

BEFORE THE AFRICAN COMMISSION FOR HUMAN & PEOPLES' RIGHTS

49th ORDINARY SESSION: APRIL-MAY 2011

COMMUNICATION NO. 383/2010

In the matter between:

MOHAMMED ABDULLAH SALEH AL-ASAD

and

DJIBOUTI

**EXHIBITS ATTACHED TO ARGUMENTS ON ADMISSIBILITY,
DECLARATION OF MOHAMMED ABDULLAH SALEH AL-ASAD,
AND DECLARATION OF ZAHRA AHMED MOHAMED**

EXHIBITS

The United Republic of Tanzania Departure Declaration Card, 27 December 2003.....	A
Center for Human Rights and Global Justice, <i>On the Record: U.S. Disclosures on Rendition, Secret Detention, and Coercive Interrogation</i> (New York: NYU School of Law, 2008).....	B
Letter to the Attorney General of Djibouti, 31 March 2009.....	C
United Nations Human Rights Council, 13 th Session, <i>Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism</i> , U.N. Doc. A/HRC/13/42 (19 February 2010).....	D
<i>Republic v. Director of Immigration Services, ex parte Mohammed al-Asad</i> (Habeas Corpus petition), High Court of Tanzania, 17 June 2004.....	E
Amnesty International, <i>United States of America: Below the radar- Secret flights to torture and ‘disappearance,’</i> 5 April 2006.....	F
<i>Prepared Remarks of Treasury Secretary John Snow to Announce Joint U.S. and Saudi Action Against Four Branches of Al-Haramain in the Financial War on Terror, JS-1107,</i> 22 January 2004.....	G
Henry Lyimo, Guardian (Dar es Salaam), <i>Yemenis, Italians Expelled</i> , 30 December 2003.....	H
Roderick Ndomba, Daily News (Dar es Salaam), <i>Dar Departs 2,367 Aliens</i> , 30 December 2003.....	I
International Committee of the Red Cross, <i>ICRC Report on the Treatment of Fourteen “High Value Detainees” in CIA Custody</i> , 2007.....	J
International Seismological Centre Earthquake Data.....	K
U.S. Department of Justice, Office of Legal Counsel, <i>Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel Re: Application of 18 U.S.C. §§ 2340-2340A to the Combined Use of Certain Techniques in the Interrogation of High Value al Qaeda Detainees</i> , 10 May 2005.....	L
Richard Norton-Taylor, Guardian (London), <i>Amnesty Demands Public Inquiry on Rendition Flights</i> , 5 April 2006.....	M
Al Jazeera, <i>Amnesty Report Probes CIA Jails</i> , 6 April 2006.....	N

BBC, *US 'used Djibouti' in Rendition*, 5 April 2006.....**O**

Scott Shane and Margot Williams, New York Times, *Yemenis Freed After Transfer From Secret Prisons, Report Says*, 5 April 2006.....**P**

Josh White, Washington Post, *Prisoner Accounts Suggest Detention At Secret Facilities*, 7 November 2005.....**Q**

International Committee for the Red Cross Tracing Request, 2 February 2005.....**R**

COMMUNICATION NO. 383/2010

EXHIBIT A

SA-TZE
TANZANIA AIR



THE UNITED REPUBLIC OF TANZANIA

DEPARTURE DECLARATION CARD
(Immigration Regulations 1997)

TIF. 11

Please complete clearly in BLOCK CAPITALS

1. Name Mohamed Abdullah Saleh Al-Asad sex M
2. Date of birth 1963 Place of birth (1963) Yemen
3. Nationality Yemen Occupation Business
4. Passport No. --- Place of Issue ---
Date of Issue ---
5. Physical Address in Tanzania Box 21930 bsm
6. Departing to ADEN Flight/Vessel/Vehicle No. SA-TZE

Date: 27/12/03

Signature

certified true copy of original



2004

COMMUNICATION NO. 383/2010

EXHIBIT B



ON THE RECORD:

U.S. DISCLOSURES ON RENDITION,
SECRET DETENTION, AND COERCIVE INTERROGATION



SESSIONS INVOLVED USE OF THE WATER BOARD

INTERROGATION

ABOUT THE AUTHORS

The Center for Human Rights and Global Justice (CHRGJ) brings together and expands the rich array of teaching, research, clinical, internship, and publishing activities undertaken within New York University (NYU) School of Law on international human rights issues. Philip Alston is the Center's Faculty Chair; Smita Narula and Margaret Satterthwaite are Faculty Directors; Jayne Huckerby is Research Director; Veerle Opgenhaffen is Program Director; and Lama Fakih is Center Fellow.

The International Human Rights Clinic at NYU School of Law (a program of the Center) provides high-quality, professional human rights lawyering services to individual clients and non-governmental and intergovernmental human rights organizations, partnering with groups based in the United States and abroad. Working as legal advisers, counsel, co-counsel, or advocacy partners, clinic students work side-by-side with human rights activists from around the world. The Clinic is co-directed by Professor Smita Narula and Professor Margaret Satterthwaite of the NYU faculty; and Michelle Williams is Clinic Administrator.

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Principal Authors and Researchers

Jayne Huckerby, Research Director, CHRGJ, NYU School of Law

Margaret Satterthwaite, Faculty Director, CHRGJ and International Human Rights Clinic, NYU School of Law

Review and Editorial

Lama Fakhri, Fellow, CHRGJ, NYU School of Law

Veerle Opgenhaffen, Program Director, CHRGJ, NYU School of Law

Additional Research, Writing, Production and/or Other Assistance

Amna Akbar, Clinical Contract Attorney, International Human Rights Clinic, NYU School of Law

Nicholas Enrich, Summer 2008 Intern, CHRGJ, NYU School of Law

Priyanka Ghosh, Summer 2008 Intern, CHRGJ, NYU School of Law

Gitanjali S. Gutierrez, Staff Attorney, Center for Constitutional Rights

Mattie Johnstone, Clinical Fellow, International Human Rights Clinic, NYU School of Law

Michele Lampach, Summer 2008 Intern, CHRGJ, NYU School of Law

Emi MacLean, Staff Attorney, Center for Constitutional Rights

Kyle Marler, Summer 2008 Intern, CHRGJ, NYU School of Law

Kelly Ryan, Program Assistant, CHRGJ, NYU School of Law

Michelle Williams, Clinic Administrator International Human Rights Clinic, NYU School of Law

TABLE OF CONTENTS

Table of Acronyms and Termsiii

Introduction 1

I. U.S. Government Statements about the Existence of the Post-9/11 Rendition, Secret Detention, and Coercive Interrogation Program.....4

A. Secret Detention and Interrogation4

B. Rendition.....4

II. Other Publicly Available Information about the Existence of the Post- 9/11 Rendition, Secret Detention, and Coercive Interrogation Program.....6

A. Authorization and Debate over the Program6

B. Rendition for Coercive Interrogation6

III. Government Statements about the Number and Identities of Individuals Rendered, Secretly Detained, and Coercively Interrogated by the CIA8

A. Number of Secret Detainees8

B. Identities of Secret Detainees.....8

C. Scope of Post-9/11 Rendition Program.....9

IV. Other Publicly Available Information about the Number and Identities of Individuals Rendered, Secretly Detained, and Coercively Interrogated by the CIA10

A. Identities and Number of Secret Detainees10

B. Identities and Number of Individuals Rendered Post-9/11.....10

C. Identities of CIA Personnel Involved.....11

V. Government Statements about Apprehension, Transfer, and Interrogation in the Rendition, Secret Detention, and Coercive Interrogation Program..... 12

A. Apprehension, Transfer, and the Role of Foreign Partners12

B. Detention Outside of Judicial Process.....12

C. “Alternative Set of Procedures”—Authorization, Nature, and Scope12

D. CIA Interrogators13

VI. Other Publicly Available Information about Apprehension, Transfer, and Interrogation in the Rendition, Secret Detention, and Coercive Interrogation Program..... 14

A. Authorization and Use of Coercive Interrogation Techniques.....14

B. Typical Rendition Procedures and Handling of Detainees.....14

C. *Incommunicado* Detention.....16

D.	Locations of CIA Secret Detention Facilities.....	16
E.	Day-to-day Operations of CIA Secret Detention Facilities	16
F.	Proxy Detention by Foreign Authorities.....	17
VII.	Government Statements about Attempts to Shield from Scrutiny the Rendition, Secret Detention, and Coercive Interrogation Program.....	19
A.	Lack of Congressional Oversight	19
B.	Dissemination of Inaccurate Information and Destruction of Evidence	20
C.	Denial of Information to other U.S. Agencies or Bodies	20
D.	Restrictions on Former CIA Detainees’ Testimonies	20
E.	Over-classification Practices in Respect to the “War on Terror”	21
VIII.	Other Publicly Available Information About Attempts to Shield from Scrutiny the Rendition, Secret Detention, and Coercive Interrogation Program.....	22
A.	Destruction of Evidence.....	22
B.	CIA Limitations on Internal and External Oversight	22
C.	Improper Classification Generally.....	22
IX.	Government Statements about Illegality and Improper Acts in the Rendition, Secret Detention, and Coercive Interrogation Program.....	24
A.	The Impact of <i>Hamdan v. Rumsfeld</i>	24
B.	U.S. Officials’ Concerns about the CIA Program.....	25
C.	Legal Reviews and Investigations	26
D.	Recognition of Public Concern	27
X.	Other Publicly Available Information about Illegality and Improper Acts in the Rendition, Secret Detention, and Coercive Interrogation Program.....	28
A.	The Impact of <i>Hamdan v. Rumsfeld</i>	28
B.	CIA Inspector General Investigations.....	28
C.	CIA Concerns about Illegality.....	29
D.	U.S. Government Concerns About Illegality of Post-9/11 Rendition and Coercive Interrogation Outside the CIA	31
E.	Additional Concerns of the U.S. Government.....	32
F.	Findings of UN Human Rights Bodies	32
G.	Investigations by Foreign Governments.....	33
H.	Investigations by the Council of Europe and European Parliament	33
I.	Public Concern with the CIA’s Activities and Mistakes	34
	Endnotes	35

TABLE OF ACRONYMS AND TERMS

ACLU:	American Civil Liberties Union
AI:	Amnesty International
AIUSA:	Amnesty International USA
CCR:	Center for Constitutional Rights
CHRGJ:	Center for Human Rights and Global Justice at New York University School of Law
CIA:	Central Intelligence Agency
DOD:	U.S. Department of Defense
DOJ:	U.S. Department of Justice
DOJ OIG:	U.S. Department of Justice Office of Inspector General
DTA:	<i>Detainee Treatment Act</i>
FBI:	U.S. Federal Bureau of Investigation
FOIA:	Freedom of Information Act
HRF:	Human Rights First
HRW:	Human Rights Watch
IHRC/ CHRGJ:	International Human Rights Clinic at NYU School of Law's Center for Human Rights and Global Justice
ODNI:	Office of the Director of National Intelligence
TDIP:	European Parliament's Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners
UN:	United Nations
U.S.:	United States

INTRODUCTION

According to the United States (U.S.) government, shortly after September 11, 2001, the Central Intelligence Agency (CIA) was tasked with planning a “separate” program to begin secretly detaining and interrogating individuals outside of the United States.¹ At that time, the CIA was also reportedly authorized to forcibly transfer individuals to foreign countries for interrogation in a practice commonly known as “rendition” or “extraordinary rendition.”² Starting with the rendition of Ibn al-Shaykh al-Libi to Egypt in January 2002,³ and the detention and interrogation of Abu Zubaydah in March 2002,⁴ the U.S. post-9/11 rendition, secret detention, and coercive interrogation program has since swept up many individuals, the vast majority of whom are still unaccounted for by the United States.

Between 2001 and September 2006, information about CIA rendition, secret detention, and coercive interrogation operations emerged piecemeal. The U.S. government was the source of some of this information: officials discussed rendition in the media and on Capitol Hill, but gave only partial accounts; they announced the capture of individuals, but refused to disclose their whereabouts; and they informed the National Commission on Terrorist Attacks Upon the U.S. (the 9/11 Commission) that certain individuals were “currently in U.S. custody,” but refused to give the Commission the access it sought to the detainees themselves. The U.S. government also provided “statements” culled from interrogations on behalf of certain secret CIA detainees in the cases of *United States v. Paracha* and *United States v. Moussaoui*. Media, inter-governmental bodies (such as the Council of Europe and the United Nations (UN)), human rights organizations, and former detainees also provided comprehensive insights into the CIA’s activities.

Following the decision of the U.S. Supreme Court in *Hamdan v. Rumsfeld* on June 29, 2006—holding that Common Article 3 of the Geneva Conventions applies to all U.S. detainee operations in the “War on Terror”—the U.S. government felt compelled to make additional disclosures on its rendition, secret detention, and coercive interrogation activities. On September 6, 2006, President George W. Bush acknowledged that the United States was operating a secret detention program as part of its “War on Terror” and stated that the program would continue.⁵ This announcement prompted a slew of acknowledgements about the program by U.S. government personnel acting in their official capacity, ranging from President Bush to the Office of the Director of National Intelligence (ODNI), the Director of the CIA, the Department of Defense (DOD), and U.S. Secretary of State, among others. These acknowledgements provided insights into the nature and scope of the CIA’s program, including, for instance, information concerning:

- The existence and continued use of the CIA’s secret detention and enhanced interrogation program;
- The existence of the government’s rendition program and its use to transfer terrorism suspects to third countries;
- The CIA’s use of an “alternative set of procedures”, a “new interrogation program”, “enhanced interrogation techniques”, or “special methods of questioning” on CIA detainees and how such techniques were purportedly approved (including the role of the National Security Council Principals Committee and the Department of Justice (DOJ));

- The number of individuals detained in the program (“fewer than 100”) and subject to enhanced interrogation techniques (“less than a third” of the “fewer than 100”);
- The number of renditions performed by the CIA, additional to the number it has detained in secret facilities (“mid-range,” “two figures”);
- U.S. collaboration with foreign partners to apprehend, render, and detain individuals;
- The names of 19 individuals secretly detained by the CIA and the details regarding the apprehension of a number of these individuals;
- The CIA’s use of waterboarding against at least three detainees in 2002 and 2003; and,
- The recordings of interrogations of CIA detainees and the subsequent destruction of those videotapes by the CIA in 2005.⁶

These official disclosures are complemented by a wealth of other publicly available information that has come from foreign government officials, former detainees and rendered individuals, and former U.S. officials (speaking both on and off the record) as well as current U.S. officials (speaking off the record) to media, investigatory bodies, and human rights organizations. The plethora of publicly available information highlights the extent to which U.S. government disclosures have been both highly selective and unduly secretive. Such an approach aggravates the state of uncertainty that hangs over the fate and whereabouts of those individuals who are still missing;⁷ those who will be subject to the CIA’s activities in the future; and those former CIA detainees who seek redress but have been prevented from pursuing claims in U.S. courts because of the U.S. government’s invocation of the “state secrets” privilege.⁸

In an effort to obtain further information from the U.S. government about its rendition, secret detention, and coercive interrogation activities, in 2004, 2006, and 2007, Amnesty International USA (AIUSA), the Center for Constitutional Rights (CCR), and the International Human Rights Clinic at NYU School of Law’s Center for Human Rights and Global Justice (NYU IHRC/CHRGJ)⁹ submitted Freedom of Information Act (FOIA) requests to several U.S. agencies, including the CIA. Following a refusal to disclose the majority of the information sought, AIUSA, CCR, and NYU IHRC filed suit in June 2007 in federal court in the Southern District of New York. In spring 2008, the CIA admitted that it had more than 7,000 relevant documents, but sought a ruling that it did not need to disclose the vast majority of those documents, arguing, *inter alia*, that it cannot be compelled to disclose information it argues is properly classified. In response, on June 26, 2008, AIUSA, CCR, and NYU IHRC filed an opposition to the CIA’s motion for summary judgment and a memorandum of law in support of a cross-motion for partial summary judgment.¹⁰

This filing was accompanied by an account of what is known to date about the U.S. rendition, secret detention, and interrogation program, in the form of a 78-page declaration by NYU IHRC/CHRGJ’s Professor Margaret Satterthwaite.¹¹ The declaration—which also contains several hundred pages of exhibits—aggregates all the public information available to date about the CIA’s activities, presenting both U.S. government statements and other publicly available sources, such as media accounts and reports by human rights organizations. This report—*On the Record: U.S. Disclosures on Rendition, Secret Detention, and Coercive Interrogation*—is based in large part on that

declaration. It omits references to, and copies of, exhibits to the declaration, but otherwise presents the same information found in the sources cited within the declaration.

This report aims to shed light both on what has been revealed and what has been obscured by the U.S. government. It also seeks to demonstrate the enormous range of information that is in the public sphere about the nature and scope of the U.S. rendition, secret detention, and coercive interrogation activities. This exercise makes it increasingly evident that the threats of disclosure of “state secrets” and harm to national security are ill-founded, and that the real concern lays in the very fact that a program of this nature exists and continues to operate.

I. U.S. GOVERNMENT STATEMENTS ABOUT THE EXISTENCE OF THE POST-9/11 RENDITION, SECRET DETENTION, AND COERCIVE INTERROGATION PROGRAM

A. SECRET DETENTION AND INTERROGATION

President George W. Bush, the Office of the Director of National Intelligence (ODNI), and the CIA have each separately confirmed that, following September 11, 2001, the CIA operated a “separate” CIA detention and interrogation program. In a September 6, 2006 statement, President Bush first officially declared that “[i]n addition to the terrorists held at Guantanamo, a small number of suspected terrorist leaders and operatives captured during the war have been held and questioned outside the United States, in a separate program operated by the Central Intelligence Agency.”¹² On September 6, 2006, the ODNI also provided an overview of the “CIA’s detention and interrogation program,” and noted that “[s]hortly after 11 September 2001” there were briefings on the “authorities” for the program.¹³

On November 10, 2006, the CIA Associate General Counsel clarified what the “authorities” for the program may have included in a letter¹⁴ sent to Plaintiffs in *ACLU et. al. v. DOD et. al.*, 04-Civ.-4151 (S.D.N.Y.), remanded 06-0205-cv (2nd Cir.) that stated that the CIA had “located...one document responsive to Item No. 61” of the list of responsive records specifically identified by Plaintiffs. Item No. 61 is described by Plaintiffs as a directive signed by President Bush granting the CIA the authority to set up detention facilities outside the United States and/or outlining interrogation methods that may be used against detainees. The CIA describes the document located as responsive to Item No. 61 as “a memorandum from President Bush to the Director of the CIA. Additionally, General Michael Hayden, Director of the CIA (CIA Director General Hayden) has also made numerous references to “our rendition, detention and interrogation programs” and their origins, stating in September 2007 that “[e]verything is on the table”¹⁵ but also indicating in October 2007 that he “can’t commend [sic] on any of the techniques we may or may not have used.”¹⁶

President Bush, DOD, and CIA Director General Hayden, have confirmed that the secret detention and coercive interrogation program continues to operate. President Bush stated on September 6, 2006 that “[t]he current transfers mean that there are now no terrorists in the CIA program. But...having a CIA program for questioning terrorists will continue to be crucial...”¹⁷ Following this statement, in April 2007, the Office of the Assistant Secretary of Defense announced that the DOD had taken custody of Abd al-Hadi al-Iraqi and that “prior to his arrival at Guantanamo Bay, he was held in CIA custody.”¹⁸ CIA Director General Hayden also made reference to this transfer in an interview with Charlie Rose, making clear that the U.S. secret detention program was operational into 2007.¹⁹ These assertions were followed by a March 2008 statement by the Office of the Assistant Secretary of Defense in which it was announced that the DOD had taken custody of Muhammad Rahim al-Afghani and that “prior to his arrival at Guantanamo Bay, he was held in CIA custody.”²⁰

B. RENDITION

President Bush, U.S. Secretary of State Condoleezza Rice, CIA Director General Hayden, and other U.S. officials have all repeatedly acknowledged the use of rendition to transfer terrorism suspects to third countries. For instance, at a March 2005 press conference, President Bush stated that in the “post-9/11 world” one technique of the United States is to “arrest people and send them

back to their country of origin with the promise that they won't be tortured."²¹ At a press conference the following month, the President reiterated the point and further stated that individuals were also being sent to third countries: "...we send people to countries where they say they're not going to torture the people..."²² The CIA has made similar admissions about the use of rendition to transfer individuals to third countries. In March 2005, then-CIA Director General Porter Goss testified about "renditions" in an open session of the Senate Armed Services Committee.²³ On September 7, 2007, CIA Director General Hayden discussed the U.S. practice of rendition, characterizing renditions as "renditions—that's moving a terrorist from A to B"²⁴ The following month, in an interview with Charlie Rose, CIA Director General Hayden further confirmed that there is a "group of people...on whom we've conducted renditions. We have moved them from one country to another."²⁵

Confirmation that the United States uses the practice of "rendition" has also come from U.S. Secretary of State Condoleezza Rice,²⁶ White House Press Secretaries Scott McClellan²⁷ and Tony Snow,²⁸ and CIA spokesperson, Paul Gimigliano, who has explained that "[s]etting aside the myths, rendition...has been used over the years on a very limited scale, and is designed to take terrorists off the street."²⁹

II. OTHER PUBLICLY AVAILABLE INFORMATION ABOUT THE EXISTENCE OF THE POST- 9/11 RENDITION, SECRET DETENTION, AND COERCIVE INTERROGATION PROGRAM

A. AUTHORIZATION AND DEBATE OVER THE PROGRAM

Media and other reports have also widely reported on the adoption of the CIA's rendition, secret detention, and coercive interrogation programs and the means by which they were authorized. In March 2005, the New York Times reported that a presidential directive purportedly gave the CIA broad new authority to covertly transfer individuals to third countries solely for interrogation or detention purposes.³⁰ In November 2005, the Washington Post discussed in detail the "covert prison system set up by the CIA nearly four years ago" and noted that "six days after the Sept. 11 attacks, President Bush signed a sweeping finding that gave the CIA broad authorization to disrupt terrorist activity, including permission to kill, capture and detain members of al Qaeda anywhere in the world."³¹ The following month, ABC News noted that the "CIA's secret prisons have existed since March 2002."³² Then, in December 2005, the New York Times reported that Ibn al-Shaykh al-Libi was rendered to Egypt in January 2002 "...because the White House had not yet provided detailed authorization for the C.I.A. to hold him," and noted that the CIA itself began to detain individuals in 2002 with the apprehension of Abu Zubaydah.³³ In 2006, the Council of Europe, Parliamentary Assembly Committee on Legal Affairs and Human Rights described a "global 'spider's web'" of rendition operations and secret detentions.³⁴ Its subsequent report on the issue, also described the development of the "High-Value Detainee" (HVD) Program and the "evolution of specific 'black sites'" in the program.³⁵

Media and other reports have also widely reported on debates between the CIA and other agencies over the adoption of the CIA's rendition, secret detention, and coercive interrogation programs. In June 2004, Newsweek reported that the handling of Ibn al-Shaykh al-Libi had set off a "bitter feud between the FBI and the CIA over how to interrogate terror suspects."³⁶ Other sources have described the "turf battle" over al Qaeda prisoners³⁷ and the protracted debate over the treatment of "high-value" al Qaeda suspects, their transfers, their location of detention, and whether they would be placed into the criminal justice system or held outside that system.³⁸

B. RENDITION FOR COERCIVE INTERROGATION

Former U.S. officials have acknowledged the use of renditions to transfer terrorism suspects to third countries. For instance, Tyler Drumheller, former chief of the CIA's Europe division, stated that he "...once had to brief Condoleezza Rice on a rendition operation, and her chief concern was not whether it was the right thing to do, but what the president would think about it...This is no way to run a covert policy."³⁹ Michael Scheuer, former Chief of the Bin Laden Unit at the CIA and an architect of the rendition program, has also acknowledged the existence of the program in describing the origins of the "Rendition Program" and its current manifestations.⁴⁰

Beginning in 2002, media and other accounts have also quoted named and unnamed U.S. officials stating that the post 9/11 rendition program was aimed at coercive interrogation, including torture and cruel, inhuman, and degrading treatment. In March 2002, the Guardian quoted an unnamed U.S. diplomat stating that "[a]fter September 11, [renditions] have been occurring all the

time...It allows us to get information from terrorists in a way we can't do on U.S. soil."⁴¹ In December 2002, the Washington Post also quoted an unnamed official who has been involved in rendering individuals, who explained his understanding of the purpose of post-9/11 renditions as follows: "We don't kick the [expletive] out of them. We send them to other countries so *they* can kick the [expletive] out of them."⁴² (emphasis in original). In a later article, the Washington Post quoted an unnamed official who revealed that "[t]he temptation is to have these folks in other hands because they have different standards."⁴³ In a 2005 interview with the BBC, Robert Baer, a former covert officer for the CIA, confirmed that one goal of the rendition program is to employ harsh interrogation tactics: "If you send a prisoner, for instance, to Egypt, you will probably never see him again, the same way with Syria."⁴⁴

III. GOVERNMENT STATEMENTS ABOUT THE NUMBER AND IDENTITIES OF INDIVIDUALS RENDERED, SECRETLY DETAINED, AND COERCIVELY INTERROGATED BY THE CIA

A. NUMBER OF SECRET DETAINEES

According to CIA Director General Hayden, the CIA has secretly detained and interrogated “fewer than 100” prisoners in CIA facilities.⁴⁵ President Bush, the ODNI, and CIA Director General Hayden have confirmed that the first individual detained in the CIA’s program was Abu Zubaydah and that the program began with his apprehension in 2002. In September 2006, President Bush referred to the apprehension of Abu Zubaydah and stated that the “CIA used an alternative set of procedures” against him.⁴⁶ On the same day as the President’s speech, the ODNI also noted the apprehension of Zubaydah in March 2002 by the CIA and its partners, stating that “[o]ver the ensuing months, the CIA designed a new interrogation program...” to question Zubaydah.⁴⁷ In 2007, CIA Director General Hayden reiterated that the CIA’s detention and interrogation program “...began with the capture of Abu Zubaydah in the spring of 2002.”⁴⁸ In a subsequent interview with Charlie Rose, Hayden referred to the number of individuals detained in the “life of the program, since the capture of Abu Zubaydah in March of 2002.”⁴⁹

B. IDENTITIES OF SECRET DETAINEES

To date, the U.S. government has confirmed by name at least 19 individuals secretly detained by the CIA.⁵⁰ As early as December 2002, National Director and Deputy National Security Adviser for combating terrorism, Wayne A. Downing, was quoted as stating on the record that “[t]he interrogations of Abu Zubaida drove me nuts at times.”⁵¹ In 2004, the 9/11 Commission stated that the following individuals were “currently in U.S. custody”: Ramzi Binalshibh; Waleed Mohammed bin Attash (Tawfiq bin Attash, Tawfiq Attash Khallad); Hassan Ghul; Hambali; Khalid Sheikh Mohammed; Abu Zubaydah; Ali Abd al Rahman al Fakasi al Ghamdi; and Abd al Rahim al-Nashiri.⁵²

Over the next few years, the U.S. government provided “statements” on behalf of certain secret CIA detainees in trials in U.S. courts. In the criminal case of *United States v. Paracha*, the U.S. government provided unclassified summaries of statements by Majid Khan, Ammar al Baluchi (Ali Abdul Aziz Ali), and Khalid Sheik Mohammed.⁵³ During the *United States v. Moussaoui* proceedings the U.S. government provided substitutions of testimony for Khalid Sheik Mohammed, Mustafa Ahmed al-Hawsawi, Walid Muhammad Salih Bin Attash (Khallad), and Riduan Isamuddin (Hambali), noting in each substitution the individual’s date of capture and that each individual “has been interrogated over the course of years on multiple occasions since his capture” and is “not available to testify either in person or by video for national security reasons.”⁵⁴ On September 6, 2006, President Bush announced that “...Khalid Sheikh Mohammed, Abu Zubaydah, Ramzi bin al-Shibh, and 11 other terrorists in CIA custody have been transferred to the United States Naval Base at Guantanamo Bay”⁵⁵ and the ODNI provided the identities and detailed biographical information of these fourteen individuals.⁵⁶ A few days later, a report of the U.S. Senate Select Committee on Intelligence cited to CIA operational cables, dated February 4, 5, and 19, 2004, recording information given by detainee Ibyn al-Shaykh al-Libi to CIA debriefers.⁵⁷

The U.S. Government did not provide any additional information about the identities of the CIA's secret detainees until 2007, when the DOD announced that it had taken custody of Abd al-Hadi al-Iraqi, who had been "held in CIA custody."⁵⁸ CIA Director General Hayden also described the transfers of the 14 secret detainees to Guantánamo Bay in September 2006 and of Abd al-Hadi al-Iraqi in 2007 on the Charlie Rose Show.⁵⁹ Another detainee was named in 2008, when the DOD announced that it had taken custody of Muhammad Rahim al-Afghani and that "...he was held in CIA custody."⁶⁰

C. SCOPE OF POST-9/11 RENDITION PROGRAM

In addition to identifying the names of individuals held by the CIA in secret U.S. facilities, the U.S. government has officially acknowledged the scope of its post-9/11 rendition program. In September and October 2007, CIA Director General Hayden confirmed the number of renditions, stating that "and I mentioned renditions, the number of renditions—that's moving a terrorist from A to B—apart from that 100 that we've detained, the number of renditions is actually even a smaller number, mid-range two figures"⁶¹ and confirming that the number of individuals rendered is "[m]id-range, two figures since September 11, 2001."⁶²

IV. OTHER PUBLICLY AVAILABLE INFORMATION ABOUT THE NUMBER AND IDENTITIES OF INDIVIDUALS RENDERED, SECRETLY DETAINED, AND COERCIVELY INTERROGATED BY THE CIA

A. IDENTITIES AND NUMBER OF SECRET DETAINEES

The media and human rights organizations have reported on the number of detainees subject to the practice of U.S. secret detention and have identified many of these individuals by name. In a 2004 report, Human Rights Watch (HRW) discussed 11 named detainees in undisclosed locations.⁶³ In November 2005, the Washington Post reported that “more than 100 suspected terrorists have been sent by the CIA into the covert system, according to current and former U.S. intelligence officials and foreign sources.”⁶⁴ The New York Times also reported that “[t]he agency currently holds between two and three dozen high-ranking terrorist suspects in secret prisons around the world.”⁶⁵

In December 2005, CHRGI released a report presenting the stories of 28 named individuals believed to have been “disappeared” by the U.S. government.⁶⁶ In 2007, several human rights organizations identified and provided biographic information about 39 individuals—most identified by name—believed to have been held at some point by the United States in secret sites, all of whom at the time of the report remained missing.⁶⁷ The 39 included the cases of specific individuals whose detention has been officially acknowledged by the United States but whom the United States has never disclosed as being in any known place of detention.

Former CIA detainees have provided information about the number of individuals with whom they were held and their identities, reportedly because their fellow prisoners sought to make known their names and identifying information. For instance, while they were in CIA custody, Khaled el-Masri and Laid Saidi, along with a “collection of prisoners”:

...spent night after night repeating their telephone numbers to one another from within the dark and dirty cells where they were being held in Afghanistan. Anyone who got out, they said they agreed, would use the numbers to contact the families of the others to let them know that they were still alive.⁶⁸

Former CIA detainee, Khaled al-Maqtari, also listed the names and/or identifying information and cell numbers of 20 prisoners who made their identities known to him while they were held in a CIA “black site” in Afghanistan between January and April 2004.⁶⁹ Another former detainee, Marwan Jabour, has also provided those names he recalls seeing on the wall of his cell, inscribed below his cell sink, written on a mattress, and written on a shirt.⁷⁰

B. IDENTITIES AND NUMBER OF INDIVIDUALS RENDERED POST-9/11

The media and human rights organizations have also reported on the number of individuals who were subject to post-9/11 renditions. In a 2008 report, HRW detailed the cases of 14 non-Jordanian prisoners who were rendered by the CIA to Jordan, which “served as a proxy jailer for the US Central Intelligence Agency (CIA), holding prisoners that the CIA apparently wanted out of circulation, and later handing some of them back to the CIA.”⁷¹ Also in 2008, Mother Jones

reported the following: “We found information on 117 renditions that have occurred since September 11, 2001. When we excluded renditions to Afghanistan, CIA secret prisons (or ‘black sites’), Guantanamo, or American custody, we found 53 cases of extraordinary rendition.” The article further outlined the cases of these individuals who were rendered to countries including Egypt, Jordan, Libya, Morocco, Pakistan, and Syria.⁷²

C. IDENTITIES OF CIA PERSONNEL INVOLVED

The media has reported the names of certain CIA officials involved in the rendition, secret detention and coercive interrogation program and some of these officials have openly spoken to the media about their part in the program. For instance, former CIA agent, John Kiriakou, gave an on-camera interview to ABC News in December 2007 about his activities within the CIA’s secret detention program.⁷³ Michael Scheuer identified himself in a New York Times op-ed in March 2005 “as head of the C.I.A.’s bin Laden desk,” stating that “(he) started the Qaeda detainee/rendition program and ran it for 40 months.”⁷⁴ The New York Times has also named one of Khalid Sheikh Mohamed’s interrogators in the CIA program as being Deuce Martinez.⁷⁵

V. GOVERNMENT STATEMENTS ABOUT APPREHENSION, TRANSFER, AND INTERROGATION IN THE RENDITION, SECRET DETENTION, AND COERCIVE INTERROGATION PROGRAM

A. APPREHENSION, TRANSFER, AND THE ROLE OF FOREIGN PARTNERS

President Bush, the ODNI, and other U.S. officials have officially confirmed that the United States, working with foreign partners, has been responsible for the apprehension of individuals rendered and detained in the CIA's program. In September 2006, President Bush stated that "[w]orking with our allies, we've captured and detained thousands of terrorists and enemy fighters in Afghanistan, in Iraq, and other fronts of this war on terror."⁷⁶ Also in September 2006, the ODNI stated that "[i]n March 2002, the CIA and our Coalition partners captured Abu Zubaydah..." and that "[d]etainees have provided names [sic] approximately 86 individuals...Nearly half of these individuals have been removed from the battlefield by the US and its allies."⁷⁷ More than three years earlier, a "senior administration official" had announced and described the capture of "Ryuduan bin Isomuddin," (Hambali) as a "joint operation...[that] did involve others" and Scott McClellan, White House Press Secretary, and the senior administration official both stated that Hambali was now in the "custody of the United States government" but the senior administration official refused to "get into...details at this point" regarding where Hambali was being held.⁷⁸

B. DETENTION OUTSIDE OF JUDICIAL PROCESS

President Bush has officially confirmed that individuals held by the CIA in its program are secretly detained and have been kept outside regular judicial processes, stating in reference to the transfer of individuals from secret CIA custody to Guantánamo Bay on or around September 6, 2006 that, "...we have largely completed our questioning of the men -- and to start the process for bringing them to trial, we must bring them into the open" and that after their transfer to Guantánamo Bay, "the International Committee of the Red Cross is being advised of their detention, and will have the opportunity to meet with them."⁷⁹

C. "ALTERNATIVE SET OF PROCEDURES"—AUTHORIZATION, NATURE, AND SCOPE

The ODNI has confirmed that in 2002 a "new interrogation program," involving what President Bush confirmed to be an "alternative set of procedures" was authorized for use against individuals in the CIA's secret detention and interrogation program. In September 2006, President Bush referred to the questioning of Abu Zubaydah, stating that "[a]nd so the CIA used an alternative set of procedures."⁸⁰ That same day, the ODNI—in discussing the capture of Abu Zubaydah in March 2002—stated that "over the ensuing months, the CIA (had) designed a new interrogation program..."⁸¹

In April 2008, President Bush stated that he had "approved" the enhanced interrogation techniques used by the CIA. He stated his awareness that the National Security Council Principal's Committee met and approved "enhanced interrogation techniques" for use against CIA secret detainees, noting: "Well, we started to connect the dots in order to protect the American people...And yes, I'm aware our national security team met on this issue. And I approved."⁸² In September and October 2007, CIA Director General Hayden specified that such "special methods

of questioning” or “enhanced interrogation techniques” had been used against “less than a third” of the individuals secretly detained by the CIA.⁸³ At the end of January 2008, John Negroponte, former Director of National Intelligence and current U.S. Deputy Secretary of State confirmed that waterboarding had been used in interrogations.⁸⁴ In February 2008, during questioning before the Senate Select Committee on Intelligence, CIA Director General Hayden confirmed the use of waterboarding as an interrogation technique for CIA detainees and also disclosed that the CIA had subjected three named detainees—Abu Zubaydah, Khalid Sheikh Mohammed, and Abd al-Rahim al-Nashiri—to waterboarding in 2002 and 2003.⁸⁵

Official U.S. documents released pursuant to FOIA litigation have also confirmed that the CIA used “enhanced techniques” for interrogation; that these techniques include waterboarding or “the waterboard”; that the CIA waterboarded three named individuals, Khalid Sheikh Mohamed, Abu Zubaydah and Abd al-Rahim al-Nashiri,⁸⁶ and that individual interrogators did not make independent decisions about what techniques to use, but instead sought specific authorization from officials in the United States.⁸⁷ At least one Article III court is currently considering whether evidence was obtained from CIA detainees through torture.⁸⁸

D. CIA INTERROGATORS

In addition to information about the nature of techniques and which detainees were subjected to them, the U.S. government has provided information about CIA interrogators, their training, and their average age. President Bush and the ODNI have both explained that interrogators must be screened and that they must also complete more than 250 hours of specialized training.⁸⁹ CIA Director General Hayden has also stated that “[t]he amount of training for this specific activity is 240 hours,” and specified that the average age of a CIA interrogator is 43.⁹⁰

VI. OTHER PUBLICLY AVAILABLE INFORMATION ABOUT APPREHENSION, TRANSFER, AND INTERROGATION IN THE RENDITION, SECRET DETENTION, AND COERCIVE INTERROGATION PROGRAM

A. AUTHORIZATION AND USE OF COERCIVE INTERROGATION TECHNIQUES

Former U.S. government officials have stated that authorization for the use of specific techniques came from officials in the United States. Paul C. Kelbaugh, deputy legal counsel at the CIA's Counterterrorist Center from 2001 to 2003, has publicly recalled that interrogators sent lawyers questions from the "black sites" about the legal limits on their interrogation techniques, specifying that they "...were getting asked about combinations—'Can we do this and this at the same time?'"⁹¹ Former CIA agent John Kiriakou has also stated that "[i]t wasn't up to individual interrogators to decide, 'Well, I'm gonna slap him' Or, 'I'm going to shake him.' Or, 'I'm gonna make him stay up for 48 hours.' Each one of these steps, even though they're minor steps, like the intention shake, or the open-handed belly slap, each one of these had to have the approval of the deputy director for operations..." and that "the cable traffic back and forth was extremely specific...it was extremely deliberate."⁹²

Additionally, U.S. intelligence sources have provided detailed information about the six "enhanced interrogation techniques" instituted in 2002 for use against secret CIA detainees. These techniques have been described as: "the attention grab"; "the attention slap"; "the belly slap"; "longtime standing"; "the cold cell"; and, waterboarding. In 2005, ABC News reported that it had been told by "former and current intelligence officers and supervisors" that harsh interrogation techniques were "first authorized in mid-March 2002" and described the six techniques.⁹³ The New York Times also reported that techniques "...included slaps to the head; hours held naked in a frigid cell; days and nights without sleep while battered by thundering rock music; long periods manacled in stress positions; or the ultimate, waterboarding."⁹⁴

Current and former CIA officials have also provided details of the waterboarding of Khalid Sheikh Mohamed and Abu Zubaydah, including how long the technique was applied to each individual. ABC News has reported that "[t]he most effective use of waterboarding, according to current and former CIA officials, was in breaking Khalid Sheikh Mohammed" and that "'KSM lasted the longest under waterboarding, about a minute and a half, but once he broke, it never had to be used again,' said a former CIA official familiar with KSM's case."⁹⁵ Former CIA agent John Kiriakou has revealed that Zubaydah "was able to withstand the waterboarding for quite some time. And by that I mean probably 30, 35 seconds--."⁹⁶

B. TYPICAL RENDITION PROCEDURES AND HANDLING OF DETAINEES

Publicly available information has disclosed that before their transfer to either a third country for interrogation or to a secret CIA "black site"—or in some cases, both—detainees are typically stripped naked; handcuffed, shackled, and blindfolded; have earplugs inserted in their ears and their mouths covered; and are hooded, before being bundled onto a plane and rendered.⁹⁷ In December 2005, the Washington Post described the lead-up to rendition as follows:

Members of the Rendition Group follow a simple but standard procedure: Dressed head to toe in black, including masks, they blindfold and cut the clothes off their new captives, then administer an enema and sleeping drugs. They outfit detainees in a diaper and jumpsuit for what can be a day-long trip. Their destinations: either a detention facility operated by cooperative countries in the Middle East and Central Asia, including Afghanistan, or one of the CIA's own covert prisons -- referred to in classified documents as 'black sites,' which at various times have been operated in eight countries, including several in Eastern Europe.⁹⁸

This comports with accounts from former detainees. The experience of former detainee Laid Saidi has been described as follows:

After being held for a week in a prison in the mountains of Malawi, Mr. Saidi said, a group of people arrived in a sport utility vehicle: a gray-haired Caucasian woman and five men dressed in black wearing black masks revealing only their eyes. The Malawians blindfolded him, and his clothes were cut away, he said. He heard someone taking photographs. Then, he said, the blindfold was removed and the agents covered his eyes with cotton and tape, inserted a plug in his anus and put a disposable diaper on him before dressing him. He said they covered his ears, shackled his hands and feet and drove him to an airplane where they put him on the floor.⁹⁹

As HRW has explained, "all of these accounts [from former detainees] had certain common characteristics, including descriptions of interrogators and prison directors who spoke American-accented English, black uniformed and masked guards, flights in which the detainee was placed in diapers and wrapped up like a package, and various forms of physical and mental abuse."¹⁰⁰ Amnesty International (AI) has reported on former CIA detainee Khaled el-Maqtari's description of this process, noting that:

In a procedure which has also been described to Amnesty International by other detainees transported by the CIA, a three- or four-person removal team, dressed completely in black, with black gloves and facemasks, came to prepare Khaled al-Maqtari for his departure. They put him in a diaper, socks, short trousers, and a shirt without buttons, then covered his eyes and stuffed his ears with cotton, taped firmly into place, before hooding him and topping it off with noise-reducing headphones.¹⁰¹

Released detainees have detailed the treatment they and others experienced in secret detention, or after rendition to a foreign country. That treatment has included beatings with a cable on palms, hips, and lower back; sleep deprivation; bombardment with loud music or other noises; genital mutilation; threats of confinement in a so-called dog box (approximately 1 cubic meter in size); threats of rape, electrocution, and death; painful shackling; and being hung from a pole. The Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, has concluded, based *inter alia* on testimony of released detainees, that 17 of the techniques used against Arar in Far Falestin, Syria "constituted torture."¹⁰² Detainees who have detailed the treatment they received and that others experienced as part of their rendition and secret detention have included Marwan Jabour,¹⁰³ Binyam Mohamed,¹⁰⁴ and Khaled al-Maqtari.¹⁰⁵

C. INCOMMUNICADO DETENTION

Legal filings and public reports show that throughout the period of their detention, CIA secret detainees are not able to contact lawyers, humanitarian organizations such as the International Committee of the Red Cross, their families, or their governments, and are detained for prolonged periods without acknowledgement or charge. With regard to U.S. “ghost detainees,” HRW has reported that “[t]he detainees are being held indefinitely and *incommunicado*, without legal rights or access to counsel.”¹⁰⁶ Similarly, CCR on behalf of its client, Maher Arar, has alleged that Arar was denied access to counsel while held in the United States and then transported to Syria, against his will, where he was held *incommunicado* and tortured for ten months.¹⁰⁷ The American Civil Liberties Union (ACLU), on behalf of Khalid El-Masri, has similarly alleged that he was denied access to counsel, consular officials, or his family for nearly half a year without charge or explanation.¹⁰⁸ Former CIA detainee, Mohamed Farag Ahmad Bashmilah, has also explained that during the 19 months he was in CIA custody, he was never allowed to contact his family, lawyers, government representatives, or humanitarian organizations.¹⁰⁹

D. LOCATIONS OF CIA SECRET DETENTION FACILITIES

The media, human rights organizations, and inter-governmental organizations have named specific countries alleged to have hosted CIA “black sites” or CIA secret facilities, including Afghanistan, Iraq, Poland, Romania, and Thailand. In March 2005, the New York Times reported that “top military intelligence officials at the Abu Ghraib prison came to an agreement with the CIA to hide certain detainees at the facility without officially registering them, according to documents obtained by The Washington Post.”¹¹⁰ The Washington Post has reported that the “covert prison system set up by the CIA” included “sites in eight countries, including Thailand, Afghanistan and several democracies in Eastern Europe, as well as a small center at the Guantanamo Bay prison in Cuba, according to current and former intelligence officials and diplomats from three continents.”¹¹¹

HRW has also reported that its independent research “corroborates the Washington Post’s allegations that there were detention facilities in Eastern Europe. Specifically, we have collected information that CIA airplanes traveling from Afghanistan in 2003 and 2004 made direct flights to remote airfields in Poland and Romania.”¹¹² The Council of Europe, Parliamentary Assembly Committee on Legal Affairs and Human Rights has also reported that the CIA operated secret prisons in Poland and Romania during the period 2002-2005.¹¹³ Recently, the New York Times reported that Khalid Sheikh Mohamed was secretly detained in Poland, “where the most important of the C.I.A.’s black sites had been established,” and that Thailand was host to the first CIA “black site”.¹¹⁴

E. DAY-TO-DAY OPERATIONS OF CIA SECRET DETENTION FACILITIES

Former CIA detainees, including those who have been released following prosecution or detention by their governments, have provided comprehensive and credible public accounts of the day-to-day operation of secret U.S. prisons, including showering schedules; diet; encounters with medical personnel, psychiatrists, and dentists; descriptions of interrogators and interpreters; and sketches of cells and facilities. For instance, AI has released several reports describing the cases of former CIA detainees Mohammed al-Asad, Salah Naser Salem Ali Darwish, and Mohamed Farag Ahmad Bashmilah, describing in detail their prolonged experiences in CIA secret detention in

Afghanistan and unknown locations.¹¹⁵ Additionally, several former detainees have provided comprehensive accounts of their time in CIA detention. These include Khaled El-Masri, who produced a 25-page declaration submitted in *El-Masri v. Tenet* describing his experience in CIA detention;¹¹⁶ Marwan Jabour;¹¹⁷ Mohamed Farag Ahmad Bashmilah, who produced a 60-page declaration outlining his apprehension, transfer, and detention, submitted in *Mohamed et. al. v. Jeppesen Dataplan, Inc.*;¹¹⁸ and Khaled al-Maqtari.¹¹⁹

F. PROXY DETENTION BY FOREIGN AUTHORITIES

Media, foreign governments, human rights organizations, and inter-governmental entities, have reported on the use of proxy detention, or detention by foreign authorities at the behest of the United States. Such reports include information about cases of former CIA detainees who were held in proxy detention after being transferred out of CIA secret detention or following rendition. For instance, in January 2005, the Washington Post reported that Australian citizen Mamdouh Habib was held at the behest of the United States in Egypt after being rendered from Pakistan and before being sent to Guantánamo.¹²⁰ In several publications, AI has described how three Yemeni nationals, Mohammed al-Asad, Salah Nasser Salem Ali Darwish, and Mohamed Farag Ahmad Bashmilah, were sent to Yemen for continued detention at the behest of the United States after being released from CIA secret detention.¹²¹

Indeed, the UN Working Group on Arbitrary Detention has stated that the government of Yemen has confirmed that Mohamed Farag Ahmad Bashmilah and Salah Nasser Salim ‘Ali were handed over to Yemen by the United States and detained, “...pending receipt of their [the persons’] files from the United States of America authorities in order to transfer them to the Prosecutor.”¹²² In a letter dated December 20, 2005 from the Permanent Mission of the Republic of Yemen to the UN Office and Other International Organizations; to the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism; and the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Permanent Mission confirmed that former secret CIA detainees Mohamed Farag Ahmad Bashmilah and Salah Nasser Salim ‘Ali were handed over to Yemen by the United States, that they were detained by the Yemeni authorities for questioning and to verify the allegations made against them by the United States, and that on November 10, 2005, the Yemeni authorities received files on the individuals from the United States authorities.¹²³

Human rights organizations have also reported extensively on the use of proxy detention. For instance, HRW has described the transfer of former CIA detainee, Marwan Jabour, from U.S. custody into first Jordanian and then Israeli custody;¹²⁴ AI, Cageprisoners, CCR, CHRJ, HRW and Reprieve U.K. have jointly described the cases of a number of individuals once held by the CIA who had been returned to Libya for continued detention;¹²⁵ Mother Jones has set out the cases of a number of individuals who remained in the custody of their home governments after being returned from secret detention by the CIA;¹²⁶ and AI has comprehensively described the transfer of former CIA detainee Khaled al-Maqtari to detention in Yemen and his subsequent release.¹²⁷

Additionally, statements made during the course of litigation against the U.S. government also reveal the extent to which proxy detention has been utilized. For instance, statements in *Arar v. Ashcroft* describe the detention, interrogation, and torture of Maher Arar in proxy detention in Syria after being rendered by the United States;¹²⁸ and statements in *Mohamed et. al. v. Jeppesen Dataplan, Inc.*,

describe the detention, interrogation, and torture of Binyam Mohamed in proxy detention in Morocco after being rendered by the United States.¹²⁹

VII. GOVERNMENT STATEMENTS ABOUT ATTEMPTS TO SHIELD FROM SCRUTINY THE RENDITION, SECRET DETENTION, AND COERCIVE INTERROGATION PROGRAM

A. LACK OF CONGRESSIONAL OVERSIGHT

From the inception of the CIA's rendition, secret detention, and coercive interrogation activities, those few members of Congress aware of the CIA's program, or elements of it, have expressed frustration at the lack of information provided by the CIA. These expressions of frustration have included a letter from Porter Goss and Jane Harman, U.S. House of Representatives, Permanent Select Committee on Intelligence to then-Director of the CIA, George Tenet on October 10, 2003, stating:

On Thursday, October 16th, 2003, the Committee will hold a full Committee briefing on the information being obtained from terrorist detainees, including but not limited to, information from three of the most noticeable terrorists in detention, Khalid Sheik Mohammed, Abu Zubaida and [REDACTED]. The Committee requests that you send senior-level briefers who can provide the Committee a full and detailed account on this subject. Some recent briefings to the Committee have been disappointing and the Committee has been frustrated with the quality of the information being provided.¹³⁰

Several months later in August 2004, Senator Patrick Leahy also wrote to Tenet stating:

On October 8, 2003, I wrote to inquire about the standards the Central Intelligence Agency applies to the treatment of detainees in its custody around the world. I am afraid that the reply I received to that letter dated November 3, 2003 from General Counsel Scott Muller did not answer the specific question I posed, namely, whether the policies and practices relating to the interrogation of detainees stated in a June 25, 2003 letter to me from Defense Department Counsel William Haynes apply in full to the CIA.¹³¹

This was followed by yet another letter from Senator John D. Rockefeller IV, then Vice Chairman of the Senate Select Committee on Intelligence, to John Negroponte, Director of National Intelligence in September 2006 seeking "confirmation" in an abundance of "caution" from the Director of National Intelligence that certain statements regarding the CIA secret prison program were unclassified, after asserting that the statements provided, "important context... without divulging national security information;" all the statements were nevertheless classified.¹³²

On May 31, 2007, the Senate Select Committee on Intelligence issued its report on the fiscal year 2008 Intelligence Reauthorization Bill, in which it expressed its concern about the lack of Congressional oversight of the CIA's detention and interrogation program, noting that "...the Administration's decision to withhold the program's existence from the full Committee membership for five years was unfortunate in that it unnecessarily hindered congressional oversight of the program"¹³³

B. DISSEMINATION OF INACCURATE INFORMATION AND DESTRUCTION OF EVIDENCE

In February 2008, CIA Director General Hayden acknowledged that the U.S. government had erroneously assured the government of the United Kingdom that British soil or airspace had not been used for rendition operations since September 11, 2001. Correcting the record, he revealed that the British Island territory of Diego Garcia had been used for rendition flights.¹³⁴ Additionally, U.S. Attorneys have admitted that CIA declarations submitted in U.S. federal court contained inaccurate information about CIA activities when they asserted falsely that no audio or video recordings of interrogations of certain detainees had been made, and that the U.S. did not possess any such recordings. An October 25, 2007 letter from U.S. Attorney, Chuck Rosenberg, to the Honorable Karen J. Williams and the Honorable Leonie Brinkema confirmed that “[t]he fact that audio/video recording of enemy combatant interrogations occurred, and that the United States was in possession of three of those recordings is, as noted, inconsistent with factual assertions in CIA declarations...”¹³⁵

CIA Director General Hayden has acknowledged that the interrogations of two individuals in the CIA program, identified separately as Abu Zubaydah and Abd al-Rahim al-Nashiri, were taped and subsequently destroyed by the CIA,¹³⁶ stating that “[t]he press has learned that back in 2002, during the initial stage of our terrorist detention program, the CIA videotaped interrogations, and destroyed the tapes in 2005.”¹³⁷

C. DENIAL OF INFORMATION TO OTHER U.S. AGENCIES OR BODIES

Other U.S. agencies or bodies have complained about the extent to which the CIA has denied them access to information about rendition, secret detention, and interrogation. The *9-11 Commission Report* concluded that the:

Current security requirements nurture over classification and excessive compartmentation of information among agencies. Each agency’s incentive structure opposes sharing, with risks (criminal, civil and internal administrative sanctions) but few rewards for sharing information. No one has to pay the long-term costs of over-classifying information, though those costs—even in literal financial terms—are substantial. There are no punishments for *not* sharing information. Agencies uphold a ‘need-to-know’ culture of information protection rather than promoting a ‘need-to-share’ culture of integration.¹³⁸

It also recorded that “[t]he Intelligence committees [adhering to CIA classification requirements] cannot take advantage of democracy’s best oversight mechanism: public disclosure.”¹³⁹ Similarly, the DOJ’s Office of Inspector General (DOJ OIG) noted in 2008 that the CIA denied the DOJ OIG access to a particular detainee and that the CIA’s reasons for doing so were “unwarranted, and its lack of cooperation hampered our investigation.”¹⁴⁰

D. RESTRICTIONS ON FORMER CIA DETAINEES’ TESTIMONIES

The U.S. government is preventing former CIA secret detainees who were transferred to Guantánamo Bay from on or around September 6, 2006 from publicly describing their own interrogation and detention by the CIA; their lawyers are also prevented from publicly discussing the CIA’s treatment of these individuals. For instance, in the Combatant Status Review Tribunal open

session hearings pertaining to detainees such as Abd Al Rahim Hussein Mohammed Al Nashiri, Abu Zubaydah and Majid Khan, portions of transcripts are redacted that appear to pertain to the treatment to which the detainee was subject while in the custody or control of the CIA.¹⁴¹ Similarly, as set out in the Emergency Stipulation in *Khan v. Gates*, in the U.S. Court of Appeals for the District of Columbia Circuit, the DOJ's terms for providing an attorney with conditional access to a former CIA detainee client require that counsel treat all information learned from the clients as presumptively top secret/sensitive compartmentalized information and make all filings under seal pending classification review by the government.¹⁴² On March 14, 2008, an attorney from CCR provided the Senate Select Committee on Intelligence with a briefing on the operation of the CIA's secret detention and interrogation program with respect to CCR's client, Majid Khan, however this briefing was classified.¹⁴³

E. OVER-CLASSIFICATION PRACTICES IN RESPECT TO THE "WAR ON TERROR"

Congress has conducted hearings on the issue of over-classification and undue withholding of documents in connection with "War on Terror" activities, and Members of Congress have expressed grave concern over the CIA's withholding of information in its briefings to Congress and in otherwise obstructing access to information. Reporting on the Joint Inquiry Into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001, the U.S. Senate Select Committee on Intelligence and U.S. House Permanent Select Committee on Intelligence recorded that "prior to September 11, 2001, the U.S. Intelligence Community was involved in fighting a 'war' against Bin Ladin largely without the benefit of what some would call its most potent weapon in that effort: an alert and committed American public."¹⁴⁴ In a hearing entitled Too Many Secrets: Overclassification as a Barrier to Critical Information Sharing before the Subcommittee on National Security, Emerging Threats and International Relations of the House Committee on Government Reform, Sub-Committee chairman Christopher Shays stated:

Against a stateless, adaptable enemy, we dare not rely on organizational stovepipes to conclude, in advance, who should have access to one piece of an emerging mosaic...The cold war paradigm of 'need to know' must give way to the modern strategic imperative, 'the need to share...The dangerous, if natural, tendency to hide embarrassing or inconvenient facts can mask vulnerabilities and only keeps critical information from the American people.¹⁴⁵

The Briefing Memorandum for a February 2005 hearing, Emerging Threats: Over-classification and Pseudo-Classification, before the same Sub-Committee, reiterated this point, explaining that the "purpose of this hearing is to examine the proliferation of categories of information that are not classified but are withheld from public disclosure" and noting the national security challenges this withholding of information presents.¹⁴⁶

VIII. OTHER PUBLICLY AVAILABLE INFORMATION ABOUT ATTEMPTS TO SHIELD FROM SCRUTINY THE RENDITION, SECRET DETENTION, AND COERCIVE INTERROGATION PROGRAM

A. DESTRUCTION OF EVIDENCE

Former and current U.S. officials, including Frederick P. Hitz, a former CIA Inspector General from 1990 to 1998, have said that the CIA's tapes of detainee interrogations were destroyed in part to prevent legal scrutiny. In March 2008, the New York Times quoted Hitz as saying: "They thought they were saving themselves from legal scrutiny, as well as possible danger from Al Qaeda if the tapes became public," and reported more generally that "...in interviews in recent months with several officers involved in the decision, they said that a primary factor was the legal risks that officers shown on the tape might face."¹⁴⁷

B. CIA LIMITATIONS ON INTERNAL AND EXTERNAL OVERSIGHT

Media reports have also recorded the extent to which the CIA has taken steps to limit internal and external oversight of its rendition, secret detention, and interrogation activities. The Washington Post reported that the "CIA and the White House, citing national security concerns and the value of the program, have dissuaded Congress from demanding that the agency answer questions in open testimony about the conditions under which captives are held."¹⁴⁸ There have also been reports of unprecedented reprisal for speaking out about the CIA program. For instance, in June 2006, the New York Times reported on the dismissal of a senior career officer for disclosing information about the CIA's secret detention program and stated that "[s]everal former veteran C.I.A. officials said the dismissal of an agency employee over a leak was rare and perhaps unprecedented."¹⁴⁹ The National Journal also explained that:

The CIA has imposed new and tighter restrictions on the books, articles, and opinion pieces published by former employees who are still contractors with the intelligence agency. According to several former CIA officials affected by the new policy, the rules are intended to suppress criticism of the Bush administration and of the CIA.¹⁵⁰

This revelation was followed by a New York Times article reporting that CIA Director General Hayden "has ordered an unusual internal inquiry into the work of the agency's inspector general, whose aggressive investigations of the CIA's detention and interrogation programs and other matters have created resentment among agency operatives."¹⁵¹

The media has sought to gain further information to enhance oversight; several media organizations have sought access to the sealed statements of former CIA detainee, Majid Khan, that describe his experience in the CIA secret detention program. Specifically, the New York Times, the Associated Press, and USA Today filed a motion in March 2008 to unseal Majid Khan's declarations concerning his experience in the CIA secret detention and coercive interrogation program.¹⁵²

C. IMPROPER CLASSIFICATION GENERALLY

Government officials have also estimated that a large proportion of classified information is improperly overclassified due to the tremendous incentives for overclassification and few for proper

declassification, and Members of Congress have expressed concern about overclassification. For instance, President Reagan's National Security Council Executive Secretary has reported that he suspected only ten percent of classification was for "legitimate protection of secrets."¹⁵³ Similarly, Carol A. Haave, the Pentagon's Deputy Under Secretary of Defense for Counter-Intelligence and Security, has estimated that 50 percent of the Pentagon's documents are classified as a result of overclassification and J. William Leonard, Director of the Information Security Oversight Office, noted that an inter-agency appeals panel recommended declassification against agency claims of secrecy "60-some-odd percent of the time."¹⁵⁴ Thomas Kean, Chair of the 9/11 Commission, has also stated that he estimates "three-quarters of what [he] read that was classified shouldn't have been."¹⁵⁵

This sentiment has been echoed by Members of Congress generally. For instance, in June 2004, the New York Times reported on Congressional disappointment that the CIA had redacted between 30 and 40 percent of the Senate Intelligence Committee's report on pre-war intelligence and quoted Senator Pat Roberts as saying "I feel very strongly that the great majority of this report should be made public...the American people certainly deserve to see it."¹⁵⁶ The Washington Post—also reporting on the intelligence community's redactions in the Senate Intelligence Committee's report on prewar intelligence—similarly noted the Senators' outrage, as described by Senator Trent Lott who said "it would be laughable if it wasn't so insulting, because they redacted half of what we had. A lot of it was to redact a word that revealed nothing."¹⁵⁷

IX. GOVERNMENT STATEMENTS ABOUT ILLEGALITY AND IMPROPER ACTS IN THE RENDITION, SECRET DETENTION, AND COERCIVE INTERROGATION PROGRAM

A. THE IMPACT OF *HAMDAN V. RUMSFELD*

Shortly after the decision of the U.S. Supreme Court in *Hamdan v. Rumsfeld* on June 29, 2006—holding that Common Article 3 of the Geneva Conventions applies to all U.S. detainee operations in the “War on Terror”—the United States government had to reverse its previous analysis that Common Article 3 did not apply to “War on Terror” detainees.¹⁵⁸ The Administration’s previous position is contained in President George W. Bush’s, *Memorandum: Human Treatment of al Qaeda and Taliban Detainees* (2002):

I also accept the legal conclusion of the Department of Justice and determine that common Article 3 of Geneva does not apply to either al-Qaida or Taliban detainees, because, among other reasons, the relevant conflicts are international in scope and common Article 3 applies only to ‘armed conflict not of an international character.’¹⁵⁹

In *Hamdan v. Rumsfeld*, the Supreme Court expressly rejected the view “that the war with al Qaeda evades the reach of” Common Article 3.¹⁶⁰ Following the *Hamdan* ruling, U.S. Deputy Secretary of Defense, Gordon R. England issued a memorandum on the *Application of Common Article 3 of the Geneva Conventions to the Treatment of Detainees in the Department of Defense*, noting that “[t]he Supreme Court has determined that Common Article 3 to the Geneva Conventions of 1949 applies as a matter of law to the conflict with Al Qaeda” and reminding officials to “ensure that all DoD personnel adhere to these standards.”¹⁶¹

President Bush and other U.S. officials have described the U.S. Supreme Court’s decision as undermining the ability of the CIA to continue its secret detention and interrogation activities. On September 6, 2006, President Bush noted that the decision “...put in question the future of the CIA program,” and said that, “[a]s we work with Congress to pass a good bill, we will also consult with congressional leaders on how to ensure that the CIA program goes forward in a way that follows the law.”¹⁶² He further commented that, “[n]ow, the Court said that you’ve got to live under Article III of the Geneva Convention, and the standards are so vague that our professionals won’t be able to carry forward the program, because they don’t want to be tried as war criminals.”¹⁶³ On September 15, 2006, President Bush reiterated his intention for the CIA’s secret detention program to continue, but indicated that this would require a new legal foundation, stating that the “...program is not going to go forward if our professionals do not have clarity in the law” and “[i]f Congress passes a law that does not clarify the rules...the program is not going forward.”¹⁶⁴

Because the decision in *Hamdan* rejected the legal basis for the CIA’s program, President Bush has sought to enact new measures to authorize the CIA’s detention and interrogation activities. For example, he has stated that he envisaged the Military Commissions Act of 2006 would provide the CIA with the needed authority to operate its secret detention program, saying “[w]hen I proposed this legislation, I explained that I would have one test for the bill Congress produced: Will it allow the CIA program to continue? This bill meets that test.”¹⁶⁵ Relevantly, the Military Commissions Act of 2006 stipulates that:

As provided by the Constitution and by this section, the President has the authority for the United States to interpret the meaning and application of the Geneva Conventions and to promulgate higher standards and administrative regulations for violations of treaty obligations which are not grave breaches of the Geneva Conventions.¹⁶⁶

In Executive Order 13440 (2007), President Bush states that “I hereby determine that Common Article 3 shall apply to a program of detention and interrogation operated by the Central Intelligence Agency as set forth in this section,” and that “I hereby determine that a program of detention and interrogation approved by the Director of the Central Intelligence Agency fully complies with the obligations of the United States under Common Article 3, provided that:...” and sets out certain such conditions.¹⁶⁷

B. U.S. OFFICIALS’ CONCERNS ABOUT THE CIA PROGRAM

CIA Director General Hayden, the DOJ, Congress, CIA agents, and other U.S. officials have all identified concerns—either their own or concerns within the U.S. government generally—about the legal basis of the CIA’s rendition, secret detention, and coercive interrogation practices, and that these activities involved illegal acts. For instance, the U.S. Senate Select Committee on Intelligence recently noted its expectation that it would receive a legal review of the program “...as part of its ongoing oversight of the program” and stated that “[b]oth Congress and the Administration must continue to evaluate whether having a separate CIA detention program that operates under different interrogation rules than those applicable to military and law enforcement officers is necessary, lawful, and in the best interests of the United States.”¹⁶⁸

The CIA Director General Hayden has also stated that the Military Commissions Act is insufficient to assuage the CIA’s concerns about the legal basis for going forward with the program.¹⁶⁹ CIA Director General Hayden has also expressed concern about the legality of certain CIA interrogation practices, stating that waterboarding “is not included in the current program, and in my own view, the view of my lawyers and the Department of Justice, it is not certain that the technique would be considered to be lawful under current statute.”¹⁷⁰ The Federal Bureau of Investigation (FBI) Office of the Inspector General similarly reported on grave concerns about the CIA’s aggressive interrogation techniques against Abu Zubaydah, which have included waterboarding.¹⁷¹ A number of FBI agents have also stated that detainees at Guantánamo Bay reported that before they were transferred to Guantánamo they had been sent by the United States to foreign countries “for more aggressive interrogation by foreign interrogators.”¹⁷² The destination countries included Egypt and Jordan, two countries cited year after year by the Department of State for the systemic practice of torture.¹⁷³ Several agents also reported that they were aware of cases of threatened rendition.¹⁷⁴

Members of Congress have repeatedly expressed concern over the illegality and impropriety of CIA rendition, secret detention, and interrogation activities and have taken actions seeking to limit such activities. In late 2005, Congressional concern over the interrogation tactics employed in the rendition and secret detention program, including waterboarding, led to the drafting and ultimate passage of the McCain amendment, which was incorporated into the Detainee Treatment Act (DTA) 42 U.S.C.A. § 2000dd, and signed into law. The DTA prevents anyone in the custody or physical control of the United States from being “subject to cruel, inhuman, or degrading treatment or punishment.” 42 U.S.C.A. § 2000dd(a).¹⁷⁵ In June 2008, 56 Members of Congress sent a letter to

the Honorable Michael Mukasey requesting that a special counsel be appointed to “investigate whether the Bush Administration’s policies regarding the interrogation of detainees have violated federal criminal laws. There is mounting evidence that the Bush Administration has sanctioned enhanced interrogation techniques against detainees under the control of the United States that warrant an investigation.”¹⁷⁶

C. LEGAL REVIEWS AND INVESTIGATIONS

President Bush, the ODNI, CIA Director General Hayden, and other U.S. officials have all stated that these measures were subject to multiple legal reviews by the DOJ, as well as the CIA. John Fredman, “then chief counsel to the CIA’s counter-terrorism centre,”¹⁷⁷ has stated in relation to the CIA’s use of coercive techniques that “[s]ignificantly harsh techniques are approved through the DOJ.”¹⁷⁸ President Bush has also stated that “[t]he Department of Justice reviewed the authorized methods extensively” and that “[t]his program has been subject to multiple legal reviews by the Department of Justice and CIA lawyers.”¹⁷⁹ The ODNI has stated that “[t]he Department of Justice has reviewed procedures proposed by the CIA on more than one occasion...”¹⁸⁰ CIA Director General Hayden has also stated that the “...CIA designed specific, appropriate interrogation procedures. Before they were used, they were reviewed and approved by the Department of Justice and by other elements of the Executive Branch.”¹⁸¹ In discussing the CIA’s use of waterboarding, CIA Director General Hayden has also noted that “that tactic, which has not been employed since 2003, was deemed legal by the Department of Justice when it was used.”¹⁸²

U.S. officials have acknowledged that several aspects of the CIA’s rendition, secret detention, and interrogation activities have been, or are being, subjected to internal and external investigation into alleged impropriety and illegality by the CIA Office of Inspector General and the DOJ. President Bush and the ODNI have disclosed that the CIA’s Inspector General has conducted oversight and investigations into the rendition and secret detention program. In September 2006, President Bush stated that “[t]his program has received strict oversight by the CIA’s Inspector General.”¹⁸³ The ODNI similarly stated that “[t]he program has been investigated and audited by the CIA’s Office of the Inspector General (OIG), which was given full and complete access to all aspects of the program.”¹⁸⁴ The DOJ has also launched investigations into aspects of the CIA’s program, including the CIA’s destruction of videotapes of detainee interrogations.¹⁸⁵

In addition to concerns within the U.S. government about the legality of rendition and secret detention, members of Congress have expressed other types of concerns about the CIA’s activities. The U.S. Senate Select Committee on Intelligence has noted that:

...the Committee believes that consideration should be given to whether it is the best means to obtain a full and reliable intelligence debriefing of a detainee. Both Congress and the Administration must continue to evaluate whether having a separate CIA detention program that operates under different interrogation rules than those applicable to military and law enforcement officers is necessary, lawful, and in the best interests of the United States. Moreover, the Committee believes that the demonstrated value of the program should be weighed against both the complications it causes to any ultimate prosecution of these terrorists, and the damage the program does to the image of the United States abroad.¹⁸⁶

D. RECOGNITION OF PUBLIC CONCERN

U.S. officials have also acknowledged that there is a high level of concern among the public regarding the CIA's rendition, secret detention, and coercive interrogation activities. Representative Edward Markey has noted in respect of legislative efforts to prevent funds for torture, that "[t]he resounding bipartisan support for this amendment comes in the wake of public outrage at the CIA practice of sending suspects to prisons in countries around the world that are known to violate human rights."¹⁸⁷ Representative Markey has also been quoted as saying "[t]he more the American people find out we are allowing other countries to torture in our name, there is going to be an outcry in this country."¹⁸⁸ CIA Director General Hayden has acknowledged the public interest in the CIA's rendition and secret detention programs and has noted that "[m]any of the things this agency does on behalf of the American people have become controversial" and that CIA employees "aren't people separated from the American political culture" and are therefore "affected by what goes on in the broader political culture when it's discussing the kind of work that they do."¹⁸⁹

X. OTHER PUBLICLY AVAILABLE INFORMATION ABOUT ILLEGALITY AND IMPROPER ACTS IN THE RENDITION, SECRET DETENTION, AND COERCIVE INTERROGATION PROGRAM

A. THE IMPACT OF *HAMDAN V. RUMSFELD*

The media has reported on statements by U.S. officials concerning the Supreme Court's rejection of the U.S. government's determination that Common Article 3 of the Geneva Conventions does not apply to the "War on Terror". The New York Times has referenced statements by U.S. officials and noted that "[b]efore the court's ruling, the administration repeatedly denied that suspects held at Guantánamo Bay fell under Common Article 3."¹⁹⁰ The New York Times has also reported in relation to the U.S. detention policy that "[n]any officials said the most important factor in forcing a new approach was the Supreme Court's ruling in June that the military commissions set up by the administration could not proceed. That decision...some officials said, left the C.I.A.'s interrogation program on even more tenuous ground."¹⁹¹

B. CIA INSPECTOR GENERAL INVESTIGATIONS

The media and human rights organizations have reported that the CIA's Inspector General has conducted more than one investigation into the rendition and secret detention program. For instance, a New York Times article reporting on the CIA's destruction of videotapes of interrogations of detainees, noted that "[s]crutiny of the C.I.A.'s secret detention program kept building. Later in 2003, the agency's inspector general, John L. Helgeson, began investigating the program, and some insiders believed the inquiry might end with criminal charges for abusive interrogations."¹⁹² Reporting on the deaths of detainees in CIA custody, Human Rights First (HRF) stated that:

Reports of internal efforts at the CIA to address detainee abuse by agents are less than encouraging. After completing a review in spring 2004 of CIA detention and interrogation procedures in Afghanistan and Iraq, the CIA Inspector General made 10 recommendations for changes, including more safeguards against abuse, to CIA Director Porter Goss. Eight of the 10 have been 'accepted,' but the changes did not apparently prevent consideration of a proposal for handling deaths of detainees in CIA custody. According to the Washington Post, "One proposal circulating among mid-level officers calls for rushing in a CIA pathologist to perform an autopsy and then quickly burning the body."¹⁹³

The Washington Post, also reporting on deaths of detainees in CIA custody, stated that the "CIA's inspector general is investigating at least half a dozen allegations of serious abuse in Iraq and Afghanistan, including two previously reported deaths in Iraq, one in Afghanistan and the death at the Salt Pit, U.S. officials said."¹⁹⁴ Reporting on mistaken renditions, the Washington Post also noted:

The CIA inspector general is investigating a growing number of what it calls 'erroneous renditions,' according to several former and current intelligence officials. One official said about three dozen names fall in that category; others believe it is fewer. The list includes several people whose identities were offered by al Qaeda figures during CIA interrogations,

officials said. One turned out to be an innocent college professor who had given the al Qaeda member a bad grade, one official said.¹⁹⁵

On the subject of mistaken renditions, the Associated Press has stated that “[t]he CIA’s inspector general, John Helgerson, is looking into fewer than 10 cases of potentially ‘erroneous renditions’, according to a current intelligence official who spoke on condition of anonymity because the investigations are classified.”¹⁹⁶ Reporting on the drugging of prisoners, the Washington Post specified that “[h]owever, the use of drugs by the CIA was discussed during a 2004 internal investigation conducted by the inspector general for coalition forces in Afghanistan.”¹⁹⁷ In relation to the CIA’s destruction of videotapes of interrogations of detainees, the Washington Post reported in December 2007, that the DOJ indicated that it would be working with the CIA’s Inspector General’s office to determine “whether a further investigation is warranted” into the agency’s destruction of videotapes in 2005.¹⁹⁸

C. CIA CONCERNS ABOUT ILLEGALITY

The media has reported that the CIA Inspector General and individual CIA agents have expressed concerns about the legal basis of the CIA’s rendition, secret detention, and interrogation practices, and concern that these activities involve illegal acts. The Washington Post reported that by 2004, concerns had grown so intense that the CIA suspended the use of certain techniques pending a legal review of the interrogation program:

Current and former CIA officers aware of the recent decision said the suspension reflects the CIA’s fears of being accused of unsanctioned and illegal activities, as it was in the 1970s. The decision applies to CIA detention facilities, such as those around the world where the agency is interrogating al Qaeda leaders and their supporters, but not military prisons at Guantanamo Bay, Cuba, and elsewhere. ‘Everything’s on hold,’ said a former senior CIA official aware of the agency’s decision. ‘The whole thing has been stopped until we sort out whether we are sure we’re on legal ground.’¹⁹⁹

The New Yorker has reported that “[r]endition was originally carried out on a limited basis, but after September 11th, when President Bush declared a global war on terrorism, the program expanded beyond recognition—becoming, according to a former C.I.A. official, ‘an abomination.’”²⁰⁰ The Washington Post has reported that “[s]ince [the secret detention system was conceived], the arrangement has been increasingly debated within the CIA, where considerable concern lingers about the legality, morality and practicality of holding even unrepentant terrorists in such isolation and secrecy, perhaps for the duration of their lives.”²⁰¹ In November 2005, the New York Times revealed that:

A classified report issued last year by the Central Intelligence Agency’s inspector general warned that interrogation procedures approved by the C.I.A. after the Sept. 11 attacks might violate some provisions of the international Convention Against Torture, current and former intelligence officials say. The previously undisclosed findings from the report, which was completed in the spring of 2004, reflected deep unease within the C.I.A. about the interrogation procedures, the officials said.²⁰²

The Washington Post has also noted, with respect to secret CIA prisons, that “some CIA officers have worried privately that they may have violated international law or domestic criminal statutes.”²⁰³ In July 2007, The Guardian further reported that:

Dick Marty, the Swiss senator who produced the Council of Europe’s report on the hidden transport and detention of suspects, yesterday told a committee in the European parliament that he had received information about the secret programme from dissident officers within the upper reaches of the CIA. He said the officers were disturbed that the programme, known as renditions, led to the torture and mistreatment of detainees.²⁰⁴

In a similar vein, the New York Times has reported that “[f]rom the secret sites in Afghanistan, Thailand and Eastern Europe where C.I.A. teams held Qaeda terrorists, questions for the lawyers at C.I.A. headquarters arrived daily. Nervous interrogators wanted to know: Are we breaking the laws against torture?”²⁰⁵ It has also stated that “[a] report by [CIA Inspector General John] Helgerson’s office completed in the spring of 2004 warned that some C.I.A.-approved interrogation procedures appeared to constitute cruel, inhuman and degrading treatment, as defined by the international Convention Against Torture.”²⁰⁶ In February 2008, ABC News reported that the 2002 Presidential authorization of harsh interrogation techniques was signed under protest by some in the intelligence community:

At the time a presidential finding was signed in 2002 approving the use of harsh interrogation techniques including waterboarding, one of the CIA’s most senior officials registered his objections to the technique, which a senior intelligence official failed to acknowledge today when he stated on the condition of anonymity that the current debate over the use of the technique is troubling to intelligence professionals. In fact, a number of intelligence professionals, current and former, object to the use of the technique.²⁰⁷

According to the New York Times, “[t]he Justice Department revealed...that its internal ethics office was investigating the department’s legal approval for waterboarding of Qaeda suspects by the Central Intelligence Agency and was likely to make public an unclassified version of its report.”²⁰⁸ On February 22, 2008, the Associated Press quoted a letter dated February 18, 2008, from Marshall Jarrett, head of the DOJ Office of Professional Responsibility, to Senators Durbin and Whitehouse, as stating that “[a]mong other issues, we are examining whether the legal advice contained in those memoranda was consistent with the professional standards that apply to Department of Justice attorneys.”²⁰⁹

As of April 2006, it was reported that the CIA’s Office of Inspector General had referred a number of cases of detainee abuse to the DOJ for their investigation and potential criminal prosecution. For example, the New Yorker detailed the death following CIA interrogation of “ghost detainee” Manadel al-Jamadi and reported that “[i]n a subsequent internal investigation, United States government authorities classified Jamadi’s death as a ‘homicide,’ meaning that it resulted from unnatural causes.”²¹⁰ HRF has also reported on numerous cases of detainee deaths in which the CIA was implicated, finding that:

Deaths in which the CIA has been implicated (alone or jointly with Army Special Forces or Navy SEALs) have presented additional problems. Such deaths are required to be investigated by the CIA Inspector General and, if cause exists, referred to the Department of Justice for prosecution. Yet while five of the deaths in custody analyzed by HRF appear to

involve the CIA, only a contract worker associated with the CIA has to date faced criminal charges for his role in the death of detainees. Further, the CIA has sought to keep closed the courts-martial of Army personnel where CIA officers may be implicated, and has in military autopsies classified the circumstances of the death. These efforts have encumbered the investigation and prosecution of both CIA officials and military personnel. (internal citations omitted).²¹¹

In 2006, CHRGI, HRF and HRW issued a report that indicated that “[a]ccording to the Department of Justice, twenty cases have been referred to it by the Department of Defense or the CIA’s Inspector General.”²¹² It also added that:

Justice Department officials told DAA [Detainee Abuse and Accountability] Project researchers in April 2006 that one of the 20 persons referred to the Justice Department for prosecution was indicted: David Passaro, a CIA contractor indicted for assault in the case of an Afghan detainee beaten to death in eastern Afghanistan in June 2003. Officials said that 17 other individuals were still being investigated and that the Department had decided not to prosecute two others.²¹³

The New York Times has further explained what has prompted investigations into detainee abuse, noting that concerning the death of Manadel al-Jamadi:

It was only after the Abu Ghraib photographs were leaked to C.I.D. (the Criminal Investigation Division of the Army) that C.I.D., C.I.A., O.I.G. (Office of Inspector General) and the NCIS (Naval Criminal Investigative Service) started a joint investigation. Eventually the death of al-Jamadi was also taken up by the various military and civil commissions set up to investigate the abuses at Abu Ghraib.²¹⁴

D. U.S. GOVERNMENT CONCERNS ABOUT ILLEGALITY OF POST-9/11 RENDITION AND COERCIVE INTERROGATION OUTSIDE THE CIA

As with the secret detention program and CIA interrogation techniques, concerns that the post-9/11 rendition program involved illegal acts were raised very early within the U.S. government, most notably within the FBI. On November 27, 2002, an FBI supervisory special agent wrote a memo analyzing the practice of sending detainees “to Jordan, Egypt, or another third country to allow those countries to employ interrogation techniques that will enable them to obtain the requisite information” under U.S. law.²¹⁵ The agent concluded that this technique—rendition—amounted to a violation of federal criminal law: 18 U.S.C. § 2340, the federal torture statute.²¹⁶ Further, the agent concluded that discussing a plan to render an individual “could be seen as a conspiracy to violate” the torture statute.²¹⁷

The media has reported on the fact that Members of Congress have called for the appointment of a special counsel to investigate whether the approval of harsh interrogation techniques involved the commission of crimes. On June 8, 2008, the Washington Post reported that “[n]early 60 House Democrats yesterday urged the Justice Department to appoint a special counsel to examine whether top Bush administration officials may have committed crimes in authorizing the use of harsh interrogation tactics against suspected terrorists.”²¹⁸ Representative Jerrold Nadler has stated in reference to the CIA’s interrogation techniques that “[i]t has become abundantly clear that

an independent investigation into these matters is long overdue and that the Justice Department lacks the political independence to conduct an impartial investigation,” adding that, “[a] special counsel is the best way to investigate how the Bush Administration created interrogation policies that have resulted in the widespread abuse of detainees in U.S. custody and control.”²¹⁹

E. ADDITIONAL CONCERNS OF THE U.S. GOVERNMENT

In addition to concerns about illegality, the media has reported that former officials have expressed additional concerns about the rendition, secret detention, and interrogation programs. The L.A. Times has reported that “[o]ne former high-ranking CIA official said [CIA Inspector General John Helgerson] has not shied away from taking positions in heated internal policy debates. The former official recalled attending staff meetings in which Helgerson expressed opposition to agency involvement in handling detainees as part of the war on terrorism.”²²⁰ The Globe and Mail has reported that “[t]he creator of the CIA’s ‘extraordinary-rendition’ program says he has always distrusted interrogation intelligence flowing from the controversial practice, given that the admissions it produced were usually ‘very tainted’ by foreign agencies who jailed suspects at the behest of the United States.”²²¹

F. FINDINGS OF UN HUMAN RIGHTS BODIES

Concerns within the U.S. government about the legality of its post-9/11 rendition and secret detention policy were echoed by UN human rights institutions charged with monitoring compliance by countries with the human rights treaties that they ratify. Because the United States has ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture) and the International Covenant on Civil and Political Rights, the U.S. is subject to review by the UN Committee Against Torture and the UN Human Rights Committee on a periodic basis. The UN Committee Against Torture (which monitors the Convention Against Torture) and the UN Human Rights Committee (which monitors the International Covenant on Civil and Political Rights) have both found that the U.S. practices of rendition, secret detention, and “enhanced interrogation” were violations of these binding treaties.

In July 2006, the UN Committee Against Torture found that the U.S. policy of rendition was a violation of the Convention;²²² determined that secret detention as practiced by the United States in the “War on Terror” was a “per se” violation of the treaty and amounted to enforced disappearance;²²³ and stated that some of the interrogation techniques employed by the U.S. amounted to torture or to cruel, inhuman or degrading treatment or punishment.²²⁴ In September 2006, the UN Human Rights Committee called on the United States to cease the rendition of individuals to countries where detainees face a risk of torture or cruel, inhuman, or degrading treatment;²²⁵ urged the United States to “immediately cease its practice of secret detention and close all secret detention facilities;”²²⁶ and expressed concern that the U.S. government had:

...authorized for some time the use of enhanced interrogation techniques, such as prolonged stress positions and isolation, sensory deprivation, hooding, exposure to cold or heat, sleep and dietary adjustments, 20-hour interrogations, removal of clothing and deprivation of all comfort and religious items, forced grooming, and exploitation of detainees’ individual phobias.²²⁷

Several UN experts responsible for monitoring specific human rights issues have criticized the U.S. rendition, secret detention, and interrogation program as practiced after 9/11, finding that it violates human rights standards binding on the United States. In August 2005, the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment submitted a report to the UN General Assembly that included an analysis of specific rendition cases and U.S. involvement therein.²²⁸ The report concluded that the renditions in question violated key provisions of the Convention Against Torture.²²⁹ In November 2007, the UN Special Rapporteur on the Promotion and Protection of Human Rights While Countering Terrorism submitted a report concerning his mission to the United States to the UN General Assembly that included an analysis of specific rendition cases and U.S. involvement therein.²³⁰ The report concluded that information gathered during his mission “supports the suspicion that the CIA has been involved and continues to be involved in the extraordinary rendition of terrorism suspects and possibly other persons.”²³¹ The report also called for an end to extraordinary rendition and secret detention, and criticized the CIA’s interrogation techniques.²³²

G. INVESTIGATIONS BY FOREIGN GOVERNMENTS

Foreign governments commonly thought of as allies of the United States in the fight against terrorism have also been voicing concerns about the post-9/11 rendition program ever since reports of the practice were made public. For instance, the Washington Post has reported on the ten-month Swedish investigation into rendition of two Egyptian asylum seekers.²³³ The Guardian has also reported that Spanish police have traced up to 42 suspected CIA operatives believed to have taken part in secret flights carrying detained or kidnapped terror suspects to interrogation centers and jails in Afghanistan, Egypt, and elsewhere.²³⁴ Following this last revelation, the Washington Post reported that officials in Norway, Spain, Sweden, and the European Parliament had opened formal inquiries or demanded answers from U.S. officials about CIA rendition flights within their respective jurisdictions.²³⁵ In addition, *Le Figaro* has reported that officials opened criminal investigation into use of Bourget airport by the CIA for rendition flights;²³⁶ the Spiegel Online has documented the German parliamentary inquiry into the CIA’s alleged kidnapping and secret detention of German citizen Khaled El-Masri;²³⁷ and the Christian Science Monitor provided information concerning European investigations into CIA rendition flights, including inquiries in Germany, Italy, Portugal, Spain, and Switzerland.²³⁸

H. INVESTIGATIONS BY THE COUNCIL OF EUROPE AND EUROPEAN PARLIAMENT

Following public reports of European involvement in CIA activities, two major European inter-governmental organizations—the Council of Europe and the European Parliament—launched inquiries into CIA rendition and secret detention activities in Europe. According to the European Parliament’s Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners (TDIP), “[o]ver one thousand CIA-operated flights used European airspace from 2001 to 2005 and temporary secret detention facilities ‘may have been located at US military bases’ in Europe.”²³⁹ The Council of Europe has characterized the final report of its Parliamentary Assembly Committee on Legal Affairs and Human Rights inquiry into CIA activities in Europe as describing:

...in detail the scope and functioning of the US’s ‘high-value detainees’ programme, which it says was set up by the CIA ‘with the co-operation of official European partners belonging to

Government services' and kept secret for many years thanks to strict observance of the rules of confidentiality laid down in the NATO framework.²⁴⁰

I. PUBLIC CONCERN WITH THE CIA'S ACTIVITIES AND MISTAKES

The volume and substance of reporting on the CIA's rendition, secret detention, and coercive interrogation program have documented the high level of public concern with the CIA's activities. For example, as early as January 2005, the Washington Post noted that the "so-called Torture Memo" (purporting to authorize abusive interrogation practices) was "withdrawn after public outcry and has recently been replaced by a new legal interpretation that is much narrower in scope and conventional in outlook."²⁴¹ The Friends Committee on National Legislation: A Quaker Lobby in the Public Interest, has stated that "[t]he public outcry against torture is strengthening the hand of those within the U.S. government who oppose torture and want to prohibit its use."²⁴² In July 2006, World Public Opinion published the results of a public opinion survey of Americans, finding, among other things, that 57 percent of respondents believe that the U.S. "should not permit U.S. military and intelligence agencies to secretly send terrorism suspects to other countries that are known to use torture."²⁴³ The ACLU has also discussed the public outcry over the 2002 Bybee memorandum, which stated that abuse does not rise to the level of torture under U.S. law unless it inflicts pain "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death," noting that following the public outcry the memorandum was rescinded by the administration.²⁴⁴ The Roanoke Times has also noted "public outcries against...travesties, including revelations of extraordinary rendition and torture."²⁴⁵

By the end of 2005, as the stories of released CIA detainees emerged, the public also learned about the rendition and secret detention program's propensity for errors, particularly in respect to former detainees Khaled El-Masri and Maher Arar. For example, in relation to El-Masri, a March 2005 CBS News report discussed his rendition, secret detention, and torture on the basis of mistaken identity.²⁴⁶ In December 2005, the Washington Post also recounted evidence that the rendition and secret detention of Khaled El-Masri was carried out by mistake.²⁴⁷ Approximately one year later, in September 2006, The New Yorker reported that U.S. Secretary of State Condoleezza Rice had conceded to the German government that the rendition and secret detention of German citizen, Khaled El-Masri, had been a mistake.²⁴⁸ In relation to Maher Arar, the Canadian Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar found that "there is no evidence to indicate that Mr. Arar has committed any offence or that his activities constitute a threat to the security of Canada."²⁴⁹ Accordingly, a Washington Post editorial has characterized Maher Arar's case as "vividly illustrat[ing] a couple of the points that veteran military and diplomatic leaders have been trying to impress on Mr. Bush about the dangers of the CIA program."²⁵⁰

ENDNOTES

- ¹ White House Office of the Press Secretary, *News Release: President Discusses Creation of Military Commissions to Try Suspected Terrorists*, Sept. 6, 2006, available at <http://www.whitehouse.gov/news/releases/2006/09/20060906-3.html> (last visited Sept. 24, 2008) [hereinafter *White House News Release*]; Announcement, Office of the Director of National Intelligence, *Summary of the High Value Terrorist Detainee Program*, Sept. 6, 2006, available at <http://www.dni.gov/announcements/content/TheHighValueDetaineeProgram.pdf> (last visited Sept. 24, 2008) [hereinafter *ODNI Summary of the Program*].
- ² Douglas Jehl and David Johnston, *Rule Change Lets C.I.A. Freely Send Suspects Abroad to Jails*, N.Y. TIMES, Mar. 6, 2005, available at <http://www.nytimes.com/2005/03/06/politics/06intel.html> (last visited Sept. 24, 2008).
- ³ Douglas Jehl, *Qaeda-Iraq Link U.S. Cited Is Tied to Coercion Claim*, N.Y. TIMES, Dec. 9, 2005, available at <http://www.nytimes.com/2005/12/09/politics/09intel.html> (last visited Sept. 24, 2008).
- ⁴ See *White House News Release*, *supra* note 1. See also *ODNI Summary of the Program*, *supra* note 1.
- ⁵ See *White House News Release*, *supra* note 1 (“In addition to the terrorists held at Guantánamo, a small number of suspected terrorist leaders and operatives captured during the war have been held and questioned outside the United States, in a separate program operated by the Central Intelligence Agency . . .”); White House Office of the Press Secretary, *Press Release: The White House Fact Sheet: Bringing Terrorists to Justice*, Sept. 6, 2006, available at <http://www.whitehouse.gov/news/releases/2006/09/20060906-2.html> (last visited Sept. 24, 2008); See also *ODNI Summary of the Program*, *supra* note 1; Office of the Director of National Intelligence, *Biographies of High Value Terrorist Detainees Transferred to the US Naval Base at Guantánamo Bay*, Sept. 6, 2006, available at <http://www.dni.gov/announcements/content/DetaineeBiographies.pdf> (last visited Sept. 24, 2008).
- ⁶ For full list of official acknowledgements by the U.S. government see Opposition to the CIA’s Motion for Summary Judgment and Memorandum of Law in Support of Plaintiff’s Cross motion for Partial Summary Judgment, *Amnesty Int.’l USA, et al. v. CIA, et al.*, (No. 07 CV 5435), at 28-9 (S.D. N.Y. 2007).
- ⁷ See Amnesty International, Cageprisoners, the Center. for Constitutional Rights, New York University School of Law Center. for Human Rights and Global Justice (CHRGJ), Human Rights Watch, and Reprieve, *Off the Record: U.S. Responsibility for Enforced Disappearances in the “War on Terror”* (June 2007), available at http://chrgj.org/docs/OffRecord/OFF_THE_RECORD_FINAL.pdf (last visited Sept. 24, 2008); CHRGJ, *Fate and Whereabouts Unknown: Detainees in the “War on Terror”* (Dec. 2005), available at <http://www.chrgj.org/docs/Whereabouts%20Unknown%20Final.pdf> (last visited Sept. 24, 2008); Human Rights Watch, *List of “Ghost Prisoners” Possibly in CIA Custody* (last updated Dec. 1, 2005), available at <http://hrw.org/english/docs/2005/11/30/usdom12109.htm> (last visited Sept. 24, 2008); Human Rights Watch, *The United States’ “Disappeared”: The CIA’s Long-Term “Ghost Detainees”* (Oct. 2004), available at <http://www.hrw.org/backgrounder/usa/us1004> (last visited Sept. 24, 2008).
- ⁸ See *Arar v. Ashcroft*, 414 F. Supp. 2d 250 (E.D.N.Y. 2006), *aff’g Arar v. Ashcroft*, 532 F.3d 157 (2nd Cir. 2008); *El-Masri v. Tenet*, 437 F. Supp. 2d 530 (E.D. Va. 2006), *aff’d sub nom. El-Masri v. U.S.*, 479 F.3d 296 (4th Cir. 2007), *cert. denied*, 128 S. Ct. 373 (2007); *Mohamed et al. v. Jeppesen Dataplan, Inc.*, 539 F. Supp. 2d 1128 (N.D. Cal. 2008).
- ⁹ Washington Square Legal Services, Inc. is the corporation that supports the International Human Rights Clinic of New York University School of Law.
- ¹⁰ See *supra* note 6.
- ¹¹ Declaration of Margaret L. Satterthwaite in Support of Opposition to the CIA’s Motion for Summary Judgment and Memorandum of Law in Support of Plaintiff’s Cross motion for Partial Summary Judgment, *Amnesty Int.’l USA, et al. v. CIA, et al.*, (No. 07 CV 5435), (S.D. N.Y. 2007), available at <http://www.chrgj.org/projects/docs/jun08declaration.pdf> and Exhibits A-Z, available at <http://www.chrgj.org/projects/docs/jun08exhibitsaz.pdf>, Exhibits AA-GG, available at <http://www.chrgj.org/projects/docs/jun08exhibitsaagg.pdf>, Exhibits HH-NN, available at <http://www.chrgj.org/projects/docs/jun08exhibitshhnn.pdf> (last visited Sept. 24, 2008).
- ¹² *White House News Release*, *supra* note 1.
- ¹³ *ODNI Summary of the Program*, *supra* note 1.
- ¹⁴ Letter from Office of General Counsel, CIA to Melanca D. Clark, Gibbins [sic], Del Deo, Dolan, Griffinger & Vecchione, P.C., Nov. 10, 2006 (letter sent in connection with *ACLU et al. v. DOD et al.*, 04-Civ.-4151 (S.D.N.Y.), remanded 06-0205-cv (2nd Cir.)).
- ¹⁵ See CIA Director General Hayden, *A Conversation with Michael Hayden*, Council on Foreign Relations, Sept. 7, 2007, available at <http://www.cfr.org/publication/14158/> (last visited Sept. 24, 2008) [hereinafter *A Conversation with Michael Hayden*] noting that “In 2007 to date, CIA officers have testified in 57 congressional hearings, and we’re responding to 29 congressionally legislated requests for information. We have answered 1,140 QFRs -- that’s Questions For the Record -- as well as 254 other letters, questions and requests. CIA experts have given more than 500 briefings to members of

Congress and their staffs. We have issued some 100 congressional notifications about our sensitive programs. Everything is on the table. I personally have briefed the Hill nine times since last September on renditions, detentions and interrogations.”

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²⁵ *Director Michael Hayden’s Interview with Charlie Rose*, supra note 16.

²⁶ U.S. Secretary of State Condoleezza Rice, *Remarks Upon Her Departure for Europe*, Andrews Air Force Base, Dec. 5, 2005, available at <http://www.state.gov/secretary/rm/2005/57602.htm> (last visited Sept. 24, 2008).

²⁷ White House Office of the Press Secretary, *Press Briefing by Scott McClellan*, Dec. 6, 2005, available at <http://www.whitehouse.gov/news/releases/2005/12/20051206-3.html>, (last visited Sept. 24, 2008) (Scott McClellan discussing “renditions” of terrorism suspects).

²⁸ White House Office of the Press Secretary, *Press Gaggle by Tony Snow*, June 7, 2006, available at <http://www.whitehouse.gov/news/releases/2006/06/20060607-2.html> (last visited Sept. 24, 2008) (Tony Snow providing “[s]everal points to make on rendition.”).

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³¹ Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, WASH. POST, Nov. 2, 2005, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/01/AR2005110101644.html> (last visited Sept. 24, 2008).

³² Brian Ross & Richard Esposito, *Exclusive: Sources Tell ABC News Top Al Qaeda Figures Held in Secret CIA Prisons*, ABC NEWS, Dec. 5, 2005, available at <http://abcnews.go.com/WNT/Investigation/story?id=1375123> (last visited Sept. 24, 2008).

³³ Jehl, *Qaeda-Iraq Link U.S. Cited Is Tied to Coercion Claim*, supra note 3.

³⁴ Eur. Parl. Ass., Comm. on Legal Aff. and Hum. Rts., *Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states*, 17th Sitting, Doc. No. 10957 (2006) at 9-19, available at <http://assembly.coe.int/Documents/WorkingDocs/doc06/edoc10957.pdf> (last visited Sept. 24, 2008) [hereinafter Comm. on Legal Aff. and Hum. Rts., *Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states* (2006)].

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- ⁴⁴ Transcript of "File on 4—Rendition," BBC, Feb. 8, 2005, at 6, available at news.bbc.co.uk/1/1/shared/bsp/hi/pdfs/15_02_05_renditions.pdf (last visited Sept. 24, 2008).
- ⁴⁵ *A Conversation with Michael Hayden*, *supra* note 15. See also *Statement to Employees by Director of the Central Intelligence Agency, General Michael V. Hayden on the CIA's Terrorist Interrogation Program*, Oct. 5, 2007, available at <https://www.cia.gov/news-information/press-releases-statements/press-release-archive-2007/terrorist-interrogation-program.html> (last visited Sept. 24, 2008) [hereinafter *General Hayden Statement to CIA Employees on the CIA's Terrorist Interrogation Program*] and *Director Michael Hayden's Interview with Charlie Rose*, *supra* note 16.
- ⁴⁶ *White House News Release*, *supra* note 1.
- ⁴⁷ ODNI *Summary of the Program*, *supra* note 1.
- ⁴⁸ *A Conversation with Michael Hayden*, *supra* note 15. See also *Statement to Employees by Director of the Central Intelligence Agency, General Mike Hayden on the Taping of Early Detainee Interrogations*, Dec. 6, 2007, available at <https://www.cia.gov/news-information/press-releases-statements/press-release-archive-2007/taping-of-early-detainee-interrogations.html> (last visited Sept. 24, 2008).
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- ⁵⁰ Those who have been named by the U.S. government are: (1) Muhammad Rahim al-Afghani (Mohammed Rahim); (2) Ali Abdul-Hamid al-Fakhiri (Ali Abd-al-Hamid al-Fakhiri, Ibn al-Shaykh al-Libi); (3) Ali Abd al-Rahman al-Faqasi al-Ghamdi (Abu Bakr al Azdi); (4) Mustafa al-Hawsawi (Hashim 'Abd al-Rahman, Zahir, Ayyub, Muhammad Adnan); (5) Abd al-Hadi al-Iraqi (Abu Abdullah, Abdal Hadi al Iraqi); (6) Abu Faraj al-Libi (Mustafa al-'Uzayti, Mahfuz, 'Abd al-Hafiz, Abu Hamada, Tawfiq); (7) Abd al-Rahim al-Nashiri (Abd al-Rahim Hussein Muhammad Abdu, Mulla Bilal, Bilal, Abu Bilal al-Makki, Khalid al-Safani, Amm Ahmad ("Uncle Ahmad")); (8) Ramzi bin al-Shibh (Abu Ubaydah, 'Umar Muhammad 'Abdallah Ba' Amar); (9) Ali Abdul Aziz Ali ('Ammar al-Baluchi); (10) Mohamed Farik Amin (Zubair); (11) Waleed Muhammad bin Attash (Khallad Bin 'Attash, Silver); (12) Gouled Hassan Dourad (Guleed Hassan Ahmad, Hanad); (13) Ahmed Khalfan Ghailani (Haytham al-Kini); (14) Hassan Ghul; (15) Riduan Isamudin (Hambali) (Riduan bin Isomuddin, Encep Nurjaman); (16) Majid Khan (Yusif); (17) Mohammed Nazir Bin Lep (Lillie, Lilie, Li-Li); (18) Khalid Sheikh Mohammed (Mukhtar); (19) Abu Zubayda (Hani, Tariq, Zayn al-'Abidin Abu Zubaydah).
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- ⁵² The National Commission on Terrorist Attacks Upon The U.S., *9-11 Commission Report* (2004) [hereinafter *9-11 Commission Report*] at 434-436.
- ⁵³ *United States v. Paracha*, 2006 U.S. Dist. LEXIS 1, *11-12 (S.D.N.Y. 2006).
- ⁵⁴ Substitution for the Testimony of Khalid Sheikh Mohammed, Defendant's Exhibit 941, *United States v. Moussaoui*, (E.D. VA. 2003), Cr. No. 01-455-A, at 1; Substitution for the Testimony of Mustafa Ahmed al-Hawsawi, Defendant's Exhibit 943, *United States v. Moussaoui*, (E.D. VA. 2003), Cr. No. 01-455-A, at 1; Substitution for the Testimony of Walid Muhammad Salih Bin Attash ("Khallad"), Defendant's Exhibit 945, *United States v. Moussaoui*, (E.D. VA. 2003), Cr. No. 01-455-A, at 1-2; Substitution for the Testimony of Riduan Isamuddin ("Hambali"), Defendant's Exhibit 946, *United States v. Moussaoui*, (E.D. VA. 2003), Cr. No. 01-455-A, at 2.
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- ⁵⁶ *Biographies of High Value Terrorist Detainees Transferred to the US Naval Base at Guantánamo Bay*, *supra* note 6.
- ⁵⁷ Report of the Senate Select Committee on Intelligence, *Postwar Findings About Iraq's WMD Programs and Links to Terrorism and How They Compare with Prewar Assessments*, Sept. 9, 2006, at 79-82, available at <http://intelligence.senate.gov/phasesiaccuracy.pdf> (last visited, Sept. 24, 2008).
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- ⁵⁹ *Director Michael Hayden's Interview with Charlie Rose*, *supra* note 16.
- ⁶⁰ *Defense Department Takes Custody of a High-Value Detainee* (2008), *supra* note 20.
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- ⁶⁴ Priest, *CLA Holds Terror Suspects in Secret Prisons*, *supra* note 31.
- ⁶⁵ Jehl, *Qaeda-Iraq Link U.S. Cited Is Tied to Coercion Claim*, *supra* note 3.
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⁹⁶ Esposito & Ross, *Coming in From the Cold: Part 1 of Transcript*, *supra* note 92, at 16.

⁹⁷ Comm. on Legal Aff. and Hum. Rts., *Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states* (2006), *supra* note 34, at 20-23 (describing the procedure used by the CIA to process detainees).

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¹⁰⁰ Human Rights Watch, *Ghost Prisoner*, *supra* note 70, at 29.

¹⁰¹ Amnesty International, *The Case of Khaled Al-Maqtari*, *supra* note 69, at 12.

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¹⁰⁶ Human Rights Watch, *U.S. Holding at Least Twenty-Six “Ghost Detainees.”* Dec. 1, 2005, available at <http://www.hrw.org/english/docs/2005/11/30/usdom12113.htm> (last visited Sept. 24, 2008).

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ON THE RECORD:

U.S. Disclosures on Rendition, Secret Detention, and Coercive Interrogation

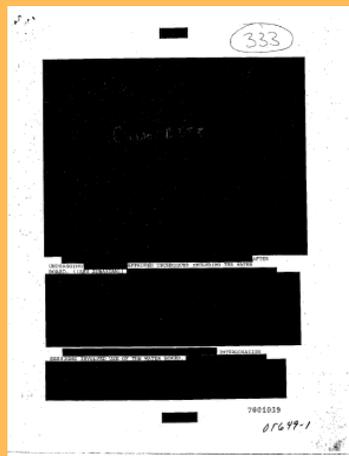
In the aftermath of September 11, 2001, the U.S. government has increasingly acknowledged its practice of rendering, secretly detaining, and coercively interrogating individuals outside of the United States as part of its “War on Terror.” Officials at every level of the government, from President George W. Bush down, have provided insight into these activities, revealing details such as the CIA’s use of coercive interrogation techniques, including waterboarding; the numbers and sometimes identities of detainees; the role of foreign partners in U.S. activities; and the destruction of videotapes of detainee interrogations.

Based on publicly available information, *On the Record* aggregates this wide range of disclosures on U.S. rendition, secret detention, and coercive interrogation activities. It includes statements by current U.S. officials and a plethora of other publicly available information from foreign government officials, former U.S. officials, the media, inter-governmental organizations, human rights organizations, and former detainees and rendered individuals themselves. As an informational resource, this report sheds light both on what has been revealed and what has been obscured by the U.S. government, underlining both the selectivity and undue secrecy informing what it chooses to disclose on the record.

CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE

New York University School of Law
110 West Third Street, Room 204
New York, NY 10012

www.chrgj.org



Left: Image © Steve Cole

Right: Heavily redacted document released by the U.S. government as a result of Freedom of Information Act litigation *ACLU et. al. v. DOD et. al.*, 04 Civ. 4151 (S.D.N.Y.), remanded 06-0205-cv (2nd Cir.).

COMMUNICATION NO. 383/2010

EXHIBIT C

INTERNATIONAL HUMAN RIGHTS CLINIC
WASHINGTON SQUARE LEGAL SERVICES, INC.

245 SULLIVAN STREET, 5th FLOOR, NEW YORK, NY 10012, USA
TEL: +1-212 998-6431 - FAX: +1-212-995-4031

MARGARET L. SATTERTHWAITTE
Clinic Director

SMITA NARULA
Clinic Director

March 31, 2009

Monsieur Djama Souleiman Ali
Procureur Général
Palais de Justice
Bld de la République
BP 12 – Djibouti
République de Djibouti

Dear Monsieur le Procureur Général Djama Souleiman Ali,

I write to you as the duly authorized legal representative of Mr. Mohamed Abdullah Saleh Moshen al-Asad. We have good reason to believe that Mr. al-Asad was unlawfully detained in Djibouti for approximately two weeks in December 2003 and January 2004 while in the process of being transferred from Tanzania to Afghanistan by agents of the United States government. Mr. al-Asad is now free and living in his home country of Yemen. We write to seek your assistance in securing any written records or other information about Mr. Al-Asad's period of detention in Djibouti, including his arrival to and departure from the country. The following factual account will detail the relevant information in our possession that might be useful for identifying any pertinent records or other sources of information.

Mr. al-Asad is a Yemeni citizen, but he had lived in Tanzania for approximately 18 years before he was abducted from his home in Dar es Salaam on the evening of December 26, 2003. The Tanzanian government has subsequently confirmed that Mr. al-Asad was transported out of Tanzania to Djibouti on Tanzanair Flight No. 5H-TZE, which departed Dar es Salaam sometime before dawn on December 27, 2003. The Tanzanian Ministry of Home Affairs later claimed in a court filing that Mr. al-Asad was deported under Tanzanian immigration law and had willingly chosen Djibouti as the country of his destination, a contention which is without merit. Rather, Mr. al-Asad was abducted from his home at night and was given no information about where he was being taken.

The men who transported Mr. al-Asad from Tanzania handcuffed and blindfolded him; he remained this way throughout the plane flight from Tanzania to Djibouti and also upon arrival in Djibouti. Still handcuffed and blindfolded, he was transferred to a waiting automobile and driven about 20-30 minutes away from the airport to the detention facility. Mr. al-Asad was held in this facility in solitary confinement for approximately two weeks. The cell contained a toilet, an old sponge mattress, a tap, and had two high windows that led to the outside. From this cell, he could hear cars and children playing, as well as the call to prayer. He did not see any other prisoners held at the detention site when he was there.

Mr. al-Asad was interrogated (through an Arabic interpreter) approximately three times during his detention in Djibouti by a woman who identified herself as an American. During the interrogations, there was also a man present whom Mr. al-Asad identified as being from the Horn of Africa; this man conferred with the interpreter multiple times during the interrogations. In the interrogation room, Mohammed could read the name Ismael, written in English, under the picture of someone he believed to be the President of Djibouti.

On approximately January 9, 2004, around the time of the sunset prayer (*maghrib*), several men entered Mr. al-Asad's cell; they blindfolded him, tied his hands together with cloth, and took him to a waiting vehicle. After roughly 20-25 minutes of driving, he and his captors arrived at an airport. He was made ready for the flight—with headphones to block sound, a hood to cover his head, and chains around his hands, waist, and feet—and he was transferred to the plane that would take him to Afghanistan. Although he was blindfolded, he could tell that this plane was more spacious than the plane that had transported him from Tanzania to Djibouti; he didn't feel anything near him. The flight landed after roughly three to three-and-a-half hours of flight. It stopped on the ground for about half an hour before flying a second leg, which lasted about the same length of time. The plane landed in Afghanistan just before dawn, before the morning prayer. Mr. al-Asad was detained in Afghanistan and an unknown country by the U.S. government until May 2005, when he was returned to Yemen; he was never charged by the United States with any crime.

We are seeking any information relevant to Mr. al-Asad's detention in Djibouti. In particular, we seek information 1) about the flights that transported Mr. al-Asad into and out of Djibouti, including who operated them, who registered the flight plans, and which aeronautical authorities approved the entry and exit of the flights into/out of Djibouti; 2) about the facility where Mr. al-Asad was detained, including its location and who controls it; and 3) whether the Tanzanian government communicated with the government of Djibouti about Mr. al-Asad's arrival in Djibouti and if so, in what manner.

We very much appreciate your assistance in uncovering information about our client's abduction and detention. Our contact information is listed above, but I will repeat it for your convenience:

Margaret L. Satterthwaite
Washington Square Legal Services, Inc.
245 Sullivan Street, 5th Floor
New York, NY 10012
United States
Tel: + 1-212-998-6431; Fax: + 1-212-995-4031
Email: Margaret.satterthwaite@nyu.edu

Attached please find a copy of our authorization to act as Mr. al-Asad's representative in this matter, as well as a copy of the Notice issued to him by the Tanzanian Ministry of Home Affairs Immigration Division and of the Departure Declaration card that was filled out on his behalf and which indicates the flight number Tanzanair 5H-TZE. Both of these documents were provided by the Tanzanian government in a case filed by Mr. al-Asad's father after his disappearance.

Please let us know if there is additional information we can provide for you. We are grateful for your attention to this important matter.

With our most sincere regards,

A handwritten signature in black ink, appearing to read "Margaret L. Satterthwaite". The signature is written in a cursive, flowing style.

Margaret L. Satterthwaite

cc:

Aref Mohamed Aref
Avocat à la Cour
Rue de Moscou
BP 1441, Djibouti
République de Djibouti

COMMUNICATION NO. 383/2010

EXHIBIT D



General Assembly

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HUMAN RIGHTS COUNCIL

Thirteenth session

Agenda item 3

**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS,
CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,
INCLUDING THE RIGHT TO DEVELOPMENT**

**JOINT STUDY ON GLOBAL PRACTICES IN RELATION TO SECRET
DETENTION IN THE CONTEXT OF COUNTERING TERRORISM
OF THE SPECIAL RAPPORTEUR ON THE PROMOTION AND
PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS WHILE COUNTERING TERRORISM, MARTIN SCHEININ;
THE SPECIAL RAPPORTEUR ON TORTURE AND OTHER CRUEL,
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT,
MANFRED NOWAK; THE WORKING GROUP ON ARBITRARY
DETENTION REPRESENTED BY ITS VICE-CHAIR, SHAHEEN SARDAR
ALI; AND THE WORKING GROUP ON ENFORCED OR INVOLUNTARY
DISAPPEARANCES REPRESENTED BY ITS CHAIR, JEREMY SARKIN* ****

* Late submission.

** The annexes are reproduced in the language of submission only.

Summary

The present joint study on global practices in relation to secret detention in the context of countering terrorism was prepared, in the context of their respective mandates, by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Arbitrary Detention (represented by its Vice-Chair), and the Working Group on Enforced and Involuntary Disappearances (represented by its Chair). Given that the violation of rights associated with secret detention fell within their respective mandates, and in order to avoid duplication of efforts and ensure their complementary nature, the four mandate holders decided to undertake the study jointly.

In conducting the present study, the experts worked in an open, transparent manner. They sought inputs from all relevant stakeholders, including by sending a questionnaire to all States Members of the United Nations. Several consultations were held with States, and the experts shared their findings with all States concerned before the study was finalized. Relevant excerpts of the report were shared with the concerned States on 23 and 24 December 2009.

In addition to United Nations sources and the responses to the questionnaire from 44 States, primary sources included interviews conducted with persons who had been held in secret detention, family members of those held captive, and legal representatives of detainees. Flight data were also used to corroborate information. In addition to the analysis of the policy and legal decisions taken by States, the aim of the study was also to illustrate, in concrete terms, what it means to be secretly detained, how secret detention can facilitate the practice of torture or inhuman and degrading treatment, and how the practice of secret detention has left an indelible mark on the victims, and on their families as well.

The study initially describes the international legal framework applicable to secret detention. At the outset, an explanation is given of the terminology used for the purpose of the study on what constitutes secret detention in the context of countering terrorism. The legal assessment concludes that secret detention is irreconcilably in violation of international human rights law, including during states of emergency and armed conflict. Likewise, it is in violation of international humanitarian law during any form of armed conflict.

Secret detention violates the right to personal liberty and the prohibition of arbitrary arrest or detention. No jurisdiction should allow for individuals to be deprived of their liberty in secret for potentially indefinite periods, held outside the reach of the law, without the possibility of resorting to legal procedures, including *habeas corpus*. Secret detainees are typically deprived of their right to a fair trial when State authorities do not intend to charge or try them. Even if detainees are criminally charged, the secrecy and insecurity caused by the denial of contact to the outside world and the fact that family members have no knowledge of their whereabouts and fate violate the presumption of innocence and are conducive to confessions obtained under torture or other forms of ill-treatment. At the same time, secret detention amounts to an enforced disappearance. If resorted to in a widespread or systematic manner, secret detention may even reach the threshold of a crime against humanity.

Every instance of secret detention is by definition incommunicado detention. Prolonged incommunicado detention may facilitate the perpetration of torture and other cruel, inhuman or

degrading treatment or punishment, and may in itself constitute such treatment. The suffering caused to family members of a secretly detained (namely, disappeared) person may also amount to torture or other form of ill-treatment, and at the same time violates the right to the protection of family life.

It is not only States whose authorities keep the detainee in secret custody that are internationally responsible for violations of international human rights law. The practice of “proxy detention”, involving the transfer of a detainee from one State to another outside the realm of any international or national legal procedure (“rendition” or “extraordinary rendition”), often in disregard of the principle of non-refoulement, also involves the responsibility of the State at whose behest the detention takes place. The Geneva Conventions, applicable to all armed conflicts, also prohibit secret detention under any circumstances.

The study also provides an historical overview of the use of secret detention. Secret detention in the context of counter-terrorism is not a new phenomenon. From the Nazi regime, with its *Nacht und Nebel Erlaß* (the night and fog decree), to the former Soviet Union and its Gulag system of forced-labour camps, States have often resorted to secret detention to silence opposition.

Striking similarities can be identified in the security measures of the 1970s and 1980s used in Latin American countries and, in the past century, in other regions, such as Africa, Asia, Europe and the Middle East.

The methods used then as now consist in, inter alia, broad emergency laws, the enhanced role of military and special courts, the practice of torture and/or ill-treatment, kidnappings (renditions), enforced disappearances and, notably, secret detention. The aim is always the same: to have a deterrent effect, to ensure that detainees would vanish without a trace, and that no information would be given with regard to their whereabouts or fate.

The study then addresses the use of secret detention in the context of the so-called “global war on terror” in the post-11 September 2001 period. In this chapter, the experts describe the progressive and determined elaboration of a comprehensive and coordinated system of secret detention of persons suspected of terrorism, involving not only the authorities of the United States of America, but also of other States in almost all regions of the world. Following a description of the legal and policy decisions taken by the United States authorities, the experts give an overview of the secret detention facilities held by them. The report then enumerates proxy detention sites and related practices of extraordinary rendition. Various United Nations bodies have in the past heavily criticized the policy of extraordinary rendition in a detailed way, dismissing it as a clear violation of international law. They have also expressed concern about the use of diplomatic assurances.

The experts also address the level of involvement and complicity of a number of countries. For purposes of the study, they provide that a State is complicit in the secret detention of a person when it (a) has asked another State to secretly detain a person; (b) knowingly takes advantage of the situation of secret detention by sending questions to the State detaining the person, or solicits or receives information from persons kept in secret detention; (c) has actively participated in the arrest and/or transfer of a person when it knew, or ought to have known, that the person would disappear in a secret detention facility, or otherwise be detained outside the

legally regulated detention system; (d) holds a person for a short time in secret detention before handing them over to another State where that person will be put in secret detention for a longer period; and (e) has failed to take measures to identify persons or airplanes that were passing through its airports or airspace after information of the CIA programme involving secret detention has already been revealed.

The study subsequently highlights the fact that secret detention in connection with counter-terrorism policies remains a serious problem on a global scale, through the use of secret detention facilities similar to those described in the study; the declaration of a state of emergency, which allows prolonged secret detention; or forms of “administrative detention”, also allowing prolonged secret detention. The cases and situations referred to, while not exhaustive, serve the purpose of substantiating the existence of secret detention in all regions of the world within the confines of the definition presented earlier.

In their conclusions, the experts reiterate that international law clearly prohibits secret detention, which violates a number of human rights and humanitarian law norms that may not be derogated from under any circumstances. If secret detention constitutes an enforced disappearance and is widely or systematically practiced, it may even amount to a crime against humanity. However, in spite of these unequivocal norms, the practice of secret detention in the context of countering terrorism is widespread and has been reinvigorated by the “global war on terror”. The evidence gathered by the experts clearly shows that many States, referring to concerns relating to national security - often perceived or presented as unprecedented emergencies or threats - resort to secret detention.

Secret detention effectively takes detainees outside the legal framework and renders safeguards contained in international instruments meaningless, including, importantly, that of *habeas corpus*. The most disturbing consequence of secret detention is, as many of the experts’ interlocutors pointed out, the complete arbitrariness of the situation, together with the uncertainty surrounding the duration of the secret detention, and the feeling that there is no way the individual can regain control of his or her life.

States of emergency, armed conflicts and the fight against terrorism - often framed in vaguely defined legal provisions - constitute an “enabling environment” for secret detention. As in the past, extraordinary powers are today conferred on authorities, including armed forces, law enforcement bodies and/or intelligence agencies, under states of emergency or global war paradigms without, or with very restricted, control mechanisms by parliaments or judicial bodies.

In many contexts, intelligence agencies operate in a legal vacuum with no law, or no publicly available law, governing their actions. Many times, although intelligence bodies are not authorized by legislation to detain persons, they do so, sometimes for prolonged periods. In such situations, oversight and accountability mechanisms are either absent or severely restricted, with limited powers and hence ineffective.

Secret detention has relied on systems of trans-border (regional or global) cooperation; in many instances, foreign security forces indeed operate freely in the territory of other States. It also leads to the mutual exchange of intelligence information between States. A crucial element in international cooperation has been the transfer of alleged terrorists to other countries, where they may face a substantial risk of being subjected to torture and other cruel, inhuman and

degrading treatment, in contravention of the principle of non-refoulement. Practices such as “hosting” secret detention sites or providing proxy detention have been supplemented by numerous other facets of complicity, including authorizing the landing of airplanes for refuelling, short-term deprivation of liberty before handing over the “suspect”, the covering up of kidnappings, and so on. With very few exceptions, too little has been done to investigate allegations of complicity.

Secret detention as such may constitute torture or ill-treatment for the direct victims as well as for their families. The very purpose of secret detention, however, is to facilitate and, ultimately, cover up torture and inhuman and degrading treatment used either to obtain information or to silence people. While in some cases elaborate rules are put in place authorizing “enhanced” techniques that violate international standards of human rights and humanitarian law, most of the time secret detention has been used as a kind of defence shield to avoid any scrutiny and control, making it impossible to learn about treatment and conditions during detention.

The generalized fear of secret detention, and its corollaries such as torture and ill-treatment, tends to effectively result in limiting the exercise of a large number of human rights and fundamental freedoms. These include the freedom of expression and the freedom of association, as they often go hand in hand with the intimidation of witnesses, victims and their families.

The experts are extremely concerned that many victims of secret detention from many countries around the world indicated their fear of reprisal, against themselves personally or against their families, if they cooperated with the study and/or allowed their names to be used. The injustice done by secretly detaining somebody is prolonged and replicated all too frequently once the victims are released, because the concerned State may try to prevent any disclosure about the fact that secret detention is practiced on its territory.

In almost no recent cases have there been any judicial investigations into allegations of secret detention, and practically no one has been brought to justice. Although many victims feel that the secret detention has stolen years of their lives and left an indelible mark, often in terms of loss of their livelihood and frequently their health, they have almost never received any form of reparation, including rehabilitation or compensation.

Such a serious human rights violation therefore deserves appropriate action and condemnation. The experts conclude with concrete recommendations that are aimed at curbing the resort to secret detention and the unlawful treatment or punishment of detainees in the context of counter-terrorism:

(a) Secret detention should be explicitly prohibited, along with all other forms of unofficial detention. Detention records should be kept, including in times of armed conflict, as required by the Geneva Conventions, and should include the number of detainees, their nationality and the legal basis on which they are being held, whether as prisoners of war or civilian internees. Internal inspections and independent mechanisms should have timely access to all places where persons are deprived of their liberty for monitoring purposes, at all times. In times of armed conflict, the location of all detention facilities should be disclosed to the International Committee of the Red Cross;

(b) Safeguards for persons deprived of their liberty should be fully respected. No undue restrictions on these safeguards under counter-terrorism or emergency legislation are permissible. In particular, effective *habeas corpus* reviews by independent judicial bodies are central to ensuring respect for the right to personal liberty. Domestic legislative frameworks should therefore not allow for any exceptions from *habeas corpus*, operating independently of the detaining authority and from the place and form of deprivation of liberty. The study shows that judicial bodies can play a crucial role in protecting people against secret detention. The law should foresee penalties for officials who refuse to disclose relevant information during *habeas corpus* proceedings;

(c) All steps necessary to ensure that the immediate families of those detained are informed of their relatives' capture, location, legal status and condition of health should be taken in a timely manner;

(d) Any action by intelligence services should be governed by law, which in turn should be in conformity with international norms. To ensure accountability in intelligence cooperation, truly independent intelligence review and oversight mechanisms should be established and enhanced. Such mechanisms should have access to all information, including sensitive information. They should be mandated to undertake reviews and investigate upon their initiative, and to make public reports;

(e) Institutions strictly independent of those that have allegedly been involved in secret detention should promptly investigate any allegations of secret detention and extraordinary rendition. Those individuals found to have participated in secretly detaining persons and any unlawful acts perpetrated during such detention, including their superiors if they have ordered, encouraged or consented to secret detentions, should be prosecuted without delay and, where found guilty, given sentences commensurate to the gravity of the acts perpetrated;

(f) The status of all pending investigations into allegations of ill-treatment and torture of detainees and detainee deaths in custody should be made public. No evidence or information obtained by torture or cruel, inhuman and degrading treatment should be used in any proceedings;

(g) Transfers, or the facilitation of transfers, from one State to the custody of authorities of another State must be carried out under judicial supervision and in line with international standards. The principle of non-refoulement of persons to countries where they would be at risk of torture or other inhuman, cruel or degrading treatment should be honoured;

(h) Victims of secret detention should be provided with judicial remedies and reparation in accordance with relevant international norms, which recognize the right of victims to adequate, effective and prompt reparation proportionate to the gravity of the violations and the harm suffered. Given that families of disappeared persons have been recognized as victims under international law, they should also benefit from rehabilitation and compensation;

(i) States should ratify and implement the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Given that the Optional Protocol to the Convention against Torture requires the setting up of monitoring systems covering all situations of deprivation of liberty, adhering to this

international instrument adds a layer of protection. States should ratify the Optional Protocol and create independent national preventive mechanisms that are in compliance with the Paris Principles, and ratify the International Convention for the Protection of All Persons from Enforced Disappearance. Other regional systems may wish to replicate the system put in place through the Inter-American Convention on Forced Disappearance of Persons;

(j) Governments have an obligation to protect their citizens abroad and provide consular protection to ensure that foreign States comply with their obligations under international law, including international human rights law;

(k) Under international human rights law, States have the obligation to provide witness protection, which is also a precondition for combating secret detention effectively.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
I. INTRODUCTION	1 - 7	10
II. SECRET DETENTION UNDER INTERNATIONAL LAW	8 - 56	11
A. Terminology.....	8 - 16	11
B. Secret detention and international human rights law and international humanitarian law.....	17 - 56	14
III. SECRET DETENTION PRACTICES IN PAST CONTEXTS	57 - 97	28
A. The emergence of the recent practice of secret detention	57 - 59	28
B. The recent practice of secret detention	60 - 86	29
C. The United Nations and regional responses towards the outlawing of the practice of secret detention	87 - 97	40
IV. SECRET DETENTION PRACTICES IN THE GLOBAL “WAR ON TERROR” SINCE 11 SEPTEMBER 2001	98 - 162	43
A. The “high-value detainee” programme and CIA secret detention facilities	103 - 130	45
B. CIA detention facilities or facilities operated jointly with United States military in battle-field zones	131 - 140	59
C. Proxy detention sites	141 - 158	69
D. Complicity in the practice of secret detention	159	81
E. Secret detention and the Obama administration	160 - 164	85
V. THE NATURE AND SCOPE OF SECRET DETENTION PRACTICES IN RELATION TO CONTEMPORARY REGIONAL OR DOMESTIC COUNTER-TERRORIST EFFORTS	165 - 281	89
A. Asia	167 - 201	89
B. Central Asia	202 - 206	102

CONTENTS (*continued*)

	<i>Paragraphs</i>	<i>Page</i>
C. Europe	207 - 214	104
D. Middle East and North Africa	215 - 250	107
E. Sub-Saharan Africa	251 - 281	119
VI. CONCLUSIONS AND RECOMMENDATIONS	282 - 292	129
A. Conclusions	282 - 291	129
B. Recommendations	292	131
Annexes		
I. SUMMARY OF GOVERNMENT REPLIES TO QUESTIONNAIRE		134
II. CASE SUMMARIES		153

I. INTRODUCTION

1. The present joint study on global practices in relation to secret detention in the context of countering terrorism was prepared by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Arbitrary Detention (represented by its Vice Chair), and the Working Group on Enforced and Involuntary Disappearances (represented by its Chair).
2. The study was prepared within the mandates of the above-mentioned special procedures. In particular, the Human Rights Council, in its resolution 6/28, requested the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism to make concrete recommendations on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and to work in close coordination with other relevant bodies and mechanisms of the United Nations, in particular with other special procedures of the Council, in order to strengthen the work for the promotion and protection of human rights and fundamental freedoms while avoiding unnecessary duplication of efforts.
3. In its resolution 8/8, the Council requested the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to study, in a comprehensive manner, trends, developments and challenges in relation to combating and preventing torture and other cruel, inhuman or degrading treatment or punishment, and to make recommendations and observations concerning appropriate measures to prevent and eradicate such practices.
4. In its resolution 6/4, the Council requested the Working Group on Arbitrary Detention to seek and receive information from Governments and intergovernmental and non-governmental organizations, and receive information from the individuals concerned, their families or their representatives relevant to its mandate, and to formulate deliberations on issues of a general nature in order to assist States to prevent and guard against the practice of arbitrary deprivation of liberty. Like other mandates, it was asked to work in coordination with other mechanisms of the Council.
5. In its resolution 7/12, the Council requested the Working Group on Enforced or Involuntary Disappearances to consider the question of impunity in the light of the relevant provisions of the Declaration on the Protection of All Persons from Enforced Disappearances, having in mind the set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/Sub.2/1997/20/Rev.1, annex II, and E/CN.4/2005/102/Add.1), and to provide appropriate assistance in the implementation by States of the Declaration and existing international rules.
6. In the above context, the four mandates endeavoured to address global practices in relation to secret detention in counter-terrorism. In the joint study, they describe the international legal framework applicable to secret detention and provide a historical overview of the use of secret detention. The study addresses the use of secret detention in the context of the “global war on terror” in the post-11 September 2001 period. To the extent possible, in order to demonstrate that the practice of secret detention is regrettably not an uncommon one, it also highlights a number of cases where it has been utilized in and by States from various geographical regions. Owing to its global nature, the present study cannot be exhaustive but rather aims to highlight and illustrate

by examples the wide spread practice of secret detention and related impunity. Finally, the study concludes with concrete recommendations regarding these practices, aimed at curbing the use of secret detention and the unlawful treatment or punishment of detainees in the context of counter-terrorism.

7. Owing to the secrecy of the practice of secret detention, it was often difficult to gather first-hand information; nevertheless, a wide array of national, regional and international sources was consulted. While United Nations sources were drawn upon, primary sources included responses to a questionnaire sent to all Member States (annex I) and interviews with current or former detainees (summaries of which are given in annex II). In some cases, secondary sources such as media and other sources were used. Such accounts, while not always verifiable are utilized when regarded by the mandate holders as credible. Responses to the questionnaire were received from 44 States. A number of interviews were held with people who had been held in secret detention, family members of those held captive, as well as legal representatives of individuals held. The mandate holders conducted face to face interviews in Germany and the United Kingdom of Great Britain and Northern Ireland. Other interviews were conducted by telephone. Formal meetings at the level of capitals were held with officials in Berlin, London and Washington, D.C. The mandate holders thank those States that cooperated with them and facilitated their joint work. They also wish to thank the Office of the United Nations High Commissioner for Human Rights (OHCHR) as well as others who provided valuable research and other assistance to the study.

II. SECRET DETENTION UNDER INTERNATIONAL LAW

A. Terminology

8. For the purpose of the present report, it is construed that a person is kept in secret detention if State authorities acting in their official capacity, or persons acting under the orders thereof, with the authorization, consent, support or acquiescence of the State, or in any other situation where the action or omission of the detaining person is attributable to the State,¹ deprive persons of their liberty; where the person is not permitted any contact with the outside world (“incommunicado detention”); and when the detaining or otherwise competent authority denies, refuses to confirm or deny or actively conceals the fact that the person is deprived of his/her liberty hidden from the outside world, including, for example family, independent lawyers or non-governmental organizations, or refuses to provide or actively conceals information about the fate or whereabouts of the detainee. In the present report, the term “detention” is used synonymously with “deprivation of liberty”, “keeping in custody” or “holding in custody”. The distinction drawn between “detention” and “imprisonment” in the preamble to the Body of

¹ Article 2 (a) of the Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the International Law Commission at its fifty-third session, in 2001, taken note of by the General Assembly in its resolution 56/83, and applied by the International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, judgment, 26 February 2007).

Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in its resolution 43/173, in the section entitled “Use of Terms”, does not purport to provide a general definition.²

9. Secret detention does not require deprivation of liberty in a secret place of detention; in other words, secret detention within the scope of the present report may take place not only in a place that is not an officially recognized place of detention, or in an officially recognized place of detention, but in a hidden section or wing that is itself not officially recognized, but also in an officially recognized site. Whether detention is secret or not is determined by its incommunicado character and by the fact that State authorities, as described in paragraph 1 above, do not disclose the place of detention or information about the fate of the detainee.

10. Any detention facility may fall within the scope of the present study. It can be a prison, police station, governmental building, military base or camp, but also, for example, a private residence, hotel, car, ship or plane.

11. Incommunicado detention, where the detainees may only have contact with their captors, guards or co-inmates, would amount to secret detention also if the International Committee of the Red Cross (ICRC) is granted access by the authorities, but is not permitted to register the case, or, if it is allowed to register the case, is not permitted by the State to, or does not, for whatever reason, notify the next of kin of the detainee on his or her whereabouts. In other words, access by ICRC alone, without it being able to notify others of the persons’ whereabouts, would not be sufficient to qualify the deprivation of liberty as not being secret. However, it is understood that ICRC, in principle, would not accept access to a detention facility without the possibility of exercising its mandate, which includes notification of the family about the whereabouts and fate of the detainee.³ If ICRC access is granted within a week,⁴ it has been deemed sufficient to leave the case outside the scope of the present study. ICRC access to certain detainees may only be exceptionally and temporarily restricted for reasons of imperative military necessity in an armed conflict.⁵

² E/CN.4/1997/4, paras. 69-85.

³ This policy was apparently not strictly followed at the detention facility at the United States airbase at Kandahar, Afghanistan, according to the testimony of Murat Kurnaz (annex II, case 14).

⁴ Compare, for instance, article 70 of the Third Geneva Convention: “Immediately upon capture, or not more than one week after arrival at a camp, even if it is a transit camp, likewise in case of sickness or transfer to hospital or to another camp, every prisoner of war shall be enabled to write directly to his family.”

⁵ Art. 126, para. 2, of the Third Geneva Convention; art. 143, para. 3 of the Fourth Geneva Convention.

12. A case falls within the scope of the present study on secret detention in the name of counter-terrorism only if State authorities or persons acting under the orders, or with the authorization, consent, support or acquiescence of the State, or in any other way attributable to the State, detain secretly persons:

(a) Who have committed, or are suspected of planning, aiding or abetting, terrorist offences, irrespective of what classification of these offences is used by a Government;

(b) In any situation where terrorism or related notions (such as extremism or separatism)⁶ are used to describe or justify the context in, or basis upon, which a person has been detained;

(c) In any situation where extraordinary detention powers or procedures are triggered (under notions such as anti-terrorism acts, states of emergency or national security acts).

13. The qualification by States of certain acts as “terrorist acts” is often aimed at applying a special regime with limited legal and procedural safeguards in place. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has expressed concern that the absence of a universal and comprehensive definition of the term of “terrorism”, leaving it to individual States to define it carries the potential for unintended human rights abuses and even deliberate misuse of the term. He added that “it was essential to ensure that the term “terrorism” is confined in its use to conduct that is of a genuinely terrorist nature.”⁷ The Working Group on Arbitrary Detention also noted with concern the frequent attempts by Governments to use normal legislation or to have recourse to emergency or special laws and procedures to combat terrorism and thereby permit, or at least increase, the risk of arbitrary detention. It added that such laws, either per se or in their application, by using an extremely vague and broad definition of terrorism, bring within their fold the innocent and the suspect alike, and thereby increase the risk of arbitrary detention, disproportionately reducing the level of guarantees enjoyed by ordinary persons in normal circumstances. Legitimate democratic opposition, as distinct from violent opposition, becomes a victim in the application of such laws.”⁸ Examples of such a type of criminal offence couched in broad terms relate to the subversion of State powers or simply anti-subversion laws”.⁹ Such

⁶ See, for instance, the Shanghai Convention on Combating Terrorism, Separatism and Extremism, agreed upon in 2001 by Kazakhstan, China, Kyrgyzstan, the Russian Federation, Tajikistan and Uzbekistan. The parties agree to “reciprocally recognize acts of terrorism, separatism and extremism irrespective of whether their own national legislations include the corresponding acts in the same category of crimes or whether they use the same terms to describe them”.

⁷ E/CN.4/2006/98, paras. 27 and 42. See also Security Council resolution 1566 (2004) and A/61/267, paras. 43-44, on the characteristics of recognizable genuine “terrorist acts”.

⁸ E/CN.4/1995/31, para. 25 (d).

⁹ See also the following opinions and decisions of the Working Group on Arbitrary Detention: opinions No. 36/2006 (A/HRC/7/4/Add.1), No. 26/2003 (E/CN.4/2005/6/Add.1), No. 15/2004

attempts to circumvent the guarantees of applicable international human rights law inform a broad approach as to the scope of the present study of what constitutes secret detention in the context of countering terrorism.

14. Organized crimes, such as drug or human trafficking, are not covered by the present study, unless anti-terrorism legislation is invoked. Whether the State has conferred on the case a link to terrorism may have to be inferred from elements uttered by State officials or if the person is later prosecuted on terrorism-related charges.

15. Detention by non-State actors, when not attributable to the State, is not addressed in the present study. Hence, hostage-taking, kidnapping or comparable conduct by terrorists, criminals, rebels, insurgents, paramilitary forces or other non-State actors do not fall within the ambit of the report, which focuses on secret detention by or attributable to States and is addressed to the Human Rights Council as an intergovernmental body.

16. Victims of the human rights violation of secret detention are not only the detainees themselves, but also their families, who are not informed of the fate of their loved ones deprived of their rights and held solely at the mercy of their captors.

B. Secret detention and international human rights law and international humanitarian law

17. Secret detention is irreconcilable with international human rights law and international humanitarian law. It amounts to a manifold human rights violation that cannot be justified under any circumstances, including during states of emergency.

1. Secret detention and the right to liberty of the person

18. Secret detention violates the right to liberty and security of the person and the prohibition of arbitrary arrest or detention. Article 9, paragraph 1, of the International Covenant on Civil and Political Rights affirms that everyone has the right to liberty and security of person, that no one should be subjected to arbitrary arrest or detention nor be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. Furthermore, article 9, paragraph 4, of the Covenant stipulates that anyone deprived of their liberty by arrest or detention should be entitled to take proceedings before a court, in order that that court may decide, without delay, on the lawfulness of their detention and order their release if the detention is not lawful. The Human Rights Committee, in its general comment No. 8, highlighted that article 9, paragraphs 1 and 4, and paragraph 3, of the International Covenant on Civil and Political Rights as far as the right to be informed at the time of the arrest about the reasons

(E/CN.4/2005/6/Add.1), No. 6/2003 (E/CN.4/2004/3/Add.1), No. 1/1999 (E/CN.4/2000/4/Add.1), No. 21/1999 (E/CN.4/2000/4/Add.1) and No. 12/1998 (E/CN.4/1999/63/Add.1); decisions No. 36/1996 (E/CN.4/1997/4/Add.1), No. 1/1993 (E/CN.4/1994/27), No. 5/1993 (E/CN.4/1994/27), No. 30/1993 (E/CN.4/1994/27) and No. 36/1993 (E/CN.4/1994/27).

therefore, is applicable to all deprivations of liberty, “whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc.”¹⁰

19. The practice of secret detention in itself violates the above-mentioned guarantees, or in most cases, automatically or inherently entails such consequences that amount to a violation. As secret detainees are held outside the reach of the law, no procedure established by law is being applied to them as required by article 9 of the International Covenant on Civil and Political Rights. Even if a State authorized in its domestic laws the practice of secret detention, such laws would in themselves be in violation of the right to liberty and security and would therefore not stand. Secret detention without contact with the outside world entails de facto that the detainees do not enjoy the right enshrined in article 9, paragraph 4 of the Covenant, namely the possibility to institute habeas corpus, *amparo*, or similar proceedings, personally or on their behalf, challenging the lawfulness of detention before a court of law that is competent to order their release in the event that the detention is found to be unlawful.

20. The Working Group on Arbitrary Detention has classified secret detention as being per se arbitrary, falling within category I of the categories of arbitrary detention that it has developed. The Working Group qualifies deprivation of liberty as arbitrary in terms of category I when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty.¹¹ In its opinion No. 14/2009¹² concerning a case of detention unacknowledged by the Government at an undisclosed place of custody, the Working Group held that no jurisdiction could allow for incommunicado detention where no access to counsel or relatives was granted and no judicial control over the deprivation of liberty was exercised; in short, where no legal procedure established by law whatsoever was followed.¹³

21. In its opinion No. 12/2006,¹⁴ the Working Group on Arbitrary Detention considered the deprivation of liberty of two individuals, one of whom was held at a secret place of detention, to be arbitrary under category I, as both had not been formally charged with any offence, informed of the duration of their custodial orders, brought before a judicial officer, allowed to name a lawyer to act on their behalf, nor otherwise been provided the possibility to challenge the legality of their detention.¹⁵

¹⁰ HRI/GEN/1/Rev.6, para.1.

¹¹ E/CN.4/1998/44, para. 8(a).

¹² A/HRC/13/30/Add.1.

¹³ Opinion No. 12/2006 (A/HRC/4/40/Add.1), p. 63.

¹⁴ Opinion No. 12/2006 (A/HRC/4/40/Add.1).

¹⁵ See also opinions No. 47/2006 (A/HRC/7/4/Add.1); No. 9/2006, in a case of arbitrary detention under category I, involving eight months of incommunicado detention, solitary

22. Opinion No. 29/2006 of the Working Group on Arbitrary Detention¹⁶ concerned 26 individuals who were alleged to have been captured in various countries, partly handed over into the custody of the United States of America under its secret Central Intelligence Agency (CIA) rendition programme in the context of the so called “global war on terror”. They were held incommunicado at various “black sites” under the jurisdiction of the United States for prolonged periods of time, without charge or trial, access to courts of law, and without their families being informed or aware of their fate or whereabouts. In spite of the absence of a response by the Government of the United States to these allegations, the Working Group considered itself in a position to render an opinion on the cases of these 26 individuals, many of whom were suspected of having been involved in serious crimes, and held that their detention clearly fell within category I of arbitrary detention.

23. In most cases, secret detention, as it is outside any international or national legal regime, also implies that the duration of detention is not known to the detainee; it rests at the sole discretion of the authorities ordering the detention. Hence, the very nature of secret detention may result in potentially, or actually, indefinite periods of detention, which render this type of detention arbitrary on this additional ground.¹⁷

2. Secret detention and the right to a fair trial

24. Secret detention outside the protection of the law is often resorted to with the purpose of depriving the detainee of the rights that he or she would otherwise enjoy as a person charged with a criminal offence, namely the right to a fair trial, as enunciated in article 14 of the International Covenant on Civil and Political Rights and the complementary guarantees contained in article 9, paragraphs 2 and 3. Article 9, paragraph 2 of the Covenant stipulates that anyone who is arrested should be promptly informed of any charges against him. Paragraph 3 of the same article requires that anyone arrested or detained on a criminal charge be brought promptly before a judge or other officer authorized by law to exercise judicial power.

25. The above-mentioned provisions presuppose that anyone suspected of having committed a recognizable criminal offence and arrested on these grounds must be informed of the underlying charges if the interest of justice requires the prosecution of such a crime; otherwise, the State could circumvent the additional rights extended to suspects of a crime spelled out in articles 9 and 14 of the Covenant. Equally, if someone suspected of a crime and detained on the basis of

confinement, ill-treatment and failure to inform the relatives about their detention; No. 47/2005 (A/HRC/4/40/Add.1) and No. 8/1998 (E/CN.4/1999/63/Add.1).

¹⁶ A/HRC/4/40/Add.1.

¹⁷ For example, see opinion No. 22/2004 (E/CN.4/2006/7/Add.1) on the arbitrary character of detention for an unspecified period of time.

article 9 of the Covenant is charged with an offence but not brought to trial, the prohibitions of unduly delaying trials as provided for by article 9, paragraph 3, and article 14, paragraph 3 (c) of the Covenant may be violated at the same time.¹⁸

26. As the present study shows, in the majority of cases, State authorities who arrest and detain people incommunicado in a secret location often do not intend to charge the detainee with any crime, or even to inform him or her about any charges or to put the person on trial without undue delay before a competent, independent and impartial tribunal established by law where the guilt or innocence of the accused could be established, in violation of article 14, paragraphs 1 (clause 2), 2, 3 (a) and (c) of the International Covenant on Civil and Political Rights. Such detainees do not have adequate time and facilities for the preparation of their defence, and cannot communicate freely with counsel of their own choosing as required by article 14, paragraph 3 (c) of the Covenant.

27. The Working Group on Arbitrary Detention has considered secret detention a violation of the right to fair trial.¹⁹ Certain practices inherent in secret detention, such as the use of secrecy and insecurity caused by denial of contact to the outside world and the family's lack of knowledge of the whereabouts and fate of the detainee to exert pressure to confess to a crime, also infringe the right not to be compelled to testify against oneself or to confess guilt derived from the principle of presumption of innocence.²⁰ Secret detention is furthermore conducive to confessions obtained under torture and other forms of ill-treatment.

3. Secret detention and enforced disappearance

28. Every instance of secret detention also amounts to a case of enforced disappearance. Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance defines enforced disappearance as:

The arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

This definition does not require intent to put the person concerned outside the protection of the law as a defining element, but rather refers to it as an objective consequence of the denial, refusal or concealment of the whereabouts and fate of the person.²¹ The International Convention, in its

¹⁸ Human Rights Committee, general comment No. 32 (CCPR/C/GC/32), para. 61.

¹⁹ Opinions No. 5/2001 (E/CN.4/2002/77/Add.1), para. 10 (iii) and No. 14/2009 (A/HRC/13/30/Add.1).

²⁰ International Covenant on Civil and Political Rights, art. 14, para. 2.

²¹ See also the preamble to the Declaration on the Protection of All Persons from Enforced Disappearance.

article 17, paragraph 1, explicitly prohibits secret detention. The Working Group on Enforced or Involuntary Disappearances confirmed in its general comment on article 10 of the Declaration on the Protection of All Persons from Enforced Disappearance that under no circumstances, including states of war or public emergency, can any State interest be invoked to justify or legitimize secret centres or places of detention which, by definition, would violate the Declaration, without exception.”²²

29. Article 24, paragraph 1, of the International Convention explicitly includes in the definition of “victim” of enforced disappearances not only the disappeared person, but also any individual who has suffered harm as the direct result of an enforced disappearance.” When exercising its mandate to monitor the implementation by Member States to the Declaration on the Protection of All Persons from Enforced Disappearance, the Working Group on Enforced or Involuntary Disappearances has always adopted the perspective that families of the disappeared are to be considered victims themselves. According to article 1.2 of the Declaration, any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families.”

30. Since secret detention amounts to an enforced disappearance, if resorted to in a widespread or systematic manner, such aggravated form of enforced disappearance can reach the threshold of a crime against humanity. In its article 7, the Rome Statute of the International Criminal Court labels the “enforced disappearance of persons” as a crime against humanity if it is committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.²³ Article 5 of the International Convention for the Protection of All Persons from Enforced Disappearance states that the widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law, and should attract the consequences provided for under such applicable international law, thus confirming this approach.

4. Secret detention and the absolute prohibition of torture and other forms of ill-treatment

31. Every instance of secret detention is by definition incommunicado detention. According to the Human Rights Committee, even comparably short periods of incommunicado detention may violate the obligation of States, as contained in article 10, paragraph 1, of the International Covenant on Civil and Political Rights, to treat all persons deprived of their liberty with humanity and with respect for the inherent dignity of the human person. The Committee confirmed that “prisoners should be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, by correspondence as well as by receiving mail.”²⁴ Although shorter time periods may also be prohibited, incommunicado detention of 15

²² E/CN.4/1997/34.

²³ See also *Prosecutor v. Kupreskic et al*, IT-95-16-A, judgement of the trial chamber of the International Criminal Tribunal for the Former Yugoslavia, para. 566 (14 January 2000).

²⁴ *Miguel Angel Estrella v. Uruguay*, communication No. 74/1980 (CCPR/C/OP/2).

days constitutes a violation of article 10 of the Covenant.²⁵ Incommunicado detention includes situations where a detainee's family is informed that the person is "safe", without disclosure of the location or nature of the person's detention.

32. The ill-treatment threshold may be reached when the period of incommunicado detention is prolonged and additional circumstances prevail. For example, in the case of *Polay Campos v. Peru*,²⁶ the Human Rights Committee found a violation of both articles 7²⁷ and 10 of the Covenant as the detained submitter of the complaint had not been allowed to speak or to write to anyone, including legal representatives, for nine months, and had been kept in an unlit cell for 23 and a half hours a day in freezing temperatures. It held that the incommunicado detention to which the author was subjected for longer than eight months constituted inhuman and degrading treatment.²⁸ Similarly, the Inter-American Court of Human Rights has stated that prolonged isolation and deprivation of communications are in themselves cruel and inhuman treatment, even if it is not known what has actually happened during the prolonged isolation of the particular individual.²⁹ In *El-Megreisi v. Libyan Arab Jamahiriya*,³⁰ the Human Rights Committee found that the Government of the Libyan Arab Jamahiriya had violated articles 10, paragraphs 1 and 7 of the Covenant by detaining an individual for six years, the last three of which incommunicado and in an unknown location, which in the view of the Committee reached the torture threshold.

33. The practice of secret detention, as reflected by the cases covered in the present study, also confirms that incommunicado detention, including secret detention, facilitates the commission of acts of torture.

34. The General Assembly, in its resolution 60/148, and the Human Rights Council, in its resolution 8/8, both state that prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or

²⁵ *Lucía Arzuaga Gilboa v. Uruguay*, communication No. 147/1983 (CCPR/C/OP/2), para. 14.

²⁶ *Polay Campos v. Peru*, communication No 577/1994(CCPR/C/61/D/577/1994), para. 8.4.

²⁷ "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

²⁸ *Steve Shaw v. Jamaica*, communication No. 704/1996 (CCPR/C/62/D/704/1996), paras. 2.5 and 7.1, taking into account that the prisoner during his period of pre-trial detention was further confined to a cell, which was grossly overcrowded, and had to sleep on a wet concrete floor.

²⁹ Velasquez Rodriguez case, judgement of 29 July 1988, Inter-American Court of Human Rights, (Ser. C); No. 4 (1988), para.187.

³⁰ Communication No. 440/1990 (CCPR/C/50/D/440/1990), para. 5.4.

punishment, and could in itself constitute a form of such treatment.³¹ The link between secret detention and torture and other forms of ill-treatment is hence twofold: secret detention as such may constitute torture or cruel, inhuman and degrading treatment; and secret detention may be used to facilitate torture or cruel, inhuman and degrading treatment.

35. In addition, secret detention not only violates the prohibition against torture and other forms of ill-treatment as defined above with regard to the victim of secret detention; but the suffering caused to family members of a disappeared person may also amount to torture or other forms of ill-treatment,³² and also violates the right to family in terms of article 17, paragraph 1, and article 23, paragraph 1, of the International Covenant on Civil and Political Rights.

5. State responsibility in cases of secret detention by proxy

36. Secret detention, involving the denial or concealment of a person's detention, whereabouts or fate has the inherent consequence of placing the person outside the protection of the law. The practice of "proxy detention", where persons are transferred from one State to another outside the realm of any international or national legal procedure ("rendition" or "extraordinary rendition") for the specific purpose of secretly detaining them, or to exclude the possibility of review by the domestic courts of the State having custody of the detainee, or otherwise in violation of the well-entrenched principle of non-refoulement, entails exactly the same consequence. The practice of "proxy detention" involves the responsibility of both the State that is detaining the victim and the State on whose behalf or at whose behest the detention takes place.

37. According to article 2, clause 1, of the International Covenant on Civil and Political Rights, each State party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Human Rights Committee clarified, in its general comment No. 31, that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State party, even if not situated within the territory of the State party.³³ Similarly, the International Court of Justice, in its advisory opinion

³¹ See also Commission on Human Rights resolution 2005/39, para. 9 and Human Rights Chamber for Bosnia and Herzegovina, Decision on Admissibility and Merits, case no. CH/99/3196, *Avdo and Esma Palić v. The Republika Srpska*, para. 74.

³² See, for example, Human Rights Committee, *Quinteros v. Uruguay*, communication No. 107/1981 (CCPR/C/OP/2), para. 14; European Court of Human Rights, *Varnava and others v. Turkey*, 18 September 2009, paras. 200 - 202; *Tanis and others v. Turkey*, 2 August 2005, para. 219; *Cyprus v. Turkey*, 10 May, 2001, paras. 155-158; and *Kurt v. Turkey*, 25 May 1998, para. 134 as well as Human Rights Chamber for Bosnia and Herzegovina, Decision on Admissibility and Merits, case no. CH/99/3196, *Avdo and Esma Palić v. Republika Srpska*, paras. 79 - 80.

³³ CCPR/C/21/Rev.1/Add.13, para. 10. See also for instance the concluding observations of the Committee on the second and third periodic report of the United States of America (CCPR/C/USA/CO/3/Rev.1), para. 10; and the concluding observations of the Committee

on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories*, recognized that the jurisdiction of States is primarily territorial, but concluded that the Covenant extends to “acts done by a State in the exercise of its jurisdiction outside of its own territory”.³⁴ An excessively literal reading of article 2, paragraph 1 of the Covenant would defeat the very purpose of the Covenant.³⁵ As far as the Convention against Torture is concerned, article 2, paragraph 1, and article 16, paragraph 1, refer to each State party’s obligation to prevent acts of torture “in any territory under its jurisdiction”.

38. The removal of a person to a State for the purpose of holding that person in secret detention, or the exclusion of the possibility of review by domestic courts of the sending State, can never be considered compatible with the obligation laid down in article 2, paragraph 2, of the International Covenant on Civil and Political Rights. The Working Group on Arbitrary Detention has dismissed this practice of “reverse diplomatic assurances”, in which the sending Government seeks assurances that the person handed over will be deprived of liberty, even though there are no criminal charges against him and no other recognizable legal basis for detention, as being at variance with international law.³⁶ In its opinion No. 11/2007,³⁷ the Working Group, concurring with the view of the Human Rights Committee expressed in its general comment No. 31, declared the Government of Afghanistan responsible for the arbitrary detention of an individual who was being detained at Bagram Airbase, under the control of the United States of America, but on Afghan soil with the knowledge of Afghan authorities.

39. Similarly, the Convention against Torture and other cruel, inhuman or degrading treatment or punishment not only expressly bans torture, but in its article 4, paragraph 1, it also implicitly prohibits complicity in acts of torture, as it requires each State party to ensure that all acts of torture, including those acts by any person that constitute complicity or participation in torture, are criminal offences under its criminal law. This approach has been supported by the Committee against Torture in its jurisprudence.³⁸ In particular, the Committee considered complicity to include acts that amount to instigation, incitement, superior order and instruction, consent, acquiescence and concealment.³⁹

against Torture on the second periodic report of the United States of America (CAT/C/USA/CO/2), paras. 14 - 15.

³⁴ Advisory opinion, I.C.J. Reports 2004 (9 July 2004), para. 111.

³⁵ Manfred Nowak, *United Nations Covenant on Civil and Political Rights. CCPR Commentary*, 2nd revised ed. 2005, pp 43-44.

³⁶ A/HRC/4/40, para. 57.

³⁷ A/HRC/7/4/Add.1.

³⁸ CAT/C/SR.105.

³⁹ *Ibid.*; see also *Official Records of the General Assembly, Forty-eight Session, supplement No. 44 (A/48/44)*.

40. A State would thus also be responsible when it was aware of the risk of torture and ill-treatment, or ought to have been aware of the risk, inherently associated with the establishment or operation of such a facility or a given transfer to the facility, and did not take reasonable steps to prevent it; or when the State has received claims that someone had been subjected to torture or other ill-treatment, or an enforced disappearance, or otherwise received information suggesting that such acts may have taken place but failed to have the claims impartially investigated.⁴⁰

41. A transferring State could also be internationally responsible under general rules of attribution of State responsibility for internationally wrongful acts. Recognizing that internationally wrongful conduct is often the result of the collaboration of more than one State, rather than one State acting alone - particularly found to be the case in the phenomenon of secret detention practices of the so called “global war on terror” - the general principles of State responsibility under international law establish the unlawfulness of the complicity of States in wrongful acts.⁴¹ In particular, a State that aids or assists another State in the commission of an internationally wrongful act is internationally responsible if it does so knowing the circumstances and if the act would have been wrongful if it had been committed by the assisting State. The real or probable conduct by another State may be decisive in assessing whether the first State has breached its own international obligations. Article 16 of the Articles on Responsibility of the Status for Internationally Wrongful Acts, reflecting a rule of customary international law,⁴² provides that:

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State.

42. Additionally, under the rules of State responsibility, where one State is in “serious breach” of its obligations under peremptory norms of international law - as would be the case if a State were to be torturing detainees - other States have a duty to cooperate to bring such a serious breach of the prohibition against torture to an end, and are required not to give any aid or assistance to its continuation.

43. Furthermore, the practice of “proxy detention” by a State in circumstances where there is a risk of torture in the hands of the receiving State could amount to a violation of the State’s obligation under customary international law on non-refoulement - that is, not to transfer a person to another State where there are substantial grounds for believing that the person would

⁴⁰ See footnote 1.

⁴¹ See, for example, the rules codified in articles 16, 17, 40 and 41 of the Articles on Responsibility of States for Internationally Wrongful Acts.

⁴² International Court of Justice, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), judgement of 26 February 2007, para. 420.

be in danger of being subjected to torture.⁴³ The Declaration on the Protection of All Persons from Enforced Disappearance and the International Convention for the Protection of All Persons from Enforced Disappearance state that the principle of non-refoulement applies to the risk of enforced disappearances. Article 17, paragraph 1, of the International Convention provides that “no State party shall expel, return (‘refouler’), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance.” The Working Group on Arbitrary Detention has argued that the risk of arbitrary detention in the country of destination, which includes secret detention, should prohibit the transfer of a person into the jurisdiction of the receiving State as well.⁴⁴ Diplomatic assurances from the receiving State for the purpose of overcoming the obstacle of the non-refoulement principle do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement.⁴⁵

6. Secret detention and derogations from international human rights

44. Article 4, paragraph 1, of the International Covenant on Civil and Political Rights permits States to derogate from certain rights contained therein “in times of public emergency which threatens the life of the nation”. However, this provision subjects such measures to a number of procedural and substantive safeguards regarding derogation measures: the State must have officially proclaimed a state of emergency; the derogation measures must be limited to those strictly required by the exigencies of the situation; they must not be inconsistent with other international obligations of the State; and they must not be discriminatory. In its general comment No. 29,⁴⁶ the Human Rights Committee highlighted the exceptional and temporary character of derogations, stating that the Covenant required that, even during an armed conflict, measures derogating from the Covenant were allowed only if and to the extent that the situation constituted a threat to the life of the nation. Derogation measures must be lifted as soon as the public emergency or armed conflict ceases to exist. Most importantly, derogation measures must be “strictly required” by the emergency situation. This requirement of proportionality implies that derogations cannot be justified when the same aim could be achieved through less intrusive means.

45. Article 4, paragraph 2, of the Covenant lists certain rights that cannot be derogated from, including the prohibition of torture or cruel, inhuman or degrading treatment or punishment (art. 7).

⁴³ Convention against Torture, art. 3. See also the comments of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment (A/59/324).

⁴⁴ A/HRC/4/40, para. 47.

⁴⁵ General Assembly resolution 63/166, para. 15; Human Rights Council resolution 8/8, para. 6 (d). See also A/HRC/4/40, paras. 52-56 and E/CN.4/2006/6.

⁴⁶ CCPR/C/21/Rev.1/Add.11, para. 3.

46. Although articles 9 and 14 of the Covenant are not among the non-derogable rights enumerated in article 4, paragraph 2, the Human Rights Committee confirmed in its general comment No. 29 that the prohibitions against taking of hostages, abductions or unacknowledged detention were not subject to derogation.⁴⁷ It also considered that it was inherent in the protection of rights explicitly recognized as non-derogable in article 4, paragraph 2, that they must be secured by procedural guarantees, including, often, judicial guarantees. The provisions of the Covenant relating to procedural safeguards could never be made subject to measures that would circumvent the protection of non-derogable rights. Article 4 may not be resorted to in a way that would result in derogation from non-derogable rights. Safeguards related to derogation, as embodied in article 4 of the Covenant, were based on the principles of legality and the rule of law inherent in the Covenant as a whole. As certain elements of the right to a fair trial are explicitly guaranteed under international humanitarian law during armed conflict, the Committee found no justification for derogation from these guarantees during other emergency situations, and was of the opinion that the principles of legality and the rule of law required that fundamental requirements of fair trial be respected during a state of emergency. Only a court of law could try and convict a person for a criminal offence. The presumption of innocence has to be respected. In order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention should not be diminished by a State party's decision to derogate from the Covenant.⁴⁸

47. In short, the main elements of articles 9 and 14 of the Covenant, namely the right to *habeas corpus*, the presumption of innocence and minimum fair trial guarantees, as well as the prohibition of unacknowledged detention, must be respected even in times of emergency, including armed conflict.

48. The Working Group on Arbitrary Detention, in its opinions No. 43/2006, 2/2009 and 3/2009,⁴⁹ concurred with the view of the Human Rights Committee that the right to *habeas corpus* must prevail even in states of emergency. The Working Group similarly stated that the right not to be detained incommunicado over prolonged periods of time could not be derogated from, even where a threat to the life of the nation existed.⁵⁰

49. The Working Group on Enforced or Involuntary Disappearances confirmed in its general comment on article 10 of the Declaration on the Protection of All Persons from Enforced Disappearance that under no circumstances, including states of war or public emergency, could any State interest be invoked to justify or legitimize secret centres or places of detention which, by definition, would violate the Declaration, without exception.⁵¹

⁴⁷ CCPR/C/21/Rev.1/Add.11.

⁴⁸ Ibid.

⁴⁹ A/HRC/7/4/Add.1, para. 36, A/HRC/13/30/Add.1, para. 33 and A/HRC/13/Add.1/, para. 36.

⁵⁰ E/CN.4/2005/6, para. 75.

⁵¹ E/CN.4/1997/34.

50. As the disappearance of persons is inseparably linked to treatment that amounts to a violation of article 7 of the Covenant, according to the jurisprudence of the Human Rights Committee,⁵² the prohibition against enforced disappearance must not be derogated from, either. Similarly, article 1, paragraph 2, of the International Convention for the Protection of All Persons from Enforced Disappearance stipulates:

No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.

51. Even if one were (wrongfully)⁵³ to classify the global struggle against international terrorism in its entirety as a “war” for the purpose of applying the Third and Fourth Geneva Conventions, international human rights law continues to apply: the Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be especially relevant for the purposes of the interpretation of those rights, both spheres of law are complementary, not mutually exclusive.⁵⁴

52. In its advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the International Court of Justice clearly affirmed the applicability of the Covenant during armed conflicts, stating that “the right not arbitrarily to be deprived of one’s life applies also in hostilities. The test of what constitutes an arbitrary deprivation of life, however, then must be determined by the applicable *lex specialis*, namely, the law applicable in armed conflict.”⁵⁵ The

⁵² Human Rights Committee, *Mojica v. Dominican Republic* (449/1991), and *Celis Laureano v. Peru* (540/1993), para. 8.5. See also European Court of Human Rights, *Kurt v. Turkey*, judgement of 25 May 1998, para. 122 et seq.

⁵³ Working Group on Arbitrary Detention, opinions No. 2/2009 and 3/2009 (A/HRC/13/30/Add.1). See also E/CN.4/2003/8, paras. 64 *et seq.*; the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, mission to the United States of America (A/HRC/6/17/Add.3), paras. 6-9; the report on the situation of detainees at Guantánamo Bay of the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (E/CN.4/2006/120), para. 21, and the official statement of ICRC dated 21 July 2005 on the relevance of international humanitarian law in the context of terrorism, available from the ICRC website [/\(www.icrc.org\)](http://www.icrc.org).

⁵⁴ Human Rights Committee, general comment No. 31 (CCPR/C/21/Rev.1/Add.13), para. 11. See also Working Group on Arbitrary Detention, opinions No. 44/2005 (A/HRC/4/40/Add.1), para. 13, No. 2/2009 and 3/2009 (A/HRC/13/30/Add.1), paras. 27 and 30.

⁵⁵ I.C.J. Reports 1996, p. 240 (8 July 1996), para. 25. See also Working Group on Arbitrary Detention, opinion No. 44/2005 (A/HRC/4/40/Add.1), para. 13, in which the Working Group

Court further developed its view in its advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories*:

The protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of the kind to be found in article 4 of the [International Covenant on Civil and Political Rights]. As regards the relationship between international humanitarian law and human rights law, there are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law.⁵⁶

53. In its judgement in the Case concerning Armed Activities on the Territory of the Congo (*Democratic Republic of the Congo v. Uganda*), the Court already applied international humanitarian law and international human rights law in parallel, without as a first step identifying the *lex specialis* or the exclusive matter.⁵⁷ In their report on the mission to Lebanon and Israel from 7 to 14 September 2006, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Representative of the Secretary-General on the human rights of internally displaced persons and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living stated that human rights law and international humanitarian law were not mutually exclusive, but existed in a complementary relationship during armed conflict; a full legal analysis required consideration of both bodies of law. In respect of certain human rights, more specific rules of international humanitarian law might be relevant for the purposes of their interpretation.⁵⁸ A complementary approach forming the basis of the present study is also supported by the principle of systemic integration contained in article 31, paragraph 3 (c), of the Vienna Convention on the Law of Treaties, which provides that, in interpreting an international treaty there shall be taken into account, together with the context ... any relevant rules of international law applicable in the relations between the parties [of the treaty].⁵⁹

stated that in the case of a conflict between the provisions of the two legal regimes [international humanitarian law and international human rights law] with regard to a specific situation, the *lex specialis* will have to be identified and applied.

⁵⁶ I.C.J. Reports 2004 (9 July 2004), para. 106.

⁵⁷ I.C.J. Reports 2005, p.168, para. 216 et seq.

⁵⁸ A/HRC/2/7, para. 16.

⁵⁹ Report of the study group of the International Law Commission entitled “Fragmentation of international law: difficulties arising from the diversification and expansion of international law” (A/CN.4/L.682/Add.1), para. 17 et seq.

7. Secret detention and international humanitarian law

54. International humanitarian law prohibits secret detention as clearly as international human rights law does. Under the Geneva Conventions, which apply to all armed conflicts, there are situations in which persons falling into two categories may be detained: prisoners of war and civilians. Generally, prisoners of war are to be released at the end of active hostilities. Civilians may be detained by an occupying power under very strict conditions, namely (a) if such detention is “necessary for imperative reasons of security”⁶⁰ and (b) for penal prosecutions. The use of novel status designations to avoid Geneva Convention protections, such as “unlawful enemy combatants”, is irrelevant in this context from a legal point of view, as “it does not constitute a category recognized and defined under international law”.⁶¹ This is true also for non-international armed conflicts, albeit the notion of prisoners of war is not directly applicable.⁶²

55. Notwithstanding the capacity to detain individuals, the entire system of detention provided for by the Geneva Conventions is founded on the notion that detainees must be registered and held in officially recognized places of detention. According to article 70 of the Third Geneva Convention, prisoners of war are to be documented, and their whereabouts and health conditions made available to family members and to the country of origin of the prisoner within one week. Article 106 of the Fourth Geneva Convention governing the treatment of civilians establishes virtually identical procedures for the documentation and disclosure of information concerning civilian detainees. According to ICRC, these procedures are meant to ensure that internment is not a measure of punishment; interned persons must therefore not be held incommunicado.⁶³ The

⁶⁰ Fourth Geneva Convention, art. 42 and 78.

⁶¹ See the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, mission to the United States of America (A/HRC/6/17/Add.3), paras. 11-12, the report on the situation of detainees at Guantánamo Bay of the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (E/CN.4/2006/120), para. 20 et seq; and Working Group on Arbitrary Detention, opinion No. 43/2006 (A/HRC/7/4/Add.1), para. 31.

⁶² Interpretive guidance on the notion of direct participation in hostilities under international humanitarian law, ICRC, Geneva 2009, in particular pp. 27-36.

⁶³ ICRC commentary to the Fourth Geneva Convention, art. 106, available at the ICRC website (www.icrc.org). See also Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, Volume I: Rules, (ICRC, 2005), at pp. 439-449, regarding mandatory recording of personal details of detainees, the right to communicate with families and the right to receive visitors.

prohibition of enforced disappearance is a rule of customary international humanitarian law applicable in all situations of armed conflict.⁶⁴

56. As incommunicado detention is also prohibited under international humanitarian law applicable to all armed conflicts⁶⁵ and to all persons who no longer take direct part in hostilities,⁶⁶ detainees must be registered, provided an effective opportunity to immediately inform their family and a centralized information bureau of their detention and any subsequent transfer, and must be permitted ongoing contact with family members and others outside the place of detention.⁶⁷ Article 5 of the Fourth Geneva Convention permits the detaining power to deny to persons these rights and privileges “where absolute military security so requires” when an individual found physically in the State’s own territory is “definitely suspected of or engaged in activities hostile to the security of the State”, or when an individual in occupied territory is “detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power”. While the article states that these persons “shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the State or Occupying Power”, ICRC stresses that article 5 may only be applied in individual cases of an exceptional nature, when the existence of specific charges makes it almost certain that penal proceedings will follow. Bare suspicion of hostile activities would not suffice; it would have to be a definite suspicion of such activities. The burden of definite suspicion is a high burden that must be individualized and must not be of a general nature.⁶⁸

III. SECRET DETENTION PRACTICES IN PAST CONTEXTS

A. The emergence of the recent practice of secret detention

57. The phenomenon of secret detention, closely intertwined with enforced disappearances, can be traced at least to the *Nacht und Nebel Erlaß* of the Nazi Germany, the “night and fog decree”, according to which suspected resistance movement members could be arrested in occupied Europe and secretly transferred to Germany “under cover of night”.⁶⁹ These measures

⁶⁴ Henckaerts and Doswald-Beck, *op.cit.*, pp. 340-343.

⁶⁵ *Ibid.*, pp. 344-352.

⁶⁶ *Ibid.*, p. 299.

⁶⁷ Third Geneva Convention, art. 48, 70 and 122; and Fourth Geneva Convention, art. 25, 26, 41, 78, 79, 106, 107, 116, 128 and 136.

⁶⁸ Commentary to Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, art. 5, available at www.icrc.org.

⁶⁹ Christopher K. Hall, “Enforced disappearance of persons”, in Otto Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court*, Baden-Baden 1999, p. 151, with further related references.

were intended to have a deterrent effect, because detainees would vanish without leaving a trace and no information would be given as to their whereabouts or fate.⁷⁰

58. An incipient form of these practices was, however, already well known in the former Soviet Union, with its *Gulag*⁷¹ system of forced-labour camps, first established under Vladimir Lenin during the early Bolshevik years. The Gulag system ultimately resulted in a vast penal network, including hundreds of camp complexes, which functioned throughout the State, many in Siberia and the Soviet Far East. The system was enhanced after 1928 under Joseph Stalin.

59. Even though the above-mentioned practices were encompassed in a broader context of war or perpetuation of a state of terror, secret detention in the context of counter-terrorism is not a new phenomenon. Striking similarities can be identified between security measures in the 1970s and 1980s in the context of Latin America, but also other regions, such as northern Africa and South-East Asia, on the one hand, and the counter-terrorism measures adopted worldwide since 11 September 2001, on the other. The methods used then, as now, consisted of, inter alia, broad emergency laws, the enhanced role of military and special courts, the practice of torture and/or ill-treatment, kidnappings (renditions), enforced disappearances and notably secret detention.

B. The recent practice of secret detention

1. Secret detention in Latin America

60. Secret detention in Latin America was closely linked to the widespread pattern of enforced disappearances. On the basis of the reports produced by various national truth and reconciliation commissions, in the 1970s and 1980s, patterns of secret detention were identified in, inter alia, Argentina, Brazil, Chile, El Salvador, Paraguay, Peru and Uruguay.⁷² Thousands of Latin Americans were secretly kidnapped, tortured and killed by national security services. When these dictatorial regimes came to an end, some of the countries, on the basis of their archives, decided to prosecute former Government officials, as well as police and military officers. In other countries these attempts have long been hampered by impunity created as a result of, inter alia, amnesty laws or pardons.

⁷⁰ Wilhelm Gorlitz (ed.), *The Memoirs of Field Marshal Keitel*, W. Kimber, London, 1965, pp. 254-6.

⁷¹ Russian acronym for “Main Directorate of Corrective Labour Camps”.

⁷² See, inter alia, Argentine National Commission on the Disappearance of Persons (CONADEP), “Nunca Más” (“Never Again”), Buenos Aires, 1984; (Brasil Nunca Mais) (1985) (the report documented 125 cases of enforced disappearances carried out for political reasons by the military regimes between 1964 and 1979); Comité de Iglesias para Ayudas de Emergencias (the final report was released in May 1990 and documented more than 360,000 illegal arrests and at least 200 disappearances during the dictatorship of General Stroessner); final report of the Peruvian Truth and Reconciliation Commission, www.cverdad.org.pe/ingles/ifinal/index.php; Informe Final de La Comisión Para La Paz, 10 April 2003 (Uruguay), available at the address www.usip.org/files/file/resources/collections/commissions/Uruguay-Report_Informal.pdf.

61. Latin American Governments justified practices of secret detention, among other exceptional measures, referring to the national security doctrine, which provided fertile ground for the creation of a repressive system by the military in which, in the name of security, human rights and fundamental freedoms were violated on a massive scale, and the rule of law and the democratic system damaged. The model was formulated in the 1940s, on the basis of French counter-insurgency concepts used in Algeria and Indochina. It was spread by the United States through the training of Latin American armies in “the school of the Americas”, located in Panama. Politically, the doctrine was strongly influenced by the bipolar cold war paradigm. It extended the notion of the alleged internal war against communism, which soon acquired a regional dimension. Practices of secret detention were first used against armed movements, later against left-wing groups, Marxist and non-Marxist, and ultimately against all groups suspected of political opposition. The latter were labelled as “subversives”, “terrorists” or “communists”.

62. Practices of secret detention ran in parallel, at the national and regional levels. They were carried out by several governmental entities, which worked with little regulation and wide authority to interpret the few rules and regulations that did exist. Each entity had its own staff and facilities. Each organization worked in secrecy.⁷³ The prime example of the regional scope of these practices was operation Condor, involving the exchange of intelligence information, and relying upon inter-State programmes of renditions.⁷⁴ The operation was endorsed by the Chilean National Intelligence Directorate, which operated as the main intelligence service engaged in political repression between 1974 and 1977. Among its different functions, it was responsible for running secret detention centres, where victims were interrogated and tortured.⁷⁵ The Directorate soon began to work in Argentina, and later in other Latin American countries, the United States and Europe.⁷⁶ Similar intelligence services were established in Argentina, Paraguay and Uruguay, and integrated into a coordination network, closely linked to the United States.⁷⁷

63. In Argentina, for instance, there were close to 500 secret detention centres, operating mainly on military or police premises.⁷⁸ Others were located in such diverse settings as hospitals,

⁷³ Memorandum of conversation, unclassified, 7 August 1979, Embassy of the United States of America, Buenos Aires.

⁷⁴ See International Commission of Jurists, “Assessing damage, urging action”, report of the eminent jurist panel on terrorism, counter-terrorism and human rights, p. 32.

⁷⁵ Report of the Chilean National Commission on Truth and Reconciliation (Notre Dame, Indiana: University of Notre Dame Press, 1993), p. 22.

⁷⁶ *Ibid.*, p. 617.

⁷⁷ See for example the references in the document entitled “Declassified documents relating to the military coup, 1970-1976”.

⁷⁸ See, *inter alia*, OEA/Ser.L/V/II.49, Doc. 19 corr.1, 11 April 1980. During its on-site observation, the Inter-American Commission on Human Rights interviewed several persons in prison who claimed to have been kept in places they could not identify.

Government offices, automobile repair shops, schools, farms and even the basement of the upscale Galerías Pacifico in downtown Buenos Aires.⁷⁹ The largest secret detention centres were the Navy Mechanics School (Escuela de Mecánica de la Armada) and the Club Atlético, a federal police facility, both in very visible Buenos Aires locations; the Campo de Mayo army base and Vesubio, a former summer residence, both in the province of Buenos Aires; La Perla, a military base in Córdoba Province; and La Cacha, located within the offices of the penitentiary.⁸⁰ Notwithstanding the fact that it was estimated that these facilities held some 14,500 detainees, the military authorities repeatedly denied the existence of secret detention centres.⁸¹

64. In Chile, torture methods were routinely practiced on all detainees held in secret facilities. Some of the secret detention facilities mentioned in the report of the Chilean National Commission on Truth and Reconciliation were Tejas Verdes, Cuatro Alamos, Londres No. 38, José Domingo Cañas, Villa Grimaldi, The Discotheques or La Venda Sexy, Casa Cajón del Maipo, la Firma, Simón Bolívar con la calle Ossandón, Nido 20 y Cuartel Venecia. According to information provided by the Government, the report of the National Commission on Political Prison and Torture of 2004 indicated that there were 1132 places used for purposes of detention throughout the country.⁸² The sites themselves were equipped with permanent installations for applying enhanced methods of interrogation and special personnel trained to use them. The guards were not the same as the officers who were in charge of interrogations, although the latter could take part in inflicting torture and indeed did so directly.⁸³ For years there were secret detention sites to which officials of the judicial branch had no access. The courts did not act to remedy this unlawful situation or even to condemn it, despite continuous claims made in habeas corpus appeals.⁸⁴ This was compounded by the fact that, during the Pinochet regime, the authority to “arrest” included the authority to order solitary confinement. This, together with the lack of provisions requiring the disclosure of the place where a person was being held, facilitated the use of secret detention.⁸⁵

⁷⁹ According to the information provided by the Government, there are no records indicating that Galerías Pacifico was used as a secret detention centre.

⁸⁰ See also the reports on clandestine detention centres in the annual report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1492), paras. 48-50. See also E/CN.4/1985/15, paras. 97-108.

⁸¹ CONADEP, “Nunca Más”, in reference to orders from file No. 4210; and legal deposition made by CONADEP on 17 May 1984 (file No. 4317).

⁸² Report of the Chilean National Commission on Truth and Reconciliation (Notre Dame, Indiana: University of Notre Dame Press, 1993), p. 22.

⁸³ *Ibid.*, p. 652.

⁸⁴ *Ibid.*, pp. 142-143.

⁸⁵ E/CN.4/Sub.2/1997/19, para. 165.

65. In the late 1970s, during an on-site observation in El Salvador, a special commission⁸⁶ verified the existence of a group of cells in which, according to claimants, several people were being detained in secret and tortured.⁸⁷ The Inter-American Commission on Human Rights received reports alleging that the authorities of El Salvador were holding individuals arbitrarily in secret places of the National Guard, the National Police and the Treasury Police.⁸⁸

66. In Peru, the vast majority of more than 3,000 cases of disappearances reported to the Working Group on Enforced or Involuntary Disappearances occurred between 1983 and 1992 in the context of the Government's fight against terrorist organizations, especially the Communist Party of Peru (*Sendero Luminoso*).⁸⁹ A number of cases of secret detention were examined by the Peruvian Truth and Reconciliation Commission.⁹⁰

67. In Uruguay, many disappeared persons were reported to be held in clandestine detention centres, allegedly run by Argentine and Uruguayan military personnel.⁹¹ The Inter-American Commission also received consistent reports of prolonged incommunicado detentions in the country during the 1970s and 1980s.⁹² These and other allegations of clandestine detention centres were later confirmed by the final report of the Peace Commission.⁹³

68. More generally, during the 1970s and 1980s, Latin American Governments adopted legislation concentrating all powers in the executive branch, including decisions on detentions, their form and place. The legislation itself was in most cases extremely broad, providing for a vague definition of terrorism-related crimes, treated as political or ideological offences, and subject to disproportionate sanctions.⁹⁴

69. The practice of secret detention was also facilitated by the introduction of states of emergency, followed by repeated renewals or extensions and, in some cases, by straightforward

⁸⁶ Established by decree No. 9 of 6 November 1979.

⁸⁷ OEA/Ser.L/V/II.46, doc. 23 rev. 1, 17 November 1978. See also E/CN.4/1984/21, para. 163.

⁸⁸ OEA/Ser.L/V/II.46, doc. 23 rev. 1.

⁸⁹ E/CN.4/1998/43, para. 296.

⁹⁰ Final report of the Peruvian Truth and Reconciliation Commission, V. VI, Chap. 1, sect. 1.2 and 1.4, available at the address www.cverdad.org.pe/ingles/ifinal/index.php.

⁹¹ E/CN.4/1985/15, para. 233.

⁹² OEA/Ser.L/V/II.43, doc. 19, corr.1, 31 January 1978.

⁹³ Informe Final de La Comisión Para La Paz, 10 April 2003 (Uruguay), available at the address www.usip.org/files/file/resources/collections/commissions/Uruguay-Report_Informal.pdf.

⁹⁴ See for example, law. 20.840 and 21.264 in Argentina; decree law No. 5 in Chile; and the National Security and Public Order Law (July 1972) in Uruguay.

perpetuations.⁹⁵ States of emergency gave more powers to the military and provided room for discretion in the repressive measures against terrorism. In Uruguay, a state of emergency was declared in 1968 and extended until the end of the dictatorial period in 1985. In Paraguay, the state of siege lasted for 35 years, although the Constitution stipulated that it could only be declared for limited periods and subject to exceptional circumstances.⁹⁶ In most of these countries, the practice of secret detention was compounded by derogations from or modifications of national constitutions, while in others they were subordinated to the regulations of military Governments.

70. Many Governments in regions other than Latin America have also resorted to secret detention in the context of counter-terrorism-related activities. Although on numerous occasions terrorism as such was not invoked as the basis of detention, accusations such as disruption of public order, involvement in a *coup d'état* or allegedly unlawful activities of the opposition, were recurrently used by Governments.

2. Secret detention in Africa

71. In the 1990s, allegations of more than 200 secret detention centres in Kinshasa were brought to the attention of the Special Rapporteur on torture. These were allegedly run by the police or the armed forces of the Zaire.⁹⁷ In its concluding observations on the country in 2006, the Committee against Torture took note of the outlawing of unlawful places of detention beyond the control of the Public Prosecutor's Office, such as prison cells run by the security services and the Special Presidential Security Group, where persons had been subjected to torture.⁹⁸

72. In 1994, serious concerns were expressed by the Working Group on Enforced or Involuntary Disappearances regarding increasing patterns of disappearances of suspected opponents of the Transitional Government of Ethiopia, in particular regarding allegations of detainees being held in secret interrogation or detention centres in Addis Ababa and other locations.⁹⁹ A number of people detained in Hararge province on suspicion of supporting the

⁹⁵ E/CN.4/Sub.2/1997/19, para. 127.

⁹⁶ *Ibid.*, para 148.

⁹⁷ E/CN.4/1996/35, para. 195.

⁹⁸ CAT/C/DRC/CO/1, para. 7.

⁹⁹ E/CN.4/1995/36.

Oromo Liberation Front were allegedly held in, inter alia, 23 secret detention centres in Deder district.¹⁰⁰ The existence of secret detention centres in Deder district was denied by the authorities.¹⁰¹

73. In South Africa, during states of emergency in the 1980s, at least 40,000 people were detained, many of them charged with representing a danger to public peace.¹⁰² Under the Internal Security Act, administrative detention in some instances effectively amounted to secret detention. In most cases, no one was allowed access to the detainee or to information about him or her, and the name of the detainee could only be disclosed by the Minister for Law and Order or a person authorized by him.¹⁰³

74. In the Sudan, the use of secret detention facilities, or “ghost houses”, has for years been the subject of attention of both the United Nations human rights bodies and civil society.¹⁰⁴ These were used mainly in the northern part of the country, but also in Darfur and Khartoum.¹⁰⁵ One of the most notorious and well-known secret detention centres was the “City Bank” or al-Waha (“the Oasis”).¹⁰⁶ The common pattern of detentions consisted of security officers arresting individuals on suspicion of opposition activities, blindfolding them on the way to the detention centres, and then subjecting them to severe torture for periods ranging from a few weeks to several months, completely cutting them off from the outside world.¹⁰⁷ *Amnesty International*

¹⁰⁰ Report of the Special Rapporteur on torture (E/CN.4/1997/7/Add.1), para 156. See also the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/1998/68/Add.1), para. 165.

¹⁰¹ E/CN.4/1998/68/Add.1, para 168. See also the report of the Special Rapporteur on torture, summary of cases transmitted to the Governments and replies received (E/CN.4/1998/38/Add.1), para. 133.

¹⁰² D. Webster and F. Friedman, “Repression and the State of Emergency, June 87-March 89”, *South African Review*, vol. 21, 1989.

¹⁰³ Internal Security Act, section 50A (3). See also, J. Sarkin, “Chapter XII - South Africa”, in *Preventive detention and security law: a comparative survey*, ed. by Andrew Harding and John Hatchard, Dordrecht; Boston [etc.]: M. Nijhoff, cop. 1993.

¹⁰⁴ See, inter alia, the report of the Special Rapporteur on torture (E/CN.4/1995/34), the joint statement submitted to the Subcommission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1994/NGO/22), para. 7, and the report of the Special Rapporteur on torture (E/CN.4/1993/26), para. 417.

¹⁰⁵ Working Group on Arbitrary Detention (E/CN.4/1994/27).

¹⁰⁶ Report of the Special Rapporteur on torture (E/CN.4/1997/7), para. 185.

¹⁰⁷ Report of the Special Rapporteur on the Sudan (E/CN.4/1994/48).

and others v. Sudan, a case before the African Commission on Human and Peoples' Rights, concerned, among others, the allegation that torture and ill-treatment were widespread in prisons and ghost houses in the Sudan.¹⁰⁸

3. Secret detention in Northern Africa and the Middle East

75. In Algeria, in the context of internal strife during the 1990s, and in particular between 1993 and 1998, the security forces and State-armed militias arrested thousands of men on suspicion of involvement in terrorist activities, in circumstances leaving the relatives of those arrested men with no knowledge of their whereabouts.¹⁰⁹ As a result, the relatives were often forced to request the issuance of a declaration of absence from judges and officials, who were in most cases denying or concealing the whereabouts of the arrested men.¹¹⁰ A number of the disappeared persons are reported to have been members or sympathizers of the Islamic Salvation Front.¹¹¹

76. Patterns of enforced disappearances and secret detentions facilities were also identified in Morocco as of the early 1960s.¹¹² In most cases, the victims were human rights activists, trade unionists or involved in activities of political opposition.¹¹³ Since Morocco took control of Western Sahara at the end of 1975, hundreds of Sahrawi men and women known or suspected of pro-independence activities had disappeared after having been arrested by Moroccan security forces. Many of the victims were reported to have been confined in secret detention centres, such as El Ayun, Qal'at M'gouna, Agdz, Derb Moulay Cherif in Casablanca, and Tazmamart. The Moroccan authorities had continuously denied any knowledge of such detention centres. For

¹⁰⁸ Amnesty International, Comité Loosli Bachelard, Lawyers Committee for Human Rights, *Association of Members of the Episcopal Conference of East Africa v. Sudan*, Communications 48/1990, 50/1991, 52/1991 and 89/1993, 13th activity report (1999-2000), AHG/222 (XXXVI), annex V, para. 5. Reference taken from Nigel Rodley and Matt Pollard, *The Treatment of Prisoners under International Law*, Third ed., Oxford: Oxford University Press, 2009, p. 472. See also the report of the Special Rapporteur on torture (E/CN.4/1994/31), paras. 512-527.

¹⁰⁹ See, inter alia, the report of the Working Group on Arbitrary Detention, opinion No. 28/2001 (E/CN.4/2003/8/Add.1).

¹¹⁰ Human Rights Committee, *Bouroual v. Algeria*, Communication No. 992/2001, 24 April 2006, and *Boucherf v. Algeria*, Communication No. 1196/2003, 27 April 2006.

¹¹¹ E/CN.4/1998/43, para. 81.

¹¹² Subcommission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1993/SR.17), para. 59. See also the report of the Working Group Enforced or Involuntary Disappearances (E/CN.4/1987/15), paras. 150-108; and the report of the Working Group on Arbitrary Detention (E/CN.4/1993/24), dec. No. 38/1992.

¹¹³ Tulio Scovazzi and Gabriella Citroni, *The Struggle against Enforced Disappearance and the 2007 United Nations Convention*, Leiden, Boston, Martinus Nijhoff Publishers, 2007, p.70. See also Amnesty International report "The disappeared in Morocco", MDE 29/01/93.

instance, in response to a question by the Human Rights Committee in November 1990 about the secret detention centres of Qal'at M'Gouna and Tazmamart, the Moroccan delegation replied that "these prisons are not on any list held in the prison administration division at the Ministry of the Interior".¹¹⁴ Cells in some police stations or military barracks, as well as secret villas in the Rabat suburbs, were also allegedly used to hide the disappeared.¹¹⁵ Until 1991, the Government of Morocco not only denied any knowledge of these disappeared and their whereabouts, but also their existence.¹¹⁶ The Equity and Reconciliation Commission considered some of the cases of secret detention occurring between 1936 and 1999.¹¹⁷ In its submission concerning the present report, the Government of Morocco stated that all cases of enforced disappearances registered in Morocco had been considered by the Commission and that, in most of these cases, compensation had been granted.

77. In its opinion No. 8/1998, adopted in 1998, the Working Group on Arbitrary Detention addressed several cases of individuals suspected of acts of terrorism being held in secret detention facilities run by Israeli forces since the late 1980s.¹¹⁸

78. In 1998, the Working Group on Enforced or Involuntary Disappearances received and transmitted to the Government of Yemen numerous cases of secret detentions and enforced disappearances in the context of counter-terrorism operations in the country since the period between January and April 1986. Other sporadic cases of secret detention were brought to the attention of the United Nations human rights bodies and mechanisms with regard to Egypt,¹¹⁹ Saudi Arabia,¹²⁰ the Syrian Arab Republic¹²¹ and Tunisia.¹²²

¹¹⁴ Written statement submitted by Amnesty International 8E/CN.4/1996/NGO/26).

¹¹⁵ Report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1995/36).

¹¹⁶ In its 2009 visit to Morocco, the Working Group met with people who had been held in secret detention; see A/HRC/31/Add.1.

¹¹⁷ Equity and Reconciliation Commission, summary of its findings, available at the address www.ictj.org/static/MENA/Morocco/IERreport.findingssummary.eng.pdf.

¹¹⁸ E/CN.4/1999/63/Add.1.

¹¹⁹ Working Group on Arbitrary Detention, opinion No. 15/1999, (E/CN.4/2000/4/Add.1).

¹²⁰ Working Group on Arbitrary Detention, decisions No. 40/1992 ((E/CN.3/1993/24), No. 60/1993 (E/CN.4/1995/31/Add.1 and E/CN.4/1995/31/Add.2) and No. 48/1995 (E/CN.4/1997/4/Add.1).

¹²¹ Working Group on Arbitrary Detention, decisions No.1/1994, (E/CN.4/1995/31/Add.1 and E/CN.4/1995/31/Add.2), No. 2/1997 (E/CN.4/1998/44/Add.1).

¹²² Working Group on Arbitrary Detention, opinion No. 5/1999 (E/CN.4/2000/4/Add.1).

4. Secret detention in Asia

79. In Cambodia, secret detention facilities were used by the Communist Party of Kampuchea during the Khmer Rouge Regime both to persecute political opposition and to intimidate the civilian population. While those individuals who were sent to Tuol Sleng prison (S-21) were regarded as established “enemies” of the Party, those sent to the so-called re-education camp (S-24) were considered to be “elements”, because it was unclear whether they were enemies or friends.¹²³ The S-24 facility was used primarily for the purposes of forced labour. The Government of Cambodia denies the occurrence of secret detention after the fall of the Khmer Rouge regime. However, in the 1990s, reports were made regarding the involvement of senior regional and provincial military officers and their units in the continuing use of secret detention facilities in Battambang province for the purposes of detaining abducted civilians, extorting money, asserting illegal power and executing those detained.¹²⁴

80. In India, no fewer than 1 million people were detained under preventive detention laws during the 1975/77 state of emergency. Many were alleged to be held in secret places of detention, for instance in Punjab. Others were abducted and made to disappear by members of the police and State security forces, especially in Punjab, Jammu and Kashmir, as well as in the North-eastern states.¹²⁵ Most of them were legally precluded from an enforceable right to compensation for unlawful detention. While the Constitution, the Penal Code and the Criminal Procedure Code prohibited secret detention and stipulated prompt access to a judicial authority, relatives, lawyers and medical assistance, such guarantees were not included in other relevant laws, such as the Terrorism and Disruptive Activities (Prevention) Act, which was in force in the States of Jammu, Kashmir and Punjab. According to a number of allegations, in the State of Jammu and Kashmir, arrests were often not recorded by, or even reported to, the local police so that legal remedies, including applications for habeas corpus, were ineffective.¹²⁶ In the late 1990s, the Working Group on Enforced or Involuntary Disappearances received consistent allegations according to which more than 2,000 people were being held in long-term unacknowledged detention in interrogation centres and transit camps in the north-east of the country and in Jammu and Kashmir.¹²⁷

¹²³ Extraordinary Chambers in the Courts of Cambodia, Trial Proceedings, transcript of trial proceedings, Kaing Guek Eav “Duch” Public, case file N° 001/18-07-2007-ECCC/TC.

¹²⁴ Recommendations of the Special Representative of the Secretary-General for human rights in Cambodia and the role of the United Nations Centre for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights (A/49/635), para. 24. In the same report, reference is made to the case of Voat Cheu Kmau.

¹²⁵ See the official Shah Commission of Inquiry report of 1978.

¹²⁶ See the summary record of the second part (public) of the 11th meeting of the Subcommittee on Prevention of Discrimination and Protection of Minorities, forty-fifth session (E/CN.4/Sub.2/1993/SR.11/Add.1), para. 28.

¹²⁷ E/CN.4/200/64.

81. In Nepal, a number of suspected members of the Maoist Communist Party, which had declared a “people’s war” in February 1996, were held in secret detention.¹²⁸ In the late 1990s, the increasing pattern of disappearances and secret detentions was communicated to the Working Group on Enforced or Involuntary Disappearances by numerous non-governmental organizations. It was reported that police officers in civilian clothes were forcing people into vehicles and taking them to unofficial places of detentions, such as the Maharajgunj Police Training Centre.¹²⁹

82. In Sri Lanka, the protracted conflict between the Government and the Liberation Tigers of Tamil Eelam (LTTE) has perpetuated the use of secret detention.¹³⁰ In general, Sri Lankan army officials, dressed either in military uniform or civilian clothes, would arrest ethnic Tamils and hold them in secret places of detention for a week or longer. One such location mentioned in the report of the Special Rapporteur on torture was an army camp located off Galle Road, Kollupitiya, Colombo. The detainees were often interrogated under torture, the purpose of which was to make them confess their involvement with the LTTE.¹³¹ In 1992, the Government adopted a law giving more power to the armed forces and authorizing the use of secret detention camps.¹³² Although the emergency regulations subsequently issued in June 1993 outlawed secret detention, there were reliable reports indicating that people continued to be held in undisclosed places where torture was practised, and no action was taken against the perpetrators.¹³³

83. In the Philippines, the practice of secret detention or “safe houses” was not formally banned until the establishment of the Presidential Committee in 1986.¹³⁴ These practices were not uncommon in the preceding years during the presidency of Ferdinand Marcos, especially when martial law was in force.

5. Secret detention in Europe

84. In Cyprus, enforced disappearances occurred during the inter-communal clashes of 1963/64 and the military intervention of 1974. Enforced disappearance as a phenomenon

¹²⁸ See, inter alia, the report of the Working Group on Arbitrary Detention, opinion No. 5/2001 (E/CN.4/2002/77/Add.1).

¹²⁹ E/CN.4/2001/68.

¹³⁰ E/CN.4/1992/18/Add.1.

¹³¹ E/CN.4/1995/34, paras. 668-673.

¹³² Tulio Scovazzi and Gabriella Citroni, *The Struggle against Enforced Disappearance and the 2007 United Nations Convention*, Leiden, Boston, Martinus Nijhoff Publishers, 2007, p. 69.

¹³³ Statement by Mr. Bhagwati, Human Rights Committee, fifty-fourth session, summary record of the 1436th meeting (CCPR/C/SR.1436).

¹³⁴ Report of the Special Rapporteur on torture (E/CN.4/1987/13). See also the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1987/15), para. 77.

affected both communities living on the island, Greek and Turkish Cypriots alike. The United Nations has long been engaged in the various processes for resolution of both the Cyprus problem¹³⁵ and the question of missing persons.¹³⁶ In 1975, the Commission on Human Rights called for the intensification of efforts aimed at tracing and accounting for missing persons,¹³⁷ a call echoed by the General Assembly in its resolution 3450 (XXX), in which it also requested the Secretary-General to make every effort for the accomplishment of the same objective through close cooperation with ICRC.

85. Notwithstanding the above-mentioned calls and the one for the establishment of an investigatory body under the chair of ICRC,¹³⁸ the question of missing persons remained at a deadlock until 1981. In its first report, the Working Group on Enforced or Involuntary Disappearances included Cyprus in its country survey, but decided not to provide an analysis of the situation because of the delicate and complex nature of the question.¹³⁹ In 1981, an agreement between the two communities was reached under the auspices of the United Nations, by which the Committee on Missing Persons was created.¹⁴⁰ Its mandate is solely to establish the fate of the missing persons. In this regard, 502 cases of Turkish Cypriots and 1493 of Greek Cypriots have been officially reported to it as missing. Despite the position of the Working Group that its role was to assist the Committee,¹⁴¹ the Committee's function remained at a standstill. A 31 July 1997 agreement between the leaders of the two communities to provide each other all information at their disposal on the location of graves did not yield any practical result.¹⁴² Finally, following a change of political stance by both communities, the Committee resumed its work in 2004. To date, 585 exhumations and 196 identifications have been made.¹⁴³

86. The question of missing persons arising out of the Cyprus context has reached the European Court of Human Rights in various instances. The cases of the disappearance of two

¹³⁵ General Assembly resolution 3212 (XXIX).

¹³⁶ See for example General Assembly resolutions 3450 (XXX), 32/128, 33/172, 34/164 and 37/181.

¹³⁷ Commission on Human Rights resolution 4 (XXXI).

¹³⁸ General Assembly resolutions 32/128 and 33/172.

¹³⁹ E/CN.4/1435, para. 79.

¹⁴⁰ See the statement of the Special Representative of the Secretary-General in Cyprus (E/CN.4/1492), para. 65.

¹⁴¹ E/CN.4/1983/14, para. 46.

¹⁴² Committee on Missing Persons, press release, available from www.cmp-cyprus.org/nqcontent.cfm?a_id=1353.

¹⁴³ Committee on Missing Persons, www.cmp-cyprus.org/media/attachments/Quick%20Statistics/Quick_Statistics_30.12.09.pdf.

Turkish Cypriots were declared inadmissible in 2002.¹⁴⁴ In the cases of *Cyprus v. Turkey*¹⁴⁵ and *Varnava v. Turkey*,¹⁴⁶ the Court found continuing violations of European Convention articles 2, 3 and 5 with regard to Greek Cypriot missing persons.

C. The United Nations and regional responses towards the outlawing of the practice of secret detention

87. The United Nations has paid increasing attention to the issue of secret detention and its relation to enforced disappearances since 1978, in the context of denunciations by numerous non-governmental organizations and widespread concerns with human rights situations in Chile, Cyprus and Argentina. The Inter-American Commission on Human Rights was one of the first international human rights bodies to respond to the phenomenon of enforced disappearances and secret detentions during the 1970s, both in general terms and with regard to specific cases in Chile since the military *coup d'état* of 11 September 1973.¹⁴⁷

88. In 1978, the General Assembly, deeply concerned by reports from various parts of the world relating to enforced or involuntary disappearances of persons as a result of excesses on the part of law enforcement or security authorities or similar organizations, adopted a resolution dealing specifically with disappeared persons and requested the Commission on Human Rights to make appropriate recommendations.¹⁴⁸ On 6 March 1979, the Commission established a mandate for experts to study the question of the fate of missing and disappeared persons in Chile. In his report, Felix Ermacora, the expert in charge of the study, proposed, inter alia, a number of preventive measures, such as the prohibition of secret places of detention, the maintenance of a central register of arrest and detention, the right of civilian judges to visit all places of detention.¹⁴⁹

89. Subsequently, the Economic and Social Council, in its resolution 1979/38, requested the Commission on Human Rights to consider, as a matter of priority, the question of disappeared

¹⁴⁴ European Court of Human Rights, *Lütfi Celul Karabardak and others v. Cyprus*, application no. 76575/01, and *Baybora and Others v. Cyprus*, application no. 77116/01, admissibility decisions of 22 October 2002.

¹⁴⁵ European Court of Human Rights, *Cyprus v. Turkey*, application 25781/94, judgement of 10 May 2001.

¹⁴⁶ European Court of Human Rights, *Varnava v. Cyprus*, applications nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, judgement of 18 September 2009.

¹⁴⁷ Wilder Tayler, "Background to the elaboration of the draft international convention for the protection of all persons from forced disappearance", ICJ Review No. 62-63, September 2001, p. 63.

¹⁴⁸ General Assembly resolution 33/173.

¹⁴⁹ A/34/583/Add.1, paras. 193-197.

persons, with a view to making appropriate recommendations at its thirty-sixth session. It also requested the Subcommission on Prevention of Discrimination and Protection of Minorities to consider the subject with a view to making general recommendations to the Commission at its intervening session.

90. In its resolution 5 B (XXXII), the Subcommission pointed out that the danger involved for such disappeared persons warranted urgent reaction on the part of all individuals and institutions, as well as of Governments.¹⁵⁰ It considered the question of enforced and involuntary disappearances at its thirty-fourth session; on 10 September 1981, it adopted resolution 15 (XXXIV), in which it reiterated, inter alia, the right of families to know the fate of their relatives, and strongly appealed for the reappearance of all detainees held in secret detention.¹⁵¹

91. In 1980, the Commission on Human Rights, in its resolution 20 (XXXVI), created a working group to examine questions relevant to enforced or involuntary disappearances of persons. The same year, the General Assembly, in its resolution 35/193, welcomed the establishment of the group and appealed to all Governments to cooperate with it.

92. The Subcommission decided, in its resolution 1983/23, that, at its next session, it would prepare a first draft of a declaration against unacknowledged detention of persons, whatever their condition.¹⁵² In 1984, a first draft was discussed in the Subcommission's Working Group on Detention, as a result of which the Subcommission, in its resolution 1984/3, requested the Working Group to submit a revised draft declaration to the Subcommission at its thirty-eighth session.¹⁵³ The purpose of the draft was to provide for a commitment that Governments (a) disclose the identity, location and condition of all persons detained by members of their police, military or security authorities acting with their knowledge, together with the cause of such detention; and (b) seek to locate all other persons who have disappeared. In countries where legislation did not exist to this effect, steps should be taken to enact such legislation as soon as possible. However, the resolution was not adopted by the Commission on Human Rights in 1985, and was referred back to the Subcommission for reconsideration.¹⁵⁴

93. Following the 1988 session of the Working Group on Detention, a draft declaration on the protection of all persons from enforced or involuntary disappearances was proposed and, following amendments by the intersessional working group, was adopted first by the Commission on Human Rights in its resolution 1992/29, then in the same year by the General Assembly in its resolution 47/133.

¹⁵⁰ See E/CN.4/1350.

¹⁵¹ *Official Records of the Economic and Social Council, Supplement No. 3* (E/1982/12).

¹⁵² E/CN.4/1984/3.

¹⁵³ Resolution 1984/13; E/CN.4/1985/3, E/CN.4/Sub.2/1984/43, chap. XVIII A.

¹⁵⁴ Commission on Human Rights decision 1986/106.

94. Ever since, the Commission continuously called upon its special rapporteurs and working groups to give special attention to questions relating to the effective protection of human rights in the administration of justice, in particular with regard to unacknowledged detention of persons, and to provide, wherever appropriate, specific recommendation in this regard, including proposals for possible concrete measures under advisory services programmes.¹⁵⁵

95. In 1988, in its resolution 43/173, the General Assembly adopted the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. This was the result of a long-standing process of ascertaining detainees' rights that had begun under the Subcommission on Prevention of Discrimination and Protection of Minorities.¹⁵⁶ This instrument provides for the application of a set of safeguards while in detention, compliance with which in principle would avoid or substantially decrease the likelihood of threat to life and limb of detainees.¹⁵⁷ The adoption of the document served as an incentive for the elaboration of complementary regional instruments, such as the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa,¹⁵⁸ adopted by the African Commission on Human and Peoples' Rights in its resolution 61 (XXXII) 02 (2002), and the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas,¹⁵⁹ of the Inter-American Commission on Human Rights.

96. Other instances have contributed to outlawing practices of secret detention. As early as 1978, the Human Rights Committee received the first communication under the Optional Protocol relating to a disappearance and secret detention case in Uruguay. The case concerned a certain Mr. Bleier, suspected of being connected with the subversive activities of the banned Communist Party, who had been arrested by that country's authorities without a court order in October 1975 and was being held incommunicado at an unknown place of detention.¹⁶⁰ The

¹⁵⁵ See for example Commission resolution 1992/31 on human rights in the administration of justice. See also the report of the Special Rapporteur on torture (E/CN.4/1993/26).

¹⁵⁶ Since 1973, the Subcommission had an item on its agenda entitled "Question of the human rights of persons subjected to any form of detention or imprisonment". See E/CN.4/Sub.2/SR.677, pp. 123-129. See generally Kathryn Jean Burke, "New United Nations procedure to protect prisoners and other detainees" *California Law Review*, vol. 64, No. 1 (January 1976), p. 205; and Daniel Prémont, "United Nations procedures for the protection of all persons subjected to any form of detention or imprisonment", *Santa Clara Law Review*, vol. 20, No. 3 (1980), p. 603.

¹⁵⁷ Nigel Rodley and Matt Pollard, *The Treatment of Prisoners under International Law*, Third ed., Oxford University Press, 2009, p. 451.

¹⁵⁸ Also known as Robben Island Guidelines.

¹⁵⁹ OEA/Ser/L/V/II.131, doc. 26 (March 2008).

¹⁶⁰ *Bleier v. Uruguay*, communication No. 30/1978, final views of 21 July 1983.

Committee found that the Government of Uruguay was in breach of articles 7, 9 and 10.1 of the International Covenant on Civil and Political Rights.

97. A decisive moment in the long-standing process of outlawing practices of secret detention was the adoption of the International Convention on the Protection of All Persons from Forced Disappearance, which has been open for signature and ratification since 6 February 2007.¹⁶¹ This process started in 2001, when the Commission on Human Rights requested a study to identify any gaps in the existing international criminal and human rights framework with a view to drafting a legally-binding normative instrument for the protection of all persons from enforced disappearance.¹⁶² On the basis of the study prepared by an independent expert on the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearances,¹⁶³ and with his assistance, the Commission drafted the International Convention on the Protection of All Persons from Forced Disappearance, the final text of which was adopted by the Human Rights Council in its resolution 2006/1. The Convention contains elements necessary for filling the gaps in the framework of the current protection against enforced disappearances and secret detentions.

IV. SECRET DETENTION PRACTICES IN THE GLOBAL “WAR ON TERROR” SINCE 11 SEPTEMBER 2001

98. In spite of the prominent role played by the United States of America in the development of international human rights and humanitarian law, and its position as a global leader in the protection of human rights at home and abroad following the terrorist attacks on New York and Washington, D.C. on 11 September 2001, the United States embarked on a process of reducing and removing various human rights and other protection mechanisms through various laws and administrative acts, including the Authorization for Use of Military Force,¹⁶⁴ the USA Patriot Act of 2001, the Detainee Treatment Act of 2005, the Military Commissions Act of 2006 (which sought to remove *habeas corpus* rights), as well as various executive orders and memoranda issued by the Office of Legal Counsel that interpreted the position of the United States on a

¹⁶¹ General Assembly resolution 61/177.

¹⁶² Commission on Human Rights resolution 2001/46.

¹⁶³ E/CN.4/2002/71.

¹⁶⁴ “Joint Resolution: To authorize the use of United States Armed Forces against those responsible for the recent attacks launched against the United States”, 17 September 2001. This authorized the President “to use all necessary and appropriate force against those nations, organizations or persons he determines planned, authorized, committed or aided the terrorist attacks that occurred on 11 September 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.”

number of issues, including torture. It also sanctioned the establishment of various classified programmes much more narrowly than before.¹⁶⁵

99. The Government of the United States declared a global “war on terror”, in which individuals captured around the world were to be held neither as criminal suspects, put forward for federal court trials in the United States, nor treated as prisoners of war protected by the Geneva Conventions, irrespective of whether they had been captured on the battlefield during what could be qualified as an armed conflict in terms of international humanitarian law. Rather, they were to be treated indiscriminately as “unlawful enemy combatants” who could be held indefinitely without charge or trial or the possibility to challenge the legality of their detention before a court or other judicial authority.

100. On 7 February 2002, the President of the United States issued a memorandum declaring that “common article 3 of Geneva does not apply to either Al-Qaida or Taliban detainees”, that “Taliban detainees are unlawful combatants and, therefore, do not qualify as prisoners of war under article 4 of Geneva”, and that “because Geneva does not apply to our conflict with Al-Qaida, Al-Qaida detainees also do not qualify as prisoners of war”. This unprecedented departure from the Geneva Conventions was to be offset by a promise that, “as a matter of policy, the United States Armed Forces shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva”.¹⁶⁶ This detention policy was defended by the Government in various submissions to the United Nations,¹⁶⁷ including on 10 October 2007, when the Government stated that the law of war, and not the International Covenant on Civil and Political Rights, was the applicable legal framework governing the detentions of “enemy combatants”,¹⁶⁸ and therefore such detentions did not fall within the mandate of the special procedures mandate holders.¹⁶⁹

101. By using this war paradigm, the United States purported to limit the applicable legal framework of the law of war (international humanitarian law) and exclude any application of human rights law. Even if and when human rights law were to apply, the Government was of the view that it was not bound by human rights law outside the territory of the United States. Therefore, by establishing detention centres in Guantanamo Bay and other places around the world, the United States was of the view that human rights law would not be applicable there. Guantanamo and other places of detention outside United States territory were intended to be outside the reach of domestic courts for *habeas corpus* applications by those held in custody in

¹⁶⁵ A/HRC/6/17/Add.3, para. 3.

¹⁶⁶ Memorandum from the President on the humane treatment of Taliban and Al-Qaida detainees, 7 February 2002, www.pegc.us/archive/White_House/bush_memo_20020207_ed.pdf.

¹⁶⁷ See for example CCPR/C/USA/CO/3/Rev.1/Add.1, p. 3; A/HRC/4/41, paras. 453 - 455; and A/HRC/4/40, para. 12.

¹⁶⁸ CCPR/C/USA/CO/3/Rev.1/Add.1, p. 3.

¹⁶⁹ CCPR/C/USA/3, para. 456, and A/HRC/4/40, para. 12.

those places.¹⁷⁰ One of the consequences of this policy was that many detainees were kept secretly and without access to the protection accorded to those in custody, namely the protection of the Geneva Conventions, international human rights law, the United States Constitution and various other domestic laws.

102. The secret detention policy took many forms. The Central Intelligence Agency (CIA) established its own secret detention facilities to interrogate so-called “high value detainees”. It asked partners with poor human rights records to secretly detain and interrogate persons on its behalf. When the conflicts in Afghanistan and Iraq started, the United States secretly held persons in battlefield detention sites for prolonged periods of time. The present chapter therefore focuses on various secret detention sites and those held there, and also highlights examples of the complicity of other States.

A. The “high-value detainee” programme and CIA secret detention facilities

103. On 17 September 2001, President Bush sent a 12-page memorandum to the Director of the CIA through the National Security Council, which authorized the CIA to detain terrorists and set up detention facilities outside the United States.¹⁷¹ Until 2005, when the United Nations sent its first of many communications regarding this programme to the Government of the United States, little was known about the extent and the details of the secret detention programme. Only in May 2009 could a definitive number of detainees in the programme be established. In a released, yet still redacted, memo, Principal Deputy Assistant Attorney General Stephen G. Bradbury stated that, to date, the CIA had taken custody of 94 detainees [redacted], and had employed enhanced techniques to varying degrees in the interrogations of 28 of those detainees.¹⁷²

104. In the report of 2007 on his country visit to the United States (A/HRC/6/17/Add.3), the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism described what was known at that time of these “enhanced techniques” and how they were regarded:

As a result of an apparent internal leak from the CIA, the media in the United States learned and published information about “enhanced interrogation techniques” used by the CIA in its interrogation of terrorist suspects and possibly other persons held because of

¹⁷⁰ In its October 2007 submission to the Human Rights Committee, the Government reaffirmed its long-standing position that “the Covenant does not apply extraterritorially” (CCPR/C/USA/CO/3/Rev.1/Add.1), p. 2.

¹⁷¹ Sixth declaration of Marilyn A. Dorn, Information Review Officer, Central Intelligence Agency, 5 January 2007, available from www.aclu.org/pdfs/safefree/20070110/cia_dorn_declaration_items_1_29_61.pdf.

¹⁷² Stephen G. Bradbury, Memorandum re: application of United States obligations under article 16 of the Convention against Torture to certain techniques that may be used in the interrogation of high value al-Qaida detainees, 30 May 2005 (footnote, p. 5). Available from http://luxmedia.vo.llnwd.net/o10/clients/aclu/olc_05302005_bradbury.pdf.

their links with such suspects. Various sources have spoken of techniques involving physical and psychological means of coercion, including stress positions, extreme temperature changes, sleep deprivation, and “waterboarding” (means by which an interrogated person is made to feel as if drowning). With reference to the well-established practice of bodies such as the Human Rights Committee and the Committee against Torture, the Special Rapporteur concludes that these techniques involve conduct that amounts to a breach of the prohibition against torture and any form of cruel, inhuman or degrading treatment.

105. Several of the 28 detainees who, according to Mr. Bradbury, were subjected to “enhanced techniques to varying degrees” were also “high value detainees”. Fourteen people were transferred from secret CIA custody in an undisclosed location to confinement at the Defense Department’s detention facility in Guantanamo Bay, as announced by President Bush on 6 September 2006.¹⁷³ They were:

- Abu Zubaydah (Palestinian), captured in Faisalabad, Pakistan, on 28 March 2002
- Ramzi bin al-Shibh (Yemeni), captured in Karachi, Pakistan, on 11 September 2002
- Abd al-Rahim al-Nashiri (Saudi), captured in the United Arab Emirates in October or November 2002
- Khalid Sheikh Mohammed (Pakistani), captured in Rawalpindi, Pakistan, on 1 March 2003
- Mustafa al-Hawsawi (Saudi), captured with Khalid Sheikh Mohammed in Rawalpindi, Pakistan, on 1 March 2003
- Majid Khan (Pakistani), captured in Karachi, Pakistan, on 5 March 2003
- Waleed Mohammed bin Attash (Yemeni), also known as Khallad, captured in Karachi, Pakistan, on 29 April 2003
- Ali Abd al-Aziz Ali (Pakistani) also known as Ammar al-Baluchi, captured with Waleed bin Attash in Karachi, Pakistan, on 29 April 2003
- Mohammed Farik bin Amin (Malaysian), also known as Zubair, captured in Bangkok on 8 June 2003
- Riduan Isamuddin (Indonesian), also known as Hambali, also known as Encep Nuraman, captured in Ayutthaya, Thailand, on 11 August 2003

¹⁷³ “President Discusses Creation of Military Commissions to Try Suspected Terrorists”, 6 September 2006, <http://georgewbush-whitehouse.archives.gov/news/releases/2006/09/20060906-3.html>.

- Mohammed Nazir bin Lep (Malaysian), also known as Lillie, captured in Bangkok on 11 August 2003
- Gouled Hassan Dourad (Somali), also known as Haned Hassan Ahmad Guleed, captured in Djibouti on 4 March 2004
- Ahmed Khalfan Ghailani (Tanzanian), captured in Gujrat, Pakistan, on 25 July 2004
- Abu Faraj al-Libi (Libyan), also known as Mustafa Faraj al-Azibi, captured in Mardan, Pakistan, on 2 May 2005¹⁷⁴

106. Beyond the transcripts of the Combatant Status Review Tribunals, held in 2007,¹⁷⁵ and the facts reported in opinion No. 29/2006 (United States of America), adopted by the Working Group on Arbitrary Detention on 1 September 2006,¹⁷⁶ the only available source on the conditions in the above-mentioned facilities is a report by ICRC leaked to the media by United States Government officials.¹⁷⁷ In spite of the fact that the ICRC report was never officially published, the experts decided to refer to it since information on the 14 was scarce and the United States of America, in spite of requests to be allowed to speak to Guantanamo detainees,¹⁷⁸ did not authorize them to do so. That report details the treatment that most of the 14 had described during individual interviews, and concluded that there had been cases of beatings, kicking, confinement in a box, forcible shaving, threats, sleep deprivation, deprivation/restriction on food provisions, stress positions, exposure to cold temperatures/cold water, suffocation by water and so on. It stressed that, for the entire detention periods, which ranged from 16 months to more than 3 and a half years, all 14 persons had been held in solitary confinement and incommunicado detention. According to the report, they had no knowledge of where they were being held, and no contact with persons other than their interrogators or guards.”¹⁷⁸ ICRC concluded that

Twelve of the fourteen alleged that they were subjected to systematic physical and/or psychological ill-treatment. This was a consequence of both the treatment and the material conditions which formed part of the interrogation regime, as well as the overall detention

¹⁷⁴ A/HRC/4/40/Add.1. Pentagon biographies are available from the address www.defenselink.mil/pdf/detaineebiographies1.pdf.

¹⁷⁵ See www.defenselink.mil/news/Combatant_Tribunals.html.

¹⁷⁶ A/HRC/4/40/Add.1.

¹⁷⁷ ICRC report on the treatment of 14 “high value detainees” in CIA custody transmitted on 14 February 2007. See www.nybooks.com/icrc-report.pdf.

¹⁷⁸ For example, the letters sent by the four experts on 5 and 28 August 2009, see also the letters sent by the Special Rapporteur on human rights and counter-terrorism dated 20 March 2007, 13 July 2007, and 18 May 2009; and letter of the Special Rapporteur on torture’s predecessor of 30 January 2004 and several reminders, of which the latest was dated 1 July 2009.

regime. This regime was clearly designed to undermine human dignity and to create a sense of futility by inducing, in many cases, severe physical and mental pain and suffering, with the aim of obtaining compliance and extracting information, resulting in exhaustion, depersonalization and dehumanization. The allegations of ill-treatment of the detainees indicate that, in many cases, the ill-treatment to which they were subjected while held in the CIA program, either singly, or in combination, constituted torture. In addition, many other elements of the ill-treatment, either singly or in combination, constituted cruel inhuman or degrading treatment.”¹⁷⁸

107. Despite the acknowledgement in September 2006 by President Bush of the existence of secret CIA detention facilities, the United States Government and the Governments of the States that hosted these facilities have generally refused to disclose their location or even existence. The specifics of the secret sites have, for the most part, been revealed through off-the-record disclosures.

108. In November 2005, for example, the *Washington Post* referred to “current and former intelligence officers and two other US Government officials” as sources for the contention that there had been a secret CIA black site or safe house in Thailand, “which included underground interrogation cells”.¹⁷⁹ One month later, ABC news reported on the basis of testimonies from “current and former CIA officers” that Abu Zubaydah had been:

Whisked by the CIA to Thailand where he was housed in a small, disused warehouse on an active airbase. There, his cell was kept under 24-hour closed circuit TV surveillance and his life-threatening wounds were tended to by a CIA doctor specially sent from Langley headquarters to assure Abu Zubaydah was given proper care, sources said. Once healthy, he was slapped, grabbed, made to stand long hours in a cold cell, and finally handcuffed and strapped feet up to a water board until after 0.31 seconds he begged for mercy and began to cooperate.¹⁸⁰

The details of Abu Zubaydah’s treatment have been confirmed by his initial FBI interrogator, who has not confirmed or denied that the location where Abu Zubaydah was held was in Thailand.¹⁸¹ The *Washington Post* also reported that the officials had stated that Ramzi

¹⁷⁹ Dana Priest, “CIA holds terror suspects in secret prisons”, *Washington Post*, 2 November 2005. Available from www.washingtonpost.com/wp-dyn/content/article/2005/11/01/AR2005110101644.html.

¹⁸⁰ Brian Ross and Richard Esposito, “Sources tell ABC news top Al-Qaida figures held in secret CIA Prisons”, 5 December 2005. Available from <http://abcnews.go.com/WNT/Investigation/story?id=1375123>.

¹⁸¹ “Former FBI agent: enhanced interrogation techniques ‘ineffective, harmful’”. ABC news, 13 April 2009. Available from <http://abcnews.go.com/Politics/story?id=7577631&page=1>.

Binalshibh had been flown to Thailand after his capture.¹⁸² The *New York Times* again stated in 2006 that Abu Zubaydah was held in Thailand “according to accounts from five former and current government officials who were briefed on the case.”¹⁸³ In January 2008, the *Asia Times* reported that political analysts and diplomats in Thailand suspected that the detention facility was “situated at a military base in the northeastern province of Udon Thani”.¹⁸⁴

109. The sources of the *Washington Post* stated that, after “published reports revealed the existence of the site in June 2003, Thai officials insisted the CIA shut it down”.¹⁸¹ The *New York Times* alleged later that local officials were said to be growing uneasy about “a black site outside Bangkok code-named Cat’s Eye” and that this was a reason for the CIA to want “its own, more permanent detention centers”.¹⁸⁵

110. In 2008, the *Washington Post* described on the basis of interviews with “more than two dozen current and former U.S. officials” how a “classified cable” had been sent between the CIA station chief in Bangkok and his superiors “asking if he could destroy videotapes recorded at a secret CIA prison in Thailand ... from August to December 2002 to demonstrate that interrogators were following the detailed rules set by lawyers and medical experts in Washington, and were not causing a detainee’s death.” The newspaper also reported “several of the inspector general’s deputies traveled to Bangkok to view the tapes.”¹⁸⁶ The Office of the Inspector General reviewed 92 videotapes in May 2003, 12 of which included “enhanced interrogation techniques” and identified 83 waterboarding sessions on Abu Zubaydah at a “foreign site”. From the OIG report it seems that Abu Zubaydah and Abd al-Rahim al-Nashiri were detained and interrogated at the same place.¹⁸⁷ This information could not be verified, as the location of the interrogation is redacted in the report of the CIA Officer General, although

¹⁸² Dana Priest, “CIA holds terror suspects in secret prisons”, *Washington Post*, 2 November 2005. Available from www.washingtonpost.com/wp-dyn/content/article/2005/11/01/AR2005110101644.html.

¹⁸³ David Johnston, “At a secret interrogation, dispute flared over tactics” *New York Times*, 10 September 2006. Available from www.nytimes.com/2006/09/10/washington/10detain.html.

¹⁸⁴ Shawn W. Crispin, “US and Thailand: allies in torture”, *Asia Times*, 25 January 2008. Available from www.atimes.com/atimes/Southeast_Asia/JA25Ae01.html.

¹⁸⁵ David Johnston and Mark Mazzetti, Interrogation inc: A window into CIA’s embrace of secret jails, in *The New York Times*, 12 August 2009. Available from www.nytimes.com/2009/08/13/world/13foggo.html?_r=2&ref=global-home.

¹⁸⁶ Joby Warrick and Walter Pincus, “Station chief made appeal to destroy CIA tapes”, *Washington Post*, 16 January 2008, available from www.washingtonpost.com/wp-dyn/content/article/2008/01/15/AR2008011504090.html.

¹⁸⁷ CIA Inspector General, Special Review, “Counterterrorism detention and interrogation activities (September 2001 - October 2003) (2003-7123-IG), 7 May 2004, unclassified version released 24 August 2009, paras. 74 and 91.

independent sources informed the experts that the facility was indeed in Thailand and that it was known as the “Cat’s Eye”. The videotapes were however allegedly destroyed in November 2005 by the CIA and, according to the *New York Times*, the tapes had been held “in a safe at the CIA station in Thailand, the country where two detainees - Abu Zubaydah and Abd al-Rahim al-Nashiri - were interrogated.”¹⁸⁸

111. In its submission for the present study, the Government of Thailand denied the existence of a secret detention facility in Thailand in 2002/03, stating that international and local media had visited the suspected places and found no evidence of such a facility. In the light of the detailed nature of the allegations, however, the experts believe it credible that a CIA black site existed in Thailand, and calls on the domestic authorities to launch an independent investigation into the matter.

112. In June 2007, in a report submitted to the Council of Europe, rapporteur Dick Marty stated that he had enough “evidence to state that secret detention facilities run by the CIA did exist in Europe from 2003 to 2005, in particular in Poland and Romania.”¹⁸⁹ The report drew on testimony from over 30 current and former members of intelligence services in the United States and from Europe. According to the Rapporteur, the Romanian “black site” was allegedly in force from 2003 to the second half of 2005. He also noted that “the majority of the detainees brought to Romania were, according to our sources, extracted ‘out of [the] theater of conflict’. This phrase is understood as a reference to detainee transfers originating from Afghanistan and, later, Iraq”.¹⁹¹ In August 2009, former United States intelligence officials disclosed to the *New York Times*, that Kyle D. Foggo, at that time head of the CIA’s main European supply base in Frankfurt, oversaw the construction of three CIA detention centres, “each built to house about a half-dozen detainees”. They added that “one jail was a renovated building on a busy street in Bucharest”.¹⁹⁰

113. While the identities of many detainees who were held in these facilities have not been revealed yet, it is known that on or around 24 April 2004, Mohammed al-Asad (see para. 133 below) was transferred with at least two other people from Afghanistan to an unknown, modern facility apparently run by United States officials, which was carefully designed to induce maximum disorientation, dependence and stress in the detainees. Descriptions of the facility and its detention regime were given by Mr. al-Asad to Amnesty International, which established that

¹⁸⁸ Mark Mazzetti, “US says CIA destroyed 92 tapes of interrogations”, *New York Times*, 2 March 2009. Available from www.nytimes.com/2009/03/03/washington/03web-intel.html.

¹⁸⁹ Dick Marty, “Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report”, Council of Europe, doc. 11302 rev., 11 June 2007. Available from assembly.coe.int/Documents/WorkingDocs/Doc07/edoc11302.pdf. In its response to the report, Romania contested the evidentiary basis of the findings concerning Romania.

¹⁹⁰ David Johnston and Mark Mazzetti, “A window into CIA’s embrace of secret jails” *New York Times*, 12 August 2009. Available from www.nytimes.com/2009/08/13/world/13foggo.html?_r=2&ref=global-home. See also response by the Government of Romania published in the *New York Times*.

he had been held in the same place as two other Yemeni men, Salah Ali and Mohammed Farag Ahmad Bashmilah.¹⁹¹ Research into flight durations and the observations of Mr. al-Asad, Mr. Ali, and Mr. Bashmilah suggest that the facility was likely located in Eastern Europe. Mr. al-Asad was held in a rectangular cell approximately 3.5x2.5 m, in which he was chained to the floor in the corner. The first night, Mr. al-Asad was kept naked in his cell. The cell included a speaker, which played noise similar to an engine or machine, and two cameras. For most of his time in the facility, the light in his cell was kept on all night. At one point, Mr. al-Asad met with a man who identified himself as the prison director and claimed that he had just flown in from Washington, D.C. Similarly, Mr. Bashmilah described how the facility where he was held was much more modern than the one in Afghanistan. White noise was blasted into his cell, the light was kept on constantly, and he was kept shackled. The guards in the facility were completely dressed in black, including black face masks, and communicated to one another by hand gestures only. The interrogators spoke to each other in English and referred to information arriving from Washington, D.C.¹⁹² On 5 March 2005, the United States informed Yemen that Mr. Bashmilah was in American custody. On 5 May 2005, Mr. Bashmilah was transferred to Yemen, along with two other Yemeni nationals, Mr. al-Asad and Salah Nasser Salim Ali Darwish.

114. In Poland, eight high-value detainees, including Abu Zubaydah, Khalid Sheikh Mohamed, Ramzi bin al-Shibh, Tawfiq [Waleed] bin Attash and Ahmed Khalfan [al-] Ghailani, were allegedly held between 2003 and 2005 in the village of Stare Kiejkuty.¹⁹³ According to the leaked ICRC report, Khalid Sheik Mohamed knew that he was in Poland when he received a bottle of water with a Polish label.¹⁹⁴ According to ABC news¹⁹⁵, in 2005, Hassan Gul¹⁹⁶ and

¹⁹¹ Amnesty International, “United States of America/Yemen: secret detention in CIA “black sites”. Available from www.amnesty.org/en/library/asset/AMR51/177/2005/en/3bbac635-d493-11dd-8a23-d58a49c0d652/amr511772005en.html.

¹⁹² Declaration of Mohamed Farag Ahmad Bashmilah in support of plaintiffs’ opposition to the motion of the United States to dismiss or, in the alternative, for summary judgement, Civil Action No. 5:07-cv-02798 in the United States District Court for the Northern District of California, San Jose Division. See also www.chrgj.org/projects/docs/survivingthedarkness.pdf, pp. 34-35.

¹⁹³ Dick Marty, op. cit., p. 25. In his report, the author also noted that “a single CIA source told us that there were ‘up to a dozen’ high-value detainees in Poland in 2005, but we were unable to confirm this number”.

¹⁹⁴ ICRC report on the treatment of 14 “high-value detainees” in CIA custody, February 2007, pp. 34-35. Available from www.nybooks.com/icrc-report.pdf.

¹⁹⁵ Brian Ross and Richard Esposito, “Sources tell ABC news top Al Qaeda figures held in secret CIA prisons”, 5 December 2005. Available from <http://abcnews.go.com/Blotter/Investigation/story?id=1375123>.

¹⁹⁶ Stephen G. Bradbury, Memorandum regarding application of United States obligations under article 16 of the Convention against Torture to certain techniques that may be used in the interrogation of high value al-Qaeda detainees”, 30 May 2005, p. 7. Available from

Mohammed Omar Abdel-Rahman¹⁹⁷ were also detained in the facility in Poland. The Polish press subsequently claimed that the authorities of Poland - during the term of office of President Aleksander Kwaśniewski and Prime Minister Leszek Miller - had assigned a team of “around a dozen” intelligence officers to cooperate with the United States on Polish soil, thereby putting them under exclusive American control and had permitted American “special purpose planes” to land on the territory of Poland.¹⁹⁸ The existence of the facility has always been denied by the Government of Poland and press reports have indicated that it is unclear what Polish authorities knew about the facility.

115. While denying that any terrorists had been detained in Poland, Zbigniew Siemiątkowski, the head of the Polish Intelligence Agency in the period 2002-2004, confirmed the landing of CIA flights.¹⁹⁹ Earlier, the Marty report had included information from civil aviation records revealing how CIA-operated planes used for detainee transfers landed at Szymany airport, near the town of Szczytno, in Warmia-Mazuria province in north-eastern Poland, and at the Mihail Kogalniceanu military airfield in Romania between 2003 and 2005. Marty also explained how flights to Poland were disguised by using fake flight plans.²⁰⁰

116. In research conducted for the present study, complex aeronautical data, including “data strings”²⁰¹ retrieved and analysed, have added further to this picture of flights disguised using fake flight plans and also front companies. For example, a flight from Bangkok to Szymany, Poland, on 5 December 2002 (stopping at Dubai) was identified, though it was disguised under multiple layers of secrecy, including charter and sub-contracting arrangements that would avoid

http://luxmedia.vo.llnwd.net/o10/clients/aclu/olc_05302005_bradbury.pdf. Mr. Ghul was reportedly transferred to Pakistani custody in 2006.

¹⁹⁷ Working Group on Arbitrary Detention, opinion No. 29/2006 (United States of America) (A/HRC/4/40/Add.1), para. 15. See also “Two other top Al-Qaeda operatives Nabbed”, Fox news, 4 March 2003, available from www.foxnews.com/story/0,2933,80170,00.html.

¹⁹⁸ Edyta Żemła, Mariusz Kowalewski, “Polski wywiad w służbie CIA” *Rzeczpospolita*, 15 April 2009.

¹⁹⁹ Adam Krzykowski, Mariusz Kowalewski, ‘Politycy przeczą’ *Rzeczpospolita*, 15 April 2009.

²⁰⁰ Dick Marty, op. cit.

²⁰¹ Data strings are exchanges of messages or digital data, mostly in the form of coded text and numbers between different entities around the world on aeronautical telecommunications networks. They record all communications filed in relation to each particular aircraft, as its flights are planned in advance, and as it flies between different international locations. The filings of initial flight plans come from diverse entities, including aviation service providers, Air Navigation Services authorities, airport authorities and Government agencies. Specialist operators of the Integrated Initial Flight Plan Processing System (IFPS) process each message, circulate it to relevant third parties, and reply to the entity that sent it, in the form of an “operational reply”. The messages sent by IFPS operators are also recorded in data strings.

there being any discernible “fingerprints” of a United States Government operation, as well as the filing of “dummy” flight plans. The experts were made aware of the role of the CIA chief aviation contractor through sources in the United States. The modus operandi was to charter private aircraft from among a wide variety of companies across the United States, on short-term leases to match the specific needs of the CIA Air Branch. Through retrieval and analysis of aeronautical data, including data strings, it is possible to connect the aircraft N63MU with three named American corporations, each of which provided cover in a different set of aviation records for the operation of December 2002. The aircraft’s owner was and remains “International Group LLC”; its registered operator for the period in question was “First Flight Management”; and its registered user in the records of the Eurocontrol Central Route Charges Office, which handles the payment of bills, was “Universal Weather”. Nowhere in the aviation records generated by this aircraft is there any explicit recognition that it carried out a mission associated with the CIA. Research for the present study also made clear that the aviation services provider Universal Trip Support Services filed multiple dummy flight plans for the N63MU in the period from 3 to 6 December 2002. In a report, the CIA Inspector General discussed the interrogations of Abu Zubaydah and Abd al-Rahim al-Nashiri. Two United States sources with knowledge of the high-value detainees programme informed the experts that a passage revealing that “enhanced interrogation of al-Nashiri continued through 4 December 2002” and another, partially redacted, which stated that:

However, after being moved, al-Nashiri was thought to have been withholding information”, indicate that it was at this time that he was rendered to Poland. The passages are partially redacted because they explicitly state the facts of al-Nashiri’s rendition - details which remain classified as “Top Secret”.²⁰²

117. Using a similar analysis of complex aeronautical data, including data strings, research was also able to demonstrate that a Boeing 737 aircraft, registered with the Federal Aviation Administration as N313P, flew to Romania in September 2003. The aircraft took off from Dulles Airport in Washington, D.C. on Saturday 20 September 2003, and undertook a four-day flight “circuit”, during which it landed in and departed from six different foreign territories - the Czech Republic, Uzbekistan, Afghanistan, Poland, Romania and Morocco - as well as Guantanamo Bay, Cuba. Focus was also placed on a flight between the two listed European “black site” locations - namely from Szymany (Poland) to Bucharest - on the night of 22 September 2003, although it was conceivable that as many as five consecutive individual routes on this circuit - beginning in Tashkent, concluding in Guantanamo - may have involved transfers of detainees in the custody of the CIA. The experts were not able to identify any definitive evidence of a detainee transfer into Romania taking place prior to the flight circuit.

118. In its response to the questionnaire sent by the experts, Poland stated that:

On 11 March 2008, the district Prosecutor’s Office in Warsaw instituted proceedings on the alleged existence of so-called secret CIA detention facilities in Poland as well as the illegal transport and detention of persons suspected of terrorism. On 1 April 2009, as result of the reorganization of the Public Prosecutor’s Office, the investigation was referred to the

²⁰² CIA Inspector General, Special Review, op. cit, paras. 76 and 224.

Appellate Prosecutor Office in Warsaw. In the course of investigation, the prosecutors gathered evidence, which is considered classified or secret. In order to secure the proper course of proceedings, the prosecutors who conduct the investigation are bound by the confidentiality of the case. In this connection, it is impossible to present any information regarding the findings of the investigation. Once the proceedings are completed and its results and findings are made public the Government of Poland will present and submit all necessary or requested information to any international body.

While the experts appreciate the fact that an investigation has been opened into the existence of places of secret detention in Poland, they are concerned about the lack of transparency into the investigation. After 18 months, still nothing is known about the exact scope of the investigation. The experts expect that any such investigation would not be limited to the question of whether Polish officials had created an “extraterritorial zone” in Poland, but also whether officials were aware that “enhanced interrogation techniques” were applied there.

119. In its response to the questionnaire sent by the experts, Romania provided a copy of the report of the Committee of Enquiry of Parliament concerning the investigation of the statements on the existence of CIA imprisonment centres or of flights of aircraft hired by the CIA on the territory of Romania.²⁰³

120. With regard to Europe, ABC news recently reported that Lithuanian officials had provided the CIA with a building where as many as eight terrorist suspects were held for more than a year, until late 2005, when they were moved because of public disclosure of the programme.²⁰⁴ More details emerged in November 2009 when ABC news reported that the facility was built inside an exclusive riding academy in Antaviliai.²⁰⁵ Research for the present study, including data strings relating to Lithuania, appears to confirm that Lithuania was integrated into the secret detention programme in 2004. Two flights from Afghanistan to Vilnius could be identified: the first, from Bagram, on 20 September 2004, the same day that 10 detainees previously held in secret detention, in a variety of countries, were flown to Guantanamo; the second, from Kabul, on 28 July 2005. The dummy flight plans filed for the flights into Vilnius customarily used airports of

²⁰³ Report of the inquiring committee of investigation on the statements regarding the existence of some CIA imprisonment centers or of some flights or aircraft hired by CIA on the territory of Romania of the Parliament of Romania. This inquiring committee has been established by Resolution 29 of the Senate of Romania of 21 December 2005. It finalized its report on 5 March 2007 and held that the accusations addressed to Romania are groundless.

²⁰⁴ Matthew Cole, “Officials: Lithuania hosted secret CIA prison to get our Ear”, ABC news, 20 August 2009, <http://abcnews.go.com/Blotter/story?id=8373807>. See also Dick Marty, “Time for Europe to come clean once and for all over secret detentions”, 21 August 2009. Available from http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=4859&L=2.

²⁰⁵ Matthew Cole and Brian Ross, “CIA secret ‘torture’ prison found at fancy horseback riding academy”. ABC news, 18 November 2009. Available from <http://abcnews.go.com/Blotter/cia-secret-prison-found/story?id=9115978>.

destination in different countries altogether, excluding any mention of a Lithuanian airport as an alternate or back-up landing point.

121. On 25 August 2009, the President of Lithuania announced that her Government would investigate allegations that Lithuania had hosted a secret detention facility. On 5 November 2009, the Lithuanian Parliament opened an investigation into the allegation of the existence of a CIA secret detention on Lithuanian territory. In its submission for the present study, the Government of Lithuania provided the then draft findings of this investigation, which in the meantime had been adopted by the full Parliament. In its findings, the Seimas Committee stated that the State Security Department (SSD) had received requests to “equip facilities in Lithuania suitable for holding detainees”. In relation to the first facility, the Committee found that “conditions were created for holding detainees in Lithuania”. The Committee could not conclude, however, that the premises were also used for that purpose. In relation to the second facility, the Committee found that:

The persons who gave testimony to the Committee deny any preconditions for and possibilities of holding and interrogating detainees ... However, the layout of the building, its enclosed nature and protection of the perimeter as well as fragmented presence of the SSD staff in the premises allowed for the performance of actions by officers of the partners without the control of the SSD and use of the infrastructure at their discretion.

The report also found that there was no evidence that the SSD had informed the President, the Prime Minister or other political leaders of the purposes and contents of its cooperation with the CIA regarding these two premises.

122. While the experts welcome the work of the Seimas Committee as an important starting point in the quest for truth about the role played by Lithuania in the secret detention and rendition programme, they stress that its findings can in no way constitute the final word on the country’s role. On 14 January 2010, President Dalia Grybauskaitė rightly urged Lithuanian prosecutors to launch a deeper investigation into secret CIA black sites held on the country’s territory without parliamentary approval.²⁰⁶

123. The experts stress that all European Governments are obliged under the European Convention of Human Rights to investigate effectively allegations of torture or cruel, inhuman or degrading treatment or punishment.²⁰⁷ Failure to investigate effectively might lead to a situation of grave impunity, besides being injurious to victims, their next of kin and society as a whole, and fosters chronic recidivism of the human rights violations involved. The experts also note that the European Court of Human Rights has applied the test of whether “the authorities reacted effectively to the complaints at the relevant time”.²⁰⁸ A thorough investigation should be capable of leading to the identification and punishment of those responsible for any ill treatment; it “must

²⁰⁶ See <http://en.rian.ru/exsoviet/20100114/157539192.html>.

²⁰⁷ See for example *Assenov et al v. Bulgaria*, judgement of 28 October 1998.

²⁰⁸ *Labita v Italy*, application no. 26772/95, judgement of 6 April 2000, para. 131.

be 'effective' in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or the omissions of the authorities".²⁰⁹ Furthermore, according to the European Court, authorities must always make a serious attempt to find out what happened²¹⁰ and "should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions".²¹¹

124. According to two high-ranking Government officials at the time, revelations about the existence of detention facilities in Eastern Europe in late 2005 by the *Washington Post* and ABC news led the CIA to close its facilities in Lithuania and Romania and move the Al-Qaida detainees out of Europe. It is not known where these persons were transferred; they could have been moved into "war zone facilities" in Iraq and Afghanistan²¹² or to another black site, potentially in Africa. The experts were not able to find the exact destination of the 16 high-value detainees between December 2005 and their move to Guantanamo in September 2006. No other explanation has been provided for the whereabouts of the detainees before they were moved to Guantanamo in September 2006.

125. Other locations have been mentioned as the venues for secret detention facilities outside territories under United States control (or operated jointly with the United States military). The first is Guantanamo, which was mentioned by the United States officials who spoke to the *Washington Post* in 2005, when it was reported that the detention facility had existed "on the grounds of the military prison at Guantanamo Bay", but that "some time in 2004, the CIA decided it had to give [it] up ... The CIA had planned to convert it into a state-of-the-art facility, operated independently of the military [but] pulled out when US courts began to exercise greater control over the military detainees, and agency officials feared judges would soon extend the same type of supervision over their detainees".²¹² More recently, former Guantanamo Bay guards have described "an unnamed and officially unacknowledged" compound located out of sight from the main road between two plateaus, about a mile north of Camp Delta, just outside Camp America's perimeter with the access road chained off. The unacknowledged "camp no" is described as having had no guard towers and being surrounded with concertina wire, with one part of the compound having "the same appearance as the interrogation centers at other prison camps". At this point, it is unclear whether this facility was run by the CIA or the Joint Special Operations Command. The experts are concerned about the possibility that three Guantanamo

²⁰⁹ See *Aksoy v. Turkey*, judgement of December 1996, para 95; and *Kaya v. Turkey*, judgement of 19 February 1998, para 106.

²¹⁰ See *Timurtas v. Turkey*, judgement of 13 June 2000, para. 88.

²¹¹ *Assenov v. Bulgaria*, op. cit., para. 104.

²¹² Dana Priest, "CIA holds terror suspects in secret prisons", *Washington Post*, 2 November 2005. Available from www.washingtonpost.com/wp-dyn/content/article/2005/11/01/AR2005110101644.html.

detainees (Salah Ahmed al-Salami, Mani Shaman al-Utaybi and Yasser Talal al-Zahrani) might have died during interrogations at this facility, instead of in their own cells, on 9 June 2006.²¹³

126. There have also been claims that the United States used two military bases in the Balkans for secret detention: Camp Bondsteel, in Kosovo, and Eagle Base, in Tuzla, Bosnia and Herzegovina. In November 2005, Council of Europe Human Rights Commissioner Alvaro Gil-Robles told *Le Monde* that the United States military ran a Guantanamo-type detention centre in Camp Bondsteel. He said he had been “shocked” by conditions at the centre, which he witnessed in 2002, and which resembled “a smaller version of Guantanamo”.²¹⁴ In December 2005, the United Nations Ombudsman in Kosovo, Marek Antoni Nowicki, also spoke about Camp Bondsteel, saying “there can be no doubt that for years there has been a prison in the Bondsteel base with no external civilian or judicial oversight. The prison looks like the pictures we have seen of Guantanamo Bay”. Mr. Nowicki said that he had visited Camp Bondsteel in late 2000 and early 2001, when it was the main detention centre for Kosovo Force (KFOR), the NATO-led peace-keeping force, but explained that he had had no access to the base since 2001.²¹⁵ The United States base in Tuzla was allegedly used to “process” eight detainees, including Nihad Karsic and Almin Hardaus. Around 25 September 2001, Karsic and Hardaus were arrested at work and taken to Butmir Base, then to Eagle Base, Tuzla, where they allegedly were held in secret detention. The men say that they were held in solitary confinement, stripped naked, forcibly kept awake, repeatedly beaten, verbally harassed, deprived of food and photographed.²¹⁶

127. Further developments were witnessed in 2009. In October, three of the experts sent a letter to the Governments of the United States, the United Kingdom,²¹⁷ Pakistan and the Syrian Arab Republic regarding Mustafa Setmariam Nassar, aged 42, a Spanish citizen of Syrian origin and author of a number of books and other publications on Islam and jihad. They pointed to allegations received that, on an unknown date in October 2005, he had been apprehended in Pakistan by forces of the Pakistani intelligence on suspicion of having been involved in a number of terrorist attacks, including the 11 September 2001 attacks against the United States and the 11 March 2004 bombings in Madrid. He was detained in Pakistan for a certain period of time accused of involvement in both incidents. He was then handed over to authorities of the

²¹³ Scott Horton, The Guantánamo “Suicides”: A Camp Delta sergeant blows the whistle, *Harper’s Magazine*, 18 January 2010, available at <http://www.harpers.org/archive/2010/01/hbc-90006368>.

²¹⁴ “Une “prison secrète” américaine a existé dans un camp de l’OTAN au Kosovo”, *Le monde*, 26 November 2005.

²¹⁵ “Questions arise over US base in Kosovo”, *Deutsche Welle*, 10 December 2005, Available from www.dw-world.de/dw/article/0,,1810615,00.html”.

²¹⁶ Cageprisoners, “Citizens no more - war on terror abuses in Bosnia and Herzegovina”, July 2007. Available from www.cageprisoners.com/citizensnomore.pdf.

²¹⁷ United Kingdom response included in A/HRC/13/39/Add.1.

United States. While no official news of Mr. Nassar's whereabouts has been received since his apprehension in October 2005, it is alleged that, in November 2005, he was held for some time at a military base facility under United States authority in Diego Garcia. It is now assumed that he is currently being held in secret detention in the Syrian Arab Republic. Official United States documents and web postings, as well as media reports, indicate that the United States authorities had been interested in Mr. Nassar before his disappearance in 2005. In June 2009, in response to a request made through Interpol by a Spanish judge for information relating to Mr. Nassar's whereabouts, the FBI stated that Mr. Nassar was not in the United States at that time. The FBI did not, however, address whether Mr. Nassar was in United States custody elsewhere or whether it knew where he was then held. Following queries by non-governmental organizations regarding the whereabouts of Mr. Nassar, the CIA responded on 10 June 2009, stating that "the CIA can neither confirm nor deny the existence or nonexistence of records responsive to your request" and that, even if the CIA was in a position to answer the request, the records would be classified and protected from disclosure by United States laws.²¹⁸ According to Reprieve, Mr. Nassar may have been transferred to Syrian custody.²¹⁹ According to the Government of the United Kingdom, it has received assurances from the United States that it has not interrogated any terrorist suspect or terrorism-related detainee in Diego Garcia in any case since 11 September 2001, and that the allegations of a CIA holding facility on the island are false. The Government was therefore confident that the allegations that Mr. Nassar had been held on Diego Garcia were inaccurate.

128. Following the transfer of the 14 high-value detainees from CIA custody to Guantanamo, President Bush, in a delivered speech on 6 September 2006, announced the closure of the CIA's "high-value detainee programme". He stressed that, "as more high-ranking terrorists are captured, the need to obtain intelligence from them will remain critical - and having a CIA programme for questioning terrorists will continue to be crucial to getting life-saving information".²²⁰ Later in 2006 and in 2007, he indicated that "the CIA interrogation and detention program" would continue.²²¹ Subsequent events support this claim as the Department

²¹⁸ Joint urgent appeal sent on 2 October 2009 to be reflected in the forthcoming communications reports of the Special Rapporteur on torture and other cruel, inhuman or degrading punishment or treatment and the Special Rapporteur on the promotion and protection of human rights while countering terrorism.

²¹⁹ Letters of 3 August 2009 from Reprieve, American Civil Liberties Union and Alkarama addressed to the Special Rapporteurs on torture and on human rights while countering terrorism and to the Working Group on Enforced or Involuntary Disappearances.

²²⁰ "President discusses creation of military commissions to try suspected terrorists", 6 September 2006. Available from <http://georgewbush-whitehouse.archives.gov/news/releases/2006/09/20060906-3.html>.

²²¹ "President Bush signs military commissions act of 2006", 17 October 2006. Available from <http://georgewbush-whitehouse.archives.gov/news/releases/2006/10/20061017-1.html>. Executive Order 13440: Interpretation of the Geneva Conventions common article 3 as applied to a program of detention and interrogation operated by the Central Intelligence Agency", 20 July 2007. Available from <http://edocket.access.gpo.gov/2007/pdf/07-3656.pdf>.

of Defense announced in 2007 and 2008 the transfer of high-value detainees from CIA custody to Guantanamo.

129. On 27 April 2007, the Department of Defense announced that another high-value detainee, Abd al-Hadi al-Iraqi, described as “a high-level member of Al-Qaida”, had been transferred to Guantanamo.²²² On the same day, Bryan Whitman, a Pentagon spokesman, stated that the detainee had been transferred to Defense Department custody that week from the CIA although he “would not say where or when al-Iraqi was captured or by whom”. However, a United States intelligence official stated that al-Iraqi “had been captured late last year in an operation that involved many people in more than one country”.²²³ Another high-value detainee, Muhammad Rahim, an Afghan described as a close associate of Osama bin Laden, was transferred to Guantanamo on 14 March 2008. In a press release, the Department of Defense stated that, “prior to his arrival at Guantanamo Bay, he was held in CIA custody”.²²⁴ According to reports in Pakistani newspapers, he was captured in Lahore in August 2007.²²⁵

130. The Government of the United States provided no further details about where the above-mentioned men had been held before their transfer to Guantanamo; however, although it is probable that al-Iraqi was held in another country, in a prison to which the CIA had access (it was reported in March 2009 that he “was captured by a foreign security service in 2006” and then handed over to the CIA),²²⁶ the Department of Defense itself made it clear that the CIA had been holding Muhammad Rahim, indicating that some sort of CIA “black site” was still operating.

B. CIA detention facilities or facilities operated jointly with United States military in battle-field zones

131. Although it is still not possible to identify all 28 of the CIA’s acknowledged high-value detainees, the figures quoted in a memo of the Office of Legal Counsel of 30 May 2005 written by Principal Deputy Assistant Attorney General Stephen G. Bradbury²²⁷ indicate that the other

²²² “Defense Department takes custody of a high-value detainee”, 27 April 2007. Available from <http://www.defenselink.mil/releases/release.aspx?releaseid=10792>.

²²³ “Pentagon: senior Al-Qaeda operative caught”, *USA Today*, 27 April 2007. Available from www.usatoday.com/news/washington/2007-04-27-alqaeda-capture_N.htm.

²²⁴ “Defense Department takes custody of a high-value detainee”, 14 March 2008. Available from www.defenselink.mil/releases/release.aspx?releaseid=11758.

²²⁵ Mark Mazzetti, “CIA secretly held qaeda suspect, officials say”, *New York Times*, 15 March 2008. Available from www.nytimes.com/2008/03/15/washington/15detain.html.

²²⁶ Eric Schmitt and Mark Mazzetti, “US relies more on aid of allies in terror cases”, *New York Times*, 23 May 2009. Available from www.nytimes.com/2009/05/24/world/24intel.html.

²²⁷ Stephen G. Bradbury, “memorandum re: application of United States obligations under article 16 of the Convention against Torture to certain techniques that may be used in the

66 prisoners in the CIA programme were regarded as less significant. Some of them were subsequently handed over to the United States military and transferred to Guantanamo, while others were rendered to the custody of their home countries or other countries. In very few cases were they released.

1. Afghanistan

132. Outside of the specific “high-value detainee” programme, most detainees were held in a variety of prisons in Afghanistan. Three of these are well-known: a secret prison at Bagram airbase, reportedly identified as “the Hangar;”²²⁸ and two secret prisons near Kabul, known as the “dark prison” and the “salt pit”. During an interview held with the experts, Bisher al-Rawi indicated that, in the dark prison, there were no lights, heating or decoration. His cell was about 5x9 feet with a solid steel door and a hatch towards the bottom of it. He only had a bucket to use as a toilet, an old piece of carpet and a rusty steel bar across the width of the cell to hang people from. All the guards wore hoods with small eye holes, and they never spoke. Very loud music was played continuously. He also indicated that he had been subjected to sleep deprivation for up to three days and received threats. Binyam Mohamed provided a similar account to the experts, as did the lawyer of Khaled El-Masri and Suleiman Abdallah. The experts heard allegations about three lesser-known prisons, including one in the Panjshir valley, north of Kabul, and two others identified as Rissat and Rissat 2, but it was not yet possible to verify these allegations. Of the prisoners identified as having been held in secret CIA custody (in addition to the above-mentioned high-value detainees), seven were eventually released and four escaped from Bagram in July 2005, namely Abu Yahya al-Libi, a Libyan; Omar al-Faruq, a Kuwaiti, captured in Bogor, Indonesia, in 2002; Muhammad Jafar Jamal al-Kahtani, a Saudi, reportedly captured in Khost province, Afghanistan, in November 2006; and Abdullah Hashimi, a Syrian, also known as Abu Abdullah al-Shami.²²⁹ Five prisoners were reportedly returned to the Libyan Arab Jamahiriya in 2006: Ibn al-Sheikh al-Libi; Hassan Raba’I and Khaled al-Sharif, both captured in Peshawar, Pakistan, in 2003, who had “spent time in a CIA prison in Afghanistan”; Abdallah al-Sadeq, seized in a covert CIA operation in Thailand in the spring of 2004; and Abu Munder al-Saadi, both held briefly before being rendered to the Libyan Arab Jamahiriya.²³⁰ In May 2009, Human Rights Watch reported that its representatives briefly met Ibn al-Sheikh al-Libi on a visit

interrogation of high-value al-Qaida detainees”, 30 May 2005. Available from http://luxmedia.vo.llnwd.net/o10/clients/aclu/olc_05302005_bradbury.pdf.

²²⁸ “CIA rendition: the smoking gun cable”, ABC news, 6 November 2007. Available from <http://blogs.abcnews.com/theblotter/2007/11/cia-rendition-t.html>. See also the interview with Murat Kurnaz (annex II, case 14).

²²⁹ Eric Schmitt and Tim Golden, “Details emerge on a Brazen Escape in Afghanistan”, *New York Times*, 4 December 2005; available from www.nytimes.com/2005/12/04/international/asia/04escape.html.

²³⁰ Craig Whitlock, “From CIA jails, inmates fade into obscurity”, *Washington Post*, 27 October 2007. Available from www.washingtonpost.com/wp-dyn/content/article/2007/10/26/AR2007102602326_pf.html.

to Abu Salim prison in Tripoli, although he refused to be interviewed. Human Rights Watch interviewed four other men, who claimed that, “before they were sent to the Libyan Arab Jamahiriya, United States forces had tortured them in detention centers in Afghanistan, and supervised their torture in Pakistan and Thailand”. One of the four was Hassan Raba’i, also known as Mohamed Ahmad Mohamed al-Shoroeiya, who stated that, in mid-2003, in a place he believed was Bagram prison in Afghanistan, “the interpreters who directed the questions to us did it with beatings and insults. They used cold water, ice water. They put us in a tub with cold water. We were forced [to go] for months without clothes. They brought a doctor at the beginning. He put my leg in a plaster. One of the methods of interrogation was to take the plaster off and stand on my leg”.²³¹

133. The released detainees are:

- Laid Saidi, an Algerian seized in the United Republic of Tanzania on 10 May 2003, was handed over to Malawians in plain clothes who were accompanied by two middle-aged Caucasian men wearing jeans and T-shirts. Shortly after the expulsion, a lawyer representing Mr. Saidi’s wife filed an affidavit with a Tanzanian court, saying that immigration documents showed that Mr. Saidi had been deported through the border between Kasumulu, United Republic of Tanzania, and Malawi. He was held for a week in a detention facility in the mountains of Malawi, then rendered to Afghanistan, where he was held in the “dark prison”, the “salt pit” and another unidentified prison. About a year after he was seized, he was flown to Tunisia, where he was detained for another 75 days, before being returned to Algeria, where he was released.²³²
- Three Yemenis - Salah Nasser Salim Ali Darwish, seized in Indonesia in October 2003, Mohammed al-Asad and Mohammed Farag Ahmad Bashmilah - were held in a number of CIA detention facilities until their return to Yemen in May 2005, where they continued to be held, apparently at the request of the United States authorities. Mr. Bashmilah was detained by Jordanian intelligence agents in October 2003, when he was in Jordan to assist his mother who was having an operation. From 21 o 26 October 2003, Mr. Bashmilah was detained without charge and subjected to torture and cruel, inhuman and degrading treatment, including prolonged beatings and being threatened with electric shocks and the rape of his mother and wife.²³³ A communication was sent by the special rapporteurs on torture and on human rights

²³¹ Human rights Watch news release, “Libya/US: investigate death of former cia prisoner”, 11 May 2009. Available from www.hrw.org/en/news/2009/05/11/libyaus-investigate-death-former-cia-prisoner.

²³² Craig S. Smith and Souad Mekhennet, “Algerian Tells of dark term in US hands”, *New York Times*, 7 July 2006. Available from www.nytimes.com/2006/07/07/world/africa/07algeria.html.

²³³ Declaration of Mohamed Farag Ahmad Bashmilah in support of plaintiffs’ opposition to the motion of the United States to dismiss or, in the alternative, for summary judgment, civil action No. 5:07-cv-02798 in the United States District Court for the Northern District of California, San Jose Division.

while countering terrorism to the Governments of the United States, Indonesia, Yemen and Jordan on the cases of Bashmilah and Salim Ali, who were both detained and tortured in Jordan.²³⁴ Only the latter country responded, declaring that no record showing that the two men had been arrested for the violations of either the penal, disciplinary or administrative codes, and that they did not have documented files indicating that they posed a security concern, eliminating the possibility of their arrest for what may be described as terrorism.²³⁵ The Working Group on Arbitrary Detention adopted its opinion No. 47/2005 (Yemen) on the case on 30 November 2005, declaring their detention to be arbitrary as being devoid of any legal basis. In its reply to the allegations, the Government of Yemen confirmed that Mr. Bashmilah and Mr. Salim Ali had been handed over to Yemen by the United States. According to the Government, they had been held in a security police facility because of their alleged involvement in terrorist activities related to Al-Qaida. The Government added that the competent authorities were still dealing with the case pending receipt of the persons' files from the United States authorities in order to transfer them to the Prosecutor.²³⁶

- Khaled el-Masri, a German seized on the border of the former Yugoslav Republic of Macedonia on 31 December 2003, was held in a hotel room by agents of that State for 23 days, then rendered by the CIA to the “salt pit”. He was released in Albania on 29 May 2004.²³⁷
- Khaled al-Maqtari, a Yemeni seized in Iraq in January 2004, was initially held in Abu Ghraib, then transferred to a secret CIA detention facility in Afghanistan. In April 2004, he was moved to a second secret detention facility, possibly in Eastern Europe, where he remained in complete isolation for 28 months, until he was returned to Yemen and released in May 2007.²³⁸

²³⁴ E/CN.4/2006/6/Add.1, paras, 93, 126, 525 and 550.

²³⁵ A/HRC/4/33/Add.1, para. 123.

²³⁶ A/HRC/4/40/Add.1, para. 15.

²³⁷ Interview with the lawyer of Khaled El-Masri (case 9, annex II). See also the statement of Khaled el-Masri, ACLU, available from www.aclu.org/safefree/extraordinaryrendition/22201res20051206.html.

²³⁸ Amnesty International, “United States of America: a case to answer. From Abu Ghraib to secret CIA custody: the case of Khaled al-Maqtari”, 14 March 2008. Available from www.amnesty.org/en/library/info/AMR51/013/2008/en.

- Marwan Jabour, a Jordanian-born Palestinian, was seized in Lahore, Pakistan, on 9 May 2004, and held in a CIA detention facility in Afghanistan for 25 months. He was then transferred to Jordan, where he was held for six weeks, and to Israel, where he was held for another six weeks, before being freed in Gaza.²³⁹
- Murat Kurnaz, a Turkish national residing in Germany, interviewed by the experts for the present study, was arrested in Pakistan in November or December 2001 and initially held by Pakistani police officers and officers of the United States. He was then transferred into the custody of the United States at that country's airbase in Kandahar, Afghanistan, before being taken to the naval base at Guantanamo Bay on 1 February 2002. He was held secretly until May 2002, and released on 24 August 2006.

134. A total of 23 detainees who ended up in Guantanamo were also held in CIA detention facilities in Afghanistan. They include:

(a) Six men seized in the Islamic Republic of Iran in late 2001:

- Wassam al-Ourdoni, a Jordanian, who was released from Guantanamo in April 2004. In 2006, he told Reprieve that he had been seized by the Iranian authorities while returning from a religious visit to Pakistan with his wife and newborn child in December 2001, then handed over to the Afghan authorities, who handed him on to the CIA. He said that the Americans “asked me about my relationship with Al-Qaida. I told them I had nothing to do with Al-Qaida. They then put me in jail under circumstances that I can only recall with dread. I lived under unimaginable conditions that cannot be tolerated in a civilized society.” He said that he was first placed in an underground prison for 77 days: “this room was so dark that we couldn't distinguish nights and days. There was no window, and we didn't see the sun once during the whole time.” He said that he was then moved to “prison number three”, where the food was so bad that his weight dropped substantially. He was then held in Bagram for 40 days before being flown to Guantanamo.²⁴⁰
- Aminullah Tukhi, an Afghan who was transferred to Afghan custody from Guantanamo in December 2007. He alleged that he had fled from Herat to the Islamic Republic of Iran to escape the Taliban, and was working as a taxi driver when the Iranians began rounding up illegal immigrants towards the end of 2001.²⁴¹

²³⁹ Human Rights Watch, “Ghost prisoner: two years in secret CIA detention”, 26 February 2007. Available from www.hrw.org/en/node/11021/.

²⁴⁰ Clive Stafford Smith, “Abandoned to their fate in Guantánamo”, *Index on Censorship*, 2006.

²⁴¹ Combatant Status Review Tribunal, set 42. Available from www.dod.mil/pubs/foi/detainees/csrt_arb/Set_42_2728-2810.pdf, pp. 71-77.

- Hussein Almerfedi, a Yemeni, still at Guantanamo. He alleged that he was ‘kidnapped’ in the Islamic Republic of Iran and held for a total of 14 months in three prisons in Afghanistan, “two under Afghani control and one under US control [Bagram]”.²⁴²
- Tawfiq al-Bihani, a Yemeni, still at Guantanamo. Allegedly, after deciding to flee Pakistan after the 9/11 attacks, he was “arrested by Iranian Police in Zahedan, Iran for entering the country without a visa” and held “in various prisons in Iran and Afghanistan, for approximately one year in total.”²⁴³
- Rafiq Alhami, a Tunisian still held at Guantanamo, who alleged that “I was in an Afghan prison but the interrogation was done by Americans. I was there for about a one-year period, transferring from one place to another. I was tortured for about three months in a prison called the Prison of Darkness or the Dark Prison”.²⁴⁴ And further: “Back in Afghanistan I would be tortured. I was threatened. I was left out all night in the cold. It was different here. I spent two months with no water, no shoes, in darkness and in the cold. There was darkness and loud music for two months. I was not allowed to pray. I was not allowed to fast during Ramadan. These things are documented. You have them”.²⁴⁵
- Walid al-Qadasi,²⁴⁶ who was rendered to the “dark prison” and held in other prisons in Afghanistan, together with four other men whose whereabouts are unknown.²⁴⁷ An allegation letter was sent in November 2005 by the Special Rapporteur on torture in relation to Walid Muhammad Shahir Muhammad al-Qadasi, a Yemeni citizen, indicating that the following allegations had been received:

²⁴² Combatant Status Review Tribunal, set 28. Available from www.dod.mil/pubs/foi/detainees/csrt_arb/Set_28_1949-2000.pdf, pp. 31-40.

²⁴³ Administrative Review Board Round 2 Factors 799-899. Available from www.dod.mil/pubs/foi/detainees/csrt_arb/ARB_Round_2_Factors_799-899.pdf, pp. 66-69.

²⁴⁴ Administrative Review Board, set 3, pp. 147-61. Available from www.dod.mil/pubs/foi/detainees/csrt_arb/ARB_Transcript_Set_1_395-584.pdf.

²⁴⁵ Combatant Status Review Tribunal, set 34. Available from www.dod.mil/pubs/foi/detainees/csrt_arb/Set_34_2426-2457.pdf, pp. 20-22.

²⁴⁶ See E/CN.4/2006/6/Add.1, paras. 1 and 527, and the response from the Government of the United States (A/HRC/10/44/Add.4) para. 252. See also the report of the Working Group on Arbitrary Detention, opinion No. 47/2005 (A/HRC/4/40/Add.1).

²⁴⁷ In addition, Aminullah Tukhi explained that 10 prisoners in total - six Arabs, two Afghans, an Uzbek and a Tajik - had been delivered to the Americans. Although six of these men are accounted for above, it is not known what happened to the other four: an Arab, an Afghan, the Uzbek and the Tajik. Combatant Status Review Tribunal, set 42, available from www.dod.mil/pubs/foi/detainees/csrt_arb/Set_42_2728-2810.pdf, pp. 71-77.

He was arrested in Iran in late 2001. He was held there for about three months before being handed over to the authorities in Afghanistan who in turn handed him over to the custody of the US. He was held in a prison in Kabul. During US custody, officials cut his clothes with scissors, left him naked and took photos of him before giving him Afghan clothes to wear. They then handcuffed his hands behind his back, blindfolded him and started interrogating him. The apparently Egyptian interrogator, accusing him of belonging to Al-Qaida, threatened him with death. He was put in an underground cell measuring approximately two metres by three metres with very small windows. He shared the cell with ten inmates. They had to sleep in shifts due to lack of space and received food only once a day. He spent three months there without ever leaving the cell. After three months, Walid al-Qadasi was transferred to Bagram, where he was interrogated for one month. His head was shaved, he was blindfolded, made to wear ear muffs and a mouth mask, handcuffed, shackled, loaded on to a plane and flown out to Guantanamo, where he was held in solitary confinement for one more month. In April 2004, after having been detained for two years, he was transferred to Sana'a prison in Yemen.

In its response, the Government of the United States reiterated its earlier announcements that no Government agency was allowed to engage in torture and that its actions complied with the non-refoulement principle.²⁴⁸ Opinion No. 47/2005 of the Working Group on Arbitrary Detention also concerns Mr. Al-Qadasi.²⁴⁹

(b) Two men seized in Georgia in early 2002 and sold to United States forces: Soufian al-Huwari, an Algerian, transferred to Algerian custody from Guantanamo in November 2008; and Zakaria al-Baidany, also known as Omar al-Rammah, a Yemeni, still held at Guantanamo. According to Mr. al-Huwari, both were rendered to the “dark prison”, and were also held in other detention facilities in Afghanistan: “The Americans didn’t capture me. The Mafia captured me. They sold me to the Americans”. He added: “When I was captured, a car came around and people inside were talking Russian and Georgian. I also heard a little Chechnyan. We were delivered to another group who spoke perfect Russian. They sold us to the dogs. The Americans came two days later with a briefcase full of money. They took us to a forest, then a private plane to Kabul, Afghanistan”,²⁵⁰

(c) Bisher al-Rawi, an Iraqi national and British resident, was seized in the Gambia in November 2002, and rendered to the “dark prison” at the beginning of December 2002. He was kept shackled in complete isolation and darkness for two weeks. On or around 22 December 2002, he was transferred to Bagram, and then to Guantanamo on 7 February 2003. He was

²⁴⁸ See E/CN.4/2006/6/Add.1, paras. 1 and 527, and the response from the Government (A/HRC/10/44/Add.4), para. 252.

²⁴⁹ A/HRC/4/40/Add.1.

²⁵⁰ Combatant Status Review Tribunal Set 21. Available from www.dod.mil/pubs/foi/detainees/csrt_arb/Set_21_1645-1688_Revised.pdf, pp. 15-23

finally released on 30 March 2007. At Bagram, he was reportedly threatened and subjected to ill-treatment and sleep deprivation for up to three days at a time;²⁵¹

(d) Jamil El-Banna, a Jordanian national and British resident, was also seized in the Gambia in November 2002 and rendered to the “dark prison”, then to Guantanamo. He was released from Guantanamo in December 2007;

(e) Six other detainees were flown to Guantanamo on 20 September 2004 after having spent one to three years in custody: Abdul Rahim Ghulam Rabbani and Mohammed Ahmad Ghulam Rabbani, Pakistani brothers seized in Karachi, who were held in the “salt pit”;²⁵² Abdulsalam al-Hela, a Yemeni colonel and businessman who was seized in Egypt;²⁵³ Adil al-Jazeera, an Algerian seized in Pakistan;²⁵⁴ Sanad al-Kazimi, a Yemeni seized in the United Arab Emirates;²⁵⁵ Saifullah Paracha, a Pakistani businessman seized in Thailand, who was held in isolation in Bagram for a year;²⁵⁶ and Sanad al-Kazimi, a Yemeni seized in the United Arab Emirates.²⁵⁷ Mr. Al-Kazimi was apprehended in Dubai in January 2003 and held at an undisclosed location in or near Dubai for two months. He was then transferred to a different

²⁵¹ Interview with Bisher al-Rawi (annex II, case 4).

²⁵² Both Laid Saidi and Khaled El-Masri spoke about getting to know the Rabbani brothers in the “salt pit”. See Craig S. Smith and Souad Mekhennet, “Algerian tells of dark term in US hands”, *New York Times*, 7 July 2006. Available from www.nytimes.com/2006/07/07/world/africa/07algeria.html.

²⁵³ Amnesty International, “USA: who are the Guantanamo detainees: Case Sheet No. 15: Yemeni national: Abdulsalam al-Hela”, 11 January 2006. Available from www.amnesty.org/en/library/info/AMR51/012/2006.

²⁵⁴ ARB Set 11. Available from www.dod.mil/pubs/foi/detainees/csrt_arb/ARB_Transcript_Set_11_21662-22010.pdf, pp. 315-334.

²⁵⁵ Guantanamo Bay Litigation: status report for petitioners Mohammed al-Shimrani (ISN 195) and Sanad al-Kazimi (ISN 1453), 18 July 2008. Available from <http://docs.justia.com/cases/federal/district-courts/district-of-columbia/dcdce/1:2008mc00442/131990/100/0.pdf>. Also on the flight that took these men to Guantanamo were Ali al-Hajj al-Sharqawi, Hassan bin Attash and Binyam Mohamed. See also paras 151 and 159 below.

²⁵⁶ See the detainee’s profile on the Reprieve website at www.reprieve.org.uk/saifullahparacha.

²⁵⁷ Guantanamo Bay Litigation: status report for petitioners Mohammed al-Shimrani (ISN 195) and Sanad al-Kazimi (ISN 1453), 18 July 2008. Available from <http://docs.justia.com/cases/federal/district-courts/district-of-columbia/dcdce/1:2008mc00442/131990/100/0.pdf>. Also on the flight that took these men to Guantanamo were Ali al-Hajj al-Sharqawi, Hassan bin Attash and Binyam Mohamed. See also paras. 151 and 159 below.

place about two hours away. He was kept naked for 22 days, at times shackled, and subjected to extreme climatic conditions and simulated drowning. After six months, he was transferred to United States custody, allegedly pursuant to the CIA rendition programme. He was taken to Kabul and held in the “dark prison” for nine months, where he suffered severe physical and psychological torture by unidentified persons. He was then transferred to Bagram airbase, where he was held for a further four months in United States custody. Again, he was allegedly subjected to severe physical and psychological torture by what he believed were the same unidentified persons he had encountered in the “dark prison”.²⁵⁸

135. Four others detainees, held in Bagram, are known because lawyers established contact with their families and filed *habeas corpus* petitions on their behalf:

- Redha al-Najar, a Tunisian who was seized in Karachi in May 2002.
- Amine Mohammad al-Bakri, a Yemeni who was seized in Bangkok on 28 December 2002 by agents of the intelligence services of the United States or of Thailand. Throughout 2003, his whereabouts were unknown. The Thai authorities confirmed to Mr. al-Bakri’s relatives that he had entered Thai territory, but denied knowing his whereabouts. In January 2004, Mr. al-Bakri’s relatives received a letter from him through ICRC, informing them that he was being kept in detention at the Bagram airbase. It was reported that Mr. al-Bakri was detained owing to his commercial connections with Mr. Khalifa, a cousin of Osama bin Laden later assassinated in Madagascar.²⁵⁹
- Fadi al-Maqaleh, a Yemeni seized in 2004, who was sent to Abu Ghraib before Bagram.
- Haji Wazir, an Afghan seized in the United Arab Emirates in late 2002.²⁶⁰

136. The whereabouts of 12 others are unknown, and the others remain to be identified. It is probable that some of these men have been returned to their home countries, and that others are still held in Bagram. The experts received allegations that the following men were also held: Issa al-Tanzani (Tanzanian), also identified as Soulayman al-Tanzani, captured in Mogadishu; Abu Naseem (Libyan), captured in Peshawar, Pakistan, in early 2003; Abou Hudeifa (Tunisian), captured in Peshawar, Pakistan, at the end of 2002; and Salah Din al-Bakistani, captured in Baghdad. Marwan Jabour also mentioned eight other prisoners. One was Yassir al-Jazeera (Algerian), seized in Lahore, March 2003 (whom he met), and he heard about seven others: Ayoub al-Libi (Libyan), seized in Peshawar in January 2004; Mohammed (Afghan, born Saudi),

²⁵⁸ See the report of the Working Group on Arbitrary Detention, opinion No. 3/2009 (United States of America) (A/HRC/13/30/Add.1)

²⁵⁹ Working Group on Arbitrary Detention, opinion No. 11/2007 (Afghanistan/United States of America) (A/HRC/7/4/Add.1).

²⁶⁰ See the opinion of the United States District Court on motion to dismiss petitions for *habeas corpus* at https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2006cv1697-31.

seized in Peshawar in May 2004; Abdul Basit (Saudi or Yemeni), seized before June 2004; Adnan (nationality unknown), seized before June 2004; an unidentified Somali (possibly Shoeb as-Somali or Rethwan as-Somali); another unidentified Somali; and Marwan al-Adeni (Yemeni), seized in or around May 2003.

2. Iraq

137. Although the Government of the United States stated that the Geneva Conventions applied to detainees seized during the occupation, an unknown number of persons were deliberately held “off the books” and denied ICRC access. In Abu Ghraib, for example, the abuse scandal that erupted following the publication of photographs in April 2004 involved military personnel who were not only holding supposedly significant detainees delivered by the United States military, but others delivered by the CIA or United States Special Forces units. The existence of “ghost detainees”, who were clearly held incommunicado in secret detention, was later exposed in two United States investigations.

138. In August 2004, a report into detainee detentions in Iraq (chaired by former Secretary of Defense James R. Schlesinger) noted that “other Government agencies” had brought a number of “ghost detainees” to detention facilities, including Abu Ghraib, “without accounting for them, knowing their identities, or even the reason for their detention”, and that, on one occasion, a “handful” of these detainees had been “moved around the facility to hide them from a visiting ICRC team”.²⁶¹

139. In another report issued in August 2004, Lieutenant General Anthony R. Jones and Major General George R. Fay noted that eight prisoners in Abu Ghraib had been denied access to ICRC delegates by Lieutenant General Ricardo Sanchez, the Commander of the Coalition Joint Task Force in Iraq: “Detainee-14 was detained in a totally darkened cell measuring about 2 metres long and less than a metre across, devoid of any window, latrine or water tap, or bedding. On the door the delegates noticed the inscription ‘the Gollum’, and a picture of the said character from the film trilogy ‘The Lord of the Rings’.”²⁶²

140. Although the Schlesinger report noted the use of other facilities for “ghost detainees”, the locations of these other prisons, and the numbers of detainees held, have not yet been thoroughly investigated. In June 2004, the then United States Secretary of Defense Donald Rumsfeld admitted that a suspected leader of Ansar al-Aslam had been held for more than seven months without ICRC being notified of his detention; he also stated: “He was not at Abu Ghraib. He is not there now. He has never been there to my knowledge”.²⁶³ According to another report, the

²⁶¹ Final report of the Independent Panel to Review DoD Detention Operations, available from www.defenselink.mil/news/Aug2004/d20040824finalreport.pdf.

²⁶² AR 15-6 Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade, available from www.defenselink.mil/news/Aug2004/d20040825fay.pdf.

²⁶³ MSNBC news services, “Rumsfeld admits secret detention of suspect in Iraq”, 17 June 2004. Available from www.msnbc.msn.com/id/5232981. See also Eric Schmitt and Carolyn Marshall,

prisoner was known as “Triple X” and his secret detention was authorized by Lieutenant General Ricardo Sanchez, who issued a classified order in November 2003 “directing military guards to hide [him] from Red Cross inspectors and keep his name off official rosters”.²⁶⁴ In addition, some locations may well be those in which prisoners died in United States custody. In 2006, Human Rights First published a report identifying 98 deaths in United States custody in Iraq, describing five deaths in CIA custody, including Manadel al-Jamadi, who died in Abu Ghraib, and others at locations including Forward Operating Base Tiger, in Anbar province, a forward operating base near Al-Asad, a base outside Mosul, a temporary holding camp near Nasiriyah and a forward operating base in Tikrit.²⁶⁵

C. Proxy detention sites

141. Since 2005, details have emerged of how the United States was not only secretly capturing, transferring and detaining people itself, but also transferring people to other States for the purpose of interrogation or detention without charge. The practice had apparently started almost simultaneously with the high-value detainee programme. The British Government²⁶⁶ transmitted to the experts a summary of conclusions and recommendations of the Intelligence and Security Committee report on rendition (2007), in which it was noted that “the Security Service and SIS were ... slow to detect the emerging pattern of “renditions to detention” that occurred during 2002”. The CIA appears to have been generally involved in the capture and transfer of prisoners, as well as in providing questions for those held in foreign prisons. Beyond that, a clear pattern is difficult to discern: some prisoners were subsequently returned to CIA custody (and were generally sent on to Guantanamo), while others were sent back to their home countries, or remained in the custody of the authorities in third countries.

142. The Government of the United States has acknowledged that “some enemy combatants have been transferred to their countries of nationality for continued detention.”²⁶⁷ In its report to the Committee against Torture on 13 January 2006, the Government attempted to deflect criticism of its policy of sending detainees to countries with poor human rights records, including those where they might face the risk of torture, declaring that “the United States does not transfer persons to countries where the United States believes it is ‘more likely than not’ that they will be

“In secret unit’s ‘black room,’ a grim portrait of US abuse”, *New York Times*, 19 March 2006, available from www.nytimes.com/2006/03/19/international/middleeast/19abuse.html.

²⁶⁴ Edward T. Pound, “Hiding a bad guy named Triple X”, *US News & World Report*, 13 June 2004. Available from www.usnews.com/usnews/news/articles/040621/21abughraib.htm.

²⁶⁵ Human Rights First, “Command’s responsibility: detainee deaths in US custody in Iraq and Afghanistan”, February 2006. Available at www.humanrightsfirst.info/pdf/06221-etn-hrf-dic-rep-web.pdf. See also Eric Schmitt and Carolyn Marshall, *op. cit.*

²⁶⁶ In response to a questionnaire on allegations of rendition and detention sent by the Working Group on Enforced and Involuntary Disappearances, dated 8 July 2009.

²⁶⁷ E/CN.4/2004/3, para. 69.

tortured... The United States obtains assurances, as appropriate, from the foreign government to which a detainee is transferred that it will not torture the individual being transferred”.²⁶⁸ Various United Nations bodies, including the experts²⁶⁹ and the Committee against Torture,²⁷⁰ have criticized heavily this policy of “extraordinary rendition” in a detailed way in the past, defining it as a clear violation of international law. They also expressed concern about the use of assurances.²⁷¹

143. Given the prevailing secrecy regarding the CIA rendition programme, exact figures regarding the numbers of prisoners transferred to the custody of other Governments by the CIA without spending any time in CIA facilities are difficult to ascertain. Equally, little is known about the number of detainees who have been held at the request of other States, such as the United Kingdom and Canada. While several of these allegations cannot be backed up by other sources, the experts wish to underscore that the consistency of many of the detailed allegations provided separately by detainees adds weight to the inclusion of Jordan, Egypt, Morocco, the Syrian Arab Republic, Pakistan, Ethiopia and Djibouti as proxy detention facilities where detainees have been held on behalf of the CIA. Serious concerns also exist about the role of Uzbekistan as a proxy detention site.

1. Jordan

144. At least 15 prisoners, mostly seized in Karachi, Pakistan, or in the Pankisi Gorge in Georgia, claim to have been rendered by the CIA to the main headquarters of the General Intelligence Department of Jordan in Amman, between September 2001 and 2004.²⁷² They include three men and one juvenile subsequently transferred to Guantanamo via Afghanistan:

²⁶⁸ CAT/C/48/Add.3/Rev.1, para. 30. See also the reply of the Government to a general allegation regarding the its involvement in one case of extraordinary rendition transmitted by the Working Group on Enforced or Involuntary Disappearances, in which it affirmed that “ the United States does not transport individuals from one country to another for the purpose of interrogation using torture. Furthermore, the United States has not transported individuals, and will no transport individuals to a country where the Government believes they will be tortured” (A/HRC/10/9, para. 425).

²⁶⁹ See A/HRC/6/17/Add.3, para. 36; A/HRC/4/40, paras. 43 and 50; E/CN.4/2004/3, para. 69; A/HRC/4/41, para. 458 and A/60/316, para. 45.

²⁷⁰ See CAT/C/USA/CO/2, paras. 20-21.

²⁷¹ See A/60/316, E/CN.4/2006/6 and A/HRC/4/40, paras. 52-56.

²⁷² Human Rights Watch, “Double jeopardy: CIA renditions to Jordan”, 7 April 2008, available from www.hrw.org/en/node/62264.

- Jamal Mar'i, a Yemeni, and the first known victim of rendition in the wake of the attacks of the 11 September 2001. Seized from his house in Karachi, on 23 September 2001, he was held for four months in Jordan before being flown to Guantanamo, where he remains.²⁷³
- Mohamedou Ould Slahi, a Mauritanian, was rendered to Jordan after handing himself to Mauritanian authorities on 28 November 2001. Mr. Slahi was held in Jordan for eight months, and described what happened to him as “beyond description”. He was then transferred to Afghanistan, where he spent two weeks, and arrived in Guantanamo, where he remains, on 4 August 2002.²⁷⁴
- Ali al-Hajj al-Sharqawi, a Yemeni, was rendered to Jordan after his capture in Karachi on 7 February 2002. Flown to Afghanistan on 8 January 2004, he was held there for eight months, then flown to Guantanamo on 20 September 2004. Still held at Guantanamo, he has stated that he was continuously tortured throughout his 23 months in Jordan.²⁷⁵
- Hassan bin Attash, a Saudi-born Yemeni, was 17 years old when he was seized in Karachi on 11 September 2002 with Ramzi bin al-Shibh. He was held in Jordan until 8 January 2004, when he was flown to Afghanistan with Ali al-Hajj al-Sharqawi. He was then delivered to Guantanamo with al-Sharqawi on 20 September 2004. Still held at Guantanamo, he has stated that he was tortured throughout his time in Jordan.²⁸⁴

145. Also held were Abu Hamza al-Tabuki, a Saudi seized by United States agents in Afghanistan in December 2001 and released in Saudi Arabia in late 2002 or early 2003;²⁷⁶ and

²⁷³ Combatant Status Review Tribunal Set 4, available from www.dod.mil/pubs/foi/detainees/csrt_arb/Set_4_0320-0464.pdf, pp. 130-144.

²⁷⁴ Combatant Status Review Tribunal Set 41, available from www.dod.mil/pubs/foi/detainees/csrt_arb/Set_41_2665-2727.pdf, pp. 28-38.

Administrative Review Board Set 8, pp. 184-218, available from www.dod.mil/pubs/foi/detainees/csrt_arb/ARB_Transcript_Set_8_20751-21016.pdf.

²⁷⁵ Human Rights Watch, “Double Jeopardy: CIA Renditions to Jordan”, 7 April 2008. Available from www.hrw.org/en/node/62264.

²⁷⁶ Ibid. Others reportedly held in Jordan are Jamil Qasim Saeed Mohammed, a Yemeni student rendered from Karachi on 23 October 2001, who has not been heard of since; Ibrahim al-Jeddawi, a Saudi seized in Yemen (or Kuwait) in the first half of 2002, who was reportedly transferred to Saudi custody; at least five other men (three Algerians, a Syrian and a Chechen), seized in Georgia in 2002; an Iraqi Kurd, possibly seized in Yemen; and a Tunisian, seized in Iraq. The current whereabouts of all these men is unknown. According to former prisoners interviewed by Human Rights Watch, Ramzi bin al-Shibh, seized with Hassan bin Attash and one of 14 “high-value detainees” transferred to Guantanamo in September 2006, was also held in

Samer Helmi al-Barq, seized in Pakistan on 15 July 2003, who was kept for three months in a secret prison outside Pakistan, before being transferred to Jordan on 26 October 2003. He was released on bail in January 2008.²⁷⁷

2. Egypt

146. At least seven men were rendered to Egypt by the CIA between September 2001 and February 2003, and another was rendered to Egypt from the Syrian Arab Republic, where he had been seized at the request of the Canadian authorities:

- Abdel Hakim Khafargy, an Egyptian-born, Munich-based publisher, was allegedly seized in Bosnia and Herzegovina on 24 September 2001, and rendered to Egypt a few weeks later, after being held by United States forces at its base in Tuzla. He was returned to Germany two months later.²⁷⁸
- Mamdouh Habib, an Australian seized in Pakistan in November 2001, was rendered to Egypt three weeks later and held for six months. Transferred to Guantanamo in June 2002, he was released in January 2005. He claims to have been tortured throughout his time in Egypt.²⁷⁹
- Muhammad Saad Iqbal Madni, a Pakistani-Egyptian national, was seized by the Indonesian authorities in Jakarta on 9 January 2002, flown first to Egypt and then to Bagram, where he was held for 11 months. He arrived in Guantanamo on 23 March 2003 and was released in August 2008. Mr. Madni indicated that, during his

Jordan for an unspecified amount of time, as was Ibn al-Sheikh al-Libi, seized in Afghanistan in late 2001, who was subjected to multiple renditions. See also para. 146.

²⁷⁷ Amnesty International, submission to the United Nations Universal Periodic Review, February 2009, available from http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/JO/AI_JOR_UPR_S4_2009_AmnestyInternational_upr.pdf.

²⁷⁸ Cageprisoners, "Citizens no more: 'war on terror' Abuses in Bosnia and Herzegovina", July 2007. Available from www.cageprisoners.com/citizensnomore.pdf.

²⁷⁹ Megan Stack and Bob Drogin, "The torment of a terror suspect", *The Age*, 15 January 2005, available from www.theage.com.au/news/War-on-Terror/The-torment-of-a-terror-suspect/2005/01/14/1105582713578.html. For recent developments, see also "Habib case raises complex issues", *Sydney Morning Herald*, 14 September 2009, available from <http://news.smh.com.au/breaking-news-national/habib-case-raises-complex-issues-20090914-fnrt.html>.

detention in Cairo, he was subjected to ill-treatment, including electroshocks applied to his head and knees and, on several occasions, he was hung from metal hooks and beaten. Furthermore, he reported that was denied medical treatment for the blood in his urine.²⁸⁰

- As confirmed by the Government of Sweden in its response to a letter sent by the experts, following a decision made by the Government to refuse asylum in Sweden to the Egyptian citizens Mohammed Alzery and Ahmed Agiza and to expel them, they were deported to Egypt by the Swedish Security Police with the assistance of the United States authorities (CIA). Both have said that they were tortured in Egyptian custody.²⁸¹ Alzery was released on 12 October 2003 without charge or trial, but was placed under police surveillance. Ahmed Agiza had already been tried and sentenced in absentia by an Egyptian military court at the time of the decision by the Government of Sweden to deport him. In April 2004, the court's decision was confirmed and Agiza was convicted on terrorism charges following a trial monitored by Human Rights Watch, which described it as "flagrantly unfair".
- Ibn al-Sheikh al-Libi, a Libyan, an emir of the Khaldan training camp in Afghanistan, was seized by Pakistani officials in late 2001 while fleeing Afghanistan and was rendered to Egypt where, under torture, he claimed that there were links between Al-Qaida and Saddam Hussein, which were used by the United States administration to justify the invasion of Iraq. Also held in secret CIA detention sites in Afghanistan, and possibly in other countries, he was returned to the Libyan Arab Jamahiriya in 2006, where he reportedly died by committing suicide in May 2009.²⁸²
- Hassan Mustafa Osama Nasr (also known as Abu Omar), an Egyptian, was kidnapped in Milan on 17 February 2003, and rendered to Egypt, where he was held for four years (including 14 months in secret detention) before being released.²⁸³ Allegations of

²⁸⁰ Interview with Muhammad Saad Iqbal Madni (annex II, case 15).

²⁸¹ *Agiza v Sweden*, communication 233/2003 (CAT/C/34/D/233/2003); and *Alzery v Sweden*, communication 1416/2006 (CCPR/C/88/D/1416/2005).

²⁸² "Libya/US: investigate death of former CIA prisoner", Human Rights Watch news release, 11 May 2009. Available from www.hrw.org/en/news/2009/05/11/libyaus-investigate-death-former-cia-prisoner.

²⁸³ For more details on this case, in particular with regard to the abduction of Abu Omar in Milan and the ensuing judicial proceedings in Italy, see the section on Italian complicity in the renditions programme below.

ill-treatment in Egyptian detention include being hung upside down and having had electric shocks applied to his testicles.²⁸⁴

- The eighth man, Ahmad Abou El-Maati, a Canadian-Egyptian national, was seized at Damascus airport on his arrival from Toronto on 11 November 2001. He was held in the Far Falestin prison in the Syrian Arab Republic until 25 January 2002, when he was transferred to Egyptian custody, where he remained in various detention sites (including in secret detention until August 2002) until his release on 7 March 2004. During the initial period of his detention in Egypt, he was subjected to heavy beatings and threats of rape against his sister. At a later stage during the secret detention phase, he was handcuffed with his hands behind his back practically continuously for 45 days in a solitary confinement cell, which he described as being very painful and which made it hard to use the toilet and wash. He was also subjected to sleep deprivation.²⁸⁵

3. Syrian Arab Republic

147. At least nine detainees were rendered by the CIA to the Syrian Arab Republic between December 2001 and October 2002, and held in Far Falestin, run by Syrian Military Intelligence. All those able to speak about their experiences explained that they were tortured. As in the case of Egypt (see para. 146 above), other men were seized at the request of the Canadian authorities:

- Muhammad Haydar Zammar, a German national, was seized in Morocco on 8 December 2001, and rendered by the CIA to Far Falestin on 22 December 2001. In October 2004, he was moved to an “unknown location”; in February 2007, he received a 12-year sentence from the Higher State Security Court. He was convicted of being a member of the banned Muslim Brotherhood, a crime punishable by death in the Syrian Arab Republic.²⁸⁶ In its reply for the present study, the Government of Morocco indicated that the police had arrested Mr. Zammar following information that he had been implicated in the events of 11 September 2001. The Government also stated that Mr. Zammar had not been subjected to secret or arbitrary detention in Morocco, and that

²⁸⁴ Amnesty International, “Italy: briefing to the UN Committee against torture”, April 2007, p. 4. Available from www.amnesty.org/en/library/asset/EUR30/003/2007/en/dbf2cdec-d3a5-11dd-a329-2f46302a8cc6/eur300032007en.pdf.

²⁸⁵ Internal inquiry into the actions of Canadian officials in relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin, pursuant to an Order in Council dated 11 December 2006. Available from www.iacobucciinquiry.ca/pdfs/documents/final-report-copy-en.pdf, paras. 42-82. See also Commission of inquiry into the actions of Canadian officials in relation to Maher Arar, report of the fact finder of 14 October 2005.

²⁸⁶ Working Group on Arbitrary Detention, opinion No. 8/2007 (Syrian Arab Republic), (A/HRC/7/4/Add.1); see also “Unfair trial and sentencing of Muhammad Haydar Zammar”, Amnesty International appeal case, 22 March 2007, available from www.amnestyusa.org/document.php?lang=e&id=ENGMDE240162007; and the report of the Germany submitted to the Committee against Torture (CAT/C/49/Add.4).

he had been transferred to the Syrian Arab Republic on 30 December 2001, in the presence of the Syrian Ambassador accredited to Morocco.

- Three detainees were rendered to the Syrian Arab Republic on 14 May 2002: Abdul Halim Dahak, a student seized in Pakistan in November 2001, Omar Ghamesh and an unnamed teenager, the latter being seized with Abu Zubaydah in Faisalabad, Pakistan, on 28 March 2002.²⁸⁷ All had been tortured. Their current whereabouts are unknown.
- Noor al-Deen, a Syrian teenager, was captured with Abu Zubaydah and rendered to Morocco, then to the Syrian Arab Republic.²⁸⁸ His current whereabouts are unknown.
- According to Abdullah Almalki (see para. 148 below), two other prisoners, Barah Abdul Latif and Bahaa Mustafa Jaghel, were also transferred from Pakistan to the Syrian Arab Republic, the first in February/March 2002, the second in May 2002.²⁸⁹ Both had been tortured. Their current whereabouts are unknown.
- Yasser Tinawi, a Syrian national seized in Somalia on 17 July 2002, was flown to Ethiopia by United States agents, who interrogated him for three months. On 26 October, he was flown to Egypt; on 29 October 2002, he arrived in the Syrian Arab Republic.²⁹⁰ In March 2003, he received a two-year sentence from a military court.²⁹¹
- Maher Arar,²⁹² a Canadian-Syrian national, was seized at John F. Kennedy airport in New York on 26 September 2002, held for 11 days in the Metropolitan Detention Centre in Manhattan, then rendered to the Syrian Arab Republic on 8 October, via Jordan,²⁹³ where he was held in secret detention at Far Falestin until later that month.

²⁸⁷ Stephen Grey, *Ghost Plane: The Inside Story of the CIA's Rendition Programme*, Hurst & Co., 2006), pp. 4, 54 and 284.

²⁸⁸ Peter Finn and Joby Warrick, "Detainee's harsh treatment foiled no plots", *Washington Post*, 29 March 2009. Available from www.washingtonpost.com/wp-dyn/content/article/2009/03/28/AR2009032802066.html.

²⁸⁹ S. Grey, op. cit. 251.

²⁹⁰ Ibid., p. 252.

²⁹¹ "Syrian authorities release some detainees", Syrian Human Rights Committee news release, 18 February 2005, available from www.shrc.org/data/aspx/d1/2061.aspx.

²⁹² Interview with Lorne Waldman, Senior Counsel of the Inquiry Legal Team representing Maher Arar (18 October 2009). See also Commission of inquiry into the actions of Canadian officials in relation to Maher Arar, available from http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/maher_arar/07-09-13/www.ararcommission.ca/eng/17.htm.

²⁹³ A/HRC/4/33/Add.3, paras. 33, 43-45, footnote 11.

Jordan alleged that Mr. Arar had arrived in Amman as an ordinary passenger, but was asked to leave the country because his name was on a list of wanted terrorists, and given a choice of destination. It also alleged that he had asked to be voluntarily taken by car to the Syrian Arab Republic.³⁰³ During his period at Far Falestin, he was severely beaten with a black cable and threatened with electric shocks. “The pattern was for Mr. Arar to receive three or four lashes with the cable then to be questioned, and then for the beating to begin again.”²⁹⁴ The torture allegations were found to be completely consistent with the results of the forensic examinations conducted in Canada. On 14 August 2003, Mr. Arar was moved to Sednaya prison and released on 29 September. The official inquiry in the Arar case also stressed the catastrophic impact of the described events in terms of his and his family’s economic situation and his family life in general.²⁹⁵

148. When Ahmad Abou El-Maati (see para. 146) was held in Far Falestin in the Syrian Arab Republic, he was held in solitary confinement in poor conditions and subjected to ill-treatment, including blindfolding, forced to remove almost all his clothes, beaten with cables, forcible shaving and had ice-cold water poured on him.²⁹⁶ Abdullah Almalki, a Canadian-Syrian national, also spent time in secret detention in the Syrian Arab Jamahiriya, in Far Falestin, from 3 May to 7 July 2002, when he received a family visit. On 25 August 2003, he was sent to Sednaya prison. He was released on 10 March 2004. He returned to Canada on 25 July 2004 after being acquitted of all charges by the Syrian State Supreme Security court.²⁹⁷

149. Another Canadian, Muayyed Nureddin, an Iraqi-born geologist, was detained on the border of the Syrian Arab Republic and Iraq on 11 December 2002, when he returned from a family visit in northern Iraq. He was secretly detained for a month in Far Falestin, then released on 13 January 2003.²⁹⁸

150. In its response to the questionnaire sent by the experts, the Government of the Syrian Arab Republic stated that the country had no secret prisons or detention centres. There were no cases of secret detention, and no individuals had been arrested without the knowledge of the competent authorities. No authorization had been granted to the security service of any foreign State to establish secret detention facilities in the Syrian Arab Republic. A number of foreign individuals had been arrested in the country at the request of other States, and had been informed of the legal

²⁹⁴ Commission of inquiry into the actions of Canadian officials in relation to Maher Arar, report of the fact finder of 14 October 2005, p. 14.

²⁹⁵ Ibid., pp. 21-23.

²⁹⁶ Internal inquiry into the actions of Canadian officials in relation to Abdullah Almalki. Ahmad Abou-Elmaati and Muayyed Nureddin, *op. cit.*, paras 10-38.

²⁹⁷ Internal inquiry into the actions of Canadian officials in relation to Abdullah Almalki. Ahmad Abou-Elmaati and Muayyed Nureddin, *op. cit.*

²⁹⁸ Ibid.

basis for the arrests and their places of detention. The above-mentioned States were also informed of whether the individuals concerned had been brought before the Courts or transferred outside of the country. Individuals belonging to different terrorist groups had been prosecuted and detained in public prisons, in compliance with relevant international standards. They would be judged by the competent judicial authorities. Court proceedings would be public and be held in the presence of defence lawyers, families, human rights activists and foreign diplomats. Some would be publicized through the media. The Interpol branch within the Security Service of the Ministry of the Interior was cooperating with international Interpol branches with regard to suspected terrorist and other criminal activities.

4. Morocco

151. At least three detainees were rendered to Morocco by the CIA between May and July 2002, and held in Temara prison, including the following:²⁹⁹

- Abou Elkassim Britel, of Moroccan origin and an Italian citizen through marriage and naturalization, was seized in Lahore, Pakistan, on 10 March 2002. He stated that he was tortured in Pakistani custody. On 23 May 2002, he was rendered by the CIA to Morocco, where he was held in secret detention until February 2003, and where he alleged he was also tortured. He was released in February 2003, but in May 2003 was seized again, held for another four months in Temara, then sentenced to 15 years in prison, which was reduced to nine years on appeal.³⁰⁰ In its submission for the present study, the Government of Morocco stated that Mr. Britel had not been subjected to “arbitrary detention or torture” between May 2002 and February 2003, or between May and September 2003.
- Binyam Mohamed, an Ethiopian national and British resident, was seized in Karachi, Pakistan, on 10 April 2002. He was held for approximately three months, during which time he was subjected to torture. On 21 July 2002, he was rendered by the CIA to Morocco, where he was held for 18 months in three different unknown facilities. During that period, he was allegedly threatened, subjected to particularly severe torture and other forms of ill-treatment; deprived from sleep for up to 48 hours at a time; and his prayers were interrupted by turning up the volume of pornographic movies. In January 2004, he was flown to the CIA “dark prison” in Kabul, and in May he was moved to Bagram. He was flown to Guantanamo on 20 September 2004, and was released in February 2009.³⁰¹

²⁹⁹ The third prisoner is Noor al-Deen (see para. 147), who was moved to the Syrian Arab Republic in 2003.

³⁰⁰ Interview with Khadija Anna L. Pighizzini, wife of Abou Elkassim Britel (annex II, case 7).

³⁰¹ Interview with Binyam Mohamed (annex II, case 18); see also the finding of two British High Court judges that the treatment to which he had been subjected presented an “arguable case of torture, or cruel, inhuman or degrading treatment”. Available from

5. Pakistan

152. From December 2001 until the summer of 2002, when the majority of the detainees who ended up in Guantanamo were seized, detention facilities in Pakistan, where several hundred detainees were held before being transferred to Kandahar or Bagram, were a crucial component of what was then, exclusively, a secret detention programme. Many of these men, seized near the Pakistani border, or while crossing from Afghanistan to Pakistan, were held in prisons in Kohat and Peshawar, but others were held in what appear to be impromptu facilities, which were established across the country in numerous locations. The then President of Pakistan, Pervez Musharraf, stated that:

Since shortly after 9/11, when many Al-Qaida members fled Afghanistan and crossed the border into Pakistan, we have played multiple games of cat and mouse with them. The biggest of them all, Osama bin Laden, is still at large at the time of this writing, but we have caught many, many others. Some are known to the world, some are not. We have captured 672 and handed over 369 to the United States. We have earned bounties totalling millions of dollars.³⁰²

153. Two former prisoners, Moazzam Begg and Omar Deghayes, described their experiences of secret detention in Pakistan to the experts:

- Omar Deghayes, a Libyan national and British resident, was arrested in April 2002 at his home in Lahore after a hundred people in black tracksuits surrounded the house. In the presence of an American officer, he was then taken, handcuffed and hooded, to a police station and, shortly afterwards, to an old fortress outside Lahore, where he was held with other men from Palestine, Tunisia, the Libyan Arab Jamahiriya and Egypt, and beaten and kicked, and heard electroshocks and people screaming. According to his account, “the place was run by Pakistanis and appeared to be a maximum security prison for extremist opponents that were traded with different States such as Libya and the United States.” He also stated that he was tortured for a month without any contact with the external world, and that the ill-treatment included punching, beating, kicking, stripping, being hit in the back with wooden sticks, and stress positions for up to three days and three nights. In mid-May, two Americans in plain clothes visited, took photographs and asked questions. He was then moved to a place in Islamabad, which looked like a barracks, where he was held incommunicado for one month without access to a lawyer or ICRC, and was interrogated in a nearby house by American officers, who identified themselves as CIA, and, on one occasion, by a British agent from MI-6. He said that torture took place in the barracks but not during the interrogations, and that he was subjected to drowning and stress positions, and recalled a room full of caged snakes that guards threatened to open if he did not speak about what he had done in Afghanistan. He then met with British and American officers, who finally “acquired”

www.reprive.org.uk/static/downloads/2009_11_19_BM_High_Court_Media_Case_Judgment_6_.pdf.

³⁰² Pervez Musharraf, *In The Line Of Fire: A Memoir*, Free Press, 2006.

him with other detainees, and took him to Bagram, where he was heavily tortured and sexually abused by American soldiers. He was flown to Guantanamo in August 2002, and released in December 2007.³⁰³

- Moazzam Begg, a British citizen, moved to Kabul, with his wife and three children, to become a teacher and a charity worker in 2001. After leaving Afghanistan in the wake of the United States-led invasion, on 31 January 2002, he was abducted from a house in Islamabad, where he was living with his family, and taken to a place in Islamabad (not an official detention facility), where those who held him were not uniformed officers and there were people held in isolation. Held for three weeks, he was moved to a different venue for interviews with American and British intelligence officers, but his wife did not know where he had been taken, and he was denied access to a lawyer or consular services. He was then taken to a military airport near Islamabad and handed over to American officers. He was held in Afghanistan and Guantanamo for three years, and was released in January 2005.³⁰⁴

6. Ethiopia

154. The Government of Ethiopia served as the detaining authority for foreign nationals of interest to United States and possibly other foreign intelligence officers between 30 December 2006 and February 2007.³⁰⁵ On 2 May 2007, a number of special procedures addressed the Government of Ethiopia, adding the following details:

In December 2006, the conflict between the militias of the Council of Somali Islamic Courts and the Transitional Federal Government of Somalia, supported by armed forces of Ethiopia, caused a large flow of refugees seeking to cross the border from Somalia into Kenya. On 2 January 2007, Kenyan authorities announced the closure of the border for security reasons. Since then, it is reported that the Kenyan security forces have been patrolling the border and have arrested a number of those seeking to cross it. Kenya has deported at least 84 of those arrested back to Somalia, from where they were taken to Ethiopia.³⁰⁶

155. The experts interviewed two of those captured between December 2006 and February 2007: Bashir Ahmed Makhtal (mentioned in the Special Rapporteur's communication)

³⁰³ Interview with Omar Deghayes (annex II, case 8).

³⁰⁴ Interview with Moazzam Begg (annex II, case 6).

³⁰⁵ For allegations of interviews conducted by Federal Bureau of Investigation officers, see for example the case of *Meshal vs Higgenbotham*, available from www.aclu.org/national-security/meshal-v-higgenbotham-complaint. See also Human Rights Watch, "Why am I still here?: the 2007 Horn of Africa renditions and the fate of those still missing", 22 September 2008, available from www.hrw.org/en/Reports/2008/09/30/whay-am-i-still-here-O.

³⁰⁶ A/HRC/7/3/Add.1, para. 71.

and Mohamed Ezzouek. The latter, a British national, was detained on 20 January 2007 in Kiunga village, Kenya, after crossing the Somali-Kenyan border and then transferred to Nairobi, where he was held in three different locations. Mr. Ezzouek reported having been detained in Kenya for about three weeks and then transferred to Somalia, where he was held for a few days before being transferred, via Nairobi, back to London. According to his testimony, he was interrogated by a Kenyan army major and Kenyan intelligence service officers, FBI officers and British security services officers, and repeatedly asked about his involvement with terrorist groups, including Al Qaida.³⁰⁷ Mr. Makhtal, an Ethiopian-born Canadian, was arrested on the border between Kenya and Somalia on 30 December 2006 by intelligence agents and held at a police detention centre. He was subsequently transferred by car to a prison cell in Gigiri police station in Nairobi. On 21 January 2007, the Kenyan authorities sent him to Mogadishu. On the following day, he was taken to Addis Ababa by an Ethiopian military plane. He was then held for approximately 18 months incommunicado in Mekalawi federal prison, often in solitary confinement and in poor conditions, then ultimately sentenced to life imprisonment by the High Court of Ethiopia.³⁰⁸

156. In a letter dated 23 May 2007, the Government of Ethiopia informed the relevant special procedures mandate holders that the Transitional Federal Government of Somalia had handed over to Ethiopia 41 individuals captured in the course of the conflict in Somalia; most of these detainees had been released. Only eight of the detainees remained in custody by order of the court. The Government also noted that “the allegation that there are more than seventy others in addition to those named in the communication is false, as are the allegations that the detainees are held incommunicado, and that they might be at risk of torture.”³⁰⁹ However, in September 2008, Human Rights Watch published a report stating that at least 10 detainees were still in Ethiopian custody, and the whereabouts of others were unknown.³¹⁰

7. Djibouti

157. The experts received information proving that a detainee in the CIA secret detention programme, Mohammed al-Asad, had been transferred by Tanzanian officials by plane to Djibouti on 27 December 2003.³¹¹ In Djibouti, Mr. al-Asad was detained for two weeks in secret detention, where he was interrogated by a white English-speaking woman and a male interpreter, mostly on his connections to the al-Haramain foundation. The woman identified herself as American. Mr. al-Asad’s own recollection is consistent with his having been held in Djibouti.

³⁰⁷ Interview with Mohamed Ezzouek (annex II, case 10).

³⁰⁸ Interview with Bashir Makhtal. (annex II, case 16).

³⁰⁹ A/HRC/7/3/Add.1, para. 71.

³¹⁰ Human Rights Watch, “Why Am I Still Here?”, op. cit.

³¹¹ High Court of Tanzania at Dar es Salaam, criminal application No. 23 of 2004, *Abdullah Salehe Mohsen al-Asad vs. Director of Immigration Services* exparte Mohamed Abdullah Salehe Mohsen Al-Asaad counter affidavit, 30 June 2004.

One of his guards told him that he was in Djibouti and there was a photograph of President Guelleh on the wall of the detention facility. After approximately two weeks, Mr. al-Asad was taken to an airport in Djibouti, where a team of individuals dressed entirely in black stripped him, inserted an object in his rectum, diapered and photographed him, and strapped him down in a plane. The detention site may have been in Camp Lemonier, which allegedly has been used on a short-term or transitory basis for several detainees being transferred to secret detention elsewhere.

8. Uzbekistan

158. No confirmation has ever been provided by either the Government of the United States or that of Uzbekistan that detainees were rendered to proxy prisons in Uzbekistan. In May 2005, however, the *New York Times* spoke to “a half-dozen current and former intelligence officials working in Europe, the Middle East and the United States” who stated that the United States had sent terror suspects to Uzbekistan for detention and interrogation. A United States intelligence official estimated that the number of terrorism suspects sent by the United States to Tashkent was in the dozens. The *New York Times* also obtained flight logs, showing that at least seven flights were made to Uzbekistan from early 2002 to late 2003” by two planes associated with the CIA rendition programme (a Gulfstream jet and a Boeing 737), and noted that, on 21 September 2003, both planes had arrived at Tashkent. According to the newspaper, the flight logs showed that “the Gulfstream had taken off from Baghdad, while the 737 had departed from the Czech Republic”.³¹² On 14 August 2009, BBC interviewed Ikrom Yakubov, an Uzbek intelligence officer who has been granted political asylum in the United Kingdom, who stated that the United States had rendered terrorist suspects for questioning to Uzbekistan, but added, “I don’t want to talk about it as there might be serious concerns for my life in the future to discuss renditions.”³¹³ On 22 August 2009, the story resurfaced once more, when *Der Spiegel* reported that, in an arrangement between the private security firm Blackwater and the CIA, Blackwater and its subsidiaries had been commissioned “to transport terror suspects from Guantanamo to interrogations at secret prison camps in Pakistan, Afghanistan and Uzbekistan”.³¹⁴

D. Complicity in the practice of secret detention

159. After September 2006, the direct role of the CIA in secret detentions seemed to have shrunk significantly, with “current and former American Government officials” explaining in May 2009 to the *New York Times* that, in the last two years of the Bush administration, the Government of the United States had started to rely heavily on the foreign intelligence services to capture, interrogate and detain all but the highest level terrorist suspects seized outside the

³¹² Don Van Natta Jr., “US Recruits a Rough Ally to Be a Jailer”, *New York Times*, 1 May 2005. Available from www.nytimes.com/2005/05/01/international/01renditions.html.

³¹³ “Confessions of an Uzbek KGB officer”, BBC Newsnight, 11 August 2009, available from <http://news.bbc.co.uk/1/hi/programmes/newsnight/8195906.stm>.

³¹⁴ “Death Squad: Blackwater Accused of Creating ‘Killing Program’”, *Der Spiegel*, 22 August 2009. Available from www.spiegel.de/international/world/0,1518,644405,00.html.

battlefields of Iraq and Afghanistan. According to the newspaper, “in the past 10 months, ... about a half-dozen mid-level financiers and logistics experts working with Al-Qaida have been captured and are being held by intelligence services in four Middle Eastern countries after the United States provided information that led to their arrests by local security services”.³¹⁵ Instead of actively detaining persons in secret, the United States - and many other countries - became complicit in the practice of secret detention. For the purposes of the present study, the experts state that a country is complicit in the secret detention of a person in the following cases:

(a) When a State has asked another State to secretly detain a person (covering all cases mentioned in paras. 141-158 above);

(b) When a State knowingly takes advantage of the situation of secret detention by sending questions to the State detaining the person or by soliciting or receiving information from persons who are being kept in secret detention. This includes at least the following States:

- The United Kingdom of Great Britain and Northern Ireland, in the cases of several individuals, including Binyam Mohamed,³¹⁶ Salahuddin Amin, Zeeshan Siddiqui, Rangzieb Ahmed and Rashid Rauf.³¹⁷ In its submission for the present study, the British Government referred to ongoing and concluded judicial assessment of the cases³¹⁸ and stressed the work of the parliamentary Intelligence and Security Committee, as well as its policy of clear opposition to secret detention;
- Germany, in the case of Muhammad Haydar Zammar, who was reportedly interrogated on at least one occasion, on 20 November 2002, by agents of German security agencies while he was secretly held in the Syrian Arab Republic.³¹⁹ The Government reported having been

informed about four cases of renditions or enforced disappearances concerning the Federal Republic of Germany: the cases of Khaled El-Masri, Murat Kurnaz, Muhammad Haydar Zammar and Abdel Halim Khafagy, which occurred between September 2001 and the end of 2005. However, the German authorities did not directly

³¹⁵ Eric Schmitt and Mark Mazzetti, “US Relies More on Aid of Allies in Terror Cases”, *New York Times*, 23 May 2009, available from www.nytimes.com/2009/05/24/world/24intel.html.

³¹⁶ Interview with Binyam Mohamed (annex II, case 18).

³¹⁷ See Human Rights Watch, “Cruel Britannia”, 24 November 2009, available from www.hrw.org/en/node/86690.

³¹⁸ According to the Government of the United Kingdom, the judge in Mr Ahmed’s case stated “I specifically reject the allegations that the British authorities were outsourcing torture”. The judge examined Mr. Amin’s allegations and found that there was no evidence to suggest that the British authorities had been complicit in his unlawful detention or ill-treatment in Pakistan.

³¹⁹ See “Kanzleramt dealte mit Syriens Geheimdienst”, *Der Spiegel*, 19 November 2005.

or indirectly participate in arresting these persons or in rendering them for imprisonment. In the cases of El- Masri and Khafagy, the German missions responsible for consular assistance had no knowledge of their imprisonment and were therefore unable to ensure that their rights were observed or guarantee consular protection; in the cases of Zammar and Kurnaz, the German authorities worked intensively to guarantee consular protection. However, they were denied access to the detainees and were thereby prevented from effectively exercising consular protection.³²⁰

In a letter dated 9 December 2009, the German Federal Ministry of Justice further reported that it had become aware of the case of Mr. Kurnaz on 26 February 2002, when the Chief Federal Prosecutor informed the Ministry that it would not take over a preliminary investigation pending before the Prosecution of the Land of Bremen. The Office of the Chief Federal Prosecutor had received a report from the Federal Criminal Police Office on 31 January 2002 that, according to information by the Federal Intelligence Service, Mr. Kurnaz had been arrested by United States officials in Afghanistan or Pakistan. In the case of Mr. el-Masri, on 8 June 2004, the Federal Chancellery and the Federal Foreign Office received a letter from his lawyer that Mr. el-Masri had been abducted in the former Yugoslav Republic of Macedonia on 31 December 2003, presumably transferred to Afghanistan and kept there against his will until his return to Germany on 29 May 2004. The Federal Ministry of Justice was informed about these facts on 18 June 2004. The experts note, however, that according to the final report of a Parliamentary Commission of Inquiry, the Government became aware of the case of Mr. el-Masri on 31 May 2004, when the Ambassador of the United States informed the Federal Minister for the Interior of Germany;³²¹

- Canada, for providing intelligence to the Syrian Arab Republic in the cases of Maher Arar, Ahmad el-Maati, Abdullah Almaki and Muayyed Nureddin.³²² In its submission for the present study, the Government denied that any of the named individuals was detained or seized by a State at the request of Canada. The experts welcome the fact that all the above-mentioned cases have been the subject of extensive independent inquiry processes within Canada and that, in the case of Mr. Arar, substantive reparations has been provided to the victims;
- Australia, for providing intelligence to interrogators in the case of the secret detention of Mamdouh Habib. Mr Habib also alleges that an Australian official was present during at least one of his interrogation sessions in Egypt. The experts understand that Mr. Habib

³²⁰ Response to a questionnaire on allegations of rendition and detention sent by the Working Group on Enforced and Involuntary Disappearances, 30 September 2009.

³²¹ Deutscher Bundestag, Drucksache 16/13400, 18 June 2009, p. 119. available from <http://dip21.bundestag.de/dip21/btd/16/134/1613400.pdf>.

³²² See Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmed Abou-Elmaati and Muayyed Nureddin (Iacobucci enquiry) and Arar Commission of Enquiry.

is currently suing the Government of Australia, arguing that it was complicit in his kidnapping and subsequent transfer to Egypt. In its submission for the present study, the Government denies that any Australian officer, servant and/or agent was involved in any dealings with or mistreatment of Mr. Habib, and refers to ongoing litigation;

(c) When a State has actively participated in the arrest and/or transfer of a person when it knew, or ought to have known, that the person would disappear in a secret detention facility or otherwise be detained outside the legally regulated detention system. This includes at least the following States:

- Italy, for its role in the abduction and rendition of Hassan Mustafa Osama Nasr (also known as Abu Omar), an Egyptian kidnapped by CIA agents on a street in Milan in broad daylight on 17 February 2003. He was transferred from Milan to the NATO military base at Aviano by car, and then flown, via the NATO military base of Ramstein in Germany, to Egypt,³²³ where he was held for four years (including 14 months in secret detention) before being released. The European Parliament considered it “very likely, in view of the involvement of its secret services, that the Italian Government of the day was aware of the extraordinary rendition of Abu Omar from within its territory.”³²⁴ Prosecutors opened an investigation and charged 26 United States citizens (mostly CIA agents) with abduction, as well as members of the Italian military secret services (SISMI) with complicity in the abduction, among them the head of SISMI.³²⁵ The Italian Ministry of Justice, however, refused to forward the judiciary’s requests for extradition of the CIA agents to the Government of the United States; as a result, the United States citizens were tried in absentia. On 4 November 2009, the court found 23 of them guilty. The court also convicted two SISMI agents and sentenced them to three years imprisonment for their involvement in the abduction.³²⁶ The then commander of SISMI and his deputy, however, were not convicted, the court having dismissed the cases against them on the grounds that the relevant evidence was covered by State secret.³²⁷ In its submission for the present study, the Government of Italy notes that the case is continuing at the appeal level, which prevents it from drawing any conclusions prior to a definitive verdict

³²³ European Parliament Committee report, para. 50.

³²⁴ *Ibid.*, para. 53.

³²⁵ Reply of the Government of Italy to the joint request for relevant information by the four experts (see annex I).

³²⁶ Milan Criminal Court, judgement of 4 November 2009 (on record with the experts).

³²⁷ The executive branch of the Government of Italy successfully raised the issue of State secret before the Constitutional Court; see the reply of the Government of Italy to the joint request for relevant information by the four experts (annex I).

- Kenya, for detaining 84 persons in various secret locations in Nairobi before transferring them on three charter flights between 20 January and 10 February 2007 to Somalia. They were subsequently transferred to Ethiopia, where they were kept in secret detention. They were not provided with an opportunity to challenge their forcible physical removal at any stage (see also paras. 154-156 above)³²⁸

(d) A specific form of complicity in this context are these cases where a State holds a person shortly in secret detention before handing them over to another State where that person will be put in secret detention for a longer period. This includes at least the following countries:

- The former Yugoslav Republic of Macedonia, for its role in the case of Khaled el-Masri³²⁹
- Malawi, for allegedly holding Laid Saidi in secret detention for a week
- The Gambia: during an interview with the experts, Bisher al-Rawi reported that, on 8 November 2002, he was arrested upon arrival at Banjul airport by the Gambian Intelligence Agency, then taken to an office and later to a house located in a Banjul residential place before he was handed over to the CIA and rendered to Afghanistan;

(e) When a State has failed to take measures to identify persons or airplanes passing through its airports or airspace after information of the CIA programme involving secret detention had already been revealed. The issue of rendition flights was, and still is, the subject of many separate investigations at the national or regional level.³³⁰ Therefore, the experts decided to refrain from going into the details of this issue.

³²⁸ See also *Meshal vs Higgenbotham* at www.aclu.org/national-security/meshal-v-higgenbotham-complaint; and Redress and Reprieve report, “Kenya and counter terrorism: a time for change”, February 2009, available from www.redress.org/publications/Kenya%20and%20Counter-Terrorism%205%20Feb%202009.pdf; and Human Rights Watch, “Why am I still here?”, op.cit. The experts have received allegations of cooperation with United States intelligence that dates back to 2003; see interview with Suleiman Abdallah (annex II, case 2).

³²⁹ Interview with Khaled el-Masri (annex II, case 9).

³³⁰ See, inter alia, the European Parliament Committee report, Deutscher Bundestag, Drucksache 16/13400, 18 June 2009, available from <http://dip21.bundestag.de/dip21/btd/16/134/1613400.pdf>; the statement of the Foreign Secretary to the House of Commons on United States rendition flights, 21 February 2008, available from www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080221/debtext/80221-0008.htm; and Dick Marty, “Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report”, available from <http://assembly.coe.int/Documents/WorkingDocs/Doc07/edoc11302.pdf>.

E. Secret detention and the Obama administration

160. In its response to the questionnaire sent by the experts, the United States stated that:

The Obama Administration has adopted the following specific measures:

- Instructed the CIA to close as expeditiously as possible any detention facilities that it currently operated as of January 22, 2009 and ordered that the CIA shall not operate any such detention facility in the future.
- Ordered that the Guantanamo Bay detention facility be closed as soon as practicable.
- Required the International Committee of the Red Cross (ICRC) to be given notice and timely access to any individual detained in any armed conflict in the custody or under the effective control of the United States Government, consistent with Department of Defense regulations and policies.
- Ordered a comprehensive review of the lawful options available to the Federal Government with respect to detention of individuals captured or apprehended in connection with armed conflicts and counterterrorism operations.
- Reaffirmed that all persons in U.S. custody must be treated humanely as a matter of law.
- Mandated that detention at Guantanamo conform to all applicable laws governing conditions of confinement, including Common Article 3 of the Geneva Conventions, and directed a review of detention conditions at Guantanamo to ensure such compliance.
- Ordered a review of U.S. transfer policies to ensure that they do not result in the transfer of individuals to other nations to face torture or otherwise for the purpose, or with the effect, of undermining or circumventing the commitments or obligations of the United States to ensure the humane treatment of individuals in its custody or control. The resulting Task Force on transfer practices recommended to the President in August that (1) the State Department be involved in evaluating all diplomatic assurances; (2) the Inspectors General of the Departments of State, Defense, and Homeland Security prepare an annual report on all transfers relying on assurances; and (3) mechanisms for monitoring treatment in the receiving country be incorporated into assurances.
- Announced the transfer of at least 7 detainees from military custody to U.S. criminal law enforcement proceedings, and transferred 25 detainees to date to third-countries for repatriation or resettlement.
- Worked with Congress to revise U.S. laws governing military commissions to enhance their procedural protections, including prohibiting introduction of evidence obtained as a result of cruel, inhuman, or degrading treatment.

- Expanded the review procedures for detainees held by the Department of Defense in Afghanistan in order to enhance the transparency and fairness of U.S. detention practices. Detainees are permitted an opportunity to challenge the evidence that is the basis for their detention, to call reasonably available witnesses, and to have the assistance of personal representatives who have access to all reasonably available relevant information (including classified information). Proceedings generally shall be open, including to representatives of the ICRC, and possibly to non-governmental organizations.
- Established more tailored standards and rigorous procedures for evaluating assertions of the State secrets privilege, including establishing an internal accountability mechanism, ensuring that the privilege is never asserted to avoid embarrassment or conceal violations of law, and creating a referral mechanism to the Office of Inspector General where the privilege is asserted but there is credible evidence of a violation of law. These standards and procedures were established in order to strike a better balance between open government and the need to protect vital national security information.
- The Department of Justice initiated a preliminary criminal investigation into the interrogation of certain detainees.
- These measures cumulatively seek to reaffirm the importance of compliance with the rule of law in U.S. detention practices, to ensure U.S. adherence to its international legal obligations, and to promote accountability and transparency in this important area of national security policy.

161. The experts welcome the above commitments. They believe, however, that clarification is required as to whether detainees were held in CIA “black sites” in Iraq and Afghanistan or elsewhere when President Obama took office, and, if so, what happened to the detainees who were held at that time. Also, the experts are concerned that the executive order instructing the CIA “to close any detention facilities that it currently operates” does not extend to the facilities where the CIA detains individuals on “a short-term transitory basis”.³³¹ The order also does not seem to extend to detention facilities operated by the Joint Special Operation Command.

162. The experts also welcome in particular the new policy implemented in August 2009, under which the military must notify ICRC of detainees’ names and identification number within two weeks of capture.³³² Nevertheless, there is no legal justification for this two-week period of secret detention. According to article 70 of the Third Geneva Convention, prisoners of war are to

³³¹ Executive order: ensuring lawful interrogations”, 22 January 2009, available from www.whitehouse.gov/the_press_office/EnsuringLawfulInterrogations/. See also CIA, “Message from the Director: interrogation policy and contracts”, 9 April 2009, available from www.cia.gov/news-information/press-releases-statements/directors-statement-interrogation-policy-contracts.html.

³³² Ibid. These requests clearly dated back to the time of Camp Nama, noted above, where allegations of abuse were widespread.

be documented, and their whereabouts and health conditions made available to family members and to the country of origin of the prisoner within one week. Article 106 of the Fourth Geneva Convention (governing the treatment of civilians) establishes virtually identical procedures for the documentation and disclosure of information concerning civilian detainees. Furthermore, it is obvious that this unacknowledged detention for one week can only be applied to persons who have been captured on the battlefield in a situation of armed conflict. This is an important observation, as the experts noted with concern news reports quoting current Government officials saying that “the importance of Bagram as a holding site for terrorism suspects captured outside Afghanistan and Iraq has risen under the Obama administration, which barred the Central Intelligence Agency from using its secret prisons for long-term detention”.³³³

163. The situation at the Bagram Theater Internment Facility remains of great concern. In March 2009, United States district Court Judge John D. Bates ruled that the *habeas corpus* rights granted to the Guantanamo detainees by the Supreme Court in June 2008 extended to non-Afghan detainees who had been seized in other countries and rendered to Bagram because “the detainees themselves as well as the rationale for detention are essentially the same”, and because the review process established at the prison “falls well short of what the Supreme Court found inadequate at Guantánamo”. The four petitioners were among the 94 prisoners that Assistant Attorney General Stephen G. Bradbury admitted were held in CIA custody between 2001 and 2005. Judge Bates found that, in holding detainees at Bagram not as prisoners of war but as “unlawful enemy combatants”, the Bush administration had put in place a review process, the Unlawful Enemy Combatant Review Board, in which “detainees cannot even speak for themselves; they are only permitted to submit a written statement. But in submitting that statement, detainees do not know what evidence the United States relies upon to justify an ‘enemy combatant’ designation - so they lack a meaningful opportunity to rebut that evidence”.³³⁴

164. The above-mentioned ruling has been appealed by the current United States administration, even though Judge Bates noted that habeas rights extend neither to Afghan detainees held at Bagram, nor to Afghans seized in other countries and rendered to Bagram. In its appeal against Judge Bates’ ruling, the United States administration notified the court that it was introducing a new review process at Bagram, “modifying the procedures for reviewing the status of aliens held by the Department of Defense at the Bagram Theater Internment Facility”.³³⁵ However, the experts are concerned that the new review system fails to address the fact that detainees in an active war zone should be held according to the Geneva Conventions, screened close to the time and place of capture if there is any doubt about their status, and not be subjected to reviews at some point after their capture to determine whether they should continue to be held. The experts are also concerned that the system appears to aim specifically to prevent United States courts from having access to foreign detainees captured in other countries and rendered to Bagram.

³³³ Eric Schmitt, “US to expand detainee review in Afghan prison”, *New York Times*, 12 September 2009. Available from www.nytimes.com/2009/09/13/world/asia/13detain.html.

³³⁴ https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2006cv1697-31.

³³⁵ www.scotusblog.com/wp/wp-content/uploads/2009/09/US-Bagram-brief-9-14-09.pdf.

While the experts welcome the fact that the names of 645 detainees at Bagram are now known, they urge the Government of the United States to provide information on the citizenship, length of detention and place of capture of all detainees currently held at Bagram Air Base.

V. THE NATURE AND SCOPE OF SECRET DETENTION PRACTICES IN RELATION TO CONTEMPORARY REGIONAL OR DOMESTIC COUNTER-TERRORIST EFFORTS

165. On a global scale, secret detention in connection with counter-terrorist policies remains a serious problem, whether it is through the use of secret detention facilities similar to those described in the previous section; declarations of a state of emergency, which allow prolonged secret detention; or forms of “administrative detention”, which also allow prolonged secret detention.

166. The principal objective of this section is to illustrate the extent to which the use of secret detention in the context of the fight against terrorism has been a global practice. The cases and situations referred to are therefore not exhaustive but serve the purpose of substantiating the existence of secret detention in all regions of the world within the confines of the definition presented earlier. Nonetheless, the experts have also been made aware of practices of secret detention that are beyond the scope of the present report.

A. Asia

167. With regard to Asia, the experts gathered information about secret detention in China, India, the Islamic Republic of Iran, Nepal, Pakistan, the Philippines and Sri Lanka, where anti-terrorist rhetoric is invoked to justify detention.

1. China

168. The Working Group on Arbitrary Detention and other special procedures mandate holders addressed several urgent communications to the Government of China, in particular with regard to cases of alleged secret detention of Tibetans accused of separatism and other State security offences, and of secret detention in the aftermath of unrest in the Xinjiang Autonomous Region in July 2009.

169. Jamyang Gyatso,³³⁶ a monk in Xiahe, in North Western Gansu province, was arrested by security officials on 8 January 2007 and detained at an undisclosed location.³³⁷ The Government informed the special procedures mandate holders that the State security authorities had

³³⁶ He had reportedly encouraged local Tibetans to listen to foreign radio broadcasts and had worked on making copies of a book written by, Hortsang Jigme, a Tibetan poet living abroad.

³³⁷ Urgent appeal of 31 January 2007 by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and Government reply of 23 March 2007 (A/HRC/7/3/Add.1.) para. 37.

investigated him on suspicion of having conducted unlawful acts that endangered State security, and that he had confessed to having committed the offence of “incitement to separatism”. On 3 February 2007, the Chinese security authorities ordered that he be placed under restricted freedom of movement, pending trial. Jamyang Kyi, a Tibetan writer and musician, was reportedly taken away from her office at the Qinghai Provincial Television Station in Xining City by plainclothes State security officers on 1 April 2008, and taken to an undisclosed location on 4 or 5 April 2008, where she was held incommunicado until her release on 21 April 2008.³³⁸ According to the information provided by the Government, Mrs. Jamyang was not arrested but was placed in criminal detention and held at the Xining municipal detention facility. She was later released on humanitarian grounds.³³⁹ Washu Rangjung, an author of two books on Tibetan history and culture, singer and news presenter for a local television company in the Tibet Autonomous Region, was arrested at his home by Chinese military police officers on 11 September 2008, and taken to an undisclosed location. According to the Government, he was issued a criminal detention order by the Sichuan judicial authorities on suspicion of having engaged in separatist acts and acts harmful to State security. After being assessed as having expressed genuine repentance, he was reprimanded and released on 20 September 2008.³⁴⁰

170. The experts also take note of reports of secret detention in the aftermath of unrest in the Xinjiang Autonomous Region in July 2009. A report by Human Rights Watch notes that “official figures suggest that the number of people detained by the security forces in connection with the protests has reached well over a thousand people”.³⁴¹ Chinese police, the People’s Armed Police and the military reportedly conducted numerous large-scale sweep operations in two predominantly Uighur areas of Urumqi, Erdaoqiao and Saimachang, in the immediate aftermath of the uprising on 6 and 7 July. Similar operations continued on a smaller scale until at least mid-August.³⁴² The report also alleges that the majority of those detained were being held

³³⁸ Urgent appeal of 7 May 2008 by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women, its causes and consequences, and Government reply of 7 August 2008 (A/HRC/11/4/Add.1), paras. 502-507.

³³⁹ A/HRC/13/39/Add.1.

³⁴⁰ Urgent appeal of 16 October 2008 by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and Government reply of 13 February 2009 (A/HRC/11/4/Add.1), paras. 614-617.

³⁴¹ Human Rights Watch, “We are afraid to even look for them:: enforced disappearances in the wake of Xinjiang’s protests”, 20 October 2009. Available from www.hrw.org/en/reports/2009/10/22/we-are-afraid-even-look-them-0.

³⁴² “China: detainees ‘disappeared’ after Xinjiang protests”, Human Rights Watch news release, 21 October 2009, available from www.hrw.org/en/news/2009/10/20/china-detainees-disappeared-after-xinjiang-protests.

incommunicado, and that, when family members attempted to inquire about their relatives, “police and other law enforcement agencies denied having knowledge of the arrests, or simply chased the families away.”

2. India

171. Arbitrary detentions and disappearances have been a longstanding concern in India, particularly in the states in which the Armed Forces Special Powers Act, 1958 applies. In its report of 2007 submitted to the Human Rights Council, the Working Group on Enforced or Involuntary Disappearances noted that, as at the end of 2006, there were 325 outstanding cases of disappearances, and that most of the cases reported occurred between 1983 and 2004 in the context of ethnic and religious disturbances in the Punjab and Kashmir regions. It added that “the disappearances allegedly relate to wide powers granted to the security forces under emergency legislation”.³⁴³ During the review of India under the universal periodic review mechanism, numerous civil society organizations alleged that the “chronic use of anti-terrorist laws, preventive detention laws and the Armed Forces Special Powers Act of 1958 have created a situation where the normal methods of ‘investigation’ have been replaced by disappearances, illegal detention, custodial torture.”³⁴⁴

172. In the wake of the attacks of 11 September 2001, India enacted new counter-terrorism legislation, including the Prevention of Terrorist Activities Act of 2002.³⁴⁵ In 2005, the Special Rapporteur on freedom of religion drew the Government’s attention to allegations that numerous Muslim men had been illegally detained since March 2003 in the Gayakwad Haveli Police Station in Ahmedabad. Although it was reported that many were subsequently charged, a large number of illegal detainees allegedly remained in custody. There were also reports of a “climate of fear” in the Muslim community in Gujarat, which meant that “most were too afraid to make official complaints about illegal detention or about torture and ill-treatment.”³⁴⁶ The Government rejected these allegations.³⁴⁷

^{173.} In July 2009, however, a leading Indian magazine, *The Week*, reported that there were at least 15, and perhaps as many as 40, secret detention sites in India, used to detain, interrogate and torture suspected terrorists. A former Government official reportedly confirmed the existence of the prisons, telling the magazine that they were not run directly by the Ministry of Home Affairs, but by security agencies, including the Research and Analysis Wing (the national

³⁴³ A/HRC/4/41, para. 216.

³⁴⁴ A/HRC/WG.6/1/IND/3, paras. 12, 14, 17-18.

³⁴⁵ The Act, which was preceded by the Prevention of Terrorist Activities Ordinance in 2001, was repealed in October 2004. New counter-terrorism legislation was enacted by Parliament in 2008.

³⁴⁶ E/CN.4/2005/61/Add.1, para. 129.

³⁴⁷ *Ibid.*, paras. 130-131.

foreign intelligence agency) and the Intelligence Bureau. An officer who had worked in one of the detention centres reportedly admitted that torture techniques were used, based loosely on those used in Guantanamo and elsewhere in the “war on terror” of the Government of the United States. The techniques included the use of loud and incessant music, sleep deprivation, keeping prisoners naked to degrade and humiliate them, and forcibly administering drugs through the rectum to break down their dignity further.³⁴⁸

174. United Nations human rights mechanisms, which could carry out independent investigation of these allegations, have found it very difficult to engage with India. The Working Group on Arbitrary Detention requested an invitation to carry out a country visit in 2004, and again in 2005 and 2006. A request for an invitation to visit India by the Special Rapporteur on torture has been outstanding since 1993, despite several reminders. The Special Rapporteur on extrajudicial, summary or arbitrary executions sought an invitation in 2000, and reiterated that request in 2005, 2006 and 2008. None of these requests received a positive response. In 1997, India reported to the Human Rights Committee³⁴⁹ and signed the Convention against Torture. However, the Government of India has not reported to, nor been examined by the Committee since,³⁵⁰ and has not ratified the Convention. As a result, United Nations human rights mechanisms have not been able to examine allegations of secret detention in India for over a decade.

3. Islamic Republic of Iran

175. Reports from the Islamic Republic of Iran indicate a pattern of incommunicado detention of political prisoners in secret, or at least unofficial, detention facilities. In a case typical of this pattern, according to information brought to the attention of the Government in a special procedures urgent communication of 15 April 2008, Majid Pourabdollah was arrested on 29 March 2008 in Tabriz; he was hospitalized three days after his arrest and transferred two days later from the hospital to an undisclosed location by the authorities. Two weeks later, his whereabouts were still not known.³⁵¹ In its response to the communication, sent more than a year later, the Government stated that Majid Pourabdollah was a member of an extremist Marxist group that pursued “the objective of disturbing the security of the country”. The Government

³⁴⁸ “India’s secret torture chambers”, *The Week*, 12 July 2009.

³⁴⁹ Third periodic report submitted in July 1997, concluding observations adopted on 4 August 1997 (CCPR/C/79/Add.81).

³⁵⁰ The next periodic report would have been due on 31 December 2001.

³⁵¹ Communication of 15 April 2008 by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/10/44/Add.4).

added that he had been brought before a court and had in the meantime been released on bail, and that he had not been tortured in detention. The allegations regarding his secret detention were not challenged.

176. In the period from 2000 to 2003, a parliamentary commission established under article 90 of the Constitution of the Islamic Republic of Iran (which allows individuals to address rights complaints to Parliament) investigated the establishment of secret prisons by authorities other than the national prisons office. The Article 90 Parliamentary Commission found that a number of authorities had established such unofficial, often secret, places of detention: the Ministry of Information, the Army and Military Police Counter-Intelligence Service, the Law Enforcement and General Inspectorate Protection Service, the Pasdaran Counter-Intelligence Service and Military Police, the Bassidj and the Ministry of Defence Counter-Intelligence Service.³⁵²

177. In addition to the secret detention facilities run by the militias, intelligence services and other agencies, there are also concerns about sector 209 at Evin Prison on the outskirts of Teheran. It is considered a “prison within a prison”, where political prisoners in particular are held, often in prolonged, solitary and incommunicado confinement.³⁵³ When the Working Group on Arbitrary Detention visited Evin Prison in 2003, it was able to visually verify the existence of this “prison within a prison”, but its attempts to visit sector 209 were cut short by secret service agents.³⁵⁴

178. Following the presidential elections held on 12 June 2009, tens of thousands of opposition supporters took to the streets of Tehran and other cities throughout the country to call for the annulment of the election results. It has been alleged that, while protests were largely peaceful, violent clashes with security forces resulted in numerous deaths and detentions.³⁵⁵ These allegations were transmitted to the Government by several mandate holders on different occasions.³⁵⁶

³⁵² Report of the Working Group on Arbitrary Detention on its visit to the Islamic Republic of Iran (E/CN.4/2004/3/Add.2), para. 36.

³⁵³ *Ibid.*, paras. 32 and 54.

³⁵⁴ *Ibid.*, para. 32.

³⁵⁵ “Iran: detained political leaders at risk of torture, possibly to force ‘confessions’”, Amnesty International news release, 29 June 2009, available from www.amnesty.org/en/news-and-updates/news/detained-political-leaders-at-risk-of-torture-20090629.

³⁵⁶ See, *inter alia*, the joint urgent appeals sent by the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on 18 June and 11 August 2009 (A/HRC/13/39/Add.1).

179. In this connection, on 10 July 2009, the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a joint urgent appeal to the Government of the Islamic Republic of Iran concerning more than 100 protesters arrested by public authorities in Tehran and other Iranian cities during the protests, or at their homes. The vast majority of those arrested were allegedly deprived of any contact with members of their family, and did not have access to legal counsel.³⁵⁷ On 14 October 2009, the Working Group on Enforced or Involuntary Disappearances sent a communication regarding many of the persons concerned by the above-mentioned joint urgent appeal, as well as other people whose fate and whereabouts were unknown.³⁵⁸

4. Nepal

180. The practice of secret detention by the Royal Nepalese Army (RNA) during the conflict with the Communist Party of Nepal (Maoist) (CPN-M) has been the object of in-depth documentation, both by Nepalese civil society and United Nations bodies. The Government has accepted visits by several special procedures mandate holders, in particular the Working Group on Enforced and Involuntary Disappearances³⁵⁹ and the Special Rapporteur on torture.³⁶⁰ The OHCHR Office in Nepal has published two reports documenting conflict-related disappearances in specific districts.³⁶¹

181. In January 2005, the Working Group on Enforced and Involuntary Disappearances observed that the phenomenon of disappearance in Nepal was widespread, with both the Maoist insurgents and the Nepalese security forces as perpetrators.³⁶² The practice of secret detention, however, related primarily to the Royal Nepalese Army, since the Maoists were reportedly likely to kill perceived opponents outright.³⁶³ A year later, the Special Rapporteur on torture reported

³⁵⁷ A/HRC/13/39/Add1.

³⁵⁸ Ibid., para. 289.

³⁵⁹ Report of the Working Group on Enforced and Involuntary Disappearances on its mission to Nepal (E/CN.4/2005/65/Add.1).

³⁶⁰ E/CN.4/2006/6/Add.5.

³⁶¹ OHCHR, Nepal, report of investigation into arbitrary detention, torture and disappearance at Maharajgunj Royal Nepalese Army barracks, Kathmandu, in 2003-2004 (May 2006), and report on conflict-related disappearances in Bardiya district (December 2008).

³⁶² E/CN.4/2005/65/Add.1, para. 25.

³⁶³ Ibid., para. 29.

that he had received a large number of allegations relating to persons taken involuntarily by security forces and who were being held incommunicado at unknown locations.³⁶⁴

182. In many of the cases attributed to the RNA, a clear pattern was documented. A person suspected of Maoist sympathies, or simply of having contact with the Maoists, was seized by a large group of known military personnel out on patrol. They were blindfolded and had their hands tied behind their back. The victim was put into a military vehicle and taken away. The security forces often appeared in plain clothes, so that no personal names or unit names were visible. In almost all cases, the victim was held incommunicado in army barracks, with no access to family or legal counsel, and subjected to physical abuse and torture.³⁶⁵ Two OHCHR reports, in 2006 and 2008, documented the treatment of detainees in two secret detention sites within RNA barracks, the Maharajgunj barracks in Kathmandu and Chisapani barracks in Bardiya district.³⁷⁴ The reports, based on interviews with former detainees, families of the disappeared and other witnesses, describe how all the detainees in Maharajgunj barracks were continuously blindfolded during their often months-long periods of detention by the RNA, subjected to deliberate and systematic torture during interrogation, including beating, electric shocks, submersion in water and, in some cases, sexual humiliation. In 2004, it was also applied to induce some detainees to renounce their CPN-M allegiance. Despite the general climate of fear and insecurity, many relatives of those arrested went to the RNA barracks to inquire after their family. They were denied access and told that their relatives had not been arrested by the RNA and were not held inside.

183. Some families, assisted by non-governmental organizations, petitioned to the courts for the writ of *habeas corpus*. In some cases, the petitions were effective, where the authorities acknowledged detention; however when the RNA denied detention, the Supreme Court normally denied the petition.³⁶⁶ In a number of cases, the army flatly denied before the Supreme Court that a particular person was in detention, only to reverse that position later when forced to do so by revelations in the media, in political debate, and even in official documents issued by other branches of the public authority.³⁶⁷ The Working Group on Enforced and Involuntary Disappearances explained that one central difficulty in these *habeas corpus* cases was that under Nepalese law, Government officials could not be charged with perjury for failing to tell the truth in *habeas corpus* proceedings.³⁸⁴

184. In its report of January 2005, the Working Group on Enforced and Involuntary Disappearances drew attention to the impact of the Terrorist and Disruptive Activities (Control and Punishment) Act of 2002 and the ordinance of the same name of 2004 on the security forces' instigation of secret detentions and disappearances, noting that the establishment by the act of

³⁶⁴ Report of the Special Rapporteur on torture on his mission to Nepal (E/CN.4/2006/6/Add.5), para. 22.

³⁶⁵ E/CN.4/2005/65/Add.1, para. 29.

³⁶⁶ E/CN.4/2005/65/Add.1, para. 41.

³⁶⁷ *Ibid.*, para. 42.

special powers to check terrorist and disruptive acts included preventive detention “upon appropriate grounds for believing that a person has to be stopped from doing anything that may cause a terrorist and disruptive act.” Although under the act preventive detention was limited to 90 days, it was extended to up to one year under the ordinance, and lawyers and human rights activists argued that, since detentions could be ordered for a full year without any judicial scrutiny, and because in practice there was no effective civilian control over the issuance of the orders, the free reign of the security personnel to judge who was a “terrorist” was unquestionable.³⁶⁸

185. In June 2007, the Supreme Court of Nepal issued a ground-breaking ruling in response to petitions for the writ of *habeas corpus* in dozens of cases. It ordered the Government to establish a commission of inquiry into disappearances complying with international standards, to enact a law to criminalize enforced disappearances, to prosecute those responsible for past disappearances and to compensate the families of victims.³⁶⁹

186. In February 2008, however, the Special Rapporteur on torture noted that, while the systematic practice of holding political detainees incommunicado ended with the April 2006 ceasefire, in 2007 OHCHR documented several cases of detainees accused of belonging to armed groups being held for short periods in unacknowledged, incommunicado detention, in the worst case for 11 days.³⁷⁰

5. Pakistan

187. The full extent of secret detention in Pakistan is not yet known. In its report submitted to the Human Rights Council in 2008, the Working Group on Enforced and Involuntary Disappearances referred to allegations that the Supreme Court was investigating some 600 cases of disappearances and that, while some of the cases reportedly concerned terrorism suspects, many involved political opponents of the Government. The Supreme Court, headed by Chief Justice Iftikhar Mohammad Chaudhry, publicly stated that it had overwhelming evidence that the intelligence agencies of Pakistan were detaining terror suspects and other opponents. The retroactive application of the Army Act would allegedly allow substantial impunity of those tried for having terror suspects disappear.³⁷¹

188. The Working Group also took up the cases of Masood Janjua and Faisal Farz, two of those who had disappeared.³⁷² It was a newspaper report about these men that first prompted the Pakistani Supreme Court, in December 2005, to demand answers from the Government about the whereabouts of those who had disappeared. In August 2006, Masood Janjua’s wife, Amina

³⁶⁸ Ibid., paras. 42-48.

³⁶⁹ Follow-up report of the Special Rapporteur on torture (A/HRC/7/3/Add.2), para. 446.

³⁷⁰ Ibid., para. 428.

³⁷¹ A/HRC/10/9, paras 300-302.

³⁷² Ibid., para. 297.

Masood Janjua, and the mother of Faisal Farz, Zainab Khatoon, founded the organization Defence of Human Rights³⁷³ and filed a petition in the Supreme Court seeking information about 16 people that the organization believed had been subjected to enforced disappearance. By July 2008, the organization represented 563 people who had disappeared.³⁷⁴ Special procedures have sent communications on a number of cases of alleged secret detention.³⁷⁵

189. In a report published in February 2009, the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights reported that at a hearing in Pakistan:

Repeated reference was made to torture, prolonged arbitrary and incommunicado detention and disappearances allegedly committed by the Pakistani Inter-Services Intelligence (ISI). The Panel heard directly from family members of disappeared people, and the trauma that they are living through was all too apparent. It was claimed that persons are held in unacknowledged or secret detention, that individuals have been rendered to other States (often for financial gain), and that individuals have been interrogated by foreign intelligence personnel while in incommunicado detention. The Panel heard that the ISI is operating to a large extent beyond either civilian or judicial control.³⁷⁶

190. The authorities' resistance to investigations into those held in secret detention reached a low point on 3 November 2007, when President Musharraf suspended the Constitution, imposed a state of emergency, dismissed the entire Supreme Court and imprisoned the judges in their homes along with their families, although there was some improvement in 2008. In May, after the Minister for Law and Justice Farooq Naik promised that the Government would trace all of the people subjected to enforced disappearance, two committees were established for that purpose. In June, the Government declared that 43 disappeared people had been traced in Balochistan, and had either been released or were being held in official detention sites, even though, according to the Government's own figures, 1,102 people had disappeared in Balochistan province alone.³⁷⁷

191. Following the election of Asif Ali Zardari as President on 6 September 2008, on 21 November, the Minister for Human Rights Mumtaz Alam Gilani announced that a new law was being prepared to facilitate the recovery of disappeared people. He stated that his ministry had

³⁷³ See the organization's website at www.dhrpk.org.

³⁷⁴ Amnesty International, "Pakistan: denying the undeniable: enforced disappearances in Pakistan", 23 July 2008. Available from www.amnesty.org/en/library/info/ASA33/018/2008/en.

³⁷⁵ A/HRC/10/44/Add.4, para. 168.

³⁷⁶ "Assessing damage: urging action: report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights", February 2009. Available from <http://icj.org/IMG/EJP-report.pdf>, p.76.

³⁷⁷ Amnesty International report on Pakistan, 2009. Available from <http://thereport.amnesty.org/en/regions/asia-pacific/pakistan>.

567 documented cases of enforced disappearance. Four days later, on 25 November, the Senate Standing Committee on the Interior acknowledged that intelligence agencies maintained “countless hidden torture cells” across the country. Amnesty International stated that new cases of enforced disappearance continued to be reported in 2009.³⁹⁴ According to an article published in the newspaper *Dawn* on 5 November 2009, the Islamabad Inspector General of Police Kaleem Imam, the Interior Secretary Qamar Zaman and the Rawalpindi Regional Police Officer Aslam Tareen had appeared before the Supreme Court and reported that cases of 416 missing persons had been pending before the apex court since September 2006. The newspaper indicated that:

Their report said the interior ministry was making hectic efforts to trace the missing persons and 241 people had been traced while 175 were still untraced. It said that complete particulars of missing persons were being collected with the help of Nadra and the lists had been sent to the provinces and law-enforcement agencies to enhance efforts to locate them. A special task force had also been constituted, the report added.³⁷⁸

192. In June 2008, the Asian Human Rights Commission identified 52 illegal detention centres in Pakistan, where, it stated, “missing persons are held for long periods of time in order to force them to confess their involvement in terrorist and sabotage activities.”³⁷⁹

6. Philippines

193. In its response to the request for relevant information from the four experts (see annex I), the Government of the Philippines drew attention to the Bill of Rights of the 1987 Constitution, enacted after the Revolution of 1986 brought an end to the presidency of Ferdinand Marcos.³⁸⁰ The Bill explicitly bans “secret detention places, solitary, incommunicado, or other similar forms of detention”. The Government also pointed out that the Human Security Act of 2007, the recent counter-terrorism legislation, provides for stiffer penalties for those who violate its provisions regarding the arrest, detention and interrogation of terrorism suspects. The Government did not provide any information on cases in which these provisions might have been violated.

194. The Committee against Torture noted in its concluding observations on the most recent periodic report submitted by the Philippines under the Convention against Torture, in April 2009, that it was deeply concerned about the de facto practice of detention of suspects by the Philippine National Police and the Armed Forces of the Philippines (AFP) in detention centres, safe houses and military camps.³⁸¹ The Working Group on Enforced or Involuntary

³⁷⁸ Available from the website <http://beta.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/04-sc-masood-janjua-qs-08>.

³⁷⁹ See the Commission’s statement at the address www.ahrchk.net/statements/mainfile.php/2008statements/1574/.

³⁸⁰ Secret detention practices were not uncommon during the Marcos presidency (see para. 83 above).

³⁸¹ CAT/C/PHL/CO/2, para. 12.

Disappearances noted in February 2009 that, in the Central Luzon region of the Philippines, since 2001, more than 70 people had allegedly been victims of enforced disappearance, a number of those previously disappeared had surfaced after being detained and tortured by military officers, and no perpetrators had been punished.³⁸² In its response to a questionnaire for the present study, the Government of the Philippines stated that facilities and practices of secret detention contravene the Constitution, which expressly prohibits secret, solitary and incommunicado detention and torture, and are not used. Specific laws provide penalties for those who violate requirements in relation to the arrest, interrogation and detention of those suspected of terrorism.

195. The experts interviewed one victim of secret detention, Raymond Manalo,³⁸³ suspected of supporting the insurgent New People's Army (NPA), whose case sheds light on the broader situation. On 14 February 2006, Raymond and his brother Reynaldo were abducted from their farms in San Ildefonso, Bulacan, by AFP soldiers and men belonging to a militia established by the AFP to support its counter-terrorism efforts. The brothers were suspected of being supporters of the NPA. They were kept in unacknowledged detention in military facilities and safe houses run by the military for 18 months until they managed to escape from detention on 13 August 2007. A decision of the Supreme Court of the Philippines of 8 October 2008 in proceedings for the writ of *amparo* brought by Raymond Manalo describes what happened to him according to his own testimony, which the Supreme Court found highly credible in spite of denials by the AFP. Other persons suspected of being supporters of left-wing groups, including two female university students, were secretly detained with them.³⁸⁴ The detainees were tortured during interrogation to extort confessions regarding their links to the NPA. The female detainees were raped by soldiers.

196. Throughout his detention, Raymond Manalo was not brought before any judicial authority and had no contact with a lawyer. His family only learned that he was still alive when he was brought before them on one occasion in an attempt to persuade his parents to drop a *habeas corpus* petition that they had filed on behalf of Raymond and his brother. In the *habeas corpus* proceedings, the AFP staunchly denied that they were holding the Manalo brothers. Other persons held together with the Manalo brothers remain disappeared.³⁸⁵ Raymond Manalo testified before the Supreme Court that he saw the killing and burning of one of his

³⁸² A/HRC/10/9, para. 323.

³⁸³ Interview with Raymond Manalo (annex II, case 17).

³⁸⁴ Supreme Court of the Republic of the Philippines in *The Secretary of National Defense and the Chief of Staff, Armed Forces of the Philippines v. Raymond Manalo and Reynaldo Manalo*, G.R. No. 180906, decision of 7 October 2008. See also the report entitled "Terrorism and human rights in the Philippines: fighting terror or terrorizing?", available from www.fidh.org/IMG/pdf/ph493a.pdf, p. 39.

³⁸⁵ "Terrorism and human rights in the Philippines: fighting terror or terrorizing?", p. 39.

co-detainees.³⁸⁶ As Raymond Manalo narrated in his testimony, and as the Supreme Court of the Philippines found to be established, high-ranking military officers, including a general, were involved in his secret detention. Calls for their prosecution remain without results.³⁸⁷ Following their escape, Raymond and Reynaldo Manalo filed a petition for a writ of *amparo* (a remedy recently created by the Supreme Court of the Philippines to protect persons at risk of disappearance or extrajudicial execution), which was granted on 7 October 2008.

7. Sri Lanka

197. United Nations human rights mechanisms and non-governmental organizations have expressed serious concerns with regard to abductions by police and military personnel, detention at undisclosed locations, and enforced disappearances. Concerning the latter phenomenon, the Special Rapporteur on extrajudicial, summary or arbitrary executions stated in the report on his visit in December 2005 to Sri Lanka that he was very disturbed to receive reports that appeared to indicate a re-emergence of the pattern of enforced and involuntary disappearances that had so wracked Sri Lanka in the past.³⁸⁸ He specifically referred to complaints of Tamil youths being picked up by white vans, allegedly with the involvement of security forces. In its 2008 report, the Working Group on Enforced and Involuntary Disappearances remarked that it remained gravely concerned at the increase in reported cases of enforced disappearances in the country.³⁸⁹ Specific cases of Tamil men, possibly suspected of links to the Liberation Tigers of Tamil Eelam (LTTE), reportedly taken to undisclosed places of detention by security forces in a white van without a number plate and since then disappeared have been brought to the attention of the Government by special procedures and non-governmental organizations, without receiving a response.³⁹⁰ The Tamileela Makkal Viduthalai Pulikal-Karuna group, a break-away faction of the LTTE

³⁸⁶ Testimony reflected (and found credible) in the decision on the Supreme Court of 8 October 2008. In a communication to five special procedures mandate holders of 16 July 2009, however, the Government stated that the “non-cooperation of the victims’ families with the Philippines National Police impedes the process of uncovering the truth on said case”.

³⁸⁷ In the communication to five special procedures mandate holders of 16 July 2009, the Government argued that “the Philippine National Police cannot identify nor apprehend the perpetrators basing only on nebulous allegations without any substantial or corroborating evidence from witnesses. At this point, allegations pointing to the military behind the abduction, and the reported torture, sexual assaults ... and burning to death ... are without any basis.”

³⁸⁸ E/CN.4/2006/53/Add.5, para. 68.

³⁸⁹ A/HRC/10/9, para. 366.

³⁹⁰ See for instance A/HRC/10/12/Add.1, para. 2349, A/HRC/10/44/Add. 4, para. 196 and A/HRC/11/4/Add.1, paras. 2274-2276. See also the case reported by the Asian Human Rights Commission at the address www.ahrchk.net/ua/mainfile.php/2008/2781/.

supported by the Government, was also reported to be responsible for abductions of LTTE representatives and civilians in the area around Trincomalee.³⁹¹

198. In its concluding observations on Sri Lanka, the Human Rights Committee expressed its regret regarding impunity for abductions and secret detentions. The Committee stated that the majority of prosecutions initiated against police officers or members of the armed forces on charges of abduction and unlawful confinement, as well as on charges of torture, had been inconclusive owing to a lack of satisfactory evidence and the unavailability of witnesses, despite a number of acknowledged instances of abduction and/or unlawful confinement and/or torture, and only very few police or army officers had been found guilty and punished.³⁹² The Committee also noted with concern reports that victims of human rights violations felt intimidated about bringing complaints or had been subjected to intimidation and/or threats, which discouraged them from pursuing appropriate avenues to obtain an effective remedy.

199. While the conduct of the security forces in “white van” abduction cases is most likely unlawful and criminal also under the law of Sri Lanka, the Special Rapporteur on torture³⁹³ and the International Commission of Jurists have drawn attention to the far-reaching powers of arrest and detention that anti-terrorism laws and ordinances bestow upon the Sri Lankan security forces.³⁹⁴ Under Emergency (Miscellaneous Provisions and Powers) Regulation No. 1 of 2005, persons “acting in any manner prejudicial to the national security or the maintenance of public order” may be arrested and held in detention for up to one year, without access to judicial review by an independent body. Persons may be similarly detained for up to 18 months under the Prevention of Terrorism (Temporary Provisions) Act of 1979 or indefinitely, pending trial. Persons can be held in irregular and unpublicized places of detention, outside of a regular police station, recognized detention centre, penal institution or prison. Detainees may be moved from place to place during interrogation and denied prompt access to a lawyer, family members or authority competent to challenge the legitimacy of detention.³⁹⁵ Section 15(A)(1) of the act, for instance, enables the Secretary to the Minister for Defence to order that persons held on remand should be “kept in the custody of any authority, in such place and subject to such conditions as may be determined by him”.⁴¹⁴ As a result of his visit to Sri Lanka in November 2007, the Special Rapporteur on torture concluded that torture had become a routine practice in the context of counter-terrorism operations, both by the police and the armed forces.³⁹⁶

³⁹¹ A/HRC/7/3/Add.6, paras. 12 and 16.

³⁹² CCPR/CO/79/LKA, para. 9.

³⁹³ A/HRC/7/3/Add.6, paras. 41-48.

³⁹⁴ International Commission of Jurists, Briefing Paper: Sri Lanka’s Emergency Laws, March 2009, available from www.icj.org//IMG/SriLanka-BriefingPaper-Mar09-FINAL.pdf.

³⁹⁵ *Ibid.*, pp. 17-18.

³⁹⁶ A/HRC/7/3/Add.6, para. 70.

200. Responding to questions raised during the universal periodic review process in May 2008, the Attorney General of Sri Lanka stated that, notwithstanding the serious nature of the security situation prevailing in Sri Lanka resulting from a reign of terror unleashed by the most ruthless terrorist organization in the world, the LTTE, it was not the policy of the State to adopt and enforce extraordinary measures outside the framework of the law. He stressed that the Government steadfastly insisted that all agents of the State should necessarily carry out arrests, detentions and investigations, including interrogations, in accordance with the due process of the law. With regard to allegations of a pattern of disappearances, the Government was studying credible reports to identify the magnitude of the problem and the possible identities of perpetrators. The Attorney General assured the Human Rights Council that it was not the policy of the State to illegally and surreptitiously arrest persons and detain them in undisclosed locations.³⁹⁷

201. Since the Government announced its victory over the LTTE in May 2009, reports have drawn attention to the detention of more than 10,000 persons suspected of having been involved with the LTTE. Human Rights Watch reported that it documented several cases in which individuals had been taken into custody without regard for the protection provided under Sri Lankan law. In many cases, the authorities had not informed family members about the whereabouts of the detained, leaving them in secret, incommunicado detention or possible enforced disappearance.³⁹⁸ ICRC was reportedly barred from the main detention camps for displaced persons.⁴²⁰ Amnesty International expressed the same concern about an estimated 10,000 to 12,000 individuals suspected of ties to the LTTE, who are or have been detained incommunicado in irregular detention facilities operated by the Sri Lankan security forces and affiliated paramilitary groups since May 2009.³⁹⁹

B. Central Asia

202. The experts gathered information on cases of secret detention in Turkmenistan and Uzbekistan.

1. Turkmenistan

203. As documented by a range of international organizations, including the United Nations, the Organization for Security and Cooperation in Europe (OSCE) and non-governmental organizations, there are persistent allegations that several persons accused of an assassination attempt on former President Niyazov in November 2002 have since then been held in secret

³⁹⁷ A/HRC/8/46, paras. 51-52.

³⁹⁸ Human Rights Watch, "Sri Lanka: world leaders should demand end to detention camps", 22 September 2009, available from www.hrw.org/en/news/2009/09/22/sri-lanka-world-leaders-should-demand-end-detention-camps.

³⁹⁹ Amnesty International, "Sri Lankan army clashes with detainees", 24 September 2009. Available from www.amnesty.org/en/news-and-updates/news/sri-lankan-army-clashes-detainees-20090924.

detention. In his report of 12 March 2003, Emmanuel Decaux, the OSCE Rapporteur, stated that “the fact that their relatives remain up to this time with no news from some prisoners in secret detention, as Mr. Nazarov or Mr. Shikhmuradov, nourishes rumours according to which these individuals - considered as too compromising for the regime - are said to have already died in prison”.⁴⁰⁰ The case of Boris Shikhmuradov is currently under the consideration of the Working Group on Enforced or Involuntary Disappearances.⁴⁰¹

204. On 7 October 2005, the Special Rapporteur on torture sent an urgent appeal to the Government of Turkmenistan concerning the situation of a number of individuals sentenced in December 2002 and January 2003 to prison terms ranging from five years to life for their alleged involvement in the above-mentioned assassination attempt.⁴⁰² The Rapporteur noted that the prisoners continued to be held incommunicado, without access to families, lawyers or independent bodies, such as ICRC. On 23 September 2009, Amnesty International issued a “postcard” calling upon the President to shed light on the disappeared persons in Turkmenistan with reference to the group arrested after the alleged attack on the former President in late 2002.⁴⁰³

2. Uzbekistan

205. In its latest recent report on Uzbekistan, the Committee against Torture expressed concern at the numerous allegations of excessive use of force and ill-treatment by Uzbek military and security forces in the May 2005 events at Andijan, which resulted in, according to the State party, 187 deaths, and according to other sources, 700 or more, and in hundreds of others being detained thereafter. Notwithstanding the State party’s persistent response to all allegations that the measures taken were in fact appropriate, the Committee noted with concern the State party’s failure to conduct full and effective investigations into all claims of excessive force by officials. The Committee also expressed concern about the fact that the State party had limited and obstructed independent monitoring of human rights in the aftermath of the events, thus impairing the ability to make a reliable or credible assessment of the reported abuses, including ascertaining information on the whereabouts and reported torture or ill-treatment of persons detained and/or missing. The Committee also received credible reports that some persons who had sought refuge abroad and were returned to the country had been kept in detention in unknown places and possibly subjected to breaches of the Convention. In this direction, the Committee recommended that Uzbekistan provide information to family members on the

⁴⁰⁰ Report on Turkmenistan, ODIHR.GAL/15/03.

⁴⁰¹ HRC/13/31, para. 579.

⁴⁰² E/CN.4/2006/6/Add.1, para. 514.

⁴⁰³ Document EUR/61/005/2009, available from www.amnesty.org/en/library/info/EUR61/005/2009/en.

whereabouts and charges against all persons arrested or detained in connection with the Andijan events.⁴⁰⁴

206. On 31 January 2006, Erkin Musaev, an Uzbek national and a local staff member of the United Nations Development Programme in Uzbekistan, was reportedly arrested by the Uzbek National Security Service (SNB); his family was not informed about his whereabouts for more than 10 days. During his detention, he was subjected to various forms of pressure, including threats by the interrogators, who forced him to sign a confession. On 13 June 2006, following a reportedly secret and flawed trial, Mr. Musaev was found guilty of high treason, disclosure of State secrets, abuse of office and negligence by a military court in Tashkent. The verdict indicated that the information he provided was utilized by unfriendly forces to organize the disturbances in Andijan. The Working Group on Arbitrary Detention declared his detention arbitrary in its opinion No. 14/2008 of 9 May 2008.⁴⁰⁵ By notes verbales dated 27 September 2007 and 25 April 2008, the Government of Uzbekistan provided the Working Group with information about the detention and trials of Mr. Musaev. On 9 March 2007, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture sent an urgent appeal summarizing the case and expressing serious concern for Mr. Musaev's physical and mental integrity following his alleged transfer to a different prison.⁴⁰⁶ On 23 February 2009, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture sent another urgent appeal to the Government of Uzbekistan. It was reported that, on 26 July 2008, Mr. Musaev was threatened by two officers from the SNB that, if he or his family did not withdraw their petitions or continued to make complaints to international human rights mechanisms or to spread news about the above decision, they would face reprisals.⁴⁰⁷

C. Europe

207. The experts received information on examples of the current secret detention policies concerning the Russian Federation and, specifically, the provinces in the North Caucasus.

Russian Federation

208. Following two visits to the North Caucasus, in May and September 2006, the Committee on the Prevention of Torture of the Council of Europe declared that:

⁴⁰⁴ CAT/C/UZB/CO/3, paras. 7-9. See also the OHCHR report on the mission to Kyrgyzstan concerning the events in Andijan, Uzbekistan, on 13 and 14 May 2005 (E/CN.4/2006/119).

⁴⁰⁵ A/HRC/10/21/Add.1.

⁴⁰⁶ A/HRC/7/3/Add.1.

⁴⁰⁷ A/HRC/13/30, para. 29.

A considerable number of persons alleged that they had been held for some time, and in most cases ill-treated, in places which did not appear to be official detention facilities, before being transferred to a recognised law enforcement structure or released ... As for places where persons may be unlawfully detained, a number of consistent allegations were received in respect of one or more places in the village of Tsentoroy, and of the “Vega base” located in the outskirts of Gudermes. Several allegations were also received of unlawful detentions in the Shali and Urus-Martan areas.⁴⁰⁸

In its statement, the Committee indicated that the problem of what it called “unlawful detention” persisted in the Chechen Republic as well as other parts of the North Caucasian region. It described its visits to an unofficial place of detention in Tsentoroy, the Vega base and the Headquarters of the Vostok Battalion in Gudermes. Although no more detainees were held there, the Committee found clear signs that these places had been previously used for detention purposes. The Committee’s observations are confirmed by judgements made by the European Court of Human Rights, which has frequently established violations of the European Convention on Human Rights, some of which involved periods of secret detention.⁴⁰⁹ In October 2009, the Human Rights Committee expressed its concern about ongoing reports of torture and ill-treatment, enforced disappearance, arbitrary arrest, extrajudicial killing and secret detention in Chechnya and other parts of the North Caucasus committed by military, security services and other state agents, and that the authors of these violations appeared to enjoy widespread impunity owing to a systematic lack of effective investigation and prosecution. The Committee was particularly concerned that the number of disappearances and abduction cases in Chechnya had increased in the period 2008-2009.⁴¹⁰

209. The Government of the Russian Federation, in its response to a questionnaire about the present study (see annex I), declared that:

⁴⁰⁸ Public statement concerning the Chechen Republic of the Russian Federation, 13 March 2007 (CPT/Inf (2007) 17).

⁴⁰⁹ See some of the most recent decisions on violations involving secret detention: *Babusheva and Others v. Russia* (app. 33944/05), judgement of 24 September 2009; *Asadulayeva and Others v. Russia* (app. 15569/06), judgement of 17 September 2009; *Mutsayeva v. Russia* (app. 24297/05), judgement of 23 July 2009; *Yusupova and Others v. Russia* (app. 5428/05), judgement of 9 July 2009; *Khasuyeva v. Russia* (app. 28159/03), judgement of 11 June 2009; *Khantiyeva and Others v. Russia* (app. 43398/06); *Satabayeva v. Russia* (app. 21486/06); *Vakhayeva and Others v. Russia* (app. 1758/04), judgement of 29 October 2009; and *Karimov and Others v. Russia* (app. 29851/05), judgement of 17 July 2009.

⁴¹⁰ CCPR/C/RUS/CO/6, para. 14. See also Dick Marty, “Situation in the North Caucasus region: security and human rights”, second information report for the Committee of Legal Affairs and Human Rights of the Council of Europe, 29 September 2009, available from http://assembly.coe.int/CommitteeDocs/2009/ajdoc43_2009.pdf, para. 6. The annex to the report contains several cases of abduction leading to various periods of secret detention in different Federation subjects in the Caucasus that corroborate such reports.

- (a) There were no instances of secret detention in the Russian system;
- (b) There was no involvement or collaboration in secret detention on the territory of another State;
- (c) All detentions fell within the supervision of the Federal penitentiary and the Ministry of the Interior;
- (d) For the period 2007-2016, a programme was being implemented to improve detention conditions;
- (e) The office of the General Prosecutor supervises situations of detention, and if there is a violation, it is reported;
- (f) All places of deprivation of liberty are subordinate to the Federal Service for the Execution of Punishment or the Ministry of the Interior. The Federal Action Programme on the Development of the Penitentiary System provides for a steady improvement of the system. The Prosecutor's office ensures that the legislation is respected.

210. In its submission to the Human Rights Committee at its ninety-seventh session, the Government of the Russian Federation also stated that criminal investigations had been opened into several cases of disappearances in the Chechen Republic. Some of these investigations were suspended owing to a failure to identify the person or person to be charged or the whereabouts of the accused. The authorities had also created a comprehensive programme on preventing kidnappings and disappearances.⁴¹¹

211. After receiving the Government's replies to the questionnaire, the experts conducted interviews with several men who testified about secret detention in the Russian Federation. Owing to fear of repression against themselves or their families, and because of the climate of impunity,⁴¹² most people addressed did not want to be interviewed by the experts or to be identified. The experts agreed to preserve the confidentiality of the sources, as the interviewed persons feared that the divulgence of their identities could cause harm to the individuals involved.

212. In an interview conducted on 12 October 2009, X.Z., a Chechen who had been living in Dagestan, and was now living in exile, explained that he had been held in secret detention and tortured for five days in the summer of 2005, apparently in connection with a search for a wounded man who had been brought to his house by a friend. Blindfolded throughout his

⁴¹¹ CCPR/C/RUS/6.

⁴¹² On 29 December 2009, Nurdi Nukhazhiev, Ombudsman of Chechnya, reported that "close relatives of more than 5000 kidnapped and missing citizens are exasperated by the inaction over many years of the Military Prosecutor's Office and the Military Investigative Department in addressing this problem". See www.eng.kavkaz-uzel.ru/articles/12126/ and the original website of the Ombudsman (in Russian) at the address http://chechenombudsman.ru/index.php?option=com_content&task=view&id=708&Itemid=198.

detention, he knew very little about the building where the cell was located. The cell had a toilet, which was also the only source of drinking water for the detainee. For food, he occasionally received a piece of bread. He heard a man screaming close by, indicating that other persons were being detained and tortured in the same building, which had bare concrete floors (in the cell) and could not possibly have been a civilian dwelling”.⁴¹³

213. In another interview conducted on 12 October 2009, X.X., another Chechen who had been living in Dagestan and now living in exile, explained that he had been subjected to harassment and short-term detention since 1991, when he participated in a demonstration against the war. This led to his name appearing on a “black list”, and he was detained whenever there was an incident, and was usually held for one or two days at a time and secretly (incommunicado and without any subsequent judicial procedure). In early 2004, after the deputy head of the local branch of the Federal Security Bureau (FSB) was killed, he was briefly detained, taken to a forest, made to dig his own grave and threatened and beaten, then released. He was then seized again in early March, and held in incommunicado detention for three days in a prison where torture was used to extract false confessions. He was then put on trial with all mention of his incommunicado detention erased from the record. With help from his family, he however managed to avoid conviction and to be released.⁴¹⁴

214. In a third interview, X.Y. explained how he had been seized from his house in Dagestan in late 2007, then taken to a secret facility that he called a concentration camp “where people do not come back from”, in Gudermes district, Chechnya, run by the FSB, the foreign military intelligence service of the Russian armed forces (GRU) and the Anti-Terrorist Centre. He described being held in an old concrete building, recalled a terrible smell and walls covered in blood, and explained that he had been “severely tortured” for 10 days, which included receiving electric shocks, being beaten with iron bars, and being burned with a lighter. He also explained that he was never given food and received only one glass of water per day, and that he had witnessed a man beaten to death and whose organs were then removed. After 10 days, he was taken to a forest, where he narrowly escaped being extrajudicially executed. He also said that several other secret facilities, such as the one where he had been held, exist in Chechnya, and now also in Dagestan.⁴¹⁵

D. Middle East and North Africa

215. With regard to the Middle East and North Africa, the experts gathered information on long-standing concerns about counter-terrorist policies involving secret detention and inadequate or non-existent legal safeguards in Algeria, Egypt, Iraq, Israel, Jordan, the Libyan Arab Jamahiriya, Saudi Arabia, the Syrian Arab Republic and Yemen.

⁴¹³ Interview with X.Z. (annex II, case 24).

⁴¹⁴ Interview with X.X. (annex II, case 22).

⁴¹⁵ Interview with X.Y (annex II, case 23).

1. Algeria

216. In its latest report on Algeria, dated 26 May 2008, the Committee against Torture expressed its concern that secret detention centres existed in Algeria, run by the Department of Information and Security (DRS). In this connection, the Committee made reference to reports of the existence of secret detention centres run by the Department in its military barracks in Antar, in the Hydra district of Algiers, which are outside the control of the courts.⁴¹⁶ In its comments on the conclusions and recommendations of the Committee, Algeria “categorically refuted the allegations with regard to alleged places of detention that reportedly lie outside the reach of the law. In all the time that they have been promoting subversion and attacking republican institutions, the people making such allegations have never been able to put forward any documentary evidence.” Furthermore, the State Party affirmed that “it exercises its authority over all places of detention under its jurisdiction and that it has been granting permission for visits by independent national and international institutions for more than eight years.”⁴¹⁷

217. In its response to a questionnaire about the present study (see annex I), the Government of Algeria stated that secret detention was not used by the police services of Algeria; the law precluded such practice. The methods for dealing with terrorism were within a strict legal framework, with investigations to be carried out within allowed time limits, and with magistrates being informed. In an emergency situation in the context of counter-terrorism threatening the public order, a presidential decree may be made of a state of emergency, notified to the United Nations, authorizing the Minister for the Interior to take measures of house arrest as administrative internment. It was in this context, controlled by presidential decree, that such rare and exceptional measures may be taken. This was believed to be an effective measure in the effort against terrorism.

218. In its briefing to the Committee against Torture, Amnesty International also referred to “a persistent pattern of secret detention and torture” by the DRS, noting that the barracks where detainees were held in secret detention were “situated in an area surrounded by forest, concealed from public view and not accessible to the public”.⁴¹⁸

219. The Working Group on Arbitrary Detention has reported on two cases in Algeria in recent years, as described below.

220. M’hamed Benyamina, an Algerian national domiciled in France since 1997 and married to a French national since 1999, was arrested on 9 September 2005 at Oran airport in Algeria by plainclothes policemen. He was held for six months in a secret place of detention, and was released in March 2006 following a presidential amnesty decree concerning the implementation of the Charter for Peace and National Reconciliation of 27 February 2006. On 2 April 2006, he

⁴¹⁶ CAT/C/DZA/CO/3, para. 6.

⁴¹⁷ CAT/C/DZA/CO/3/Add.1, paras. 14-15.

⁴¹⁸ Amnesty International, “Algeria: briefing to the Committee against Torture”, 17 April 2008. Available from www.ohchr.org/english/bodies/cat/docs/ngos/AI-AlgeriaApril2008.pdf.

was again arrested by plainclothes policemen from the DRS, and taken to DRS premises in Tiaret. Officers told his brother that he had been interrogated and released the following morning; in reality, he was transferred to Algiers, probably to other DRS premises, before being transferred again, on 5 April, to Serkadj prison in Algiers.⁴¹⁹ According to the Algerian authorities, Mr. Benyamina was charged with membership of a terrorist organization active in Algeria and abroad. On 7 March 2006, the indictment division of the Algiers court issued a decision terminating criminal proceedings against Mr. Benyamina and ordering his release. Mr. Benyamina, who had been implicated in extremely serious acts of terrorism, could not however benefit from the termination of criminal proceedings but only from a commutation or remission of the sentence after the verdict. After bringing the case before the indictment division, the Procurator-General once again placed Mr. Benyamina in detention.

221. Mohamed Rahmouni disappeared on 18 July 2007, and was transferred to a military prison in Blida after six months of secret detention, allegedly at one of the secret centres run by the DRS. According to a communication received from the Government on 2 January 2008, Mr. Rahmouni was questioned by the military judicial police about his membership of a terrorist organization, and then released and assigned to a residence by a decision of the Minister for the Interior and the local community on 6 August 2007. He was reportedly found at Blida Military Prison (50 km from Algiers) on 26 January 2008.⁴²⁰

2. Egypt

222. In Egypt, a state of emergency has been in force continuously since 1958, with the exception of a short period from May 1980 until the assassination of President Anwar al-Sadat in October 1981. In May 2008, it was extended for another two-year period, even though State officials, including President Mubarak, had repeatedly said that they would not seek to renew the state of emergency beyond its expiration on 31 May 2008.⁴²¹

223. In his report on his mission to Egypt in April 2009, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism referred to an emergency law framework primarily used to countering terrorism in the country. In the view of the Special Rapporteur, the use of exceptional powers in the prevention and investigation of terrorist crimes reflected a worrying trend in which this phenomenon was perceived as an emergency triggering exceptional powers, rather than a serious crime subject to normal penal procedures. He also expressed, inter alia, concern about relying on exceptional powers in relation to arrest and detention of terrorist suspects that were then inserted into the ordinary penal framework of an anti-terrorism law, the practice of administrative detention without trial in violation of international norms and the use of unofficial detention facilities, the

⁴¹⁹ Working Group on Arbitrary Detention, opinion No. 38/2006 (A/HRC/7/4/Add.1).

⁴²⁰ Working Group on Arbitrary Detention, opinion No. 33, 2008 (A/HRC/13/30/Add.1).

⁴²¹ Submission of the International Commission of Jurists to the universal periodic review of Egypt, August 2009. Available from www.icj.org/IMG/UPRSubmission-Egypt.pdf.

heightened risk of torture for terrorist suspects, and the lack of investigation and accountability.⁴²²

224. On 2 September 2009, the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on torture sent an urgent communication to the Government of Egypt regarding the alleged enforced disappearance of Mohamed Fahim Hussein, Khaled Adel Hussein, Ahmed Adel Hussein, Mohamed Salah Abdel Fattah, Mohamed Hussein Ahmed Hussein, Adel Gharieb Ahmed, Ibrahim Mohamed Taha, Sameh Mohamed Taha, Ahmed Saad El Awadi, Ahmed Ezzat Ali, Samir Abdel Hamid el Metwalli, Ahmed El Sayed Nasef, Ahmed Farhan Sayed Ahmed, Ahmed El Sayed Mahmoud el Mansi, Mohamed Khamis El Sayed Ibrahim and Yasser Abdel Qader Abd El Fattah Bisar. According to the information received, State Security Intelligence agents are believed to have abducted these 16 persons for having allegedly belonged to the “Zeitoun terror cell”, accused of Islamist extremism and of preparing terrorist attacks. It was also reported that, even though the Government publicly recognized the detention of these persons, it did not disclose their place of detention. Mr. El Sayed Mahmoud el-Mansi saw his lawyer by chance in the State Security Prosecution at which time he said that, following his abduction, he had been blindfolded, stripped naked, tied to an iron bed without a mattress and deprived of sleep. He indicated receiving electroshocks to his private parts, nipples and ears. Further information received indicates that Mr. Fahim Hussein and Mr. Farhan Sayed Ahmed were brought before the Prosecutor on 23 August 2009. It was reported that, during the hearing, they stated that they had been tortured. It was also alleged that, after the hearing, they were once again taken to an unknown location and that neither the Attorney General nor the Chief Prosecutor knew where they were being held. These cases are all still under the consideration of the Working Group on Enforced or Involuntary Disappearances.⁴²³

225. The experts held an interview with Azhar Khan, a British national who was reportedly held in secret detention in Cairo for about five days in July 2008.⁴²⁴ During the interview, Mr. Khan reported that, in 2004, he had been arrested for being related to people accused of committing terrorist acts, but that he had been later released without charge. Moreover, he reported that, in 2008, he decided to go to Egypt with a friend, where they arrived on 9 July 2008. Upon arrival at the airport, Mr. Khan was detained, but his friend was not. Mr. Khan was then taken to a room located before passport control, where he stayed until the following night, when he was taken handcuffed, hooded and at gunpoint to a place which he described as an old prison located at about 20 minutes from the airport. Upon arrival, he was put in stress positions and had short electroshocks applied to his ribs and back. Later, he was taken to a room where two people were waiting, one who spoke English, the other Arabic. There were also two other people taking notes. The English speaker asked questions related only to the United Kingdom, including about his arrest in 2004. He was also asked about his personal life in the United Kingdom, including his religion and the mosque he attended. He was interrogated a second time and asked the same

⁴²² A/HRC/13/37/Add.2.

⁴²³ Report of the Special Rapporteur on torture (A/HRC/13/39/Add.1) and the Working Group on Enforced or Involuntary Disappearances (A/HRC/13/31), para.192.

⁴²⁴ Interview with Azhar Khan (annex II, case 13).

type of questions. According to Mr. Khan, the questions were provided by British Security officials. During his detention, he was held handcuffed and hooded. The fifth day, he was transferred to a police station, where an official of the British Consulate informed him that he was going back to London the following day. Upon arrival in London, he was not formally interrogated but asked by British Security officials whether he was well.

3. Iraq

226. With regard to secret detention practiced by the Government of Iraq, the United Nations Assistance Mission for Iraq (UNAMI) referred to “unofficial detention” by Iraqi authorities, notably the Ministry of the Interior, in several of its reports.⁴²⁵ The al-Jadiriya facility is mentioned repeatedly in this connection.⁴²⁶ In 2006, drawing attention to the lack of effective investigations after its discovery, UNAMI noted that:

One year after the discovery of the illegal detention centre of al-Jadiriya’s bunker in Baghdad, on 13 November 2005, where 168 detainees were unlawfully detained and abused, the United Nations and international NGOs ... continue to request that the Government of Iraq publish the findings of the investigation on this illegal detention. It may be recalled that a Joint-Inspection Committee was established after the discovery of the al-Jadiriya’s bunker in November 2005, in order to establish the general conditions of detention. The existence of the bunker was revealed after a raid of the Ministry of Interior’s bunker by MNF I/Iraqi forces. The Iraqi Government should start a judicial investigation into human rights violations in al-Jadiriya. The failure to publish the al-Jadiriya report, as well as other investigations carried out by the Government regarding conditions of detention in the country, remains a matter of serious concern and affects Iraq’s commitment to establish a new system based on the respect of human rights and the rule of law.”⁴²⁷

Another unofficial place of detention under the Ministry of the Interior was the so-called “site 4”. According to UNAMI:

On 30 May [2006], a joint inspection led by the Deputy Prime Minister and MNF-I, in a prison known as “Site 4,” revealed the existence of 1,431 detainees with systematic evidence of physical and psychological abuse. Related to alleged abuses committed at “Site 4,” a probe by 3 separate investigative committees was set up. After two and a half months, the probe concluded that 57 employees, including high-ranking officers, of the

⁴²⁵ UNAMI human rights report, 1 November - 31 December 2005, paras. 9-11.

⁴²⁶ UNAMI human rights report, 1 July - 31 August 2006, paras. 70-73; and 1 May - 30 June 2006, paras. 76-78.

⁴²⁷ UNAMI human rights report, 1 November - 31 December 2006, paras. 90-91.

Ministry of Interior were involved in degrading treatment of prisoners. Arrests warrants against them were allegedly issued, but no arrests have reportedly yet taken place.”⁴²⁸

227. In relation to Kurdistan province, UNAMI noted in 2006 that despite concrete acknowledgement by the Kurdistan Regional Government (KRG) of the arrest of individuals by intelligence and security forces and their detention at unofficial detention facilities, there appeared to be little impetus by the authorities to effectively address this pervasive and serious human rights concern. There had been little official denial of the existence and sometimes location of secret and illegal detention cells in Suleimaniya and Erbil, which were often no more than rooms in private houses and Government buildings. UNAMI reiterated in 2007 that:

The practice of administrative detention of persons held in the custody of the Asayish (security) forces in the Kurdistan region, the majority having been arrested on suspicion of involvement in acts of terrorism and other serious crimes. Many are said by officials to be members or supporters of proscribed Islamist groups. Hundreds of detainees have been held for prolonged periods, some for several years, without referral to an investigative judge or charges brought against them. In some cases, detainees were arrested without judicial warrant and all are routinely denied the opportunity to challenge the lawfulness of their detention. UNAMI also continues to receive allegations of the torture or ill-treatment of detainees in Asayish detention facilities. ... On 28 January and again on 27 February [2007], families of detainees arrested by Asayish forces demonstrated before the Kurdistan National Assembly in Erbil, demanding information on the whereabouts of detained relatives and the reasons for their arrest...⁴²⁹

In 2009, UNAMI further reported that:

The KRG 2006 Anti-Terrorism Law, which forms the legal basis for many arrests, has been extended into mid-2010. ...UNAMI/HRO continues to document serious violations of the rights of suspects and those deprived of their liberties by the KRG authorities. These include claims of beatings during interrogation, torture by electric shocks, forced confessions, secret detention facilities, and a lack of medical attention. Abuse is often committed by masked men or while detainees are blindfolded.⁴³⁰

228. The experts took up the case of a group of individuals arrested and held in secret detention for prolonged periods in the spring of 2009 in connection with accusations against Mr. al-Dainy,

⁴²⁸ Ibid., para. 92.

⁴²⁹ Ibid., paras. 73-75.

⁴³⁰ UNAMI, human rights report, 1 July - 31 December 2008, May 2009, paras. 91-92. See also Amnesty International, “Hope and fear: human rights in the Kurdistan region of Iraq”, April 2009, available from www.amnesty.org/en/library/asset/MDE14/006/2009/en/c2e5ae23-b204-4b46-b7f5-06dc1501f62f/mde140062009en.pdf.

a former member of Parliament.⁴³¹ According to the allegations received, several former collaborators of Mr. al-Dainy were arrested in February 2009 and held in secret detention at a number of different locations. In particular, they were detained in a prison in the Green Zone run by the Baghdad Brigade. Their families were not notified of their whereabouts for several months. The current location of 11 persons is still not known. While held at the Baghdad Brigade prison, most of them were subjected to severe ill-treatment, including beating with cables, suspension from the ceiling by either the feet or hands for up to two days at a time, or electroshocks. Some had black bags put over their heads and were suffocated for several minutes until their bodies became blue several times in a row. Also, some had plastic sticks introduced into their rectum. They were also threatened with the rape of members of their families. They were forced to sign and fingerprint pre-prepared confessions. As a result of the ill-treatment, several of them had visible injuries on several parts of their bodies. Many lost a considerable amount of weight.

4. Israel

229. In its report of May 2009, the Committee against Torture quoted an official figure of 530 Palestinians held in administrative detention in Israel (while noting that it was “as many as 700” according to non-governmental sources). The Committee also highlighted a disturbing piece of legislation related to holding detainees as “unlawful combatants”, explaining that Unlawful Combatants Law No. 5762-2002, as amended in August 2008, allowed for the detention of non-Israeli citizens falling into the category of “unlawful combatants”, described as “combatants who are believed to have taken part in hostile activity against Israel, directly or indirectly”, for a period of up to 14 days without any judicial review. Detention orders under this law could be renewed indefinitely; evidence was made available neither to the detainee nor to the person’s lawyer and, although the detainees had the right to petition the Supreme Court, the charges against them were also reportedly kept secret.⁴³² According to the State party, 12 persons were currently being detained under the law.

230. The Committee also mentioned the alleged secret detention facility no. 1391, noting with concern that, although the Government claimed that it had not been used since 2006 to detain or interrogate security suspects, the Supreme Court had rejected several petitions urging an examination of the facility. The Committee reminded the Government of Israel that it should ensure that no one was detained in any secret detention facility under its control in the future, as a secret detention centre was per se a breach of the Convention.⁴³³ The Committee went further by calling on the Government to “investigate and disclose the existence of any other such facility and the authority under which it has been established”.

⁴³¹ See the report of the Special Rapporteur on torture (A/HRC/13/39/Add.1) and the report of the Working Group on Enforced or Involuntary Disappearances (A/HRC/13/31), para. 295.

⁴³² CAT/C/ISR/CO/4.

⁴³³ Ibid.

5. Jordan

231. Although the involvement of Jordan in the CIA proxy detention programme seems to have come to an end in 2005,⁴³⁴ secret detention in a domestic context remains a problem. This is above and beyond the sweeping powers of the Law on Crime Prevention Act of 1954, which “empowers provincial governors to authorize the detention without charge or trial of anyone suspected of committing a crime or ‘deemed to be a danger to society’. Such detention orders can be imposed for one year and are renewable.”⁴³⁵ Pursuant to the act, authorities may arbitrarily detain and isolate individuals at will under the guise of administrative detention.⁴³⁶ In its 2009 report, Amnesty International explained that 12,178 men and 81 women (according to figures gathered in 2007) were held without charge or trial under this provision.⁴³⁷

232. In 2007, for example, the Working Group on Arbitrary Detention reported on the case of Issam Mohamed Tahar Al Barqaoui Al Uteibi, a writer and theologian known in Jordan and in the Arab world who had been repeatedly accused of “promoting and glorifying terrorism” by the security services. He was detained for the first time from 1994 to 1999, and arrested on 28 November 2002, with 11 other people, on charges of “conspiracy to commit terrorist acts” as a result of public statements that he made through the media. Tried by the State Security Court, he was acquitted on 27 December 2004. He was not released, however, but detained again for six months, from 27 December 2004 to 28 June 2005, at a secret detention facility (which later turned out to be the Headquarters of the General Intelligence Directorate, the Jordanian intelligence service), where he alleges that he was tortured. He was interviewed after his release by Al-Jazeera on 4 July 2005, when he condemned the military occupation of Iraq. Following the interview, he was again secretly detained on 5 July 2005.⁴³⁸ He was finally released on 12 March 2008.⁴³⁹

6. Libyan Arab Jamahiriya

233. In a visit to the Libyan Arab Jamahiriya in May 2009, representatives of Amnesty International noted that the Internal Security Agency (ISA) appeared to have unchecked powers in practice to arrest, detain and interrogate individuals suspected of dissent against the political

⁴³⁴ Human Rights Watch, “Double jeopardy: CIA renditions to Jordan”, 7 April 2008. Available from www.hrw.org/en/node/62264.

⁴³⁵ A/HRC/4/33/Add.3, para. 16, footnote 4.

⁴³⁶ Ibid., appendix, para. 15.

⁴³⁷ “Jordan”, Amnesty International report 2009, available from <http://thereport.amnesty.org/en/regions/middle-east-north-africa/jordan>.

⁴³⁸ Working Group on Arbitrary Detention, opinion No. 18/2007 (A/HRC/10/21/Add.1).

⁴³⁹ Alkarama for Human Rights press release, 13 March 2008, available from http://en.alkarama.org/index.php?option=com_content&view=article&id=70:jordan-m-issam-al-uteibi-sheikh-almaqdisi-liberated-on-march-12-2008&catid=24:communiqu&Itemid=120.

system or deemed to present a security threat, to hold them incommunicado for prolonged periods and deny them access to lawyers, in breach even of the limited safeguards set out in the country's Code of Criminal Procedure.⁴⁴⁰ In addition, Human Rights Watch recently reported on continuing practices of incommunicado and secret detention in the Libyan Arab Jamahiriya.⁴⁴¹

234. In 2007, the Human Rights Committee adopted its final views in *Edriss El Hassy v. Libya* (communication No. 1422/2005). The Committee held that the alleged incommunicado detention of the author's brother, from around 25 March to 20 May 1995, and again from 24 August 1995 "to the present time" constituted a violation of articles 7 and 9 of the International Covenant on Civil and Political Rights.⁴⁴² With respect to article 6 of the Covenant, the Committee held that, as the author had not explicitly requested the Committee to conclude that his brother was dead, it was not for it to formulate a finding on article 6.

235. In 2005, the Working Group on Enforced or Involuntary Disappearances received the case of Hatem Al Fathi Al Marghani, who was reportedly held in secret detention by the Libyan Security Services from December 2004 to March 2005. During that period, he was not informed of any charges against him nor brought before a judge. He was allegedly detained for having publicly expressed his dissatisfaction with the arrest and condemnation to execution of his brother on the grounds of endangering State security.⁴⁴³

236. In 2007, the Working Group on Arbitrary Detention reported on the case of Mohamed Hassan Aboussedra, a medical doctor who was arrested by agents of the Internal Security Services in Al-Bayda on 19 January 1989. The agents had no formal arrest warrant and no charges were laid against him. His four brothers were also secretly detained for three years until information was made available that they were detained at Abu Salim prison. On 9 June 2005, Mr. Aboussedra, who was also held at Abu Salim, was moved to an unknown location by agents of the Internal Security Services, in spite of a judicial order for his release. After being sentenced to a prison term of 10 years in 2004, the Appellate Court ordered his release on account of the years that he had already spent in prison, from 1989 until 2005. Mr. Aboussedra was not released, however; he was kept in detention and transferred to an unknown location. He has been

⁴⁴⁰ "Libya: Amnesty International completes first fact-finding mission in five years", Amnesty International news release, 29 May 2009, available from www.amnesty.nl/voor_de_pers_artikel/49650.

⁴⁴¹ Human Rights Watch, "Truth and justice can't wait; human rights developments in Libya amid institutional obstacles", 12 December 2009. See, in particular, chapter VII on the Internal Security Agency.

⁴⁴² See also *Youssef El-Megreisi v. Libyan Arab Jamahiriya*, Human Rights Committee communication No. 440/1990.

⁴⁴³ E/CN.4/2006/56, para. 331.

secretly detained ever since, and has been neither able to consult a lawyer, nor been presented to any judicial authority, nor been charged by the Government with any offence.⁴⁴⁴

237. On 13 October 2009, the experts conducted an interview with Aissa Hamoudi, an Algerian/Swiss national, who was held incommunicado for three months in a prison in the Libyan Arab Jamahiriya without knowing where he was detained. On 18 November 2007, while on a business trip to the country, Mr. Hamoudi was arrested in Tripoli by policemen conducting a simple identity check. After a day spent in police custody, he was handed over to the interior services, who took him to a prison where he was held for three months in a cell with four other men, and interrogated every week, or every other week, on numerous topics. He was asked detailed information about his family, and general questions on his political views, his relationship to Switzerland and other countries. In the last month of his detention, he was left in a cell without a bathroom or water, and had to ask permission for anything he required. In this period, he was not interrogated, but was beaten once when he tried to go on a hunger strike. He was then transferred to the “passports prison”, run by the Exterior Services, which housed around 4,000 detainees, mainly foreigners, waiting to be sent back to their respective countries, where he was held for 10 days in terrible sanitary conditions, but was never interrogated. He witnessed other detainees being tortured, but was not tortured himself. It was here that a representative of the Consulate of Algeria found him, and took steps to initiate his release. He was never charged with anything, and for his entire stay under arrest he was held totally incommunicado. His family did not know where he was, and although he was kept in known places, he was secretly detained.⁴⁴⁵

7. Saudi Arabia

238. Saudi Arabia has a legal limit of six months of detention before trial, but in reality the domestic intelligence agency - the General Directorate for Investigations, or Mahabith, run by the Ministry of the Interior - functions without effective judicial oversight, running its own prisons, which are used to hold both political prisoners and those regarded as being involved in terrorism, and ignoring court orders to release detainees held for longer than the legal limit. In July 2007, the Minister for the Interior admitted that 9,000 “security suspects” had been detained between 2003 and 2007, and that 3,106 of them were still being held.⁴⁴⁶

239. In recent years, United Nations bodies have focused on several cases in Saudi Arabia, including the ones set out below.

240. In 2007, the Working Group on Arbitrary Detention reported that nine individuals - Saud Mukhtar al-Hashimi, Sulaiman al-Rashoudi, Essam Basrawy, Abdulrahman al-Shumairi,

⁴⁴⁴ Working Group on Arbitrary Detention, opinion No. 16/2007 (A/HRC/10/21/Add.1).

⁴⁴⁵ Interview with Aissa Hamoudi (annex II, case 11).

⁴⁴⁶ Amnesty International, “Saudi Arabia, assaulting human rights in the name of counter-terrorism”, available from www.amnesty.org/en/library/asset/MDE23/009/2009/en/692d9e42-b009-462a-8a16-7336ea4dfc3c/mde230092009en.pdf.

Abdulaziz al-Khuraiji, Moussa al-Garni, Abdulrahman Sadeq Khan, Al-Sharif Seif Al-Dine Shahine and, allegedly, Mohammed Hasan al-Qurashi - were arrested on 2 February 2007 by agents of the Intelligence Services (*Mabahith*) in Jeddah and Medina and had been held in incommunicado detention at an unknown location ever since. The arrest of these men, who comprise doctors, academics, businessmen, a lawyer and a retired judge, and are all long-standing advocates of political and social reforms, was ordered by the Ministry of the Interior on the basis of allegations of financing terrorism and illegal activities. At the time of the report, the Government had not refuted the fact that the men had already been held in secret detention for 156 days, and had denied visits, access to a lawyer and the opportunity to question the legality of their detention.⁴⁴⁷

241. The experts conducted an interview with Hassna Ali Ahmed al-Zahrani, the wife of Saud Mukhtar al-Hashimi, a doctor and an advocate for civil and political liberties who, at the time, had been held for two years and nine months, including many months of incommunicado detention. Mrs. al-Zahrani explained that, on the night of 2 February 2007, her husband went out with friends (including a university professor and a judge) to attend a meeting, but never returned. She learned of his arrest when the Minister for the Interior made a public statement regarding arrests after a raid, and spoke to her husband by telephone after 10 days, when he was held in an annex to a prison run by the Public Investigations Unit (PIU). He was then held incommunicado in a PIU prison for five months until she was allowed to meet him, when he told her that he was being held in solitary confinement, and that he was also being interrogated, sometimes at night. Despite being allowed visits from his wife, Mr. al-Hashimi has never been formally charged, has not been allowed access to a lawyer and has not been brought before a judge. The reasons given for his arrest and detention vary, and they include allegations that he has been advocating reform, fund-raising or simply that he is a “suspect”.⁴⁴⁸

8. Syrian Arab Republic

242. When considering the third periodic report of the Syrian Arab Republic, the Human Rights Committee noted with concern the state of emergency that has been in force in the country since 1963, which provides for many derogations in law or practice from the rights guaranteed under articles 9, 14, 19 and 22 of the International Covenant on Civil and Political Rights, without any convincing explanations being given as to the relevance of these derogations to the conflict with Israel and the necessity for these derogations to meet the exigencies of the situation claimed to have been created by the conflict. The Committee also noted that the State party had not fulfilled its obligation to notify other States parties of the derogations it has made and of the reasons for these derogations, as required by article 4 (3) of the Covenant. As a consequence, the Committee recommended that State parties should ensure firstly that the measures it had taken, in law and practice, to derogate from Covenant rights were strictly required by the exigencies of the situation; secondly, that the rights provided for in article 4 (2) of the Covenant were made non-derogable in law and practice; and thirdly, that States parties were duly informed, as

⁴⁴⁷ Working Group on Arbitrary Detention, opinion No. 27/2007 (A/HRC/10/21/Add.1).

⁴⁴⁸ Interview with the wife of Saud Mukhtar al-Hashimi (annex II, case 3).

required by article 4 (3) of the Covenant, of the provisions from which it had derogated and the reasons therefore, and of the termination of any particular derogation.⁴⁴⁹

243. The Human Rights Committee also expressed its concern at continuing reports of torture and cruel, inhuman or degrading treatment or punishment, practices that it found to be facilitated by the resort to prolonged incommunicado detention, especially in cases of concern to the Supreme State Security Court, and by the security or intelligence services. As a consequence, the Committee recommended that the State party should take firm measures to stop the use of incommunicado detention and eradicate all forms of torture and cruel, inhuman or degrading treatment or punishment by law enforcement officials, and should ensure prompt, thorough and impartial investigations by an independent mechanism into all allegations of torture and ill-treatment, prosecute and punish perpetrators, and provide effective remedies and rehabilitation to the victims.⁴⁵⁰

244. The experts note a recent report of Human Rights Watch in which concern is expressed at the current situation of the Kurdish community in the Syrian Arab Republic. The organization affirmed that, inter alia, the Emergency Law had been used to detain a number of leading Kurdish political activists without arrest warrants, and that 30 former Kurdish detainees, who were interviewed for the report, had been held incommunicado at the security branches for interrogations by security forces and that some of them had allegedly been subjected to torture and other forms of ill-treatment, including sleep deprivation and stress positions. Furthermore, it is ascertained that these people were only able to inform their relatives of their whereabouts after being transferred to ordinary prisons. According to the report, this practice has not only been used against Kurdish activists, but also against all political and human rights activists.⁴⁵¹

245. In 2009, the Working Group on Enforced or Involuntary Disappearances transmitted eight cases concerning members of the Kurdish community of Kamishli who had been allegedly abducted in 2008 and whose whereabouts remain unknown.⁴⁵²

246. In the context of the present study, the experts conducted an interview with Maryam Kallis, who was held in secret detention in Damascus from 15 March to 7 June 2009.⁴⁵³ According to her report, Ms. Kallis was held in the basement of a building located in a private area in Baab-Tooma, Damascus, which, she assumed, could have been run by the *Mukhabarat*, the Syrian intelligence services. During this period, Ms. Kallis was taken blindfolded eight to ten

⁴⁴⁹ CCPR/CO/84/SYR, para. 6.

⁴⁵⁰ Ibid., para. 9.

⁴⁵¹ Human Rights Watch, "Group denial, repression of Kurdish political and cultural rights in Syria", 26 November 2009, pp. 44-49. Available from www.hrw.org/en/reports/2009/11/26/group-denial.

⁴⁵² A/HRC/13/31, para. 546.

⁴⁵³ Interview with Maryam Kallis (annex II, case 12).

times to another room of the same building for interrogation and, although not physically assaulted, she suffered mental torture and witnessed scenes of torture where men were beaten with electric rods. Furthermore, on two occasions, she very briefly met with representatives of the British consulate at another venue. She also alleged that her family did not know where she was being held and that, when her husband tried to find out where she was, British authorities had said that they could not disclose the place of detention for two reasons: they had an agreement with the Syrian Arab Republic not to disclose this place and, if they did, Ms. Kallis' sister could go there and put Ms. Kallis' life at risk.

9. Yemen

247. In 2008, the Working Group on Arbitrary Detention reported on the case of Abdeljalil al-Hattar, who was arrested at dawn on 14 December 2007 by political security officers at a mosque in Sana'a, then handcuffed and taken to an unknown location. For two months, he was held incommunicado in cells belonging to the political police. When his family was allowed to visit him, they learned that he had not been brought before a magistrate to be formally charged with any crime, and had not been given access to a lawyer. In its response to the Working Group on 19 November 2008, the Government of Yemen confirmed the arrest of Mr. al-Hattar, citing terrorist activity, but claimed that he had never disappeared and that he would be subject to legal proceedings.⁴⁵⁴

248. The experts interviewed Mr. al-Hattar, who explained that he had been held in incommunicado detention for two months and had been unlawfully detained for a total of 14 months. Asked whether this arrangement of denying visits for the first couple of months was a method regularly adopted by the authorities for detainees, he stated that it varied from person to person, but that weekly visits were the usual arrangement for detainees. He was not aware whether the detention centre had ever been visited by ICRC.

249. Mr. al-Hattar explained that the reason that had been given for his arrest was that he had "hosted a wanted person" who, in fact, "was brought to his home by an acquaintance, but not known to him personally". He stated that it was common local practice to host travellers, but that it was two days after he had hosted this person that he was arrested. He also explained that he understood that his release had been the result of an agreement reached between the Government of Yemen and Al-Qaida, whereby a group of detainees would be released if Al-Qaida ceased its attacks. It was his understanding that it was up to the political security unit to select which detainees would be released under this arrangement; the unit selected persons such as himself who had not been charged and who had been unfairly detained. He added that many young people have been unfairly detained in Yemen.⁴⁵⁵

250. The experts also spoke to another Yemeni subjected to secret detention. A.S. was seized on 15 August 2007 from his home in Sana'a, and held in incommunicado detention for two months in an official prison belonging to the Political Security Body - Intelligence Unit, the political

⁴⁵⁴ Working Group on Arbitrary Detention, opinion No. 40/2008 (A/HRC/13/30/Add.1).

⁴⁵⁵ Interview with Abdeljalil Al-Hattar (annex II, case 1).

security prison in Sana'a. During that time, no one knew his whereabouts and he did not have any access to the outside world, including any access to a doctor, lawyer or ICRC. His family was not able to visit him until two months after his arrest. He was apparently seized because of a call made from his mobile phone by a relative, and was held for another seven months after the initial period of incommunicado detention. He was released on 27 May 2008. In the report on his interview, it was noted that, when he asked on the day of his release why he had been detained, he was simply told that many innocent people were detained, and he could consider himself to be one such person.⁴⁵⁶

E. Sub-Saharan Africa

251. In sub-Saharan Africa, the experts gathered information about the secret detention of political opponents in the Gambia, the Sudan, Uganda and Zimbabwe, where anti-terrorist rhetoric has been invoked. The information collected by the experts also shows the widespread use of secret detention in the Democratic Republic of the Congo, and several long-standing and unresolved cases of secret detention in Equatorial Guinea and Eritrea.

1. Democratic Republic of the Congo

252. In its report of April 2006, the Committee against Torture expressed concern that officials were still depriving people of their liberty arbitrarily, especially in secret places of detention. The Committee took note of the outlawing of unlawful places of detention that were beyond the control of the Public Prosecutor's Office, such as prison cells run by the security services and the Special Presidential Security Group, where people had been subjected to torture. Nevertheless, it remained concerned that officials of the State party were still depriving people of their liberty arbitrarily, especially in secret places of detention.⁴⁵⁷

253. The Agence nationale des renseignements (ANR) and the Republican Guard remain widely reported to severely restrict the safeguards to which detainees are entitled under international law, while at the same time barring any independent monitoring (including by the judiciary), so that detention is effectively secret. Detainees are commonly denied the right to be brought before a judge within the 48-hour time period stipulated by the national Constitution, which has led to a proliferation of detainees who are detained solely on the basis of the *Procès-verbal de saisie des prévenus*, a document issued by the Prosecutor General stipulating that detainees should be informed of their rights and of the charges imputed to them. In relation to ANR facilities, judicial authorities are barred from carrying out inspections, in clear contravention of the laws of the Democratic Republic of the Congo. This state of affairs is compounded by the constant refusal by ANR agents to allow the United Nations Joint Human Rights Office access to their facilities in several parts of the country, particularly Kinshasa, South Kivu, Bas-Congo, North Kivu and Oriental Province, despite the mandate of the United Nations Mission in the Democratic Republic of the Congo and the existence of a directive by President Joseph Kabila dated 5 July 2005 ordering all security forces, intelligence services and judicial authorities to provide

⁴⁵⁶ Interview with A.S. (annex II, case 20).

⁴⁵⁷ CAT/C/DRC/CO/1, para. 7.

unhindered access to Office staff. Likewise, access to detention facilities operated by the Republican Guard continued to be denied to judicial authorities and civil society organizations, as well as to Office staff.⁴⁵⁸

2. Equatorial Guinea

254. In its report on a mission to Equatorial Guinea in July 2007, the Working Group on Arbitrary Detention explained that it was particularly concerned by the practice of secret detention, because it had received information about the kidnapping by Government agents of nationals of Equatorial Guinea, taken from neighbouring countries to Malabo and held in secret detention there. In some cases, the authorities had not acknowledged that the persons in question were held in detention, which meant that, technically, they were considered to be missing.⁴⁵⁹

255. During its mission, the Working Group interviewed four people - Carmelo Ncogo Mitigo, Jesús Michá Michá, Juan Bestue Santander and Juan María Itutu Méndez - who were detained in secret for 18 months before being transferred to Bata. The Working Group also reported that, during their secret detention, the people had worn handcuffs and leg irons, the marks of which the Working Group was able to observe directly.⁴⁶⁰ The people were part of a group of five exiles arrested in Libreville on 3 June 2004 by members of the Gabonese security forces for their alleged participation in the incidents that took place on the island of Corisco in 2004. Ten days after they were apprehended, they were handed over to security officials of Equatorial Guinea and transported in secret to Malabo. No formal extradition proceedings were observed. For one and a half years they were held incommunicado and underwent torture.

256. In 2006, the four were accused of rebellion, but had not been put on trial by the time of the Working Group's mission. Their lawyer explained that he had difficulties meeting with them since he only saw them on the day that they were formally charged.

257. The Working Group also reported that it had been unable to interview four other individuals - Juan Ondo Abaga, Felipe Esono Ntutumu, Florencio Ela Bibang and Antimo Edu Nchama - who, according to a letter they had sent to the Working Group, were kept in a separate wing of the prison at Black Beach. The Working Group added that, according to the complaints received, the four individuals had been transferred to Equatorial Guinea in a military aircraft and imprisoned in Black Beach. They had official refugee status in the countries where they were living (Benin and Nigeria). They were kidnapped and subsequently detained without the benefit of any legal proceedings.⁴⁶¹ In 2008, the Working Group added that the four had continued to be

⁴⁵⁸ Report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo (A/HRC/10/58), paras. 40 and 43.

⁴⁵⁹ A/HRC/7/4/Add.3, para. 69.

⁴⁶⁰ *Ibid.*, paras. 71-72.

⁴⁶¹ *Ibid.*, paras. 69-70.

detained in secret locations until their trial, when they were charged with having posed a threat to State security, rebellion and participation in a coup d'état on 8 October 2004.⁴⁶²

258. The allegations of the secret detention of three of the individuals - Florencio Ela Bibang, Antimo Edu Nchama and Felipe Esono Ntutumu - were confirmed to the Special Rapporteur on torture during his country visit in November 2008. He mentioned several reports indicating that Equatoguinean officials had been involved in, or had themselves committed, kidnapping abroad before transferring the individuals to Equatorial Guinea and holding them in secret and/or incommunicado detention, noting that this had allegedly been the case of three people still being held in secret detention, probably in Black Beach prison, whom the Special Rapporteur was not able to meet because he was unable to gain access to the part of the prison where they were reportedly held. A number of other cases of prolonged secret detention, most often of persons accused of political crimes, were also brought to his attention. The Special Rapporteur interviewed one individual who had been arrested in Cameroon, where he used to live as a refugee some months prior to the visit. He had then been handed over to soldiers of the Equatoguinean Presidential Guard, who took him to Malabo. He was detained incommunicado in solitary confinement, handcuffed and in leg irons. The restraints were removed shortly before the Special Rapporteur arrived.⁴⁶³

3. Eritrea

259. In a report in 2004 by the African Commission on Human and Peoples' Rights, the case of 11 former Eritrean Government officials was discussed, and also examined by the Working Group on Arbitrary Detention. The 11 in question - Petros Solomon, Ogbe Abraha, Haile Woldetsensae, Mahmud Ahmed Sheriffo, Berhane Ghebre Eghzabiher, Astier Feshation, Saleh Kekya, Hamid Himid, Estifanos Seyoum, Germano Nati and Beraki Ghebre Selassie - were arrested in Asmara on 18 and 19 September 2001, after they had been openly critical of the policies of the Government. They were part of a senior group of 15 officials of the ruling People's Front for Democracy and Justice, which, in May 2001, had written an open letter to ruling party members, criticizing the Government for acting in an "illegal and unconstitutional" manner.⁴⁶⁴

260. The Government subsequently claimed that the 11 individuals had been detained "because of crimes against the nations' security and sovereignty", but refused to release any other information about them - either where they were being held, or how they were being treated. In

⁴⁶² Opinion No. 2/2008 (A/HRC/10/21/Add.1).

⁴⁶³ A/HRC/13/39/Add.4, paras. 53-54.

⁴⁶⁴ Seventeenth annual activity report of the African Commission on Human and People's Rights, 2003-2004, annex VII, 250/2002, para.2.

the report, it was noted that their whereabouts was “currently unknown”, although it was suggested that they “may be held in some management building between the capital Asmara and the port of Massawa”.⁴⁶⁵

261. In submitting a claim of *habeas corpus* to the Minister for Justice, the complainants acting on behalf of the 11 asked the Eritrean authorities to reveal where the 11 detainees were being held, to either charge them and bring them to court or promptly release them, to guarantee that none of them would be ill-treated and that they had immediate access to lawyers of their choice, their families and adequate medical care. The Commission reported that “the Complainants allege that no reaction has been received from the Eritrean authorities”.⁴⁶⁶

262. In its opinion No. 3/2002, the Working Group on Arbitrary Detention noted that the 11 were detained in isolation for nine months, in one or more secret locations, where they had no contact whatsoever with lawyers or their families.⁴⁶⁷ By 2003, the African Commission noted that they had then been held in secret detention for more than 18 months, and that the only response from the Government regarding their whereabouts had been a letter from the Ministry of Foreign Affairs on 20 May 2002, stating that they “had their quarters in appropriate Government facilities, had not been ill-treated, have had continued access to medical services and that the Government was making every effort to bring them before an appropriate court of law as early as possible”.⁴⁶⁸

4. Gambia

263. In its submission to the Human Rights Council for the review of the Gambia under the universal periodic review mechanism, Amnesty International demonstrated that, since the failed coup attempt of March 2006, alleged opponents of the regime, including journalists, opposition politicians and their supporters, were routinely unlawfully detained in official places of detention, such as the Mile II State Central Prison, the National Intelligence Agency (NIA) headquarters and police detention centres. Other official places of detention include Banjulinding, a police training centre, and Jeshwang and Janjanbureh prisons in the interior of the country. Others were held in secret detention centres, allegedly including Fort Buling and other military barracks, secret quarters in police stations such as in Bundung, police stations in remote areas such as Sara Ngai and Fatoto, and warehouses, such as in Kanilai. Special units within the NIA, as well as the President’s personal protection officers and members of the army

⁴⁶⁵ Ibid., para.3.

⁴⁶⁶ Ibid., para.4.

⁴⁶⁷ E/CN.4/2003/8/Add.1.

⁴⁶⁸ Seventeenth annual activity report, op.cit., para.12.

and the police, were alleged to have tortured or ill-treated detainees. Torture and other ill-treatment were used to obtain information, as punishment and to extract confessions to use as evidence in court.⁴⁶⁹

264. Yahya Bajinka, a brother of former presidential bodyguard Major Khalipha Bajinka, who was accused of being involved in the March 2006 coup plot, was arrested in April 2007 and held for over a year in secret detention. He is known to have been tortured, and was denied medical attention in an attempt to keep his detention secret in the maximum security wing of Mile II State Central Prison.⁴⁷⁰

5. Sudan

265. Detention of political dissidents, persons suspected of involvement in the activities of rebel groups, and human rights defenders by the National Intelligence and Security Services (NISS) has long given rise to well-documented human rights concerns. In 2007, the Human Rights Committee voiced its concern at the many reports from non-governmental sources of “ghost houses” and clandestine detention centres” in the Sudan.⁴⁷¹ In a report on the human rights situation in Darfur submitted to the Council by seven special procedures mandates holders in September 2007, it was noted that the Government had provided no information with regard to the closure of all unofficial places of detention, and that there seemed to be persistent ambiguity over persons detained under national security laws and the extent to which places of detention were known outside the NISS.⁴⁷²

266. The tenth periodic report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Sudan of November 2008 contained a detailed study of NISS detention practices, including secret detention, based on three years of monitoring by United Nations human rights officers and interviews with many released NISS detainees.⁴⁷³ In June 2009, the Special Rapporteur on the situation of human rights in the Sudan reported that, in northern Sudan, the NISS continued to systematically use arbitrary arrest and detention against

⁴⁶⁹ www.amnesty.org/en/library/asset/AFR27/006/2009/en/14b4f7a1-fc1c-46d6-aabc-74ae3e95e543/afr270062009eng.html.

⁴⁷⁰ www.amnesty.org/en/library/asset/AFR27/001/2008/en/9ec55ad4-ea41-11dc-9a27-819d7db3035f/afr270012008eng.pdf.

⁴⁷¹ Concluding observations of the Human Rights Committee (CCPR/C/SDN/CO/3/CRP.1), para. 22. The Committee referred to the case of the arrests during the protests against the construction of the Kajbar dam in Northern Sudan and noted that, a month and a half since their arrest, the whereabouts of two of the detainees remained unknown.

⁴⁷² A/HRC/6/19, p.69.

⁴⁷³ Tenth periodic report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Sudan, Arbitrary arrest and detention committed by national security, military and police (28 November 2008).

political dissidents. Detainees were often held for several months without charge or access to a lawyer or their families. The locations in which NISS detainees were held sometimes remained unknown.⁴⁷⁴

267. Of particular concern for the purposes of the present study are the cases of the men detained in the aftermath of the attack on Omdurman in May 2008 by rebels belonging to the Darfurian Justice and Equality Movement. Following the attack, Government security forces rounded up hundreds of Darfurians in the capital, the majority of them civilians. In August 2008, it was reported that hundreds of these individuals were still held in undisclosed places of detention and denied all contact with the outside world.

268. The experts interviewed one of the above-mentioned individuals, X.W., who explained that, after being seized at his place of work, he was taken to the NISS Political Bureau of Security Services in Bahri, Khartoum, near the Shandi bus terminal, where he was held in incommunicado detention for nearly two months. Interrogated and tortured for five days, he was then moved from a corridor, where those being interrogated were held, to a large hall where about 200 detainees were held and where the lights were constantly on. Moved to Kober prison in July 2008, he continued to be held in incommunicado detention. X.W. was released in September 2008.⁴⁷⁵

269. While X.W. was at no stage brought before a judge or charged with any offence, many others were brought before special anti-terrorism courts, which imposed death sentences in more than 100 cases. In two communications to the Government of the Sudan, five special procedures mandate holders drew the Government's attention to reliable reports, according to which:

Following their apprehension, the defendants were held without access to the outside world for over one month and were not given access to lawyers until after the trial proceedings opened. Observers at the trials noticed that the defendants looked tired and appeared to be in pain. The defendants complained that they had been subjected to torture or ill-treatment, but the court did not investigate these allegations and refused to grant requests by the defendants' lawyers for independent medical examinations. In reaching their verdicts, the courts relied as evidence primarily on confessions by the defendants, which the defendants said they were forced to make under torture and ill-treatment and which they retracted in court. The court made reference to the Sudanese Evidence Act, which permits the admission to judicial proceedings of statements obtained by unlawful means.⁴⁷⁶

⁴⁷⁴ A/HRC/11/14, para.32.

⁴⁷⁵ Interview with X.W. (annex II, case 21).

⁴⁷⁶ Urgent appeals of 11 August and 24 September 2008, sent by the Special Rapporteur on extrajudicial, arbitrary or summary executions, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of human rights while countering terrorism, the Special Rapporteur on the situation on human rights in the Sudan and the Special Rapporteur on the question of torture, report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/11/2/Add.1), p. 385.

270. No reply to these communications was received from the Government. At the time of writing, the National Assembly was considering a new national security bill, which would confirm the sweeping powers of the NISS, including detention without judicial control for up to 30 days.

6. Uganda

271. In 2004, when the Human Rights Committee addressed claims that “safe houses” were being used by the Government of Uganda as places of unacknowledged detention, where persons had been subjected to torture by military personnel, the Committee expressed its concern that State agents continued arbitrarily to deprive persons of their liberty, including in unacknowledged places of detention, in particular in northern Uganda. It was also concerned about the widespread practice of torture and ill-treatment of persons detained by the military as well as by other law enforcement officials.⁴⁷⁷

272. In 2005, the Committee against Torture followed up on the report of the Human Rights Committee, stating that it had taken note of the explanation provided by the delegation about the outlawing of “ungazetted” or unauthorized places of detention or “safe houses”, where people had been subjected to torture by military personnel. Nevertheless, it remains concerned about the widespread practice of torture and ill-treatment of persons detained by the military and other law enforcement officials.⁴⁷⁸

273. The Committee recommended that the Government of Uganda abolish the use of ungazetted or unauthorized places of detention or “safe houses”, and immediately provide information about all places of detention.⁵⁰⁵

274. The United Nations High Commissioner for Human Rights, in her report on the work of her Office in Uganda, stated that, immediately prior to the elections, in early February 2006, violent incidents were reported, with several people injured or killed in various locations. Opposition politicians, supporters and media personnel were subjected to harassment, arbitrary arrests and detentions by security operatives, including from the Chieftaincy of Military Intelligence and the Violent Crimes Crack Unit, and some elements of the Army. People arrested on charges of treason claimed to have been tortured, or suffered other forms of ill-treatment in ungazetted safe houses.⁴⁷⁹ It was also noted in the report that in June 2006, a spokesperson for the Uganda People’s Defence Force publicly recognized the existence of ungazetted safe houses, arguing their necessity for the purpose of protecting witnesses (protective custody).⁴⁸⁰

275. Nevertheless, in April 2009, Human Rights Watch issued a report in which it indicated that, between 2006 and 2008, at least 106 people had been held in a secret detention centre in

⁴⁷⁷ CCPR/CO/80/UGA, para.17.

⁴⁷⁸ CAT/C/CR/34/UGA, para.7.

⁴⁷⁹ A/HRC/4/49/Add.2, para 5.

⁴⁸⁰ A/HRC/4/49/Add.2, footnote 1.

Kololo, an upmarket suburb of Kampala where many embassies and ambassadors' residences are located, and where the use of torture was commonplace. The report was based on a detailed analysis of the activities of the Joint Anti-Terrorism Task Force (JATT), established in 1999 primarily to deal with the threat posed by the Allied Democratic Forces (ADF), a Ugandan rebel group based in the Democratic Republic of the Congo. However, as Human Rights Watch explained, under the cover of its mandate to deal with terrorism, "individuals allegedly linked to other groups, such as Al-Qaida, have also suffered at the hands of JATT".⁴⁸¹

276. Moreover, although the Rwandan newspaper the *New Times* reported on 19 July 2006 that Kyanjo Hussein, the shadow Minister for Internal Affairs had told a meeting of the Parliamentary Committee of Internal Affairs and Defence in July 2006 that JATT was holding 30 Rwandan and Congolese detainees,⁴⁸² and former detainees also told Human Rights Watch about non-Ugandans held in Kololo for long periods of time, and explained that "they saw foreigners, such as Somalis, Rwandans, Eritreans and Congolese, in the JATT compound", it appears that the majority of cases involved terrorism - and, specifically, fears of terrorist activities organized by Muslims, who make up 12 per cent of the population of Uganda. Human Rights Watch noted that, "of the 106 named individuals detained by JATT documented by Human Rights Watch, all but two were Muslim".⁴⁸³

277. Of the foreigners held specifically in connection with terrorism, the most prominent examples are two South Africans citizens, Mufti Hussain Bhayat and Haroon Saley, who were arrested at Entebbe Airport on 18 August 2008 and taken to Kololo. Although the men's capture received significant news coverage in Uganda and South Africa, they were held in Kololo for 11 days without charge, and were only freed - and deported - when their lawyer secured a *habeas corpus* hearing. Relating his experience afterwards, Mr. Bhayat stated that "questions were read from a roll of fax paper from an unknown source", which suggests that JATT was also working with the intelligence services of other countries.⁵¹¹

7. Zimbabwe

278. In Zimbabwe, in 2008, an election year that was marked by extensive human rights abuses resulting in "at least 180 deaths, and at least 9,000 people injured from torture, beatings and other violations perpetrated mainly by security forces, war veterans and supporters of the Zimbabwe African National Union (ZANU-PF)",⁴⁸⁴ the Government also seized at least 24 human rights defenders and political activists, and their family members, held them in

⁴⁸¹ Human Rights Watch, "Open secret: illegal detention and torture by the Joint Anti-Terrorism Task Force in Uganda", April 2009. Available from www.hrw.org/node/82082.

⁴⁸² Charles Kazooba and Jumah Senyonga, "Ugandan MP exposes Rwandan illegal arrests in Kampala", *New Times*, 19 July 2006.

⁴⁸³ Human Rights Watch, *op. cit.*

⁴⁸⁴ Amnesty International report on Zimbabwe (2009), available from <http://report2009.amnesty.org/en/regions/africa/zimbabwe>.

incommunicado detention for up to seven months, and then put them on trial for acts of sabotage, banditry and terrorism against the Government, which was a clear manipulation of terrorist-related rhetoric for political ends.

279. Those seized included Broderick Takawira, Pascal Gonzo and Jestina Mukoko, the director of the Zimbabwe Peace Project (ZPP) and a well-known human rights campaigner, whose case was considered by the Working Group on Enforced or Involuntary Disappearances.⁴⁸⁵ From January to September 2008, ZPP catalogued 20,143 crimes committed by those working for the Government, including 202 murders, 463 abductions, 41 rapes, 411 cases of torture and 3,942 assaults.⁴⁸⁶ Ms. Mukoko was taken from her home by armed men at daybreak on 3 December 2008, and later testified that she was held in secret locations, where she was tortured in an attempt to extract a false confession. She said that her captors made her kneel on gravel and repeatedly beat her on the soles of her feet with rubber truncheons during interrogations.⁴⁸⁷

280. Other people seized included Chris Dhlamini, an aide to the leader of the opposition and Prime Minister in waiting, Morgan Tsvangirai, who was seized from his home on 25 November 2008. Mr. Dhlamini stated that he was detained in Goromonzi Prison Complex until 22 December 2008, but was moved, at various times, to undisclosed locations, where he was “subjected to extreme forms of torture to extract false information and confessions”. He recalled being “suspended from a considerable height” and beaten all over his body with what felt like a tin full of stones. Describing another incident, he explained, “I was lifted up and my head was submerged in the sink and held there for long periods by someone, in a mock drowning, which is another severe form of torture (waterboarding) to which I was subjected during my unlawful abduction and detention. This mock drowning went on and on, until I felt that I was on the verge of dying.”⁴⁸⁸

⁴⁸⁵ A/HRC/13/31, para. 629.

⁴⁸⁶ Jenny Booth, “Zimbabwe human rights activist Jestina Mukoko taken back to jail”, *Times*, 5 May 2009. Available from <http://www.timesonline.co.uk/tol/news/world/africa/article6225536.ece>.

⁴⁸⁷ See the affidavit of Jestina Mukoko at the address http://graphics8.nytimes.com/packages/pdf/world/2009/JM_Affidavit.pdf.

⁴⁸⁸ See the affidavit of Chris Dhlamini at the address http://graphics8.nytimes.com/packages/pdf/world/2009/CD_affidavit.pdf. See also those of Chinoto Zulu, at http://graphics8.nytimes.com/packages/pdf/world/2009/AFFIDAVIT_OF_CHINOTO_MUKWEZARAMBA_ZULU.pdf; of Gandhi Mudzingwa, at http://graphics8.nytimes.com/packages/pdf/world/2009/AFFIDAVIT_OF_GANDI_MUDZINGWA.pdf; of Zachariah Nkomo, at http://graphics8.nytimes.com/packages/pdf/world/2009/AFFIDAVIT_OF_ZACHARIAH_NKOMOMO.pdf; and of Andrison Manyere, at http://graphics8.nytimes.com/packages/pdf/world/2009/Andrison_Manyere_Affidavit.pdf. Jestina Mukoko also explained that two of her ZPP colleagues, Broderick Takawira and Pascal Gonzo, were held in cells near her own in one of the places of secret detention in which she was held.

281. Those who were seized mostly reappeared in a number of police stations in Harare on or around 23 December 2008, after being handed over by the men who abducted them, who were reportedly members of the security forces. They were then held in police detention, and were charged in May 2009. Jestina Mukoko and eight others were cleared of the terrorism charges against them by the Zimbabwean Supreme Court on 28 September 2009. In a blow to Ms. Mukoko's abductors, the court ruled that "the State, through its agents, violated the applicant's constitutional rights protected under the constitution of Zimbabwe to an extent entitling the applicant to a permanent stay of criminal prosecution associated with the above violations".⁴⁸⁹

VI. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

282. **International law clearly prohibits secret detention, which violates a number of human rights and humanitarian law norms that may not be derogated from under any circumstances. If secret detention constitutes enforced disappearances and is widely or systematically practiced, it may even amount to a crime against humanity. However, in spite of these unequivocal norms, secret detention continues to be used in the name of countering terrorism around the world. The evidence gathered by the four experts for the present study clearly shows that many States, referring to concerns relating to national security - often perceived or presented as unprecedented emergencies or threats - resort to secret detention.**

283. **Resorting to secret detention effectively means taking detainees outside the legal framework and rendering the safeguards contained in international instruments, most importantly *habeas corpus*, meaningless. The most disturbing consequence of secret detention is, as many of the experts' interlocutors pointed out, the complete arbitrariness of the situation, together with the uncertainty about the duration of the secret detention and the feeling that there is no way the individual can regain control of his or her life.**

284. **A comparison of past and more recent practices of secret detention brings to the fore many common features, despite considerable variations in political and social contexts.**

1. Emergency contexts

285. **States of emergency, international wars and the fight against terrorism - often framed in vaguely defined legal provisions - constitute an "enabling environment" for secret detention. As in the past, extraordinary powers are today conferred on authorities, including armed forces, law enforcement bodies and/or intelligence agencies, under states of emergency or global war paradigms either without or with very restricted control mechanisms by parliaments or judicial bodies. This thus renders many, or even all, of the safeguards contained in criminal law and required by international human rights law**

⁴⁸⁹ "Zimbabwe: Jestina Mukoko - 'Not bitter, but better'", IRIN, 1 October 2009. Available from www.irinnews.org/Report.aspx?ReportId=86392.

ineffective. In some States, protracted states of emergency and broadly defined conflicts against vaguely conceived enemies have tended to turn exceptional, temporary rules into the norm.

2. Intelligence agencies

286. In many contexts, intelligence agencies operate in a legal vacuum with no law, or no publicly available law, governing their actions. Although intelligence bodies are not authorized by legislation to detain persons, they do so many times, sometimes for prolonged periods. In such situations, there are either no oversight and accountability mechanisms at all, or they are severely restricted, with limited powers, and hence ineffective.

3. International cooperation

287. From operation Condor in South America through to the global CIA network, secret detention has relied on systems of trans-border (regional or global) cooperation. This means that, in many instances, foreign security forces may operate freely in the territory of other States. It also leads to the mutual exchange of intelligence information between States, followed by its use for the purpose of detaining or trying the person before tribunals, the proceedings of which do not comply with international norms, often with reference to State secrets, making it impossible to verify how the information was obtained.⁴⁹⁰ A crucial element in international cooperation, be it in the methods of operation Condor of the 1970s or the current policies of “extraordinary rendition”, is the transfer of alleged terrorists to other countries, where they may face a substantial risk of being subjected to torture and other cruel, inhuman and degrading treatment in contravention of the principle of non-refoulement. Worse, in some cases, persons have been rendered to other countries precisely to circumvent the prohibition of torture and “rough” treatment. Practices such as “hosting” secret detention sites or providing proxy detention have, however, been supplemented by numerous other facets of complicity, including authorizing the landing of airplanes for refuelling, short-term deprivation of liberty before handing over the “suspect”, the covering up of kidnappings, and so on. With very few exceptions, too little has been done to investigate allegations of complicity.

288. While the experts welcome the cooperation extended by a number of States, including through the responses submitted by 44 of them to the questionnaire, they express their regret that, although States have the obligation to investigate secret detention, many did not send responses, and a majority of those received did not contain sufficient information. A lack of access to States’ territories also meant that a number of interviews had to be conducted by telephone or Skype, with those interviewed fearing being monitored.

⁴⁹⁰ A/61/259, paras. 44-65.

4. Torture and cruel, inhuman and degrading treatment

289. Secret detention as such may constitute torture or ill-treatment for the direct victims as well as for their families. As many of the interviews and cases included in the present study illustrate, however, the very purpose of secret detention is to facilitate and, ultimately, cover up torture and inhuman and degrading treatment used either to obtain information or to silence people. While in some cases elaborate rules have been put in place to authorize “enhanced” techniques that violate international standards of human rights and humanitarian law, most of the time secret detention has been used as a kind of defence shield to avoid scrutiny and control, as well as to make it impossible to learn about treatment and conditions during detention.

5. Impact on other human rights and freedoms

290. The generalized fear of secret detention and its corollaries, such as torture and ill-treatment, tends to effectively result in limiting the exercise of a large number of human rights and fundamental freedoms, including freedom of expression and freedom of association. This fear often goes hand in hand with the intimidation of witnesses, victims and their families. Moreover, independent judiciaries and secret detention can hardly coexist; several examples identified by the experts indicated that the broader use of secret detention tends to lead to attempts to either influence or, worse, silence judges who take up cases of secret detention.

6. Witness protection and reparation

291. The experts are extremely concerned that many victims of secret detention from countries around the world indicated that they feared reprisals personally or against their families if they cooperated with the study and/or allowed their names to be used. The injustice done by secretly detaining somebody is prolonged and replicated all too frequently once the victims are released, because the State concerned may try to avoid any disclosure about the fact that secret detention is practiced on its territory. In almost no recent cases has there been any judicial investigation into allegations of secret detention, and practically no one has been brought to justice. Although many victims feel that secret detention has “stolen” years of their lives (the experts learned about one anonymous case of 30 years) and left an indelible mark, often in terms of loss of their jobs and frequently their health, they have almost never received any rehabilitation or compensation.

B. Recommendations

292. On the basis of the above conclusions, the experts put forward the recommendations set out below. In practice, concrete measures will need to be taken, depending on the specific context:

(a) Secret detention should be explicitly prohibited, along with all other forms of unofficial detention. Detention records should be kept, including in times of armed conflict as required by the Geneva Conventions, including with regard to the number of detainees, their nationality and the legal basis on which they are being held, whether as prisoners of war or civilian internees. Internal inspections and independent mechanisms should have

timely access to all places where persons are deprived of their liberty for monitoring purposes at all times. In times of armed conflict, the location of all detention facilities should be disclosed to the International Committee of the Red Cross;

(b) Safeguards for persons deprived of their liberty should be fully respected. No undue restrictions on these safeguards under counter-terrorism or emergency legislation are permissible. In particular, effective *habeas corpus* reviews by independent judicial bodies are central to ensuring respect for the right to personal liberty. Therefore, domestic legislative frameworks should not allow for any exceptions from *habeas corpus*, operating independently from the detaining authority and from the place and form of deprivation of liberty. The study has shown that judicial bodies play a crucial role in protecting people against secret detention. The law should foresee penalties for officials who refuse to disclose relevant information during *habeas corpus* proceedings;

(c) All steps necessary to ensure that the immediate families of those detained are informed of their relatives' capture, location, legal status and condition of health should be taken in a timely manner;

(d) Any action by intelligence services should be governed by law, which in turn should be in conformity with international norms. To ensure accountability in intelligence cooperation, truly independent intelligence review and oversight mechanisms should be established and enhanced. Such mechanisms should have access to any information, including sensitive information. They should be mandated to undertake reviews and investigate upon their initiative, and to make reports public:

(e) Institutions strictly independent of those that have been allegedly involved in secret detention should investigate promptly any allegations of secret detention and "extraordinary rendition". Those individuals who are found to have participated in secretly detaining persons and any unlawful acts perpetrated during such detention, including their superiors if they ordered, encouraged or consented to secret detentions, should be prosecuted without delay and, where found guilty, given sentences commensurate with the gravity of the acts perpetrated;

(f) The status of all pending investigations into allegations of ill-treatment and torture of detainees and detainee deaths in custody must be made public. No evidence or information that has been obtained by torture or cruel, inhuman and degrading treatment may be used in any proceedings;

(g) Transfers or the facilitation of transfers from one State to the custody of authorities of another State must be carried out under judicial supervision and in line with international standards. The principle of non-refoulement of persons to countries where they would be at risk of torture or other inhuman, cruel or degrading treatment must be honoured;

(h) Victims of secret detention should be provided with judicial remedies and reparation in accordance with relevant international norms.⁴⁹¹ These international standards recognize the right of victims to adequate, effective and prompt reparation, which should be proportionate to the gravity of the violations and the harm suffered. As families of disappeared persons have been recognized as victims under international law, they should also benefit from rehabilitation and compensation;

(i) States should ratify and implement the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Given that the Optional Protocol to the Convention against Torture requires the setting-up of monitoring systems covering all situations of deprivation of liberty, adhering to this international instrument adds a layer of protection. States should ratify the Optional Protocol and create independent national preventive mechanisms that are in compliance with the Paris Principles (Principles relating to the status of national institutions), and ratify the International Convention for the Protection of All Persons from Enforced Disappearance. Other regional systems may wish to replicate the system put in place by the Inter-American Convention on Forced Disappearance of Persons;⁴⁹²

(j) Governments have an obligation to protect their citizens abroad and provide consular protection to ensure that foreign States comply with their obligations under international law, including international human rights law;

(k) Under international human rights law, States have the obligation to provide witness protection. Doing so is indeed a precondition for effectively combating secret detention.

⁴⁹¹ Articles 2.3. and 9.5 of the International Covenant on Civil and Political Rights and article 14.1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. See also the relevant standards contained in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34), and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by the General Assembly in its resolution 60/147.

⁴⁹² Article XIV stipulates that “when the Inter-American Commission on Human Rights receives a petition or communication regarding an alleged forced disappearance, its Executive Secretariat shall urgently and confidentially address the respective government, and shall request that government to provide as soon as possible information as to the whereabouts of the allegedly disappeared person together with any other information it considers pertinent, and such request shall be without prejudice as to the admissibility of the petition.”

Annex I

SUMMARY OF GOVERNMENT REPLIES TO QUESTIONNAIRE

	Country	Response
1.	Albania	<ul style="list-style-type: none"> • No instances of secret detention in the penitentiary system • No involvement or collaboration in secret detention on the territory of another State • No further comments on effectiveness of secret detention or other counter-terrorism measures or on past experiences with secret detention
2.	Algeria	<ul style="list-style-type: none"> • No instances of secret detention or facilities for secret detention as a means to counter terrorism. • Places of custody exist within the levels of the national security service, the police service and the Department of Intelligence and Security. The sites are controlled by personnel who hold the rank of an officer within the criminal investigation department, and who will be subject to legal responsibility for disciplinary and penal sanctions, in the event they act outside of, or in violation of, legal procedures. • All sites of police custody are placed under the control of the public prosecutor (civil or military) which carries out regular and unannounced inspections. • The penitentiaries are placed under the authority of relevant personnel of the Ministry of Justice, who will be held personally liable at a disciplinary and penal level in the event of violation of the governing rules of detention applicable to both accused and convicted detainees. Such establishments are controlled by magistrates and the heads of the administration of penitentiaries. • Noted that, pursuant to an accord signed with the Ministry of Justice, the ICRC has visited penitentiaries since 1999; and since 2003 has been allowed unannounced visits to places of police custody. Also, the penitentiary establishments are accessible to civil society; regular visits are carried out by the national commission for promotion of human rights, by NGOs, UNDP and UNICEF. • There are various codes which comprise a legal framework for sites of police custody and penitentiaries, and the Penal Code provides for sanctions for persons who violate the laws,

	Country	Response
		<p>such as illegal or arbitrary detention or ill-treatment.</p> <ul style="list-style-type: none"> • No involvement or collaboration in secret detention on the territory of another State. • Secret detention is not used by the police services of Algeria. The law precludes such practice. The methods for dealing with terrorism are within a strict legal framework, with investigations to be carried out within allowed time limits, and with magistrates being informed. In an emergency situation in the context of counter-terrorism which threatens the public order, a presidential decree may be made of a State of Emergency, notified to the UN, authorizing the Minister of Interior to take measures of house arrest as administrative internment. It is in this context, controlled by presidential decree, that such rare and exceptional measures may be taken. This is believed to be an effective measure in the efforts against terrorism.
3.	Armenia	<ul style="list-style-type: none"> • No instances of secret detention in the penitentiary system • No involvement or collaboration in secret detention on the territory of another State. • No further comments on effectiveness of secret detention or other counter-terrorism measures or on past experiences with secret detention.
4.	Austria	<ul style="list-style-type: none"> • No instances of secret detention in the penitentiary system • No involvement or collaboration in secret detention on the territory of another State. • Recalled the position it took as Presidency of the Council of the European Union from the beginning of 2006 in emphasizing the absolute necessity for adhering to all existing standards of human rights law and international humanitarian law in the context of the fight against terrorism. • On 21 November, 2005, the Secretary General of the Council of Europe initiated an inquiry directed at all CoE member States where member States were asked how their internal law ensured the effective implementation of the ECHR on four issues relevant to secret detention in countering terrorism. Austria furnished a comprehensive answer to this inquiry in February, 2006.

	Country	Response
5.	Bahrain	<ul style="list-style-type: none"> • No instances of secret detention under Bahraini law to counter terrorism. The criminal procedure code, in accordance with the Constitution, sets out requirements which preclude the lawfulness of secret detention. Anti-terrorism legislation regulates procedures for the investigation and arrest of persons accused or suspected of involvement in terrorism. Further, Bahraini law guarantees the rights of persons who are arrested or remanded in custody, including the right to communicate with family members and lawyers prior to detention. • No involvement or collaboration in secret detention on the territory of another State. Noted that Bahrain has signed numerous international counter-terrorism agreements and extradition agreements, which involve procedures which are applied in conformity with the Constitution and domestic law. Bahrain has signed extradition treaties with Egypt and ratified an agreement between the States of Gulf Cooperation Council concerning the transfer of persons sentenced to deprivation of liberty. • Any alternatives to secret detention must be consistent with the UN conventions which have been ratified by Bahrain. • No history of secret detention practices. However, Bahrain has fully co-operated with respect to counter-terrorism efforts, including having signed numerous international covenants on counter-terrorism. Co-operation must be carried out within the framework of international conventions.
6.	Bangladesh	<ul style="list-style-type: none"> • No instances of secret detention in the penitentiary system as a means to counter terrorism. Constitutional law and the criminal procedure set out requirements which preclude lawfulness of secret detention. • No involvement or collaboration in secret detention on the territory of another State. • Suggests surveillance and advance intelligence as an alternative to secret detention as a means of countering terrorism. • No comment on past experiences with secret detention, as it is unlawful in Bangladesh. •

	Country	Response
7.	Belarus	<ul style="list-style-type: none"> • No information on any persons who have been secretly detained in the territory of the state. • No involvement or collaboration in secret detention on the territory of another State. • No comment on past experiences with secret detention
8.	Bolivia	<ul style="list-style-type: none"> • No information on any persons who have been secretly detained in the territory of the state. • No involvement or collaboration in secret detention on the territory of another State. Such practices are not permitted under Bolivian law. • Secret detention is not an effective means of countering terrorism and runs counter to human rights obligations. • No history of secret detention practices. The current situation of terrorism in Bolivia has been dealt with within a legal framework and any actions taken are in the public knowledge, internationally and nationally.
9.	Botswana	<ul style="list-style-type: none"> • No instances of secret detention in the penitentiary system as a means to counter terrorism. Constitutional law and the criminal procedure set out requirements which preclude lawfulness of secret detention. • No involvement or collaboration in secret detention on the territory of another State. • No further comments on effectiveness of secret detention or other counter-terrorism measures or on past experiences with secret detention. •
10.	Bulgaria	<ul style="list-style-type: none"> • No instances of secret detention in the penitentiary system as a means to counter terrorism. • No involvement or collaboration in secret detention on the territory of another State. • No further comments on effectiveness of secret detention or other counter-terrorism measures or on past experiences with secret detention.

	Country	Response
		<ul style="list-style-type: none"> •
11.	Chad	<ul style="list-style-type: none"> • The Constitution of Chad guarantees the protection of human rights, including the protection of life and liberty, and against torture and degrading treatment. Referred to Chad's ratification of various international instruments relating to counter-terrorism. The Chad Penal Code also punishes terrorist acts. • No instances of secret detention, nor do secret detention facilities exist as a means to counter terrorism. There is the National Security Agency which is charged with responsibility for this domain. • No information on collaboration with other governments on involvement or participation in secret detention of suspected terrorists in other states.
12.	Croatia	<ul style="list-style-type: none"> • No instances of secret detention in the penitentiary system as a means to counter terrorism. • No involvement or collaboration in secret detention on the territory of another State. • No further comments on counter-terrorism measures. Detention per se is clearly regulated within Croatian legislative framework, including the sanctions for any possible misuse and/or illegal detention • No further comments or on past experiences with secret detention. Serious infringements of human rights, as well as a one dimensional approach to countering terrorism in past years, have only helped terrorist propaganda. Therefore, Croatia stresses the need for counterterrorism compliance with international law.
13.	Cyprus	<ul style="list-style-type: none"> • No instances of secret detention in the penitentiary system as a means to counter terrorism. • No involvement or collaboration in secret detention on the territory of another State. • No further comments on counter-terrorism measures (no terrorist incidents have occurred in the past 20 years in Cyprus) or on past experiences with secret detention.

	Country	Response
14.	Finland	<ul style="list-style-type: none"> • No instances of secret detention or facilities as a means to counter terrorism. Finland has consistently emphasized the need to respect human rights while countering terrorism. • A reference has once been made to the landing of a cargo aircraft on 16 May 2003. Permission had been granted because it had been designated by the US declaration as an aircraft used for the carriage of cargo. • Finnish legislation contains provisions which control acts of foreign agencies, and affords safeguards against unacknowledged deprivation of liberty. • The Sentences Enforcement Decree prohibits detention in a penal institution without a written order, and the identity of the prisoners is always verified; this applies to both Finnish nationals and foreigners. • No person suspected of involvement in terrorism have been placed in Finnish prisons or transported on the order of the Prison Service in Finland; nor is there any information that any official or person acting officially has been involved in the unacknowledged deprivation of liberty or the transport of persons so deprived. • No instances of experiences where secret detentions have been an effective or acceptable measure in countering terrorism. • The Finnish Penal Code provides for definition of terrorist offences and for the right of the Prosecutor General to make decisions in relation to the bringing of charges. • No experiences of secret detention in past domestic, regional or global counter-terrorism context.
15.	Germany	<ul style="list-style-type: none"> • No instances of secret detention in the penitentiary system as a means to counter terrorism. • No involvement or collaboration in secret detention on the territory of another State. Respect for human rights is a constitutional mandate. • Germany does not regard secret detention as an effective tool in countering terrorism and emphasizes that terrorism must be dealt with in compliance with democratic principles, rule of

	Country	Response
		<p>law, human rights and international obligations.</p> <ul style="list-style-type: none"> • No further comments on past experiences with secret detention. • Germany referred to the case of Mr. Murat Kurnaz. It reported that the German Federal Ministry of Justice became aware of this case on 26 February 2002, when the Chief Federal Prosecutor informed the Ministry that it would not take over a preliminary investigation pending before the Prosecution of the Land of Bremen. Germany also indicated that the Office of the Chief Federal Prosecutor had received a report from the Federal Criminal Police Office on 31 January 2002, that, according to information by the Federal Intelligence Service, Mr. Murat Kurnaz had been arrested by United States officials in Afghanistan or Pakistan. • Germany also referred to the case of Mr. Khaled El-Masri. It reported that, on 8 June 2004, the Federal Chancellery and the Federal Foreign Office received a letter from his lawyer indicating that Mr. El-Masri had been abducted in the former Yugoslav Republic of Macedonia on 31 December 2003, presumably transferred to Afghanistan and kept there against his will until his return to Germany on 29 May 2004. It also indicated that the Federal Ministry of Justice was informed about these facts on 18 June 2004.
16.	Greece	<ul style="list-style-type: none"> • No instances of secret detention in the penitentiary system as a means to counter terrorism. • No involvement or collaboration in secret detention on the territory of another State. • No further comments on effectiveness of secret detention or other counter-terrorism measures or on past experiences with secret detention.
17.	Iraq	<ul style="list-style-type: none"> • Response received; currently with the translation services;
18.	Ireland	<ul style="list-style-type: none"> • No instances of secret detention in the penitentiary system as a means to counter terrorism. • No involvement or collaboration in secret detention on the territory of another State. • The Constitution of Ireland provides that "No person shall be deprived of his personal liberty save in accordance with

	Country	Response
		<p>law''. The deprivation of a person's liberty can only take place in defined circumstances, and there is no concept in Irish law of a detention which is simultaneously both lawful and secret.</p> <ul style="list-style-type: none"> • No further comments on effectiveness of secret detention or other counter-terrorism measures or on past experiences with secret detention.
19.	Italy	<ul style="list-style-type: none"> • Italy's legal system is designed to ensure the effective framework of guarantees protective of human rights; after 9/11 Italy adopted urgent measures to combat terrorism, updating anti-terrorist legislation. • Italy referred to the case of Hassam Osama Mustafa Nasr (Abu Omar) with regard to whom a judicial investigation had been initiated, involving the committal of 26 people for trial who had served at the Italian Intelligence and Military Service. The trial is ongoing. Under Act No. 124, the Services were suppressed, while their tasks were placed under the responsibility of the President of the Council of Ministers, as the National Authority for the Security. It is envisaged that a legal excuse available to personnel would be that the activities are considered critical for pursuing institutional objectives. State secrecy has also be redefined by limiting its application, particularly to be in line with certain values (integrity; protection of constitutional institutions; protection of the independence of the state; protection of the military defense). The Criminal Procedure Code has also been reformulated to provide for a privilege for civil servants to plead state secrets to avoid having to testify in relevant cases. However, there is scope for the Judicial Authority to apply to the Constitutional Court to examine documents covered by state secrecy. • Secret detention is not considered to be an effective tool to counter terrorism. • Italy is not in a position to provide specific relevant practice.
20.	Jamaica	<ul style="list-style-type: none"> • Jamaica supports the efforts of the United Nations in general, and the Special Rapporteurs in particular, to promote and protect human rights and fundamental freedoms, whilst also countering the dangers of terrorism. • Have never engaged in the practice of secret or any other type

	Country	Response
		<p>of detention of terrorist subjects.</p> <ul style="list-style-type: none"> • To date, including over the time period specified, no individual has been arrested, charged or suspected of terrorism or terrorist activity.
21.	Japan	<ul style="list-style-type: none"> • No instances of secret detention in the penitentiary system as a means to counter terrorism. • No involvement or collaboration in secret detention on the territory of another State. • No further comments on effectiveness of secret detention or other counter-terrorism measures or on past experiences with secret detention.
22.	Lebanon	<ul style="list-style-type: none"> • (Translated from Arabic) No instances of “arbitrary” detention in the penitentiary system as a means to counter terrorism. • Under the laws in force, suspects are detained pursuant to a warrant issued by the competent judicial authorities, which oversee all stages of investigations. No suspects have been held in “incommunicado” detention. • No one, acting in cooperation with any foreign ally, has participated in, or facilitated the incommunicado detention in Lebanon of any person suspected of engaging in terrorist activities. • No information is available on the use of forcible detention in the context of countering terrorism at the local, regional or international levels.
23.	Liechtenstein	<ul style="list-style-type: none"> • No instances of, or involvement in, secret detention as a means to counter terrorism, either actively or passively. Unlawful detention is a crime which is prosecuted, and if a suspicion of unlawful secret detention by a domestic or foreign authority or service in Liechtenstein were to have arisen, the Office of the Public Prosecutor would be required to immediately initiate a judicial investigation into an offense of deprivation of liberty, as there no lawful exception which is applicable to the secret services which would otherwise limit the Prosecutor’s obligation to prosecute. • No involvement or collaboration in secret detention on the

	Country	Response
		<p>territory of another State.</p> <ul style="list-style-type: none"> • No experiences in countering terrorism can be mentioned where secret detention has been considered as an effective tool. • Promotion and protection of human rights constitutes one of the priority areas in Liechtenstein's foreign policy, and it regards full respect of human rights as a vital element to ensure the effectiveness of any counter terrorism measure. •
24.	Mauritius	<ul style="list-style-type: none"> • No instances of secret detention in the penitentiary system as a means to counter terrorism. • No involvement or collaboration in secret detention on the territory of another State. • The Constitution guarantees the protection of the right to liberty, entitling all persons who have been detained with the right to inform his/her relatives/friend and the right to a visit. As to measures to combat terrorism - the Prevention of Terrorism Act 2002 does not provide for "secret detention" but does allow for "incommunicado detention" for up to 36 hours with access only to a Police Officer of a certain rank. • It is believed that as a counter-terrorism measure, the Prevention of Terrorism Act 2002 falls within the International Human Rights framework.
25.	Mexico	<ul style="list-style-type: none"> • No instances of secret detention in the penitentiary system. Even within the context of military detentions, there is a requirement to keep a register of all detainees, and there are procedural safeguards against secret detentions. • No involvement or collaboration in secret detention on the territory of another State. • No further comments on effectiveness of secret detention or other counter-terrorism measures or on past experiences with secret detention.
26.	Moldova	<ul style="list-style-type: none"> • No instances of secret detention in the penitentiary system • No involvement or collaboration in secret detention on the

	Country	Response
		<p>territory of another State.</p> <ul style="list-style-type: none"> • No further comments on effectiveness of secret detention or other counter-terrorism measures or on past experiences with secret detention.
27.	Montenegro	<ul style="list-style-type: none"> • No information or evidence that persons suspected of terrorism have been arrested or detained on the territory of Montenegro or that they have been secretly detained. The relevant authorities or institutions do not possess information about potential arrest or secret detention of those suspected of terrorism, nor about any such imprisonment and/or arrest resulting in death or violence. • No facilitation of secret detention. • As to counter-terrorism measures, a number of laws have been passed which sanction the criminal act of terrorism and provide for identification of such perpetrators and establish institutional bodies responsible for detection, investigation and decision making in cases of suspected terrorist acts. • Emphasizes that Montenegro is a member of CAT, OPCAT and the European Convention.
28.	Paraguay	<ul style="list-style-type: none"> • No information on any instances of secret detention. All arrests should be carried out within the legal framework. • Paraguay does not have any specific anti-terrorism laws, so that all crimes are dealt with in accordance with the Penal code. There is a draft law currently being considered in relation to anti-terrorism measures. • No information of any secret detention facilities, nor are there any plans for construction of such sites. • No involvement or collaboration in secret detention on the territory of another State. • Emphasizes Paraguay's compliance with its international human rights obligations.
29.	Peru	<ul style="list-style-type: none"> • The Ministry of Interior has no knowledge of any instances of secret detention in the penitentiary system, nor any facilities for secret detention. • No involvement or collaboration in secret detention on the

	Country	Response
		<p>territory of another State.</p> <ul style="list-style-type: none"> • No, secret detention is not an effective measure in countering terrorism. There has been no case in which such secret detention has been effective. Peru emphasizes its compliance with all international obligations. • There is legislation allowing police to arrest persons who are caught in the act of committing a crime. They are informed of the reason for the arrest, presumed innocent, have a right to physical integrity, and right to lawyer and doctor, and to communicate with family and friends. There are also requirements which arise in cases where police carry out an arrest pursuant to an arrest warrant: to inform the person of the reasons for the arrest; to inform the magistrate, the reason of detention and which authority had ordered the arrest; report the arrest to the magistrate who needs to put the detainee before the judge who issued the arrest warrant; and to inform the detainee of their rights.
30.	Philippines	<ul style="list-style-type: none"> • Facilities and practices of secret detention; such practices contravene the Constitution which expressly prohibits secret, solitary and incommunicado detention and torture, and are not used. Specific laws provide penalties for those who violate requirements in relation to the arrest, interrogation and detention of those suspected of terrorism.
31.	Poland	<ul style="list-style-type: none"> • On 11 March 2008, the district Prosecutor's Office has instituted proceedings on the alleged existence of secret CIA prisons in Poland. This was referred to the Appellate Prosecutor Office on 1 April 2009. The prosecutors are gathering evidence which is considered secret or classified. • To ensure the proper course of the proceedings, the prosecutors are bound by confidentiality and cannot reveal the findings. Once the proceedings are completed and the findings are made public, the Government may respond.
32.	Romania	<ul style="list-style-type: none"> • No instances of secret detention in the penitentiary system • No involvement or collaboration in secret detention on the territory of another State • No further comments on effectiveness of secret detention or other counter-terrorism measures or on past experiences with secret detention.

	Country	Response
33.	Russian Federation	<ul style="list-style-type: none"> • No instances of secret detention in the Russian system • No involvement or collaboration in secret detention on the territory of another State • All detentions fall within the supervision of the Federal penitentiary and the Ministry of Interior. • From 2007-2016 there is a program being undertaken to improve detention conditions. • The office of the General Prosecutor supervises situations of detention, and if there is a violation, it is reported. • No further comments on effectiveness of secret detention or other counter-terrorism measures or on past experiences with secret detention.
34.	Singapore	<ul style="list-style-type: none"> • Singapore does not practice secret detentions at all, either alone or in collaboration with its allies. • Singapore's approach to detection and rehabilitation of terrorists, used effectively, with two-thirds of terrorists arrested since 2001 having been released and reintegrated back into society, has involved: <ul style="list-style-type: none"> • A legislative framework defining the mandate and powers of the intelligence agencies, ensuring accountability. • the Internal Security Act provides for powers of preventative detention for security threats, outside of criminal laws, with: <ul style="list-style-type: none"> • built-in procedural safeguards including a review panel overseen by a Supreme court judge; and a right given to the President to overrule Government decisions on detention. • Initial detention beyond 48 hours must be approved by a Superintendent of Police and reported to the Commander of Police. • Any detention under the ISA beyond 30 days must be approved by the Minister of Home Affairs and permission be given by the President. • Once detained under the ISA, detention is reviewed every 12 months.

	Country	Response
		<ul style="list-style-type: none"> • Rights of detainees: to written reasons for detention (within 14 days) and right to appeal, and right to representation. • Family members are informed and given the right to reach the detainee (within the first 30 days subject to non-interference with the investigation; thereafter, regularly) • Justices of the Peace and community members form a Board of Inspection which is allowed to make unannounced visits to the detention centers.
35.	Slovakia	<ul style="list-style-type: none"> • No instances of secret detention in the penitentiary system • No involvement or collaboration in secret detention on the territory of another State. • In 2006, Slovakia responded to the inquiry of the Council of Europe's investigation into allegations of unlawful and unacknowledged detentions. • Slovakian authorities are constrained by the rule of law and in particular the Constitution. Unlawful deprivation of liberty, interrogation or torture would attract criminal liability. Persons charged with terrorist offences must be dealt with in accordance with the criminal procedures. • Activities of foreign intelligence services on Slovakian territory are monitored by the two national intelligence agencies, which are subject to Parliamentary control.
36.	Slovenia	<ul style="list-style-type: none"> • No instances of secret detention in the penitentiary system • No involvement or collaboration in secret detention on the territory of another State • No further comments on effectiveness of secret detention or other counter-terrorism measures or on past experiences with secret detention.
37.	Spain	<ul style="list-style-type: none"> • No instances of secret detention in the penitentiary system and no secret facilities. • No involvement or collaboration in secret detention on the territory of another State. • No further comments on effectiveness of secret detention or other counter-terrorism measures as Spain has no past

	Country	Response
		experiences with secret detention. Secret detention is incompatible with Spain's domestic legislation.
38.	Suriname	<ul style="list-style-type: none"> • No instances of secret detention in the penitentiary system • No involvement or collaboration in secret detention on the territory of another State • No further comments on effectiveness of secret detention or other counter-terrorism measures or on past experiences with secret detention.
39.	Syrian Arab Republic	<ul style="list-style-type: none"> • There are no secret prisons or detention centres in Syria. There are no cases of secret detention and no individuals are arrested without the knowledge of the competent authorities. • No authorization has been granted to the security service of any foreign state to establish secret detention facilities in Syria. • A number of foreign individuals were arrested in Syria at the request of other States, who were informed of the legal basis for the arrests and their places of detention. These States were also informed whether the individuals concerned were brought before the Courts or transferred outside of Syria. • Individuals belonging to different terrorist groups have been prosecuted and detained in public prisons, in compliance with the relevant international standards. They will be judged by the competent judicial authorities. Court proceedings will be public and will take place in the presence of defense lawyers, families, human rights activists and foreign diplomats. Some will be publicized through the media. • The Interpol branch within the Security Service of the Ministry of Interior cooperates with international Interpol branches with regard to suspected terrorist and other criminal activities.
40.	Switzerland	<ul style="list-style-type: none"> • The practice of secret detention is never used, and no facility for such detention exists in Switzerland. Such detention is not permitted by Swiss law. • The Swiss Constitution guarantees the rights of persons deprived of their liberty, and detention must be carried out strictly in accordance with prescribed requirements, including: being informed of the reasons of detention; make a

	Country	Response
		<p>call to a lawyer; and inform family/friends; being brought before a judge; to be judged without unreasonable delay.</p> <ul style="list-style-type: none"> • The Swiss Penal Code criminalizes abductions and detention without legal basis, and unlawful forced transportation is punishable as a crime, as are attempts or participation in such acts. Also, Switzerland complies with its obligations under the 1963 Vienna Convention in relation to the detention/arrest of foreigners, such that in the case of arrest/detention of foreigners, the person has a right to inform the diplomatic embassy. Persons who have been illegally detained have recourse before an independent tribunal. • No further comments on effectiveness of secret detention or other counter-terrorism measures or on past experiences with secret detention.
41.	Trinidad and Tobago	<ul style="list-style-type: none"> • The practice of secret detention is not used, and no facility for such detention exists. • Anti-Terrorism Act 2005 regulates treatment of persons suspected of terrorist acts. This provides for a process for seeking a detention order to be granted by a judge in chambers, with the consent of the Director of Public Prosecution. Detention is for an initial period of up to 48 hours, and extended for up to 14 days. Records to be kept of the place and periods of detention. • No history of using secret detention to counter terrorism.
42.	United Kingdom	<ul style="list-style-type: none"> • The Government is not aware of any cases of individuals having been secretly detained in facilities on UK territory. In February 2008, the US informed the UK government (contrary to previous assurances otherwise) that it had used the UK Overseas Territory of Diego Garcia to refuel rendition flights. The US has given assurances that there have been no other such incidents since September 2001, and have assured the UK that there would be no rendition through UK territory without express permission, which would only be granted if satisfied that it would accord with UK law and international obligations. • The Intelligence and Security Committee is charged with oversight of the policy of the intelligence and security agencies. It has produced reports on the ways in which the agencies seek to ensure that they do not contribute to the detention of individuals outside of a legal framework. In one

	Country	Response
		<p>of the reports, the agencies refer to the fact that the US is clearly holding some Al-Qaida members in detention, but the details and location have not been disclosed to the UK, although the intelligence gathered from interrogation of such detainees has been used by the UK agencies.</p> <ul style="list-style-type: none"> • By mid-2003 suspicions arose regarding the operation of black sites, so the UK agencies sought Ministerial approval and assurances from foreign liaison agencies if there was a risk of rendition operations arising from their operations. After April 2004 (Abu Ghraib revelations), in view of the known risk of mistreatment in operations which may result in US custody of detainees, the UK agencies sought assurances of humane treatment in any operation which may involve rendition/US custody. • No further comments on effectiveness of secret detention or other counter-terrorism measures or on past experiences with secret detention.
43.	United States of America	<ul style="list-style-type: none"> • The Obama Administration has adopted the following specific measures: • Instructed the CIA to close as expeditiously as possible any detention facilities that it currently operated as of 22 January 2009 and ordered that the CIA shall not operate any such detention facility in the future. • Ordered that the Guantanamo Bay detention facility be closed as soon as practicable. • Required the International Committee of the Red Cross (ICRC) to be given notice and timely access to any individual detained in any armed conflict in the custody or under the effective control of the United States Government, consistent with Department of Defense regulations and policies. • Ordered a comprehensive review of the lawful options available to the Federal Government with respect to detention of individuals captured or apprehended in connection with armed conflicts and counterterrorism operations. • Reaffirmed that all persons in U.S. custody must be treated humanely as a matter of law. • Mandated that detention at Guantanamo conform to all applicable laws governing conditions of confinement,

	Country	Response
		<p>including Common Article 3 of the Geneva Conventions, and directed a review of detention conditions at Guantanamo to ensure such compliance.</p> <ul style="list-style-type: none"> • Ordered a review of United States transfer policies to ensure that they do not result in the transfer of individuals to other nations to face torture or otherwise for the purpose, or with the effect, of undermining or circumventing the commitments or obligations of the United States to ensure the humane treatment of individuals in its custody or control. The resulting Task Force on transfer practices recommended to the President in August that (1) the State Department be involved in evaluating all diplomatic assurances; (2) the Inspectors General of the Departments of State, Defense, and Homeland Security prepare an annual report on all transfers relying on assurances; and (3) mechanisms for monitoring treatment in the receiving country be incorporated into assurances. • Announced the transfer of at least seven detainees from military custody to U.S. criminal law enforcement proceedings, and transferred 25 detainees to date to third countries for repatriation or resettlement. • Worked with Congress to revise U.S. laws governing military commissions to enhance their procedural protections, including prohibiting introduction of evidence obtained as a result of cruel, inhuman, or degrading treatment. • Expanded the review procedures for detainees held by the Department of Defense in Afghanistan in order to enhance the transparency and fairness of U.S. detention practices. Detainees are permitted an opportunity to challenge the evidence that is the basis for their detention, to call reasonably available witnesses, and to have the assistance of personal representatives who have access to all reasonably available relevant information (including classified information). Proceedings generally shall be open, including to representatives of the ICRC, and possibly to non-governmental organizations. • Established more tailored standards and rigorous procedures for evaluating assertions of the State secrets privilege, including establishing an internal accountability mechanism, ensuring that the privilege is never asserted to avoid embarrassment or conceal violations of law, and creating a

	Country	Response
		<p>referral mechanism to the Office of Inspector General where the privilege is asserted but there is credible evidence of a violation of law. These standards and procedures were established in order to strike a better balance between open government and the need to protect vital national security information.</p> <ul style="list-style-type: none"> • The Department of Justice initiated a preliminary criminal investigation into the interrogation of certain detainees. • The Government indicated that these measures cumulatively seek to reaffirm the importance of compliance with the rule of law in U.S. detention practices, to ensure U.S. adherence to its international legal obligations, and to promote accountability and transparency in this important area of national security policy.” The Government also noted that some of the specific information requested in the questionnaire implicates national security issues and that, although considerable amounts of information have been declassified, certain information will not be released for valid security reasons, subject to extensive oversight to ensure compliance with the law.
44.	Venezuela	<ul style="list-style-type: none"> • No instances of secret detention in the penitentiary system • No involvement or collaboration in secret detention on the territory of another State. • No further comments on effectiveness of secret detention or other counter-terrorism measures or on past experiences with secret detention. • Venezuela noted that secret detentions are contrary to its domestic legislation and Constitution. Domestic provisions specifically provide for safeguards against such secret detention and further criminalize enforced disappearances and set out criminal sanctions for such an offence.

Annex II

In August 2009, the experts corresponded with 19 countries across all geographic regions of the world with a request to conduct an official visit to the countries concerned in order to conduct private interviews with persons believed to have been formerly held in secret detention. As one of the essential objectives of the joint study is to better understand - and ultimately redress - the plight of the victims, the experts wanted to engage directly with relevant sources. The experts wish to thank the Government of Germany and the United Kingdom of Great Britain and Northern Ireland for extending an invitation to visit. Visits to these two States were undertaken between September and November 2009 for the purpose of conducting interviews. The experts were unfortunately unable to visit other States due to the fact that invitations were either not extended or they were advised that a visit for such a purpose could not be arranged by the concerned State. In an effort to get direct information from persons who reportedly had been secretly detained, the experts did conduct a number of interviews by telephone and/or interviewed legal counsel or family members as some of these persons are still in detention or hospitalized and unable to communicate directly. In total, the experts conducted 30 interviews with individuals from various nationalities and regions around the world. This Annex contains 24 case summaries of interviews conducted. Six interviews were excluded as they were determined either not to be within the scope of this study or the information provided was not sufficiently detailed and precise to be included.

CASE SUMMARIES

Case 1 - Biographic details	
Name of interviewee	Mr. Abdeljalil Al-Hattar*
Nationality/country of origin	Yemen
Gender	Male
Detention	
Date of initial detention 14 December 2007	
Location of initial detention Arrested at a mosque in Sana'a district, Yemen.	
Grounds of initial detention Told during interrogation that he had been arrested on suspicion of having harboured a wanted person.	
The authority(ies) involved in the detention Yemeni Political Security Officers	
Total period of detention 14 months (14 December 2007 to February 2009)	
Duration of secret detention Approximately the first 2 months (14 December 2007 to February 2008)	
Site(s) of detention, including sites of possible transit Initially detained at a mosque in Sana'a district, Yemen, and then subsequently taken to the Political Security Unit's premises in Sana'a district, Yemen, where he was detained for a further 1 year and 2 months.	
Conditions and treatment Interrogated during the first seven days of detention. No physical coercion was used. No	

complaints generally about interrogation methods used. He had no access to a lawyer, judge nor doctor during the entire period of his detention.

Judicial proceedings

Never formally charged, never brought before a judge.

Date of release

February 2009. He was released without an apology or compensation. To date, he has not filed a complaint.

Additional Information

His arrest and detention created some personal problems. He had been due to be married four days after the arrest, and also, he had applied for a government job at the time.

* Information contained is from an interview with interviewee and other credible sources.

Case 2- Biographic details	
Name	Mr. Suleiman Abdallah*
Nationality/country of origin	Tanzania
Gender	Male
Detention	
Date of the initial detention	
March 2003	
Location of the initial detention	
Mogadishu, Somalia	
Grounds of detention	
No charges were ever brought against him.	
The authority(ies) involved in the arrest/detention	
<u>Somalia:</u> He was arrested by team of Mohammed Dere, a notorious warlord allegedly working for the United States.	
<u>Kenya:</u> He was held by the Kenyan police in Nairobi and was interrogated by the CIA and the FBI.	
<u>Somalia:</u> In Bosaso, he was guarded by Somali soldiers.	
<u>Afghanistan:</u> In Afghanistan, he was guarded by Afghan soldiers and interrogated by officials from the CIA. The Prison of Darkness was allegedly run by the CIA and the Salt Pit by the FBI.	
Site(s) held in detention, including sites of possible transit	
<ol style="list-style-type: none"> 1. Mogadishu, Somalia in March 2003 (one day) 2. Jail near an airport in Nairobi, Kenya 3. Bosaso, Somalia; Djibouti (one day) 4. "Dark Prison", Afghanistan (two months) 5. "Salt pit", Afghanistan (14 months) 6. Bagram Airforce Base, Afghanistan (four years and two months) 7. Dar es Salaam, Tanzania via Dubai, United Arab Emirates (one day) 	
Total period of detention	
More than five years (March 2003 - November 2008)	
Duration of secret detention	
Same as above	

Conditions and treatment

Upon his arrest in Mogadishu, he was beaten by four men, resulting in broken fingers and teeth. Afterwards, he was forcibly taken to a hospital, then blindfolded and taken to the airport, where he was flown to Nairobi.

In Nairobi, he was held in a room with no bed and tiny windows. He was interrogated by the police and taken to the hospital. There, he was visited by officers who identified themselves as belonging to the FBI. After eight days in Nairobi, he was taken to an airport with the same CIA agents who had taken him from Mogadishu. They tied his hands and legs, blindfolded him, and beat him on his ears. He was flown to Bosaso, Somalia, where he was taken to a boarding house and forced to sit on the floor, surrounded by four armed soldiers.

The following day, he was flown to Djibouti. On the flight, he was blindfolded, his feet were shackled and he was chained to the floor of the plane. He was not allowed to sleep, and he was hit on his ears every time he started to sleep. He was kept in a building at the airport. Some people held them while another man cut his clothes off and raped him. Afterwards, he was put in a diaper, hooded, cuffed, shackled and put on another plane to Kabul, Afghanistan. Upon landing, he was taken to the Prison of Darkness. At the prison, he heard strange voices in several languages, including Kiswahili and Somali, saying things such as “there is no God, no God, no God.” He was taken to an interrogation room, where his entire body was shaved by the interrogators in an aggressive and humiliating manner. He was kept in a stress position, chained to a wall, in a tiny, dark room in solitary confinement. Freezing water was poured on him; he was often forcibly naked, beaten and raped with foreign objects. He was kept in solitary confinement for two months, in complete darkness and with very loud music playing constantly. The interrogators would hang him from the ceiling in the “strapado” position, so that only his toes touched the floor. The guards were Afghans. He was fed only every two days, and was given pills on a regular basis. He was approached by some people carrying ICRC badges who asked for his personal information, including his mother’s address, but he refused to give them the information since he believed they were CIA agents.

Around September 2004, he was taken to the “Salt pit”, an underground prison run by the FBI. There was constant light, and the Afghan guards would sometimes urinate on the detainees’ food. He had no contact with his family, and he was visited several times by two FBI agents. After 14 months, FBI officers came to the prison, took his photograph, shackled him with fiberglass cuffs and blindfolded him. He was taken by helicopter and upon arrival in Bagram, he was chained and handcuffed, and his eyes were covered with glasses. He was also made to stand in a box and the rules were extremely strict. After bathing in the open, he was blindfolded and taken to an interrogation room. The interrogators were US officials. After he refused to answer their answers, he was slapped by one of the interrogators and dragged down the staircase to a wooden cage, where he was forced to stay for approximately one week. He was then transferred to another cage, where his blindfold was finally removed. He was first able to see other detainees, but the cages were later sealed so that the detainees could not see any other people. He was constantly harassed by the soldiers guarding the prison and bright lights were constantly kept on. The common practice was for the guards to use teargas on all detainees if one of them caused a problem. Mr. Abdallah suffered from acute headaches but was not taken to see a psychiatrist, like other detainees. During his detention in Bagram, he did not have contact with his family. Women and children, as young as twelve were also detained there.

In November 2008, he was flown to Dar es Salaam and held for interrogation overnight.

Date of release November 2008.
Additional information After three years in detention, he sent a letter to his mother via the ICRC. Starting at the end of 2006, he was visited by the ICRC three or four times. After his release, Mr. Abdallah has only been able to eat fruit, as solid food makes him vomit. He experiences pain in his back, jaw and teeth. He constantly feels dizzy and confused during the day and has nightmares at night.

* Information contained is from a phone interview with interviewee and other credible sources.

Case 3 - Biographic details	
Name of interviewee	Mr. Saud Mukhtar Al-Hashimi*
Nationality/country of origin	Saudi Arabia
Gender	Male
Detention	
Date of initial detention 2 February 2007	
Location of initial detention Jeddah, Saudi Arabia	
Grounds of initial detention He was arrested as part of a group of nine persons demanding political change. These individuals were accused of having supported and financed terrorism, and were conducting illegal activities of raising and transferring funds to suspicious parties.	
Total period of detention From 2 February 2007 until present. He was in detention at the time of this interview.	
Duration of secret detention First 10 days.	
The authority(ies) involved in the arrest Officers of the Public Investigations Unit, Saudi Arabia	
Site(s) of detention, including sites of possible transit He was held in premises of the Public Investigations Unit in Jeddah. For the first ten days he was held in a building annexed to the public prison, and then moved to the public prison.	
Conditions and treatment He was held in solitary confinement since the beginning of the detention period, without any contact with other detainees. He was interrogated from time to time. Communication with his wife (visits and telephone calls) was sometimes suspended as punishment, including in one instance, for a period of 5 months, and another period of 8 months. He was beaten three times.	
Judicial proceedings Never formally charged, never brought before a judge	
Date of release He remains in detention.	

* Information contained is from an interview with the wife of the interviewee, Mrs. Hassna Ali Ahmed Al Zahrani, and other credible sources.

Case 4 - Biographic details	
Name	Mr. Bisher Al-Rawi*
Nationality/country of origin	Iraq
Gender	Male
Detention	
<p>Date of the initial detention 8 November 2002</p> <p>Location of the initial detention Banjul, the Gambia</p> <p>Grounds of detention No charges were ever brought against him.</p> <p>The authority(ies) involved in the arrest/detention <u>Gambia</u>: He was detained by officers from the Gambian Intelligence Agency and subsequently kept in custody by Gambian authorities. <u>Afghanistan</u>: Afghani authorities. He was interrogated by American officials, including officials from the CIA, the MI5 and foreign counter intelligence delegations from Tunisia, Syria, and Libya, among others.</p> <p>Site(s) held in detention, including sites of possible transit</p> <ol style="list-style-type: none"> 1. Safe houses in a residential area in Banjul, the Gambia 2. "Dark Prison", Afghanistan 3. Bagram, Afghanistan 4. Guantanamo Bay <p>Total period of detention More than four years (8 November 2002 to 30 March 2007)</p> <p>Duration of secret detention Safe houses in a residential area in Banjul, the Gambia (one month); "Dark Prison" (three weeks) and Bagram, Afghanistan (one month); and Guantanamo Bay (four years).</p> <p>Conditions and treatment In <u>Banjul</u>, he was first allowed to be free inside the safe houses. He was later placed in a wooden cage. On the <u>flight to Afghanistan</u>, he was blindfolded, hooded, handcuffed and his feet were shackled. At the "<u>Dark Prison</u>", an old detention center, there was no light or heating. The guards all wore hoods and never spoke. On the first day, he was placed in a dark cell and the handcuffs and hood were eventually removed. He was kept in that cell, which measured approximately 5 x 9 feet for three weeks. It had a steel door, a bucket, an old piece of carpet and a rusty steel bar. He was kept in the cold and had to wear diapers. Loud music was played continuously. The only light he saw was the torches carried by the guards when they gave him food, which was on average less than once per day. He was kept incommunicado and was not interrogated during this time. On around 22 December, two American and two Afghan guards went into his cell, chained his hands behind his back and hooded him. He was taken away on a helicopter to <u>Bagram, Afghanistan</u>. He was held at an old factory, which was used as a secret detention facility. He spent the first three days and several weeks after in isolation. At Bagram, he was subjected to sleep deprivation for up to three days and threats. He was subjected to almost daily, long interrogations, and he was always handcuffed, hooded and shackled. He was transferred to <u>Guantanamo Bay</u> through a rendition flight on 7 February 2003. During the trip, which lasted 24 hours, he was handcuffed, had goggles covering his eyes and his feet</p>	

were shackled. He underwent multiple interrogations and was kept in isolation for three weeks. Date of release 30 March 2007.
Additional information
While in Bagram, he was able to meet with the ICRC and send letters to his family through them.

* Information contained is from an interview with interviewee and other credible sources.

Case 5 - Biographic details	
Name of interviewee	Mr. Maher Arar*
Nationality/country of origin	Canadian (national of the Syrian Arab Republic)
Gender	Male
Detention	
Date of initial detention 26 September 2002	
Location of initial detention John F. Kennedy Airport, New York, United States of America (he was in transit on the way home to Canada, following a visit to Tunisia)	
Grounds of initial detention He was detained on the basis of information provided by the Royal Canadian Mounted Police (RCMP) that he was a suspected terrorist and a possible member of the Muslim Brotherhood and/or Al-Qaida. Formal charges were never filed in Canada, the USA or the Syrian Arab Republic.	
The authority(ies) involved in the detention He was detained and interrogated by officials from the United States of America based on unverified information provided by the RCMP. He was deported by US authorities and transferred to Jordanian officials and then turned over to the Syrian authorities, including the Syrian military intelligence who held him under special powers given to the National Intelligence Services.	
Total period of detention From 26 September 2002 to 5 October 2003.	
Duration of secret detention Approximately 1 month, from 26 September 2002 to end of October 2002.	
Site(s) of detention, including sites of possible transit	
1. On 26 September 2002, he was detained at JFK airport, NY, USA and held in the Metropolitan Detention Centre in Manhattan for eleven days (26 September to 7 October 2002).	
2. On 8 October 2002, he was transported to the Syrian Arab Republic, via 2 stopovers in Rome, Italy and Amman, Jordan. During this time he was chained and shackled in the back of a plane.	
3. He saw a photo of President Assad which indicated to him he was in the Syrian Arab Republic. He was later told that he was in Far Falestin detention centre. He was held here for 10 and half months.	
4. On 20 August 2003, he was transferred to Sednaya Prison in Syria until his release on 5 October 2003.	

Conditions and treatment

From the USA to Jordan - He was put on a private plane and chained and shackled. He arrived in Jordan blindfolded and said he was repeatedly hit on the back of his head by Jordanian guards.

In transit from Jordan to the Syrian Arab Republic - He was blindfolded and “bundled” into a van and driven fast over bad roads. From time-to-time he was struck by one of the guards.

In Far Falestin detention centre, the Syrian Arab Republic - He was kept in a tiny cell, roughly seven feet high by six feet long by three feet wide. The cell contained only two thin blankets and a “humidity isolator” as well as two bottles, “one for water and one for urine”. There was an opening in the middle of the ceiling, roughly one foot by two feet. There was no light in the cell at all, except what filtered through from the opening in the ceiling. He recalled two or three times when cats urinated through that opening. The cell was damp and very cold in winter and stifling in summer. He was known to guards only by his cell number: two. The first and official recognition of his detention occurred about three weeks after his deportation to Syria (end of October 2002) with a consular visit by Canadian authorities. He received approximately half a dozen consular visits while in detention but was not allowed to receive visits from anyone other than consular officials.

Treatment during interrogations at Far Falestin detention centre -

On 8 October 2002, Mr. Arar was taken for questioning from around 8:00 pm to midnight. He was questioned by a man named “George”, who Mr. Arar later discovered was George Salloum, the head of interrogation at Far Falestin. There was no physical violence during this interrogation, but there were ominous threats. If he was slow to answer, “George” said that he would use “the chair” which Mr. Arar did not understand, but assumed to be a form of torture.

On 9 October 2002, he was called up for interrogation which lasted roughly 10 hours. When “George” arrived, he immediately started hitting him. The chair on which Mr. Arar was sitting was taken away, so that he was now on the floor. Mr. Arar interpreted it as a form of humiliation - lowering the status of the detainee in respect of the interrogators. “George” brought with him into the room a black cable, which might have been a shredded electrical cable. It was about two feet long. It was probably made of rubber, but was not hollow.

Mr. Arar says that as soon as he saw the cable he started to cry. George told Mr. Arar to open his right hand. George then raised the cable high and brought it down hard. He stood up and started jumping, but was forced back down and the process was repeated with his left hand.

Again Mr. Arar jumped up. No question had yet been asked. From then on, Mr. Arar was forced to stand near the door, and the questions began. The constant theme was “you are a liar”. He was given breaks and put in another room where he could hear other people screaming. Sometimes he was blindfolded and left to stand in the hallway for an hour or more listening to the screams of women being beaten and the cries of the babies that some of the women had with them in the detention centre. When he was brought back into the interrogation room, he would be beaten about the upper body and asked more questions.

Mostly, he was asked about his relations with various people. On 11 October 2002, this was the most intensive interrogation as he was questioned for sixteen to eighteen hours, with great physical and psychological abuse. Mr. Arar was beaten with the black cable on numerous occasions throughout the day, and threatened with electric shocks, “the chair” and “the tire”. The pattern was for Mr. Arar to receive three or four lashes with the cable, then to be questioned, and then for the beating to begin again. After a while, he became so weak that he was disoriented. Mr. Arar remembers wetting himself twice during this questioning. He had to wear the same clothes for the next two and a half months. He was humiliated. After these three

days of beatings the interrogation became less intense physically. There was much less use of the cables, and more punching and hitting. By the 16 or 17 October, the beatings diminished but the threats intensified, so that the psychological pressure was extreme. The “chair” was also invoked to scare him. At the end of each interrogation session an interrogator would say “tomorrow will be tough” or “tomorrow will be worse for you”. Mr. Arar found it almost impossible to sleep for more than two or three hours a night.

Sednaya Prison - He said conditions were “like heaven” compared to those in Far Falestin.

Judicial proceedings

In the Syrian Arab Republic - on the day prior to his release, over a year after his initial detention, he was taken before a Supreme State Security Court. He was never tried or convicted of any offence. Canadian officials were not notified of this court date and no lawyer was present. He was not sure what took place this day, if it was an actual trial, no one ever advised him of the charges against him and he was not convicted of any offence.

In Canada - On 28 January 2004, the Government of Canada announced that a Public Commission of Inquiry would be established to examine the actions of Canadian officials, including the detention and deportation of Mr. Arar in the countries concerned, namely in relation to the United States of America, Jordan and Syria. The Commissioner’s report was released on 18 September 2006.** The Commission found that the treatment and conditions of Mr. Arar in Far Falestin detention centre in Syria constituted torture as understood in international law. Upon the conclusion of the Inquiry Mr. Arar received an official apology from the Prime Minister of Canada and 10.5 millions dollars (Cdn) in compensation in addition to one million Cdn dollars to cover the costs of his legal fees.

Date of release

On 5 October 2003, Mr. Arar was released from custody after signing a “confession” given to him in court by a Syrian prosecutor. He returned to Canada on 6 October 2003.

Additional Information

Mr. Arar experiences serious psychological effects from his detention and torture in Syria. Since his release, Mr. Arar has a deep sense of isolation from the Muslim community. Since returning to Canada, he has had difficulty finding a job, despite having a degree in computer engineering and a Masters in telecommunications. This has had a devastating effect upon both his psychological state and economically. Mr. Arar’s relationships with members of his immediate family have been significantly impaired. He feels guilty about how he now relates to his own family. He often feels emotionally distant and preoccupied with his own concerns.

* Information contained is from an interview with the interviewee’s legal representative, Mr. Lorne Waldman, and other credible sources.

** The Commissioner’s report was released on 18 September 2006, following a Commission of Inquiry. The Toope Report, released on 14 October 2005, was requested by the Commissioner of the Inquiry to determine the treatment of Mr. Arar while in detention in Jordan and Syria. The reports are available at:

http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/maher_arar/07-09-13/www.ararcommission.ca/eng/index.htm.

Case 6 - Biographic details	
Name	Mr. Moazzam Begg*
Nationality/country of origin	United Kingdom

Gender	Male
Detention	
<p>Date of the initial detention 31 January 2002</p> <p>Location of the initial detention Islamabad, Pakistan</p> <p>Grounds of arrest No charges were ever brought against him.</p> <p>The authority(ies) involved in the arrest/detention <u>Islamabad</u>: Abducted by unidentified sources, although American officers dressed as Pakistanis were in the vehicle at the time of arrest. <u>Kandahar</u>: The detention facility was run by the US military.</p> <p>Site(s) held in detention, including sites of possible transit</p> <ol style="list-style-type: none"> 1. Detained in Islamabad, Pakistan. 2. On 21 February, he was taken to a military airport near Islamabad and handed over to American officers. He was flown to Kandahar, Afghanistan, on an American military plane, along with six other detainees. 3. The detention facility in Kandahar was located next to an airport. 4. In Bagram, Afghanistan, he was held at a remodeled warehouse. 5. On 7 February 2003, he was transferred to Guantanamo Bay. <p>Total period of detention Mr. Begg was detained since January 2002 for nearly three years.</p> <p>Duration of secret detention Three weeks in Islamabad (31 January - 21 February 2002) Guantanamo (February 2003 - January 2005)</p> <p>Conditions and treatment During his detention in <u>Islamabad</u>, he was taken to meet with American and British Intelligence officers in a different venue. He was not beaten and the Pakistan officials indicated that he had been arrested based on an American instruction. During the <u>flight to Kandahar</u>, he was held on the floor in a painful position and received threats from soldiers. He was hooded, shackled and handcuffed. He was hooded and shackled to the floor during the <u>flight to Bagram</u>. The cells had dim light and loud music was played all the time. Religious duties were forbidden as was all communication between detainees; it was thought that they could communicate with each other if they prayed. He was not taken outside except for during a few minutes on some occasions. Since he was considered a “High Value Detainee” (HVD) at <u>Guantanamo Bay</u>, he was held in secret detention in one of the two cells at Camp Echo. The ICRC was denied access to him due to “military necessity”. He was later moved to the “Secret Squirrel” unit, a place where HVD were secretly kept under the custody of the CIA.</p> <p>Judicial proceedings He was denied access to a lawyer or consular services during his detention in Islamabad. His wife filed a writ of habeas corpus to find out his whereabouts but the Government denied the arrest.</p> <p>Date of release</p>	

January 2005.

Additional information

In Kandahar, he spent the first 4 weeks in solitary confinement in a metallic barn divided into six cells. He was later held with other detainees. He was held in incommunicado detention for two months, although he was visited by the ICRC. He was subjected to heavy torture and was interrogated, sometimes naked, by the FBI, the CIA, military intelligence and the MI5.

In Bagram, he was subjected to systematic interrogations, during which he was shackled, and subjected to physical and psychological tortures such as a mock rape of his wife. He also witnessed two detainees being beaten to death. If the interrogators did not hear what they wanted, he was taken out of the interrogation room, beaten by someone other than the interrogators, and then taken back. He was held in solitary confinement during the initial 6 weeks, and later in communal cells “where detainees were treated like animals”. In Bagram, he was visited by the ICRC and could send letters to his family through them.

After his release, he was sent back to the United Kingdom, but he did not have his passport until mid-2009.

* Information contained is from an interview with interviewee and other credible sources.

Case 7 - Biographic details

Name of interviewee	Mr. Abou Elkassim Britel*
Nationality/country of origin	Moroccan and Italian
Gender	Male

Detention

Date of initial detention

10 March 2002

Location of initial detention

Lahore, Pakistan

Grounds of initial detention

His initial detention was on the grounds of immigration matters. The second period of detention was carried out on the ground of suspicion of his involvement in bombings in Casablanca.

The authority(ies) involved in the detention

First Period of Detention

In Pakistan - Pakistani immigration officers, Pakistani officials and United States officials, including FBI agents.

In Morocco - Moroccan officers (including the Moroccan secret service) and United States officials.

Second Period of Detention

In Morocco - he was detained by Moroccan officers, this time en route to Italy, and was again transferred into the hands of the Moroccan secret service agency, the Direction de la Surveillance du Territoire. He was subsequently transferred to a public prison. He remains imprisoned in Ain Bourja prison Casablanca, Morocco.

Total period of detention

Two periods of detention:

1. Approximately one year (10 March 2002 to February 2003)

2. From 16 May 2003 until present.

Duration of secret detention

1. During the first period of detention: the entire period, approximately one year.
2. During the second period of detention: approximately 4 months (16 May 2003 to 16 September 2003).

Site(s) of detention, including sites of possible transit

First Period of Detention

1. Initially detained at Lahore, in a police station.
2. Transferred to a detention centre in Islamabad, and transported on four occasions to a villa run by US officials, Islamabad.
3. Transferred on a private airplane and handed into the custody of Moroccan officials.
4. Detained in a facility run by the Moroccan secret service agency, the Direction de la Surveillance du Territoire, in Témara, Morocco.

Second Period of Detention

1. Detained in Melilla, and again held at Témara detention facility, this time for four months.
2. Transferred to a prison in Sale, Morocco.

Conditions and treatment

First Period of Detention

At Lahore police station: his repeated requests to contact the Italian embassy were denied, and he was accused of being a terrorist, and was ill-treated.

At the Crime Investigation Department, Lahore: he was chained and beaten.

At the villa, interrogations by FBI agents: FBI agents, with Pakistani agents present, threatened to torture and kill him, if he did not give information.

Transfer by plane to Morocco: US officials forcibly transferred him onto a private airplane. During the flight, he was chained on his back to the floor of the airplane, his head was covered with a hood, and he was dressed in a diaper. Tape was put over his mouth when he tried to ask to use the bathroom. Before landing, the chains were removed and plastic handcuffs were used to bind his hands, and he was blindfolded.

At the Témara facility: he was regularly interrogated about his life in Italy, and he was beaten and received threats of sexual torture, including sodomy and castration, and threats concerning his family. He was subsequently released without charge or explanation in front of his mother's house.

Second Period of Detention

At the Témara facility: he was shackled at all times except for 15 minutes each day, and was not permitted to have a Koran. He was interrogated while his arms and legs were tied to a bunk bed, and he was severely beaten. He heard other persons screaming from their interrogations. As a result of this torture and coercion, he signed a confession to involvement in terrorist activities.

Judicial proceedings

1. During the first period of detention, he was released without charge, and without being brought before judicial proceedings.
2. During the second period of detention, he was transferred from the Témara facility to a prison in Sale, and was then tried on charges relating to participation in subversive association and taking part in unauthorised meetings. He was sentenced to 15 years' imprisonment, reduced to 9 years on appeal.

<p>Date of release At time of the interview he is in prison in Sale serving his sentence.</p>
<p>Additional Information During his second period of detention in Morocco, his wife searched for him by asking the Moroccan Ministry of Justice of his status. The office of the Prosecutor in Casablanca guaranteed that he was not being detained in Morocco. It was not until the alleged detainee's brother reported his disappearance on 18 September 2003, that the family became officially informed that the alleged detainee was being held in prison in Sale. According to the alleged detainee's wife, he now suffers from many physical problems as a result of the treatment inflicted upon him during his periods of detention.</p>

* Information contained is from an interview with interviewee's wife, Ms. Khadija Anna Lucia Pighizzini, and other credible sources.

Case 8 - Biographic details	
Name	Mr. Omar Deghayes*
Nationality/country of origin	Libyan/Libyan Arab Jamahiriya (UK resident)
Gender	Male
Detention	
<p>Date of initial detention April 2002</p> <p>Location of the detention He was detained at his home located in Lahore, Pakistan</p> <p>Grounds of initial detention Not formally charged and never brought before a judge. At the moment of detention he was requested to hand over his weapons.</p> <p>The authority(ies) involved in the arrest/detention <u>Pakistan</u>: Pakistani, CIA and UK Security Services officers <u>Afghanistan</u>: American military, CIA, FBI and UK Security Services officers <u>Guantanamo Bay</u>: US officers</p> <p>Site(s) of detention, including sites of possible transit</p> <ol style="list-style-type: none"> 1. Police station (April 2002: after arrest and only for some hours) 2. Building described as an old castle near Lahore, Pakistan (April - May 2002) 3. Military barracks in Islamabad, Pakistan (May - June 2002) 4. Bagram Airbase, Afghanistan (June - August 2002) 5. Guantanamo Bay (August 2002 - December 2007) <p>Total period of detention Approximately 5 years and 8 months</p> <p>Duration of secret detention Approximately 5 months (April 2002 - August 2002)</p> <p>Conditions and treatment during secret detention - <u>Building described as an old castle near Lahore, Pakistan</u>: He was placed alone in a room. The first 3 days he was interrogated, by Pakistani persons in civilian clothes, about bombs and about his family's opposition to the Libyan Arab Jamahiriya (his father was allegedly killed</p>	

for his opposition to the Libyan Arab Jamahiriya). During interrogations he was usually handcuffed and sometimes also hooded. He was also questioned by two people with an “American” accent who did not identify themselves and who wore no uniforms. During this period, he was punched, beaten, kicked, stripped, hit in the back with wooden sticks, and subjected to stress positions for up to 3 days and 3 nights by Pakistanis.

- Transfer to Islamabad, Pakistan (by car): He was transferred hooded and handcuffed.

- Military barracks at Islamabad, Pakistan: At first he was placed alone in a room and then another person of Jordanian origin joined him. On 3 occasions, he was taken to interrogations; two in a hotel located near the detention centre and the third in a house. He was taken to interrogations at gunpoint, handcuffed and hooded by Pakistanis in civilian clothes.

Interrogations were carried out by American officers (identified themselves as CIA) and, at the third interrogation, there was also a British officer from MI6. During the interrogations he was asked, *inter alia*, about his father and his opposition to Libya, his stay in Afghanistan, and his life in the UK. In the barracks, he was threatened and tortured by Pakistanis (mostly drowning and stress positions) and there was also a room full of caged snakes that guards threatened to open if he did not tell and write what he did in Afghanistan.

- Transfer to Bagram, Afghanistan: 45 detainees were taken together by uniformed American officers. They were put in boxes, with plastic handcuffs, and bundled together on the floor of the plane.

- Bagram Airbase, Afghanistan: At first, he was held in a very small cell with about 15 other people, always chained in front (hands to feet), and then moved alone to a very small room (height of a table). Prisoners were not allowed to talk to each other and, if they did, they were tortured. He was heavily tortured (including being stripped naked and beaten) and sexually abused by American soldiers. He was interrogated by FBI, CIA and British Intelligence officers. He was visited by the ICRC after 1 month, but he was not able to communicate with his family or lawyers.

- Guantanamo Bay: Upon arrival, he was interrogated and then taken to a hospital where interrogations continued. At Guantanamo, he was kept in solitary confinement for long periods and he was severely tortured. Moreover, he lost sight in one eye after a brutal assault by a guard. He reported that his family knew his whereabouts only when he arrived at Guantanamo.

Judicial proceedings

He was brought before the Combatant Status Review Tribunal when detained at Guantanamo.

Date of release

Released in December 2007. No compensation was granted.

Additional information

Together with seven former Guantanamo detainees he brought a civil compensation case against the UK Government.

* Information contained is from an interview with the interviewee and other credible sources.

Case 9 - Biographic details	
Name of interviewee	Mr. Khaled El-Masri*
Nationality/country of origin	German (Lebanese origin)
Gender	Male
Detention	
Date of initial detention	
31 December 2003	
Location of initial detention	
The border of the former Yugoslav Republic of Macedonia (FYROM)	
Grounds of initial detention	
Initially detained on suspicion of traveling on a false passport.	
The authority(ies) involved in the detention	
Initially detained by FYROM border officials. Then transferred to FYROM officials in Skopje. He was detained in the custody of officials of the United States of America, including CIA. He was visited by Afghani persons and a German <i>Bundeskriminalamt</i> (BKA) officer during his detention at the CIA-run detention facility in Afghanistan.	
Total period of detention	
Approximately 5 months (31 December 2003 to 28 May 2004)	
Duration of secret detention	
Entire period of detention, approximately 5 months.	
Site(s) of detention, including sites of possible transit	
<ol style="list-style-type: none"> 1. Initially detained at the FYROM border. 2. Transferred to Skopski Merak hotel, Skopje, where he was detained for approximately three weeks. 3. Transferred to an unknown location and forcibly placed on a plane. 4. Transferred by plane to Afghanistan, and taken to United States of America's CIA-run detention facility, known as the "Salt Pit", where he remained for approximately 4 months. 5. Transferred by plane and released in Albania. 	
Conditions and treatment	
<p><u>Detention at the Skopje hotel:</u> he was interrogated in English despite the fact that he knew little English. His request to call the German Embassy, a lawyer and his family were refused. He was offered a deal - to confess to being a member of Al-Qaida and in return he would be released to return to Germany; he refused and undertook a hunger strike. He was instructed to make a statement for a video recording to the effect that he was being treated well and would be shortly returned to Germany.</p> <p><u>Transfer to Afghanistan:</u> he was escorted from the hotel in a vehicle, handcuffed and blindfolded and led into a room where he was grabbed by two persons, his arms bent backwards and beaten from all sides. His clothes were sliced off, he was thrown on the ground, and he was sodomized. His feet were bound, his blindfold was removed and he believes he was photographed. He was then dressed in a diaper and a sports suit, blindfolded again, his ears were plugged with cotton, and headphones were placed over his ears. A bag was placed over his head, and a belt around his waist, and he was forcibly placed into an airplane, with his arms and legs spread-eagled and secured to the sides. He was forcibly injected twice during the flight.</p> <p><u>Detention at the "Salt Pit" facility, Afghanistan:</u> upon arrival at the facility, he was beaten and kicked, and detained in a small cell with walls covered in crude Arabic, Urdu and Farsi writing. He was interrogated on three or four occasions, each time during the night. On one</p>	

occasion, he was forced to strip naked, photographed, and blood and urine samples were taken from him. He subsequently began a hunger strike; an American director demanded that he end the strike and said that although they knew he was innocent, the detainee could not be released without higher authorization. He was visited by some Afghani persons urging him to end the strike. He was refused medical treatment, and after 37 days of the hunger strike, he was forcibly fed through a tube in his nose, causing him to fall extremely ill. He was spoken to by a German BKA officer and the American prison director assuring him he would be released.

Transfer out of Afghanistan: he was handcuffed, shackled and blindfolded and placed into a jeep and driven to a place where his suitcase was returned to him and he was given two t-shirts. He was then blindfolded again, had earplugs and headphones placed on him and driven to an airplane. He was chained to the seat of the plane during the flight.

Release in Albania: he was driven through some mountains and roads in an unknown location, and when he was released, his blindfold and handcuffs were removed, he was given his belongings including passport and instructed to walk down a path without turning back. He subsequently encountered three armed men and discovered he was in Albania. He was put on a flight to Germany.

Judicial proceedings

He was never formally charged or brought before any judicial proceedings.

Date of release

28 May 2004. No reparations or any redress upon release.

Additional Information

When he returned to Germany, he discovered that his family had returned to Lebanon, believing that he had abandoned them.

He suffers severe emotional and psychological distress following his detention experience. He experiences pronounced difficulty concentrating, sleep disruption and irritability.

* Information contained is from an interview with the interviewee's legal representatives Mr. Steven Watt and Mr. Manfred Gnjidic and other credible sources.

Case 10 - Biographic details	
Name	Mr. Mohamed Ezzoueck*
Nationality/country of origin	British / UK
Gender	Male
Detention	
Date of initial detention 20 January 2007	
Location of the detention Kiunga village, Kenya, near the border with Somalia.	
Grounds of initial detention Not formally charged, never brought before a judge. Grounds of arrest: the Kenyan soldiers who arrested him told him they knew that he and the group of people with him were Al-Qaida members as they had seen them on TV. Moreover, during interrogations, he was accused of having links with terrorists.	
The authority(ies) involved in the arrest/detention <u>In Kenya:</u> Kenyan military, intelligence, anti-terrorism, and other law enforcement officers; UK Security Services officers (MI5); FBI officers. <u>Transfer to Somalia:</u> Kenyan intelligence officers.	

In Somalia: Somali military officers.

Site(s) of detention, including sites of possible transit

1. Military police station located near Kiunga, Kenya (20 to 21 January 2007)
2. 3 different police stations, all located in Nairobi, Kenya (21 January - approximately 6 February 2007)
3. Army base in Baidoa, Somalia (approximately 6 - 10 February 2007)

Total period of detention

Approximately three weeks (20 January - 10 February 2007)

Duration of secret detention

Entire period of detention

Conditions and treatment during secret detention

- Military police station located near Kiunga, Kenya: Detained one night. He was interrogated by around 7 or 8 people in civilian clothes and threatened to be handed to the Ethiopians or the Somali militia.

- Transfer to Kenya (by helicopter and jet): Blindfolded and handcuffed. Soldiers told Mr. Ezzoueck that he was going to be executed.

- 3 Police stations in Nairobi, Kenya: In the first police station, he was detained with another 5 detainees in a cell of about 4x3 feet with no light, which became very cold at night. The cell was dirty, they were not allowed to clean it, and they had to use a bucket as a toilet. The first days he was interrogated in the same building by a Kenyan Army Major and Kenyan Intelligence Service officers about his life, the Nairobi bombings and his links with terrorist organizations. In the second police station, he was interrogated by people who identified themselves as FBI officers about his links with Al-Qaida and other terrorist groups. During this period, he was taken several times to a central hotel where he was interrogated by people, who identified themselves as UK Security Services officers, about his links to terrorist attacks or terrorist groups. The third police station was located at the Nairobi airport and he stayed there for a few days. During this last period, he was not interrogated and he was told that he was being sent back to London. Moreover, Mr. Ezzoueck was told that British officers from the Consulate tried to see him at this place, but they were told that Mr. Ezzoueck was being detained at another police station.

- Transfer to Somalia: Blindfolded and handcuffed.

- Army base in Baidoa, Somalia: Placed with 13 other detainees in a dirty underground cell with no light and with bottles to be used as toilettes. He remained there for a few days always handcuffed. At this place, he was not interrogated nor ill-treated. He could see Somali and Ethiopian military officers through a hole on the wall. At this place, he was approached by an official of the British Consulate who told Mr. Ezzoueck that he had been trying to find him for a few days and that Mr. Ezzoueck was flying back to London via Nairobi.

- Transfer to London (with change of plane in Nairobi): The first part of the trip he was blindfolded and handcuffed by request of Somali officials going in the plane. The official of the UK Consulate also took the first flight. In the flight Nairobi-London he was not handcuffed nor blindfolded and he was well treated by UK military officers.

- London: Upon arrival at Heathrow airport, he was taken by people, who identified themselves as Scotland Yard officers, to the airport police station. There, he was interrogated under the Terrorist Act 2000 Schedule 7 and detained for about nine hours before being allowed to return home.

Judicial proceedings

He was never charged nor brought before any judicial proceedings.

Date of release He was released on about 10 February 2007.
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* Information contained is from an interview with the interviewee and other credible sources.

Case 11 - Biographic details	
Name of interviewee	Mr. Aissa Hamoudi*
Nationality/country of origin	Algeria and Switzerland
Gender	Male
<p>Date of initial detention 18 November 2007</p> <p>Location of the initial detention Tripoli, Libya</p> <p>Grounds of initial detention Unknown.</p> <p>The authority(ies) involved in the detention Libyan Police and Interior Services</p> <p>Total period of detention Approximately 3 ½ months</p> <p>Duration of secret detention Approximately 3 ½ months</p> <p>Site(s) of detention, including sites of possible transit He was detained in a police station for four hours and then transferred to another police station overnight. He was transferred to the custody of the Interior Services and detained in a prison where he remained for three months. Although this prison was publically known, his detention was kept secret. He was subsequently transferred to the “Passports Prison” (which houses up to 4000 prisoners, many foreigners) of the Exterior Services for ten days.</p> <p>Conditions and treatment At the prison of the Interior Services he was interrogated while blindfolded on a weekly or fortnightly basis. During the last month at the Interior Services’ prison, he was left in a cell without bathroom or water. He was beaten once when he tried to undertake a hunger strike. In the “Passports Prison” he experienced terrible sanitary conditions. He witnessed the torture of other detainees but was not interrogated nor tortured himself.</p> <p>Judicial Proceedings He was never formally charged with any offence.</p> <p>Date of release End of February 2008.</p>	
Additional Information	
<p>The Libyan authorities never acknowledged his detention nor provided any information about him. His family repeatedly contacted Swiss and Algerian Departments of Foreign Affairs to try and locate him. His family also sent letters to President Bouteflika of Algeria asking the Government to intervene. A representative of the Consulate of Algeria in Tripoli did visit the prison to clarify the number of Algerian nationals held in the prison and when this official learned of his detention he initiated steps which may have led to his subsequent release.</p>	

* Information contained is from an interview with the interviewee and other credible sources.

Case 12 - Biographic details	
Name	Mrs. Maryam Kallis*
Nationality/country of origin	United Kingdom/Pakistan
Gender	Female
Detention	
<p>Date of the initial detention 15 March 2009</p> <p>Location of the initial detention Damascus, Syria</p> <p>Grounds of detention No charges were ever brought against her.</p> <p>The authority(ies) involved in the arrest/detention Believed to be the Mukhabarat, the intelligence services of the Syrian Arab Republic.</p> <p>Site(s) held in detention, including sites of possible transit Basement in a private complex in Baab-Tooma, Damascus</p> <p>Total period of detention Approximately 3 months (15 March to 7 June 2009)</p> <p>Duration of secret detention Same period as above</p> <p>Conditions and treatment Mrs. Kallis was interrogated for approximately two hours by men, after she had a body search by a woman. She was then taken back to her apartment blindfolded and handcuffed. That evening, she was taken back to the <u>basement</u> and kept in incommunicado detention until 7 June. Upon arrival at the basement, she was placed in a large cell on her own for four days. She was later transferred to another cell, which she shared with a woman and her baby for 25 days. She was then taken to a smaller cell, where she remained on her own, except for two days when she shared the cell with another woman. She was not allowed to communicate with other detainees and could only speak to the guards when she needed to use the toilet. She was not allowed to go outside. She suffered from mental torture and witnessed scenes of torture where men were beaten with electric shocks.</p> <p>Date of release 7 June 2009.</p>	
Additional information	
Mrs. Kallis twice briefly met with representatives of the British consulate at another location. The British authorities indicated to her family that they could not disclose the place of detention because they had an agreement with Syria not to disclose it and because the family could put her life at risk if they went there.	

* Information contained is from an interview with the interviewee and other credible sources.

Case 13 - Biographic details	
Name	Mr. Azhar Khan*
Nationality/country of origin	United Kingdom
Gender	Male
Detention	
<p>Date of the initial detention 9 July 2008</p> <p>Location of the initial detention Cairo, Egypt</p> <p>Grounds of detention No charges were ever brought against him.</p> <p>The authority(ies) involved in the arrest/detention Egyptian intelligence officers</p> <p>Site(s) held in detention, including sites of possible transit Cairo Airport and a former prison in Egypt.</p> <p>Total period of detention Approximately one week (9 July to 15 July 2008)</p> <p>Duration of secret detention Same as above</p> <p>Conditions and treatment He was detained at the airport in <u>Cairo</u> and taken to a small room with approximately 16 other people who were not allowed to communicate with each other. There were three uniformed guards present. Two Egyptian intelligence officers in civilian clothes later took him to an office, where he was asked where he was from and sent back to the first room. He was not allowed to eat or go to the toilet for two days. On the evening of 10 July, he was handcuffed, hooded and taken away at gun-point by two guards. He was taken to an <u>old prison in Egypt</u>, where he was interrogated in English and Arabic. He could hear people screaming and was told that his name would be number two. Many other people were also kept there, lying on the floor, hooded and handcuffed. The place was guarded by officers in civilian clothes and monitored by video cameras. The interrogations took place in a separate area. While waiting for his interrogation, he was put in stress positions while short electroshocks were inflicted on his ribs and back. During the first two interrogations, an English speaking-interrogator asked questions relating to the United Kingdom, including his previous arrest and his personal life. He was held in this prison for five days, handcuffed and hooded. He could hear other people being tortured, but could not communicate with anyone. On the fifth day, he was taken away in a jeep, transferred to another jeep, and finally taken to a police station. Upon arrival at the <u>police station</u>, a woman from the British Embassy informed him to leave the country within 24 hours. His personal belongings were then given back to him. During the time he spent in detention in Egypt, his family was unaware of his whereabouts and the Egyptian authorities at the airport affirmed that he had left the airport.</p> <p>Judicial Proceedings He has not initiated any litigation.</p> <p>Date of release 15 July 2008.</p>	

Additional information

Mr. Khan was arrested in 2004 for his relations with people accused of committing terrorist acts, but he was later released. After his release, British intelligence officers (MI5) tried to convince him to work for them, but he never accepted the offers. Upon his arrival in London following his release, MI5 officers were waiting for him. He was not interrogated and simply asked if everything was fine.

* Information contained is from an interview with the interviewee and other credible sources.

Case 14 - Biographic details

Name of interviewee	Mr. Murat Kurnaz*
Nationality/country of origin	Turkey. Resident of Germany at the time of arrest.
Gender	Male

Detention**Date of initial detention**

December 2001

Location of the detention

Pakistani police checkpoints, Peshawar, Pakistan.

Grounds of initial detention

No basis disclosed for initial detention.

The authority(ies) involved in the detention

Initially detained by Pakistani police officers.

While in detention, he was under the custody of both Pakistani police officers and United States officers.

He was then transferred into the custody of the United States at the US airbase in Kandahar.

Total period of detention

Approximately 4 years and 9 months (late November or early December 2001 to 24 August 2006)

Duration of secret detention

It appears that his family was not informed of his whereabouts for 6 months to May 2002.

Site(s) of detention, including sites of possible transit

1. Initially detained overnight at a Pakistani police station
2. Transferred to another unknown location for interrogation in Peshawar, Pakistan
3. Transferred to a villa in the city centre of Peshawar which was run by United States' authorities but guarded by Pakistani police officers
4. Transferred to another detention facility located underground, in Peshawar, Pakistan
5. Transferred by plane to Afghanistan and handed over to the custody of the United States of America at the US airbase in Kandahar, Afghanistan
6. Transferred to Guantanamo Bay naval base

Conditions and treatment

At the villa, detention centre in Peshawar, Pakistan: he was detained in a villa for two weeks, held in isolation, usually handcuffed and shackled around his feet. He was blindfolded when taken outside, and regularly beaten. He was regularly interrogated, including questions about his connection with "the war".

At the next detention centre in Peshawar, Pakistan: this was an underground facility, and he

was interrogated on one occasion by Americans.

Transfer to Kandahar: - he was taken to a police station and searched, shackled to the ground and then transferred to a former military airport and, along with between 20 and 30 other detainees, transferred by plane to Kandahar. He was regularly beaten during the flight.

At Kandahar airbase - he was left outside for periods and exposed to extremely cold temperatures, mostly isolated from other detainees. US army officers tied him with chains around hands and feet, and hung him from the ceiling hangar for five days to obtain a confession of involvement with Al-Qaida and the Taliban. He was regularly inspected by a medical doctor who certified that the treatment could continue. He was allowed to meet with an ICRC delegate, who came to Kandahar airbase once or twice a year, but only briefly, never in private and Murat Kurnaz was once beaten for trying to send a postcard through the ICRC to his mother. Already in December 2001 he was registered by the ICRC, which, however, did not inform his mother or anyone else about his whereabouts.

At Guantanamo Bay detention facility - he was frequently placed in a room with very cold conditions. He was informed by an interrogator, whom he believed to be an FBI officer, "We have paid \$3 000 for you".

Judicial proceedings

Never formally charged or brought before any judicial proceedings.

Date of release

24 August 2006.

Additional information

His family did not learn that he was in US custody until January 2002, from the local German police, and did not learn of his location of detention until May 2002.

* Information contained is from an interview with the interviewee and other credible sources.

Case 15 - Biographic details	
Name	Mr. Mohammed Saad Iqbal Madni*
Nationality/country of origin	Pakistani / Pakistan
Gender	Male
Detention	
Date of initial detention 9 January 2002	
Location of the detention Jakarta, Indonesia	
Grounds of initial detention He was detained for his alleged link to a person considered a terrorist. Moreover, during his time in detention, he was interrogated several times about his alleged links with terrorist acts and organizations.	
The authority(ies) involved in the arrest/detention <u>Jakarta, Indonesia</u> : Indonesian police and immigration officers; Egyptian Intelligence officers. <u>Cairo, Egypt</u> : Egyptian Intelligence officers, US military officials. <u>Bagram Airbase</u> : US officials. <u>Guantanamo Bay</u> : US officials; UK and Indonesian officials (present at interrogations).	
Site(s) of detention, including sites of possible transit 1. Jakarta, Indonesia (9 to 10 January 2002)	

2. Diego Garcia Island, British Overseas Territory in the Indian Ocean (stopover of around 30 minutes sometime between 10 and 11 January 2002)
3. Cairo, Egypt (11 January 2002 to beginning April 2002)
4. Bagram Airbase, Afghanistan (Beginning April 2002 to 22 March 2003)
5. Guantanamo Bay, (23 March 2003 to 31 August 2008)

Total period of detention

Approximately 6 years and 8 months (9 January 2002 to around 31 August 2008)

Duration of secret detention

Approximately the first 5 months (around May 2002, he was visited by the ICRC at Bagram Airbase)

Conditions and treatment during secret detention

- Jakarta, Indonesia: Detained one day at a police station.

- Transfer to Cairo, Egypt, (with stopover for refueling at Diego Garcia Island): Mr. Madni was placed into an open coffin-shaped box covered with a plastic sheet, hooded, handcuffed, and bound with plastic and shackled so tightly that he could not move. During the stopover at Diego Garcia, he was unshackled, un-cuffed and allowed to urinate in a bottle, but never left the plane. Moreover, he was photographed by people who boarded the plane only for a short time.

- Cairo, Egypt: Mr. Madni was detained at an Egyptian Intelligence office in an underground cell which was completely dark and smaller than a “grave”. Upon arrival at the building, he was examined by a doctor but not treated from the bleeding on his nose, ears, mouth and in his urine. During this period, he was interrogated three times, around 15 hours on each occasion, by Egyptian officers (there were also other men at the interrogations - allegedly American military officers - who did not speak and passed notes with questions to the Egyptians) about, *inter alia*, his links with Osama Bin Laden and terrorist attacks. Moreover, he was subjected to ill-treatment: he received electroshocks to his head and knees, he was given drinks with drugs, and he was denied medicine for the bleeding. On several occasions he was hung from metal hooks and beaten. Before being transferred, he was forced to sign a statement saying that he had not been subjected to torture.

- Transfer to Bagram Airbase, Afghanistan (with stopover in another country, most probably Uzbekistan): his mouth was taped and he was shackled in a fetal position. During the flight, American soldiers applied electroshocks and beat him.

- Bagram Airbase, Afghanistan: During this period, he was kept around six months in isolation and subjected to torture. At first he was hidden from the ICRC. However, after around one month, ICRC representatives came across him by chance and only then his family learned where he was being held.

- Guantanamo Bay: During six months, he was subjected to a regime of sleep deprivation and frequently moved from one cell to another, which was called the “frequent flyer program.” He was interrogated several times by several people, including Americans, British and Indonesians. He was questioned about links with Al-Qaida and whether he knew of any plans for future terrorist acts. Mr. Madni was further told that, if he cooperated, he would be given medical assistance.

Judicial proceedings:

He was brought before the United States of America Combatant Status Review Tribunal.

Date of release

On 31 August 2008, he was taken to a plane where he remained shackled and not allowed to visit the bathroom. After several hours, the plane landed and he was transferred to another

plane which took him to Islamabad, Pakistan. Upon arrival, he was taken to a hospital where he remained for three weeks before reuniting with his family.

Additional information

- Although released without charges, Mr. Madni did not receive any compensation.
- Judicial proceedings were initiated by Mr. Madni's lawyers after he arrived in Guantanamo.
- Mr. Madni lost his job and his health severely deteriorated. Currently, he does not have sufficient financial means to pay for necessary medication.

* Information contained is from an interview with interviewee and other credible sources.

Case 16 - Biographic details	
Name of interviewee	Mr. Bashir Makhtal *
Nationality/country of origin	Canadian (born in Ethiopia)
Gender	Male
Detention	
Date of initial detention	
30 December 2006	
Location of initial detention	
Border of Kenya/Somalia	
Grounds of initial detention	
Not known.	
The authority(ies) involved in the detention	
<u>At border of Kenya/Somalia</u> - detained by intelligence authorities	
<u>In Kenya</u> - law enforcement officials	
<u>In Somalia</u> - law enforcement/security officials	
<u>In Ethiopia</u> -law enforcement/security officials	
Total period of detention	
Over 2 ½ years (30 December 2006 to 27 July 2009 held in detention). Since 27 July 2009 serving a life sentence in a jail in Addis Ababa, Ethiopia	
Duration of secret detention	
6- 7 months (30 December 2006 to July 2007)	
Site(s) of detention, including sites of possible transit	
1. On 30 December 2006 detained at a police detention centre at Kenya/Somalia border.	
2. Transferred by car to a prison cell in Gigiri police station, Nairobi, Kenya (date of transfer unknown)	
3. On 21 January 2007, Kenyan authorities put him on an African Express Airways plane under heavy armed guard by Kenyan police officers (with about 100 persons onboard) and the plane landed in Mogadishu, Somalia.	
4. On 22 January 2007, he was transferred by an Ethiopian military plane to Addis Ababa, Ethiopia. He now knows he was held at Mekalawi Federal Prison.	
Conditions and treatment	
<u>In Mekalawi Federal Prison</u> : He had no access to a lawyer and no access to Canadian officials. He was held in incommunicado detention and was barred from reviewing the grounds of his detention. Canadian officials came to the jail, but authorities denied his presence there. He complained about being cold and being held in isolation for a long time. He said he gave a forced confession as he was under a death threat (a gun was put to his head). Only on 18 July 2008, did Mr. Makhtal receive his first consular visit from Canadian authorities. On 1	

February 2009, Mr. Makhtal was allowed to meet with family members for the first time since his initial detention in Kenya.

Judicial proceedings

He was initially brought before a military tribunal which declared him an unlawful combatant. He had no access to counsel during this time. Formal charges were filed after July 2008. On 22 January 2009, his case was transferred to a civilian court. He was tried before the High Court of Ethiopia, and finally gained access to a lawyer. The Canadian authorities and NGOs monitored the trial and reported procedural irregularities that amounted to an unfair trial. Mr. Makhtal was unable to meet regularly with his lawyer and prohibited from meeting in private. He and his lawyer were not sufficiently advised about the charges as the case was partially disclosed at the last minute. His lawyer was not permitted to cross-examine prosecution's witnesses or call any in his client's defence. On 27 July 2009, Mr. Makhtal was convicted on terrorism related charges - inciting rebellion by aiding and abetting the Ogaden National Liberation Front (ONLF), an armed opposition group in the Somali region of Ethiopia; being a senior member of the ONLF; and involvement in training of ONLF members. On 3 August 2009, he was sentenced to life imprisonment. He has appealed his conviction and sentence.

Date of release

Not applicable, he was in prison at time of the interview.

Additional Information

His relatives were also arrested and detained for some period of time. His wife was not permitted to visit or have direct access to her husband until the trial commenced.

* Information contained is from an interview with the interviewee's legal representative, Mr. Lorne Waldman, and other credible sources.

Case 17 - Biographic details	
Name	Mr. Raymond Manalo*
Nationality/country of origin	Philippines
Gender	Male
Detention	
Date of initial detention	14 February 2006
Location of the detention	Abducted from his home in Buhol na Mangga, San Ildefonso, Bulacan, The Philippines
Grounds of initial detention	He was never brought before a judge or otherwise formally notified of the reasons for his detention. The interrogations he was subjected to, however, made it clear that he was accused of being a member of the New People's Army (NPA), an insurgent group listed as terrorist organization by some Governments.
The authority(ies) involved in the detention	The Armed Forces of the Philippines (AFP) personnel with assistance of CAFGU (Citizens Armed Forces Geographical Unit) auxiliaries.
Total period of detention	18 months (from 14 February 2006 until 13 August 2007)
Duration of secret detention	Entire period of detention

Site(s) of detention, including sites of possible transit

1. Fort Magsaysay, the Headquarters of the AFP 7th Infantry Division;
2. a safe-house in San Ildefonso;
3. a safe-house in Sapang;
4. Camp Tecson, the Headquarters of the AFP Scout Rangers;
5. AFP 24th Infantry Battalion detachment in Limay, Bataan;
6. a safe-house in Zambales;
7. a safe-house in Pangasinan.

He escaped from the last place of detention.

Conditions and treatment

Interrogation: During the initial stages of his secret detention he was repeatedly interrogated about his alleged affiliation with the NPA by military personnel, including senior officers (he has identified some of them by name in the domestic judicial proceedings, see below). He was tortured during his interrogations.

Torture: He says he was regularly subjected to torture and other ill-treatment by his captors in several of the places of secret detention he was held at. He described that he was hit in all parts of his body. For instance, he was beaten in the buttocks and in the back with wood. He was beaten with metal chains and with a handgun butt, leaving him a still visible scar on his left eye brow. Water was poured into his nose to give him a sense of drowning. His back was burned with a searing hot metal can. His own urine was poured into his mouth and nose. He was doused with gasoline and threatened that he will be burnt alive. Both of his forearms were hammered with a metal hammer twice in one week, leaving him for a long time incapable of the menial work he was required to do for his captors. In Fort Magsaysay he received medical treatment for the injuries caused by torture. He cannot tell whether those treating him were military or civilian medics, as they did not introduce themselves and bore no name tags. The Supreme Court of the Philippines has found these torture allegations to be credible (see below).

He also witnessed the torture of his brother Reynaldo, secretly detained together with him, and was told by a female co-detainee of the torture and rape she underwent at the hands of the soldiers.

Food: During some parts of the secret detention, for instance in Fort Magsaysay, he was fed only at night, usually with left-over and rotten food.

Forced work: He and other persons secretly detained with him were forced to carry out work for their military captors, such as raising live-stock, washing and cooking.

Judicial proceedings

No judicial proceedings were initiated by the authorities against him. During his secret detention, the parents of Raymond Manalo initiated *habeas corpus* proceedings before the Supreme Court of the Philippines. The AFP denied that Raymond Manalo was in their custody. In June 2006, AFP personnel took Raymond Manalo to his parents' home during one night to dissuade them from pursuing the *habeas corpus* proceedings. Before that meeting, a senior military commander, Maj.Gen. Jovito Palparan, told him that he and his brother Reynaldo would be kept alive if their family stopped taking part in the *habeas corpus* proceedings, stopped talking to human rights groups, particularly Karapatan, and stopped taking part in rallies. If the family failed to comply with these instructions, he and Reynaldo Manalo could be killed any time.

In its decision of 7 October 2008 (see below), the Supreme Court of the Philippines states that “[a]part from the failure of the military elements to provide protection to respondents by

themselves perpetrating the abduction, detention, and torture, they also miserably failed in conducting an effective investigation of the respondents' abduction" when a habeas corpus petition was filed on behalf of Raymond and Reynaldo Manalo.

Date of release

On 13 August 2007, Raymond and Reynaldo Manalo escaped from detention. Following their escape, they petitioned the judiciary seeking a writ of amparo ordering the AFP to desist from further attempts against their liberty and security, as well as ordering disclosure of certain information, such as the current whereabouts of some of the military officers involved in their abduction and detention and details of the drugs administered to them while in detention. The Court of Appeals accepted the facts as presented by petitioners, rejecting all the denials of the AFP, and granted the writ as requested. In its decision of 7 October 2008, the Supreme Court upheld the Court of Appeals decision against the challenge brought by the Government and the AFP. The Manalo case is the first case in which the writ of amparo, a remedy recently created by the Supreme Court of the Philippines to protect persons at risk of disappearance or extrajudicial execution, was granted.

Raymond Manalo stated that he was not interested in monetary compensation, as money could not compensate him for what he had gone through. The reparation he seeks is that those most responsible for his suffering be prosecuted and punished. He specifically identified some of the military officers allegedly responsible, both at the command level and among those materially in charge of his capture and much of his detention. According to the information available, no investigation or prosecution of the military personnel identified by Raymond Manalo is taking place.

Additional information

With regard to the credibility of Raymond Manalo's testimony, in its decision of 7 October 2008, the Supreme Court of the Philippines states: "After careful perusal of the evidence presented, we affirm the findings of the Court of Appeals that respondents [Raymond and Reynaldo Manalo] were abducted from their houses in Sito Muzon, Brgy. Buhol na Mangga, San Ildefonso, Bulacan on February 14, 2006 and were continuously detained until they escaped on August 13, 2007. The abduction, detention, torture, and escape of the respondents were narrated by respondent Raymond Manalo in a clear and convincing manner."

The Supreme Court specifically upheld the following factual findings of the Court of Appeals: "... the abduction was perpetrated by armed men who were sufficiently identified by [Raymond and Reynaldo Manalo] to be military personnel and CAFGU auxiliaries."

"... the reason for the abduction was the suspicion that [Raymond and Reynaldo Manalo] were either members or sympathizers of the NPA".

"Gen. Palparan's participation in the abduction was also established."

Of great importance to the link between secret detention and other human rights violations, the Supreme Court stresses the threat to the life of Raymond and Reynaldo Manalo resulting from their secret detention: "It should be stressed that they are now free from captivity not because they were released by virtue of a lawful order or voluntarily freed by their abductors [but because they managed to escape]. It ought to be recalled that towards the end of their ordeal, sometime in June 2007 when respondents [Raymond and Reynaldo Manalo] were detained in a camp in Limay, Bataan, respondents' captors even told them that they were still deciding whether they should be executed. [...] The possibility of respondents being executed stared them in the eye while they were in detention." The Supreme Court further stresses that other persons secretly detained together with the Manalo brothers remain disappeared.

* Information contained is from an interview with the interviewee and other credible sources

Case 18 - Biographic details	
Name of interviewee	Mr. Binyam Mohamed*
Nationality/country of origin	Ethiopian. Resident of the United Kingdom.
Gender	Male
Detention	
Date of initial detention 10 April 2002	
Location of initial detention Karachi airport, Pakistan (en route from Afghanistan to London)	
Grounds of initial detention Initially arrested on the grounds of travelling on an invalid passport.	
The authority(ies) involved in the detention	
<u>In Pakistan</u> - Pakistani immigration officers, Pakistani prison officers and Pakistani Intelligence officers, French officers, United States' FBI officers, and a UK MI6 agent.	
<u>In Islamabad</u> - he was transferred into the custody of United States officers.	
<u>In Morocco</u> - Moroccan and US officials, and a Canadian interrogator.	
<u>In Kabul</u> - Afghani officers and United States officials, including CIA officers.	
<u>At Bagram airbase and Guantanamo Bay</u> - United States officials and soldiers.	
Total period of detention Approximately 6 years and 10 months (10 April 2002 to 23 February 2009)	
Duration of secret detention It appears that after approximately 20 months, his family finally knew of his whereabouts in June 2004 (10 April 2002 to June 2004).	
Site(s) of detention, including sites of possible transit	
<ol style="list-style-type: none"> 1. Initially detained at Karachi airport, then transferred to Landi prison, Karachi, Pakistan where he was detained for 7 days. 2. Transferred to an interrogation centre of the Pakistani Intelligence service in Karachi, Pakistan for two months. 3. Transferred by plane to a military airport in Islamabad, and then transferred by United States military plane to Salat airport, near Rabat, Morocco. 4. Detained in three separate unknown detention centres in Morocco over 18 months: the first was a detention centre run by US officials, for approximately three weeks. He was then transferred to another two unknown Moroccan facilities. 5. Transferred by plane to Kabul, Afghanistan and then taken to the "prison of darkness" - a United States CIA-run facility outside of Kabul - where he remained for four months. 6. He was then transferred by helicopter to the United States' Bagram airbase, Afghanistan where he remained for four months. 7. He was then transferred to the United States' detention facility at Guantanamo Bay for approximately 4 years and 5 months. 	
Conditions and treatment	
<u>At the Pakistani Intelligence detention facility in Karachi</u> : he was deprived of sleep and food; beaten with a leather strap by French officers following an explosion in Karachi killing 12 French persons; beaten by Pakistani officers; and interrogated by American interrogators.	
<u>Transfer from Karachi to Islamabad</u> - under guard supervision, he was taken handcuffed and	

blindfolded to a military airport in Islamabad. In US custody, he was stripped naked, photographed, anally penetrated, shackled, hooded with goggles and earphones were inserted. He was then put into a US military plane to Sala airport.

At the Morocco detention facilities:

At the first facility - he was interrogated numerous times by Moroccan officials concerning his contacts in the United Kingdom and shown pictures of suspected Al-Qaida members. He was interrogated by a woman believed to be a Canadian, who threatened that he would be tortured by Americans, including electrocution, beatings and rape by Americans. He was handcuffed and beaten by men in masks.

At the second facility - his ankles were shackled and tied with a rope to the wall. Over several days, beaten by a group of men, after failing to give information demanded, then left hanging for an hour, and then beaten again. Over several months a process was repeated where he was tied to a wall, stripped naked, and cut over his body with a scalpel and a salt solution was poured into his wounds.

At the third facility - he was handcuffed and earphones were forcibly placed onto him, and he was made to listen to music continually day and night. He was exposed to cold and unsanitary conditions and loud volume from pornographic movies being played whenever he tried to pray; he had his food laced with drugs, and when he undertook a hunger strike to protest against this, he was strapped onto a mattress and forcibly injected with drugs. He was photographed naked, showing his injuries from the scalpel cuts to his body.

Transfer to Kabul - he was placed into a location where he was chained to the floor with a strap across his chest, with goggles and earmuffs and a bag over his head.

At the Kabul detention facility (the "prison of darkness") - he was chained to the floor in his cell, on one occasion for ten days as punishment; held in darkness most of the time; given a bucket to be used as a toilet; exposed to loud music and recorded sounds such as ghost laughter, constantly. He was interrogated almost daily by CIA officers in face masks, where he was threatened with torture and shown pictures of a person whom he did not know.

Transfer to Bagram by helicopter - he was lifted painfully by his arms, blindfolded and had headphones placed on him.

At Bagram airbase - forced to shower in groups, and soldiers discussed openly which of the prisoners would be worth penetrating. Although he was allowed visits by the ICRC, the letter he gave to the ICRC was confiscated by the US. He was not allowed to pray. He was subjected to one 12 hour and subsequent 6 hour interrogations, during which he was chained, and denied access to food, water or the bathroom. He was forced to write a confession.

At Guantanamo Bay - he was allowed to send letters. He was kept in unsanitary conditions with no natural light, and only allowed outside at night time; kept in stress positions and in overcrowded cells. During his period at Guantanamo Bay, he was held incommunicado (where he was denied access to a lawyer, the ICRC, and not permitted to speak with the guards) for several months at a time, on various occasions.

Judicial proceedings

He was never charged nor brought before any judicial proceedings until his arrival at Guantanamo Bay. While detained at the US detention facility at Guantanamo Bay, he was eventually charged with conspiracy and brought before a United States military commission; after the case was halted, new charges were filed but ultimately dropped.

Date of release

23 February 2009.

Additional Information

His family appear to have been told that he was in the custody of Pakistani authorities shortly after his initial detention, but his family were not informed of his location of detention until he was in Bagram airbase, in approximately July 2004.

* Information contained is from an interview with interviewee and other credible sources.

Case 19 - Biographic details

Name	Mr. Abu Omar * **
Nationality/country of origin	British / Born in Lebanon
Gender	Male

Detention**Date of initial detention**

Mid-March 2009

Location of the detention

A friend's house located in Nairobi, Kenya

Grounds of initial detention

Not formally charged, never brought before a judge. However, during interrogations, he was accused of being an Al-Qaida member and of being in Kenya to commit a terrorist attack.

The authority(ies) involved in the arrest/detention

Kenyan anti-terrorism and other law enforcement officials.

Total period of detention

Approximately 4 days

Duration of secret detention

Almost the entire period of detention (his sister was only informed by UK Consulate officials just before he was transferred to London)

Site(s) of detention, including sites of possible transit

1. Two police stations in Nairobi, Kenya (two days, one day in each)
2. Military barrack located in Nairobi outskirts, Kenya (only the second night)
3. House allegedly belonging to the Intelligence Service of Kenya (one day)
4. Police station in Nairobi, Kenya (one day)

Conditions and treatment during secret detention

- Two police stations located in Nairobi, Kenya: In the first police station, he was placed in a very small cell with no lights or pillows and he was not allowed to use the toilet. Abu Omar was told that a woman from the Consulate asked for him at this place but she did not have direct contact with him. During these two days, he was interrogated by several people about his trip to Kenya, his life in the UK and his links with Al-Qaida. Furthermore, he was accused of planning to bomb an Israeli supermarket in Kenya. He was denied the presence of a lawyer or officers from the UK Consulate and he was told that in the 'war on terror', terrorists have no rights. Moreover, he was given no food.

- Military barrack located in Nairobi outskirts: Placed for one night in a cell described as a cave, very dark, dusty and dirty.

- House allegedly belonging to the Intelligence Service of Kenya: He was interrogated from morning to night. During the interrogations, he was threatened. At this place, he was given food that he could not eat because it was mixed with cigarette ashes. At night, after the interrogation, he was taken handcuffed in a car to the forest. After 3 hours drive, he was taken out of the car into the forest and the officers made noises with their guns. However, he was

done no harm and later drove to the prison of a police station.

- Police station in Nairobi: In the morning, he was given breakfast and he was visited by an official of the British Consulate. The official asked him whether his family knew where he was arrested and Abu Omar replied yes although it was not true. Later, a guard came and asked him how his family knew and Abu Omar replied he phoned them right before the detention took place. Abu Omar gave the telephone number of his sister to the Consulate official who later called her to inform her about the whereabouts of Abu Omar. Later, he was taken to the airport.

- London: Upon arrival in London, he was interrogated by MI5 officers about, *inter alia*, his reasons for going to Kenya, his stay in Kenya, and whether he was mistreated. Later, he was released but his money and shoes were confiscated and he was left alone in the airport.

Judicial proceedings

He was never charged nor brought before any judicial proceedings.

Date of release

He was released by the end of March 2009 after four 4 days of detention.

Additional information

Abu Omar believes that he is being followed and his friends reported having being harassed with questions about him.

* Information contained is from an interview with interviewee and other credible sources.

** Alias used at the request of the alleged detainee.

Case 20 - Biographic details	
Name of interviewee	Mr. A.S.* **
Nationality/country of origin	Yemen
Gender	Male
Detention	
Date of initial detention 15 August 2007	
Location of initial detention Sana'a district, Yemen	
Grounds of initial detention Unknown.	
The authority(ies) involved in the detention National Political Security Officers and persons dressed in civilian clothes.	
Total period of detention Approximately 9 months (15 August 2007 to 27 May 2008)	
Duration of secret detention The first 2 months of detention (15 August 2007 to early October 2007)	
Site(s) of detention, including sites of possible transit Prison of the Political Security Body - Intelligence Unit in Sana'a district, Yemen.	
Conditions and treatment He was held in solitary confinement for the first three days of detention, during which he was subjected to about five interrogation sessions, twice a day, where his hands were bound, he was blindfolded and seated in a chair. He was interrogated about a phone number that	

<p>appeared on his phone and for suspected involvement with a wanted person.</p> <p>Judicial Proceedings Never formally charged, never brought before a judge.</p> <p>Date of release 27 May 2008. He was released without an apology or compensation. To date, he has not filed a complaint.</p>
<p>Additional Information During his detention, his family endured financial hardship as he is the sole provider. As a result of the detention, his family has suffered ongoing problems - his two children who have trouble sleeping and bed-wetting.</p>

* Information contained is from an interview with the interviewee and other credible sources.

** Initials used at the request of the interviewee.

Case 21 - Biographic details	
Name of interviewee	Mr. X.W.* **
Nationality/country of origin	Sudan
Gender	Male
Detention	
Date of initial arrest In May 2008, in the days following the attack on Omdurman by rebels belonging to the Darfurian Justice and Equality Movement (JEM)	
Location of initial detention Khartoum, Sudan	
Grounds of initial detention Believes he was arrested because suspected of ties to JEM members.	
The authority(ies) involved in the detention Believed to be officers of the Political Bureau of National Intelligence and Security Services, Sudan.	
Total period of detention Approximately 4 months	
Duration of secret detention Most of the period of detention	
Site(s) of detention, including sites of possible transit	
<ol style="list-style-type: none"> Initially held at the premises of the Political Bureau of Security Services in Bahri, Khartoum. Transferred to Kober prison, Khartoum, in July 2008. 	
Conditions and treatment At the time of arrest, he was blind-folded and beaten, including being stamped on while being put into the vehicle transferring him to the detention facility. During the first five days of detention at the Political Bureau of Security Services detention facility he was interrogated and tortured by six or seven persons, while stripped naked, and handcuffed. He was threatened with “methods” to extract a confession, and beaten with stones, wooden clubs and belts to the point of fainting, and then revived and tortured again. He was placed in a small room with an air conditioning unit with a machine blowing hot steam causing	

a suffocating atmosphere and pulled out and told to confess, and repeatedly returned to room. He was forced to stand naked under the sun for four hours on the rooftop. He was denied medical assistance when he requested it.

Judicial proceedings

Never formally charged, never brought before a judge.

Date of release

September 2008.

* Information contained is from an interview with the interviewee and other credible sources.

** Initials used at the request of the interviewee. Other details that could contribute to his identification, including precise dates of detention (which were provided) have been withheld upon his request.

Case 22 - Biographic details	
Name of interviewee	Mr. X.X.* **
Nationality/country of origin	Russian Federation
Gender	Male
Detention	
Date of initial detention	
March 2004	
Location of initial detention	
Khasavjurt, Dagestan	
Grounds of initial detention	
Grounds of arrest unknown, but it appears he was arrested on suspicion of involvement with a person suspected of killing a Federal Security Service (FSB) officer. The detention and arrest appears to be another in a series of previous periods of detention of this individual following his participation in a demonstration in 1991.	
The authority(ies) involved in the detention	
Two persons dressed in civilian clothes.	
Total period of detention	
One week and three days.	
Duration of secret detention	
First three days of detention.	
Site(s) of detention, including sites of possible transit	
<ol style="list-style-type: none"> 1. Kirovsky detention facility, operated by the FSB, for three days. 2. Transferred to a pre-trial detention facility in Bynaksk. No record was made of the initial phase of secret detention. 	
Conditions and treatment	
During the first three days of detention, interrogated and presented with false accusations to which he should confess. During interrogation sessions, handcuffed and seated in a chair. On the final interrogation, on the third day at the Kirovsky detention facility, beaten with a wet rug, had a plastic bag placed over his head, and was punched in the stomach. Finally signed a false confession after being threatened with rape.	
Judicial proceedings	
After signing the confession, was formally charged and brought before a judge.	

Date of release

March 2004. As a result of his false confession, he faced charges in relation to manslaughter. He was released after a court hearing. No apology or compensation. To date, he has not filed a complaint.

* Information contained is from an interview with the interviewee and other credible sources.

** Initials used at the request of the alleged detainee.

Case 23 - Biographic details	
Name of interviewee	Mr. X.Y.* **
Nationality/country of origin	Russian Federation
Gender	Male
Detention	
Date of initial detention	
Late 2007	
Location of initial detention	
Dagestan, Chechnya, Russian Federation.	
Grounds of initial detention	
Grounds of arrest unknown, but he appears to have been arrested on suspicion of involvement in the killing of members of the armed forces.	
The authority(ies) involved in the detention	
Around 10 persons - some dressed in black uniforms, some dressed in civilian clothes. Some were identified as ethnic Russians, and others as members of the GRU (“ <i>Glavnoye Razvedyvatel'noye Upravleniye</i> ” - “Главное Разведывательное Управление”), the foreign military intelligence service of the armed forces of the Russian Federation.	
Total period of detention	
Approximately 10 days.	
Duration of secret detention	
Entire duration of detention - approximately 10 days.	
Site(s) of detention, including sites of possible transit	
Detained at a secret facility in Gudermes district, Chechnya, Russian Federation, which is jointly run by the FSB (Federal Security Service of the Russian Federation - “ <i>Federal'naya sluzhba bezopasnosti Rossiyskoy Federatsii</i> ” - “Федеральная служба безопасности Российской Федерации”), the GRU, and the ATC (Anti-Terrorist Centre, Russian Federation).	
Conditions and treatment	
He was interrogated by a group for about 10 days, accused of being a fighter and co-erced in order to obtain a confession to the killing of members of the armed forces. He received numerous electric shocks through a wire that was wrapped around his fingers, legs and feet while his hands were tied around his back. He was beaten with iron bars, and on one occasion, his captors tried to burn him with a blowtorch, but when they could not ignite it, burned him with a lighter. He was left without shoes, and made to sleep on the concrete floor in extremely cold temperatures. He was never given food and received only one glass of water per day. Finally, he was brought in a military pick-up truck into a forest in order to be executed if he did not confess. He managed to escape in the forest.	

Judicial proceedings

Never formally charged, never brought before judicial proceedings.

Date of release

10 days after initial detention.

* Information contained is from an interview with the interviewee and other credible sources.

** Initials used at the request of the interviewee.

Case 24 - Biographic details	
Name of interviewee	Mr. X.Z.* **
Nationality/country of origin	Russian Federation
Gender	Male
Detention	
Date of initial detention	
10 July 2005	
Location of initial detention	
Dagestan, Chechnya, Russian Federation	
Grounds of initial detention	
Unknown.	
The authority(ies) involved in the arrest	
Three persons dressed in uniform and two persons dressed in civilian clothes	
Total period of detention	
5 days (10 July 2005 to 15 July 2005)	
Duration of secret detention	
5 days (10 July 2005 to 15 July 2005)	
Site(s) of detention, including sites of possible transit	
Unknown. Alleged detainee believes that, after being taken blindfolded into a vehicle, he was driven through a Dagestan checkpoint. Remained blindfolded during his detention.	
Conditions and treatment	
He was subjected to interrogation whilst blindfolded and accused of harboring a wounded person who had been brought to his house by a friend, two days prior to the his arrest. He was hit with a plank, a club and the butt of a gun. A gun was put against his head, and then a shot was fired passing his head. Electrical wires were put around him and he was given electric shocks. He became very weak, often losing consciousness. The interrogator threatened that he would be taken away, shot and buried. He was taken out, blindfolded, driven in a vehicle and deposited in a park in Dagestan.	
Judicial proceedings	
Never formally charged, never brought before a judge.	
Date of release	
15 July 2005. He was released without an apology or compensation. To date, he has not filed a complaint.	

* Information contained is from an interview with the interviewee and other credible sources.

** Initials used at the request of the interviewee.

COMMUNICATION NO. 383/2010

EXHIBIT E

IN THE HIGH COURT OF TANZANIA
(MAIN REGISTRY)
AT DARES SALAAM

CRIMINAL APPLICATION NO.....23.....OF 2004

REPUBLIC
VERSUS
DIRECTOR OF IMMIGRATION SERVICES

EXPARTE
MOHAMED ABDULLAH SALEHE MOHSEN AL-ASAAD

CHAMBER SUMMONS

*(Under Section 390 (1) (f) and Section 2 (2) of the
Judicature and Application of Laws Ordinance Cap 453)*

LET ALL PARTIES concerned attend the Honourable Judge in Chambers on the.....day of.....2004, at.....O'clock in the forenoon or soon thereafter as the counsel for the applicant can be heard upon an application for orders that:-

- (a) The Director of Immigration Services produce the body of MOHAMED ABDULLAH SALEHE MOHSEN AL-ASAAD.
- (b) Incidental Orders as may be necessary be made.

This application has been taken up at the instance of RK RWEYONGEZA & CO ADVOCATES and shall be supported by the grounds set forth in the affidavit of ABDULLAH SALEH MOHSEIN AL-ASAAD, the applicant, and ZAHARA AHMED MOHAMED together with other grounds to be adduced at the hearing hereof

Dated at Dar es Salaam this.....day of.....2004

Given under my hand and Seal of the Court this.....day of.....2004

Presented for filing this.....17th.....day of.....June.....2004

REGISTRAR

[Signature]
REGISTRY OFFICER

DRAWN AND FILED BY



RK RWEYONGEZA & CO,
ADVOCATES,
DAR ES SALAAM OFFICE,
HAIDERY PLAZA 3RD FLOOR,
KISUTU / UPANGA STREET,
P.O. BOX 75192,
DAR ES SALAAM.

TO BE SERVED UPON

THE DIRECTOR OF IMMIGRATION SERVICES,
MINISTRY OF HOME AFFAIRS,
DEPARTMENT OF IMMIGRATION,
IHIO / POSTAL STREET,
DAR ES SALAAM.

May J

IN THE HIGH COURT OF TANZANIA
(MAIN REGISTRY)
AT DARES SALAAM

CRIMINAL APPLICATION NO. 23 OF 2004

REPUBLIC
VERSUS
DIRECTOR OF IMMIGRATION SERVICES

EXPARTE

MOHAMED ABDULLAH SALEHE MOHSEN AL-ASAAD

CERTIFICATE OF URGENCY

I, RICHARD KARUMUNA RWEYONGEZA, Advocate of the High Court of Tanzania and Courts subordinate thereto save for the Primary Courts, DO HEREBY CERTIFY that the application for a writ of HABEAS CORPUS is of extreme urgency on the ground that:-

- (i) MOHAMED ABDULLAH SALEHE MOHSEIN AL-ASAAD, has not been seen since his arrest by the Director of Immigration Services on 26/12/2003 and his whereabouts are unknown.

Dated at Dar es Salaam this 14th day of June 2004

Certified this 14th day of June 2004

.....
ADVOCATE FOR APPLICANT

Presented for filing this 17th day of June 2004

[Signature]
REGISTRY OFFICER

DRAWN AND FILED BY

RK RWEYONGEZA & CO 
ADVOCATES
DAR ES SALAAM OFFICE
HAIDERY PLAZA 3RD FLOOR
KISUTU / UPANGA STREET,
P.O. BOX 75192
DAR ES SALAAM

TO BE SERVED UPON

THE DIRECTOR OF IMMIGRATION SERVICES,
MINISTRY OF HOME AFFAIRS,
DEPARTMENT OF IMMIGRATION,
IHIO / POSTAL STREET,
DAR ES SALAAM.

IN THE HIGH COURT OF TANZANIA
(MAIN REGISTRY)
AT DAR ES SALAAM

CRIMINAL APPLICATION NO.....²³.....OF 2004

REPUBLIC
VERSUS
DIRECTOR OF IMMIGRATION SERVICES

EXPARTE

MOHAMED ABDULLAH SALEHE MOHSEN AL-ASAAD

AFFIDAVIT

I, ABDULLAH SALEH MOHSEN AL-ASAAD, YEMENITE, MUSLIM, Adult, resident of Tanga Tanzania, hereby SOLEMNLY AFFIRM and state as follows -

1. THAT, I am the applicant conversant with the facts I am about to depone as herein under.
2. THAT, I am married with children and among my children is one MOHAMED ABDULLAH SALEHE MOHSEN AL-ASAAD, a businessman operating his business along Livingstone Street / Tandamti Ilala Dar es Salaam under the name and style of AL-ASAAD TRADING Company. A photocopy of his business Licence is appended herewith marked annexured MAS1.
3. THAT, in December, 2003, I was in YEMEN when on 27/12/2003 I received telephone calls from ZAHARA AHMED MOHAMED, wife of my son MOHAMED ABDULLAH SALEH AL-SAAD, informing me that my son had been arrested by the Director of Immigration Services, but no reason for his arrest had been disclosed.
4. THAT, three days later, I received calls from the same person mentioned in paragraph 3 above informing me that it had been reported in Tanzania Media that my son MOHAMED ABDULLAH SALEH AL-ASAAD had been deported by the Director of Immigration Services to YEMEN. A copy of the Uhuru Newspaper of 30th December, 2003 bearing a photograph of my son and the full story on his deportation is appended herewith marked annexure MAS2.

5. THAT, upon learning that sad news, I tried to go to various place in Yemen but failed to get him and even failed to get any information leading to his whereabouts in Yemen.
6. THAT, having failed to trace my son in YEMEN, I came to Tanzania to try and get better particulars that would lead me to tracing my son and I arrived in Dar es Salaam on 4th of January, 2004 and ever since I have been trying to trace my son in vain.
7. THAT, I decided to seek the assistance of the Member of Parliament for Tanga constituency who incidentally is also the Minister for Legal and Constitutional Affairs, Honourable Bakari Mwapachu, but the Minister was outside the country.
8. THAT, as I am not fluent in Kiswahili, I requested the company of Mzee Athumani Makalo, a Tanga resident, to accompany me in my efforts to contact the Ministry of Home Affairs and upon our arrival in Dar es Salaam we went to the Director of Criminal Investigation Commissioner ADADI RAJABU, who upon hearing my story, direct us to the Immigration Department. I went to the Immigration Department in the company of Mzee Athumani Makalo to see the Director of Immigration Services.
9. Upon inquiry at the reception, I was informed that the Director of Immigration Services was not in the Country and I was directed to see Mr Samba and I did.
10. Mr. Samba of the Immigration Department did not know where my son was but advised me to go the Ministry of Home Foreign Affairs and International Cooperation.
11. THAT, I decided to go and meet the Chairman of the Human Rights Commission Mr. Justice Kissanga, but the Chairman was away. I was advised to see the Permanent Secretary Ministry of Home Affairs.
12. THAT, I went to the Ministry of Home Affairs and explained my plight. As the Permanent Secretary was in a meeting I was directed to Mr Asikwenye of Immigration Department.
13. THAT, I met Mr. Asikwenye, who upon hearing my story, took me to Mr. PHILO WILLIAM NOMBO, a Senior Immigration Officer.
14. THAT, Mr. PHILO listened to my narration and directed me to write a letter to the Director of Immigration Service and I did. A copy of a letter dated 27th May, 2004, addressed to the Director of Immigration Services is appended herewith marked annexure MASS.

15. THAT, upon presentation of the letter to Mr. PHILO, on the same day, Mr. PHILO, directed me to meet him on Monday 31st May, 2004 and come Monday 31st May, 2004, Mr. PHILO took me to the Mr. SAMBA of the same Department. Mr. SAMBA left us in his office and came back and told us that the Director was ready to meet me on Tuesday 1st June, 2004 in the morning.
16. THAT, in compliance with the above appointment I went to the office of the Director of Immigration service on 1st June, 2004.
17. THAT, on the said date, I met the Director of Immigration Services Mr KINEMO KIHOMANI who demanded me to confirm to him that I was the father of MOHAMED ABDULLAH SALEH MOHSEIN AL-SAAD and demanded that I produce my Passport, my Resident Permit and any other information to establish that I am the father of the said MOHAMED.
18. THAT, subject to the production of the said documents, I was required to go back to the Director of Immigration Services on 3rd of June, 2004 to meet him and he promised to tell me the whereabouts of MOHAMED once I properly identify myself.
19. THAT, on 3rd June, 2004 at 10.am, I reported at the Office of the Director of Immigration Services with my Passport, my Resident Permit, and a letter from the Embassy of the Republic of Yemen, expecting to get a report on the whereabouts of my son. A copy of my Resident Permit, a copy of my Passport, and a letter of the Embassy of Yemen, are appended herewith marked annexure MAS₄, MAS₅ MAS₆.
20. THAT, upon presentation of the documents, the Director of Immigration Service, Mr. KIHOMANI told me he had expelled my son MOHAMED out of the Country and sent him to YEMEN because he was troublesome
21. THAT, I told the Director that my son was not in YEMEN, then he changed his story and said that he had sent him to Djibouti.
22. THAT, upon such an answer, I demanded to know the particulars of the flight by which my son left the Country, thereupon the Director of Immigration Services stood up, and ordered me together with MZEE ATHUMANI MAKALO out of his office with an order that we should never go to his office again.
23. THAT, with the reaction of the Director as aforesaid, I have failed to know where my son was taken and where is kept.

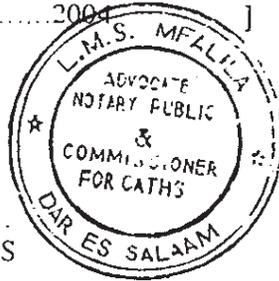
- 24. THAT, I have not heard of my son since December, 2003 and I do not know if he is dead or alive.
- 25. THAT, from these circumstances, I believe the Director of Immigration Services is still holding my son.
- 26. All what is stated in paragraphs 1, 2, 5, 6, 7, 8, 11, 12, 13, 14, 15,16, 17, 18, 20, 21, 22, 23, 24, is true to the best of my own knowledge and what is stated in paragraph 3 and 4 is in accordance with the information received from ZAHARA AHMED MOHEMED my daughter in law the wife of MOHAMED ABDULLAH SALEH MOHSEIN AL-ASAAD of Livingstone Street Ilala Dar es Salaam, which information I verily believe to be true and what is stated in paragraph 9 is accordance with the information received from the Immigration Office Headquarters Dar es Salaam on the trip of the Director abroad, which information I verily believe to be true. And what is stated in paragraph 25 is the belief arising from the events narrated herein above and the fact that the Director of Immigration Services has failed to show me any document, which belief now I very believe to be true.

SOLEMNLY AFFIRMED at Dar es Salaam]
 by the said ABDULLAH SALEH MOHSEN]
 AL-ASAAD who is known to me]
 personally identified to me by]
*RWEYONGEZA*.....]
 the latter being known to me personally]
 this *9th* day of *JUNE* 200*4*]

[Signature]
 DEPONENT

BEFORE ME

[Signature]
 COMMISSIONER FOR OATHS



DRAWN BY

[Signature]
 RK RWEYONGEZA & CO
 ADVOCATES
 DAR ES SALAAM OFFICE
 HAIDERY PLAZA 3RD FLOOR
 KISUTU /UPANGA STREET
 P.O. BOX 75192
 DAR ES SALAAM

KAR/1731/03

Box 2149
Res. 108554
28-12-95



TIN 226
(Rev 2/96)

JAMHURI YA MUUNGANO WA TANZANIA

LESENI YA BIASHARA

B N° 00861731

(Imetolewa chini ya Sheria ya Leseni za Biashara Na. 25 ya Mwaka 1972, marekebisho ya mwaka 1980 na masharti yaliyo nyuma)

*Futa isiyotakiwa

- 1. Ofisi iliyotolewa: Manispaa Ilala
 - 2. Nambari ya Ushuru wa mapato: 10-0-149-753
 - 3. Leseni imetolewa kwa: AL. Asad Trading Co
kucendesha biashara ya Tyre, Tubes & Battery
katika Wilaya/Kanda* ya Ilala Mtaa Livingstone
38/57
 - 4. Ni ya Shina/Tawi*
Ada Sh. 200,000 = Nambari ya Stakabadhi 37303
ya tarehe 22-7-03
 - 5. Mpya inaendeleza* muda wa leseni Na 00683886
ya tarehe 16-8-02
- (ii) Muda wa leseni hii utaishia 30 Juni 20 04

Tarehe 6-9-03

M.R.B. Mayile
Sahihi na Mufuri wa Mtoaji Leseni

GP. DSM

MUNICIPAL TRADE OFFICER
ILALA MUNICIPAL COUNCIL

Annexure MAS2

UFAHU

SIMUZA
CHUMBA CHA
HABARI
UHURU
0748-584445
MICHEZO
0744-742774
MATANGAZO
0744-536614

**Binaisa asema
Museveni
amechoka, sasa
asitafu**

Uk.2

**CCM haijaandaa
sherehe zozote
kumpa pole Rais**

Uk.16

Raia wa Yemen, Italia watimuliwa nchini

S E R I K A hii imewafukua nchini mfanayabiashara Mohamed Abdallah Saleh, raia wa Yemeni, padri wa kanisa Katoliki, Tarcisio Bertarelli na mwekezaji Dk. Mario Mariane, wote raia wa Italia.

● Ni padri na wafanyabiashara

Mbali ya kuwafukua wageni hao, imeloa onyo kali kwa watumishi wa serikali na wananchi wengine watakaobainika kuwasaidia watu hao kupata uraia au hati za

Chilambo, kwenye makao makuu ya Wizara ya Mambo ya Ndani, mjini Dar es Salaam. Chilambo alisema jina kamili la mfanayabiashara huyo ni

Na Mwandishi Wetu kuishi nchini kinyume cha sheria. Hatua hiyo ilingazwa jana na msemaji wa Idara ya Uhamiaji, Herbert

Mohamed Abdallah Saleh Muhsen al-Assad aliyekuwa akiuza matairi na betri za magari, eneo la Kariakoo mjini Dar es Salaam.

Aliifanua kuwa Al-Assad alikuwa akiishi nchini tangu mwaka 1985

Inaendelea uk.3



MOHAMED Abdallah Saleh

Wanane wafa maji Mafia

ABDALLA SALEHE
S.L.P 21930
DAR ES SALAAM.

27/MEI/2004

MKURUGENZI
UHAMIAJI,
S.L.P 512
DAR ES SALAAM.

**YAH: MALALAMIKO YANGU NA MAULIZO JUU YA MTOTO
WANGU AITWAYE MOHAMED ADBALLA SALEHE.**

Muheshimiwa,

Husika na kichwa cha habari hapo juu. Kwa heshima kubwa na taadhima napenda kuleta kilio changu kwako. Mimi ni baba wa mtoto niliyemtaja hapo juu.

Ilikuwa tarehe 26, Disemba 2003, mtoto wangu akiwa nyumbani Mtaa wa Livingstone na Tandamti, walifika watumishi wa uhamiaji na kumchukua yeye mwenyewe, hati yake ya kusafiria na simu yake ya mkononi, tokea siku hiyo hadi hivi leo naandika barua hii sijajua mtoto wangu yuko wapi na wala sijui kosa lake.

Muheshimiwa Mkurugenzi, nimekaa kwa taabu kubwa, wakati mtoto wangu anakamatwa mimi nilikuwa Yemen nikapata habari hiyo kwa simu kutoka hapa Tanzania, nilipouliza sasa mtoto yuko wapi wakaniambia habari walizonazo ni kwamba Mohamed Abdalla amepakiwa katika ndege kurudishwa kwao Yemen kupitia Giboot. Mimi baada ya kusikia hivyo nikachukua hatua ya kuiona mamlaka ya Yemen kuulizia kama Mohamed Abdalla amefika kutoka Tanzania? Nikafika nikakuta hayupo. Nikatuma mtu maalum kwenda Giboot, hakumkuta. Ikabidi nirudi Tanzania hususan Tanga, kwani Tanga ndiko ninakoishi. Nikaenda kwa Mbunge wangu Mh. Bakari Mwapachu, ambaye pia ni Waziri wa sheria, akaniambia njoo Dar es Salaam tuangalie. Nilipofika Waziri akawa hana nafasi kwani alikuwa ana safari nje ya nchi. Nikafika kwa Waziri wa nchi Ofisi ya Raisi, Mh. Hassani Ngwilizi, nae nikamweleza, akasema hana habari yoyote juu ya hilo. Labda nikamuone Kamishna Adadi Rajabu, nikaenda akanipokea vizuri nikamweleza shida yangu akaniambia niende kumuona Mkurugenzi wa Uhamiaji. Nikaenda, nikajibiwa Mkurugenzi kasafiri nje ya nchi. Nikapelekwa kwa msaidizi wake Mh. Samba naye akawa hana habari juu ya kupotea kwa mwanangu.

Mpaka hapo nikawa na wasiwasi kama mwanangu yuko hai au amefariki. Ikabidi niende kwenye tume ya haki za binadamu sikuwakuta, walikuwa wameenda Morogoro. Nilikomkuta kijana akamwelekeza niende kwa Katibu Mkuu wa Taha ya Mambo ya Ndani. Nikaenda siku kutaka alikuwa kwenye mkutano Nikapelekwa kwa Mh. Asikwenye kitengo cha uhamiaji. Nilipomueleza shida yangu akanikabidhi kwa Mh. Philo Senior Immigration Office baada ya kumueleza

matatizo yangu akaniambia niandike barua kwa Mkurugenzi wa Uhamiaji, nikauliza mbona Mkurugenzi hayupo? Na endapo nitaandika barua haitachukua muda? Kwani kuna urasimu kwa baadhi ya ofisi za nchi. Akasema kaandike halafu ilete wewe mwenyewe haitachukua muda.

Muheshimiwa Mkurugenzi wa Uhamiaji, malezo niliyoeleza hapo juu ni baadhi tu ya mahangaiko yangu. Lakini kwa jumla nimesumbuka sana kwa kumtafuta mwanangu.

Ombi langu:-

Kwanza nijulishwe mtoto wangu yuko wapi.

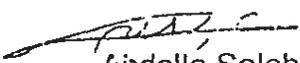
Pili Nitashukuru kama serikali ya Tanzania itaniruhusu nimuone mwanangu uso kwa macho ili anieleze yaliyomsibu.

Tatu naomba nijulishwe kosa lake lililopelekea yeye kukamatwa bila kufikishwa mahakamani na kufichwa mahali nisipopajua.

Ni mategemeo yangu kuwa serikali tukufu yenye utawala bora na sherja itanisaidia juu ya jambo hili.

Natanguliza shukrani zangu za dhati.

Aksante.


Abdalla Salehe.

Nakala kwa:- Waziri wa mambo ya ndani ya nchi.

" Mh. Bakari Mwapachu – Mbunge wa Tanga, Waziri wa sheria na katiba.

" Mh. Hasani Ngwilizi - Waziri ofisi ya Raisi tawala za mikoa

**THE FOLLOWING IS AN ENGLISH TRANSLATION OF THE PRECEDING LETTER,
DATED 27 MAY 2004.**

ABDALLA SALEHE
MAIL BOX 21930
DAR ES SALAAM

May 27, 2004

TO: DIRECTOR OF IMMIGRATION
P.O. BOX 512
DAR ES SALAAM

RE: MY COMPLAINTS AND INQUIRIES ABOUT MY CHILD,
NAMED MOHAMEDI ADBALLA SALAHE

With all due respects,

In reference to the above mentioned subject, I respectfully take this opportunity to tell you how worried I am as the father of the man referred to above.

On 26 December 2003, my son was at home on Livingstone Street when agents from the Department of Immigration came and took him, his passport and his cellular phone. Since that day until today as I am writing this letter, I do not know where my son is, and I do not know what charges led to his arrest.

With all due respect, Director, I was upset to learn from Yemen where I was that my son had been arrested. I asked where my son Mohamed Abdalla was taken and I was told that he was forced into an airplane that was travelling to Yemen through Djibouti. When I heard this, I immediately went to see the Yemeni authorities to find out if my son, Mohamed Abdalla, had arrived from Tanzania. I was told he had not arrived. They referred me to a gentleman going to Djibouti; he did not find him there either. I decided to go back to Tanzania, specifically to the city of Tanga, where I lived. There I met with Hon. Bakari Mwapachu, who was also a lawyer. He told me to return to Dar es Salaam to speak with a State official. But when I got there, I was told that the Minister was travelling abroad. I even met with the Minister of State, Hon. Hassani Ngwilizi, who was in charge of the President's office. He had no information about this matter. So I decided to see Congressman Adadi Rajabu. He welcomed me into his

office, and I told him about my worries. He sent me back to the Director of Immigration. When I got there, I learned that the Director was travelling abroad too. I was then directed to his assistant, Hon. Samba, and he knew nothing about my son's disappearance.

At that moment, I started to wonder whether my son was dead or alive. I decided to contact the Human Rights Commission, but did not find them, they were going to Morogoro. I spoke with a young man who advised me to go to the Secretary General at the Ministry of Interior. I went there, but he was in a meeting. I was introduced to Hon. Asikwenye of the immigration unit. I told him my problem and was referred to Hon. Philip, Senior Immigration Officer. After speaking with him, he told me to write to the Director of Immigration. I mentioned that the Director was absent. Even if I write now it would take time to get an answer because of the bureaucracy in the country. He advised me to write a letter and bring it to him and he would deliver it himself.

Respected Director of Immigration, I have stated the circumstances of my worries above, but I am suffering seriously from the unsuccessful search for my son.

Here are my inquiries:

First, I want to know where my son is being detained.

Second, if the Tanzanian government officials saw my son with their own eyes, I want to know where they are holding him.

Third, I urge you to tell me what kind of crime he committed that does not allow him to have a fair trial in court, and led to his arrest without warrant.

I hope that the government will demonstrate good governance and apply the rule of law in this case, and I am grateful in advance for your assistance.

Thank you.

Abdalla Salehe

Copies to:

The Interior Minister

Hon. Bakari Mwapachu, Minister of Law and the Constitution.

Hon. Hasani Ngwilizi, Minister in Charge of the President's Regional Administration Office.

TAPP 2514 DP: 106768

THE UNITED REPUBLIC OF TANZANIA

The Immigration Act 1995

Section 19

RESIDENCE PERMIT A

No. 003489

Valid up to 07.04.2006

Director of Immigration Services

Date

REGISTRATION OFFICE
TANZANIA
APR 2004

REGULATION 11 (1997)
THE UNITED REPUBLIC OF TANZANIA

RE-ENTRY PERMIT

Valid up to 07.04.2006

Date of issue 08.04.2004

Handwritten: 28/03/04
Stamp: 31 JAN 2004
DIA
TANZANIA

THE UNITED REPUBLIC OF TANZANIA
VISA
No. 422743 Date 31/1/04

NAME: ABDULLA SAG
PASSPORT No. 0141485
VALIDITY 04-01-04
NATIONALITY: YEMEN
VISA TYPE: TRANSIT
EXPIRY DATE: 31 JAN 2004
DIS SIG. [Signature]
ISS. OFF. No. 31 JAN
FEE: US\$ 20 DIA
SERV. No. 2003173924

TAMP 2514

DN 106768



III

THE UNITED REPUBLIC OF TANZANIA

The Immigration Act, 1995

(Section 19)

DOSSIER NO: 106768 TAMP 2514 No: 003489

CIS

"E" No. TAMP 2514

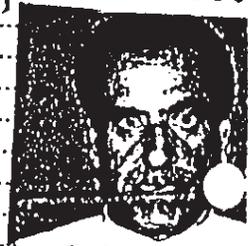
CN:

TB

NT YEMEN

TI RPL

ADDRESS: TANGA BOX 2451



- 2 APR 2004

Mr./Mrs./Miss THE RESIDENT PERMIT CLASS "A" NBDALWAH SALEH M. AL SAED

Is hereby authorized to enter Tanzania and to remain therein for a period of TWO YEARS FROM 7.4.2004

and subject to the provisions of the Immigration Act, 1995 and to the following conditions:

(a) (i) Place of residence TANGA

(ii) Place of work TANGA

(b) the holder shall not engage in any employment, trade, business or profession other than...

TRADER WITH AL-ABAD ENTERPRISES

* (c) wife and children whose names have been endorsed on this permit are not allowed to engage in employment/business of any kind.

(d) other specific conditions:

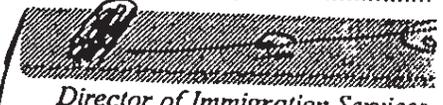
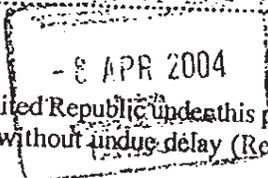
Description of Passport: YEMEN

Country of issue No. 01411185

Date of issue 20.1.2004 20

Fee: US \$ 820 received vide ERV. No. 19254104 of 8/4/2004

Issued at TANGA



Director of Immigration Services

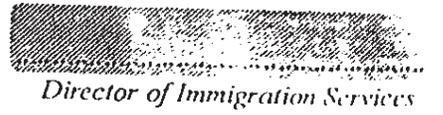
All persons entitled to enter the United Republic under this permit must, on entering the United Republic report to an Immigration Officer without undue delay (Reg. 18) (SECT. 25).

Full Name	Relationship to Holder	Age
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

NPC-SPD

20

Delete if not applicable



Director of Immigration Services

Republic of Yemen

Dar Es Salaam



سفارة
الجمهورية اليمنية
دار السلام

1.

Date: 1/6/04

Ref.: Gen/2104/16/94/910/04/04

التاريخ
الرجوع

TO WHOM IT MAY CONCERN

The Embassy of the Republic of Yemen in Dar es Salaam is hereby certifying that Mr. Abdullah Saleh Mohsen are Yemenite and bear Yemen Passport no. 01414485 issued at Mukallah on 5/01/2004, and a really Father of Mr. Mohmed Abdullah Saleh Mohsen Al-Asaad.

He has given this upon his own request.

**YEMEN EMBASSY
CONSULAR SECTION
DAR ES SALAAM**



IN THE HIGH COURT OF TANZANIA
(MAIN REGISTRY)
AT DAR ES SALAAM

CRIMINAL APPLICATION NO.....OF 2004

REPUBLIC
VERSUS
DIRECTOR OF IMMIGRATION SERVICES

EXPARTE

MOHAMED ABDULLAH SALEHE MOHSEN AL-ASAAD

AFFIDAVIT

I, **ZAHARA AHMED MOHAMED**, Adult, Tanzanian, Muslim, resident of Dar es Salaam hereby SOLEMNLY AFFIRM and state as follows:-

1. THAT, I am the wife of MOHAMED ABDULLAH SELEH MUHSEN AL-ASAAD with whom I contracted marriage on the 29th day of November, 1991
2. THAT, my husband has been conducting business in a building which is also our residential house along Livingstone street Ilala Dar es Salaam.
3. THAT, on 26th day of December, 2003 at about 9.00pm there came a group persons in the company of an Immigration Officer and arrested my husband without disclosing any reasons for his arrest.
4. THAT, my husband was handcuffed and when he left the premises he was blindfolded.
5. THAT, they never disclosed where they were taking him and at that stage I did not know where they were taking him. I immediately rang my father in law in Yemen to inform him of what had transpired.
6. THAT, the following day I was called to the Immigration Department where I was asked about the Nationality of my husband and my own nationality.
7. THAT, on the day of 30th December, 2003 I read in the Uhuru Newspaper that my husband had been deported by the Director of Immigration services to YEMEN and I accordingly notified my father in law Mr. ABDULLAH SALEH MOHSEN AL-ASSAD of this report. A copy of the extract said Newspaper is appended herewith marked annexure ZAM1

- 8. THAT, save for the information which I got from the newspaper I have not heard of my husband since his arrest on 26th December, 2003.
- 9. THAT, I have been informed by my father in law which information I verily believe to be true that my husband is not in YEMEN.
- 10. THAT, my husband who was taking care of the whole family has left me with our issues of marriage namely:-
 - 1. FATMA MOHAMED aged 11 year
 - 2. MARIAM MOHAMED aged 9
 - 3. ABDULRAHAMANI MOHAMED aged 7
 - 4. AMNE MOHAMED aged 3 years
- 11. THAT, besides my husband left me with pregnancy in early stages and now is advanced.
- 12. THAT, I too have failed to trace my husband.
- 13. All what is stated herein above in paragraphs 1, 2, 3, 4, 5, 6, 8, 10, 11 and 12 is true to the best of my own knowledge and what is stated in paragraph 7 is according to the information contained in the Uhuru Newspaper of 30th December 2003 on the report made by the Immigration Department which report I verily believe to be true and what is contained in paragraph 9 is according to the information received from my father in law ABDULLAH SALEH MOHAMED MOHSEN AL-ASSAD which I verily believe to be true.

SOLEMNLY AFFIRMED at Dar es Salaam]
 by the said **ZAHARA AHMED MOHAMED**]
 who is known to me personally / identified to me]
 by AK LONGONGEA KSA]
 the latter being known to me personally]
 this 9th day of June 2004]

Z. AHMED
 DEPONENT

BEFORE ME

[Signature]
 COMMISSIONER FOR OATHS
 P. C. B...
 ADI...
 NOT...
 SALAM

DRAWN BY:-

A handwritten signature in black ink, appearing to read 'R. Rweyongeza'.

RK RWEYONGEZA & CO,
ADVCOATES,
DAR ES SALAM OFFICE,
HAIDERY PLAZA 3RD FLOOR,
KISUTU / UPANGA STREET,
P.O. BOX 75192,
DAR ES SALAAM.

COMMUNICATION NO. 383/2010

EXHIBIT F

TABLE OF CONTENTS

1. The US rendition programme.....	2
1.1 Renditions.....	2
1.2 ‘Diplomatic assurances’	3
1.3 Establishment of the US rendition programme	4
1.4 Rendition practice since September 2001	6
1.5 Pakistan	7
1.6 Torture, ill-treatment and ‘disappearance’: violations of international law	8
1.7 Secret detentions and secret transfers: the case of Muhammad Bashmilah, Salah Qaru and Muhammad al-Assad	9
1.8 Transfer to torture: the case of Muhammad Zammar	17
1.9 A practice predating 2001: the case of Abdul Rahman al-Yaf’i	19
2. Planes and airports – the support network for rendition flights	22
2.1 International aviation law and renditions.....	22
2.2 CIA-front companies.....	23
2.3 Other US agencies involved in rendition	24
2.4 Role of third countries.....	26
2.5 Flight movements: 2001-2005.....	27
2.6 Companies and aircraft	28
3. Amnesty International’s recommendations.....	31
Appendix: Planes monitored.....	34

UNITED STATES OF AMERICA

Below the radar: Secret flights to torture and 'disappearance'

1. The US rendition programme

1.1 Renditions

Amnesty International uses the term “rendition” to describe the transfer of individuals from one country to another, by means that bypass all judicial and administrative due process. In the “war on terror” context, the practice is mainly – although not exclusively – initiated by the USA, and carried out with the collaboration, complicity or acquiescence of other governments. The most widely known manifestation of rendition is the secret transfer of terror suspects into the custody of other states – including Egypt, Jordan and Syria – where physical and psychological brutality feature prominently in interrogations. The rendition network’s aim is to use whatever means necessary to gather intelligence, and to keep detainees away from any judicial oversight.

However, the rendition network also serves to transfer people into US custody, where they may end up in Guantánamo Bay in Cuba, detention centres in Iraq or Afghanistan, or in secret facilities known as “black sites” run by the USA’s Central Intelligence Agency (CIA). In a number of cases, individuals have been transferred in and out of US custody several times. Muhammad Saad Iqbal Madni, for instance, was arrested by Indonesian intelligence agents in January 2002, allegedly on the instructions of the CIA, who flew him from Jakarta to Egypt, where he “disappeared” and was rumoured to have died under interrogation. In fact, he had been secretly returned to Afghanistan via Pakistan in April 2002 and held there for 11 months before being sent to Guantánamo Bay in March 2003. It was more than a year later that fellow detainees, who said he had been “driven mad” by his treatment, managed to get word of his existence to their lawyers.

Rendition is sometimes presented simply as an efficient means of transporting terror suspects from one place to another without red tape. Such benign characterizations conceal the truth about a system that puts the victim beyond the protection of the law, and sets the perpetrator above it.

Renditions involve multiple layers of human rights violations. Most victims of rendition were arrested and detained illegally in the first place: some were abducted; others were denied access to any legal process, including the ability to challenge the decision to transfer them because of the risk of torture. There is also a close link between renditions and enforced disappearances. Many of those who have been

illegally detained in one country and illegally transported to another have subsequently “disappeared”, including dozens who have “disappeared” in US custody. Every one of the victims of rendition interviewed by Amnesty International has described incidents of torture and other ill-treatment.

Because of the secrecy surrounding the practice of rendition, and because many of the victims have “disappeared”, it is difficult to estimate the scope of the programme. In many countries, families are reluctant to report their relatives as missing, for fear that intelligence officials will turn their attention on them. Amnesty International has spoken to several people who have given credible accounts of rendition, but are unwilling to make their names or the circumstances of their arrests and transfers known. Some cases come to light when the victim is released or given access to a lawyer, although neither event is a common occurrence in the life of a rendition victim. The number of cases currently appears to be in the hundreds: Egypt's Prime Minister noted in 2005 that the USA had transferred some 60-70 detainees to Egypt alone, and a former CIA agent with experience in the region believes that hundreds of detainees have been sent by the USA to prisons in the Middle East. The USA has acknowledged the capture of about 30 “high value” detainees whose whereabouts remain unknown, and the CIA is reportedly investigating some three dozen additional cases of “erroneous rendition”, in which people were detained based on flawed evidence or confusion over names.¹

However, this is a minimum estimate. Rendition, like “disappearance”, is designed to evade public and judicial scrutiny, to hide the identity of the perpetrators and the fate of the victims.

1.2 ‘Diplomatic assurances’

“They promptly tore his fingernails out and he started telling things.”

Vincent Cannistraro, former Director of the CIA's Counterterrorism Center, describing what happened to a detainee who was rendered to Egypt

Those who have been rendered to other countries for interrogation have said they were beaten with hands or sticks, made to stand for days on end, hung up for *falaqa* (beatings on the sole of the foot)² or deprived of food or sleep. In some cases, the conditions of detention, including prolonged isolation, have themselves amounted to cruel treatment. Yet no one can investigate this, much less stop it, because the condition and whereabouts of most rendition victims remain concealed.

There is little doubt that transfers are intended to facilitate such abusive interrogation. The former director of the CIA's Counterterrorism Center, Vincent Cannistraro, told *Newsday* newspaper in February 2003 that a senior al-Qa'ida detainee had been sent from Guantánamo Bay to Egypt because he was refusing to cooperate with his

¹ Dana Priest, “Wrongful Imprisonment: Anatomy of a CIA Mistake”, Washington Post, 4 December 2005.

² Falaqa involves beating the bare soles of the feet, often when the victim is suspended upside-down. It causes intense pain due to the numerous nerve endings in the foot, and often causes lasting damage to the foot's small bones and tendons.

interrogators. In Egypt, Vincent Cannistraro said, "they promptly tore his fingernails out and he started telling things."³ Robert Baer, a former CIA official in the Middle East, told the *British Broadcasting Corporation (BBC)*: "As I understand it, there's a lot of franchising stuff out. Syria is a country, like Iraq, where they torture people. They use electrodes, water torture. They take torture to the point of death, like the Egyptians. The way you get around involving Americans in torture is to get someone else to do it."⁴

The US government has claimed that renditions do not lead to a risk of torture. Secretary of State Condoleeza Rice insisted that: "the United States has not transported anyone, and will not transport anyone, to a country when we believe he will be tortured. Where appropriate, the United States seeks assurances that transferred persons will not be tortured."⁵

Even if one were to accept the premise that rendition is not intended to facilitate interrogation under torture, reliance on such "diplomatic assurances" would not satisfy the absolute obligation not to transfer any person to a country where they risk torture or other ill-treatment (the principle of *non-refoulement*). Indeed, the premise on which such assurances are based is inherently self-contradictory. If the risk of torture or ill-treatment in custody is so great that the USA must ask for assurances that the receiving state is not going to carry out such a crime, then the risk is obviously too great to permit the transfer. Most states asked to provide such assurances have already signed binding legal conventions prohibiting torture and ill-treatment, and have ignored them. Moreover, the use of diplomatic assurances creates a situation in which neither state has an interest in monitoring the agreement effectively, as any breach of the agreement would implicate both the sending and receiving states in internationally prohibited acts of torture or ill-treatment.

1.3 Establishment of the US rendition programme

Before 11 September 2001, rendition was largely thought of as a means of returning suspected terrorists to the USA for trial. President Bill Clinton's Presidential Decision Directive 39 of June 1995 states: "When terrorists wanted for violation of U.S. law are at large overseas, their return for prosecution shall be a matter of the highest priority... If we do not receive adequate cooperation from a state that harbors a terrorist whose extradition we are seeking, we shall take appropriate measures to induce cooperation. Return of suspects by force may be effected without the cooperation of the host government, consistent with the procedures outlined in [National Security Directive 77], which shall remain in effect."⁶ National Security

³ Tom Brune, "An Aggressive Interrogation", *Newsday*, 4 March 2003.

⁴ "Stars, Stripes and Human Rights", interview broadcast on *British Broadcasting Corporation (BBC) Radio Three*, January 2006.

⁵ Secretary Condoleeza Rice, "Remarks Upon Her Departure for Europe", as-aired at Andrews Air Force Base, 5 December 2005, see <http://www.state.gov/secretary/rm/2005/57602.htm>.

⁶ National Security Directive 77 was issued by President George Bush in January 1992, and its contents remain classified, <http://www.fas.org/irp/offdocs/pdd39.htm>.

Directive 77 was issued by President George W. Bush in January 1992, and its contents remain classified.

Speaking before the Senate Judiciary Committee in September 1998, FBI Director Louis J. Freeh noted: "During the past decade, the United States has successfully returned 13 suspected international terrorists to stand trial in the United States for acts or planned acts of terrorism against U.S. citizens... Based on its policy of treating terrorists as criminals and applying the rule of law against them, the United States is one of the most visible and effective forces in identifying, locating, and apprehending terrorists on American soil and overseas."⁷

At the same time, however, other US agencies were making provision to render terrorist suspects to third countries, where the goal was not trial, but to keep them in custody, out of circulation, and without access to US courts. Michael Scheuer, former chief of the CIA's bin Laden unit, said that the CIA had originally proposed a programme to bring suspects back to the USA and hold them as prisoners of war. When this failed to gain administration approval, in 1995, the rendition programme to Egypt was proposed and accepted. The goal was to "get the guys off the streets", said Michael Scheuer, and to seize documents, computers and any other information that could be exploited for intelligence.⁸ He also noted, however, that it was still White House officials who called the shots: they "told the CIA what to do, and decided how it should pursue, capture and detain terrorists... Having failed to find a legal means to keep all the detainees in American custody, they preferred to let other countries do our dirty work".⁹

Publicly, however, it continued to be suggested that rendition was a means of ensuring that terrorist suspects stood trial. In 2000, in a statement before the US Senate Select Committee on Intelligence, CIA Director George Tenet said: "Since July 1998, working with foreign governments worldwide, we have helped to render more than two dozen terrorists to justice. More than half were associates of Usama Bin Ladin's Al-Qa'ida organization. These renditions have shattered terrorist cells and networks, thwarted terrorist plans, and in some cases even prevented attacks from occurring."¹⁰ The meaning of the phrase "render... to justice" is not entirely clear. Amnesty International has asked the CIA for details of who was rendered and to where, and the dates of their trials, but has received no response.

In 2004, George Tenet testified to the US Congress' 9/11 Commission that the CIA's Counterterrorism Center, which added a Renditions Branch in 1997, "has racked up many successes, including the rendition of many dozens of terrorists prior to September 11, 2001." In later remarks, he clarified that there had been at least 70 renditions to foreign countries; no trials were mentioned.¹¹

7 1998 Congressional Hearings on Intelligence and Security, statement for the record from FBI Director Louis J Freeh, 3 September 1998.

8 Neil Mackay, "These two men are experts on rendition", Sunday Herald (Scotland), 16 October 2005.

9 Michael Scheuer, "A fine rendition", New York Times, 11 March 2005.

10 see:http://www.odci.gov/cia/public_affairs/speeches/2004/tenet_testimony_04142004.html.

11 Written Statement for the Record of the Director of Central Intelligence Before the National Commission on Terrorist Attacks Upon the United States, 24 March 2004.

1.4 Rendition practice since September 2001

“All I want to say is that there was ‘before’ 9/11 and ‘after’ 9/11. After 9/11 the gloves come off... ‘No Limits’ aggressive, relentless, worldwide pursuit of any terrorist who threatens us is the only way to go...”

Cofer Black, Director of the CIA's Counterterrorism Centre from 1999 until May 2002, in a statement before the 9/11 Commission

Since 11 September the focus of rendition practice has shifted emphatically; the aim now is to ensure that suspects are not brought to stand trial, but are handed over to foreign governments for interrogation – a process known in the USA as “extraordinary rendition” – or are kept in US custody on foreign sites. What was once an inter-agency operation was apparently turned largely over to the CIA under a still-classified directive signed by President Bush in September 2001.¹² The minority and majority leaders of both chambers of Congress were apparently notified of the CIA's new powers, but were not consulted on or even shown the directive.

The directive is said to give the CIA the power to capture and hold terrorist suspects. Prior to its signing, the CIA could capture suspects, but had no authority to keep them in custody. This had been part of the reason for establishing the rendition programme in the first place; it enabled the CIA – and other US intelligence agencies – to capture suspects and ship them off to client states without having to produce the evidence that would justify detention or trial.¹³ Roger Cressey, who was deputy counter-terrorism director at the White House in 2001, told *UPI*: “We are going to make mistakes. We are even going to kill the wrong people sometimes. That's the inherent risk of an aggressive counter-terrorism program.”¹⁴

As the practice of rendition has shown, mistakes are indeed made and lives are ruined. Some in the US government have tried to justify rendition and “black sites” by saying they are a necessary means of capturing and holding the “worst of the worst”, and that “renditions save lives”, yet there is no legal or judicial mechanism to ensure that this is the case. The methodology is to grab first, sometimes on flimsy or non-existent evidence, and to ask questions later.

Without a transparent process, based on the international standards and customary rules that bind all states, the programme of rendition and secret detention is eroding the human security and rule of law it claims to protect. For all practical purposes, the

¹² Douglas Jehl and David Johnston, “Rule Change Lets CIA Freely Send Suspects Abroad to Jails”, *New York Times*, 6 March 2005.

¹³ There are 15 federal organizations in the US “intelligence community”: National Security Agency/Central Security Service (NSA/CSS); Central Intelligence Agency (CIA); National Geospatial-Intelligence Agency (NGA); Federal Bureau of Investigation (FBI); Defense Intelligence Agency (DIA); National Reconnaissance Office (NRO); Department of Energy (DoE); Army Intelligence; Air Force Intelligence (AIA); Navy Intelligence (ONI); Marine Corps Intelligence; Department of Treasury (OIS); Department of State (INR); Coast Guard and the Department of Homeland Security (DHS).

¹⁴ Shaun Waterman, “CIA ‘too cautious’ in killing terrorists”, *UPI*, 28 February 2005.

USA has created a law-free zone, in which the human rights of certain individuals have simply been erased.

1.5 Pakistan

Hassan bin Attash was only 17 years old when he was detained in a house raid in Pakistan in September 2002. He was sent first to the "Dark Prison" in Afghanistan for about a week, then rendered again, this time to Jordan, where he said he was severely tortured while being interrogated about the activities of his brother, Walid bin Attash, who has "disappeared" and is presumed to be held in a secret US detention centre. Announcing Walid bin Attash's capture in 2003, President George W. Bush called him a "killer", adding "he is one less person that people who love freedom have to worry about". After 16 months in Jordan, Hassan bin Attash, a Yemeni national, was rendered back to US custody in Afghanistan, then resurfaced at Guantánamo Bay in May 2004.

Although cases of rendition from Western countries have received substantial attention in the media and from human rights organizations, it remains the case that most of the known victims of rendition or secret detention were initially detained in Pakistan, where the government maintains a close working relationship with the USA on intelligence matters. Some of them are known to be in Guantánamo Bay¹⁵; others in "black sites"; some were rendered by the USA to Middle Eastern countries where they are believed to have been tortured. Transfers to US and other custody have been carried out in contravention of Pakistani national extradition law as well as the international prohibition of *refoulement*.

The Pakistani government has publicly stated that some 700 terrorist suspects have been arrested, many of whom have been handed over to US custody. Many of these detainees have "disappeared", including men, women and children; journalists reporting on the "war on terror"; and doctors alleged to have treated "terrorists". Given the degree of secrecy surrounding security operations, and the overlap between US and Pakistani intelligence interests, it is difficult to find out which detainees have been turned over to the USA and which have been kept in Pakistani custody.

Those who have been turned over to the USA include many of the "high value" detainees currently being held in CIA "black sites". Of the 12 detainees identified by ABC news as having been held in secret detention in Poland, nine had first been arrested by Pakistani forces; at least 19 of the 28 "disappeared" named by the Center

15 More than 85 per cent of the Guantánamo detainees, for instance, were arrested not in Afghanistan by US troops, but by the Northern Alliance and Pakistani forces; rewards of up to US\$5,000 were paid for every "terrorist" turned over to the USA. One leaflet distributed in Pakistan by US forces read: "Get wealth and power beyond your dreams. Help the Anti-Taliban Forces rid Afghanistan of murderers and terrorists. You can receive millions of dollars for helping the Anti-Taliban Force catch Al-Qaida and Taliban murderers." See Mark Denbeaux et al, Report on Guantanamo Detainees: A Profile of 517 Detainees through Analysis of Department of Defense Data, Seton Hall University School of Law, February 2006.

for Human Rights and Global Justice at the New York University School of Law had likewise been detained in Pakistan.¹⁶

The most recent such detention appears to be that of Mustafa Setmariam Nasar, also known as Abu Musab al-Suri, who was reportedly arrested in Quetta by Pakistani counter-terrorism police in early November 2005. The subject of a US\$5 million reward on the FBI's "Rewards for Justice" list, Mustafa Nasar's capture was described by US intelligence officials as an "intelligence bonanza", adding that "he is all pen, no action, but the man has amazing access to a lot of other key players."¹⁷ The USA has not officially confirmed his arrest, and his current whereabouts remain unknown, but his photograph and details have been removed from the "Rewards for Justice" wanted list. Mustafa Nasar's wife Elena blames his continued "disappearance" on "non-Pakistani" agents.

Mustafa Nasar was one of 35 people listed in a 695-page indictment handed down in September 2003 by Spanish Judge Baltasar Garzon. The indictment called for the arrest of 34 other men, including Osama Bin Laden, on charges including membership of a terrorist group and planning terrorist acts. In the indictment, Judge Garzon alleged that Mustafa Nasar trained volunteers from Spain, Italy and France, then sent them home as "sleepers" awaiting orders. The judge also alleged that he worked closely with the leader of the Spanish cell, Imad Yarkus, a Syrian-born Spaniard who was tried and sentenced to a 25-year prison term in Spain in 2005. Judge Garzon issued an international arrest warrant for Mustafa Nasar in 2003, but the Spanish authorities have not been given any indication of his current whereabouts.

1.6 Torture, ill-treatment and 'disappearance': violations of international law

Incommunicado detention has been condemned by human rights bodies as a human rights violation that both facilitates torture, and constitutes a form of torture or cruel, inhuman and degrading treatment in itself. Prolonged isolation has been shown to cause depression, paranoia, aggression and hallucinations; the psychological trauma can last a lifetime. Where the detainee has "disappeared", the effects of enforced solitude are compounded by a pervasive sense of uncertainty and anxiety about the future, which can be similarly destructive.¹⁸

The Human Rights Committee, in an authoritative statement on the prohibition on torture and cruel, inhuman or degrading treatment, has stated that "to guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and

¹⁶ List from: Brian Ross and Richard Esposito, *Sources Tell ABC News Top Al Qaeda Figures Held in Secret CIA Prisons*, 5 December 2005, checked against *FATE AND WHEREABOUTS UNKNOWN: DETAINEES IN THE "WAR ON TERROR"*, The Center for Human Rights and Global Justice (CHRGJ) at NYU School of Law, December 2005.

¹⁷ Robert Windrem, "US hunt for 'pen jihadist' ends", *NBC News*, 3 November 2005.

¹⁸ Combating torture: a manual for action, Amnesty International, 2003. See also Human Rights First, *Behind the Wire: An Update to Ending Secret Detentions*, March 2005, p30.

places of detention... to be kept in registers readily available and accessible to those concerned, including relatives and friends".¹⁹ The UN Special Rapporteur on torture has said: "the maintenance of secret places of detention should be abolished under law. It should be a punishable offence for any official to hold a person in a secret and/or unofficial place of detention."²⁰

"Disappearances" are crimes under international law, involving multiple human rights violations. In certain circumstances they are crimes against humanity, and can be prosecuted in international criminal proceedings. The International Convention for the Protection of All Persons from Enforced Disappearance, defines enforced disappearance as the: "arrest, detention, abduction or any other form of deprivation of liberty committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law."²¹

The defining characteristic of a "disappearance" is that it puts the victim beyond the protection of the law while concealing the violations from outside scrutiny, making them harder to expose and condemn, and allowing governments to avoid accountability.

The UN Committee against Torture has determined that the uncertainty regarding the circumstances surrounding their loved ones' fate "causes the families of disappeared persons serious and continuous suffering".²²

1.7 Secret detentions and secret transfers: the case of Muhammad Bashmilah, Salah Qaru and Muhammad al-Assad

"Every day here is another day stolen from my life."

Muhammad Bashmilah, who "disappeared" in US custody for 21 months and was then arbitrarily detained in Yemen

Secret detention is the corollary of a secret rendition programme. Without renditions, the US-run "black sites" could not exist. The USA has acknowledged that it is holding a number of "high value" detainees – those who are thought to be leading terrorist suspects or to have intelligence information too sensitive to be entrusted to client states. Rendition provides the means to transport them to the CIA-run system of

¹⁹ Human Rights Committee, General Comment 20, Article 7, para. 11. Accurate and detailed registers of detainees are required under international law and standards, including the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

²⁰ UN Doc. E/CN.4/2002/76, 27 December 2001, Annex 1.

²¹ The Convention has not been adopted, although text was finalized in September 2005: E/CN.4/2005/WG.22/WP.1/REV.4, 23 September 2005.

²² Concluding observations of the Committee against Torture: Guatemala, UN Doc. A/56/44, 6 December 2000, para. 73(e).

covert prisons that has reportedly operated at various times in at least eight countries. According to reports, these facilities tend to be used in rotation, with detainees transferred from site to site together, rather than being scattered in different locations. Although the existence of secret CIA detention facilities has been acknowledged since early 2002, the term "black sites" was first reported by the *Washington Post* in November 2005.

The only public testimony from those who have held in "black sites" comes from three Yemeni men who "disappeared" in US custody and were then held in secret detention for more than 18 months, before being returned to Yemen in May 2005. Muhammad Faraj Bashmilah and Salah Nasir Salim 'Ali Qaru²³, had been arrested in Jordan before being transferred to US custody in October 2003. The third man, Muhammad Abdullah Salah al-Assad, was arrested in Tanzania, also in 2003, and turned over to US custody a few hours later. Amnesty International first reported on their cases in 2005, and returned to Yemen to follow up in February and March 2006; Muhammad al-Assad was released on 14 March. Muhammad Bashmilah and Salah Qaru were conditionally released from the political security prison in Aden at around midnight on 27/28 March.

During their "disappearance", the three men were kept in at least four different secret facilities, likely to have been in at least three different countries, judging by the length of their transfer flights and other information they have been able to provide. Although not conclusive, the evidence suggests that they were held at various times in Djibouti, Afghanistan and Eastern Europe.

Muhammad Bashmilah and Salah Qaru were apparently taken from Jordan to Afghanistan in October 2003; other prisoners there managed to get word to them that they were in Afghanistan. The two men have separately described a transfer flight of about four hours from Jordan, which is consistent with a flight to Afghanistan.

It is not clear where in Afghanistan they were held, but it does not appear to be the same Afghan-run prison in Kabul in which Khaled el-Masri was detained at roughly the same time. Khaled el-Masri, a German citizen, had been arrested in Macedonia in December 2003 and rendered to Afghanistan, where he spent some four months in a prison he said was run by Afghans but controlled by US officials. In May 2004, apparently realizing that they had the wrong man, the USA flew him to Albania and dropped him off on a mountain road to make his own way back to Germany. Khaled el-Masri has drawn a detailed floor map of his Afghan prison; the map was immediately recognizable to Walid al-Qadasi, a Yemeni national who had been detained in Kabul in 2002.²⁴ Muhammad Bashmilah and Salah Qaru, however, did not recognize the drawing and insisted that there were no Afghan guards or staff at their prison. Both men believe that all of their guards and interrogators were from the USA,

23 In previous Amnesty International documents, he has been referred to as Salah 'Ali, or as Salah Nasser Salim 'Ali.

24 Amnesty International showed him the map in March 2006, days after he was finally released and returned to his home in Yemen. Walid al Qadasi had been transferred to Guantánamo Bay from Afghanistan in 2002, and spent nearly two years there before being returned to Yemen in April 2004. He was arbitrarily detained in Yemen for almost two years, before being released on 3 March. He has never been charged with any offence, nor given any explanation for the more than four years he has spent in detention.

although the translators included native Arabic speakers with Lebanese and Moroccan accents.

The men told Amnesty International that they were held with a group of “important, high ranking” prisoners, who were watched over very closely. One such detainee managed to tell them that he had not been held permanently in any one location, but had been transported with the group from place to place.

The security measures practiced in the facility were far stricter and more methodical than those described by other detainees who have been held in Afghanistan. Muhammad Bashmilah and Salah Qaru describe a regime in which each detainee was constantly and individually monitored. The men were held in complete isolation, in cells measuring about 2m x 3m. There was one camera above the door and another on the wall on the other side of the cell. The inmates were permanently shackled to a ring fixed in the floor; the chain was not quite long enough to allow them to reach the door.

If a guard needed to enter their room to take them to shower or for interrogation, for instance, they followed a set routine. When the guard opened the door, the inmate had to face the wall with his back to the door and his hands on the wall. The guard would hood them and handcuff them behind their backs before removing the shackles. The hood had a kind of noose that could be tightened around the neck if the detainee did not move fast enough or in the right direction. The guards were always covered, and wore masks and gloves, but the men said that none of them were Arabs or Afghans. When asked how they knew this, they replied that the guards “had a different kind of physique”.

They were allowed outside for 20 minutes once a week, when they were brought into a courtyard with very high walls and made to sit in a chair facing the wall. Once seated, their hood was removed. They were not allowed to look to the left or the right, and a guard stood behind them to “enforce the rules”.

Muhammad al-Assad was arrested in Dar es Salaam, Tanzania, on 26 December 2003 and flown out sometime before dawn the next day. Sources in Tanzania have said that he was flown to Djibouti on a small US plane. According to press reports, about 800 US personnel, part of a counter-terrorism task force, had been located in Djibouti in late 2002, and the site was known to be a base for the CIA’s unmanned predator planes.²⁵ Speaking before the US Senate Armed Services Committee in March 2005, General John Abizaid noted: “Djibouti has given extraordinary support for US military basing, training, and counter-terrorism operations”.²⁶

Muhammad al-Assad says that he was questioned there by US officials, one man and one woman, who told him they were from the USA’s Federal Bureau of Investigation (FBI); a picture of the President of Djibouti hung on the wall of the interrogation room. Muhammad al-Assad spent about two weeks there before being processed for

²⁵ *San Francisco Chronicle*, 12 January 2003.

²⁶ Statement of General John P. Abizaid, United States Army Commander, United States Central Command, before the Senate Armed Services Committee on the 2005 posture of the United States Central Command, 1 March 2005.

another transfer. This time he thinks he was in a larger plane as he entered it without having his head pushed down or bending. He believes he was strapped down to a bench and that the plane had a row of benches along the side. He knows the flight was long and that it touched down once before flying on to a place that was “cold and muddy”. At this location, he was held in two different detention centres, about 20-40 minutes apart by car, over unpaved roads. The first room was large and dirty, with a rug and a high narrow window; the second was smaller and darker, and the walls were covered in graffiti. The bread he was given there, he said, was from Pakistan or Afghanistan. Muhammad al-Assad is diabetic and says that he was not given proper medication during this period, so was often dizzy or ill. It is not certain that he was held with Muhammad Bashmilah and Salah Qaru, although all three men were transferred to the same final secret destination at about the same time.

At the end of April 2004, probably around the 24th, the men were brought, one at a time, to be prepared for transfer. They were stripped naked before being given absorbent plastic underpants, a pair of knee length cotton trousers to wear over them, a cotton shirt, and a pair of blue overalls. They were handcuffed and their hands were strapped to a belt around the waist, their legs were shackled together and to the belt. Foam earplugs were inserted in their ears. They were blindfolded and had their mouths covered with a surgical facemask, presumably to prevent them from talking. They were then hooded, and tape or a bandage was wrapped around the hood to prevent movement. Finally, a pair of heavy, sound-deadening headphones were placed over the hood. A similar process was described by Swedish police officers who witnessed a US-led renditions team preparing two men for transfer in December 2001; the renditions team told them that the procedures had become policy for transporting terrorist suspects “post 9/11”.

“You lose most of your senses”, said Muhammad Bashmilah, “but you can still feel a bit, and on this flight I felt the presence of a number of other bodies swaying back and forth.” The preparations are done very quickly and professionally, he added, by a team of black masked “ninjas” who carried out the whole operation in about 20 minutes. After he was prepared, he was taken to a waiting room for a couple of hours, so he believes there must have been a number of others undergoing the same treatment.

Muhammad Bashmilah and Salah Qaru said that this flight lasted three to four hours, Muhammad al-Assad thought the flight was longer. Whether or not they were on the same plane for the first leg of their journey, all three describe landing and waiting for an hour or so before being thrown roughly into a helicopter with a number of other prisoners. All three noted separately that they felt that there were a number of prisoners being transported at the same time, perhaps a dozen or more. All three agree that the helicopter flew for about two and a half or three hours, and that once it had landed they were taken to the new detention centre by car.

The size and location of the final secret facility, where they spent 13 months, remains unconfirmed. Two of the men told Amnesty International in October 2005 that they believed this detention centre was in Europe. Other information they have since provided, some of it confirmed or augmented by media reports, indicates a strong possibility that the men were indeed held in an Eastern European “black site”.

As Amnesty International has reported, the facility was new or refurbished, and carefully designed and operated to ensure maximum security and secrecy, as well as disorientation, dependence and stress for the detainees.²⁷ Well-staffed and resourced, and highly organized, the system in operation there could not have been maintained solely for the purpose of interrogating low-level suspects like Muhammad Bashmilah, Salah Qaru and Muhammad al-Assad.²⁸ One of the men calculated that at least 20 people were being taken to the shower room in his section each week, although he does not know whether the facility contained more than one section.

The men were initially examined by a doctor or medic, who had access to the medical records that had been kept on the men throughout their detention. At each transfer, the men said, they were stripped and photographed, front and back, and any wounds or marks on their bodies were noted on a medical record, which followed them from place to place. Salah Qaru explained that the doctor used a template drawing, and that he has two scars that the doctors always recorded. The scales used at their checkups, he noted, measured weight only in pounds, the unit used in the USA.²⁹

According to one of the men, "all of the guards and officials were Americans. One doctor we saw was an American and one spoke English with a European accent. Of the translators, some were native Arabic speakers, and some spoke Arabic with an American accent." The director of the prison was one of the few people they ever saw unmasked. When he arrived in late 2004, he told Muhammad al-Assad that he had been sent from Washington DC in order to decide who they should keep and who they should send home. "You are at the top of the list to be returned," he told Muhammad al-Assad.

Although the men were never allowed outside, or even to look through a window, they were given prayer schedules throughout the year. The schedules were not made up by the prison officials, but were downloaded from an Internet site (islamicfinder.org) which the men could see at the bottom of the printouts. On these schedules, they said that the time of sundown prayer over the course of the year changed by over three hours, from about 4.30pm to about 8.45pm (including an additional hour for daylight saving time). Such a degree of variation indicates a location north of the 41st parallel, well above the Middle East, and very likely to be within one of the member states of the Council of Europe (CoE). Countries that would fit the time range include Turkey, Azerbaijan, Georgia, Romania, Bulgaria, Albania and Macedonia. They were also in a location that observed daylight saving time, which is observed in all CoE member states, but not, for instance, in Afghanistan, Jordan or Pakistan.

27 *United States of America/Yemen: Secret Detention in CIA "Black Sites"*, Amnesty International, November 2005, AI Index: AMR 51/177/2005.

28 The fact that the men were released, that no terrorism-related charges have ever been brought against them, and that the Yemeni government has openly said that no such evidence exists all suggest that they were among the "erroneous renditions" reportedly being investigated by the CIA.

29 Even countries that still use imperial measures, like the UK or Australia, generally measure weight in stone, rather than pounds.

Moreover, the men said that there was significant variation in the temperature. In particular, they noted the extreme cold during the winter. By December 2004, they said, it was so cold that they had to pray wearing their blankets. Even though they were issued new sets of extra warm blankets, they say the temperatures were colder than any they had ever known.

The detention centre had an on-site inventory of some 600 books, again suggesting that many more than three detainees were held there. Most of the books listed were in Arabic, but there were also titles in English, Farsi, Pashto, Russian and Indonesian. The men said that the Arabic books usually had a white and gold sticker, with Arabic and English writing, naming a bookshop in Washington DC and another in Chicago.³⁰ The detainees were given the book list one morning a week, and ticked off their choices; the book or books were delivered with their evening meal.

The men said that much of the food they were served seemed "European", once including pizza which they had never eaten before. Their description of the meals also echoes the account provided in an *ABC* news report on a "black site" facility allegedly located in Poland.³¹ For breakfast, they were served two slices of bread with two triangles of cheese with the wrappers already removed, and yoghurt in a cup. Lunch was usually rice with tinned salty meat, sometimes fish or chicken, and olives or tomatoes. Dinner was more of the same, sometimes with some salad. For a short time in late 2004, they said, there was a dish of "normal" food, a spicy hot chicken with onions, but that stopped after Ramadan.

On Fridays they got two fingers of a "Kit Kat" chocolate bar, again with the wrappers removed (although the name was on the bar itself); *ABC* news reported that Kit Kats were a favourite of Abu Zubaydah, a "high value" detainee allegedly held in Poland in 2005.³² Labels were usually removed from their clothes and their bottles of water. They had some blankets and t-shirts made in Mexico, while their water cups, although made in China, had the name and telephone number of a US company embossed on the bottom.

The detention facility was about 10-15 minutes by car via a bumpy, possibly unpaved, road from the airstrip. When they got out of the car, they said, they walked up a flight of steps to get into the building, then once inside the building they walked down a ramp or slope of some kind. Their cells were new or refurbished – the walls were freshly painted and bare of any graffiti or identifying marks. The toilet facilities were modern -- the men noted that the toilets were Western-style and faced in the direction of Mecca (which they had been given for prayers), which they thought meant they were unlikely to be in a Muslim country. There was artificial light in the cells, which was usually on 24 hours a day. On the few occasions when the electricity failed, the men said, the cells were absolutely pitch black, leading them to believe that they may have been in the basement of the building. "We don't have daylight here," one of the

³⁰ Amnesty International has confirmed the existence of both bookshops.

³¹ Brian Ross and Richard Esposito, Sources Tell ABC News Top Al Qaeda Figures Held in Secret CIA Prisons, 5 December 2005.

³² *ibid.*

interrogators told them, "we have capsules". The men assumed that these capsules, which they were given every morning, contained vitamin C or D.

Although they were brought by helicopter, the facility was located within a 10-minute drive of an airbase or airstrip that is probably not a commercial airport, as it only receives light traffic. From their cells, Muhammad al-Assad said, they could hear planes taking off and landing. "Sometimes there were two or three a day," added Muhammad Bashmilah, "but some days there were none. A week wouldn't go by without planes and the most movement was on Wednesdays."

The information that the men provided about the duration of their flights provides general indications of where they might have been. However, without knowing the size, speed and route of the aircraft, as well as the exact duration of the flights, the locations cannot be pinpointed.

The flight that returned the men to Yemen in May 2005 was separately described by all three as a non-stop journey of approximately seven hours. The plane seems to have been a small jet. The men agree that there were about six steps from the ground to the door of the plane, and they think there were probably two seats on the aisle, at least on one side. They believe that they left in the early afternoon and arrived at about 10pm. An airport official said they might have arrived in Yemen in a military plane, although the Yemeni government has thus far refused to comment. Given that cruise speeds for likely aircraft vary from about 250 to more than 500 knots, the final flight could have been between 1,400-2,800 nautical miles (around 2,600-5,200 kilometres).³³

The triangulation between this flight and the shorter journeys the men had apparently made from Afghanistan to their final secret destination rule out locations in Western Europe and the Middle East. If the flight times given by the men are accurate, the initial flight from Afghanistan could have reached Azerbaijan, Armenia, Turkey or Georgia or coastal Bulgaria or Romania; an additional helicopter flight of 150-180 minutes from such locations would have been unlikely to have gone more than 500 nautical miles (around 925km). Aviation experts note that it is not common for helicopter flights to cross international borders, although technically possible. Assuming that the flight from Afghanistan had reached Turkey, eastern Bulgaria or Romania, possible sites for the final detention centre could have included Turkey, Bulgaria, Romania, Albania, Bosnia-Herzegovina and the Slovak Republic.

Senior Yemeni officials told Amnesty International that they had first heard of the men on 4 May 2005, when the US Embassy in Yemen informed them that the three would be flown to Sana'a and transferred to Yemeni custody the following day. The USA provided no further information about what the men might have done, or any evidence or charges against the men, but Yemeni officials say they were instructed by

³³ A Beech B300 has a maximum cruise speed of 311 knots, while certain models of the Gulfstream V can cruise at up to 585 knots. There are also turboprop planes with the capacity to fly seven hours non-stop; the CASA CN 235, for instance, has a cruising speed of about 246 knots. The men said they did not hear propellers, or sense the rhythm, but cannot be certain because of the headphones and ear plugs.

the US Embassy to keep the men in custody until their case files were transferred from Washington DC. No files or evidence were ever received.

On 13 February 2006, after more than nine months in arbitrary detention in Yemen, and some two and a half years since they were first arrested, the three men were brought to trial in Sana'a. On the basis of statements they made during their interview with the prosecutor of the Special Penal Court,³⁴ each was charged with forgery in connection with obtaining a false travel document for personal use. None of the alleged forgeries was presented in evidence. None of the men was charged with any terrorism-related offence; the Chief of Special Prosecutions told Amnesty International that they were not suspected of any such offences. The men all pleaded guilty and the judge had it written into the trial record that they had been detained in an unknown place by US agents. On 27 February the judge sentenced the men each to two years in prison, adding the instructions: "to count the period that the accused spent in prisons outside the country as part of the sentence". He calculated that, in addition to their nine months in prison in Yemen, their time in secret US detention had been at least 18 months, and ordered their release.

Muhammad al-Assad was released from custody in Sana'a on 14 March. Muhammad Bashmilah and Salah Qaru were transferred to Aden, where they were released at around midnight on 27/28 March. They were given instructions to report to political security every month and not to leave Aden without permission.

The human cost of rendition and secret detention is too often ignored. Muhammad al-Assad told Amnesty International on his release that "for me now, it has to be a new life, because I will never recover the old one". His business is in ruins, he is in debt, and he does not yet know if he will even be allowed to return to Tanzania, where he had lived since 1985, to try and rebuild the life he had made there.

The prospects are also bleak for Muhammad Bashmilah and Salah Qaru. The men do not know if they will be reunited with their wives in Indonesia, who have been thrown into destitution by their absence. Even if they manage to raise the money, they may not get permission to travel to Indonesia. Nor will it be easy for them to support themselves in Yemen. Even though they were never charged with a terrorist offence, they believe that they will remain stigmatized because they were detained by the USA. Under suspicion by any potential employers, and harassed by the security and intelligence service, they fear they will never be able to lead normal lives or take care of their families. All three men have suffered emotional and physical trauma – Salah Qaru and Muhammad Bashmilah have described severe torture during their detention in Jordan and are in urgent need of medical attention for problems caused or exacerbated by the long months in isolation and secret detention.

³⁴ Al-mahkama al-jaza'iyya al-mukhtassa.

1.8 Transfer to torture: the case of Muhammad Zammar

The secret arrest and subsequent “disappearance” of Muhammad Haydar Zammar has all the hallmarks of a case in which an individual has been rendered for the purposes of interrogation under torture. Muhammad Zammar, a German national of Syrian descent, was suspected of involvement with the “Hamburg Cell” – a group that included the presumed leaders of the 11 September 2001 attacks in the USA – and had been under surveillance in Germany for some years. He was questioned by German police after 11 September, and was brought before a court in Hamburg less than a week later. There was not enough evidence to hold him, but the Federal Public Prosecutor initiated an investigation into allegations that he had “supported a terrorist organization”.³⁵ Intelligence information supplied by Germany is thought to have been instrumental in his arrest in Morocco and rendition to Syria.

On 27 October 2001 Muhammad Zammar left Germany for Morocco, travelling on his German passport, and spent some weeks there and 12 days in Mauritius before attempting to return to Germany. He was reportedly taken into custody by Moroccan intelligence agents at the airport in Casablanca in early December, and was then interrogated by Moroccan and US intelligence officials for over two weeks. Towards the end of December 2001, he was reportedly put on the CIA’s Gulfstream V jet, N379P, and taken to Damascus, Syria. A US official declined to provide details on whether the USA was directly involved with Muhammad Zammar’s capture or transfer, but said that the US government was aware of the detention and the transfer as they occurred.³⁶

The German government was reportedly not informed of Muhammad Zammar’s arrest by the USA, Morocco or Syria, and learned of the transfer through media reports during June of 2002.³⁷ While US officials have said they do not have direct access to Muhammad Zammar in Syria, they have reportedly provided written questions to his Syrian interrogators. Murhaf Jouejati, an expert on Syrian politics and a former adviser to the Syrian government, testified before the 9/11 Commission: “Syrian cooperation was also highlighted by an earlier revelation that a key figure in the September 11 plot, Muhammad Haydar Zammar, had been arrested in Morocco and sent to Syria for interrogation, with American knowledge. Although US officials have not been able to interrogate Zammar, Americans have submitted questions to the Syrians.”³⁸

After learning through the media of his arrest and transfer, the German government reportedly ordered their intelligence agents to locate Muhammad Zammar, and was subsequently informed by US officials on 13 June 2002 that he was in the custody of the Syrian government. In November 2002, six German intelligence agents arrived in Damascus and interrogated Muhammad Zammar for three days. No details of these interrogations have been released or used in other investigations; as *Der Spiegel*

35 Holger Stark, “The Forgotten Prisoner: A Tale of Extraordinary Renditions and Double-Standards”, *Der Spiegel*, November 2005.

36 Peter Finn, “Al Qaeda Recruiter Reportedly Tortured”, *Washington Post*, 31 January 2003.

37 Peter Finn, “Syria Interrogating Al Qaeda Recruiter”, *Washington Post*, at A01, 19 June 2002.

38 See: http://www.globalsecurity.org/security/library/congress/9-11_commission/030709-joujati.htm.

magazine noted: "no court operating under the rule of law would ever accept an interrogation conducted in a Damascus prison notorious for its torture practices".³⁹ German diplomatic officials, on the other hand, have not been able to visit Muhammad Zammar; they have filed eight *notes verbales* seeking clarification of the reasons for Muhammad Zammar's detention and seeking a lawyer for him. The Syrian government has not responded to these notes.⁴⁰

In early 2003, a Moroccan national, recently released from the Far' Falastin (Palestine Branch) of Military Intelligence in Damascus, said that Muhammad Zammar was being tortured by Syrian officials. The former CIA official Robert Baer told Amnesty International that he had sought an interview with Muhammad Zammar in April 2003, while working in Syria for a US television network, but was told that "he is no longer with us". In an interview with a Swedish television channel, Robert Baer said: "there was not enough evidence obviously that he broke US law, but we still wanted him off the streets so we arranged with the Moroccan government to have him arrested, sent to Jordan and then to Syria where he is either dead or alive, I don't know. With the Syrians engaging in torture, there is no bones about it."⁴¹ There were persistent reports that Muhammad Zammar's physical condition had deteriorated, and even that he had died.

In 2004 Amnesty International learned through former prisoners that Muhammad Zammar had been held in solitary confinement at the Far' Falastin since he was brought to Damascus in late 2001. His underground cell was believed to be 185cm long, less than 90cm wide, and under 2m high. Although photographs taken before he left Germany show him as a large, heavy-set man, Amnesty International was told that his condition was now "skeletal".

Former detainees have told Amnesty International that the underground section of Far' Falastin is infested with rats and lice. There is no bed or mattress in a "tomb" cell, just a couple of old and filthy blankets. One plastic bottle is provided for drinking water, and another for urination. Three short visits to the bathroom are allowed daily - usually limited to several minutes each time, with 10 minutes allowed on Fridays to also take a shower or bath and to wash clothes. Access to fresh air and sunlight in the yard is restricted to a maximum of 10 minutes each month, but can be as infrequent as 10 minutes each six to eight months. Released detainees have told Amnesty International that the food provided is barely enough to keep a person alive, and is often rotten and always dirty, resulting in frequent bouts of diarrhoea.

Torture and ill-treatment are commonly reported at Far' Falastin. In addition to the prolonged solitary confinement in cramped and wretched conditions, detainees are commonly beaten or subjected to other methods of torture. Amnesty International has documented some 40 different types of torture and ill-treatment reportedly used against detainees in prisons and detention centres in Syria.

39 Holger Stark, "A Tale of Extraordinary Renditions and Double-Standards", *Der Spiegel*, November 2005.

40 "German, CIA Roles in Terror Suspect's Torture in Syria", BBC Monitoring International Reports, 22 November 2005.

41 *Sweden TV4*, Kalla Fakta Programme, broadcast 22 November 2004.

Amnesty International received information that Muhammad Zammar was taken from his solitary confinement cell in the Far' Falastin in October 2004. He may then have been held in Sednaya prison on the outskirts of Damascus. His family in Germany was given their first real indication that he was still alive when a letter from him, dated 8 June 2005, was sent to them through the International Committee of the Red Cross (ICRC) in Damascus. The letter, which contains just 43 words, suggests that he had been returned to the Far' Falastin. His current whereabouts are unknown, and he has yet to be seen by his family or anyone known to them since he was first detained.

1.9 A practice predating 2001: the case of Abdul Rahman al-Yaf'i

"We're going to kill you and bury you here", they told me, and all the time I was wishing that they would."

Abdul Rahman al-Yaf'i, on his interrogation in Jordan in 2000

Although shipping people off to third countries for "vigorous" interrogation has become a more common practice since September 2001, it was already an established means of trying to gather intelligence about al-Qa'ida. A network of intelligence agencies from different countries helped to carry out the practice of rendition, and US involvement may not always have been direct, although the aims and results of the interrogations were the same.

Abdul Rahman Muhammad Nasir Qasim al-Yaf'i, now 38 years old, was one of the pre-2001 victims of rendition. He spoke to Amnesty International in February 2006 about his rendition from Egypt to Jordan five years before. As with most of the other rendition victims interviewed by Amnesty International⁴², his interrogations did not appear to have been aimed at investigating a specific criminal offence, but at gathering intelligence about the activities of others. As in the cases of Muhammad Bashmilah and Salah 'Ali Qaru described above, it appears that the standard of evidence needed to warrant months of torture and interrogation was nothing stronger than his admission of a previous visit to Afghanistan.

Abdul Rahman al-Yaf'i, who lives in Sana'a in Yemen with his wife and six children, said that he took his aunt and brother to Cairo in Egypt for medical treatment in October 2000. When he told airport immigration officials, in response to a question, that he had visited Afghanistan 10 years before, they detained him at the airport for about 13 hours, then told him he would have to return for his passport. When he came back for it two days later, an Egyptian policeman cuffed and blindfolded him, and took him to a place where they put him in a cell so small he could not stand upright. When he asked why they were holding him, he said he was told "we just want some general information".

42 Most of the rendition victims interviewed by Amnesty International have been released, suggesting that their captors determined they did not have valuable or specific information. Their experiences of interrogation may therefore be substantively different from those who are believed to have "high value" intelligence.

After some hours in the tiny cell, he said, they took him to interrogation, and began calling him names and making him stand up and sit down over and over again. They asked him repeatedly about what he had done in Afghanistan, where he had gone, and whom he had met there. He was also questioned about bombings in Kenya, Tanzania and Riyadh in Saudi Arabia. When he could not answer, he said, they strangled him, all the while insulting his parents, wife and religion. He was interrogated like this three times a day. "If they beat me in Egypt", he said, "it would have been more bearable than what they did... They accused me of everything that ever happened in the world... perhaps it is the price you have to pay for having been in Afghanistan". They asked him to work with them, and offered to put his aunt and brother in the "finest hospitals in Cairo". He refused, and they told him he would now be turned over to the USA.

After four days, they returned him to the airport, where they took him through the VIP entrance and straight to a waiting plane.⁴³ The plane was "full of military, you could feel the presence of military even if it was a civilian plane." He says he kept asking what was happening to him and where he was going, but eventually "stopped asking questions because there were no answers". He said he was surprised when the plane took him to Amman airport in Jordan, where his guards handed him over to Jordanian security. He was again blindfolded and taken by car to a detention centre, which he described as a new building, about four stories tall, with good facilities. He thought it might be the General Intelligence Department (Mukhabarat al-'amma), which is indeed a modern building, located near Wadi Sir in Amman, about 30 minutes from the airport. "I was exhausted from the Egyptian terrorism [sic] and asked for some medication," he said, "and then I prayed and slept".

The next evening he was taken to interrogation, cuffed and blindfolded, and was told to write down everything that had happened in Egypt. After he finished, he said, they kept asking him "do you love Osama bin Laden?", and then they beat him and forced him to stand in his cell for more than 24 hours without sleep.

The following evening, they took him to a covered yard, where he saw large stains of what looked like blood on the concrete ground. His ankles were tied to a stick, and two soldiers picked it up from either end, so that he was suspended upside-down above the ground. They then took turns beating the soles of his feet until the stick they were using broke. "They reach a point where the blood is about to come out of your feet," he said, "and they stop there for a little while." There was a man in white clothes, who he thought was a doctor, supervising the procedure, and giving instructions on how long and how hard he should be beaten. *Falaqa*, sleep deprivation and long-term standing are commonly used forms of torture in Jordan.

Abdul Rahman al-Yaf'i felt that the interrogators were fishing for information. "They just kept saying 'confess, confess. Confess to Kenya, confess to Riyadh.' I kept saying the *Shahadah* [Muslim statement of faith] and they kept beating me and mocking my religion." When his feet swelled from the beating, they took him down and made him run around the yard, then made him stand in salt, while they poured

⁴³ The typical processing of transfer for rendition – including the hooding, shackling and jumpsuits – was established after 11 September 2001.

cold water on his feet to bring the swelling down. Then they strung him back up and it started all over again. On the first day this happened at least three times. "They told me: 'We're going to kill you and bury you here', and all the time I was wishing that they would."

He "disappeared" in Jordan for more than four months. His family never discovered his whereabouts; a brother living in the USA came to Egypt to search for him, while members of his tribe made persistent inquiries with the Egyptian ambassador in Yemen, who finally said that he did not know where Abdul Rahman al-Yaf'i was, only that he had left Egypt.

Abdul Rahman al-Yaf'i told Amnesty International that about twice a month, when the ICRC visited the detention centre, he and other detainees were told to get their things together and they would then be taken to underground cells, which he thinks might have been underneath the kitchen. In these cells, he and other prisoners wrote their names on the walls with the soot from the lantern wicks. He was not held in the same cell every time and could read on the walls the names of other detainees; there had been Saudis, Palestinians, Tunisians and Egyptians there. He thinks he was moved with about a dozen other people each time.

The interrogation was intensive for the first week or two, and after that intermittent, but always focused on general information. He was often shown photographs of people, most of whom he said he did not know. Throughout interrogation, he said, they would smack him (here he mimed a full back and forth open-handed blow) until his face swelled. He told us that even now, after five years, his ears are still ringing. There were three or four interrogators, he said, and "you really felt like they had been specially trained to insult religion, in particular beards... What I was most worried about all the time I was there was being raped. The interrogators threatened me tens of times with rape. I kept the same clothes on all the time I was there, I didn't take my robe off even when I went to the washroom, I never washed my clothes, I hoped that the smell would put them off."

Abdul Rahman al-Yaf'i was returned to Yemen in March 2001. One day guards came to his cell and told him they were sending him to the USA, a threat he said that they often used. Instead, he was taken to the airport with another Yemeni, where they were turned over to Yemeni guards and put on a Yemeni airlines passenger plane.

When the plane landed in Sana'a, he was taken directly to the Political Security prison, where he stayed for just under two months. It was better in Yemen, he said, "because they didn't hit me". When he asked why they were holding him, the Yemeni authorities said: "American pressure". He believes that his eventual release was due to the insistence of powerful tribal leaders.

Abdul Rahman al-Yaf'i knew of several other cases similar to his own, but said that most of these people are too frightened to talk to anyone about their experiences – a point which underscores the difficulty of getting any precise idea of the number of people who may have been subjected to rendition.

2. Planes and airports – the support network for rendition flights

“Yes. It's very convenient. It's finding someone else to do your dirty work.”

Michael Scheuer, who as a senior counter-terrorism official with the CIA, helped establish the rendition programme

2.1 International aviation law and renditions

The Convention on International Civil Aviation, also known as the Chicago Convention, establishes the rules of airspace, plane registration and safety, and sets out the rights of the signatory states in relation to air travel. It establishes a system under which all transit and landing rights for airlines and their aircraft require the explicit or tacit approval of the national governments in or above whose territory they operate. The current version of the Convention was adopted in 2000 and it has 189 contracting states.⁴⁴

Of particular importance for rendition cases is the clause that allows private, non-commercial flights to fly over a country, or make technical stops there, without prior authorization or notification. The CIA planes identified to date have been chartered from private companies, real or fictional. “State aircraft” – defined by the Convention as those “used in military, customs and police services” – do require specific agreement or authorization to fly over the territory of another state or to use its airports. Experts on rendition believe that this is one of the main reasons why privately contracted aircraft are used in rendition operations, rather than military or other official aircraft.

The intelligence and military community of the USA has long used private air carriers for secret operations. Some of the covert carriers identified by past US congressional inquiries and other investigations⁴⁵ are still in business. In November 2003, for example, carriers such as Southern Air, Kalitta Air, Evergreen International Airways, and Tepper Aviation – all known for their connections to covert intelligence and military operations – received a “US Transportation Command Certificate of Appreciation” for their support of Operations Enduring Freedom and Iraqi Freedom, in the “Global War on Terrorism”.⁴⁶

The use of planes able operating as private aircraft, without the restrictions placed on official or military flights, has been a key component of the rendition programme since the mid-1990s. According to Michael Scheuer, when the outlines of the current

44 Further information: ‘Enabling Torture: International Law Applicable to State Participation in the Unlawful Activities of other States’, Briefing Paper by The Center for Human Rights and Global Justice, New York University School of Law, February 2006

45 TransArms, Ariadne’s Thread, report to the MacArthur Foundation, 2003; J Peleman, The logistics of sanction busting: the airborne component, in Angola’s War Economy, Pretoria, ISS, 2000; Netherlands Institute for War Documentation, <http://213.222.3.5/srebrenica/> Appendix II.

46 USTRANSCOM News Service, Release Number: 031113-1, 13 November 2003.

system were established in 1995, the CIA needed the means to locate, detain and remove terror suspects.⁴⁷ A small fleet of private jets able to land discreetly at both commercial airports and US military bases worldwide was the essential ingredient for making the system work.

2.2 CIA-front companies

The CIA rendition programme has relied on private planes contracted from companies listed as private air charter services. In some cases, these are CIA front companies that exist only on paper. Premier Executive Transport, for instance, first appeared as a Delaware company in 1994, and was then re-registered in Massachusetts in 1996 as a "Foreign Corporation".⁴⁸ It listed a President and Treasurer whose only known addresses were post office boxes outside Washington DC, who appeared to have no credit or personal history, and who both had Social Security numbers issued in the mid-1990s.⁴⁹

Premier was the listed owner of only two planes: the Gulfstream jet most frequently identified with rendition operations, originally registered as N379P; and a Boeing 737, initially N313P, which appeared regularly in locations such as Afghanistan, Libya, Jordan, Baghdad, Germany and the UK, and which Amnesty International believes was used to render Khaled el-Masri from Macedonia to Afghanistan in January 2004. Flight records show that the plane flew from Skopje to Kabul, touching down in Baghdad, on 24 January 2004, the day Khaled el-Masri was transferred from Macedonia to Afghanistan. Both planes had previously been registered by Stevens Express Leasing and Amnesty International has landing declarations showing that both continued to identify Stevens Express as their operator in 2003 and 2004. Stevens Express has an office address in Tennessee, but no actual premises, although it currently appears in US Federal Aviation Administration (FAA) records as the operator of four planes.⁵⁰ Stevens Express was in turn incorporated by the same lawyer listed as the official representative of Devon Holding, another company identified with rendition flights. Premier Executive Transport ceased operations in late 2004; the Boeing's ownership was transferred in November 2004 to Keeler and Tate Management, another non-existent front company with no other planes, no website and no premises. A few days later, the Gulfstream was transferred to Bayard Foreign Marketing, a company whose named corporate officer, Leonard Bayard, cannot be found in any public record.

Other transport contractors have actual premises and staff, but appear to be largely controlled by the CIA. Aero Contractors, for instance, was described by the *New York*

⁴⁷ Jane Mayer, "Outsourcing Torture", *New Yorker*, February 2005.

⁴⁸ Massachusetts registration certificate 521857292, can be viewed at:

<http://corp.sec.state.ma.us/corp/corptest/CorpSearchSummary.asp?ReadFromDB=True&UpdateAllowed=&FEIN=521857292>.

⁴⁹ All US citizens are now required to have a Social Security number before their first birthday. The US Social Security Administration told the Boston Globe that those who receive their numbers in adulthood are either recent immigrants or people being given a new identity. Farah Stockman, Terror suspects' torture claims have Massachusetts Link, 29 November 2004.

⁵⁰ FAA Registry Inquiry, 22 March 2006, see: <http://registry.faa.gov/aircraftinquiry>.

Times newspaper as “a major domestic hub of the Central Intelligence Agency’s secret air service”. The *New York Times* went on to say that the CIA owns at least 26 planes, and “concealed its ownership behind a web of seven shell corporations that appear to have no employees and no function apart from owning the aircraft. The planes, regularly supplemented by private charters, are operated by real companies controlled by or tied to the agency, including Aero Contractors and two Florida companies, Pegasus Technologies and Tepper Aviation.”⁵¹

In other cases, the CIA leases their planes from ordinary charter agents, such as Richmor Aviation, which the *Boston Globe* newspaper identified as “one of the nation’s oldest aircraft chartering and management companies”. The CIA has made frequent use of Richmor’s Gulfstream IV, N85VM, later N227SV, which has made over 100 trips to Guantánamo Bay, and which appears to have carried out the rendition of Abu Omar from Ramstein to Cairo in 2003.⁵² The plane’s owner confirmed to the *Boston Globe* in March 2005 that he charters his plane through Richmor to the CIA, as well as to other clients. The plane is currently advertised for charter at a rate of US\$5,365 per hour.

Individual aircraft may change their registration numbers, but they remain largely traceable. Given the concentrated attention now being devoted to tracking rendition flights, it seems that the intelligence services have now decided that the notorious Gulfstream V, variously registered as N379P, N8068V and N44982, has become too conspicuous. It was put up for sale in November 2005; the advertisement on www.usaircraftsales.com emphasized its “16 pax capacity, dual DVD players, mid and aft seating in Brown leather, and Walnut matte finish woodwork”, but the plane had to be “priced below market” due to its heavy usage.⁵³ Premier Executive Transport itself seems to have vanished as well; there are no planes registered with the company and its landing contracts expired in 2005 and have not been renewed. It is likely that other companies have been created to take Premier’s place, and that other, less well-known planes are now being used for CIA rendition activities.

It is likewise the case that the number of flights carried out by the planes identified for monitoring in this report have fallen over the last year. This does not necessarily indicate that renditions are not being carried out, but that companies and aircraft previously involved in the programme are being replaced, making the rendition programme increasingly difficult to monitor.

2.3 Other US agencies involved in rendition

Although renditions have largely been carried out under the auspices of the CIA, other US agencies have apparently been involved in both flight leasing and operations. Contracts for identified rendition planes have been issued through an obscure US Navy office, rather than the CIA, according to US Department of Defense (DoD)

51 Scott Shane, Stephen Grey and Margot Williams, *CIA Expanding Terror Battle Under Guise of Charter Flights*, New York Times, 31 May 2005.

52 Abu Omar, an Egyptian cleric, was kidnapped in Italy and then flown on this jet from Germany to Egypt.

53 <http://www.usaircraftsales.com/Forsale/SPECS%20GV%20581%20%202.pdf>.

documents obtained by *Associated Press (AP)*.⁵⁴ In September 2005, *AP* reported that the Navy Engineering Logistics Office (NELO)⁵⁵ had issued classified contracts with 10 different companies and 33 planes for the “occasional airlift of USN (Navy) cargo worldwide.” This was the first indication that the DoD had participated in the rendition programme; the companies previously identified as operators of rendition planes were widely believed to be under CIA contracts.

According to the *AP* article, permits to land and buy fuel in US bases worldwide were granted to all of the 10 companies under NELO contract between 2001 and 2004. The 2004, 2005 and 2006 contract lists examined by Amnesty International show that permission to land in US bases worldwide is currently held by 12 companies, but had previously been granted to a total of 38 companies, among them Aviation Specialties; Devon Holding & Leasing; Path Corporation; Rapid Air Trans; Richmor Aviation; Stevens Express Leasing; and Tepper Aviation, all allegedly involved in rendition operations through one or more of their planes.⁵⁶ Many of these companies also appeared in lists of commercial agreements for buying fuel under US Defense Energy Support Center contracts.⁵⁷

There have been other indications that responsibility for the rendition programme should not be laid solely at the door of the CIA. It has been reported that the teams that actually carry out the rendition operations include members of military Special Forces units, as well as CIA personnel. Amnesty International has copies of police investigation reports into CIA flights in Spain that suggest that the pilots of the rendition planes were US military officers; when their names were checked against FAA databases, it was found that not all were currently registered as private pilots. If any pilots involved in rendition flights were found to be US military officers, the legal implications would be important: members of the armed forces are not only subject to international legal standards and to US criminal law, but also to the Uniform Code of

54 Seth Hettena, *Navy Secretly Contracted Jets Used by CIA*, *Associated Press*, 24 September 2005.

55 Further research carried out by Amnesty International has shown that the Office's name and address were removed from the US DoD's DARF (Defense Federal Acquisition Regulations Supplement - Appendix G, Activity Address Numbers) March 2000. NELO was until 1999 listed in Appendix G with the identification number N41756 and addressed as Navy Engineering Logistics Office, LE Washington, DC 20000. Since 14 November 2003, Appendix G has been entirely removed from the Defense Federal Acquisition Regulations Supplement. (See: <http://farsite.hill.af.mil/archive/DFars/DCN19990101/DFARSApxG.htm>, http://www.acq.osd.mil/dpap/dars/dfars/html/previous/r20031001/appendix_g-3.htm). NELO also appears as contracting agent in a “Broad Agency Announcement in Joint Support of the Technical Support Working Group and Defense Advanced Research Projects Agency/Information Exploitation Office, Srcsqt” dated 5 June 2003 (solicitation number 03-Q-4110) and its address is posted as “Department of the Navy, Navy Engineering Logistics Office TSWG, P.O. Box 16224 Arlington, VA 22202”. According to *AP*, NELO “operates under different names: it is also known as the Navy Office of Special Projects and its San Diego location is called the Navy Regional Plant Equipment Office.” Its principal function is “the conduct of foreign intelligence or counterintelligence activities.”

56 The list also includes the following companies: Aeromet (L-3/Aeromet); Air Transport International; Air Trek; Airmed International; Atlas Air; BK Associates; Centurion Aviation Services; Continental Airlines; Continental Micronesia; Crowell Aviation Technologies; Delta Air Lines; Eastern Shore Holding; Evergreen International Airlines; Falcon Air Express; Federal Express; Gemini Air Cargo; North American Airlines; Omni Air International; Orbital Sciences Corp.; Raytheon Aircraft Company; Southern Air; United Parcel Service, Co.; US Airways Group; Vantage Leasing; World Airways.

57 Defense Energy Support Center, Commercial Purchase Agreement Customers - DODAAC Database, various editions from 2001 to 2005.

Military Justice, which explicitly forbids both “unlawful detention” and “cruelty and maltreatment”. The armed forces do not appear to be covered by the memorandum authorizing the CIA to carry out renditions.

According to a former CIA officer interviewed by the *Chicago Tribune*, Gulfstream N379P/ N8068V/ N44982 was operated by “the Joint Special Operations Command, an inter-agency unit that organizes counter-terrorist operations in conjunction with the CIA and military special forces.”⁵⁸ The Joint Special Operations Command is the coordinating agency for all military special operations forces and operations, and its headquarters are at Fort Bragg, North Carolina. According to its website, Fort Bragg is the “Home of the Airborne and Special Operations Forces. Fort Bragg houses the 82nd Airborne Division and the XVIII Airborne Corps, the US Army Special Operations Command and the US Army Parachute Team.” The CIA’s deputy executive director Christopher Kojm told the 9/11 Commission that “the CIA had two main operational responsibilities for combating terrorism: rendition and disruption... The CIA often plays an active role, sometimes calling upon the support of other agencies for logistical or transportation assistance.”⁵⁹

A *United Press International (UPI)* report in January 2005 noted that the FBI also carries out renditions, but that it transports its suspects by US Air Force jet rather than private plane.⁶⁰

2.4 Role of third countries

Countries that allow CIA planes to cross their air space and use their airports have defended these actions by citing their obligations under the Chicago Convention. They may claim that the state party has no authority to question the reasons for the flight or to board the airplane during the stay in the airport because of the rights guaranteed by the Convention.

However, the Chicago Convention holds that every state has the right to require that an aircraft flying over its territory must land at a designated airport for inspection if there are “reasonable grounds to conclude that it is being used for any purpose inconsistent with the aims of the convention”. Given that the practice of rendition violates international human rights law, it follows that transferring or aiding and abetting in the transfer of a detainee in such circumstances cannot be a purpose consistent with the aims of the Chicago Convention, especially considering the internationally recognized, absolute prohibition of torture. The extensive reporting by the media, human rights organizations and parliamentary bodies of specific flight numbers and chartering companies which appear to be involved in renditions constitutes “reasonable grounds” for suspicion. This would give states the right to stop certain aircraft suspected of being involved in the unlawful transfer of detainees.

58 “Mystery man takes to skies; Elusive owner’s jet linked to CIA torture”, *Chicago Tribune*, 9 January 2005.

59 Transcript: Wednesday’s 9/11 Commission Hearings, FDCH E-Media, Wednesday, 24 March 2004.

60 Richard Sale, “Renditions pro and con”, UPI, 19 January 2005.

2.5 Flight movements: 2001-2005

Amnesty International and TransArms⁶¹ have records of nearly 1,000 flights directly linked to the CIA, most of which have used European airspace; these are flights by planes that appear to have been permanently operated by the CIA through front companies. In a second category, there are records of some 600 other flights made by planes confirmed as having been used at least temporarily by the CIA. Finally there are well over 1,000 other flights made by planes owned by companies that have been linked to the CIA, but which are not known to be connected to any known cases of rendition.

The flight information comes from several sources: FAA flight records; European flight records; actual flight logs; aircraft movements recorded by airport authorities; airport records acquired in police and parliamentary investigations; photographs of aircraft in selected airports; and some press reports. Flight logs contain all movements carried out by the plane, including all stopovers between origin and destination airports.

Flight records, however, only tell part of the story. Records maintained by the FAA, for instance, do not include all of the stops a plane has made during a trip away from US airspace. The information usually provided includes the origin airport in the USA or in FAA monitored airspace – including Ireland and the UK – and the first destination of the flight outside monitored airspace. It does not pick up again until the plane reappears in FAA monitored airspace. It also shows the flight date, time and duration.

What this means in practice is that large parts of a flight's itinerary may not be shown by FAA flight records. In January 2004, for instance, the CIA's Boeing 737, N313P, left from Washington DC and stopped off in Ireland, Cyprus, Morocco, Algeria, Spain, Macedonia, Iraq, Afghanistan, Romania and Spain before returning to Washington DC, apparently carrying out the rendition of Khaled el-Masri on the way. FAA records show the Washington to Ireland and Ireland to Cyprus flights, but do not record the landings in Morocco, Algeria, Spain, Macedonia, Iraq, Afghanistan or Romania. Amnesty International has obtained this information from another source. The final leg of the journey, the return flight from Spain to the USA, is also shown. The shortcomings – for the purposes of monitoring – are obvious; such flight records do not show the precise activities of the planes in locations where renditions are most likely to occur, they can only show whether planes were active in a certain region at the time in question.

It also seems likely that not all relevant traffic is recorded by the FAA; between 2001 and 2005, for instance, two of Premier Executive Transport's jets made a total of 50 landings at Shannon Airport in Ireland, yet the records show that they only took off 35 times. Flight records originating from European sources provide additional information on flights that have originated or terminated in European airspace.

⁶¹ TransArms, Research Center for the Logistics of Arms Transfers.

Flight lists are useful, but they cannot tell whether or not any particular plane has carried out a rendition. The information they contain is indicative rather than conclusive; Amnesty International has constructed a database of flights in order to check it against case information as it becomes available. It remains the case that raw data on the flights themselves is of limited use without specific details of cases; case details are hard to come by precisely because the secret nature of the practice is aimed at avoiding scrutiny and oversight. Where cases become known, and the details and dates of the abduction or transfer can be pinpointed, it has often been able to match a rendition with a flight record. Amnesty International cannot, however, infer possible cases or even make estimates of the extent of the rendition programme solely from the flight information.

2.6 Companies and aircraft

Amnesty International and TransArms have compiled a list of companies likely to have had some level of involvement in renditions and other covert operations. This includes the owners or operators of aircraft that have been detected in known cases of rendition or in other CIA operations, as well as some of the companies – believed to be intelligence-linked – that are mentioned in both the US Army Aeronautical Service Agency's worldwide landing permits and in US DoD fuelling contracts.

The tentative list of companies involved in covert activities has in turn formed the basis for the list of aircraft whose flights Amnesty International has tracked over the 2001-2006 period. Once the flight logs were analysed, some of these companies and aircraft were dropped from the list, because flight logs indicated that they had only flown in and out of locations unlikely to have been connected to either the rendition programme or to covert CIA activities. In a number of cases, there was mixed activity – a plane which has made repeated flights in and out of bases in Afghanistan and Egypt, for instance, has also appeared in holiday resorts or business centres in the USA – suggesting that the agency may be trying to vary its use of planes, so that individual aircraft cannot be so closely linked to covert activity.

The other indication of a shifting landscape in the world of front companies is the current list of companies with a Civil Aircraft Landing Permit (CALP) that authorizes them to land on US military bases worldwide. The 10 companies that currently hold such certificates are listed below, but equally important are those that are no longer listed. Notably absent from the 2006 list are some of the companies with the most widely and frequently reported rendition links: Aeromet, Inc; Devon Holding and Leasing, Inc; Premier Executive Transport Services, Inc; Rapid Air Trans; Raython Aircraft Company; Richmor Aviation, Inc; Stevens Express Leasing, Inc; and Tepper Aviation, Inc. The permits of all of these companies expired in 2005 and none has been renewed.

**PRIVATE COMPANIES WITH CURRENT PERMITS TO LAND IN US MILITARY BASES
WORLDWIDE⁶²**

NAME	CALP	EXPIRATION
CENTURION AVIATION SERVICES, INC. *	01-04-121 01-05-132	1 OCTOBER 2005 1 OCTOBER 2006
EVERGREEN INTERNATIONAL AIRLINES, INC. *	01-04-179 01-05-059	1 APRIL 2005 1 APRIL 2006
FALCON AIR EXPRESS*	01-04-021 01-05-163	8 NOVEMBER 2004 16 JULY 2006
GEMINI AIR CARGO, INC. *	01-04-124 01-05-117	22 JULY 2005 1 AUGUST 2006
OMNI AIR INTERNATIONAL, INC.	01-04-141 01-05-130	1 AUGUST 2005 1 AUGUST 2006
ORBITAL SCIENCES CORPORATION *	01-04-020 01-04-117 01-05-118	1 JULY 2004 1 JULY 2005 1 JULY 2006
PHOENIX AIR GROUP	01-05-113	1 AUGUST 2006
POLAR AIR CARGO, INC *	01-05-037	31 DECEMBER 2006
RYAN INTERNATIONAL AIRLINES	01-05-152	15 MAY 2006
SOUTHERN AIR, INC.	01-04-161 01-05-166*	13 NOVEMBER 2005 13 NOVEMBER 2006

(*) EXCEPT THE BUCHOLZ US ARMY AIRFIELD, KWAJALEIN ATOLL, KIRIBATI, MARSHALL ISLANDS

**COMPANIES AND AIRCRAFT LINKED TO RENDITION FLIGHTS IN PRESS AND
PARLIAMENTARY REPORTS**

OWNER/OPERATOR	REGISTRATION NUMBER	MANUFACTURER'S NUMBER	AIRCRAFT TYPE
AERO CONTRACTORS			
APACHE AVIATION	N404AC	1384	G-IV
AVIATION SPECIALTIES	N5139A	BL-144	BEECH B200C
AVIATION SPECIALTIES	N4489A	BL-145	BEECH B200C
BAYARD FOREIGN MARKETING LLC	N44982	581	G-V
BRAXTON MNG/CENTURION AVIATION SERVICES	N478GS	1478	G-IV
DEVON HOLDING/AEROCONTRACTORS	N168D	C-135	CASA CN-235- 300
DEVON HOLDING/AEROCONTRACTORS	N196D	C-139	CASA CN-235
DEVON HOLDING/AEROCONTRACTORS	N187D	C-143	CASA CN-235
GEMINI LEASING INC.	N600GC	46965	DC-10- 30F

⁶² www.usaasa.belvoir.army.mil, various period 2004-2006.

OWNER/OPERATOR	REGISTRATION NUMBER	MANUFACTURER'S NUMBER	AIRCRAFT TYPE
IMPERIAL AIR LTD (BENNET REALTY INC)	N331P**	1139	G-IV
KEELER & TATE MGM	N4476S	33010	B-737-7ET BBJ
MARK J. GORDON	N829MG	327	G-III
PEGASUS TECHNOLOGIES			
PHOENIX AVIATION GROUP	N547PA	012	LEARJET 36
PHOENIX AVIATION GROUP	N541PA	053	LEARJET 35
PHOENIX AVIATION GROUP/CFF AIR INC	N549PA	119	LEARJET 35A
PREMIER EXECUTIVE TRANSPORT SERVICES	N313P	33010	B-737-7ET BBJ
PREMIER EXECUTIVE TRANSPORT SERVICES, INC	N379P	581	G-V
PREMIER EXECUTIVE TRANSPORT SERVICES, INC	N8068V	581	G-V
RAPID AIR TRANS INC./TEPPER AVIATION	N2189M	4582	L-382G-44K-30
RAPID AIR TRANS INC./TEPPER AVIATION	N8183J	4796	L-382G-44K-30
RICHMOR AVIATION-ASSEMBLY POINT AV	N85VM	1172	G-IV
RICHMOR AVIATION-ASSEMBLY POINT AV.	N227SV	1172	G-IV
S&K AVIATION LLC	N259SK	327	G-III
STEVENS EXPRESS LEASING	N4009L	B300C	Raytheon

(**) FORMERLY N325RC, THIS PLANE WAS RE-REGISTERED AS N331P, 13 DECEMBER 2001. IT WAS RE-REGISTERED AGAIN ON 14 OCTOBER 2004 AS N134BR BY GSCP (NJ) INC.

3. Amnesty International's recommendations

Amnesty International makes the following recommendations as immediate and essential steps towards putting an end to the rendition programme and its associated practices, including enforced disappearance, torture and incommunicado and secret detention.

Recommendations to all governments:

No renditions

- Do not render or otherwise transfer to the custody of another state anyone suspected or accused of security offences unless the transfer is carried out under judicial supervision and in full observance of due legal process.
- Ensure that anyone subject to transfer has the right to challenge its legality before an independent tribunal, and that they have access to an independent lawyer and an effective right of appeal.
- Do not receive into custody anyone suspected or accused of security offences unless the transfer is carried out under judicial supervision and in full observance of due legal process.
- Information on the numbers, nationalities and current whereabouts of all terror suspects rendered, extradited or otherwise transferred into custody from abroad should be publicly available. Full personal details should be promptly supplied to the families and lawyers of the detainees, and to the International Committee of the Red Cross (ICRC).
- Bring all such detainees before a judicial authority within 24 hours of entry into custody.
- Ensure that detainees have prompt access to legal counsel and to family members, and that lawyers and family members are kept informed of the detainee's whereabouts.
- Ensure that detainees who are not nationals of the detaining country have access to diplomatic or other representatives of their country of nationality or former habitual residence.

No 'disappearances', no secret detention

- End immediately the practices of incommunicado and secret detention wherever and under whatever agency it occurs.
- Hold detainees only in officially recognized places of detention with access to family, legal counsel and courts.
- Ensure that those responsible for "disappearances" are brought to justice, and that victims and families receive restitution, compensation and rehabilitation.
- Investigate any allegations that their territory hosts or has hosted secret detention facilities, and make public the results of such investigations.

No torture or other ill-treatment

- Ensure that interrogations are carried out in accordance with international standards, in particular without any use of torture or other cruel, inhuman or degrading treatment.
- Investigate all complaints and reports of torture or other ill-treatment promptly, impartially and effectively, using an agency independent of the alleged perpetrators, and ensure that anyone found responsible is brought to justice.
- Ensure that victims of torture obtain prompt reparation from the state including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation.

No diplomatic assurances

- Prohibit the return or transfer of people to places where they are at risk of torture or other ill-treatment.
- Do not require or accept “diplomatic assurances” or similar bilateral agreements to justify renditions or any other form of involuntary transfers of individuals to countries where there is a risk of torture or other ill-treatment.

No renditions flights

- Identify to the aviation authorities any plane or helicopter used to carry out the missions of the intelligence services as a state aircraft, even if the aircraft in question is chartered from a private company.
- Ensure that airports and airspace are not used to support and facilitate renditions or rendition flights.
- Maintain and update a register of aircraft operators whose planes have been implicated in rendition flights, and require them to provide detailed information before allowing them landing or flyover rights. Such information should include: the full flight plan of the aircraft, including onward stops and full itinerary, the full names and nationalities of all passengers on board, and the purposes of their travel.
- If any passengers are listed as prisoners or detainees, more detailed information about their status and the status of their flight should be required, including their destination and the legal basis for their transfer.
- Refuse access to airspace and airfields if requested information is not provided.
- If there are grounds to believe that an aircraft is being used in connection with renditions or other human rights violations, board the plane or require it to land for inspection.
- If such inspection indicates that the flight is being used for the unlawful transfer of people, or other human rights violations, the flight should be held until the lawfulness or otherwise of its purpose can be established, and appropriate law enforcement action taken.

Additional recommendations to the US government:

- Ensure that anyone held in US custody in any part of the world can exercise the right to legal representation and to a fair and transparent legal process;
- Disclose the location and status of the detention centres where Muhammad Abdullah Salah al-Assad, Muhammad Faraj Ahmed Bashmilah and Salah Nasser Salim 'Ali Qaru were held between October 2003 and May 2005;
- Disclose the identities and whereabouts of all others held in secret locations and their legal status, and invite the ICRC to have full and regular access to all those detained;
- Release all detainees in US custody at undisclosed locations unless they are to be charged with internationally recognizable criminal offences and brought to trial promptly and fairly, in full accordance with relevant international standards, and without recourse to the death penalty;
- Promptly and thoroughly investigate all allegations of "disappearance", and bring those suspected of having committed, ordered or authorized a "disappearance" before the competent civil authorities for prosecution and trial.

Recommendations to private aircraft operators and leasing agents:

- Ensure that the company is aware of the end use of any aircraft it is leasing or operating;
- Do not lease or otherwise allow the operation of any aircraft where there is reason to believe it might be used in human rights violations, including rendition or associated operations;
- Develop an explicit human rights policy, ensuring that it complies with the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.

Appendix: Planes monitored

1. N 313P-N4476S

N313P-N4476S is a Boeing 737-7ET (BBJ) aircraft (m/n 33010) for which there are 396 recorded landings or taking offs between 22 November 2002 and 8 September 2005. Flight records show that it was the plane that took Khaled el-Masri from Skopje to Afghanistan in January 2004, and Human Rights Watch has identified it as the “plane that the CIA used to move several prisoners to and from Europe, Afghanistan, and the Middle East in 2003 and 2004 – it landed in Poland and Romania on direct flights from Afghanistan on two occasions in 2003 and 2004.”

Registration: First registered by Stevens Express Leasing Inc, and then re-registered on 1 May 2002 by Premier Executive Transport Services. Keeler & Tate Management re-registered the aircraft on 1 December 2004, as N4476S. This is the only aircraft registered under this company name.

Landing rights: Stevens Express Leasing Inc. and Premier Executive Transport Services were both permitted to land at US military bases worldwide. Their permits expired in 2005 and have not been renewed.

Range and capacity: average range of 5,510 nautical miles at 522/542 knots (non-stop Washington Dulles-Tashkent in 11 hours, for example), and can transport up to 127 passengers.



N313P plane used in rendition flights. Later re-registered as N4476S. © Toni Marimon

Destinations: movements of N313P-N4476S include landings and take offs from the following airports:

COUNTRY	CITY / AIRPORT	PASSAGES THROUGH THE AIRPORT
AFGHANISTAN	KANDAHAR	1
AFGHANISTAN	KHWAJA RAWASH (KABUL)	9
ALGERIA	ALGIERS	3
AZERBAIJAN	BAKU	1
BAHRAIN	BAHRAIN	1
CROATIA	DUBROVNIK	2
CYPRUS	LARNACA	8
CZECH REPUBLIC	PRAGUE	6
ESTONIA	PARNU	3
FIJI	NADI, VITI LEVU	2
GERMANY	FRANKFURT	73
GERMANY	RAMSTEIN	3
GREECE	ATHENS	1
IRAQ	BAGHDAD	10
IRELAND	DUBLIN	2
IRELAND	SHANNON	23
ITALY	PISA	2
JORDAN	AMMAN	20
KUWAIT	KUWAIT	6
LIBYA	MITIGA	17
LIBYA	TRIPOLI	2
MACEDONIA	SKOPJE	2
MALTA	VALLETTA	2
MOROCCO	RABAT	8
PAKISTAN	ISLAMABAD	5
PAKISTAN	KARACHI	1
PORTUGAL	PORTO (OPORTO)	5
PORTUGAL	SANTA MARIA (AZORES)	2
ROMANIA	BUCHAREST	1
ROMANIA	TIMISOARA	1
RUSSIA	MOSCOW	1
SAUDI ARABIA	RIYADH	1
SPAIN	PALMA DE MALLORCA	8
SWITZERLAND	GENEVA	2
UNITED ARAB EMIRATES	ABU DHABI	1
UNITED ARAB EMIRATES	DUBAI	4
UNITED KINGDOM	GLASGOW	19
UNITED KINGDOM	LONDON GATWICK	1
UNITED KINGDOM	LUTON	9
UNITED KINGDOM	MILDENHALL	3
UNITED KINGDOM	NORTHOLT	9
UNITED KINGDOM	OXFORD BRIZE NORTON	3
UNITED KINGDOM	PROVIDENCIALES (TURKS AND CAICOS)	8
UNITED STATES OF AMERICA	GUANTÁNAMO BAY US NAVAL AIR STATION, CUBA	7
UNITED STATES OF AMERICA	MANCHESTER, NEW HAMPSHIRE	2
UZBEKISTAN	TASHKENT	1

2. N379P-N8068V-N44982

The Gulfstream V executive jet, variously registered as N379P, N8068V and N44982 has been the plane most often identified with known cases of rendition. AI has records of 590 landings and take offs between February 2001 and September 2005.

Registration: registered in February 2000 by Premier Executive Transport Services; it was re-registered as N8068V at the beginning of 2004; and again re-registered as N44982 in December 2004 by Bayard Foreign Marketing, a phantom company registered in Oregon State since August 2003. No other aircraft were registered by Bayard Foreign Marketing. The aircraft was put up for sale in late 2005, and is now the property of a company based in Miami, Florida.⁶³

Landing rights: Premier Executive Transport Services aircraft were permitted to land in the US bases worldwide (expiration 15 October 2005).

Range and capacity: average range of 5,800 nautical miles at 459/585 knots (non-stop Washington Dulles-Kabul in 12 hours, for example). The aircraft can transport up to 18 passengers, but it is usually configured for 8 passengers.



N8068V plane used in rendition flights. Earlier registered as N379P and later re-registered as N44982.
© Jean Luc Altherr

⁶³ See an advertisement for the sale of this Gulfstream V executive jet at US Aircraft Sales: <http://www.usaircraftsales.com/Forsale/SPECS%20GV%20581%20%202.pdf>.

Destinations: movements of N379P-N8068V-N44982 include landings and take offs from the following airports:

COUNTRY	CITY / AIRPORT	PASSAGES THROUGH THE AIRPORT
AFGHANISTAN	KHWAJA RAWASH (KABUL)	5
ALGERIA	ALGIERS	1
AZERBAIJAN	BAKU	1
BAHRAIN	MUHARRAQ MILITARY AIRPORT	1
CYPRUS	LARNACA	10
CYPRUS	PAPHOS	2
CZECH REPUBLIC	PRAGUE	11
DJIBOUTI	DJIBOUTI	2
EGYPT	CAIRO	14
GAMBIA	BANJUL	2
GERMANY	FRANKFURT	70
GERMANY	MUNICH	2
GERMANY	RAMSTEIN	2
GERMANY	STUTT GART	2
GREECE	ATHENS	7
IRAQ	BAGHDAD	6
IRELAND	SHANNON	22
ITALY	ROME	4
ISRAEL	TEL AVIV	4
JORDAN	AMMAN	18
KUWAIT	KUWAIT	3
LIBYA	MITIGA	2
MALAYSIA	KUALA LUMPUR	1
MOROCCO	MARRAKECH	2
MOROCCO	RABAT	7
NETHERLANDS	AMSTERDAM	1
PAKISTAN	KARACHI	2
POLAND	WARSAW	2
PORTUGAL	LISBON	1
PORTUGAL	PORTO (OPORTO)	15
QATAR	DOHA	2
SAUDI ARABIA	RIYADH	2
SPAIN	PALMA DE MALLORCA	3
SPAIN	SANTA CRUZ DE TENERIFE (CANARY ISLANDS)	3
SWITZERLAND	GENEVA	3
THAILAND	BANGKOK	1
TURKEY	DIYARBAKIR	2
UNITED ARAB EMIRATES	ABU DHABI	1
UNITED ARAB EMIRATES	DUBAI	4
UNITED KINGDOM	GLASGOW	20
UNITED KINGDOM	LUTON	4
UNITED KINGDOM	OXFORD BRIZE NORTON	2
UNITED KINGDOM	PRESTWICK	36
UNITED KINGDOM	PROVIDENCIALES (TURKS AND CAICOS)	6
UNITED STATES OF AMERICA	GUANTÁNAMO BAY US NAVAL AIR STATION, CUBA	20
UZBEKISTAN	KARSHI AIRBASE	1
UZBEKISTAN	TASHKENT	13

3. N829MG-N259SK

A Gulfstream III (Grumman G-1159A), this plane carried Canadian national Maher Arar from the US to Jordan, where he was transferred overland to Syria. He was tortured during 13 months of detention without charge, and was released in October 2003. There are 380 relevant FAA recorded landings or takeoffs between March 2001 and May 2005.

Registration: registered by MJG Aviation in October 2000 in Florida; the company dissolved July 2004. MJG's owner also owned Presidential Aviation, a company first registered in Florida in 1998 and dissolved November 2004. The aircraft was re-registered as 259SK in March 2004 by S&K Aviation LLC. S&K Aviation was first registered in Florida in December 2003 and is an active company with a registered agent.

Range and capacity: average range of 3,715 nautical miles. The aircraft can transport up to 22 passengers, but it is usually configured for 10/12 people.



Gulfstream III: N829MG (Later re-registered as N259SK). © Sam Chui

Destinations: Recorded movements of N829MG-N259SK include landings and take offs from the following airports:

COUNTRY	CITY / AIRPORT	PASSAGES THROUGH THE AIRPORT
BELGIUM	ANTWERP	1
CANADA	GANDER, NEWFOUNDLAND	10
FRANCE	LE BOURGET	2
GERMANY	FRANKFURT	1
GERMANY	FRANKFURT-HAHN	1
GERMANY	NURNBERG	1
IRELAND	SHANNON	2
ITALY	ROME	3
JORDAN	AMMAN	2
NETHERLANDS	AMSTERDAM	2
NETHERLANDS	GRONINGEN	1
PORTUGAL	SANTA MARIA (AZORES)	6
SPAIN	MALAGA	2
UNITED KINGDOM	BIGGIN HILL	2
UNITED KINGDOM	HAMILTON US NAVAL AIR STATION, BERMUDA	6
UNITED KINGDOM	LONDONDERRY	2
UNITED KINGDOM	PROVIDENCIALES (TURKS AND CAICOS)	7
UNITED STATES OF AMERICA	GUANTÁNAMO BAY US NAVAL AIR STATION, CUBA	2
UNITED STATES OF AMERICA	TETERBORO	3
UNITED STATES OF AMERICA	WASHINGTON, DC	2

4. N85VM-N227SV

The Gulfstream IV plane that took Abu Omar to Egypt from Germany after his kidnapping in Italy. Its owners have admitted leasing the plane to the CIA, but have said it is not used exclusively by the agency. There are 488 relevant recorded landings or takeoffs between February 2001 and July 2005.

Registration: owned by Assembly Point Aviation Inc., registered May 1995 in New York State. The aircraft was registered as N85VM until September 2004, when it was re-registered as N227SV. Operated by Richmor Aviation, a company based at the Columbia County airport (Hudson, New York) and Scotia (New York). Richmor Aviation owns or manages a fleet of about 15 business jets.

Landing rights: Richmor Aviation aircraft were permitted to land at US military bases worldwide (expiration February 15, 2005).

Range and capacity: average range of 3,633 nautical miles at 460/582 knots; can transport up to 19 passengers, but it is usually configured for 8/14 passengers.



Gulfstream IV: N227SV plane used in rendition flights. Earlier registered as N85VM. This aircraft is currently available for charter at a rate of US\$5365 per hour. © Wallace

Destinations: Recorded movements of N85VM-N227SV include landings and take offs from the following airports:

COUNTRY	CITY / AIRPORT	PASSAGES THROUGH THE AIRPORT
AFGHANISTAN	KHWAJA RAWASH (KABUL)	1
AZERBAIJAN	BAKU	2
BAHRAIN	MUHARRAQ MILITARY AIRPORT	2
CANADA	GANDER, NEWFOUNDLAND	2
CYPRUS	LARNACA	1
CYPRUS	PAPHOS	2
CZECH REPUBLIC	PRAGUE	3
EGYPT	CAIRO	1
EGYPT	SHARM EL SHEIKH	1
FINLAND	HELSINKI	1
FRANCE	LE BOURGET	4
GERMANY	FRANKFURT	10
GERMANY	KOLN-BONN	2
GERMANY	RAMSTEIN	1
ICELAND	KEFLAVIK	1
IRELAND	DUBLIN	1
IRELAND	SHANNON	30
ITALY	ROME	1
JAPAN	OSAKA	1
KUWAIT	KUWAIT	1
MOROCCO	RABAT	7
NORWAY	EVENES	2
PORTUGAL	LISBON	2
PORTUGAL	SANTA MARIA (AZORES)	4
SPAIN	BARCELONA	1
SPAIN	PALMA DE MALLORCA	3
SPAIN	SAN CRISTOBAL (CANARY ISLANDS)	2
SPAIN	SANTA CRUZ DE TENERIFE (CANARY ISLANDS)	2
SWITZERLAND	GENEVA	2
SWITZERLAND	ZURICH	2
UNITED ARAB EMIRATES	DUBAI	3
UNITED KINGDOM	BELFAST	2
UNITED KINGDOM	EDINBURGH	1
UNITED KINGDOM	GLASGOW	2
UNITED KINGDOM	HAMILTON US NAVAL AIR STATION, BERMUDA	2
UNITED KINGDOM	LEUCHARS	10
UNITED KINGDOM	LONDON STANSTED	1
UNITED KINGDOM	LONDONDERRY	1
UNITED KINGDOM	LUTON	6
UNITED KINGDOM	PROVIDENCIALES (TURKS AND CAICOS)	21
UNITED STATES OF AMERICA	GUANTÁNAMO BAY US NAVAL AIR STATION, CUBA	114

COMMUNICATION NO. 383/2010

EXHIBIT G

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Advisories](#)[News](#)[Photos](#)[Video, Audio, and Webcasts](#)[Press Contacts](#)

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Home » [Press Center](#) » [Press Releases](#) » Prepared Remarks of Treasury Secretary John Snow to Announce Joint U.S. and Saudi Action Against Branches of Al-Haramain in the Financial War on Terror

Prepared Remarks of Treasury Secretary John Snow to Announce Joint U.S. and Saudi Action Against Four Branches of Al-Haramain in the Financial War on Terror

1/22/2004

FROM THE OFFICE OF PUBLIC AFFAIRS

JS-1107

Thank you very much for being here today.

I am very pleased to announce that the United States and Saudi Arabia have joined together today to take action against four branches of the Al-Haramain organization. Today's designation is another important victory in our ongoing war against the spread of terrorism and terrorist financiers and another demonstration of our partnership in the war against terror.

The four branches of Al-Haramain that we are singling out today have not only supported the plotting of despicable acts of terror, but they have done so by exploiting countless individuals who believed that by supporting Al-Haramain, they were, in fact spreading good will to many in need of a helping hand.

The four branches of Al-Haramain have cloaked themselves in the virtue of charity, only to fund and support terrorist organizations around the world - such as the al-Qaeda network.

These four branches located in Indonesia, Kenya, Tanzania, and Pakistan have ignored past orders to cease their operations.

By designating these organizations under the President's Executive Order Number 13224, and joining with Saudi Arabia to call on the United Nations 1267 Sanctions Committee to designate these groups as well, we bring to bear the full weight of the international community.

We will continue to vigilantly work to ensure that these groups will no longer be able to disguise themselves as legitimate and benevolent organizations in order to undermine peace and freedom.

We know generous givers to charities provide hundreds of millions of dollars to improve the lives of countless people around the world.

We will not interfere with the noble work of legitimate charities.

But donors need to be assured that their contributions are being used for their intended purposes -- and not to fuel the activity of terrorists.

Make no mistake; this administration will continue to take aggressive actions, both domestically and internationally, to ensure that charities are not being abused by terrorists or other criminals.

Just days ago, during the State of the Union address, President Bush stated that our greatest responsibility is the active defense of the American people.

Twenty-eight months have passed since September 11th, 2001 -- over two years without an attack on American soil. As the President said, it is tempting to believe that the danger is behind us. But the terrorists continue to plot against America and the civilized world.

However, we too are on the offensive against the terrorists who started this war. We're tracking al Qaeda around the world, and nearly two-thirds of their known leaders have now been captured or killed.

As part of the Administration's offensive against terror the President mentioned during his national address, the Treasury Department is confronting networks that funnel money to terrorists.

COMMUNICATION NO. 383/2010

EXHIBIT H

Yemeni, Italians expelled

By Henry Lyimo

A YEMENI and two Italians have been expelled from Tanzania for alleged immigration offences.

Immigration Services spokesman Herbert Chilambo said in Dar es Salaam yesterday that those expelled were Mohamed Abdallah Saleh Muhsen Al-Asaad of Yemen who masqueraded as Tanzanian since he came in

the country in 1985.

The Italians are a priest, Tarcisio Bertarelli, who was previously expelled from the country in 1998, but returned to Tanzania under mysterious circumstances and was allegedly engaged in business.

He once worked with the Catholic Church in Tanzania, but was expelled after violating church ethics, according to Chilambo. The other Italian was an investor, Dr. Mario

Mariane, who allegedly flouted Zanzibar investment policies.

Chilambo said the Yemen national was arrested on Friday last week and expelled the following day.

He was served with "Prohibited Immigrant" (PI) notice number 00007752 issued on the same day, he said.

Chilambo said Al-Asaad came to Tanzania in 1985 using a Yemeni passport number G

1337166 issued in Sanaa, Yemen and that he later alleged managed to get three Tanzania passports under mysterious circumstances.

Chilambo gave the registration number of the passports as 217201 which was issued in Arusha in 1998, A0071743 issued in Dar es Salaam in 1992 and A0015271 also issued in Dar es Salaam in 1998.

The Guardian Issue No. 2833 30/12/03

COMMUNICATION NO. 383/2010

EXHIBIT I

Dar deports 2,367 aliens

THE Immigration Department has this year deported 2,367 immigrants for staying in the country illegally.

Announcing the recent arrests and expulsion of three illegal immigrants, the department's spokesman, Mr Herbert Chilambo, told reporters in Dar es Salaam yesterday that some of them had stayed in the country for 18 years.

He said a Yemeni businessman, Mohammed Abdallah Saleh Muhsen Al-Asaad, who was nabbed on December 26, had resided in Tanzania since 1985. He was deported on December 27.

Mr Chilambo explained that the deportee owned a shop in Kariakoo in the city selling motor vehicle spare parts and other accessories. When arrested, the Yemeni was found with a forged birth certificate indicating that

By RODRICK NDOMBA

he was a Tanzanian.

He said the man used the certificate to acquire three Tanzanian passports issued in 1987, 1992 and 1998 in Arusha and Dar es Salaam.

Investigation by the Immigration Department revealed that Al-Asaad arrived in the country with a passport number G 1337166 issued in Sanaa, Yemen, and that whatever credentials he possessed as a Tanzanian citizen were invalid.

"His birth certificate is a duplicate of one Mohamed Abdallah Saleh," Mr Chilambo said, adding that the police was tracking down officials involved in the forging of the certificate.

In another incident, the department has deported an Italian, Tarcisio Bertarelli, who the Roman Catholic Church disowned for misconduct as a church

minister in 1998.

Mr Chilambo said Bertarelli came back secretly and continued with his unlawful businesses only to be arrested this year.

In September, another Italian national, Dr Mario Mariane, was also deported after failing to fulfil conditions to set up a business in Zanzibar.

He said the exercise to arrest and deport illegal immigrants and crackdown on officials who help them stay in the country illegally is continuing, pointing out that the majority of illegal immigrants come from war-torn countries bordering Tanzania including Rwanda, Burundi, Kenya, the Democratic Republic of Congo (DRC) and Somalia.

In total, the department nabbed 3,370 illegal immigrants between January and this month. Of the total, 189 were prosecuted in courts and jailed for contravening the country's immigration laws.

Daily News Issue No. 8407 30/12/03

COMMUNICATION NO. 383/2010

EXHIBIT J



ICRC

INTERNATIONAL COMMITTEE OF THE RED CROSS

REGIONAL DELEGATION FOR
UNITED STATES AND CANADA

Washington, 14 February 2007
WAS 07/76

Dear Sir,

Please find enclosed a report on the findings and recommendations of the International Committee of the Red Cross following its visits to fourteen "high value detainees" transferred to Guantanamo in September 2006. The report covers the period during which these persons were held in the detention program run by the Central Intelligence Agency.

We hope that you will find the report useful and thank you in advance for the action you will take on the matters raised.

Yours sincerely,

Geoff Loane
Head of Regional Delegation

John Rizzo
Acting General Counsel
Central Intelligence Agency
Langley, Virginia.

1100 Connecticut Ave. N.W., Suite 500, Washington, DC 20036

Tel: (202) 587-4600 • Fax: (202) 587-4696

Strictly Confidential

ICRC REPORT ON THE TREATMENT OF FOURTEEN
“HIGH VALUE DETAINEES” IN CIA CUSTODY

February 2007

This report is strictly confidential and intended only for the Authorities to whom it is presented. It may not be published, in full or in part, without the consent of the International Committee of the Red Cross.

[Editors' Note: These lines appear at the bottom of every page of the original version of the report]

Contents

Introduction

1. Main Elements of the CIA Detention Program

1.1. Arrest and Transfer

1.2. Continuous Solitary Confinement and Incommunicado Detention

1.3. Other Methods of Ill-treatment

1.3.1. Suffocation by water

1.3.2. Prolonged stress standing

1.3.3. Beatings by use of a collar

1.3.4. Beating and kicking

1.3.5. Confinement in a box

1.3.6. Prolonged nudity

1.3.7. Sleep deprivation and use of loud music

1.3.8. Exposure to cold temperature/cold water

1.3.9. Prolonged use of handcuffs and shackles

1.3.10. Threats

1.3.11. Forced shaving

1.3.12. Deprivation/restricted provision of solid food

1.4. Further Elements of the Detention Regime

2. Conditions of Detention In Later Stages

3. Health Provision and Role of Medical Staff

4. Legal Aspects Related to Undisclosed Detention

5. Fate of Other Persons who Passed Through the CIA Detention Program

6. Future use of the CIA Detention Program

Conclusion

Annex 1.

Annex 2.

INTRODUCTION

The International Committee of the Red Cross (ICRC) has consistently expressed its grave concern over the humanitarian consequences and legal implications of the practice by the United States (US) authorities of holding persons in undisclosed detention in the context of the fight against terrorism¹. In particular, the ICRC has underscored the risk of ill-treatment, the lack of contact with the outside world as a result of being held incommunicado, the lack of a legal framework, and the direct effects of such treatment and conditions on the persons held in undisclosed detention and on their families.

The ICRC made its first written interventions to the US authorities in 2002, requesting information on the whereabouts of persons allegedly held under US authority in the context of the fight against terrorism. Since then, it has made regular written and oral interventions to the US authorities on the issue of undisclosed detention (see Annex 2). In particular, the ICRC transmitted two reports on undisclosed detention on 18 November 2004 and 18 April 2006 respectively which consolidated the information previously transmitted² and included more recent allegations of undisclosed locations, hidden detainees and third country detention. Both reports annexed a non-exhaustive nominal list of persons allegedly held in undisclosed detention by the US authorities³.

Despite repeated requests at various levels of the US Government (USG), the ICRC has not received a response to most of these written interventions. The main written response by the US authorities is the Note Verbale of 8 June 2005 which responds to three earlier written interventions⁴. The US authorities have never responded to the two ICRC consolidated reports.

On 6 September 2006, President Bush publicly announced that fourteen “high value” detainees had been transferred from the High Value Detainee Program run by the Central Intelligence Agency (hereafter CIA detention program) to the custody of the Department of Defense in Guantanamo Bay Internment Facility (hereafter Guantanamo). The fourteen detainees (hereafter the fourteen) were reportedly held in the CIA detention program from the time of their arrest, or shortly thereafter, until their arrival in Guantanamo⁵. Throughout their time in CIA custody—which ranges from 16 months to almost four and a half years—these persons were held in undisclosed detention.

Prior to this public announcement, the ICRC had never been informed by the US authorities of the existence of the CIA detention program, nor of the presence in US custody of the fourteen. This is despite the fact that thirteen of the fourteen had been included in the abovementioned ICRC written requests to the US authorities concerning undisclosed detention, the first of which were made in January 2003⁶. The remaining detainee was not known to the ICRC.

The ICRC was granted access to the fourteen in Guantanamo, and met with each of them in private for the first time from 6 to 11 October 2006.

The ICRC regards the confirmation of the present whereabouts of the fourteen by the US authorities, and the subsequent access granted to the ICRC, as positive steps. However, it deplores the fact that these persons were held in undisclosed detention

during a prolonged period by the US authorities and the conditions of detention and treatment to which they were subjected during that time. It is also gravely concerned by the lack of information provided to the ICRC regarding their fate despite regular and repeated requests.

The ICRC recognizes the right of the US authorities to take measures to address legitimate security concerns, including the detention and interrogation of individuals suspected of posing a threat to national security. However, the ICRC believes that the US can achieve these objectives while respecting its obligations and historical commitment to respect international law.

The aim of the present report is to provide a description of the treatment and material conditions of detention of the fourteen during the period they were held in the CIA detention program, as reported to the ICRC during its private interviews with these persons. Section One reports in detail the main elements of the CIA detention program, including arrest and transfers, incommunicado detention and other conditions and treatment, in particular during the initial stages of interrogation; Section Two outlines the conditions of detention and treatment in the later stages; Section Three considers the provision of health care and the role of medical staff during the entire period of undisclosed detention; Section Four details the legal aspects related to undisclosed detention; Section Five discusses the issue of the persons other than the fourteen who passed through the CIA detention program; and, finally, Section Six addresses the issue of future use of the CIA detention program.

A separate ICRC report has been transmitted to the Department of Defense regarding the material conditions and treatment of the fourteen since their arrival in Guantanamo⁷.

I. MAIN ELEMENTS OF THE CIA DETENTION PROGRAM

Following the transfer of the fourteen from CIA custody to the custody of the Department of Defense in Guantanamo in September 2006, the ICRC met with each of these persons in private from 6 to 11 October, and from 4 to 14 December, 2006. The information provided in this report is based on the information gathered during those interviews, to the extent that each detainee agreed for it to be transmitted to the authorities.

The fourteen, who are identified individually below, described being subjected, in particular during the early stages of their detention, lasting from some days up to several months, to a harsh regime employing a combination of physical and psychological ill-treatment with the aim of obtaining compliance and extracting information. This regime began soon after arrest, and included transfers of detainees to multiple locations, maintenance of the detainees in continuous solitary confinement and incommunicado detention throughout the entire period of their undisclosed detention, and the infliction of further ill-treatment through the use of various methods either individually or in combination, in addition to the deprivation of other basic material requirements.

It is essential to a proper understanding of this report that all of the elements of treatment and material conditions of detention individually outlined below be considered as forming a whole, as each constitutes an integral part of the situation of the detainees in the CIA detention program. In addition to the information contained in the following section, it is also necessary to consider the prolonged duration of the detention, the conditions of detention and treatment in the later stages of detention, and the role of health personnel and, in particular, the lack of legal framework governing the undisclosed detention of the fourteen. When understood in their totality, the undisclosed detention regime to which these persons were subjected becomes all the more disturbing.

The ICRC wishes to underscore that the consistency of the detailed allegations provided separately by each of the fourteen adds particular weight to the information provided below.

The general term “ill-treatment” has been used throughout the following section, however, it should in no way be understood as minimising the severity of the conditions and treatment to which the detainees were subjected. Indeed, as outlined in Section 4 below, and as concluded by this report, the ICRC clearly considers that the allegations of the fourteen include descriptions of treatment and interrogation techniques—singly or in combination—that amounted to torture and/or cruel, inhuman or degrading treatment.

2. ARREST AND TRANSFER

The following fourteen persons are referred to in this report, in chronological order according to date of arrest:

<u>Name</u>	<u>Nationality</u>	<u>Place of arrest</u>	<u>Date of arrest</u>
1) Abu Zubaydah	Palestinian	Faisalabad, Pakistan	28 March 2002
2) Ramzi Mohammed Binalshib	Yemeni	Karachi, Pakistan	11 September 2002
3) Abdelrahim Hussein Abdul Nashiri	Saudi	Dubai	October 2002
4) Mustafha Ahmad Al Hawsawi	Saudi	Rawalpindi, Pakistan	01 March 2003
5) Khaled Shaik Mohammed	Pakistani	Rawalpindi, Pakistan	01 March 2003
6) Majid Khan	Pakistani	Karachi, Pakistan	05 March 2003
7) Ali Abdul Aziz Mohammed	Pakistani	Karachi, Pakistan	29 April 2003
8) Walid Bin Attash	Yemeni	Karachi, Pakistan	29 April 2003
9) Mohammed Farik Bin Amin	Malaysian	Bangkok, Thailand	08 June 2003
10) Mohammed Nazir Bin Lep	Malaysian	Bangkok, Thailand	11 August 2003
11) Encep Nuraman (aka Hambali)	Indonesian	Ayutthaya, Thailand	11 August 2003
12) Haned Hassan Ahmad Guleed	Somali	Djibouti	04 March 2004
13) Ahmed Khalafan Ghailani	Tanzanian	Gujarat, Pakistan	25 July 2004
14) Mustafah Faraj Al-Azibi	Libyan	Mardan, Pakistan	02 May 2005

The fourteen were arrested in four different countries. In each case, they were reportedly arrested by the national police or security forces of the country in which they were arrested.

In some cases US agents were present at the time of arrest. All fourteen were detained in the country of arrest for periods ranging from a few days up to one month before their first transfer to a third country (reportedly Afghanistan, see below) and from there on to other countries. Interrogation in the country of arrest was conducted by US agents in nearly all cases. In two cases, however, detainees reported having been interrogated by the national authorities, either alone or jointly with US agents: Mr Abdelrahim Hussein Abdul Nashiri was allegedly interrogated for the first month after arrest by Dubai agents, and one detainee who did not wish his name to be transmitted to the authorities was allegedly interrogated by both Pakistani and US agents. During their subsequent detention, outlined below, detainees sometimes reported the presence of non-US personnel (believed to be personnel of the country in which they were held), even though the overall control of the facility appeared to remain under the control of the US authorities.

Throughout their detention, the fourteen were moved from one place to another and were allegedly kept in several different places of detention, probably in several different countries. The number of locations reported by the detainees varied, however ranged from three to ten locations prior to their arrival in Guantanamo in September 2006.

The transfer procedure was fairly standardised in most cases. The detainee would be photographed, both clothed and naked prior to and again after transfer. A body cavity check (rectal examination) would be carried out and some detainees alleged that a suppository (the type and the effect of such suppositories was unknown by the detainees), was also administered at that moment.

The detainee would be made to wear a diaper and dressed in a tracksuit. Earphones would be placed over his ears, through which music would sometimes be played. He would be blindfolded with at least a cloth tied around the head and black goggles. In addition, some detainees alleged that cotton wool was also taped over their eyes prior to the blindfold and goggles being applied. Mr Abu Zubaydah alleged that during one transfer operation the blindfold was tied very tightly resulting in wounds to his nose and ears. He does not know how long the transfer took but, prior to the transfer, he reported being told by his detaining authorities that he would be going on a journey that would last twenty-four to thirty hours.

The detainee would be shackled by hands and feet and transported to the airport by road and loaded onto a plane. He would usually be transported in a reclined sitting position with his hands shackled in front. The journey times obviously varied considerably and ranged from one hour to over twenty-four to thirty hours. The detainee was not allowed to go to the toilet and if necessary was obliged to urinate or defecate into the diaper.

On some occasions the detainees were transported lying flat on the floor of the plane and/or with their hands cuffed behind their backs. When transported in this position the detainees complained of severe pain and discomfort.

In addition to causing severe physical pain, these transfers to unknown locations and unpredictable conditions of detention and treatment placed mental strain on the

fourteen, increasing their sense of disorientation and isolation. The ability of the detaining authority to transfer persons over apparently significant distances to secret locations in foreign countries acutely increased the detainees' feeling of futility and helplessness, making them more vulnerable to the methods of ill-treatment described below.

The ICRC was informed by the US authorities that the practice of transfers was linked specifically to issues that included national security and logistics, as opposed to being an integral part of the program, for example to maintain compliance. However, in practice, these transfers increased the vulnerability of the fourteen to their interrogation, and was performed in a manner (goggles, earmuffs, use of diapers, strapped to stretchers, sometimes rough handling) that was intrusive and humiliating and that challenged the dignity of the persons concerned.

As their detention was specifically designed to cut off contact with the outside world and emphasise a feeling of disorientation and isolation, some of the time periods referred to in the report are approximate estimates made by the detainees concerned. For the same reasons, the detainees were usually unaware of their exact location beyond the first place of detention in the country of arrest and the second country of detention, which was identified by all fourteen as being Afghanistan. This report will not enter into conjecture by referring to possible countries or locations of places of detention beyond the first and second countries of detention, which are named, and will refer, where necessary, to subsequent places of detention by their position in the sequence for the detainee concerned (eg. third place of detention, fourth place of detention). The ICRC is confident that the concerned authorities will be able to identify from their records which place of detention is being referred to and the relevant period of detention.

Moreover, the ICRC notes that four detainees believed that they had previously been held in Guantanamo, for periods ranging from one week to one year during 2003/4. They reported recognising this location upon return there in September 2006, as each had been allowed outdoors on a daily basis during their earlier time there. The ICRC has been assured by DoD that it was given full notification of and access to all persons held in Guantanamo during its regular detention visits. The ICRC is concerned, if the allegations are confirmed, it had in fact been denied access to these persons during the period in which they were detained there.

1.2. CONTINUOUS SOLITARY CONFINEMENT AND INCOMMUNICADO DETENTION

Throughout the entire period during which they were held in the CIA detention program—which ranged from sixteen months up to almost four and a half years and which, for eleven of the fourteen was over three years—the detainees were kept in continuous solitary confinement⁸ and incommunicado detention. They had no knowledge of where they were being held, no contact with persons other than their interrogators

or guards. Even their guards were usually masked and, other than the absolute minimum, did not communicate in any way with the detainees. None had any real—let alone regular—contact with other persons detained, other than occasionally for the purposes of inquiry when they were confronted with another detainee. None had any contact with legal representation. The fourteen had no access to news from the outside world, apart from in the later stages of their detention when some of them occasionally received printouts of sports news from the internet and one reported receiving newspapers.

None of the fourteen had any contact with their families, either in written form or through family visits or telephone calls. They were therefore unable to inform their families of their fate. As such, the fourteen had become missing persons. In any context, such a situation, given its prolonged duration, is clearly a cause of extreme distress for both the detainees and families concerned and itself constitutes a form of ill-treatment.

In addition, the detainees were denied access to an independent third party. In order to ensure accountability, there is a need for a procedure of notification to families, and of notification and access to detained persons, under defined modalities, for a third party, such as the ICRC. That this was not practiced, to the knowledge of the ICRC, neither for the fourteen nor for any other detainee who passed through the CIA detention program, is a matter of serious concern.

1.3. OTHER METHODS OF ILL-TREATMENT

As noted above, the fourteen were subjected to an extremely harsh detention regime, characterised by ill-treatment. The initial period of interrogation, lasting from a few days up to several months was the harshest, where compliance was secured by the infliction of various forms of physical and psychological ill-treatment. This appeared to be followed by a reward based interrogation approach with gradually improving conditions of detention, albeit reinforced by the threat of returning to former methods.

The methods of ill-treatment alleged to have been used include the following:

- **Suffocation by water** poured over a cloth placed over the nose and mouth, alleged by three of the fourteen.
- **Prolonged stress standing position**, naked, held with the arms extended and chained above the head, as alleged by ten of the fourteen, for periods from two or three days continuously, and for up to two or three months intermittently, during which period toilet access was sometimes denied resulting in allegations from four detainees that they had to defecate and urinate over themselves.
- **Beatings by use of a collar** held around the detainees neck and used to forcefully bang the head and body against the wall, alleged by six of the fourteen.
- **Beating and kicking**, including slapping, punching, kicking to the body and face, alleged by nine of the fourteen.

- **Confinement** in a box to severely restrict movement alleged in the case of one detainee.
- **Prolonged nudity** alleged by eleven of the fourteen during detention, interrogation and ill-treatment; this enforced nudity lasted for periods ranging from several weeks to several months.
- **Sleep deprivation** was alleged by eleven of the fourteen through days of interrogation, through use of forced stress positions (standing or sitting), cold water and use of repetitive loud noise or music. One detainee was kept sitting on a chair for prolonged periods of time.
- **Exposure to cold temperature** was alleged by most of the fourteen, especially via cold cells and interrogation rooms, and for seven of them, by the use of cold water poured over the body or, as alleged by three of the detainees, held around the body by means of a plastic sheet to create an immersion bath with just the head out of the water.
- **Prolonged shackling** of hands and/or feet was alleged by many of the fourteen.
- **Threats of ill-treatment** to the detainee and/or his family, alleged by nine of the fourteen.
- **Forced shaving** of the head and beard, alleged by two of the fourteen.
- **Deprivation/restricted provision of solid food** from 3 days to 1 month after arrest, alleged by eight of the fourteen.

In addition, the fourteen were subjected for longer periods to a deprivation of access to open air, exercise, appropriate hygiene facilities and basic items in relation to interrogation, and restricted access to the Koran linked with interrogation (see Section 1.4 Other Aspects of the Detention Regime).

The following section provides various examples of each of the methods of ill-treatment alleged to have been used on the fourteen during their time in CIA detention. The examples provided are only samples to illustrate each particular method and are not in any way meant to be a representation of all of the allegations recorded.

For the purposes of clarity in this report, each method of ill-treatment mentioned below has been detailed separately. However, each specific method was in fact applied in combination with other methods, either simultaneously, or in succession. Not all of these methods were used on all detainees⁹, except in one case, namely that of Mr Abu Zubaydah, against whom all of the methods outlined below were allegedly used.

In order to provide as complete and accurate a picture as possible, some excerpts from the interviews conducted with some of the fourteen, as recorded by the ICRC, are attached in Annex 1.

The information contained in the following section was reported to the ICRC by twelve of the fourteen. Two detainees did not report allegations of the other methods of ill-treatment outlined in Section 1.3. These two detainees were, nevertheless, subjected to ill-treatment in the form of continuous solitary confinement and incommunicado detention.

1.3. SUFFOCATION BY WATER

Three of the fourteen alleged that they were repeatedly subjected to suffocation by water. They were: Mr Abu Zubaydah, Mr Khaled Shaik Mohammed and Mr Al Nashiri.

In each case, the person to be suffocated was strapped to a tilting bed and a cloth was placed over the face, covering the nose and mouth. Water was then poured continuously onto the cloth, saturating it and blocking off any air so that the person could not breathe. This form of suffocation induced a feeling of panic and the acute impression that the person was about to die. In at least one case, this was accompanied by incontinence of the urine. At a point chosen by the interrogator the cloth was removed and the bed was rotated into a head-up and vertical position so that the person was left hanging by the straps used to secure him to the bed. The procedure was repeated at least twice, if not more often, during a single interrogation session. Moreover, this repetitive suffocation was inflicted on the detainees during subsequent sessions. The above procedure is the so-called 'water boarding' technique.

In all three cases this caused considerable pain, particularly for Mr Abu Zubaydah who had undergone surgery just three months earlier. He stated that he vomited on several occasions during this procedure.

Mr Abu Zubaydah described the suffocation method of ill-treatment, used in his third place of detention, as follows: *"I was put on what looked like a hospital bed, and strapped down very tightly with belts. A black cloth was then placed over my face and the interrogators used a mineral water bottle to pour water on the cloth so that I could not breathe. After a few minutes the cloth was removed and the bed was rotated into an upright position. The pressure of the straps on my wounds caused severe pain. I vomited. The bed was then again lowered to a horizontal position and the same torture carried out with the black cloth over my face and water poured on from a bottle. On this occasion my head was in a more backward, downwards position and the water was poured on for a longer time. I struggled without success to breathe. I thought I was going to die. I lost control of my urine. Since then I still lose control of my urine when under stress."* The suffocation procedure was applied during five sessions of ill-treatment that took place during an approximately one-week intense period of interrogation allegedly in Afghanistan in 2002. During each session, apart from one, the suffocation technique was applied once or twice; on one occasion, it was applied three times.

Mr Khaled Shaik Mohammed gave the following description of this method of ill-treatment, used in his third place of detention: *"I would be strapped to a special bed, which can be rotated into a vertical position. A cloth would be placed over my face. Water was then poured onto the cloth by one of the guards so that I could not breathe. This obviously could only be done for one or two minutes at a time. The cloth was then removed and the bed was put into a vertical position. The whole process was then repeated during about 1 hour"*. The procedure was applied during five different sessions during the first month of interrogation in his third place of detention. He also

said that injuries to his ankles and wrists occurred during the suffocation as he struggled in the panic of not being able to breathe. As during other forms of ill-treatment he was always kept naked during the suffocation. Female interrogators were also present during this form of ill-treatment, again increasing the humiliation aspect. Mr Khaled Shaik Mohammed described a device attached to one of his fingers, the reading of which was checked regularly by a person he assumed to be a doctor. From the description, this appears to have been a pulse oxymeter, a medical device for measuring the saturation of oxygen in the blood (also see Sect. 3 Health Provision and the Role of Medical Staff).

1.3.2. PROLONGED STRESS STANDING

Ten of the fourteen alleged that they were subjected to prolonged stress standing positions, during which their wrists were shackled to a bar or hook in the ceiling above the head for periods ranging from two or three days continuously, and for up to two or three months intermittently. All those detainees who reported being held in this position were allegedly kept naked throughout the use of this form of ill-treatment.

For example, Mr Khaled Shaik Mohammed alleged that, apart from the time when he was taken for interrogation, he was shackled in the prolonged stress standing position for one month in his third place of detention (he estimates he was interrogated for approximately eight hours each day at the start of the month gradually declining to four hours each day at the end of the month).

Mr Ramzi Binalshib alleged that he was shackled in this position for two to three days in Afghanistan his second place of detention and for seven days in his fourth; Mr Al Nashiri for at least two days in Afghanistan and again for several days in his third place of detention; Mr Majid Khan for three days in Afghanistan and seven days in his third place of detention, Mr Bin Attash for two weeks with two or three short breaks where he could lie down in Afghanistan and for several days in his fourth place of detention; Mr Bin Lep for seven days in Afghanistan and Mr Hambali for four to five days, blindfolded with a type of sack over his head, while still detained in Thailand.

Mr Bin Attash commented that during the two weeks he was shackled in the prolonged stress standing position with his hands chained above his head, his artificial leg was sometimes removed by the interrogators to increase the stress and fatigue of the position.

One detainee who did not wish his name to be transmitted to the authorities alleged that he was shackled in this position for two to three months, seven days of prolonged stress standing followed by two days able to sit or lie down.

While being held in this position some of the detainees were allowed to defecate in a bucket. A guard would come to release their hands from the bar or hook in the ceiling so that they could sit on the bucket. None of them, however, were allowed to clean themselves afterwards. Others were made to wear a garment that resembled a diaper. This was the case for Mr Bin Attash in his fourth place of detention. However,

he commented that on several occasions the diaper was not replaced so he had to urinate and defecate on himself while shackled in the prolonged stress standing position. Indeed, in addition to Mr Bin Attash, three other detainees specified that they had to defecate and urinate on themselves and remain standing in their own bodily fluids. Of these, only Mr Bin Lep agreed that his name be transmitted to the authorities.

Many of the detainees who alleged that they had undergone this form of ill-treatment commented that their legs and ankles swelled as a result of the continual forced standing with their hands shackled above their head. They also noted that while being held in this position they were checked frequently by US health personnel.

Although this position prevented most detainees from sleeping, three of the detainees stated that they did fall asleep once or more while shackled in this position. These include Mr Khaled Shaik Mohammed and Mr Bin Attash; the third did not wish his name to be transmitted to the authorities. When they did fall asleep held in this position, the whole weight of their bodies was effectively suspended from the shackled wrists, transmitting the strain through the arms to the shoulders.

1.3.3. BEATING BY USE OF A COLLAR

Six of the fourteen alleged that an improvised thick collar or neck roll was placed around their necks and used by their interrogators to slam them against the walls. For example, Mr Abu Zubaydah commented that when the collar was first used on him in his third place of detention, he was slammed directly against a hard concrete wall. He was then placed in a tall box for several hours (see Section 1.3.5., Confinement in boxes). After he was taken out of the box he noticed that a sheet of plywood had been placed against the wall. The collar was then used to slam him against the plywood sheet. He thought that the plywood was in order to absorb some of the impact so as to avoid the risk of physical injury. Mr Abu Zubaydah also believed that his interrogation was a form of experimentation with various interrogation techniques. Indeed some forms of ill-treatment were allegedly used against him that were not reported to have been used on other detainees. He claimed that he was told by one of the interrogators that he was one of the first to receive these interrogation techniques.

Mr Bin Attash alleged that during interrogation in Afghanistan: “*on a daily basis during the first two weeks a collar was looped around my neck and then used to slam me against the walls of the interrogation room. It was also placed around my neck when being taken out of my cell for interrogation and was used to lead me along the corridor. It was also used to slam me against the walls of the corridor during such movements*”.

Mr Khaled Shaik Mohammed alleged that, in his third place of detention: “*a thick plastic collar would be placed around my neck so that it could then be held at the two ends by a guard who would use it to slam me repeatedly against the wall*”.

1.3.4. BEATING AND KICKING

Nine of the fourteen alleged that they had been subjected to daily beatings during the initial period, involving repeated slapping, punching and, less often, kicking, to the body and face, as well as a detainee having his head banged against a solid object. These beatings lasted up to half an hour and were repeated throughout the day and again on subsequent days. They took place during periods ranging from one week up to two to three months.

For example, one detainee who did not wish his name to be transmitted to the authorities alleged that: *"In Kabul the treatment got worse. I was punched and slapped in the face and on the back to the extent that I was bleeding. While having a rope round my neck and being tied to a pillar my head was banged against the pillar repeatedly."* The interrogators then allegedly took a picture of the detainee to show to another suspect, in order to threaten the same treatment to that person (see Section 1.3.10. Threats).

Mr Khaled Shaik Mohammed alleged that on a daily basis during the first month of interrogation in his third place of detention: *"if I was perceived not to be cooperating I would be placed against a wall and subjected to punches and slaps in the body, head and face"*.

Mr Bin Attash alleged that: *"every day for the first two weeks [in Afghanistan] I was subjected to slaps to the face and punches to the body during interrogation. This was done by one interrogator wearing gloves. He was then replaced by a second interrogator who was more friendly and pretended that he could save me from the first interrogator"*.

One detainee who did not wish his name to be transmitted to the authorities said that: *"during the early days of the interrogation [in Kabul] I was often subjected to punches and slaps to the face by the interrogator. Two Afghan guards held me by the shoulders during the beatings."*

1.3.5. CONFINEMENT IN A BOX

One of the fourteen reported that confinement inside boxes was used as a form of ill-treatment. Mr Abu Zubaydah, alleged that during an intense period of his interrogation in Afghanistan in 2002 he was held in boxes that had been specially designed to constrain his movement. One of the boxes was tall and narrow and the other was shorter, forcing him to crouch down. Mr Abu Zubaydah stated that: *"As it was not high enough even to sit upright, I had to crouch down. It was very difficult because of my wounds. The stress on my legs held in this position meant that my wounds both in the leg and stomach became very painful. I think this occurred about three months after my last operation"*. He went on to say that a cover was placed over the boxes while he was inside making it hot and difficult to breathe. The combination of sweat, pressure and friction from the slight movement possible to try to find a comfortable

position, meant that the wound on his leg began to reopen and started to bleed. He does not know how long he remained in the small box; he says that he thinks he may have slept or fainted. The boxes were used repeatedly during a period of approximately one week in conjunction with other forms of ill-treatment, such as suffocation by water, beatings and use of the collar to slam him against the wall, sleep deprivation, loud music and deprivation of solid food. During this period, between sessions of ill-treatment he was made to sit on the floor with a black hood over his head until the next session began.

1.3.6. PROLONGED NUDITY

The most common method of ill-treatment noted during the interviews with the fourteen was the use of nudity. Eleven of the fourteen alleged that they were subjected to extended periods of nudity during detention and interrogation, ranging from several weeks continuously up to several months intermittently.

For example, Mr Bin Attash alleged that he was kept naked for two weeks in Afghanistan, followed by one month of being clothed. However, after being transferred to his next place of detention, he was allegedly again kept naked for another one month.

Mr Hambali alleged that he was kept naked for four to five days while still detained in Thailand and was then held for one week naked in Afghanistan. He was then provided with clothes, which were again removed after one week after which he remained naked for another month before clothes were finally provided.

Mr Abu Zubaydah alleged that after spending several weeks in hospital following arrest he was transferred to Afghanistan where he remained naked, during interrogation, for between one and a half to two months. He was then examined by a woman he assumed to be a doctor who allegedly asked why he was still being kept naked. Clothes were given to him the next day. However, the following day, these clothes were then cut off his body and he was again kept naked. Clothes were subsequently provided or removed according to how cooperative he was perceived by his interrogators.

Mr Khaled Shaik Mohammed alleged that he was kept naked for one month in Afghanistan. Mr Majid Khan alleged that he was kept naked for three days in Afghanistan and for seven days in his third place of detention. Mr Bin Lep alleged that he was kept naked for three to four days while still detained in Thailand followed by nine days naked in Afghanistan.

One of the detainees who did not wish his name to be transmitted to the authorities alleged that while detained in Afghanistan he was kept naked for two to three months with clothes being provided approximately every seven days for a two day period and then being again removed.

Most of the detainees commented that the provision of clothes was determined by how cooperative they were perceived by the interrogators.

1.3.7. SLEEP DEPRIVATION AND USE OF LOUD MUSIC

Eleven of the fourteen alleged that they were deprived of sleep during the initial interrogation phase from seven days continuously to intermittent sleep deprivation that continued up to two or three months after arrest. Sleep was deprived in various ways, and therefore overlaps with some of the other forms of ill-treatment described in this section, from the use of loud repetitive noise or music to long interrogation sessions to prolonged stress standing to spraying with cold water.

For example, Mr Abu Zubaydah alleged that, while detained in Afghanistan, *“I was kept sitting on a chair, shackled by hands and feet for two to three weeks. During this time I developed blisters on the underside of my legs due to the constant sitting. I was only allowed to get up from the chair to go to the toilet, which consisted of a bucket”*. He alleged that he was constantly deprived of sleep during this period, *“if I started to fall asleep a guard would come and spray water in my face”*, he said. The cell was kept very cold by the use of air-conditioning and very loud *“shouting”* music was constantly playing on an approximately fifteen minute repeat loop twenty-four hours a day. Sometimes the music stopped and was replaced by a loud hissing or crackling noise.

One detainee who did not wish his name to be transmitted to the authorities alleged that loud music played for twenty-four hours a day throughout the one year period he believed he was held in Afghanistan. He reported that during the last month it changed to sounds of wind, waves and birds.

1.3.8. EXPOSURE TO COLD TEMPERATURE/COLD WATER

Detainees frequently reported that they were held for their initial months of detention in cells which were kept extremely cold, usually at the same time as being kept forcibly naked. The actual interrogation room was also often reported to be kept cold. Requests for clothing or for blankets went unanswered. For example, Mr Abu Zubaydah alleged that his cell was excessively cold throughout the nine months he spent in Afghanistan.

Seven of the fourteen reported that they were also subjected to dousing with cold water during interrogation sessions. In four cases the water was allegedly thrown or poured onto the detainee with buckets or a hose-pipe while held in a stress standing position with their arms shackled above their head for prolonged periods. Several thought that this was in order to clean away the faeces which had run down their legs when they defecated while held in the prolonged stress standing position (see Section 1.3.2. Prolonged Stress Standing). In three cases cold water was also poured over the detainee while he was lying on a plastic sheet raised at the edges by guards to contain the water around his body creating an immersion bath with just the head exposed. In one case a detainee was strapped to a tilting bed and cold water was poured over his body while he was threatened with “water boarding” (although that procedure was not actually carried out on that individual).

For example, one detainee who did not wish his name to be transmitted to the authorities alleged that, during his detention in Afghanistan, his interrogators “*threw cold water on me with buckets*” during the early days of the interrogation; Mr Ramzi Binalshih alleged that he was: “*splashed with cold water from a hose*” during interrogation in his fourth place of detention and that in his eighth place of detention he was: “*restrained on a bed, unable to move, for one month, February 2005 and subjected to cold air-conditioning during that period.*”

Another detainee who did not wish his name to be transmitted to the authorities alleged that: “*when I was taken for interrogation I would first be splashed with cold water by the guards while still in the {cell in the prolonged stress standing} position. I'm not sure if this was to clean me or as part of the interrogation process—or both. I was then blindfolded and walked the fifteen minutes to another room, separate from the interrogation room, where I was made to lie on a plastic sheet, which was then raised at the edges. Cold water was then poured onto me using a kettle or hose for between fifteen and thirty minutes. I was still blindfolded. My interrogator told me that a woman was also present during the cold water treatment. I think I heard a female voice on at least one occasion*”. He alleged that this was repeated on an almost daily basis, with breaks of two days approximately once a week, during two to three months while he was detained in Afghanistan.

Mr Bin Attash described the following from his detention in Afghanistan: “*on a daily basis during the first two weeks I was made to lie on a plastic sheet placed on the floor which would then be lifted at the edges. Cold water was then poured onto my body with buckets. They did not have a hosepipe to fill the sheet more easily. This jail was not so well equipped for torture*”. He was kept enveloped within the sheet with the cold water for several minutes. In his next place of detention, he was allegedly doused every day during the month of July 2003 with cold water from a hosepipe. He commented that: “*in this place of detention they were rather more sophisticated than in Afghanistan because they had a hosepipe with which to pour water over me*”.

1.3.9. PROLONGED USE OF HANDCUFFS AND SHACKLES

Many of the detainees alleged that they were kept for long periods continuously shackled and/or handcuffed. For example, Mr Khaled Shaik Mohammed was allegedly kept continuously shackled, even when inside his cell for nineteen months.

One detainee who did not wish his name to be transmitted to the authorities alleged that he was kept for four and a half months continuously handcuffed and seven months with the ankles continuously shackled while detained in Kabul in 2003/4. On two occasions, his shackles had to be cut off his ankles as the locking mechanism and ceased to function, allegedly due to rust.

Mr Bin Attash alleged that he was kept permanently handcuffed and shackled throughout his first six months of detention. During the four months he was held in his third place of detention, when not kept in the prolonged stress standing position, his

ankle shackles were allegedly kept attached by a one meter long chain to a pin fixed in the corner of the room where he was held.

1.3.10. THREATS

Nine of the fourteen alleged that they had been subjected to threats of ill-treatment. Seven of these cases took the form of a verbal threat, including of ill-treatment in the form of “water boarding”, electric shocks, infection with HIV, sodomy of the detainee and the arrest and rape of his family, torture, being brought close to death, and of an interrogation process to which “no rules applied”. The other two threats were made by visual means, namely of ill-treatment which would make the detainee resemble a co-detainee (through use of a photo of a co-detainee showing physical signs of ill-treatment), and of a return to past methods of ill-treatment (through displaying during interrogation a neck collar previously used for ill-treatment). In all cases, the threats were made to induce cooperation with the interrogation.

For example, Mr Khaled Shaik Mohammed alleged that, in his third place of detention, one of his interrogators stated that the greenlight had been received from Washington to give him a “*hard time*” and that, although they would not let him die, he would be brought to the “*verge of death and back again*”.

Mr Abu Zubaydeh alleged that, in his third place of detention, he was told by one of the interrogators that he was one of the first to receive these interrogation techniques, “*so no rules applied*”.

Mr Hambali alleged that, in his third place of detention, he was threatened with a return to previous methods of ill-treatment (namely, having his head slammed against the wall by use of a collar, see Section 1.3.3 Beatings by use of a collar), by his interrogators showing him the collar during interrogation sessions. Similarly, Mr Khaled Shaik Mohammed stated that the collar previously used had been placed on the table in front of him during interrogation sessions in his third place of detention.

Mr Al Nashiri alleged that, in his third place of detention, he was threatened with sodomy, and with the arrest and rape of his family.

1.3.11. FORCED SHAVING

Two of the fourteen alleged that their heads and beards were forcibly shaved. Mr Abu Zubaydah alleged that his head and beard were shaved during the transfer to Afghanistan.

Mr Ramzi Binalshib alleged that, in his eighth place of detention, first his head was shaved and then some days later his beard was also shaved off. He was particularly distressed by the fact that the people who shaved him allegedly deliberately left some spots and spaces in order to make him look and feel particularly undignified and abused.

1.3.12. DEPRIVATION/RESTRICTED PROVISION OF SOLID FOOD

Eight of the fourteen alleged that they were deprived of solid food for periods ranging from three days to one month. This was often followed by a period when the provision of food was restricted and allegedly used as an incentive for cooperation. Two other detainees alleged that, whilst they were not totally deprived of solid food, food was provided intermittently or provided in restricted amounts.

For example, Mr Abu Zubaydah alleged that in Afghanistan, during the initial period of two to three weeks while kept constantly sitting on a chair, he was not provided with any solid food, but was provided with Ensure (a nutrient drink) and water. After about two to three weeks he began to receive solid food (rice) to eat on a daily, once a day, basis. Approximately one month later, during a resumption of intense questioning he was again deprived of food for approximately one week and only given Ensure and water.

Mr Binalshih alleged that during a period of three weeks in his fourth place of detention he was deprived of solid food for three to four weeks and only provided with Ensure and water.

One detainee who did not wish his name to be transmitted to the authorities alleged that during the initial two to three months of his detention in Afghanistan, although not totally deprived of solid food, he was given just one meal every two to three days. Later this increased to one meal a day, until the last month in that place of detention, when he finally received three meals a day. He believes he was detained in Afghanistan for approximately one year.

Mr Bin Attash alleged that he was not provided with any solid food during the first two weeks of his detention in Afghanistan; only Ensure and water being provided during that period. During the third week the Ensure continued, but he was also given one solid meal a day. This consisted of either bread and gravy or rice and potatoes. He was held in Afghanistan for three weeks. In his next place of detention food was adequately provided.

Mr Khaled Shaik Mohammed alleged that during the first month in his third place of detention, he was not provided with any solid food apart from on two occasions as a reward for perceived cooperation. A drink of Ensure was provided once every four hours. If he refused to drink then his mouth was forced open by a guard and the Ensure was poured down his throat. After about one month solid food began to be provided twice a day.

Mr Majid Khan alleged that he did not receive any solid food for seven days in Afghanistan.

One detainee who did not wish his name to be transmitted to the authorities alleged that during the one week he was held in his first place of detention he was not provided with any food and was only given Ensure and water to drink. After arriving in where he believes was Kabul, he was kept another two days without food, after which he was provided with meals irregularly for the next two months, after which meals were provided on a regular basis.

Mr Bin Lep alleged that he was not provided with any solid food until twelve days after his arrest.

Mr Hambali alleged that throughout his four to five days of detention in Thailand, where he was allegedly held in US custody, he was not provided with any solid food. During the two months he was detained in Afghanistan he received solid food irregularly, sometimes twice a day and sometimes only once in two to three days. Ensure was provided throughout to supplement the lack of solid food.

1.4. FURTHER ELEMENTS OF THE DETENTION REGIME

The conditions of detention under which the fourteen were held, particularly during the earlier period of their detention, formed an integral part of the interrogation process as well as an integral part of the overall treatment to which they were subjected as part of the CIA detention program. This report has already drawn attention to certain aspects associated with basic conditions of detention, which were clearly manipulated in order to exert pressure on the detainees concerned.

In particular, the use of continuous solitary confinement and incommunicado detention, lack of contact with family members and third parties, prolonged nudity, deprivation/restricted provision of solid food and prolonged shackling have already been described above.

The situation was further exacerbated by the following aspects of the detention regime:

- Deprivation of access to the open air
- Deprivation of exercise
- Deprivation of appropriate hygiene facilities and basic items in pursuance of interrogation
- Restricted access to the Koran linked with interrogation

These aspects cannot be considered individually, but must be understood as forming part of the whole picture. As such, they also form part of the ill-treatment to which the fourteen were subjected.

Little or no access to open air was granted to the fourteen throughout their detention period. For most, their arrival in Guantanamo was the first time they had been allowed outdoors at all since their arrest (apart from during transfer from one place of detention to another). Two detainees said they were taken outdoors twice during their periods of detention in Afghanistan and only four detainees claimed that they received a regular outdoor period during any part of their detention. These four believed that they were previously detained in Guantanamo for periods ranging from one week to one year during 2003/4. During this time they were allowed to go outdoors on a daily basis. Apart from these few exceptions, none of the fourteen received any access to open air throughout their period in the CIA detention program.

Access to exercise was also severely limited, particularly during the early months and years of detention for the detainees arrested during 2002 and 2003. According to many of the detainees it was after several months or years of detention that the authorities constructed or provided such facilities. For example, Mr Bin Attash was kept for approximately two and a half years without any possibility to exercise outside his cell apart from a one month period in his fifth place of detention which was equipped with a gym/exercise area. Mr Hambali was allegedly detained for nine months before he was provided with any possibility to exercise outside of his cell. Mr Khaled Shaik Mohammed was allegedly held for nineteen months before he was provided with access to a small gym located outside his cell in his fifth place of detention.

Basic materials such as toothbrushes, toothpaste, soap, towels, toilet paper, clothes, underwear, blankets and mattress were not provided at all during the initial detention period, in some instances lasting several months. The timing of initial provision and continued supply of all these items was allegedly linked with compliance and cooperation on the part of the detainee. Even after being provided, these basic items allegedly were sometimes removed in order to apply pressure for purposes of interrogation.

In the early phase of interrogation, from a few days to several weeks, access to shower was totally denied and toilet, as mentioned above, was either provided in the form of a bucket or not provided at all—in which case those detainees shackled in the prolonged stress standing position had to urinate and defecate on themselves and remain standing in their own bodily fluids for periods of several days (see Section 1.3.2. Prolonged Stress Standing).

During the initial stages of detention, particularly during the most intense interrogation phase, the fourteen were not provided with access to the Koran. The cultural and religious significance of this lack of access added significant psychological pressure to the detainees. Later, usually about two months after arrest, Korans were provided and the direction of Mecca was indicated. Detainees alleged, however, that throughout their detention period the timing of the prayer schedule was inaccurate. Several detainees alleged that on occasion their Korans, along with other items, were removed according to the needs of the interrogation. For example, Mr Bin Attash was provided with a Koran in his third place of detention, approximately two months after arrest. He was able to keep the Koran for one month. It was then removed as the interrogation again became harsher and was finally returned to him one month later. Mr Khaled Shaik Mohammed alleged that he was not allowed to pray until approximately one month after his arrest. He was provided with a Koran in April 2003, approximately six weeks after arrest. It was confiscated on four occasions during his stay in his third place detention. Mr Hambali was provided with a Koran about four days after his arrival in his third place of detention, approximately two months after arrest. He stated that: *“A few days later the air conditioning was made very cold and everything was removed from my cell, including the Koran. I was only left with a T-shirt and shorts”*.

2. CONDITIONS OF DETENTION IN LATER STAGES

The ICRC notes that conditions of detention and treatment, following the initial period during which the methods described above were used, gradually improved. The timing for the implementation of these improvements varied for each detainee and appears linked to the needs of the interrogation. The introduction of improvements appears to mark the transition from the phase where compliance was obtained by force to what resembled a more incentive-based approach (see Section 1.3 for examples of approximate timeframes).

Following the initial stages of interrogation described above, all detainees were provided with clean clothes on a weekly basis, were gradually provided with solid food three times per day (although some complaints of quality and quantity lasted throughout), and were provided with books in English or their mother tongue and magazines.

In the latter stages of detention, usually six to eight months after arrest, all fourteen were provided with toilet facilities in their cells, to which they had unlimited access, some also had unlimited access to washbasins, and all were able to shower either on a weekly basis or more often. After a period which varied between several months to two and a half years following the arrest, all detainees were allowed to move from their cells to a closed indoor area in which they were able to use exercise machines. Also in the latter stages of detention, the cell temperature was usually maintained at a proper level. In the final place of detention prior to their arrival in Guantanamo, some detainees were able to watch a film on a weekly basis and/or use a portable DVD player.

Although each of these aspects represents an improvement in the situation in which the fourteen were held, such improvements must be understood against the earlier background of severe ill-treatment and ongoing threats of such treatment, continuous solitary confinement and incommunicado detention, ongoing transfers, and the lack of legal framework governing their detention.

3. HEALTH PROVISION AND THE ROLE OF MEDICAL STAFF

During the course of their detention, detainees described three principal roles for health personnel whom they encountered. Firstly, there was a direct role in monitoring the ongoing ill-treatment which, in some instances, involved the health personnel directly participating while certain methods were used. Secondly, there was a role in performing a medical check just prior to, and just after, each transfer. Finally, there was the provision of healthcare, to treat both the direct consequences of ill-treatment detailed in previous sections, and to treat any natural ailments that arose during the prolonged periods of detention.

Throughout the course of the initial phase of the detention, the ICRC received allegations that health personnel were directly involved in monitoring the health effects of ill-treatment. In some cases it was alleged that, based on their assessments, health

personnel gave instructions to interrogators to continue, to adjust, or to stop particular methods. As with other personnel within the detention facilities, the health personnel did not identify themselves, but the detainees presumed from their presence and function that they were either physicians or psychologists.¹⁰

For certain methods, notably suffocation by water, the health personnel were allegedly directly participating in the infliction of the ill-treatment. In one case, it was alleged that health personnel actively monitored a detainee's oxygen saturation using what, from the description of the detainee of a device placed over the finger, appeared to be a *pulse oxymeter*. For example, Mr Khaled Shaik Mohammed alleged that on several occasions the suffocation method was stopped on the intervention of a health person who was present in the room each time this procedure was used.

Other detainees who were shackled in a stress standing position for prolonged periods in their cells were monitored by health personnel who in some instances recommended stopping the method of ill-treatment, or recommended its continuation, but with adjustments. For example, Mr Bin Attash (the detainee has had a right-sided below knee amputation) alleged that while being held in a form of stress standing position with his arms shackled above his head, and his feet touching the floor, had his lower leg measured on a daily basis with a tape measure by a person he assumed to be a doctor for signs of swelling; the health person finally ordered that he be allowed to sit on the floor, albeit with his arms still shackled above his head. Mr Hambali alleged that, after a period of the same form of prolonged stress standing, a health person intervened to prevent further use of the method, but told him that "*I look after your body only because we need you for information*".

As well as the monitoring of specific methods of ill-treatment, other health personnel were alleged to have directly participated in the interrogation process. One detainee, who did not wish his name to be transmitted to the authorities, alleged that a health person threatened that medical care would be conditional upon cooperation with the interrogators.

The second alleged role of the health personnel was to perform a medical check prior to and after each transfer from one detention location to another. The purpose and results of this medical examination appear not to have been divulged to the detainees.

The third alleged role was to provide medical care to detainees, either for injuries resulting directly from the various forms of ill-treatment employed, or treatment for common ailments that arose throughout the course of the detention.

With regard to this third role, when such medical treatment was necessary it appears from the descriptions given that the care was appropriate and satisfactory. In two specific cases, detainees indicated that exceptional lengths were taken to provide very high standards of medical intervention.

Medical ethics are based on a number of principles¹¹ which include the principle of beneficence (a medical practitioner should act in the best interest of the patient—*salus aegroti suprema lex*), non-maleficance (first do no harm—*primum non nocere*) and dignity (the patient and the person treating the patient have the right to dignity). These

principles guide any relationship between a medical doctor and a person whom he or she is relating to as a medical doctor.

There are accepted roles for health professionals working in recognised, official, places of detention such as police stations and prisons wherein the health professionals have the health care and best interests of the detainee as their primary consideration.¹² To this end, when a person enters an official detention facility or system, a medical assessment of their medical status is required in order to meet their current and ongoing health needs. In the case of a normal, lawful interrogation, a physician may be asked to provide a medical opinion, within the usual bounds of medical confidentiality, as to whether existing mental or physical health problems would preclude the individual from being questioned. Secondly, a physician may rightly be requested to provide medical treatment to a person suffering a medical emergency during questioning. This accepted role of the physician, or any other health professional, clearly does not extend to ruling on the permissibility, or not, of any form of physical or psychological ill-treatment. The physician, and any other health professionals, are expressly prohibited from using their scientific knowledge and skills to facilitate such practices in any way. On the contrary, the role of the physician and any other health professional involved in the care of detainees is explicitly to protect them from such ill-treatment and there can be no exceptional circumstances invoked to excuse this obligation.¹³

With the exceptions detailed in the above paragraph, any interrogation process that requires a health professional to either pronounce on the subject's fitness to withstand such a procedure, or which requires a health professional to monitor the actual procedure, must have inherent health risks. As such, the interrogation process is contrary to international law and the participation of health personnel in such a process is contrary to international standards of medical ethics. In the case of the alleged participation of health personnel in the detention and interrogation of the fourteen detainees, their primary purpose appears to have been to serve the interrogation process, and not the patient. In so doing the health personnel have condoned, and participated in ill-treatment.

4. LEGAL ASPECTS IN RELATION TO UNDISCLOSED DETENTION

As described in the following paragraphs, it is a basic tenet of international law that any person deprived of liberty must be registered and held in an officially recognized place of detention.

International humanitarian law (IHL) applicable to international armed conflicts contains numerous provisions and provides extensive requirements concerning the registration of persons deprived of their liberty, ICRC visits to places of detention and the transmission of information related to such persons to, *inter alia*, their next of kin¹⁴. The entire system of detention provided for by the Geneva Conventions of 1949, in which the ICRC plays a supervisory role, is based on the idea that detainees must be registered and held in officially recognised places of detention. While under

the Geneva Conventions ICRC access to certain detainees may be restricted for reasons of imperative military necessity, such restriction should be of a temporary and exceptional nature only¹⁵.

Customary rules of IHL and human rights soft law instruments contain similar explicit provisions on the obligation of registration of detainees and the prohibition of unacknowledged detention, as well as provisions on contacts with family, applicable in situations of non-international armed conflicts and other situations of violence¹⁶. All of the above-mentioned rules aim at preventing, *inter alia*, enforced disappearance, which is prohibited under international law, including customary IHL. As far as IHL is concerned, the phenomenon of enforced disappearance violates, or risks violating, a range of customary rules, most notably the prohibition of arbitrary deprivation of liberty and the prohibition of torture and/or other cruel, inhuman or degrading treatment (CID)¹⁷.

In the ICRC's view, the fourteen were placed outside the protection of the law during the time they spent in CIA custody. Indeed, one of the main effects of the transfers was to place the fourteen in secret detention facilities in unspecified locations in a number of different countries, outside the reach of any judicial or administrative system. As such, they were, for instance, apparently both precluded from knowing the reasons for their detention and denied access to any mechanism capable of independently reviewing the lawfulness of their detention. They were also denied contact with their families, including any information to the families of their detention. The totality of the circumstances in which the fourteen were held effectively amounted to an arbitrary deprivation of liberty and enforced disappearance, in contravention of international law.¹⁸

As regards conditions of detention and treatment of the fourteen, the effects of their being in undisclosed detention were severe and multifaceted, as the present report shows. The absence of scrutiny by any independent entity—including the ICRC—inevitably creates conditions conducive to excesses that would not otherwise be permitted. Persons held in undisclosed detention are especially vulnerable to being subjected to ill-treatment. Indeed, the allegations of the fourteen include descriptions of treatment and interrogation techniques—singly or in combination—that amounted to torture and/or cruel, inhuman or degrading treatment.

In that regard, the ICRC wishes to remind the US authorities that international law absolutely prohibits CID and torture. Torture is defined by the 1984 UN Convention against Torture as: “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”¹⁹. In particular, the provisions of common article 3 to the Geneva Conventions, which reflects elementary considerations of humanity, stipulate that persons taking no active part in the hostilities “shall in all circumstances be treated humanely”, and that “cruel

treatment and torture”, “outrages upon personal dignity, in particular humiliating and degrading treatment” are prohibited at any time and in any place whatsoever.

5. FATE OF OTHER PERSONS WHO PASSED THROUGH THE CIA DETENTION PROGRAM

During his speech of 6 September 2006, President Bush also stated that the CIA detention program held a limited number of persons at a given time, and that a number of other persons had also been detained by the CIA in the context of the fight against terrorism. President Bush added that: “many of them have been returned to their home countries for prosecution or detention by their governments” once the US authorities had determined that they had “little or no intelligence value”.

In subsequent discussions with various US Government departments, it was again stated to the ICRC that the majority, if not all, other detainees who went through this program have been transferred to their countries of origin.

It is the ICRC’s understanding that these transfers are all subject to formal agreements between the USG and the respective countries which include, *inter alia*, assurances of humane treatment on the part of the countries of origin. The ICRC has a number of legal and operational concerns about this practice. In particular, the ICRC regrets that the USG has not informed the ICRC of the countries of destination so that the ICRC can seek access from the relevant authorities in order to monitor human treatment and to ensure communication with their families.

In light of the conditions of detention and treatment of the fourteen during the period they were held in the CIA detention program, as reported above, the ICRC remains gravely concerned by the fact that a significant number of other persons have passed through this detention program and may have been subjected to similar, if not the same, conditions and treatment. The ICRC has not received any clarification of the fate of these persons, and has therefore not been able to seek access to them following their reported transfer to their home countries. Consequently, it has not been able to assess the detention regime experienced by these persons whilst in CIA custody, nor to assess whether they are currently assured humane treatment by the detaining authorities in their respective countries of origin, nor whether they have been given the possibility of re-establishing contact with their families.

The ICRC welcomes the fact that it has been able to begin discussions with the CIA on this question. It considers the issue to be a humanitarian priority and anticipates a continuation of the discussions aimed at resolving this question.

6. FUTURE USE OF THE CIA DETENTION PROGRAM

According to information provided to the ICRC by the US authorities, no persons were held in the CIA detention program as of October 2006. Nevertheless, in his

speech of 6 September 2006, President Bush made clear that the CIA detention program had not been discontinued and could again be used in the future.

The ICRC is concerned by the maintenance or resumption of any type of undisclosed detention, particularly in view of the information described in the body of this report, including the legal aspects. It urges the US authorities to end the practice of undisclosed detention.

Without prejudice to this position, the ICRC requests that, should persons nevertheless be held in the CIA detention program in the future, it be notified of their detention and be granted access to conduct its traditional visits to the persons detained. In addition, it urges the authorities to ensure that conditions of detention and treatment are humane.²⁰ Finally, the ICRC wishes to remind the CIA that persons whose continued detention is deemed necessary for imperative reasons of security should be afforded an independent and impartial review of deprivation of liberty that appropriately addresses their status. Review processes should enable the internees to challenge the reasons for their continued internment by application of appropriate procedural safeguards²¹

CONCLUSION

All of the fourteen were subjected to a process of ongoing transfers to places of detention in unknown locations and continuous solitary confinement and incommunicado detention throughout the entire period of their detention. The fourteen were placed outside the protection of the law during the time they spent in the CIA detention program. The totality of the circumstances in which they were held effectively amounted to an arbitrary deprivation of liberty and enforced disappearance, in contravention of international law.

Moreover, and in addition to the continuous solitary confinement and incommunicado detention which itself was a form of ill-treatment, twelve of the fourteen alleged that they were subjected to systematic physical and/or psychological ill-treatment. This was a consequence of both the treatment and the material conditions which formed part of the interrogation regime, as well as the overall detention regime. This regime was clearly designed to undermine human dignity and to create a sense of futility by inducing, in many cases, severe physical and mental pain and suffering, with the aim of obtaining compliance and extracting information, resulting in exhaustion, depersonalisation and dehumanisation.

The allegations of ill-treatment of the detainees indicate that, in many cases, the ill-treatment to which they were subjected while held in the CIA program, either singly or in combination, constituted torture. In addition, many other elements of the ill-treatment, either singly or in combination, constituted cruel inhuman or degrading treatment.

The alleged participation of health personnel in the interrogation process and, either directly or indirectly, in the infliction of ill-treatment constituted a gross breach

of medical ethics and, in some cases, amounted to participation in torture and/or cruel, inhuman or degrading treatment.

In light of the above, the ICRC remains gravely concerned by the fate of the other persons previously held in the CIA detention program, who remain unaccounted for. It continues to request that the relevant US authorities provide clarification concerning the fate of all persons for whom it has information.

The ICRC also remains gravely concerned about the announcement by President Bush that the US authorities intend to continue the practice of undisclosed detention by holding persons arrested in the context of the fight against terrorism in the CIA detention program in the future.

The ICRC urges the US authorities to end the practice of undisclosed detention and to ensure that all persons detained in the context of the fight against terrorism are held in conformity with the rules and principles of international law.

Without prejudice to its position on undisclosed detention, the ICRC requests that, should persons nevertheless be held in the CIA detention program in the future, it be notified of their detention and granted access to these detainees. Moreover, it urges the US authorities to provide the ICRC with notification and access to all detainees held under US authority in the context of the fight against terrorism. Such access, of a purely humanitarian nature, should not be seen as inconsistent with any legitimate security concerns of the US authorities in relation to the concerned detainees.

To this end, the ICRC recommends the following:

- that the US authorities take all measures to eliminate abusive conditions of detention and treatment in all places of detention under their authority;
- that all persons detained in the context of the fight against terrorism be treated humanely at all times;
- that all persons detained in the context of the fight against terrorism be permitted to communicate with family members within a reasonable time;
- that all persons detained in the context of the fight against terrorism be held in a legal framework affording all fundamental guarantees;
- that the ICRC be notified of all arrests carried out by the US authorities or by third country authorities acting on behalf of or in cooperation with the US authorities in the context of the fight against terrorism;
- that the ICRC be granted access to all persons held under US authority in the context of the fight against terrorism;
- that the US authorities investigate all allegations of ill-treatment and take steps to punish the perpetrators, where appropriate, and to prevent such abuses from happening again.
- that the US authorities inform the ICRC of the identities of the other persons who have passed through the CIA detention program, the country to which they have been returned and any other relevant details to allow the ICRC to seek access to these persons.

The ICRC trusts that the information in the present report will provide a useful tool for the relevant US authorities to take the necessary measures to ensure that all persons deprived of liberty in the context of the fight against terrorism are treated in accordance with the provisions of international law and internationally recognised standards. The ICRC looks forward to continue its dialogue with the US authorities on this issue.

ANNEX I

The following examples of excerpts from some of the interviews conducted with the fourteen are in no way meant to represent the entirety of any one those interviews or to be representative of all of the interviews carried out. These excerpts are reproduced verbatim. They are presented only to illustrate how the various alleged methods of ill-treatment described in Section 1. of the report were reportedly used in combination with each other.

- i) Abu Zubaydeh reported the following regarding his detention in Afghanistan where he was held for approximately nine months from May 2002 to February 2003. He had previously been held in hospital for what he believes were several weeks and had several operations to severe gunshot injuries sustained at the time of arrest:

"I woke up, naked, strapped to a bed, in a very white room. The room measured approximately 4m x 4m. The room had three solid walls, with the fourth wall consisting of metal bars separating it from a larger room. I am not sure how long I remained in the bed. After some time, I think it was several days, but can't remember exactly, I was transferred to a chair where I was kept, shackled by hands and feet for what I think was the next 2 to 3 weeks. During this time I developed blisters on the underside of my legs due to the constant sitting. I was only allowed to get up from the chair to go to the toilet, which consisted of a bucket. Water for cleaning myself was provided in a plastic bottle.

I was given no solid food during the first two or three weeks, while sitting on the chair. I was only given Ensure and water to drink. At first the Ensure made me vomit, but this became less with time.

The cell and room were air-conditioned and were very cold. Very loud, shouting type music was constantly playing. It kept repeating about every fifteen minutes twenty-four hours a day. Sometimes the music stopped and was replaced by a loud hissing or crackling noise.

The guards were American, but wore masks to conceal their faces. My interrogators did not wear masks.

During this first two to three week period I was questioned for about one to two hours each day. American interrogators would come to the room and speak to me

through the bars of the cell. During the questioning the music was switched off, but was then put back on again afterwards. I could not sleep at all for the first two to three weeks. If I started to fall asleep one of the guards would come and spray water in my face.

After about two or three weeks I began to receive food, rice, to eat on a daily basis. They gave it once a day. I could eat with my hand, but I was not allowed to wash. It was also around this time that I was allowed to lie on the floor. I remained naked and in shackles, but I could sleep a little. It went on like this for about another one and a half months.

During the first few days a doctor came and gave me an injection. I was told it was an anti-biotic. After about one and a half to two months I was examined by a female doctor who asked why I was still naked. My measurements were taken and the next day, I was provided with orange clothes to wear. This was followed however, by more threats that worse was to follow.

Indeed, the next day guards came into my cell. They told me to stand up and raise my arms above my head. They then cut the clothes off of me so that I was again naked and put me back on the chair for several days. I tried to sleep on the chair, but was again kept awake by the guards spraying water in my face.

When my interrogators had the impression that I was cooperating and providing the information they required, the clothes were given back to me. When they felt I was being less cooperative the clothes were again removed and I was again put back on the chair. This was repeated several times.

Eventually, (I don't remember after how long), I was allowed to have a mattress and was given a towel to use as a sheet to cover myself with while sleeping. I was allowed some tissue paper to use when going to toilet on the bucket.

There then followed a period of about one month with no questioning. During this period I was given food, rice and beans, on a daily basis, varying between once or twice a day. They also continued to give me Ensure to drink. My cell was still very cold and the loud music no longer played, but there was a constant loud hissing or crackling noise, which played twenty-four hours a day. I tried to block out the noise by putting tissue in my ears.

There then followed a period of about one month with no questioning. Then, about two and a half or three months after I arrived in this place, the interrogation began again, but with more intensity than before. Then the real torturing started. Two black wooden boxes were brought into the room outside my cell. One was tall, slightly higher than me and narrow. Measuring perhaps in area 1m x 0.75m and 2m in height. The other was shorter, perhaps only 1m in height. I was taken out of my cell and one of the interrogators wrapped a towel around my neck, they then used it to swing me around and smash me repeatedly against the hard walls of the room. I was also repeatedly slapped in the face. As I was still shackled, the pushing and pulling around meant that the shackles pulled painfully on my ankles.

I was then put into the tall back box for what I think was about one and a half to two hours. The box was totally black on the inside as well as the outside. It had a bucket inside to use as a toilet and had water to drink provided in a bottle. They put a

cloth or cover over the outside of the box to cut out the light and restrict my air supply. It was difficult to breathe. When I was let out of the box I saw that one of the walls of the room had been covered with plywood sheeting. From now on it was against this wall that I was then smashed with the towel around my neck. I think that the plywood was put there to provide some absorption of the impact of my body. The interrogators realized that smashing me against the hard wall would probably quickly result in physical injury.

During these torture sessions many guards were present, plus two interrogators who did the actual beating, still asking questions, while the main interrogator left to return after the beating was over. After the beating I was then placed in the small box. They placed a cloth or cover over the box to cut out all light and restrict my air supply. As it was not high enough even to sit upright, I had to crouch down. It was very difficult because of my wounds. The stress on my legs held in this position meant my wounds both in the leg and stomach became very painful. I think this occurred about 3 months after my last operation. It was always cold in the room, but when the cover was placed over the box it made it hot and sweaty inside. The wound on my leg began to open and started to bleed. I don't know how long I remained in the small box, I think I may have slept or maybe fainted.

I was then dragged from the small box, unable to walk properly and put on what looked like a hospital bed, and strapped down very tightly with belts. A black cloth was then placed over my face and the interrogators used a mineral water bottle to pour water on the cloth so that I could not breathe. After a few minutes the cloth was removed and the bed was rotated into an upright position. The pressure of the straps on my wounds was very painful. I vomited. The bed was then again lowered to a horizontal position and the same torture carried out again with the black cloth over my face and water poured on from a bottle. On this occasion my head was in a more backward, downwards position and the water was poured on for a longer time. I struggled against the straps, trying to breathe, but it was hopeless. I thought I was going to die. I lost control of my urine. Since then I still lose control of my urine when under stress.

I was then placed again in the tall box. While I was inside the box loud music was played again and somebody kept banging repeatedly on the box from the outside. I tried to sit down on the floor, but because of the small space the bucket with urine tipped over and spilt over me. I remained in the box for several hours, maybe overnight. I was then taken out and again a towel was wrapped around my neck and I was smashed into the wall with the plywood covering and repeatedly slapped in the face by the same two interrogators as before.

I was then made to sit on the floor with a black hood over my head until the next session of torture began. The room was always kept very cold.

This went on for approximately one week. During this time the whole procedure was repeated five times. On each occasion, apart from one, I was suffocated once or twice and was put in the vertical position on the bed in between. On one occasion the suffocation was repeated three times. I vomited each time I was put in the vertical position between the suffocation.

During that week I was not given any solid food. I was only given Ensure to drink. My head and beard were shaved everyday.

I collapsed and lost consciousness on several occasions. Eventually the torture was stopped by the intervention of the doctor.

I was told during this period that I was one of the first to receive these interrogation techniques, so no rules applied. It felt like they were experimenting and trying out techniques to be used later on other people.

At the end of this period two women and a man came to interrogate me. I was still naked and, because of this, I refused to answer any questions. So they again repeatedly slapped me in the face and smashed me against the wall using the towel around my neck. The following day I was given a towel to wear around my waist, but I was still very cold.

Then, little by little, things started to get better. I was again given rice to eat. Then my mattress was returned. I was allowed to clean my cell. The tall box was removed, but the short one remained in the room outside my cell, I think as a deliberate reminder as to what my interrogators were capable of. One week after the end of torture I was given a pair of green shorts and a top to wear. The food also improved with the addition of beans and fruit.

I was provided with water and allowed to wash inside the cell. However, the loud noise continued throughout the nine months I spent in that place. I was never given any outdoor time.”

- ii) **Walid Bin Attash reported the following regarding his detention in Afghanistan, where he was held for approximately three weeks from mid-May to the start of June 2003 and in his subsequent place of detention, where he was held from June to October 2003:**

“On arrival at the place of detention in Afghanistan I was stripped naked. I remained naked for the next two weeks. I was put in a cell measuring approximately 1m x 2m. I was kept in a standing position, feet flat on the floor, but with my arms above my head and fixed with handcuffs and a chain to a metal bar running across the width of the cell. The cell was dark with no light, artificial or natural.

During the first two weeks I did not receive any food. I was only given Ensure and water to drink. A guard would come and hold the bottle for me while I drank. During the third week the Ensure continued, but I was also provided with one meal each day. This consisted of either gravy and bread or rice and potatoes. The toilet consisted of a bucket in the cell, which was removed once a day. I was not allowed to clean myself after using the bucket. Loud music was playing twenty-four hours each day throughout the three weeks I was held there.

After some time of being held in this position my stump began to hurt so I removed my artificial leg to relieve the pain. Of course my one good leg then began to ache and soon started to give way so that I was left hanging with all my weight on my wrists. I shouted for help but at first nobody came. Finally, after about one hour a guard came

and my artificial leg was given back to me and I was again placed in the standing position with my hands above my head. After that the interrogators sometimes deliberately removed my artificial leg in order to add extra stress to the position. For the first two weeks I was held in this position apart for two or three times when I was allowed to lie down, but I cannot remember for how long.

Usually, throughout the interrogation, the methods they used were specifically designed not to leave marks. However, when I was in this position the cuffs cut into my wrists and made wounds. When this happened the doctor would be called.

For interrogation I was blindfolded and removed from the cell and taken to another room. Every day for the first two weeks I was subjected to slaps to my face and punches to my body during the interrogation. This was done by one interrogator wearing gloves. He was then replaced by a second interrogator who was more friendly and pretended that he could save me from the first interrogator.

Also on a daily basis during the first two weeks a collar was looped around my neck and then used to slam me against the walls of the interrogation room. It was also placed around my neck when being taken out of my cell for interrogation and was used to lead me along the corridor. It was also used to slam me against the walls of the corridor during such movements.

Also on a daily basis during the first two weeks I was made to lie on a plastic sheet placed on the floor which would then be lifted at the edges. Cold water was then poured onto my body with buckets. They did not have a hose-pipe to fill the sheet more easily. This jail was not so well equipped for torture. I would be kept wrapped inside the sheet with the cold water for several minutes. I would then be taken for interrogation to a separate room. At the end of the interrogation I would be placed under hot lights to dry out thoroughly and warm up. This was sometimes done during the interrogation.

The interrogators threatened to infect me with HIV. I was given at least two injections by the doctor during this period, but I have no idea what they were for.

Female interrogators were also present which I found highly humiliating in my naked state. The female interrogators did not take part in physical ill-treatment.

After about two weeks the torture stopped. I was given some clothes, a tracksuit, to wear and was no longer kept in the standing position with my hands above my head. I was still shackled, by my ankles, but was allowed to sit or lie down in my cell. I was also provided with a blanket.

After approximately three weeks in Afghanistan I was transferred to another place. I was blindfolded and earphones were placed over my ears. I was transported in a sitting position, shackled by the ankles and by the wrists with my hands in front of my body. I think that the flight lasted probably more than eight hours. On this occasion the transfer was done using a military plane. If I shifted my position too much during the journey somebody hit me by hand on the head.

I arrived in the next place of detention during June 2003. I think I was detained underground as I had to walk down some stairs in order to reach the cell. My blindfold was then removed. The cell was about 4m x 5m. I was kept chained by my ankle

shackles to a pin fixed in the floor. For the first month here I was not subjected to any torture.

I was not allowed to shower. Meals were provided three times a day in addition to Ensure and multivitamins. Toilet consisted of a bucket in the cell which was removed everyday. Loud music was playing twenty-four hours each day. I was provided with a Styrofoam mattress.

After about one month the torture began again. I was stripped naked and remained naked throughout the month of July. Also during this time I was again kept for several days in a standing position with my arms above my head and fixed with handcuffs and a chain to a metal ring in the ceiling. My lower leg was examined on a daily basis by a doctor using a tape measure for signs of swelling. I do not remember for exactly how many days I was kept standing, but I think it was about ten days. The doctor finally ordered that I be allowed to sit on the floor, I was still kept with my arms extended above my head. This was very painful on my back. During the standing I was made to wear a diaper. However, on some occasions the diaper was not replaced and so I had to urinate and defecate over myself. I was washed down with cold water everyday.

In this place of detention they were rather more sophisticated than in Afghanistan because they had a hose-pipe with which to pour the water over me. After having been washed down with cold water in my cell I was taken for interrogation. On one occasion I heard sounds of a person being tortured next door. In this place of detention, female interrogators were again present while I was naked. One of them was particularly aggressive in her questioning. [He would not go further into detail on this subject]. However, I was not subjected to any more beatings.”

- iii) Khaled Shaik Mohammed reported the following regarding his transfer to and detention in Afghanistan, where he was held for three days at the start of March 2003 and in his subsequent place of detention, where he was held from 06 March to 22 September 2003:

“During the transfer from Pakistan to Afghanistan my eyes were covered with a cloth tied around my head and with a cloth bag pulled over it. A suppository was inserted into my rectum. I was not told what the suppository was for. I was dressed in a shalwar kameez, shackled hands and feet and put sitting in a vehicle for the journey to the airport. I was then put in a sitting position on a plane. The transfer was OK, with no particular problems to report. The flight was short, only about 1 hour. I arrived at night. The transfer from the plane to the place of detention took about 15–20 minutes. During my time in this place of detention I could hear planes taking off and landing. I think the place was Bagram.

After arrival my clothes were cut off of me, the bag and blindfold were removed and photographs were taken of me naked. I remained naked throughout the three days I stayed in this place of detention.

I was checked by a doctor and asked about my medical history. I told the doctor about the pain I was still suffering from the beating in Pakistan. [During the two days

he was detained at Rawlapindi he was questioned by a CIA agent who allegedly punched him several times in the stomach, chest and face. The same agent reportedly threw him on the floor and trod on his face three times. He was not allowed to sleep during his detention in Pakistan].

I was then placed in a cell, about 2m x 4 m, naked, where I was kept in a standing position with my hands cuffed and chained to a bar above my head. My feet were flat on the floor. At first I was questioned for about one hour with no other forms of ill-treatment. After about one hour I was taken to another room where I was made to stand on tiptoes for about two hours during questioning. Approximately thirteen persons were in the room. These included the head interrogator (a man) and two female interrogators, plus about ten muscle guys wearing masks. I think they were all Americans. From time to time one of the muscle guys would punch me in the chest and stomach. This was repeated during two nights.

Also during this period I was on four occasions taken to a separate room away from the main interrogation room. Here cold water from buckets was thrown onto me for about forty minutes. Not constantly as it took time to refill the buckets. After which I would be taken back to the interrogation room.

On one occasion during the interrogation I was offered water to drink, when I refused I was again taken to another room where I was made to lie of the floor with three persons holding me down. A tube was inserted into my anus and water poured inside. Afterwards I wanted to go to the toilet as I had a feeling as if I had diarrhoea. No toilet access was provided until four hours later when I was given a bucket to use.

Whenever I was returned to my cell I was always kept in the standing position with my hands cuffed and chained to a bar above my head.

On one occasion I was taken to another cell and was allowed to sleep for a little while, I think for only about one hour, before being returned to my cell standing, naked with my hands shackled above my head.

Music was always playing in the corridor outside my cell, but it was not very loud.

For a toilet a bucket was provided inside the cell. A guard came and lowered my hands to allow me to use it. However, I was not allowed to clean myself afterwards and was immediately again returned to the former position.

I was not allowed to pray. I could not bathe or wash. I was not provided with any time outdoors. Some Afghani style bread was given to me on some occasions, as a reward for when they thought I was cooperating.

After three days in Afghanistan I was dressed in a tracksuit. My eyes were covered with a cloth tied around my head. A cloth bag was then pulled over my head. Headphones were placed over my ears—playing music, but not too loud. I was transported about ten minutes by vehicle and then placed in a plane sitting, leaning back, with my hands and ankles shackled in a high chair. I fell asleep. The first proper sleep in over five days. I therefore don't know how long the journey lasted.

On arrival the transfer from the airport to the next place of detention took about one hour. I was transported sitting on the floor of a vehicle. I could see at one point that there was snow on the ground. Everybody was wearing black, with masks and

army boots, like Planet-X people. I think the country was Poland. I think this because on one occasion a water bottle was brought to me without the label removed. It had e-mail address ending in “.pl”. The central-heating system was an old style one that I would expect only to see in countries of the former communist system.

After arrival my clothes were again cut off of me, the bag and blindfold were removed and photographs were again taken of me naked. I was put in a cell with cameras where I was later informed by an interrogator that I was monitored 24 hours a day by a doctor, psychologist and interrogator. I think the cell was underground. I had to go down steps to get to it. It was about 3m x 4m with wooden walls.

It was here that the most intense interrogation occurred, led by three experienced CIA interrogators, all over 65 years old and all strong and well trained. There were the “emirs.” Although of course they never revealed their own names, I gave them names by which I could refer to them, all beginning with ‘Abu’. I think that ‘Abu Captain’ was of South American origin, whereas ‘Abu Hanan’ was perhaps of Moroccan origin and ‘Abu White’ was of Eastern European descent.

As the interrogation again resumed I was told by one of the “emirs” that they had received the green-light from Washington to give him “*a hard time*”. They never used the word “torture” and never referred to “physical pressure”, only to “*a hard time*”, I was never threatened with death, in fact I was told that they would not allow me to die, but that I would be brought to the “*verge of death and back again*”.

Apart from when I was taken for interrogation to another room, I was kept for one month in the cell in a standing position with my hands cuffed and shackled above my head and my feet cuffed and shackled to a point in the floor. Of course during this month I fell asleep on some occasions while still being held in this position. This resulted in all my weight being applied to the handcuffs around my wrists resulting in open and bleeding wounds. The cuffs around my ankles also created open, bleeding wounds. [Scars consistent with this allegation were visible on both wrists as well as on both ankles.] Both my feet became very swollen after one month of almost continual standing.

Initially I was interrogated for approximately eight hours each day. This gradually became less until after one month it was about four hours each day.

For the interrogation I was taken to a separate room. The number of people present varied greatly from one day to another. Other interrogators, including women, were also sometimes present along with the ‘emirs’. A doctor was also usually present. If I was perceived not to be cooperating I would be put against a wall and punched and slapped in the body, head and face. A thick flexible plastic collar would also be placed around my neck so that it could then be held at the two ends by a guard who would use it to slam me repeatedly against the wall. The beatings were combined with the use of cold water, which was poured over me using a hose-pipe. The beatings and use of cold water occurred on a daily basis during the first month.

In addition I was also subjected to ‘water-boarding’ on five occasions, all of which occurred during that first month. I would be strapped to a special bed, which could be rotated into a vertical position. A cloth would be placed over my face. Cold water

from a bottle that had been kept in a fridge was then poured onto the cloth by one of the guards so that I could not breathe. This obviously could only be done for one or two minutes at a time. The cloth was then removed and the bed was put into a vertical position. The whole process was then repeated during about one hour. Injuries to my ankles and wrists also occurred during the water-boarding as I struggled in the panic of not being able to breathe. Female interrogators were also present during this form of ill-treatment and a doctor was always present, standing out of sight behind the head of bed, but I saw him when he came to fix a clip to my finger which was connected to a machine. I think it was to measure my pulse and oxygen content in my blood. So they could take me to breaking point.

After each session of torture I was put into a cell where I was allowed to lie on the floor and could sleep for a few minutes. However, due to shackles on my ankles and wrists I was never able to sleep very well.

The harshest period of the interrogation was just prior to the end of the first month. The beatings became worse and I had cold water directed at me from a hose-pipe by guards while I was still in my cell. The worst day was when I was beaten for about half an hour by one of the interrogators. My head was banged against the wall so hard that it started to bleed. Cold water was poured over my head. This was then repeated with other interrogators. Finally I was taken for a session of water boarding. The torture on that day was finally stopped by the intervention of the doctor. I was allowed to sleep for about one hour and then put back in my cell standing with my hands shackled above my head.

Music was playing 24 hours/day in the corridors, but not very loud. I was allowed to pray after about one month. Koran was given in April 2003. It was confiscated on four occasions during my stay in that place of detention. The toilet consisted of a bucket in the cell, which I could use on request, but I was not allowed to clean myself after toilet during the first month. I was allowed to shower twice during the first month. After these two showers I was allowed to sleep for a little while on the floor of my cell before being returned to the standing position with hands cuffed above my head. During the first month I was not provided with any food apart from on two occasions as a reward for perceived cooperation. I was given 'Ensure' to drink every 4 hours. If I refused to drink then my mouth was forced open by the guard and it was poured down my throat by force. At my request the Ensure was later provided a little warmed. I was weighed every day during the first month. This was done on a weekly basis later. At the time of arrest I weighed 78kg. After one month in detention I weighed 60kg.

I wasn't given any clothes for the first month. Artificial light was on 24 hours a day, but I never saw sunlight. I was never taken outdoors.

After about one month I was moved to another cell. I was given clothes to wear. I was no longer kept in a standing position. I was only shackled by the ankles. I could shower once a week. The interrogation became less harsh. No more physical assault, but threats along the lines of "*we will take you to another room*" or by having the plastic collar put on the table in front of me during the questioning. I was provided

cence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law”; as well as in the UN Declaration on the Protection of All Persons from Enforced Disappearance (1992): “enforced disappearances occur, in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government or by organized groups or private individuals, acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law”.

18. E.g. articles 21, 118 GC III; articles 42, 78 GC IV; common article 3 to the Geneva Conventions; article 9 (1) of the International Covenant on Civil and Political Rights (ICCPR, 1966).

19. Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).

20. The ICRC notes the remarks by General Hayden on 18 October 2006 that certain procedures would not be used in subsequent detention programs and the affirmation that common article 3 of the four Geneva Conventions applied as a matter of law to the treatment of any future CIA detention program. It was also indicated that the CIA did not intend to undertake detention of the duration previously used and that a significant reduction may be considered.

21. For an elaboration on the procedural principles and safeguards that should be applied as a minimum to all cases of deprivation of liberty for security reasons, please see the ICRC document entitled “*Procedural principles and safeguards for interment/administrative detention in armed conflict and other situations of violence*”, Jelena Pejic, International Review of the Red Cross, Vol. 87, number 858, pp. 375–391 (June 2005).

ANNEX 2

ICRC written interventions to the US authorities requesting information on the fourteen

Name	Date of ICRC request for information
Abu Zubaydah	Note Verbale of ICRC Geneva, 8 January 2003 Note Verbale of ICRC Washington, 25 March 2004 ICRC Report on Undisclosed Detention, 18 November 2004 ICRC Report on Undisclosed Detention, 18 April 2006
Ramzi Mohammed Binalshib	Note Verbale of ICRC Geneva, 8 January 2003 Note Verbale of ICRC Washington, 25 March 2004 Report of ICRC Kabul, 16 July 2004 ICRC Report on Undisclosed Detention, 18 November 2004 ICRC Report on Undisclosed Detention, 18 April 2006
Abdelrahim Hussein Abdul Nashiri	Note Verbale of ICRC Geneva, 8 January 2003 Report of ICRC Kabul, 16 July 2004 ICRC Report on Undisclosed Detention, 18 November 2004 ICRC Report on Undisclosed Detention, 18 April 2006
Mustafha Ahmad Al Hawsawi	Note Verbale of ICRC Washington, 25 March 2004 Report of ICRC Kabul, 16 July 2004 ICRC Report on Undisclosed Detention, 18 November 2004 ICRC Report on Undisclosed Detention, 18 April 2006
Khaled Shaik Mohammed	Note Verbale of ICRC Washington, 25 March 2004 Report of ICRC Kabul, 16 July 2004 ICRC Report on Undisclosed Detention, 18 November 2004 ICRC Report on Undisclosed Detention, 18 April 2006
Majid Khan	Report of ICRC Kabul, 16 July 2004 ICRC Report on Undisclosed Detention, 18 November 2004 ICRC Report on Undisclosed Detention, 18 April 2006
Ali Abdul Aziz Mohammed	Report of ICRC Kabul, 16 July 2004 ICRC Report on Undisclosed Detention, 18 November 2004 ICRC Report on Undisclosed Detention, 18 April 2006
Walid Bin Attash	Report of ICRC Kabul, 16 July 2004 ICRC Report on Undisclosed Detention, 18 November 2004 ICRC Report on Undisclosed Detention, 18 April 2006
Mohammed Farik Bin Amin	Report of ICRC Kabul, 16 July 2004 ICRC Report on Undisclosed Detention, 18 November 2004 ICRC Report on Undisclosed Detention, 18 April 2006
Mohammed Nazir Bin Lep	Report of ICRC Kabul, 16 July 2004 ICRC Report on Undisclosed Detention, 18 November 2004 ICRC Report on Undisclosed Detention, 18 April 2006
Encep Nuraman (aka Hambali)	Note Verbale of ICRC Washington, 25 March 2004 Report of ICRC Kabul, 16 July 2004 ICRC Report on Undisclosed Detention, 18 November 2004 ICRC Report on Undisclosed Detention, 18 April 2006
Haned Hassan Ahmad Gulced	—
Ahmed Khalafan Ghailani	ICRC Report on Undisclosed Detention, 18 November 2004 ICRC Report on Undisclosed Detention, 18 April 2006
Mustafah Faraj Al-Azbi	Letter of ICRC Washington, 3 November 2005 ICRC Report on Undisclosed Detention, 18 April 2006

COMMUNICATION NO. 383/2010

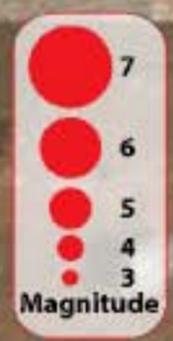
EXHIBIT K



ISC Event ID [7226073](#) (Full details)
Prime hypocentre
ISC 2004-01-04 00:09:43
lat: 11.6034 lon: 43.1529 depth: 10
Distinct stations: 189
azimgap: 90 mindist: 2 maxdist: 95
mag: 4.9 MS
mag: 5.0 mb

 International Seismological Centre

Hypocentral solutions and magnitudes are also available from:
DHMR 5.1 ML
BJI 5.0 Ms 4.8 Msz 5.2 mB 4.9 mb
DUSS 6.3 MS
IDC 3.4 ML 4.9 MS 4.9 Ms1 4.3 mb 4.4 mb1 4.4 mb1mx 4.8 ms1mx
NEIC 4.7 MS 5.1 mb
HRVD 5.3 MW
EHB
MOS 4.9 MS 5.1 mb



Data SIO, NOAA, U.S. Navy, NGA, GEBCO
Image © 2011 GeoEye
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International Seismological Centre On-Line Bulletin

The American Geophysical Union has added the ISC to the list of data centres that can be included in reference lists of AGU journals. The ISC may be cited as both the institutional author of the *Bulletin* and the source from which the data can be retrieved. A citation should show how the data were retrieved and, if they are from a short time span, the *Bulletin* issues in which the data were originally published. The format of these references can be seen at <http://www.isc.ac.uk/Cite/cite.html>

ISS station arrival data for years 1960 to 1963 has been provided by Antonio Villaseñor. (Antonio Villaseñor and E. Robert Engdahl, Systematic Relocation of Early Instrumental Seismicity: Earthquakes in the International Seismological Summary for 1960–1963, Bull. Seism. Soc. Am., 97, 1820–1832, 2007)

[Make a map](#)

Once the search has completed a compressed [KML file](#) will be available to view the results on [Google Earth](#)

Please note

Before 1 Jan 2006 the Jeffreys-Bullen (JB) travel times were used to compute the ISC hypocentres. From 1 Jan 2006 the ISC hypocentres are computed and reviewed using AK135 velocity model. In addition the JB based hypocentres (agency ISCJB) are still computed for continuity purpose until such time when the entire ISC dataset has been recomputed using AK135. The ISCJB solutions are not reviewed by the ISC seismologists.

Data on or after 2009/01/01 has not been reviewed by the ISC

DATA_TYPE BULLETIN IMS1.0:short
ISC Comprehensive Bulletin
Event 7226073 Ethiopia



Date	Time	Err	RMS	Latitude	Longitude	Smaj	Smin	Az	Depth	Err	Ndef	Nsta	Gap	mdist	Mdist	Qual	Autho
2004/01/04	00:09:39.00	1.24	0.400	11.6070	43.1010	11.10	11.50	-1	6.4	14.0		5	321				DHMR
2004/01/04	00:09:43.20		0.900	11.8800	43.1100				4.0			39					BJI
2004/01/04	00:09:44.10	0.30	0.000	10.4320	33.7410	10.10	65.40	-1	15.0	0.00		1	360				DUSS
2004/01/04	00:09:45.28	1.19	0.610	11.8407	43.3078	33.90	24.00	41	0.0f		15	199	19.37	128.12		uk	IDC
2004/01/04	00:09:46.06	0.35	1.020	11.6400	43.1920	8.100	6.800	66	10.0f		75	90	13.99	128.21		se	NEIC
2004/01/04	00:09:46.10	0.30		11.8100	43.3300	2.224	1.112	-1	12.0f		151	62					HRVD

```
(#CENTROID)
(#MOMTENS sc M0 fCLVD MRR MTT MPP MRT MTP MPR NST1 NST2 Author )
(# eM0 eCLVD eRR eTT ePP eRT eTP ePR NCO1 NCO2 Duration )
(# 17 1.300 -1.000 1.470 -0.470 0.030 -0.260 -0.260 23 62 HRVD )
(# 0.040 0.030 0.040 0.110 0.030 0.170 39 112 1.20 )
(#FAULT_PLANE Typ Strike Dip Rake NP NS Plane Author )
(# BDC 76.00 48.00 -122.00 HRVD )
(+ 299.00 51.00 -60.00 )
(#PRINAX sc T_val T_azim T_pl B_val B_azim B_pl P_val P_azim P_pl Author )
(# 17 1.510 8.00 1.00 -0.400 98.00 23.00 -1.100 274.00 67.00 HRVD )
```



(nsta1 refers to body waves, cutoff=40s. nsta2 refers to surface waves, cutoff=50s.)

2004/01/04	00:09:46.35		0.850	11.6720	43.1700	55.00	35.00	9	12.0f		189	183					ke	EHB
2004/01/04	00:09:48.00	0.92		11.7180	43.1320	10.10	5.000	100	33.0		71							MOS
2004/01/04	00:09:43.98	0.28	1.021	11.6034	43.1529	4.945	4.356	143	10.0f		202	189	90	2.49	95.25	m i se		ISC

(#PRIME)
(#PARAM pp_DEPTH=24+2)

Magnitude	Err	Nsta	Author	OrigID
ML	5.1		DHMR	6662646
Ms	5.0		BJI	5878792
MsZ	4.8		BJI	5878792
mB	5.2		BJI	5878792
mb	4.9		BJI	5878792
MS	6.3		DUSS	6671179
ML	3.4	0.1	2 IDC	6455254
MS	4.9	0.1	10 IDC	6455254
Ms1	4.9	0.1	10 IDC	6455254
mb	4.3	0.1	11 IDC	6455254
mb1	4.4	0.1	13 IDC	6455254
mb1mx	4.4	0.1	14 IDC	6455254
ms1mx	4.8	0.1	16 IDC	6455254
MS	4.7		9 NEIC	6905363
mb	5.1		23 NEIC	6905363
MW	5.3		62 HRVD	5974531
MS	4.9		20 MOS	6909200
mb	5.1		36 MOS	6909200
MS	4.9		35 ISC	6927269
mb	5.0		67 ISC	6927269

Sta	Dist	EvAz	Phase	Time	TRes	Azim	AzRes	Slow	SRes	Def	SNR	Amp	Per	Qual	Magnitude	ArrID
UDYN	2.49	19.1	Pn	00:10:23.12	-2.12					T__				ci		93122187
UDYN	2.49	19.1	Sn	00:10:56.2	0.3					T__				_i		93122188

COMMUNICATION NO. 383/2010

EXHIBIT L

0000012

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U.S. Department of Justice

Office of Legal Counsel

Office of the Principal Deputy Assistant Attorney General

Washington, D.C. 20530

May 10, 2005

MEMORANDUM FOR JOHN A. RIZZO
SENIOR DEPUTY GENERAL COUNSEL, CENTRAL INTELLIGENCE AGENCY

*Re: Application of 18 U.S.C. §§ 2340-2340A to the Combined Use of Certain Techniques
 in the Interrogation of High Value al Qaeda Detainees*

In our Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Application of 18 U.S.C. §§ 2340-2340A to Certain Techniques That May Be Used in the Interrogation of a High Value al Qaeda Detainee (May 10, 2005) ("Techniques")*, we addressed the application of the anti-torture statute, 18 U.S.C. §§ 2340-2340A, to certain interrogation techniques that the CIA might use in the questioning of a specific al Qaeda operative. There, we considered each technique individually. We now consider the application of the statute to the use of these same techniques in combination. Subject to the conditions and limitations set out here and in *Techniques*, we conclude that the authorized combined use of these specific techniques by adequately trained interrogators would not violate sections 2340-2340A.

Techniques, which set out our general interpretation of the statutory elements, guides us here.¹ While referring to the analysis provided in that opinion, we do not repeat it, but instead

¹ As noted in *Techniques*, the Criminal Division of the Department of Justice is satisfied that our general interpretation of the legal standards under sections 2340-2340A, found in *Techniques*, is consistent with its concurrence in our Memorandum for James B. Comey, Deputy Attorney General, from Daniel Levin, Acting Assistant Attorney General, Office of Legal Counsel, *Re: Legal Standards Applicable Under 18 U.S.C. §§ 2340-2340A (Dec. 30, 2004)*. In the present memorandum, we address only the application of 18 U.S.C. §§ 2340-2340A to combinations of interrogation techniques. Nothing in this memorandum or in our prior advice to the CIA should be read to suggest that the use of these techniques would conform to the requirements of the Uniform Code of Military Justice that governs members of the Armed Forces or to United States obligations under the Geneva Conventions in circumstances where those Conventions would apply. We do not address the possible application of article 16 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for U.S. Nov. 20,

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presume a familiarity with it. Furthermore, in referring to the individual interrogation techniques whose combined use is our present subject, we mean those techniques as we described them in *Techniques*, including all of the limitations, presumptions, and safeguards described there.

One overarching point from *Techniques* bears repeating: Torture is abhorrent and universally repudiated, *see Techniques* at 1, and the President has stated that the United States will not tolerate it. *Id.* at 1-2 & n.2 (citing Statement on United Nations International Day in Support of Victims of Torture, 40 Weekly Comp. Pres. Doc. 1167-68 (July 5, 2004)). In *Techniques*, we accordingly exercised great care in applying sections 2340-2340A to the individual techniques at issue; we apply the same degree of care in considering the combined use of these techniques.

I.

Under 18 U.S.C. § 2340A, it is a crime to commit, attempt to commit, or conspire to commit torture outside the United States. "Torture" is defined as "an act committed by a person acting under color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control." 18 U.S.C. § 2340(1). "Severe mental pain or suffering" is defined as "the prolonged mental harm caused by or resulting from" any of four predicate acts. *Id.* § 2340(2). These acts are (1) "the intentional infliction or threatened infliction of severe physical pain or suffering"; (2) "the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality"; (3) "the threat of imminent death"; and (4) "the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality."

In *Techniques*, we concluded that the individual authorized use of several specific interrogation techniques, subject to a variety of limitations and safeguards, would not violate the statute when employed in the interrogation of a specific member of al Qaeda, though we concluded that at least in certain respects two of the techniques presented substantial questions under sections 2340-2340A. The techniques that we analyzed were dietary manipulation, nudity, the attention grasp, walling, the facial hold, the facial slap or insult slap, the abdominal slap, cramped confinement, wall standing, stress positions, water dousing, extended sleep deprivation, and the "waterboard." *Techniques* at 7-15.

1994), nor do we address any question relating to conditions of confinement or detention, as distinct from the interrogation of detainees. We stress that our advice on the application of sections 2340-2340A does not represent the policy views of the Department of Justice concerning interrogation practices. Finally, we note that section 6057(a) of H.R. 1268 (109th Cong. 1st Sess.), if it becomes law, would forbid expending or obligating funds made available by that bill "to subject any person in the custody or under the physical control of the United States to torture," but because the bill would define "torture" to have "the meaning given that term in section 2340(1) of title 18, United States Code," § 6057(b)(1), the provision (to the extent it might apply here at all) would merely reaffirm the preexisting prohibitions on torture in sections 2340-2340A.

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Techniques analyzed only the use of these techniques individually. As we have previously advised, however, "courts tend to take a totality-of-the-circumstances approach and consider an entire course of conduct to determine whether torture has occurred." Memorandum for John Rizzo, Acting General Counsel, Central Intelligence Agency, from Jay S. Bybee, Assistant Attorney General, Office of Legal Counsel, *Re: Interrogation of al Qaeda Operative* at 9 (Aug. 1, 2002) ("*Interrogation Memorandum*") (TS). A complete analysis under sections 2340-2340A thus entails an examination of the combined effects of any techniques that might be used.

In conducting this analysis, there are two additional areas of general concern. First, it is possible that the application of certain techniques might render the detainee unusually susceptible to physical or mental pain or suffering. If that were the case, use of a second technique that would not ordinarily be expected to—and could not reasonably be considered specifically intended to—cause severe physical or mental pain or suffering by itself might in fact cause severe physical or mental pain or suffering because of the enhanced susceptibility created by the first technique. Depending on the circumstances, and the knowledge and mental state of the interrogator, one might conclude that severe pain or suffering was specifically intended by the application of the second technique to a detainee who was particularly vulnerable because of the application of the first technique. Because the use of these techniques in combination is intended to, and in fact can be expected to, physically wear down a detainee, because it is difficult to assess as to a particular individual whether the application of multiple techniques renders that individual more susceptible to physical pain or suffering, and because sleep deprivation, in particular, has a number of documented physiological effects that, in some circumstances, could be problematic it is important that all participating CIA personnel, particularly interrogators and personnel of the CIA Office of Medical Services ("OMS"), be aware of the potential for enhanced susceptibility to pain and suffering from each interrogation technique. We also assume that there will be active and ongoing monitoring by medical and psychological personnel of each detainee who is undergoing a regimen of interrogation, and active intervention by a member of the team or medical staff as necessary, so as to avoid the possibility of severe physical or mental pain or suffering within the meaning of 18 U.S.C. §§ 2340-2340A as a result of such combined effects.

Second, it is possible that certain techniques that do not themselves cause severe physical or mental pain or suffering might do so in combination, particularly when used over the 30-day interrogation period with which we deal here. Again, depending on the circumstances, and the mental state of the interrogator, their use might be considered to be specifically intended to cause such severe pain or suffering. This concern calls for an inquiry into the totality of the circumstances, looking at which techniques are combined and how they are combined.

Your office has outlined the manner in which many of the individual techniques we previously considered could be combined in *Background Paper on CIA's Combined Use of Interrogation Techniques* (undated, but transmitted Dec. 30, 2004) ("*Background Paper*"). The *Background Paper*, which provides the principal basis for our analysis, first divides the process of interrogation into three phases: "Initial Conditions," "Transition to Interrogation," and "Interrogation." *Id.* at 1. After describing these three phases, see *id.* at 1-9, the *Background Paper* "provides a look at a prototypical interrogation with an emphasis on the application of

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interrogation techniques, in combination and separately," *id.* at 9-18. The *Background Paper* does not include any discussion of the waterboard; however, you have separately provided to us a description of how the waterboard may be used in combination with other techniques, particularly dietary manipulation and sleep deprivation. See Fax for Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, from [REDACTED] Assistant General Counsel, CIA, at 3-4 (Apr. 22, 2005) ("April 22 [REDACTED] Fax").

Phases of the Interrogation Process

The first phase of the interrogation process, "Initial Conditions," does not involve interrogation techniques, and you have not asked us to consider any legal question regarding the CIA's practices during this phase. The "Initial Conditions" nonetheless set the stage for use of the interrogation techniques, which come later.²

According to the *Background Paper*, before being flown to the site of interrogation, a detainee is given a medical examination. He then is "securely shackled and is deprived of sight and sound through the use of blindfolds, earmuffs, and hoods" during the flight. *Id.* at 2. An on-board medical officer monitors his condition. Security personnel also monitor the detainee for signs of distress. Upon arrival at the site, the detainee "finds himself in complete control of Americans" and is subjected to "precise, quiet, and almost clinical" procedures designed to underscore "the enormity and suddenness of the change in environment, the uncertainty about what will happen next, and the potential dread [a detainee] may have of US custody." *Id.* His head and face are shaved; his physical condition is documented through photographs taken while he is nude; and he is given medical and psychological interviews to assess his condition and to make sure there are no contraindications to the use of any particular interrogation techniques. See *id.* at 2-3.

The detainee then enters the next phase, the "Transition to Interrogation." The interrogators conduct an initial interview, "in a relatively benign environment," to ascertain whether the detainee is willing to cooperate. The detainee is "normally clothed but seated and shackled for security purposes." *Id.* at 3. The interrogators take "an open, non-threatening approach," but the detainee "would have to provide information on actionable threats and location information on High-Value Targets at large—not lower-level information—for interrogators to continue with [this] neutral approach." *Id.* If the detainee does not meet this "very high" standard, the interrogators submit a detailed interrogation plan to CIA headquarters

² Although the *OMS Guidelines on Medical and Psychological Support to Detainee Rendition, Interrogation and Detention* (Dec. 2004) ("*OMS Guidelines*") refer to the administration of sedatives during transport if necessary to protect the detainee or the rendition team, *id.* at 4-5, the *OMS Guidelines* do not provide for the use of sedatives for interrogation. The *Background Paper* does not mention the administration of any drugs during the detainee's transportation to the site of the interrogation or at any other time, and we do not address any such administration. OMS, we understand, is unaware of any use of sedation during the transport of a detainee in the last two years and states that the interrogation program does not use sedation or medication for the purpose of interrogation. We caution that any use of sedatives should be carefully evaluated, including under 18 U.S.C. § 2340(2)(B). For purposes of our analysis, we assume that no drugs are administered during the relevant period or that there are no ongoing effects from any administration of any drugs; if that assumption does not hold, our analysis and conclusions could change.

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for approval. If the medical and psychological assessments find no contraindications to the proposed plan, and if senior CIA officers at headquarters approve some or all of the plan through a cable transmitted to the site of the interrogation, the interrogation moves to the next phase. *Id.*³

Three interrogation techniques are typically used to bring the detainee to "a baseline, dependent state," "demonstrat[ing] to the [detainee] that he has no control over basic human needs" and helping to make him "perceive and value his personal welfare, comfort, and immediate needs more than the information he is protecting." *Id.* at 4. The three techniques used to establish this "baseline" are nudity, sleep deprivation (with shackling and, at least at times, with use of a diaper), and dietary manipulation. These techniques, which *Techniques* described in some detail, "require little to no physical interaction between the detainee and interrogator." *Background Paper* at 5.

Other techniques, which "require physical interaction between the interrogator and detainee," are characterized as "corrective" and "are used principally to correct, startle, or ... achieve another enabling objective with the detainee." *Id.* These techniques "are not used simultaneously but are often used interchangeably during an individual interrogation session." *Id.* The insult slap is used "periodically throughout the interrogation process when the interrogator needs to immediately correct the detainee or provide a consequence to a detainee's response or non-response." *Id.* at 5-6. The insult slap "can be used in combination with water dousing or kneeling stress positions"—techniques that are not characterized as "corrective." *Id.* at 6. Another corrective technique, the abdominal slap, "is similar to the insult slap in application and desired result" and "provides the variation necessary to keep a high level of unpredictability in the interrogation process." *Id.* The abdominal slap may be simultaneously, combined with water dousing, stress positions, and wall standing. A third corrective technique, the facial hold, "is used sparingly throughout interrogation." *Id.* It is not painful, but "demonstrates the interrogator's control over the [detainee]." *Id.* It too may be simultaneously combined with water dousing, stress positions, and wall standing. *Id.* Finally, the attention grasp "may be used several times in the same interrogation" and may be simultaneously combined with water dousing or kneeling stress positions. *Id.*

Some techniques are characterized as "coercive." These techniques "place the detainee in more physical and psychological stress." *Id.* at 7. Coercive techniques "are typically not used

³ The CIA maintains certain "detention conditions" at all of its detention facilities. (These conditions "are not interrogation techniques," *id.* at 4, and you have not asked us to assess their lawfulness under the statute.) The detainee is "exposed to white noise/loud sounds (not to exceed 79 decibels) and constant light during portions of the interrogation process." *Id.* These conditions enhance security. The noise prevents the detainee from overhearing conversations of staff members, precludes him from picking up "auditory clues" about his surroundings, and disrupts any efforts to communicate with other detainees. *Id.* The light provides better conditions for security and for monitoring by the medical and psychological staff and the interrogators. Although we do not address the lawfulness of using white noise (not to exceed 79 decibels) and constant light, we note that according to materials you have furnished to us, (1) the Occupational Safety and Health Administration has determined that there is no risk of permanent hearing loss from continuous, 24-hour per day exposure to noise of up to 82 decibels, and (2) detainees typically adapt fairly quickly to the constant light and it does not interfere unduly with their ability to sleep. See Fax for Dan Levin, Acting Assistant Attorney General, Office of Legal Counsel, from [REDACTED] Assistant General Counsel, Central Intelligence Agency at 3 (Jan. 4, 2005) ([REDACTED] fax).

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in combination, although some combined use is possible." *Id.* Walling "is one of the most effective interrogation techniques because it wears down the [detainee] physically, heightens uncertainty in the detainee about what the interrogator may do to him, and creates a sense of dread when the [detainee] knows he is about to be walled again." *Id.*⁴ A detainee "may be walled one time (one impact with the wall) to make a point or twenty to thirty times consecutively when the interrogator requires a more significant response to a question," and "will be walled multiple times" during a session designed to be intense. *Id.* Walling cannot practically be used at the same time as other interrogation techniques.

Water temperature and other considerations of safety established by OMS limit the use of another coercive technique, water dousing. *See id.* at 7-8. The technique "may be used frequently within those guidelines." *Id.* at 8. As suggested above, interrogators may combine water dousing with other techniques, such as stress positions, wall standing, the insult slap, or the abdominal slap. *See id.* at 8.

The use of stress positions is "usually self-limiting in that temporary muscle fatigue usually leads to the [detainee's] being unable to maintain the stress position after a period of time." *Id.* Depending on the particular position, stress positions may be combined with water dousing, the insult slap, the facial hold, and the attention grasp. *See id.* Another coercive technique, wall standing, is "usually self-limiting" in the same way as stress positions. *Id.* It may be combined with water dousing and the abdominal slap. *See id.* OMS guidelines limit the technique of cramped confinement to no more than eight hours at a time and 18 hours a day, and confinement in the "small box" is limited to two hours. *Id.* Cramped confinement cannot be used in simultaneous combination with corrective or other coercive techniques.

We understand that the CIA's use of all these interrogation techniques is subject to ongoing monitoring by interrogation team members who will direct that techniques be discontinued if there is a deviation from prescribed procedures and by medical and psychological personnel from OMS who will direct that any or all techniques be discontinued if in their professional judgment the detainee may otherwise suffer severe physical or mental pain or suffering. *See Techniques* at 6-7.

A Prototypical Interrogation

In a "prototypical interrogation," the detainee begins his first interrogation session stripped of his clothes, shackled, and hooded, with the walling collar over his head and around

⁴ Although walling "wears down the [detainee] physically," *Background Paper* at 7, and undoubtedly may startle him, we understand that it is not significantly painful. The detainee hits "a flexible false wall," designed "to create a loud sound when the individual hits it" and thus to cause "shock and surprise." *Interrogation Memorandum* at 2. But the detainee's "head and neck are supported with a rolled hood or towel that provides a c-collar effect to help prevent whiplash"; it is the detainee's shoulder blades that hit the wall; and the detainee is allowed to rebound from the flexible wall in order to reduce the chances of any injury. *See id.* You have informed us that a detainee is expected to feel "dread" at the prospect of walling because of the shock and surprise caused by the technique and because of the sense of powerlessness that comes from being roughly handled by the interrogators, not because the technique causes significant pain.

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his neck. *Background Paper* at 9-10. The interrogators remove the hood and explain that the detainee can improve his situation by cooperating and may say that the interrogators "will do what it takes to get important information." *Id.*⁵ As soon as the detainee does anything inconsistent with the interrogators' instructions, the interrogators use an insult slap or abdominal slap. They employ walling if it becomes clear that the detainee is not cooperating in the interrogation. This sequence "may continue for several more iterations as the interrogators continue to measure the [detainee's] resistance posture and apply a negative consequence to [his] resistance efforts." *Id.* The interrogators and security officers then put the detainee into position for standing sleep deprivation, begin dietary manipulation through a liquid diet, and keep the detainee nude (except for a diaper). *See id.* at 10-11. The first interrogation session, which could have lasted from 30 minutes to several hours, would then be at an end. *See id.* at 11.

If the interrogation team determines there is a need to continue, and if the medical and psychological personnel advise that there are no contraindications, a second session may begin. *See id.* at 12. The interval between sessions could be as short as an hour or as long as 24 hours. *See id.* at 11. At the start of the second session, the detainee is released from the position for standing sleep deprivation, is hooded, and is positioned against the walling wall, with the walling collar over his head and around his neck. *See id.* Even before removing the hood, the interrogators use the attention grasp to startle the detainee. The interrogators take off the hood and begin questioning. If the detainee does not give appropriate answers to the first questions, the interrogators use an insult slap or abdominal slap. *See id.* They employ walling if they determine that the detainee "is intent on maintaining his resistance posture." *Id.* at 13. This sequence "may continue for multiple iterations as the interrogators continue to measure the [detainee's] resistance posture." *Id.* The interrogators then increase the pressure on the detainee by using a hose to douse the detainee with water for several minutes. They stop and start the dousing as they continue the interrogation. *See id.* They then end the session by placing the detainee into the same circumstances as at the end of the first session: the detainee is in the standing position for sleep deprivation, is nude (except for a diaper), and is subjected to dietary manipulation. Once again, the session could have lasted from 30 minutes to several hours. *See id.*

Again, if the interrogation team determines there is a need to continue, and if the medical and psychological personnel find no contraindications, a third session may follow. The session begins with the detainee positioned as at the beginning of the second. *See id.* at 14. If the detainee continues to resist, the interrogators continue to use walling and water dousing. The corrective techniques—the insult slap, the abdominal slap, the facial hold, the attention grasp—"may be used several times during this session based on the responses and actions of the [detainee]." *Id.* The interrogators integrate stress positions and wall standing into the session. Furthermore, "[i]ntense questioning and walling would be repeated multiple times." *Id.* Interrogators "use one technique to support another." *Id.* For example, they threaten the use of walling unless the detainee holds a stress position, thus inducing the detainee to remain in the position longer than he otherwise would. At the end of the session, the interrogators and security

⁵ We address the effects of this statement below at pp. 18-19.

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personnel place the detainee into the same circumstances as at the end of the first two sessions, with the detainee subject to sleep deprivation, nudity, and dietary manipulation. *Id.*

In later sessions, the interrogators use those techniques that are proving most effective and drop the others. Sleep deprivation "may continue to the 70 to 120 hour range, or possibly beyond for the hardest resisters, but in no case exceed the 180-hour time limit." *Id.* at 15.⁶ If the medical or psychological personnel find contraindications, sleep deprivation will end earlier. *See id.* at 15-16. While continuing the use of sleep deprivation, nudity, and dietary manipulation, the interrogators may add cramped confinement. As the detainee begins to cooperate, the interrogators "begin gradually to decrease the use of interrogation techniques." *Id.* at 16. They may permit the detainee to sit, supply clothes, and provide more appetizing food. *See id.*

The entire process in this "prototypical interrogation" may last 30 days. If additional time is required and a new approval is obtained from headquarters, interrogation may go longer than 30 days. Nevertheless, "[o]n average, the actual use of interrogation techniques covers a period of three to seven days, but can vary upwards to fifteen days based on the resilience of the [detainee]." *Id.* As in *Techniques*, our advice here is limited to an interrogation process lasting no more than 30 days. *See Techniques* at 5.

Use of the Waterboard in Combination with Other Techniques

We understand that for a small number of detainees in very limited circumstances, the CIA may wish to use the waterboard technique. You have previously explained that the waterboard technique would be used only if: (1) the CIA has credible intelligence that a terrorist attack is imminent; (2) there are "substantial and credible indicators the subject has actionable intelligence that can prevent, disrupt or delay this attack"; and (3) other interrogation methods have failed or are unlikely to yield actionable intelligence in time to prevent the attack. *See* Attachment to Letter from John A. Rizzo, Acting General Counsel, CIA, to Daniel Levin, Acting Assistant Attorney General, Office of Legal Counsel (Aug. 2, 2004). You have also informed us that the waterboard may be approved for use with a given detainee only during, at most, one single 30-day period, and that during that period, the waterboard technique may be used on no more than five days. We further understand that in any 24-hour period, interrogators may use no more than two "sessions" of the waterboard on a subject—with a "session" defined to mean the time that the detainee is strapped to the waterboard—and that no session may last more than two hours.⁶ Moreover, during any session, the number of individual applications of water lasting 10 seconds or longer may not exceed six. The maximum length of any application of water is 40 seconds (you have informed us that this maximum has rarely been reached). Finally, the total cumulative time of all applications of whatever length in a 24-hour period may not exceed 12 minutes. *See* Letter from [REDACTED] Associate General Counsel, CIA, to Dan Levin, Acting Assistant Attorney General, Office of Legal Counsel, at 1-2 (Aug. 19, 2004).

⁶ As in *Techniques*, our advice here is restricted to one application of no more than 180 hours of sleep deprivation.

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You have advised us that in those limited cases where the waterboard would be used, it would be used only in direct combination with two other techniques, dietary manipulation and sleep deprivation. See April 22 [REDACTED] Fax at 3-4. While an individual is physically on the waterboard, the CIA does not use the attention grasp, walling, the facial hold, the facial or insult slap, the abdominal slap, cramped confinement, wall standing, stress positions, or water dousing, though some or all of these techniques may be used with the individual before the CIA needs to resort to the waterboard, and we understand it is possible that one or more of these techniques might be used on the same day as a waterboard session, but separately from that session and not in conjunction with the waterboard. See *id.* at 3.

As we discussed in *Techniques*, you have informed us that an individual undergoing the waterboard is always placed on a fluid diet before he may be subjected to the waterboard in order to avoid aspiration of food matter. The individual is kept on the fluid diet throughout the period the waterboard is used. For this reason, and in this way, the waterboard is used in combination with dietary manipulation. See April 22 [REDACTED] Fax at 3.

You have also described how sleep deprivation may be used prior to and during the waterboard session. *Id.* at 4. We understand that the time limitation on use of sleep deprivation, as set forth in *Techniques*, continues to be strictly monitored and enforced when sleep deprivation is used in combination with the waterboard (as it is when used in combination with other techniques). See April 22 [REDACTED] Fax at 4. You have also informed us that there is no evidence in literature or experience that sleep deprivation exacerbates any harmful effects of the waterboard, though it does reduce the detainee's will to resist and thereby contributes to the effectiveness of the waterboard as an interrogation technique. *Id.* As in *Techniques*, we understand that in the event the detainee were perceived to be unable to withstand the effects of the waterboard for any reason, any member of the interrogation team has the obligation to intervene and, if necessary, to halt the use of the waterboard. See April 22 [REDACTED] Fax at 4.

II.

The issue of the combined effects of interrogation techniques raises complex and difficult questions and comes to us in a less precisely defined form than the questions treated in our earlier opinions about individual techniques. In evaluating individual techniques, we turned to a body of experience developed in the use of analogous techniques in military training by the United States, to medical literature, and to the judgment of medical personnel. Because there is less certainty and definition about the use of techniques in combination, it is necessary to draw more inferences in assessing what may be expected. You have informed us that, although "the exemplar [that is, the prototypical interrogation] is a fair representation of how these techniques are actually employed," "there is no template or script that states with certainty when and how these techniques will be used in combination during interrogation." *Background Paper* at 17. Whether any other combination of techniques would, in the relevant senses, be like the ones presented—whether the combination would be no more likely to cause severe physical or mental pain or suffering within the meaning of sections 2340-2340A—would be a question that cannot be assessed in the context of the present legal opinion. For that reason, our advice does not extend to combinations of techniques unlike the ones discussed here. For the same reason, it is especially important that the CIA use great care in applying these various techniques in

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combination in a real-world scenario, and that the members of the interrogation team, and the attendant medical staff, remain watchful for indications that the use of techniques in combination may be having unintended effects, so that the interrogation regimen may be altered or halted, if necessary, to ensure that it will not result in severe physical or mental pain or suffering to any detainee in violation of 18 U.S.C. §§ 2340-2340A.

Finally, in both of our previous opinions about specific techniques, we evaluated the use of those techniques on particular identified individuals. Here, we are asked to address the combinations without reference to any particular detainee. As is relevant here, we know only that an enhanced interrogation technique, such as most of the techniques at issue in *Techniques*, may be used on a detainee only if medical and psychological personnel have determined that he is not likely, as a result, to experience severe physical or mental pain or suffering. *Techniques* at 5. Once again, whether other detainees would, in the relevant ways, be like the ones previously at issue would be a factual question we cannot now decide. Our advice, therefore, does not extend to the use of techniques on detainees unlike those we have previously considered. Moreover, in this regard, it is also especially important, as we pointed out in *Techniques* with respect to certain techniques, *see, e.g., id.* at 37 (discussing sleep deprivation), that the CIA will carefully assess the condition of each individual detainee and that the CIA's use of these techniques in combination will be sensitive to the individualized physical condition and reactions of each detainee, so that the regimen of interrogation would be altered or halted, if necessary, in the event of unanticipated effects on a particular detainee.

Subject to these cautions and to the conditions, limitations, and safeguards set out below and in *Techniques*, we nonetheless can reach some conclusions about the combined use of these techniques: Although this is a difficult question that will depend on the particular detainee, we do not believe that the use of the techniques in combination as you have described them would be expected to inflict "severe physical or mental pain or suffering" within the meaning of the statute. 18 U.S.C. § 2340(1). Although the combination of interrogation techniques will wear a detainee down physically, we understand that the principal effect, as well as the primary goal, of interrogation using these techniques is psychological—"to create a state of learned helplessness and dependence conducive to the collection of intelligence in a predictable, reliable, and sustainable manner," *Background Paper* at 1—and numerous precautions are designed to avoid inflicting "severe physical or mental pain or suffering."

For present purposes, we may divide "severe physical or mental pain or suffering" into three categories: "severe physical . . . pain," "severe physical . . . suffering," and "severe . . . mental pain or suffering" (the last being a defined term under the statute). *See Techniques* at 22-26; Memorandum for James B. Comey, Deputy Attorney General, from Daniel Levin, Acting Assistant Attorney General, Office of Legal Counsel, *Re: Legal Standards Applicable Under 18 U.S.C. §§ 2340-2340A* (Dec. 30, 2004).

As explained below, any physical pain resulting from the use of these techniques, even in combination, cannot reasonably be expected to meet the level of "severe physical pain" contemplated by the statute. We conclude, therefore, that the authorized use in combination of these techniques by adequately trained interrogators, as described in the *Background Paper* and the April 22 [REDACTED] Fax, could not reasonably be considered specifically intended to do so.

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Moreover, although it presents a closer question under sections 2340-2340A, we conclude that the combined use of these techniques also cannot reasonably be expected to—and their combined use in the authorized manner by adequately trained interrogators could not reasonably be considered specifically intended to—cause severe physical suffering. Although two techniques, extended sleep deprivation and the waterboard, may involve a more substantial risk of physical distress, nothing in the other specific techniques discussed in the *Background Paper* and the April 22 [REDACTED] Fax, or, as we understand it, in the CIA's experience to date with the interrogations of more than two dozen detainees (three of whose interrogations involved the use of the waterboard), would lead to the expectation that any physical discomfort from the combination of sleep deprivation or the waterboard and other techniques would involve the degree of intensity and duration of physical distress sufficient to constitute severe physical suffering under the statute. Therefore, the use of the technique could not reasonably be viewed as specifically intended to cause severe physical suffering. We stress again, however, that these questions concerning whether the combined effects of different techniques may rise to the level of physical suffering within the meaning of sections 2340-2340A are difficult ones, and they reinforce the need for close and ongoing monitoring by medical and psychological personnel and by all members of the interrogation team and active intervention if necessary.

Analyzing the combined techniques in terms of severe mental pain or suffering raises two questions under the statute. The first is whether the risk of hallucinations from sleep deprivation may become exacerbated when combined with other techniques, such that a detainee might be expected to experience "prolonged mental harm" from the combination of techniques. Second, the description in the *Background Paper* that detainees may be specifically told that interrogators will "do what it takes" to elicit information, *id.* at 10, raises the question whether this statement might qualify as a threat of infliction of severe physical pain or suffering or another of the predicate acts required for "severe mental pain or suffering" under the statute. After discussing both of those possibilities below, however, we conclude that the authorized use by adequately trained interrogators of the techniques in combination, as you have described them, would not reasonably be expected to cause prolonged mental harm and could not reasonably be considered specifically intended to cause severe mental pain or suffering. We stress that these possible questions about the combined use of the techniques under the statutory category of severe mental pain or suffering are difficult ones and they serve to reinforce the need for close and ongoing monitoring and active intervention if necessary.

Severe Physical Pain

Our two previous opinions have not identified any techniques that would inflict pain that approaches the "sever[ity]" required to violate the statute. A number of the techniques—dietary manipulation, nudity, sleep deprivation, the facial hold, and the attention grasp—are not expected to cause physical pain at all. *See Techniques* at 30-36. Others might cause some pain, but the level of pain would not approach that which would be considered "severe." These techniques are the abdominal slap, water dousing, various stress positions, wall standing, cramped confinement, walling, and the facial slap. *See id.* We also understand that the waterboard is not physically painful. *Id.* at 41. In part because none of these techniques would individually cause pain that even approaches the "severe" level required to violate the statute, the combined use of the techniques under the conditions outlined here would not be expected to—

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and we conclude that their authorized use by adequately trained interrogators could not reasonably be considered specifically intended to—reach that level.⁷

We recognize the theoretical possibility that the use of one or more techniques would make a detainee more susceptible to severe pain or that the techniques, in combination, would operate differently from the way they would individually and thus cause severe pain. But as we understand the experience involving the combination of various techniques, the OMS medical and psychological personnel have not observed any such increase in susceptibility. Other than the waterboard, the specific techniques under consideration in this memorandum—including sleep deprivation—have been applied to more than 25 detainees. See [REDACTED] Fax at 1-3. No apparent increase in susceptibility to severe pain has been observed either when techniques are used sequentially or when they are used simultaneously—for example, when an insult slap is simultaneously combined with water dousing or a kneeling stress position, or when wall standing is simultaneously combined with an abdominal slap and water dousing. Nor does experience show that, even apart from changes in susceptibility to pain, combinations of these techniques cause the techniques to operate differently so as to cause severe pain. OMS doctors and psychologists, moreover, confirm that they expect that the techniques, when combined as described in the *Background Paper* and in the April 22 [REDACTED] Fax, would not operate in a different manner from the way they do individually, so as to cause severe pain.

We understand that experience supports these conclusions even though the *Background Paper* does give examples where the distress caused by one technique would be increased by use of another. The “conditioning techniques”—nudity, sleep deprivation, and dietary manipulation—appear designed to wear down the detainee, physically and psychologically, and to allow other techniques to be more effective, see *Background Paper* at 5, 12; April 22 [REDACTED] Fax at 4; and “these [conditioning] techniques are used in combination in almost all cases,” *Background Paper* at 17. And, in another example, the threat of walling is used to cause a detainee to hold a stress position longer than he otherwise would. See *id.* at 14. The issue raised by the statute, however, is whether the techniques would be specifically intended to cause the detainee to experience “severe . . . pain.” 18 U.S.C. § 2340(1). In the case of the conditioning

⁷ We are not suggesting that combinations or repetitions of acts that do not individually cause severe physical pain could not result in severe physical pain. Other than the repeated use of the “walling” technique, however, nothing in the *Background Paper* suggests the kind of repetition that might raise an issue about severe physical pain; and, in the case of walling, we understand that this technique involves a false, flexible wall and is not significantly painful, even with repetition. Our advice with respect to walling in the present memorandum is based on the understanding that the repetitive use of walling is intended only to increase the shock and drama of the technique, to wear down the detainee's resistance, and to disrupt expectations that he will not be treated with force, and that such use is not intended to, and does not in fact, cause severe physical pain to the detainee. Along these lines, we understand that the repeated use of the insult slap and the abdominal slap gradually reduces their effectiveness and that their use is therefore limited to times when the detainee's overt disrespect for the questioner requires immediate correction, when the detainee displays obvious efforts to misdirect or ignore the questioner, or when the detainee attempts to provide an obvious lie in response to a specific question. Our advice assumes that the interrogators will apply those techniques as designed and will not strike the detainee with excessive force or repetition in a manner that might result in severe physical pain. As to all techniques, our advice assumes that the use of the technique will be stopped if there is any indication that it is or may be causing severe physical pain to the detainee.

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techniques, the principal effect, as you have described it, is on the detainee's will to resist other techniques, rather than on the pain that the other techniques cause. See *Background Paper* at 5, 12; *April 22 [REDACTED] Fax* at 4. Moreover, the stress positions and wall standing, while inducing muscle fatigue, do not cause "severe physical . . . pain," and there is no reason to believe that a position, held somewhat longer than otherwise, would create such pain. See *Techniques* at 33-34.⁸

In any particular case, a combination of techniques might have unexpected results, just as an individual technique could produce surprising effects. But the *Background Paper* and the *April 22 [REDACTED] Fax*, as well as *Techniques*, describe a system of medical and psychological monitoring of the detainee that would very likely identify any such unexpected results as they begin to occur and would require an interrogation to be modified or stopped if a detainee is in danger of severe physical pain. Medical and psychological personnel assess the detainee before any interrogation starts. See, e.g., *Techniques* at 5. Physical and psychological evaluations are completed daily during any period in which the interrogators use enhanced techniques, including those at issue in *Techniques* (leaving aside dietary manipulation and sleep deprivation of less than 48 hours). See *id.* at 5-7. Medical and psychological personnel are on scene throughout the interrogation, and are physically present or are otherwise observing during many of the techniques. See *id.* at 6-7. These safeguards, which were critically important to our conclusions about individual techniques, are even more significant when techniques are combined.

In one specific context, monitoring the effects on detainees appears particularly important. The *Background Paper* and the *April 22 [REDACTED] Fax* illustrate that sleep deprivation is a central part of the "prototypical interrogation." We noted in *Techniques* that extended sleep deprivation may cause a small decline in body temperature and increased food consumption. See *Techniques* at 33-34. Water dousing and dietary manipulation and perhaps even nudity may thus raise dangers of enhanced susceptibility to hypothermia or other medical conditions for a detainee undergoing sleep deprivation. As in *Techniques*, we assume that medical personnel will be aware of these possible interactions and will monitor detainees closely for any signs that such interactions are developing. See *id.* at 33-35. This monitoring, along with quick intervention if any signs of problematic symptoms develop, can be expected to prevent a detainee from experiencing severe physical pain.

We also understand that some studies suggest that extended sleep deprivation may be associated with a reduced tolerance for some forms of pain.⁹ Several of the techniques used by

⁸ Our advice about wall standing and stress positions assumes that the positions used in each technique are not designed to produce severe pain that might result from contortions or twisting of the body, but only temporary muscle fatigue.

⁹ For example, one study found a statistically significant drop of 8-9% in subjects' tolerance thresholds for mechanical or pressure pain after 40 hours of total sleep deprivation. See S. Hakki Onen, et al., *The Effects of Total Sleep Deprivation, Selective Sleep Interruption and Sleep Recovery on Pain Tolerance Thresholds in Healthy Subjects*, 10 J. Sleep Research 35, 41 (2001); see also *id.* at 35-36 (discussing other studies). Another study of extended total sleep deprivation found a significant decrease in the threshold for heat pain and some decrease in the cold pain threshold. See B. Kundermann, et al., *Sleep Deprivation Affects Thermal Pain Thresholds but not Somatosensory Thresholds in Healthy Volunteers*, 66 Psychosomatic Med. 932 (2004).

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the CIA may involve a degree of physical pain, as we have previously noted, including facial and abdominal slaps, walling, stress positions, and water dousing. Nevertheless, none of these techniques would cause anything approaching severe physical pain. Because sleep deprivation appears to cause at most only relatively moderate decreases in pain tolerance, the use of these techniques in combination with extended sleep deprivation would not be expected to cause severe physical pain.

Therefore, the combined use of techniques, as set out in the *Background Paper* and the April 22 [REDACTED] Fax, would not reasonably be expected by the interrogators to result in severe physical pain. We conclude that the authorized use of these techniques in combination by adequately trained interrogators, as you have described it, could not reasonably be considered specifically intended to cause such pain for purposes of sections 2340-2340A. The close monitoring of each detainee for any signs that he is at risk of experiencing severe physical pain reinforces the conclusion that the combined use of interrogation techniques is not intended to inflict such pain. OMS has directed that "[m]edical officers must remain cognizant at all times of their obligation to prevent 'severe physical or mental pain or suffering.'" *OMS Guidelines* at 10. The obligation of interrogation team members and medical staff to intercede if their observations indicate a detainee is at risk of experiencing severe physical pain, and the expectation that all interrogators understand the important role played by OMS and will cooperate with them in the exercise of this duty, are here, as in *Techniques*, essential to our advice. See *Techniques* at 14.

Severe Physical Suffering

We noted in *Techniques* that, although the statute covers a category of "severe physical ... suffering" distinct from "severe physical pain," this category encompasses only "physical distress that is 'severe' considering its intensity and duration or persistence, rather than merely mild or transitory." *Id.* at 23 (internal quotation marks omitted). Severe physical suffering for purposes of sections 2340-2340A, we have concluded, means a state or condition of physical distress, misery, affliction, or torment, usually involving physical pain, that is both extreme in intensity and significantly protracted in duration or persistent over time. *Id.* Severe physical suffering is distinguished from suffering that is purely mental or psychological in nature, since mental suffering is encompassed by the separately defined statutory category of "severe mental pain or suffering," discussed below. To amount to torture, conduct must be "sufficiently extreme and outrageous to warrant the universal condemnation that the term 'torture' both connotes and invokes." See *Price v. Socialist People's Libyan Arab Jamahiriya*, 294 F.3d 82, 92 (D.C. Cir. 2002) (interpreting the TVPA); cf. *Mehinovic v. Vuckovic*, 198 F. Supp. 2d 1322, 1332-40, 1345-46 (N.D. Ga. 2002) (standard met under the TVPA by a course of conduct that included severe beatings to the genitals, head, and other parts of the body with metal pipes and various other items; removal of teeth with pliers; kicking in the face and ribs; breaking of bones and ribs and dislocation of fingers; cutting a figure into the victim's forehead; hanging the victim and beating him; extreme limitations of food and water, and subjection to games of "Russian roulette").

In *Techniques*, we recognized that, depending on the physical condition and reactions of a given individual, extended sleep deprivation might cause physical distress in some cases. *Id.* at 34. Accordingly, we advised that the strict limitations and safeguards adopted by the CIA are

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important to ensure that the use of extended sleep deprivation would not cause severe physical suffering. *Id.* at 34-35. We pointed to the close medical monitoring by OMS of each detainee subjected to sleep deprivation, as well as to the power of any member of the interrogation team or detention facility staff to intervene and, in particular, to intervention by OMS if OMS concludes in its medical judgment that the detainee may be experiencing extreme physical distress. With those safeguards in place, and based on the assumption that they would be strictly followed, we concluded that the authorized use of sleep deprivation by adequately trained interrogators could not reasonably be considered specifically intended to cause such severe physical suffering. *Id.* at 34. We pointed out that "[d]ifferent individual detainees may react physically to sleep deprivation in different ways," *Id.*, and we assumed that the interrogation team and medical staff "will separately monitor each individual detainee who is undergoing sleep deprivation, and that the application of this technique will be sensitive to the individualized physical condition and reactions of each detainee." *Id.*

Although it is difficult to calculate the additional effect of combining other techniques with sleep deprivation, we do not believe that the addition of the other techniques as described in the *Background Paper* would result in "severe physical . . . suffering." The other techniques do not themselves inflict severe physical pain. They are not of the intensity and duration that are necessary for "severe physical suffering"; instead, they only increase, over a short time, the discomfort that a detainee subjected to sleep deprivation experiences. They do not extend the time at which sleep deprivation would end, and although it is possible that the other techniques increase the physical discomfort associated with sleep deprivation itself, we cannot say that the effect would be so significant as to cause "physical distress that is 'severe' considering its intensity and duration or persistence." *Techniques* at 23 (internal quotation marks omitted). We emphasize that the question of "severe physical suffering" in the context of a combination of techniques is a substantial and difficult one, particularly in light of the imprecision in the statutory standard and the relative lack of guidance in the case law. Nevertheless, we believe that the combination of techniques in question here would not be "extreme and outrageous" and thus would not reach the high bar established by Congress in sections 2340-2340A, which is reserved for actions that "warrant the universal condemnation that the term 'torture' both connotes and invokes." See *Price v. Socialist People's Libyan Arab Jamahiriya*, 294 F.3d at 92 (interpreting the TVPA)

As we explained in *Techniques*, experience with extended sleep deprivation shows that "[s]urprisingly, little seemed to go wrong with the subjects physically. The main effects lay with sleepiness and impaired brain functioning, but even these were no great cause for concern." *Id.* at 36 (quoting James Horne, *Why We Sleep: The Functions of Sleep in Humans and Other*

Mammals 23-24 (1988)). The aspects of sleep deprivation that might result in substantial physical discomfort, therefore, are limited in scope; and although the degree of distress associated with sleepiness, as noted above, may differ from person to person, the CIA has found that many of the at least 25 detainees subjected to sleep deprivation have tolerated it well. The general conditions in which sleep deprivation takes place would not change this conclusion. Shackling is employed as a passive means of keeping a detainee awake and is used in a way designed to prevent causing significant pain. A detainee is not allowed to hang by his wrists. When the detainee is shackled in a sitting position, he is on a stool adequate to bear his weight; and if a horizontal position is used, there is no additional stress on the detainee's arm or leg

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joints that might force his limbs beyond their natural extension or create tension on any joint. Furthermore, team members, as well as medical staff, watch for the development of edema and will act to relieve that condition, should significant edema develop. If a detainee subject to sleep deprivation is using an adult diaper, the diaper is checked regularly and changed as needed to prevent skin irritation.

Nevertheless, we recognize, as noted above, the possibility that sleep deprivation might lower a detainee's tolerance for pain. See *supra* p.13 & n.9. This possibility suggests that use of extended sleep deprivation in combination with other techniques might be more likely than the separate use of the techniques to place the detainee in a state of severe physical distress and, therefore, that the detainee might be more likely to experience severe physical suffering. However, you have informed us that the interrogation techniques at issue would not be used during a course of extended sleep deprivation with such frequency and intensity as to induce in the detainee a persistent condition of extreme physical distress such as may constitute "severe physical suffering" within the meaning of sections 2340-2340A. We understand that the combined use of these techniques with extended sleep deprivation is not designed or expected to cause that result. Even assuming there could be such an effect, members of the interrogation team and medical staff from OMS monitor detainees and would intercede if there were indications that the combined use of the techniques may be having that result, and the use of the techniques would be reduced in frequency or intensity or halted altogether, as necessary. In this regard, we assume that if a detainee started to show an atypical, adverse reaction during sleep deprivation, the system for monitoring would identify this development.

These considerations underscore that the combination of other techniques with sleep deprivation magnifies the importance of adhering strictly to the limits and safeguards applicable to sleep deprivation as an individual technique, as well as the understanding that team personnel, as well as OMS medical personnel, would intervene to alter or stop the use of an interrogation technique if they conclude that a detainee is or may be experiencing extreme physical distress.

The waterboard may be used simultaneously with two other techniques: it may be used during a course of sleep deprivation, and as explained above, a detainee subjected to the waterboard must be under dietary manipulation, because a fluid diet reduces the risks of the technique. Furthermore, although the insult slap, abdominal slap, attention grasp, facial hold, walling, water dousing, stress positions, and cramped confinement cannot be employed during the actual session when the waterboard is being employed, they may be used at a point in time close to the waterboard, including on the same day. See April 22 [REDACTED] Fax at 3.

In *Techniques*, we explained why neither sleep deprivation nor the waterboard would impose distress of such intensity and duration as to amount to "severe physical suffering," and, depending on the circumstances and the individual detainee, we do not believe the combination of the techniques, even if close in time with other techniques, would change that conclusion. The physical distress of the waterboard, as explained in *Techniques*, lasts only during the relatively short periods during a session when the technique is actually being used. Sleep deprivation would not extend that period. Moreover, we understand that there is nothing in the literature or experience to suggest that sleep deprivation would exacerbate any harmful effects of the waterboard. See *supra* p. 9. Similarly, the use of the waterboard would not extend the time

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of sleep deprivation or increase its distress, except during the relatively brief times that the technique is actually being used. And the use of other techniques that do not involve the intensity and duration required for "severe physical suffering" would not lengthen the time during which the waterboard would be used or increase, in any apparent way, the intensity of the distress it would cause. Nevertheless, because both the waterboard and sleep deprivation raise substantial questions, the combination of the techniques only heightens the difficulty of the issues. Furthermore, particularly because the waterboard is so different from other techniques in its effects, its use in combination with other techniques is particularly difficult to judge in the abstract and calls for the utmost vigilance and care.

Based on these assumptions, and those described at length in *Techniques*, we conclude that the combination of techniques, as described in the *Background Paper* and the *April 22 Fax*, would not be expected by the interrogators to cause "severe physical . . . suffering," and that the authorized use of these techniques in combination by adequately trained interrogators could not reasonably be considered specifically intended to cause severe physical suffering within the meaning of sections 2340-2340A.

Severe Mental Pain or Suffering

As we explained in *Techniques*, the statutory definition of "severe mental pain or suffering" requires that one of four specified predicate acts cause "prolonged mental harm." 18 U.S.C. § 2340(2); see *Techniques* at 24-25. In *Techniques*, we concluded that only two of the techniques at issue here—sleep deprivation and the waterboard—could even arguably involve a predicate act. The statute provides that "the administration or application . . . of . . . procedures calculated to disrupt profoundly the senses or the personality" can be a predicate act. 18 U.S.C. § 2340(2)(B). Although sleep deprivation may cause hallucinations, OMS, supported by the scientific literature of which we are aware, would not expect a profound disruption of the senses and would order sleep deprivation discontinued if hallucinations occurred. We nonetheless assumed in *Techniques* that any hallucinations resulting from sleep deprivation would amount to a profound disruption of the senses. Even on this assumption, we concluded that sleep deprivation should not be deemed "calculated" to have that effect. *Techniques* at 35-36. Furthermore, even if sleep deprivation could be said to be "calculated" to disrupt the senses profoundly and thus to qualify as a predicate act, we expressed the understanding in *Techniques* that, as demonstrated by the scientific literature about which we knew and by relevant experience in CIA interrogations, the effects of sleep deprivation, including the effects of any associated hallucinations, would rapidly dissipate. Based on that understanding, sleep deprivation therefore would not cause "prolonged mental harm" and would not meet the statutory definition for "severe mental pain or suffering." *Id.* at 36.

We noted in *Techniques* that the use of the waterboard might involve a predicate act. A detainee subjected to the waterboard experiences a sensation of drowning, which arguably qualifies as a "threat of imminent death." 18 U.S.C. § 2340(2)(C). We noted, however, that there is no medical basis for believing that the technique would produce any prolonged mental harm. As explained in *Techniques*, there is no evidence for such prolonged mental harm in the CIA's experience with the technique, and we understand that it has been used thousands of times

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(albeit in a somewhat different way) during the military training of United States personnel, without producing any evidence of such harm.

There is no evidence that combining other techniques with sleep deprivation or the waterboard would change these conclusions. We understand that none of the detainees subjected to sleep deprivation has exhibited any lasting mental harm, and that, in all but one case, these detainees have been subjected to at least some other interrogation technique besides the sleep deprivation itself. Nor does this experience give any reason to believe that, should sleep deprivation cause hallucinations, the use of these other techniques in combination with sleep deprivation would change the expected result that, once a person subjected to sleep deprivation is allowed to sleep, the effects of the sleep deprivation, and of any associated hallucinations, would rapidly dissipate.

Once again, our advice assumes continuous, diligent monitoring of the detainee during sleep deprivation and prompt intervention at the first signs of hallucinatory experiences. The absence of any atypical, adverse reaction during sleep deprivation would buttress the inference that, like others deprived of sleep for long periods, the detainee would fit within the norm established by experience with sleep deprivation, both the general experience reflected in the medical literature and the CIA's specific experience with other detainees. We understand that, based on these experiences, the detainee would be expected to return quickly to his normal mental state once he has been allowed to sleep and would suffer no "prolonged mental harm."

Similarly, the CIA's experience has produced no evidence that combining the waterboard and other techniques causes prolonged mental harm, and the same is true of the military training in which the technique was used. We assume, again, continuous and diligent monitoring during the use of the technique, with a view toward quickly identifying any atypical, adverse reactions and intervening as necessary.

The *Background Paper* raises one other issue about "severe mental pain or suffering." According to the *Background Paper*, the interrogators may tell detainees that they "will do what it takes to get important information." *Background Paper* at 10. (We understand that interrogators may instead use other statements that might be taken to have a similar import.) Conceivably, a detainee might understand such a statement as a threat that, if necessary, the interrogators will imminently subject him to "severe physical pain or suffering" or to "the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality," or he perhaps even could interpret the statement as a threat of imminent death (although, as the detainee himself would probably realize, killing a detainee would end the flow of information). 18 U.S.C. § 2340(2)(A)-(C).

We doubt that this statement is sufficiently specific to qualify as a predicate act under section 2340(2). Nevertheless, we do not have sufficient information to judge whether, in context, detainees understand the statement in any of these ways. If they do, this statement at the beginning of the interrogation arguably requires considering whether it alters the detainee's perception of the interrogation techniques and whether, in light of this perception, prolonged mental harm would be expected to result from the combination throughout the interrogation process of all of the techniques used. We do not have any body of experience, beyond the CIA's

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own experience with detainees, on which to base an answer to this question. SERE training, for example, or other experience with sleep deprivation, does not involve its use with the standing position used here, extended nudity, extended dietary manipulation, and the other techniques which are intended "to create a state of learned helplessness," *Background Paper* at 1, and SERE training does not involve repeated applications of the waterboard. A statement that the interrogators "will do what it takes to get important information" moves the interrogations at issue here even further from this body of experience.

Although it may raise a question, we do not believe that, under the careful limitations and monitoring in place, the combined use outlined in the *Background Paper*, together with a statement of this kind, would violate the statute. We are informed that, in the opinion of OMS, none of the detainees who have heard such a statement in their interrogations has experienced "prolonged mental harm," such as post-traumatic stress disorder, *see Techniques* at 26 n.31, as a result of it or the various techniques utilized on them. This body of experience supports the conclusion that the use of the statement does not alter the effects that would be expected to follow from the combined use of the techniques. Nevertheless, in light of these uncertainties, you may wish to evaluate whether such a statement is a necessary part of the interrogation regimen or whether a different statement might be adequate to convey to the detainee the seriousness of his situation.

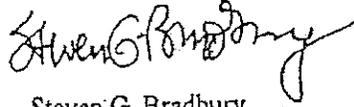
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In view of the experience from past interrogations, the judgment of medical and psychological personnel, and the interrogation team's diligent monitoring of the effects of combining interrogation techniques, interrogators would not reasonably expect that the combined use of the interrogation methods under consideration, subject to the conditions and safeguards set forth here and in *Techniques*, would result in severe physical or mental pain or suffering within the meaning of sections 2340-2340A. Accordingly, we conclude that the authorized use, as described in the *Background Paper* and the April 22 [REDACTED] Fax, of these techniques in combination by adequately trained interrogators could not reasonably be considered specifically intended to cause severe physical or mental pain or suffering, and thus would not violate sections 2340-2340A. We nonetheless underscore that when these techniques are combined in a real-world scenario, the members of the interrogation team and the attendant medical staff must be vigilant in watching for unintended effects, so that the individual characteristics of each detainee are constantly taken into account and the interrogation may be modified or halted, if necessary, to avoid causing severe physical or mental pain or suffering to any detainee. Furthermore, as noted above, our advice does not extend to combinations of techniques unlike the ones discussed here, and whether any other combination of techniques would be more likely to cause severe physical or mental pain or suffering within the meaning of sections 2340-2340A would be a question that we cannot assess here. Similarly, our advice does not extend to the use of techniques on detainees unlike those we have previously considered; and whether other detainees would, in the relevant ways, be like the ones at issue in our previous advice would be a factual question we cannot now decide. Finally, we emphasize that these are issues about which reasonable persons may disagree. Our task has been made more difficult by the imprecision of the statute and the relative absence of judicial guidance, but we have applied our best reading of the law to the specific facts that you have provided.

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Please let us know if we may be of further assistance.



Steven G. Bradbury
Principal Deputy Assistant Attorney General

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Amnesty demands public inquiry on rendition flights

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Amnesty International today calls for an independent public inquiry into all aspects of British involvement in secret CIA "extraordinary rendition" flights. The call comes as it reports details of more than 200 CIA flights passing through British airports.

It also reveals US efforts to ensure conditions and locations where detainees were held were kept secret. Four of the CIA's 26 planes have landed and taken off more than 200 times from British airports over the past five years, Amnesty says. They include Stansted, Gatwick, Luton, Glasgow, Prestwick, Edinburgh, Londonderry and Belfast. Others used are RAF Brize Norton in Oxfordshire, Biggin Hill in Kent, and RAF Leuchars in Scotland, as well as the Turks and Caicos islands, a British overseas territory in the Caribbean.

Amnesty's report - Below the Radar: Secret Flights to Torture and "Disappearance" - shows a pattern of nearly 1,000 flights directly linked to the CIA through "front" companies, most of which, it says, have used European airspace. A further 600 CIA flights were made by planes hired from US aviation companies.

Amnesty says detainees were abducted or handed over to US guards by other law enforcement agencies before being "disappeared". In what it says is the only detailed information to emerge from an Eastern European or Central Asian "black site" prison, detainees had described being prepared for transportation by black-masked "ninjas".

It describes the case of three Yemeni men - Muhammad al-Assad, Muhammad Bashmilah and Sala Qaru - held for more than a year at a suspected "black site". After cross-referencing prayer schedule data and the position of the sun and flight times, Amnesty believes the likely location of the prison is Romania, Bulgaria, Turkey, Macedonia, Albania, Georgia or Azerbaijan.

Information on the numbers and whereabouts of all terror suspects rendered should be publicly available, detainees should be brought before a judicial authority within 24 hours of being held, and any plane carrying detainees, or suspected of doing so, should be identified to the aviation authorities of the country where it lands, Amnesty says.

Jack Straw, the foreign secretary, has said the US would not render a detainee through Britain without the government's permission. He says the Clinton administration asked four times and the UK twice declined

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its request; there is no evidence the Bush administration had asked.

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Amnesty report probes CIA jails

Human rights group Amnesty International says it has further evidence that eastern European countries may have been involved in secret CIA flights to transport terror suspects to clandestine prisons.

The report, released on Wednesday, provides detailed accounts of the experiences of three Yemeni men who believe they were taken by US authorities to secret prisons following lengthy journeys through different climates and time zones.

The 15,000-word report includes testimony taken in February and March from Muhammad Bashmilah, Muhammad al-Assad and Salah Nasser Salim Ali, also known as Salah Qaru.

Bashmilah said he was detained in Jordan in October 2003 while on a trip to visit his mother. Ali was detained in Indonesia in August 2003 and then flown to Jordan where he was taken into custody. Al-Assad claimed he was detained in Tanzania in 2003. However, none of the three could say with confidence where they were taken next.

In their statements, they described travel times, changing climates, temperatures, and daylight hours in detailed descriptions Amnesty says indicates that they may have been held in eastern Europe.

The men were allegedly held for 13 months at a so-called black site, a clandestine facility believed to be run by the CIA, before they were returned to Yemen where they were charged with forging travel documents, Amnesty said.

Location concealed

In a statement released with the report, Amnesty International said new information from the men raised "the possibility that they were held somewhere in Eastern Europe or Central Asia".

"Their captors went to great lengths to conceal their location from the men; but circumstantial evidence such as climate, prayer schedules, and flight times to and from the site suggest that they may have been held in Eastern Europe or Central Asia," Anne FitzGerald, a senior adviser with Amnesty, said in the statement.

"But without further information from the US government and European authorities, it's impossible to verify exactly where."

The CIA declined to comment on the report.

The US government has said that the transfer of terror suspects is carried out according to US and international law.

The Council of Europe, the continent's top human rights watchdog, is investigating US operated flights sometimes referred to as "renditions" where terror suspects are allegedly transferred to third countries for interrogation.

Amnesty said in its report that the CIA is exploiting



Amnesty says eastern European military bases are used

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"Their captors went to great lengths to conceal their location from the men; but circumstantial evidence such as climate, prayer schedules, and flight times to and from the site suggest that they may have been held in Eastern Europe or Central Asia"

Ann FitzGerald,
Senior Adviser,

a loophole that allows private aircraft to land at foreign airports without having to inform local authorities - unlike government or military planes - and called for inspections of planes suspected of being involved.

Amnesty International

Twenty landings

Amnesty's branch in the Czech Republic said three planes made a total of 20 landings in the capital Prague as part of the rendition programme.

"We asked the Czech government to make sure that airports in the Czech Republic will not be misused for illegal transfers of people that is in breach of international law," said Martin Kryl, Amnesty's chair of the board in the Czech Republic.

"This practice does not ensure justice nor safety but makes torture possible."

Discussing the Amnesty International report on Wednesday, Fawaz Gerges, a professor at Sarah Lawrence College in New York, told Al Jazeera: "The report has exposed the the US administration's conduct and put pressure on it to reveal the truth."

However, he said "it is more a moral crisis than a political one".

Gerges pointed out that the US secretary of state, in the past, had declared that no secret prisons existed outside of the US.

He said he believes the American people will punish their government for such acts and European publics too will question their governments to ascertain whether or not they were aware of these activities.

Gerges said the report would have a negative impact on the European governments concerned as well as on their relations with the US administration.

Source: Aljazeera + Agencies



The US says the transfer of terror suspects is legal

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US 'used Djibouti' in rendition

Amnesty International has suggested that Djibouti was one of the countries where prisoners allegedly abducted and mistreated by the US were held.



The US is accused of transporting suspects to secret jails abroad

The report, based on interviews with former detainees, also links the US practice of "rendition" to the torture or ill-treatment of terror suspects.

Washington has insisted it would never send detainees to places where they would be at risk of torture.

The CIA said it was aware of the report but declined to comment.

The US has a task force based in Djibouti to lead its anti-terror operations across the Horn of Africa.

Detailed testimony

Yemeni citizen Muhammad al-Assad said US officials, who said they were from the US Federal Bureau of Investigation had questioned him in Djibouti, according to the Amnesty International report titled "Below the radar: Secret flights to torture and 'disappearance'".

He said a picture of the president of Djibouti hung on the wall of the interrogation room.

Mr al-Assad said he spent about two weeks in Djibouti.

The report says Mr al-Assad was arrested in Dar es Salaam in Tanzania, on 26 December 2003 and flown out sometime before dawn the next day.

"Sources in Tanzania have said that he was flown to Djibouti on a small US plane," the report states.

From Djibouti, Mr al-Assad was flown to another location, believed to be in Europe.

He is one of three Yemenis whose cases are highlighted in the report. The other two are believed to have been held in Afghanistan before being transferred to Europe.

The 15,000-word report provides detailed accounts of the experiences of the three men, who claim to have been held in at least four different secret US prisons between October 2003 and May 2005.

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Descriptions

The men were allegedly held for 13 months at a so-called "black site", a secret facility believed to be run by the CIA, before they were returned to Yemen, Amnesty said.

In their statements, they gave detailed descriptions of travel times, changing climates and daylight hours which, although not conclusive, Amnesty says suggests they were held in Djibouti, Afghanistan and somewhere in eastern Europe.

The BBC's Rob Watson says although the report is highly critical of the US approach to terrorism suspects, it does not contain any suggestion from the three men that they were tortured by their American captors.

None of the three men was ever charged with any terrorism-related offence.

The US government has said that the transfer of terror suspects is carried out according to US and international law.

However, Amnesty says the CIA is exploiting a loophole that allows private aircraft to land at foreign airports without having to inform local authorities - unlike government or military planes.

The group warned that governments around the world may find themselves "complicit in serious human rights abuses" and urged them to take steps to prevent renditions.

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COMMUNICATION NO. 383/2010

EXHIBIT P

Yemenis Freed After Transfer From Secret Prisons, Report Says

By [SCOTT SHANE](#) and [MARGOT WILLIAMS](#)
Published: April 5, 2006

WASHINGTON, April 4 — Three Yemeni men who were held for well over a year in secret American prisons overseas were quietly released last month after being transferred to their home country, where a court concluded they had no terrorist ties, according to a report released Tuesday by Amnesty International.

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The report says evidence promised by the United States was apparently never transferred to Yemeni authorities. It also adds other new details to accounts of the Central Intelligence Agency's program of holding terrorist suspects in secret detention centers or transferring them to other countries, where some said they were tortured.

The Yemenis said their American jailers, whom they do not accuse of abusing them, took great care to keep them from surmising the detention centers' location, keeping windows covered and removing wrappers and labels from food, clothing and water bottles, the report says.

In the report — which includes information on the web of companies the C.I.A. uses to own and operate its fleet of aircraft for moving the suspects — Amnesty International officials call for an end to the C.I.A.'s practice of rendition, in which suspects are seized and transported without judicial process.

"The bottom line is that secretly sending individuals to unknown locations where they are likely to be tortured or treated inhumanly is unlawful, and the C.I.A. must stop," said William F. Schulz, executive director of Amnesty International U.S.A.

A C.I.A. spokesman declined to comment on the report.

The report came one day after the Pentagon released 2,700 pages of documents from hearings for detainees held by the United States military at Guantánamo Bay, Cuba. The new documents, the second major installment released since last month in response to a lawsuit filed by The Associated Press, are a window on the frustration of both prisoners who claim they are innocent and the American military officers who must judge whether they are lying.

"Your story sounds like about 500 others," an unidentified colonel declared while questioning a Guantánamo detainee arrested in Pakistan in December 2001. "Everybody has their passport stolen; everybody is in Afghanistan and Pakistan doing charity work."

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American and Afghan soldiers are dying, but according to the detainees' stories, "nobody is killing them," the exasperated officer said. He told the detainee, "Your story doesn't ring true. Help us help you."

Amnesty International first described the cases of the Yemeni prisoners — Muhammad Bashmilah, Salah Ali Qaru and Muhammad al-Assad — late last year.

Mr. Bashmilah and Mr. Qaru were arrested in Jordan and transferred to American custody in October 2003, while Mr. Assad was arrested in Tanzania and turned over to American officials in December 2003, Amnesty International said.

They were kept in at least four secret facilities that likely are situated in at least three countries, probably including Djibouti, Afghanistan, and somewhere in Eastern Europe, Amnesty International concluded after studying the men's descriptions of transfer flights and other data.

After months of interrogation by Americans, they were flown to Yemen in May 2005. "The U.S. authorities effectively instructed the Yemeni officials to detain the men, apparently promising to transfer their case files," the report says.

But it says the files never arrived. In February, Yemeni authorities finally charged the men with forging travel documents, sentenced them to two years and ruled that they had served their time, the report says.

Mr. Assad was freed March 14, and Mr. Bashmilah and Mr. Qaru on March 27, the report says.

If American authorities appear to have struggled over whether the three Yemenis posed a threat, the voluminous transcripts released by the Pentagon suggest similar difficulties assessing some prisoners held at Guantánamo.

One detainee, Abdul Majid Mohammadi, described himself as an Iranian Christian — an anomaly in a counterterrorism campaign usually described as focusing on Islamist extremism. Swearing by "Jesus and God," he admitted to having been a drug dealer and having obtained papers to cross the Iran-Afghanistan border from an Afghan with ties to a pro-Taliban group.

Several detainees from Afghanistan are described as having worked for the Afghan government under Hamid Karzai, the pro-American politician who led the interim administration after American-led forces toppled the Taliban and who was elected president in 2004.

Muhammad Aman, for example, said he was a clerk for the military under the pro-Soviet Communist government, under the Taliban and finally under Mr. Karzai. Like other prisoners, he said the Taliban had forced him to work for them.

"All the workers that you see in the current government of Afghanistan worked for the Taliban too," Mr. Aman told the review board.

Scott Shane reported from Washington for this article, and Margot Williams from New York.

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COMMUNICATION NO. 383/2010

EXHIBIT Q

The Washington Post

Prisoner Accounts Suggest Detention At Secret Facilities

Rights Group Draws Link to the CIA

By Josh White
Washington Post Staff Writer
Monday, November 7, 2005

Three Yemeni nationals who were arrested in late 2003 say they were transferred to U.S. custody and kept isolated in at least four secret detention facilities that Amnesty International officials believe could be part of a covert CIA prison system.

The three detainees have not said they were physically abused while in U.S. custody, but they describe being whisked away in airplanes to unknown locations where they were interrogated by Americans in civilian clothes, according to an Amnesty International report. At one prison, the detainees were guarded by people in all-black "ninja" suits, who communicated using hand gestures.

During their separate incarcerations, the detainees were never visited by the International Committee of the Red Cross, never had access to lawyers, were unable to correspond with their families and had no contact with the outside world, the report said. Their families believed they were dead or were told that they had gone to Iraq to fight the United States.

The accounts, taken in independent interviews by Amnesty International researchers over the past few months, appear to be consistent with reports of a network of secret CIA detention facilities, according to the report. The detainees could not determine where they were because they were hooded during the flights, but because of the travel time they assumed they were in Europe or the Middle East, according to Amnesty International.

"We've tried working out where they might have been, but it's so subjective," said Anne FitzGerald, senior adviser on research policy for Amnesty International, who interviewed the detainees in two Yemeni prisons. "It's clear they were in facilities that were designed to hold many people, not just them. But they really didn't know where they were."

The CIA declined to comment Friday.

In a telephone interview from London last week, FitzGerald said she believes the detainees' stories are credible because they were each detained separately and were unable to communicate with one another before the United States turned them over to the Yemeni government in May. One of the detainees has never met the other two and is now kept in a separate facility, yet his story is consistent, she said.

Muhammad Assad was arrested in his home of Dar es Salaam, Tanzania, on Dec. 26, 2003, for alleged passport problems. A Yemeni native, Assad had lived in Tanzania for 20 years.

After his arrest and initial questioning, Assad was taken to a waiting airplane, and his family was told that he was deported to Yemen, according to Amnesty International. Yemeni authorities denied that Assad had

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entered the country, and Tanzania later informed Assad's father that he had been turned over to U.S. officials.

Assad believes he was arrested because of his connections to a charity that was "blacklisted" after the Sept. 11, 2001, terrorist attacks for allegedly funding terrorism. The al Haramain Islamic Foundation, a Saudi Arabian charity, had rented space in a building Assad owned. It is the only topic Assad was questioned about in his 15 months of incarceration.

He was first taken on a small airplane that flew for about two to three hours, and was interrogated for two weeks by Arabic-speaking people, according to the report. He was then flown elsewhere, a flight that he believes lasted about 11 hours, with a one-hour stop-over. When he arrived, his surroundings were much colder, and he was interrogated by white men who spoke what he believed to be American English.

"There was nothing haphazard or makeshift about the detention regime, it was carefully designed to induce maximum disorientation, dependence and stress in the detainees," according to the 20-page report. "The men were subjected to extreme sensory deprivation; for over a year they did not know what country they were in, whether it was night or day, whether it was raining or sunny. They spoke to no one but their interrogators, through translators, and no one spoke to them."

Salah Ali and Muhammad Bashmilah, who were living in Indonesia, were arrested in August and October 2003, respectively; Ali in Jakarta and Bashmilah in Amman, Jordan. They were taken to a Jordanian prison and tortured -- badly beaten and chained in uncomfortable positions -- by Jordanian authorities before being transferred to U.S. custody, according to Amnesty International. Both men had traveled to Afghanistan in 2000 to learn about jihad, but neither man fought against the United States, according to FitzGerald.

Ali said he was stripped and beaten with sticks by a ring of masked soldiers. "They tried to force me to walk like an animal, on my hands and feet, and I refused," Ali told Amnesty, "so they stretched me out on the floor and walked on me and put their shoes in my mouth."

Ali and Bashmilah recount similar stories after their transfer to U.S. custody in a place Amnesty International believes could have been Eastern Europe. They were put into a windowless, underground facility, each was isolated in a tiny cell, and their jailers and interrogators spoke English with American accents. In April 2004, they were moved to a new facility with "no pictures or ornaments on the walls, no floor coverings, no windows, no natural light," according to the report. It was here that the guards dressed in all black.

FitzGerald said that the two Indonesian detainees were barely interrogated after their first few weeks, perhaps an acknowledgment that they did not know much. All three were released to Yemeni authorities in May. Ali and Bashmilah are in the central prison in Aden, and Assad is at a security prison at Al Ghaydah. Their families now know they are alive, FitzGerald said.

"The cases of the three 'disappeared' Yemenis documented in this report . . . suggest that the network of clandestine interrogation centres is not reserved solely for high-value detainees, but may be larger, more comprehensive and better organized than previously suspected," the report says.

Such "incommunicado" detentions are against international standards but are consistent with recent reports of how the CIA operated its detention network.

Manfred Nowak, the U.N. rapporteur on torture, said in an interview last week that secret facilities are a particularly important issue because there is no outside oversight and no ability to know which detainees are in custody or where they are held. He condemned the practice.

"Incommunicado detention forms inhumane treatment in and of itself," Nowak said.

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Nom complet (selon l'usage local)

Jina kamili la baba / Father's full name / Nom complet du père
MUMBA, MURIEL MURIEL

Jina kamili la mama / Mother's full name / Nom complet de la mère
MURIEL MURIEL MURIEL

Jina kamili la mama / Mother's full name / Nom complet de la mère
MURIEL MURIEL MURIEL

Tarehe ya kuzaliwa au umri / Date of birth or age / Jinsia: Mume/Mke
Date of birth or age: 15/01/1975 Sex: M/F
Date de naissance ou âge: 15/01/1975 Sexe: M/F

Mahali alipozaliwa (Kisubani), Taifa / Place of birth / Nationality
TANGA, TZ TANGA, TZ

Lieu de naissance: TANGA, TZ Nationalité: TANGA, TZ

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Le recherché est mon ma

NAI HUSBANDS

ahibi ya mtafitaji / Inquirer's signature / Signature du demandeur
Certified as true copy

Tarehe na mahali alipofunguliwa waombi / Date and place of enquiry /
Date de la demande

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Tribu / Ethnie

Kazi / Occupation /
Profession

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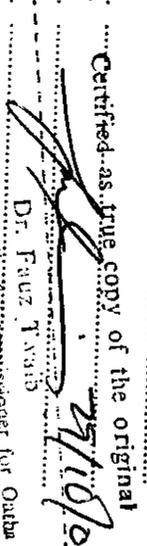
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(a) (b) (c) (d)

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