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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.

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CONTENTS (*continued*)

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]

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[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

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[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

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(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. 14/2009[12] 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]

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[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 Detention[16] 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

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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 article14, 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

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[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

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[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 7[27] 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

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[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

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[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 article16, 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]

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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

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[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).

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[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]

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[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

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[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).

[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]

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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

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[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 conflicts[65] 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

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[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.

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[70] Whilhelm 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,

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[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 Galerias Pacifico in downtown Buenos Aires.[79] The largest secret detention centres were the Navy Mechanics School (Escuela de Mecanica 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]

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[79] According to the information provided by the Government, there are no records indicating that Galerias 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 commission[86] 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

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[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

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[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*

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[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", S*outh 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

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[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 Republic[121] and Tunisia.[122]

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[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]

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[123] Extraordinary Chambers in the Courts of Cambodia, Trial Proceedings, transcript of trial proceedings, Kaing Guek Eav "Duch" Public, case file Nº 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 Subcommission 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

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[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 problem[135] 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

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[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

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[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.

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[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

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[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

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[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

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[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

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[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 2005[174]

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

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[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

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[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

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[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

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[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 news[195], in 2005, Hassan Gul[196] and

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[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 insecret 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-Rahman[197] 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

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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

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[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 Grybauskaite 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

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[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 happened[210] 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 Afghanistan[212] 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

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[209] See A*ksoy 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

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[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

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[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 Rapoprteur 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. Bradbury[227] indicate that the other

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[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

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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]

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[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]

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[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:

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[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

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[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-Jazeeri, 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

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[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-Jazeeri (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),

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[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 Shoeab 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

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[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 Government[266] 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

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"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 experts[269] 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:

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[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

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[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

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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

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[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

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[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 Ghramesh 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.

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[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

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[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]

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[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"

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www.reprieve.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)

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[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 Ezzoueck. 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. Ezzoueck 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.

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[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, A*bdullah 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

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[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 cases[318] 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

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[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-Masri[329]

- 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.

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[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%2009.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

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[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.

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[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

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[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

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[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 Committee[349] 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

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[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]

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[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 Disappearances[359] 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

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[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

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[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

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[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 Rights[373] 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

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[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

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[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

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[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

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[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 torture[393] 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]

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[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

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[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

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[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:

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[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:

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[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 divulgation 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

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[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.

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[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

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[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

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[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

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[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-Jadiryia'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

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[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,

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[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. According to the State party, 12 persons were currently being detained under the law.[432]

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".

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[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

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[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

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[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,

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[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

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[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

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[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

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[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

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[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

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[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'etat 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 Woldetensae, 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

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[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

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[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

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[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]

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[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

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[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

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[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 an on, until I felt that I was on the verge of dying."[488]

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[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 Gandi 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_NKOMO.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**

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[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.**

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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.

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[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	• 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	• 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
		such as illegal or arbitrary detention or ill-treatment. • 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	• 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	• 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 21November, 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	• 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	• 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	• 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	• 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	• 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	• 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
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11.	Chad	• 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	• 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	• 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	• 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	• 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
		law, human rights and international obligations. • 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	• 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	• Response received; currently with the translation services;
18.	Ireland	• 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
		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. • No further comments on effectiveness of secret detention or other counter-terrorism measures or on past experiences with secret detention.
19.	Italy	• 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 responsibly 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	• 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
		of detention of terrorist subjects. • To date, including over the time period specified, no individual has been arrested, charged or suspected of terrorism or terrorist activity.
21.	Japan	• 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	• (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	• 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
		territory of another State. • 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	• 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	• 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	• No instances of secret detention in the penitentiary system • No involvement or collaboration in secret detention on the

	Country	Response
		territory of another State. • No further comments on effectiveness of secret detention or other counter-terrorism measures or on past experiences with secret detention.
27.	Montenegro	• 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	• 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	• 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
		territory of another State. • 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	• 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	• 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	• 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	• 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	• 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: • 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: • 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 Superintendant 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
		• 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	• 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	• 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	• 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	• 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	• 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	• 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
		call to a lawyer; and inform family/friends; being brought before a judge; to be judged without unreasonable delay. • 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	• 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	• 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
		of the reports, the agencies refer to the fact that the US is clearly holding some Al-Qaida members indention, 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. • 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	• 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
		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 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
		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. • 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	• 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** Somalia: He was arrested by team of Mohammed Dere, a notorious warlord allegedly working for the United States. Kenya: He was held by the Kenyan police in Nairobi and was interrogated by the CIA and the FBI. Somalia: In Bosaso, he was guarded by Somali soldiers. Afghanistan: 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** 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	

Date of the initial detention
8 November 2002
Location of the initial detention
Banjul, the Gambia
Grounds of detention
No charges were ever brought against him.
The authority(ies) involved in the arrest/detention
Gambia: He was detained by officers from the Gambian Intelligence Agency and subsequently kept in custody by Gambian authorities.
Afghanistan: 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.
Site(s) held in detention, including sites of possible transit
1. Safe houses in a residential area in Banjul, the Gambia
2. "Dark Prison", Afghanistan
3. Bagram, Afghanistan
4. Guantanamo Bay

Total period of detention
More than four years (8 November 2002 to 30 March 2007)
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).
Conditions and treatment
In Banjul, he was first allowed to be free inside the safe houses. He was later placed in a wooden cage.
On the flight to Afghanistan, he was blindfolded, hooded, handcuffed and his feet were shackled. At the "Dark Prison", 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 Bagram, Afghanistan. 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 Guantanamo Bay 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

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

Date of the initial detention
31 January 2002
Location of the initial detention
Islamabad, Pakistan
Grounds of arrest
No charges were ever brought against him.
The authority(ies) involved in the arrest/detention
Islamabad: Abducted by unidentified sources, although American officers dressed as Pakistanis were in the vehicle at the time of arrest.
Kandahar: The detention facility was run by the US military.
Site(s) held in detention, including sites of possible transit
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.

Total period of detention
Mr. Begg was detained since January 2002 for nearly three years.
Duration of secret detention
Three weeks in Islamabad (31 January - 21 February 2002)
Guantanamo (February 2003 - January 2005)
Conditions and treatment
During his detention in Islamabad, 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 flight to Kandahar, 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 flight to Bagram. 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 Guantanamo Bay, 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.
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.
Date of release

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.

Date of release At time of the interview he is in prison in Sale serving his sentence.
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.

* 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	
Date of initial detention April 2002 **Location of the detention** He was detained at his home located in Lahore, Pakistan **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. **The authority(ies) involved in the arrest/detention** Pakistan: Pakistani, CIA and UK Security Services officers Afghanistan: American military, CIA, FBI and UK Security Services officers Guantanamo Bay: US officers **Site(s) of detention, including sites of possible transit** 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) **Total period of detention** Approximately 5 years and 8 months **Duration of secret detention** Approximately 5 months (April 2002 - August 2002) **Conditions and treatment during secret detention** - Building described as an old castle near Lahore, Pakistan: 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	

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 *Bundeskriminalamt* (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
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
Detention at the Skopje hotel: 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.
Transfer to Afghanistan: 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.
Detention at the "Salt Pit" facility, Afghanistan: 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

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 difficultly 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** In Kenya: Kenyan military, intelligence, anti-terrorism, and other law enforcement officers; UK Security Services officers (MI5); FBI officers. Transfer to Somalia: 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.

* 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
Date of initial detention 18 November 2007 **Location of the initial detention** Tripoli, Libya **Grounds of initial detention** Unknown. **The authority(ies) involved in the detention** Libyan Police and Interior Services **Total period of detention** Approximately 3 ½ months **Duration of secret detention** Approximately 3 ½ months **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. **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. **Judicial Proceedings** He was never formally charged with any offence. **Date of release** End of February 2008.	
Additional Information	
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.	

* 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	
Date of the initial detention 15 March 2009 **Location of the initial detention** Damascus, Syria **Grounds of detention** No charges were ever brought against her. **The authority(ies) involved in the arrest/detention** Believed to be the Mukhabarat, the intelligence services of the Syrian Arab Republic. **Site(s) held in detention, including sites of possible transit** Basement in a private complex in Baab-Tooma, Damascus **Total period of detention** Approximately 3 months (15 March to 7 June 2009) **Duration of secret detention** Same period as above **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 basement 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. **Date of release** 7 June 2009.	
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	

Date of the initial detention
9 July 2008
Location of the initial detention
Cairo, Egypt
Grounds of detention
No charges were ever brought against him.
The authority(ies) involved in the arrest/detention
Egyptian intelligence officers
Site(s) held in detention, including sites of possible transit
Cairo Airport and a former prison in Egypt.
Total period of detention
Approximately one week (9 July to 15 July 2008)
Duration of secret detention
Same as above
Conditions and treatment
He was detained at the airport in Cairo 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 old prison in Egypt, 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 police station, 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.
Judicial Proceedings
He has not initiated any litigation.
Date of release
15 July 2008.

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** Jakarta, Indonesia: Indonesian police and immigration officers; Egyptian Intelligence officers. Cairo, Egypt: Egyptian Intelligence officers, US military officials. Bagram Airbase: US officials. Guantanamo Bay: 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** At border of Kenya/Somalia - detained by intelligence authorities In Kenya - law enforcement officials In Somalia - law enforcement/security officials In Ethiopia -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** In Mekalawi Federal Prison: 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
In Pakistan - Pakistani immigration officers, Pakistani prison officers and Pakistani Intelligence officers, French officers, United States' FBI officers, and a UK MI6 agent.
In Islamabad - he was transferred into the custody of United States officers.
In Morocco - Moroccan and US officials, and a Canadian interrogator.
In Kabul - Afghani officers and United States officials, including CIA officers.
At Bagram airbase and Guantanamo Bay -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

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
At the Pakistani Intelligence detention facility in Karachi: 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.
Transfer from Karachi to Islamabad - 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

appeared on his phone and for suspected involvement with a wanted person. **Judicial Proceedings** Never formally charged, never brought before a judge. **Date of release** 27 May 2008. He was released without an apology or compensation. To date, he has not filed a complaint.
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.

* 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** 1. Initially held at the premises of the Political Bureau of Security Services in Bahri, Khartoum. 2. 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

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 ("*Glavnoye Razvedyvatel'noye Upravleniye*" - "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 - "*Federal'naya sluzhba bezopasnosti Rossiyskoy Federatsii*" - "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.
