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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

**Follow-up report on the Joint Study (2010) on Global Practices  
in Relation to Secret Detention in the Context of Countering  
Terrorism**

**Report of the Special Rapporteur on the promotion and protection of  
human rights and fundamental freedoms while countering terrorism\*<sup>\*</sup> \*\***

*Summary*

In the present report, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, presents a follow-up report to the 2010 Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism (A/HRC/13/42).

This report illuminates the abject failure to implement the recommendations of that Study with tragic and profound consequences for individuals who were systematically, tortured, rendered across borders, arbitrarily detained, and deprived of their most fundamental rights. Over two decades of impunity have followed from the events which gave rise to the Study. Building on and complementing the work of the Special Rapporteur on Torture and other Cruel, Inhuman and Degrading Treatment, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances this report demands again that accountability, reparation, and transparency be implemented by those States responsible for these grave human rights violations. Failure to implement the 2010 recommendations made by Special Procedures has enabled and facilitated ongoing human rights violations in the name of countering terrorism across the globe. New modalities of transfer across borders have developed in this time, circumventing required legal protections including non-refoulement; mass detention without legal process has been normalized by certain States; and exceptionality in trial process involving charges of terrorism remains entrenched. Reversing these trends requires recommitment to fundamental human rights protections while countering terrorism, exposing the persistent misuse of counter-terrorism measures for over two decades, addressing impunity as well as providing adequate remedy to those who have been harmed

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\* The present report was submitted after the deadline in order to reflect recent developments.

\*\* The annex is being circulated without formal editing, in the language of submission only.

## I. Activities of the Special Rapporteur

1. Despite the highly challenging ongoing circumstances posed by the Covid-19 pandemic the Special Rapporteur had a busy and fruitful year, defined by extensive dialogue with multiple States and civil society stakeholders. In addition to the activities detailed in her report A/76/261, she undertook over 100 consultations with civil society groups across all continents. She provided extensive technical assistance to multiple States during the 7th biannual Global Counter-Terrorism Strategy Review process. She completed a constructive country visit to Uzbekistan. She regretfully was unable to undertake her country visit to Singapore under the terms of reference of Special Procedures Mandate holders. She will undertake a visit to the Maldives this Spring 2022. The Special Rapporteur provided technical assistance to the production of the Model Legislative Provisions for Victims of Terrorism, led by the IPU, UNODC, and UNOCT (UNCCT). The Special Rapporteur makes it a priority to provide technical assistance and views concerning counter-terrorism legislation to States. Since January 2021, she provided reviews of legislation or legislative developments to Algeria, Austria, Belarus, Brazil, China, Denmark, France, Haiti, Netherlands, New Zealand, Nicaragua, European Union, Sri Lanka, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland, Uzbekistan, Venezuela, and Zimbabwe.<sup>1</sup>

## II. Contextualizing the Follow-up report to the Joint Study (2010) on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism

2. In 2010, four Special Procedures mandates produced a unique joint study on global practices in relation to secret detention in the context of countering terrorism.<sup>2</sup> 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 and degrading treatment, the WG on arbitrary detention and WG on enforced or involuntary disappearances had been respectively charged by the Human Rights Council to address various dimensions of secret detention which came within the scope of their mandates.<sup>3</sup> These mandates came together in a transparent and open manner, to avoid duplication and ensure complementary reporting and presented an extraordinary Study describing the international legal framework applicable to secret detention, explaining and condemning the wide range of human rights violations that follow from secret detention, identifying States responsible for individual and collective acts of secret detention, and concluding with specific and concrete recommendation to remedy past violations and prevent future harms in counter-terrorism contexts.

3. Further to the consideration of the joint study<sup>4</sup> by the Human Rights Council, a follow-up report to analyse further information and to assess the level of implementation of the 2010 recommendations was advised. However, resourcing for a study of similar scale has proven elusive in the intervening period. Nonetheless since 2010, all four mandate holders have addressed the issue of secret detention through individual communications,<sup>5</sup> and continued through their respective mandates and collectively to press for implementation of concrete

<sup>1</sup> [CHN 3/2022](#); [GBR 3/2022](#); [NZL 1/2021](#); [DZA 12/2021](#); [NZL 1/2021](#); [THA 7/2021](#); [ZWE 3/2021](#); [LKA 7/2021](#); [VEN 8/2021](#); [GBR 11/2021](#); [OTH 229/2021](#); [THA 5/2021](#); [AUT 2/2021](#); [LKA 3/2021](#); [HTI 2/2021](#); [UZB 4/2021](#); [BRA 6/2021](#); [FRA 5/2021](#); [DNK 3/2021](#); [NLD 2/2021](#); [BLR 2/2021](#); [TUR 3/2021](#); [NIC 4/2020](#)

<sup>2</sup> A/HRC/13/42

<sup>3</sup> A A/HRC/RES/6/28, A/HRC/RES/8/8, A/HRC/RES/6/4, and A/HRC/RES/7/12.

<sup>4</sup> A/HRC/13/42.

<sup>5</sup> 2016 [USA 5/2016](#) (Mustafa al-Hawsawi); 2020 [USA 5/2020](#) (Ammar al Baluchi); [USA 17/2020](#) (Mr. Haji Hamdullah; 18 Yemeni detainees; and Mr. Ravil Mingazov); [ARE 3/2020](#) (Mr. Haji Hamdullah; 18 Yemeni detainees; and Mr. Ravil Mingazov); 2021 [ARE 5/2021](#) (Mr. Ravil Mingazov); [USA 22/2017](#) (Ammar al Baluchi, also known as Ali Abdul Aziz Ali); A/HRC/48/57, paras. 38-60.

recommendations from the study.<sup>6</sup> Considering the twenty-year anniversary of the events of 11 September 2001 and the rendition of the first detainee to Guantanamo Bay, Cuba on 11 January 2002, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism devotes this annual report to addressing the human rights consequences of systemic and gross human rights violations engaged by secret rendition; the catastrophic personal and familial consequences for individuals who have been subject to secret detention (recalling in particular the facilitation of torture or inhuman and degrading treatment); the abject failure of States to implement the recommendations of the Joint Study; and the evolution of State practice from secret detention, to such practices as extraordinary rendition,<sup>7</sup> ‘rendition to justice’, extraterritorial operations, expulsion, extradition,<sup>8</sup> lawful transfer and the use of diplomatic assurance in the context of transfers of persons accused or suspected of terrorism and extremism between States.

4. The Special Rapporteur has been significantly aided in this task by the 2021 report of the Working Group on Enforced or Involuntary Disappearances which she endorses.<sup>9</sup> Recalling the 2010 Joint Study in documenting cases whereby “States resorted to extraterritorial transfers that led to enforced disappearances with the participation, support or acquiescence of other States, in an attempt to capture their nationals or third country nationals, often as part of purported counter-terrorism operations”,<sup>10</sup> the Working Group addressed enforced disappearances in the context of transnational transfers.<sup>11</sup> Its report provides a highly concerning assessment on contemporary allegations of gross human rights violations including enforced disappearances in the context of national security and countering terrorism. Specifically:

“Serious allegations of gross human rights violations, including enforced disappearances, were reported to the Working Group shortly before, during or in the immediate aftermath of alleged transnational transfers from Afghanistan, Albania, Azerbaijan, Cambodia, Gabon, Kazakhstan, Kenya, Lebanon, Malaysia, Pakistan, Panama and Uzbekistan, as well as from Kosovo, to Turkey; from Egypt, Myanmar and the United Arab Emirates to China; from Cambodia, the Lao People’s Democratic Republic and Vietnam to Thailand; from Thailand to the Lao People’s Democratic Republic; from Malaysia to Egypt; from Egypt to Yemen; from Lebanon to the Syrian Arab Republic; from Ukraine to Uzbekistan; from France and Germany to the Russian Federation; from the United Republic of Tanzania to Burundi; from Kenya to South Sudan; from Afghanistan and Pakistan to the United States of America and subsequently to the United Arab Emirates; from Senegal via Tunisia to Libya; and from the United Republic of Tanzania via Afghanistan and Djibouti to Yemen. It is noteworthy that these cases are not emblematic of the real extent of the phenomenon. Rather, they are a snapshot of what appears to be the increasing practice of forcible repatriations or involuntary returns by States acting on national security grounds at the expense of the fundamental rights and freedoms of the alleged victims.<sup>12</sup>

5. The Special Rapporteur underscores that the evolution of practices from secret detention to transnational transfer in counter-terrorism contexts continue to be marked by an abject lack of adherence to fundamental human rights norms, thin lines of judicial oversight,

<sup>6</sup> Guantanamo Bay: “Ugly chapter of unrelenting human rights violations” UN Experts (10 January 2022); WGAD opinions regarding the Guantánamo Bay Detention Facility, 32/2021 (USA, UAE); 85/2019 (Libya, Senegal, USA); 70/2019 (USA); 89/2017 (USA); 56/2016 (Afghanistan, USA); 53/2016 (Afghanistan, USA); 50/2014 (Cuba, USA); 10/2013; 26/2009; 3/2009; 2/2009 and 29/2006.

<sup>7</sup> This term is not defined in international law. This definition is used: “the apprehension of a person often sponsored by one State in the territory of another State, with or without that State’s cooperation, and the subsequent extrajudicial transfer of the person from the territory in which the person was abducted to another State for detention and interrogation”. A/HRC/43/35, para 11.

<sup>8</sup> An extradition is a formal legal process through which one country (requesting State) seeks from another (the executing State) the transfer of a person to its jurisdiction for the purpose of criminal prosecution or to serve a criminal sentence. UNODC, Model Law on Extradition, Part 1, Section 1.

<sup>9</sup> A/HRC/48/57 (4 August 2021).

<sup>10</sup> *Ibid.*, para 38.

<sup>11</sup> *Ibid.*, para 40.

<sup>12</sup> *Ibid.*, para 40 (footnotes omitted).

meagre to non-existent legal and/or political accountability, targeting of religious and ethnic minorities, and a high degree of tolerance by democratic and non-democratic States alike for the subversion of the rule of law to enable persons to be rendered to jurisdictions where they have a high likelihood of being subjected to arbitrary detention, surveillance, and torture, cruel, inhuman and degrading treatment. The permissive environment created for human right 'lite' counter-terrorism since 9/11, the growth of the global counter-terrorism architecture, the 'privatization' of counter-terrorism and the weakening of national oversight mechanisms have all contributed to the current status quo. The ultimate victim of the entrenched practices of secret detention has been the 'rule of law'. Only meaningful and sustained recommitment to human rights compliant counter-terrorism will start to undo the damage done reverse the rule of law harms and undercut the production of conditions conducive to terrorism, which are sustained and fed by these practices.

### III. Recap of the 2010 Study

6. The Study was unflinching in its assessment of the human rights violations occasioned by secret detention. It establishes a resolute historical account of secret detention from its use by the Nazi regime to deployment by the former Soviet Union in its Gulag system of forced-labour camps.<sup>13</sup> It provided a comprehensive analysis of the international legal framework applicable to secret detention.<sup>14</sup> The Study reinforces the international law position that secret detention is a violation of the right to personal liberty and breaches the prohibition of arbitrary arrest or detention.<sup>15</sup> Secret detention denies and subverts the right to a fair trial.<sup>16</sup> Secret detention unequivocally amounts to enforced disappearance,<sup>17</sup> and when widespread and systematic, as was the case in the aftermath of the events of 9/11, secret detention reaches the threshold of a crime against humanity.<sup>18</sup> Secret detention robs those detained of the protection of law, most specifically the right to habeas corpus.<sup>19</sup> The family members of person secretly detained are victims in their own right, suffering the horrors of not knowing where the loved ones are, fearing the worst, often subsequently subject to a barrage of connected state sanctioned counter-terrorism measures not least when they refuse to be silent and continue to advocate for the protection of their relatives.<sup>20</sup> Every instance of secret detention is incommunicado detention.<sup>21</sup> Secret detention is consistently, unrelentingly and brutally connected to the practice of torture, cruel, inhuman and degrading treatment.<sup>22</sup> The practice of secret torture is evidenced from multiple countries and regions including Asia, Central Asia, Europe, the Middle East, North Africa, Sub-Saharan Africa, and Latin America.<sup>23</sup> The Annex to this Report names every single individual mentioned in the 2010 Report. The Special Rapporteur profoundly regrets that not a single person named has had full or adequate remedy for the profound violations of human rights they experienced. This finding is a stain on the integrity of the international human rights system as a whole.

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<sup>13</sup> A/HRC/13/42 para 57 and 58.

<sup>14</sup> *Ibid*, para 18-53.

<sup>15</sup> *Ibid*, para 18-23.

<sup>16</sup> *Ibid*, para 24-27.

<sup>17</sup> *Ibid*, para 28- 30.

<sup>18</sup> *Ibid*, para 30. Its widespread, authorized, and systematic nature confirmed by subsequent investigations and reporting have augmented the information to the Joint Study including the SSCI Study of the Central Intelligence Agency's Detention and Interrogation Program; ECHR judgements regarding the complicity of some ECHR Member States in secret detention practices; Dick Marty Report Council Of Europe Doc. 10957, 12 June 2006; Andy Worthington, *The Guantanamo Files: The Stories of 744 Detainees in America's Illegal Prison* (Pluto Press 2007); North Carolina Commission of Inquiry Report on Rendition (2018).

<sup>19</sup> *Ibid*, para 19.

<sup>20</sup> *Ibid*, para 29.

<sup>21</sup> *Ibid*, para 31.

<sup>22</sup> *Ibid*, paras 34.

<sup>23</sup> *Ibid*, paras 132-281.

7. The detail and specificity of torture, cruel, inhuman, and degrading treatment systematically carried out during secret detention and legally justified<sup>24</sup> under the rubric of the ‘global war on terror,’ is documented in the 2010 Study. Our contemporary understanding of the forms of physical, emotional, and psychological harm experienced by detainees has expanded since 2010, because of now available personal accounts from detainees, evidence to judicial bodies and other investigations being released into the public domain. Regrettably, substantial efforts were expended to suppress that information by the State authorizing systematic secret detention post 9/11. Occlusion of the full truth includes ongoing classification of information about that torture as classified information (including detainees’ own recollections and experiences).<sup>25</sup> Counter-terrorism justified the most egregious of human dignity violations. The practice of waterboarding (simulated drowning) was legally justified and brutally carried out in black sites controlled by the United States. Detainees were placed in coffin-like or closed box-like structures for extended periods of time to induce fear, claustrophobia, and physical pain. Detainees were subject to extreme cold, stripped naked, inadequately clothed, given no bedding, denied medical treatment for pre-existing and new injuries, not given humane toiletry access, tightly chained to fixed objects, deprived of food and water, subjected to extreme sleep deprivation, forced to hold unbearable stances for long durations and subject to harsh, continuous noises while in detention. Detainees were violently slapped, shaken, subject to mock executions, kicked, thrown to the ground, and set upon by multiple agents simultaneously to deliberately injure in concerted action. Detainees were told that multiple serious harms would befall their family members including physical violence, economic distress, social shaming, and sexual violence. Detainees were kept in solitary confinement, many for months at a time. Detainees were stripped naked, ridiculed, sexually taunted, and humiliated. They had their private sexual organs touched and harmed. They were not allowed to pray and taunted for their religious beliefs and practices. Medical personnel enabled and sustained torture practices.<sup>26</sup> Some detainees were subject to anal penetration by objects, actions which amounts to sexual violation and appears to reach the threshold for rape as set out under the ICC Statute.<sup>27</sup> By way of illustration, we know that the detainee Abu Zubaydah, who has been held without any legal charge by the United States for over 20 years, was subject to the barbaric practice of waterboarding 83 times in the month of August 2002 alone.<sup>28</sup>

8. The Study documents the actions of numerous countries that collaborated with the United States government to allow capture of individuals (proxy detention),<sup>29</sup> hosted secret jails (black sites), interrogated persons at the request and sometimes with the oversight of US personnel, enabled covert prisoner transfers (renditions) to take place through their airports and borders, facilitated medical and other operational assistance, and covered up for the

<sup>24</sup> E.g. Memorandum from John C. Yoo on the President’s Constitutional Authority to Conduct Military Operations against Terrorists and Nations Supporting Them to Timothy Flanigan, the Deputy Counsel to the President (Sept. 25, 2001); Memorandum to William J. Haynes II, General Counsel, DOD (Dec. 28, 2001); Memorandum from John Yoo & Robert J. Delabunty on the Application of Treaties and Laws to Detainees to William J. Haynes II, General Counsel, DOD (Jan. 9, 2002); Memorandum on Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-2340A to Alberto R. Gonzales, Counsel to the President (Aug. 1, 2002).

<sup>25</sup> The SR recognizes movement by the U.S. Government towards the declassification of torture and detention evidence. See, e.g., Executive Order on Declassification Review of Certain Documents Concerning the Terrorist Attacks of September 11, 2001 (3 Sept. 2021); Letter from Acting Solicitor General Brian Fletcher to Hon. Scott Harris Re: United States v. Husayn, No. 20-827 (15 Oct. 2021). But where testimony is classified, the Special Rapporteur warns that such classification may prevent adequate legal defence and full psychological treatment to those who experienced the harm of egregious and systematic torture.

<sup>26</sup> In abject breach of the WMA Declaration of Tokyo – Guidelines for Physicians (Adopted by the 29th World Medical Assembly 1975, reaffirmed in 2005, 2006, and 2016).

<sup>27</sup> Rome Statute, 2187 U.N.T.S. 3, at arts. 7(1)(g), 8(2)(b)(xxii), & 8(2)(e)(vi) (Jul. 17, 1998). The scale of sexual harm to detainees can be partially gleaned by the use of the following terms in the significantly redacted US Senate Torture Report “sex,” “genital,” “nudity,” “naked,” “rape,” “diaper,” “sodomy,” “HIV,” “rectal,” “rough takedown,” and “female.” See e.g. Findings and Conclusions, Page 3 of 19; Executive Summary, Page 51 of 499.

<sup>28</sup> <https://www.justice.gov/sites/default/files/olc/legacy/2013/10/21/memo-bradbury2005.pdf>

<sup>29</sup> *Ibid.*, e.g. para 141-143, para 158-159.

violations that had taken place on their territory by refusing to share or release information related to the detention, disappearance, and torture. Private actors were also complicit rendition and torture. Accountability for the commission of grave violations of international law remains the responsibility of those States upon whose territory violations were committed.

9. The Study further documents the persistent use of secret detention in multiple countries justified by the discourse of countering terrorism nationally and regionally. Such countries included China, India, the Islamic Republic of Iran, Nepal, Pakistan, the Philippines, Sri Lanka, Turkmenistan, Uzbekistan, the Russian Federation, Algeria, Egypt, Iraq, Israel, Jordan, Libyan Arab Jamahiriya, Saudi Arabia, the Syrian Arab Republic, Yemen, the Democratic Republic of Congo, Equatorial Guinea, Eritrea, the Gambia, Sudan, Uganda, and Zimbabwe.<sup>30</sup> The WGAD has consistently communicated about practices of arbitrary detention authorized or enabled by counter-terrorism or national security justifications in these countries since 2010.<sup>31</sup> Ongoing practices of secret detention and transfer violating fundamental human rights involving many of these States continue to concern Special Procedures as evidenced by the 2021 report of the Working Group on Enforced or Involuntary Disappearances.<sup>32</sup> The Special Rapporteur highlights two countries, namely the Syrian Arab Republic and China where she has profound contemporary concerns about systematic and mass use of secret detention implicating multiple and scalar human rights violations.<sup>33</sup>

## IV. Accountability

10. The scale of human rights violations implicated by the systematic and legalized use of secret detention and torture following the events of 9/11 demand specific individual, State and inter-State accountability. Such accountability is the *sine quo non* of future torture and secret detention prevention. It is imperative to hold individuals, institutions, and States accountable not only to prevent impunity but also as an essential aspect of the guarantee of non-recurrence. Systematic violations of non-derogable human rights do not have an end-date. The abject failure of governments to address criminal justice and reparations obligations from these practices does not lessen claims for human rights violations and may in fact, over time, augment the scope of violations so that the widespread or systematic threshold requirement of crimes against humanity is firmly established.

### A. The Role of the Courts

11. Courts play an essential role in defending the rule of law, particularly during times of emergency when States may seek to utilize exceptional measures to respond to perceived or actual national security threats. The Special Rapporteur recognizes that some domestic courts have performed a highly effective, diligent, and commendable role in preventing secret detention and/or holding security and other State actors to account for practices that amount to secret detention, or transfer between legal systems without adequate human rights

<sup>30</sup> Paras 168-170, 171-174, 175-179, 180-186, 187-192, 193-196, 197-201, 203-204, 205-206, 208-214, 216-221, 222-225, 226-228, 229-230, 231-232, 233-237, 238-241, 242-246, 247-250, 252-253, 254-258, 259-262, 263-264, 265-270, 271-277, 278-281 respectively.

<sup>31</sup> China (62/2018, 69/2017, 59/2017); Islamic Republic of Iran (48/2017, 2/2016); Pakistan (11/2018); Sri Lanka (9/2013, 49/2011, 48/2013); Turkmenistan (15/2010); Uzbekistan (4/2013); Algeria (34/2017, 17/2014, 49/2012); Egypt (47/2018, 78/2017, 60/2016); Iraq (38/2018, 32/2017, 29/2016); Israel (15/2016, 31/2017); Jordan (46/2017, 17/2017, 9/2016); Libyan Arab Jamahiriya, (39/2018, 6/2017); Saudi Arabia (10/2018, 63/2017, 13/2015); Syrian Arab Republic (36/2014, 43/2013); Yemen (42/2014, 2/2015, 13/2014); Democratic Republic of Congo (23/2018); Sudan (9/2015, 34/2016); Zimbabwe (82/2017).

<sup>32</sup> A/HRC/48/57 (4 August 2021).

<sup>33</sup> See e.g. CHN 4/2021; CHN 18/2020, and 57 letters to States from SRCT & HR to States (<https://www.ohchr.org/EN/Issues/Terrorism/Pages/return-and-repatriation-foreign-fighters-and-their-families.aspx>).

protections.<sup>34</sup> Regrettably, however, many national courts have been highly ineffective and at times complicit in secret detention practices, providing significant legal cover for State abuses. The elevated degree of deference paid by judicial bodies to State actors engaging in egregious and well-documented rights violations through state torture and rendition especially brings shame to judiciaries that otherwise pride themselves on upholding the rule of law and protecting against barbarism by State officials. The variable deference given to State practices is illustrated by the case concerning Maher Arar, a dual citizen of Canada and Syria, who was *en route* to his home in Canada when he was detained in New York and held without charge for 12 days before being rendered to Syria via Jordan. In subsequent legal proceedings the U.S. District Court for the Eastern District of New York held—and the Second Circuit affirmed—that Arar could not sue the U.S. government officials due to national security and foreign policy considerations.<sup>35</sup> At the same time, Canada launched a public inquiry, issued a public apology for its role in Arar’s rendition and torture and reached a C\$10 million settlement with him.

12. Regional courts have played a particularly valuable role in seeking accountability for detention and rendition in the post 9/11 counter-terrorism context. The ECHR has played a singularly important and commendable role in identifying State responsibility for secret detention and the torture, inhuman and degrading treatment that has accompanied it. The court has found violations of fundamental rights in many individual cases adjudicating the harms experienced by victims of extraordinary rendition and torture. For instance, in *Al-Nashiri v. Romania*, the Court found that the authorities who facilitated Mr. al-Nashiri’s transfer out of Romania for trial in the United States were likely aware of “widely expressed public concern” that a trial before the U.S. military commission would not culminate in a fair trial. Despite the “real and foreseeable risk” that Mr. al-Nashiri could face a “flagrant denial of justice,” Romania assisted his transfer from its territory, breaching Mr. al-Nashiri’s right to a fair trial.<sup>36</sup> In *al-Nashiri*, the Court also found that Romania had assisted the CIA to transfer Mr. al-Nashiri to the U.S. military commission’s jurisdiction, where he had been indicted and was on trial facing the death penalty.<sup>37</sup> The court has found Italy, Lithuania, Macedonia, and Poland complicit in the torture and enforced disappearance of detainees in U.S. rendition and secret detention programs.<sup>38</sup> The ECHR has also taken a proactive and positive approach to remedies in some extraordinary rendition cases. For example, as a part of the remedy awarded to Mr. al-Nashiri, the Court ordered that Romania seek US assurances that Mr. al-Nashiri would not suffer the death penalty.<sup>39</sup>

13. In its regional context, the Inter-American Court has also illustrated judicial mettle in addressing torture and secret detention and mandating adequate remedy and reparations for victims.<sup>40</sup> The Court considers both the prohibition on enforced disappearances and the obligation to investigate as having attained the status of *jus cogens*. The Court also holds the position that the systematic practice of enforced disappearances amounts to a crime against

<sup>34</sup> See e.g. *R (on the application of Binyam Mohamed) v Secretary of State for the FOCO* [2010] EWCA Civ 65, [2010] EWCA Civ 158; *Al Rawi and others v Security Services and Others* [2009] EWHC 2959, [2010] EWHC 1496 (QB), [2010] EWCA Civ 482, [2011] UKSC 34.

<sup>35</sup> *Arar v. Ashcroft*. The SR recognizes that certain landmark decisions by the US Supreme Court cf. *Boumediene v. Bush* have addressed some legal lacunae in the regulating of detainee status.

<sup>36</sup> Press Release: Romania committed several rights violations due to its complicity in CIA secret detainee program, EUROPEAN COURT OF HUMAN RIGHTS, ECHR 196 (2018).

<sup>37</sup> International Rehabilitation Council for Torture Victims, available at <https://irct.org/what-we-do/rehabilitation-of-torture-victims>; See also ECtHR decision in *El Masri v. the Former Yugoslav Republic of Macedonia*, Application no. 39630/09; *Nasr and Ghali v Italy*; *Al-Nashiri v Romania* and *Abu Zubaydah v Lithuania*.

<sup>38</sup> <https://www.amnesty.org/en/latest/news/2022/01/20-years-biden-must-close-guantanamo/>

<sup>39</sup> *Ibid*. When the Court ordered this judgment, Mr. al-Nashiri’s case was still pending before the U.S. Military commission. His case is currently still pending.

<http://www.mc.mil/Cases.aspx?caseType=omc&status=1&id=34> (last visited 30 Nov. 2018).

<sup>40</sup> See *Baldeón García v. Perú*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 147, 23 (Apr. 6, 2006). Court ordered Perú to publish the Court’s judgment (§ 62-3) and to investigate, identify, prosecute and punish those responsible for the death of Bernabé. (§ 63) Court ordered the “highest ranking State authorities” to publicly apologize and assume liability for the murder of Bernabé, (§63).

humanity. The Inter-American Commission on Human Rights has also made significant interventions regarding the continued detention of persons at Guantanamo Bay, setting out the international legal basis which mandates closure of the detention facility.<sup>41</sup>

14. The abject lack of criminal accountability for the practice of systematic torture and rendition is inconsistent with States' international law obligations. Despite a plethora of evidence including from former detainees, allied with public identification of those who authorised, enabled, and carried out systematic practices of torture and rendition there appears to be a 'pact of forgetting', a collective amnesia as regards the responsibility to account for past serious violations of international law. In particular, the tendency of new political administrations to emphasize "moving forward" without fully accounting for and taking responsibility for the State's past wrongdoings is deeply regrettable.<sup>42</sup> The Special Rapporteur acknowledges the importance of independent parliamentary investigations and oversight into rendition and torture practices, affirming, for instance, the value of the investigation conducted by the US Senate Select Committee on Intelligence.<sup>43</sup> She regrets that numerous states have evidenced no interest in holding persons responsible for facilitating or carrying out acts of torture. She underscores that there is no international statute of limitations on serious breaches of international law, that the *jus cogens* status of torture means that persons responsible may be subject to universal jurisdiction, and that continued and sustained attention to the scale and impact of these harms will not diminish over time.

## B. The Need for Reparations and Remedy

15. The scale and consequences of secret detention and its associated practices for individuals and their families underscores the necessity of comprehensive reparations and remedy. The failure to provide such remedy following detention and torture functions as a secondary harm in its own right. An essential starting point to remedy is to identify precisely and publicly how many individuals were subject to these practices.<sup>44</sup>

16. The Convention Against Torture as well as the collective jurisprudence of regional and international courts requires reparations from harm committed in breach of human rights treaty obligations.<sup>45</sup> Reparations for victims of torture can include criminal penalties, compensation, rehabilitation, measures of non-repetition, restitution, and satisfaction. Compensation should be prompt, fair, and adequate, covering "any economically assessable damage," including medical expenses, loss of earnings, and lost educational opportunities.<sup>46</sup> Measures of non-repetition, which may include mechanisms to monitor future abuses, "strengthening the independence of the judiciary," and changes in legislation or policy, should actively address any cultures of impunity.<sup>47</sup> Similarly, satisfaction and "the right to truth," which recognizes the harm suffered by the victims, is a reparative measure designed to prevent ongoing and future violations, and may include sanctions, formal declarations and apologies, and memorials and tributes to the victims.<sup>48</sup>

17. Rehabilitation, on the other hand, is a process; it recognizes that victims may need medical, psychological, legal and social services to restore their independence and full participation in society.<sup>49</sup> To promote victim agency, rehabilitative measures should address

<sup>41</sup> IACHR, *Towards the Closure of Guantanamo*, OAL/Ser.L/V/II Doc. 20/15, 3 June 2015 para 3.

<sup>42</sup> See, e.g., Attorney General Eric Holder regarding a preliminary review into the interrogation of certain detainees (24 Aug. 2009).

<sup>43</sup> Report of the U.S. Senate Select Committee *supra* note 18., <https://www.intelligence.senate.gov/sites/default/files/publications/CRPT-113srpt288.pdf>.

<sup>44</sup> This would include providing information on how many persons have had a remedy for torture. This question was posted to the US in its appearance before the CAT by Jens Modvig country rapporteur (2014), <https://www.scribd.com/doc/247753774/CAT-Complete-Transcript>.

<sup>45</sup> Article 14, CAT,

<sup>46</sup> CAT, General Comment No. 3, ¶ 10 (Nov. 19, 2012).

<sup>47</sup> *Ibid.* at ¶ 18.

<sup>48</sup> *Ibid.* at ¶ 16; See, Dr. Clara Sandoval Villalba, *Rehabilitation as a Form of Reparation under International Law*, in *Redress 4* (Dec. 2009).

<sup>49</sup> *Ibid.* at ¶ 11.

individual needs in the context of their cultural, social, and political background.<sup>50</sup> Ultimately, reparations for victims of torture and extraordinary rendition must be “comprehensive,” incorporating “the full scope of measures required to redress violations[.]”<sup>51</sup>

18. By recognizing that torture destroys a victim’s sense of dignity, and therefore threatens the very concept of liberty underlining all rights bearing societies, comprehensive reparations must address the substantive barriers to liberty. This includes compensation, education, housing assistance, medical care, access to job training, all of which raise the standard of living of victim groups, promoting their survival and participation in society.<sup>52</sup> Therefore, a comprehensive reparations package, for the victim, their family, and their community, constitutes the state’s recognition that the dignity and liberty of all persons is a fundamental human right.

19. Adequate reparation includes an obligation to compensate individual victims as appropriate and proportionate to the violation in each case.<sup>53</sup> When violations of non-derogable and *jus cogens* norms occur combined with systematic violations, monetary compensation is a necessity. Monetary compensation can be for pecuniary damage (monetary harm), non-pecuniary damage (moral injury), and costs and expenses.<sup>54</sup> Some countries have given monetary compensation for rendition and torture practices although it is notable that the process of securing such remedy is arduous and has been the exception rather than the rule.<sup>55</sup> While monetary compensation is far from *restitutio in integrum*, it is an important recognition of the harms experienced by both direct and indirect victims of secret detention. The Special Rapporteur notes with profound concern that while in some cases, monetary awards have been awarded to a small number of persons who were subject to rendition and torture in post 9/11 secret detention cases,<sup>56</sup> their access to funds has been denied in practice because they remain incarcerated in Guantanamo Bay or remain designated on terrorism watchlists despite there never having been a human rights compliant determination of any alleged criminal acts.

20. Regional human rights courts have recognized that monetary compensation is an insufficient remedy at the individual level and structural level to function as a barrier to ongoing or future harm.<sup>57</sup> An array of measures are being deployed including ordering the reopening of criminal proceedings, requesting injunctive relief in arbitrary detention cases, mandating robust assurances and oversight to prevent harms to persons being transferred from one territory to another. For example, in *Al Nashiri v. Poland* the ECHR identified diplomatic assurances as an individual measure affirming that they are especially applicable in extraordinary rendition cases, given that the victim is exposed to a serious risk of ill-treatment or the death penalty in another country and that these renditions lack any process

<sup>50</sup> International Rehabilitation Council for Torture Victims, available at <https://irct.org/what-we-do/rehabilitation-of-torture-victims>.

<sup>51</sup> CAT General Comment 3, *supra* note 46, at ¶ 19.

<sup>52</sup> CAT General Comment 3, *supra* note 46, at ¶ xx.

<sup>53</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation, GA Res 60/147 (16 December 2005).

<sup>54</sup> See e.g. *Ringeisin v. Austria*, App. No. 2614/65, Eur. Ct. H.R. ¶ 107–09.

<sup>55</sup> See e.g. UK settlement of £500,000 to Fatima Boudchar, a victim of the CIA’s rendition program, kidnapped and tortured when she was four and a half months pregnant and released shortly before giving birth; 2005, Swedish investigation of the rendition of Mohammed El-Zari and Ahmed Agiza, both Egyptian citizens finding violations by the Swedish police of Article 3 ECHR. The Chancellor of Justice ordered 3,160,000 Swedish krona be paid to El-Zari as compensation (2008). A similar amount was paid to Agiza.

<sup>56</sup> See *Al Nashiri v. Romania*, App. No. 33234/12, Eur. Ct. H.R. ¶ 750 (judgment, May 31, 2018)(100.000 Euro awarded); *Al-Nashiri v. Poland*, App. No. 28761/11, Eur. Ct. H.R. ¶ 595 (judgment, July 24, 2014) (100.000 Euro awarded); *Husayn (Abu Zubayday) v. Poland*, App. No. 7511/13, Eur. Ct. H.R. ¶ 567 (judgment, July 24, 2014) (100.000 Euro awarded); *El-Masri v. Former Yugoslav Republic of Macedonia*, App. No. 39630/09, Eur. Ct. H.R. ¶ 270 (judgment, Dec. 13, 2012) (60,000 Euro awarded); *Zubaydah v. Lithuania*, App. No. 46454/11, Eur. Ct. H.R. (judgment, May 31, 2018); *Al Nashiri v. Romania*, App. No. 33234/12, Eur. Ct. H.R. (judgment, May 31, 2018).

<sup>57</sup> *Papamichalopoulos v. Greece*, App. No. 144556/89, Eur. Ct. H.R. (judgment, June 24, 1993).

or protection of law.<sup>58</sup> The Court here required Poland to take all possible steps to obtain diplomatic assurances from the United States that the individual rendered through Poland would not be subject to torture or serious ill-treatment.<sup>59</sup>

### C. National Legislation

21. The Joint Study recommended that secret detention be strictly prohibited by national law.<sup>60</sup> Regretfully, little significant progress has been made on this recommendation from the majority of States whose practices were directly addressed in the Joint Study.<sup>61</sup> Positively some countries have moved decisively to domesticate torture crimes. For example, through the Crimes Legislation Amendment Act of 2010, Australia has set the penalty for torture at a 20-year imprisonment.<sup>62</sup>

22. The Joint Study also recommended that States ratify the Optional Protocol to the Convention against Torture and establish independent national preventative mechanisms that are Paris Principles compliant. Unfortunately, progress on robust and adequately resourced preventative mechanism remains nascent in a number of countries listed in the Joint Study.<sup>63</sup>

### V. Ongoing Violations

23. The legacy of secret detention and torture does not exist in a distant past. Harms continue to be experienced to the present.<sup>64</sup> The Special Rapporteur acknowledges that the United States Executive has made commitments to transfer eligible detainees from the detention facility at Guantanamo Bay and to close the facility.<sup>65</sup> Still, 39 Muslim men remain detained at the detention facility,<sup>66</sup> at an estimated cost of \$540 million per year, \$13 million per detainee. Many of these men are entering their 20<sup>th</sup> year in the custody of the United States. Many of the men are torture survivors. Twelve of them have been charged<sup>67</sup> with terrorism related crimes and are being processed through the military commission system, which in the view of the Special Rapporteur may fail to meet the requirements of fair trial and procedure required by international law.<sup>68</sup> By their very construction – as specially constituted, exceptional bodies with more permissible evidentiary and procedural standards

<sup>58</sup> Al-Nashiri v. Poland, App. No. 28761/11, ¶ 588–89.

<sup>59</sup> *Id.* ¶ 587.

<sup>60</sup> A/HRC/13/42 ¶ 292 (a).

<sup>61</sup> Oxford Pro Bono Publico A Report for the UN OHCHR, (2016) confirming the lack of express legislation or statutory instruments in the United Kingdom, Canada, Ireland, India, Italy, France, Germany, Czech Republic, Poland, and China.

<sup>62</sup> *Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Act 2010*, pt. 1 § 274.1(1)-(2) (Austl.).

<sup>63</sup> A/HRC/43/46/Add.1

<sup>64</sup> UN Experts, “Ugly Chapter of Unrelenting Human Rights Violations” (10 January 2022) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=28017&LangID=E>

<sup>65</sup> See, e.g., Background Press Call by Senior Administration Officials on Guantanamo Bay, White House Press Briefing (19 July 2021); U.S. Executive Order 13492 (22 Jan. 2009).

<sup>66</sup> On Feb. 17th 2022, the US announced that a seriously mentally ill detainee Mr. al-Qahtani who has been subject to prolonged torture in custody would be transferred to Saudi Arabia in the coming months. Noting further the transfer of Abeullatif Nasser from Guantanamo Bay Cuba to Morocco in July 2021. He was immediately arrested on return on suspicion of committing terrorist acts. His release was ‘subject to security and humane treatment assurances’. <https://www.defense.gov/News/Releases/Release/Article/2698321/guantanamo-bay-detainee-transfer-announced/>. The SR notes her concerns about the functionality of such assurances in preventing further harm.

<sup>67</sup> Only 1% of all prisoners ever held at Guantanamo have so far been convicted by a military commission; in two of those eight cases the material support conviction was subsequently overturned on appeal by federal courts.

<sup>68</sup> The SR particularly singles out the trial associated with the September 11<sup>th</sup> attacks as profoundly flawed including by lacking equality of arms, predictability, and clarity of legal process, insufficiently independent of the executive and neither meeting the rights of the victims of terrorism to speedy and fair resolution of the violation of their right.

than criminal courts, including vis-à-vis classified evidence – the military commissions infringe on equal protection rights and fair trial guarantees, including the right to a ‘fair and public hearing by a competent, independent and impartial tribunal.’<sup>69</sup> Moreover, the continued, indefinite detention of certain detainees without charge or trial plainly contravenes the minimum guarantee of a trial without undue delay. The Special Rapporteur on torture, supported by this mandate, has determined that the ongoing conditions at Guantanamo Bay constitute circumstances that meet the threshold of torture, cruel, inhuman, and degrading treatment under international law.<sup>70</sup> These men live with the profound psychological and physical trauma of torture. No adequate torture rehabilitation program has been made available to them, and the continuation of their detention in the site where they experienced such profound violations constitutes an unrelenting violation of their fundamental and non-derogable human rights.<sup>71</sup> These men are aging rapidly and have increasingly complex medical conditions, including severe coronary vascular disease, complex post-traumatic stress disorder, and traumatic brain injury.<sup>72</sup> The resources needed to address their medical and psycho-social needs are not available at the detention facility.<sup>73</sup> Their continued detention in this facility is inconsistent with the international law obligations of the United States. Recognizing that the US Congress has acted to thwart the transfer of these individuals to the US mainland and to certain enumerated foreign countries,<sup>74</sup> the entire range of options available to the United States executive should be activated to ensure resolution of their detention including release, transfer with adequate human rights assurances, reparations for harm and ongoing human rights monitoring in countries of nationality or safe third countries if non-refoulement concerns mean resettlement elsewhere.

24. Consistent with her attention to the consequences of counter-terrorism measures on the rights of women, girls, and families<sup>75</sup> the Special Rapporteur draws attention to the unrelenting rights violations experienced by the families of persons subject to rendition and torture. Families of persons detained, disappeared, tortured, and imprisoned for years without trial have experienced unending violations of their right to family and intimate life, practices which should not be tolerated by civilized societies.<sup>76</sup> Children have grown up without fathers, the most intimate parts of family life have been destroyed, life rituals and cycles have been lost and no remedy can compensate adequately for these incommensurable losses. The 2010 Joint Study rightly identified the families of individuals subject to secret detention as victims in their own right,<sup>77</sup> and the Special Rapporteur concurs with that view, underscoring that the harms to families, spouses, and children have only augmented over time. She emphasizes that family members of persons detained in contexts justified by counter-terrorism must be informed of the capture, location, and legal status of their relatives. Families are entitled to regular updates on the health of their family members and given the right to input meaningfully into medical decision-making for family members who remained detained.<sup>78</sup> Reparation and remedy is due to family members for the harms endured in their own right because of secret detention and the treatment suffered as a result.

25. Over the course of the past 20 years, hundreds of men have been transferred out of the detention facility at Guantanamo Bay.<sup>79</sup> Some were returned to countries of nationality, others to agreed third countries. Countless other were transferred from “black sites” to third

<sup>69</sup> ICCPR, art 14; see also *Guantánamo and Beyond: Exceptional Courts and Military Commissions in Comparative Perspective* (2013), chs. 6-7, 14-15.

<sup>70</sup> USA 5/2020; USA 17/2020; USA 22/2017; USA 20/2013; USA 32/2012.

<sup>71</sup> SR highlights the relevance of the judicial concept of continuous violation, developed in European regional human rights treaty jurisprudence see e.g. *Loizidou v. Turkey*, Application no. 15318/89, 18 December 1996.

<sup>72</sup> CVT & PHR, *Deprivation and Despair: The Crisis of Medical Care at Guantanamo* (2019).

<sup>73</sup> E.g., any condition that requires magnetic resonance imaging (MRI), computerized tomography (CT scans), or cardiac catheterization cannot be treated adequately at the detention facility.

<sup>74</sup> U.S. S. 1605, National Defense Authorization Act for Fiscal Year 2022, sections 1032, 1033.

<sup>75</sup> A/HRC/46/36.

<sup>76</sup> *Ibid* ¶ 12.

<sup>77</sup> A/HRC/13/42 ¶ 29.

<sup>78</sup> A/HRC/13/42 ¶ 292 (c).

<sup>79</sup> Per the Guantanamo Docket 733 transfers confirmed

(<https://www.nytimes.com/interactive/2021/us/guantanamo-bay-detainees.html>)

countries or countries of nationality where they experienced further egregious human rights violations. For these men the scale and consequences of their prior and ongoing human rights violations is forgotten and largely ignored. Transfers of these detainees were often informal, operating as matter-of-fact systems between governments and security/intelligence services to move persons from one country to another to enable, continue or maintain detention and/or torture practices. As knowledge of secret detention became widespread, and governments were required to account in some way for the persons over whom they had effective control, transfers were facilitated by a variety of means including extradition,<sup>80</sup> assurances, and expulsions.<sup>81</sup> In all contexts, informal and formal transfers of persons previously subject to secret detention has raised serious human rights concerns, many ongoing and unresolved.

26. Life after Guantanamo has been described by former detainees as “its own kind of prison”.<sup>82</sup> Transfers often led to further imprisonment under harsh high-security regimes or in rehabilitation centres, raising fundamental concerns about the protection of fundamental rights and the adequacy of judicial oversight.<sup>83</sup> For those resettled in third countries where they had no family, cultural, social or economic ties the process of establishing a normal and dignified life has been painful and obstructed by structural and administrative barriers. In multiple cases, those resettled subsist with precarious immigration status, lack of national identification paper, limited access to social security, and medical care compounding ongoing insecurities and fears.<sup>84</sup> In no case that the Special Rapporteur has reviewed (Annex 1) has there been adequate and ongoing medical care including psychological treatment provided to individuals who were systematically tortured and subject to rendition. Individuals face ongoing surveillance, many are on ‘no-fly’ lists unable to leave the country they have been settled to, most have struggled to maintain family and intimate relationships, most have struggled to make up the educational and social deficits that followed directly from their rendition and torture, few have been able to thrive economically, many face penury, and all suffer long-term trauma from the violence and harms they experienced. The governments responsible for their torture and rendition have been largely unresponsive or dismissive of any reparations or remedy claims these men have.

## VI. The Evolution of Secret Detention Practices

27. More broadly, the Special Rapporteur observes with great concern that ‘secret’ detention has evolved in the past two decades to encompass more complex and multifaceted forms of formally lawful transfer. In counter-terrorism/national security contexts extradition, rendition to justice’, extraterritorial operations, expulsion and the use of diplomatic assurance have become essential tools for States.<sup>85</sup> The Special Rapporteur recognizes the value of formal legal processes such as extradition to address crimes that relate to gross violations of human rights including torture, crimes against humanity, disappearances, and war crimes particularly when there is an obligation on States to prosecute or extradite for prosecution, an accused person. She is deeply concerned about the by-passing of such formal extradition arrangements in counter-terrorism and national security cases,<sup>86</sup> as well as the weakening of human rights guarantees in extradition proceedings.<sup>87</sup> Her concerns are amplified by the lack

<sup>80</sup> The UNODC Model Law on Extradition defines ‘extradition’ as ‘the surrender of any person who is sought by the requesting State for criminal prosecution for an extraditable offence or for the imposition or enforcement of a sentence in respect of such an offence’ Part 1, Section 1.

<sup>81</sup> See ICJ, *Transnational Injustices: National Security Transfers and International Law* (2017).

<sup>82</sup> Narratives and books by former prisoners have given detailed insight into their conditions of living see e.g. Hisham Bin Ali Bin Amor Sliiti and Hussein Salim Al-Marfadi (Slovakia). ECCHR, *Rupture and Reckoning: Guantánamo Turns 20* (2022) <https://www.ecchr.eu/en/guantanamo20/>.

<sup>83</sup> A/HRC/40/52/ Add. 2 ¶ 58.

<sup>84</sup> Noting the cases of Mr Quraishi and Mr Al-Gbari transferred from Guantanamo Bay to Kazakhstan A/HRC/43/46/Add.1 para. 54 (both were detained without trial for 10 years, and despite assurances do not, to this day, have clear legal status).

<sup>85</sup> Noting the language of the GA calling on MS to enhance their cooperation on extradition or prosecution of “international terrorists” (e.g. G.A. Resolution 34/145, para 11).

<sup>86</sup> While not mandatory under international law to have an extradition treaty in place to enable transfer, she stresses that an such arrangements must conform with other international legal obligations.

<sup>87</sup> *Zhakhongir Maksudov and others v. Kyrgyzstan*, CCPR, para. 10.2

of a globally agreed definition of terrorism and (violent) extremism and the widespread failure to define acts of terrorism in concrete and precise ways in national legislation.<sup>88</sup> The result, has been an increasingly evident practice of transfers justified under the banner of countering terrorism or extremism which engage non-refoulement concerns and result in transfer for persons who have in fact engaged in activities (expression, assembly, participation in public affairs) protected under international law.<sup>89</sup> She is particularly concerned at the scale and consequences of such practices involving the Russian Federation and countries in the CIS region. She highlights that the practices of lawful transfer appear to target minorities, religious and ethnic groups and as such raise profiling and non-discrimination concerns.<sup>90</sup>

28. The Special Rapporteur further observes significant resort to the use of diplomatic assurances in counter-terrorism and national security transfers, as States seek to discharge their obligations of non-refoulement. Here the requesting State seeks written guarantees from the authorities of the destination State undertaking that the person concerned will not be subject to certain practices. She acknowledges that diplomatic assurances have played a positive role in preventing the application of the death penalty in transfer cases.<sup>91</sup> But, in general, she takes the view that the practice of diplomatic assurances in counter-terrorism and national security related transfers has been largely ineffective and quite cynical in seeking to circumvent fundamental treaty and customary law obligations.<sup>92</sup> She notes that such assurances are never enforceable, as they do not typically have legal effect and are not justiciable. Multiple UN human rights entities have made clear that such assurances do not relieve States of their non-refoulement obligations, and thus do not permit transfers that would otherwise be prohibited.<sup>93</sup>

## VII. Consequences of Failure to Address Secret Detention Practices: Contemporary Sites of Secret and Arbitrary Detention

29. The Joint Study surveyed the practices of multiple countries engaged in secret detention and rendition, which shed significant light on what can only be considered as a pattern of externalisation of measures adopted in the name of counter-terrorism aimed at displacing States' human rights obligations to circumvent accountability processes. One consequence of the Study was to illustrate the pervasive and widespread effect that a permissive global environment led by powerful States has on the normalization and entrenchment of secret detention as an accepted practice. The Study revealed the breath and scope of secret detention and rendition and the failures of multiple States to act on their international (and domestic) law obligations to prevent such practices. A resounding concern of this follow-up report is the lived reality of ongoing arbitrary detention, the failure to prosecute those responsible for grave violations of international law, *de facto* amnesty for scores of persons who have authorized, enabled, or committed systematic torture and the lack of bright lines being drawn ensuring that such practices are fundamentally unacceptable and will not be tolerated by civilized societies. The failure to address the legacy and responsibility for the past has created an enabling and permissive global environment in which mass arbitrary detention, systematic torture, cruel, inhuman, and degrading treatment and the spectre of detention from cradle to grave is tolerated. Two specific examples

<sup>88</sup> SR Comments on Legislation and Policy found here:

<https://www.ohchr.org/EN/Issues/Terrorism/Pages/LegislationPolicy.aspx>

<sup>89</sup> See e.g. *Toirjon Abdussamatov and others v. Kazakhstan*, CAT, Communication No. CAT/C/48/D/444/2010, 1 June 2012

<sup>90</sup> Nothing the Chisinau Convention prohibits extradition where there are reasonable grounds to believe that the request has been undertaken for the purpose of persecution on the grounds of race, sex, religion, ethnicity or political opinion.

<sup>91</sup> See e.g. cases of *Alexandra Kotey* and *El Shafee Elsheikh*.

<sup>92</sup> UN Special Rapporteur on Torture, Annual Report to the General Assembly, UN Doc. A/60/316, 30 August 2005 (Nowak Report 2005)

<sup>93</sup> *CAT/C/USA/CO/2*, para. 21; *A/HRC/13/39/Add.5*, para. 243-4; *A/HRC/4/88*; *CAT, Agiza v. Sweden*, 20 May 2005; *HRC, Alzery v. Sweden*, 25 October 2006.

illustrate the Special Rapporteur's profound concern that the failure to address the recommendations made in the 2010 Study have a direct relationship to contemporary tolerance for a similar scale and type of violations.

30. **North-East Syria:** The establishment of multiple detention sites in North-East Syria has a complex history. These detention sites are currently predominantly administered by non-State actors—including the Syrian Democratic Forces (SDF), although there are reports of detention carried out by, or at the behest of, foreign governments.<sup>94</sup> There are multiple known and unknown sites of detention in the territory in which thousands of men, women, and children are detained without any legal process and subject to conditions which the Special Rapporteur finds meet the threshold for torture, cruel, inhuman, and degrading treatment under international law.<sup>95</sup> The maintenance of these individuals in a legal limbo, a human rights black hole, detained by unrecognised authorities, for which no State is willing to take any human rights responsibility, finds roots in the extraterritorial practices of rendition and secret detentions abroad described in the 2010 Study.

31. In 1991, Al Hawl camp was established by the United Nations High Commissioner for Refugees to hold approximately 15,000 people. It expanded further in the early 2000s. In 2018, the camp hosted approximately 10000 individuals, largely Iraqi nationals, but this number grew to approximately 73 000, between December 2018 and March 2019, largely surpassing the capacity, due to the further deprivation of liberty of a large number of persons fleeing conflict in the territory. It is estimated that in Al Hawl approximately 11,000 detainees are third country nationals and over 94% are women and children. In parallel, other camps have been established including Roj camp, containing approximately 2,500 persons of which over half are children deprived of liberty. In these makeshift locked camps made up of unstable tent-like structures which collapse in strong winds or flood with rain or sewage, hygiene is almost non-existent: limited drinking water is often contaminated, latrines are overflowing, mounds of garbage litter the grounds, and illnesses including viral infections are rampant. Food, water, health care and essential non-food supplies are provided by under-resourced humanitarian groups and organisations. No legal process of any kind has been established to justify the detention of these individuals. No public information exists on whom precisely is being held in these camps, contrary to the requirements of the Geneva Conventions that detention records be kept and identify both nationality and the legal basis of detention. It is understood that individuals have been smuggled out of the camps, and the Special Rapporteur underscores her concerns about the enabling environment this situation creates for trafficking in person. These camps epitomize the normalization and expansion of secret detention practices in the two decades since the establishment of the detention facility at Guantanamo Bay, Cuba. The egregious nature of secret, incommunicado, harsh, degrading, and unacceptable detention is now practiced with impunity and the acquiescence of multiple States.

32. She highlights that since 2019, there are approximately 10,000 men and 750 boys, some as young as nine, detained for alleged association to ISIL in approximately fourteen detention centers throughout North-East Syria, mostly converted schools and hospitals. Of these at least 2,000 men and 150 boys are third country nationals. Most of these boys were transferred from the camps of al-Hawl and Roj, some taken away from the care of their mothers and separated from siblings. None of these detention sites or "prisons" meet the UN Mandela Standards. No judicial process has determined the legality or appropriateness of their detention. There are also reports of incommunicado detention. A recent attack on the Al-Sina'a prison in Hassakah prison underscores the scale of security and human rights

<sup>94</sup> TUN 6/2021

<sup>95</sup> AFG 3/2020; ALB 1/2021; DZA 1/2021; AUS 1/2021; AUT 1/2021; AZE 2/2021; BGD 1/2021; BEL 1/2021; BIH 1/2021; CAN 1/2021; CHN 1/2021; DNK 1/2021; EGY 1/2021; EST 1/2021; FIN 1/2021; FRA 6/2020; GEO 1/2021; DEU 3/2021; IND 1/2021; IDN 1/2021; IRN 30/2020; KAZ 2/2021; KGZ 1/2021; LBN 1/2021; LBY 1/2021; MYS 3/2020; MDV 1/2021; MAR 1/2021; NLD 1/2021; MKD 1/2021; NOR 1/2021; PAK 14/2020; PHL 2/2021; POL 1/2021; PRT 1/2021; ROU 2/2021; RUS 1/2021; SAU 14/2020; SEN 1/2021; SRB 1/2021; SOM 2/2020; ZAF 1/2021; ESP 1/2021; PSE 1/2021; SDN 1/2021; SWE 1/2021; CHE 1/2021; TJK 1/2021; TTO 1/2021; TUN 1/2021; TUR 2/2021; UKR 1/2021; GBR 2/2021; USA 8/2021; UZB 1/2021; VNM 1/2021; YEM 4/2020

challenges perpetuated by the continued existence of sites of detention to which no form of legal process or regulation applies. This system of detention is secret detention in mass and extreme form. States that directly support or enable the building and maintenance of prisons within which no legal norms apply are, in the Special Rapporteur's view, complicit or responsible through the application of extra-territorial human rights obligations for the human rights violations that occur within them.

33. **Xinjiang, China;** Practices of arbitrary mass and secret detention with other serious violations of international law directed at the Uyghurs and other ethnic groups in the Xinjiang Uyghur Autonomous Region (XUAR) have been the subject of significant communications by United Nations Special Procedure mechanisms. Communications have been issued by the Special Rapporteur on the protection and promotion of human rights and fundamental freedoms while countering terrorism,<sup>96</sup> the Working Group on Arbitrary Detention,<sup>97</sup> and other mandate holders.<sup>98</sup> This Report reiterates and highlights ongoing concerns about the conditions in such facilities including the practice of 're-education' which impinges on the most fundamental of rights including deprivation of liberty, the integrity of family life including forced separation, freedom of expression, freedom of association, right to hold and practice religious belief, cultural rights and fundamental economic and social rights. The assertion that mass detention and incommunicado detention is justified by 're-education' to prevent extremism is inconsistent with the governments' international law obligations. The Special Rapporteur has consistently held that the term "extremism" has no purchase in binding international legal standards, and when operative as a criminal legal category is irreconcilable with the principle of legal certainty and is therefore, *per se*, incompatible with the exercise of certain fundamental human rights. She notes that at the 40th session of the Human Rights Council, the UN High Commissioner for human rights called for independent assessment of the continuing reports pointing to wide patterns of enforced disappearances and arbitrary detentions. She takes notes of multiple resolutions in the General Assembly Third Committee (Oct 2019), the Human Rights Council (June 2020), the General Assembly Third Committee (Oct 2020) and the Human Rights Council (June 2021) expressing growing concerns expressed by States about the practice of mass detention and associated human rights violations in Xinjiang. The ongoing flow of credible information pointing to a sustained practice of mass arbitrary detention affirms the pressing need for independent human rights assessment and accountability for violations of international law. In addressing extradition or transfer to China of persons from such minority and ethnic groups the Special Rapporteur has found that any request to expulse, return or extradite a person to another State where there are substantial grounds for believing that he or she would face the risk of being tortured, the principle of non-refoulement must be fully respected.<sup>99</sup>

34. The Special Rapporteur also highlights credible information regarding extensive and sustained ill-treatment occurring *inter alia* in these detention facilities.<sup>100</sup> The UN Working Group on human rights and transnational corporations and seven other independent human rights mandates have raised profound concerns about forced labour, human trafficking, and enslavement in the context of arbitrary detention<sup>101</sup> The Experts have specifically highlighted the discriminatory aspect of such serious rights-abusing practices with Muslim Uyghurs being directly targeted and subjected to multiple practice which are not compliant with international law, including the rights of minorities. The Special Rapporteur affirms these concerns. As noted previously in this Report, when state practices give rise to the concern that systematic and grave violations of international law may be occurring, particularly where they may reach the threshold of crimes against humanity, it is imperative that free and unhindered access, meaningful fact-finding missions and close scrutiny are guaranteed. It

<sup>96</sup> CHN 18/2019; CHN 21/2018.

<sup>97</sup> CHN 4/2021; CHN 14/2020.

<sup>98</sup> OHC "UN experts call for decisive measures to protect fundamental freedoms in China" <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26006> 10/06/2021; CHN 18/2020; CHN 3/2014; CCPR Communication No. 2024/2011.

<sup>99</sup> A/HRC/43/46.Add.1 para 51.; CHN 3/2022.

<sup>100</sup> She also notes her deep concerns about the role of global and domestic companies in such practices. *Ibid.*

<sup>101</sup> 168 letters to States and Business entities (March 29, 2021)

remains highly regrettable that neither the High Commissioner for Human Rights nor the several mandate holders who have sought to conduct official visits to China to engage constructively on such issues have been able to do so.

## VIII. Conclusion

35. The Special Rapporteur underscores the absolute impermissibility of secret detention, rendition, incommunicado detention, disappearances, arbitrary detention and associated practices of torture, cruel, inhuman and degrading treatment under international law. She stresses the necessity of accountability and remedy for the systematic use of these practices in the aftermath of the events of September 11, 2001. Impunity for serious violations of international law breeds permissibility for further violations of international law. The failure to reckon with responsibility for these gross violations has created an enabling environment in which States appear empowered to engage in or support mass secret detention with few consequences. The Special Rapporteur urges States to right and remedy the past and to squarely face contemporary practices of mass arbitrary detention and deem them unacceptable to the rule of law and the vision of human rights and contained in the UN Charter.

## IX Recommendations

### A. States

36. The Special Rapporteur recommends that:

(a) States renew their commitment to accept and implement the recommendations of the 2010 Joint Study. Specifically:

(i) States must pass clear and express domestic legislation prohibiting the practice of secret detention and other forms of unofficial detention;

(ii) States must prosecute without delay individuals who participated in secretly detaining persons and in any unlawful acts perpetrated during such detention, including their superiors if they have ordered, encouraged, or consented to secret detentions and, where found guilty, they must be given sentences commensurate with the gravity of the acts perpetrated;

(iii) States cannot use trans-border cooperation to engage in secret detention, extraordinary rendition, or formally lawful transfer that functions in practice to seriously compromise the fundamental human rights of individuals;

(iv) States must provide protection to persons who have been subject to rendition or secret detention and prevent reprisals given the significant consequences for them and their families that follow from speaking out about the violations they have experienced;

(v) Intelligence agencies must be subject to independent oversight in national legal systems to prevent abuse and ensure that their actions are in conformity with international norms;

(vi) States identified in the Joint Study should ratify the OPCAT and establish monitoring systems to prevent torture including Paris Principle compliant national preventative mechanisms;

(vii) States whose nationals are being held in secret detention must protect their citizens abroad by providing effective consular assistance.

(viii) States credibly alleged to have facilitated the use of their airspace and landing facilities for CIA rendition flights, must review their domestic law and

practice, including a review of the investigations, if any, that have so far been conducted by their national authorities.

(b) Given the persistent human rights violations associated with security related cross-border transfers the Special Rapporteur calls on the Human Rights Council to directly address the need for augmented human rights protection and enforcement in such contexts.

(c) National courts must ensure that transfer agreements in the context of counter-terrorism and security agreements between states are robustly reviewed to ensure that the principle of non-refoulement is upheld. Where human rights have been violated in transfer cases, effective judicial remedies, and other remedies and reparations must be available to respond to violations.

(d) Transfers in violation of human rights will not be prevented unless there is accountability for violations of the past. States must remove barriers to accountability for renditions, including restrictive rules relating to State secrets, and other doctrines such as 'political question' and 'act of State' that function to frustrate the right to an effective remedy.

(e) Extradition and expulsion proceedings with a counter-terrorism or national security basis must incorporate States' international law obligations including human rights, international humanitarian and refugee law. Such proceeding must always be conducted by a judicial authority.

## B. Country-Specific Recommendations

37. The Special Rapporteur calls:

(a) for the closure of the military detention facility at Guantanamo Bay, Cuba and the transfer of persons that have been detained there to countries of nationality or safe third countries when concerns of non-refoulement apply;

(b) for the establishment of a mechanism to provide adequate remedy to individuals who were secretly detained and identified by the 2010 Joint Study and the United States Senate Intelligence Committee report.

(c) upon the United States government to publish without delay, and to the fullest extent possible,<sup>102</sup> the Senate Select Committee on Intelligence report into the CIA's secret detention, rendition and interrogation programme. Such transparency would ensure that such practices could never again be institutionalized and serve as a model for other countries;

(d) upon the Governments of Lithuania, Morocco, Poland, Romania and Thailand to establish (or, where applicable, to re-open) effective independent judicial or quasi-judicial inquiries into credible allegations that secret CIA "black sites" were established on their territories;

(e) The Special Rapporteur calls for full independent and unhindered access for UN Human Rights entities including the Office of the High Commissioner and United Nations Special Procedures to assess and investigate allegations of systematic human rights violations occurring at detention facilities in Xingang, China.

(f) The Special Rapporteur calls for the immediate closure of any mass arbitrary detention facilities in Xinjiang, China.

(g) The Special Rapporteur calls for the immediate return and repatriation of third country nationals being held in a variety of detention facilities and camps in North-East Syria guided by the principle of non-refoulement, and the establishment of safe third country resettlement if return to countries of nationality is not possible.

(h) The Special Rapporteur calls on the immediate activation of protection for thousands of children secretly and arbitrarily detained in camps, detention, and 'rehabilitation' facilities in North-East Syria. Children should never be victims of secret detention and the full application of human rights law, including CRC and the obligations of international humanitarian law apply to them in full.

<sup>102</sup> A/HRC/22/52.

(i) **The Special Rapporteur calls for continued support to and cooperation with the IIIM Investigation mechanism for Syria to ensure that impunity for grave breaches of international law including arbitrary detention, secret detention, torture, and disappearance.**

## Annex

<i>NAME.</i>	<i>Country of Nationality )</i>	<i>Date and place of capture</i>	<i>Place of detention</i>	<i>What this person subject to a UN communication ?</i>
<b>Abu Zubaydah</b>	Palestine	28 March 2002/Faisalabad	Thailand /Guantanamo	A/HRC/4/40/Add.1.; WGAD, Opinion No. 29/2006
<b>Ramzi Binalshibh (bin al-Shibh )</b>	Yemen	11 September 2002/Karachi	Thailand / Stare Kiejkuty, Poland/ Guantanamo	A/HRC/4/40/Add.1.; WGAD, Opinion No. 29/2006
<b>Abd al-Rahim al-Nashiri</b>	Saudi Arabia	October or November 2003/UAE	Thailand /Poland/ Guantanamo	A/HRC/4/40/Add.1.; WGAD, Opinion No. 29/2006
<b>Khalid Sheikh Mohammed</b>	Pakistan	3 March 2003/ Rawalpindi, Pakistan	Stare Kiejkuty, Poland/ Guantanamo	A/HRC/4/40/Add.1.; WGAD, Opinion No. 29/2006
<b>Mustafa al-Hawsawi</b>	Saudi Arabia	1 March 2003/ Rawalpindi, Pakistan	Guantanamo	A/HRC/4/40/Add.1.; WGAD, Opinion No. 29/2006
<b>Majid Khan</b>	Pakistan	5 March 2003/Karachi	Guantanamo	A/HRC/4/40/Add.1.; WGAD, Opinion No. 29/2006
<b>Waleed Mohammed bin Attash / Khallad</b>	Yemen	29 April 2003 / Karachi	Guantanamo	A/HRC/4/40/Add.1.; WGAD, Opinion No. 29/2006
<b>Ali Abd al-Aziz Ali / Ammar al-Baluchi</b>	Pakistan	29 April 2003 / Karachi	Guantanamo	A/HRC/4/40/Add.1.; WGAD, Opinion No. 29/2006
<b>Mohammed Farik bin Amin/ Zubair</b>	Malaysia	8 June 2003/ Bangkok	Guantanamo	A/HRC/4/40/Add.1.; WGAD, Opinion No. 29/2006
<b>Riduan Isamuddin/ Hambal/ Encep Nuraman</b>	Indonesia	11 August 2003/ Ayutthaya, Thailand	Guantanamo	A/HRC/4/40/Add.1.; WGAD, Opinion No. 29/2006

<i>NAME.</i>	<i>Country of Nationality )</i>	<i>Date and place of capture</i>	<i>Place of detention</i>	<i>What this person subject to a UN communication ?</i>
<b>Mohammed Nazir bin Lep/ Lillie</b>	Malaysia	11 August 2003/ Bangkok	Guantanamo	A/HRC/4/40/Add.1.; WGAD, Opinion No. 29/2006
<b>Gouled Hassan Dourad/ Haned Hassan Ahmad Guleed</b>	Somalia	4 March 2004/Djibouti	Guantanamo	A/HRC/4/40/Add.1.; WGAD, Opinion No. 29/2006
<b>Ahmed Khalfan Ghailani</b>	Tanzania	25 July 2004/ Gujrat, Pakistan	Guantanamo	A/HRC/4/40/Add.1.; WGAD, Opinion No. 29/2006
<b>Abu Faraj al-Libi / Mustafa Faraj al-Azib</b>	Libya	2 May 2005/ Mardan, Pakistan	Guantanamo	A/HRC/4/40/Add.1.; WGAD, Opinion No. 29/2006
<b>12 unidentified detainees</b>			Guantanamo	A/HRC/4/40/Add.1.; WGAD, Opinion No. 29/2006
<b>1 unidentified detainee</b>	Afghanistan			Opinion No. 11/2007 A/HRC/7/4/Add.1.
<b>Mr. Bleier</b>		Oct.1975/Uruguay		Bleier v. Uruguay, communication No. 30/1978, final views of 21 July 1983
<b>Salah Ali</b>	Yemen		Eastern Europe	
<b>Tawfiq [Waleed] bin Attash</b>		Between 2003-2005	Stare Kiejkuty, Poland	
<b>Ahmed Khalfan [al-] Ghailani</b>		Between 2003-2005	Stare Kiejkuty, Poland	
<b>Hassan Gul</b>		2005	Stare Kiejkuty, Poland	
<b>Salah Ahmed al-Salami</b>			Died in Guantanamo (9 June 2006)	
<b>Mani Shaman al-Utaybi</b>			Died in Guantanamo	

<i>NAME.</i>	<i>Country of Nationality )</i>	<i>Date and place of capture</i>	<i>Place of detention</i>	<i>What this person subject to a UN communication ?</i>
<b>Yasser Talal al-Zahrani</b>			Guantanamo (9 June 2006) Died in Guantanamo (9 June 2006)	
<b>Nihad Karsic, Almin Hardaus and six other detainees</b>		Around 25 September 2001	Butmir Base (Sarajevo) /Eagle Base, Tuzla (Bosnia-Herzegovina)	
<b>Mustafa Setmariam Nassar</b>	Spain	October 2005/Pakistan	Pakistan/US military base in Diego Garcia (Indo-Pacific) / Syria / whereabouts unknown	
<b>Abd al-Hadi al-Iraqi</b>			Guantanamo	
<b>Muhammad Rahim</b>	Afghanistan	August 2007/Lahore	Guantanamo	
<b>Abdelghani Saad Muhamad al-Nahi al-Chehri; and Abdurahman Nacer Abdullah al-Dahmane al-Chehri</b>				Opinion No. 12/2006 (A/HRC/4/40/Add.1)
<b>26 detainees</b>				WGAD, Opinion No. 29/2006

<i>NAME.</i>	<i>Country of Nationality )</i>	<i>Date and place of capture</i>	<i>Place of detention</i>	<i>What this person subject to a UN communication ?</i>
<b>Mohammed Omar Abdel-Rahman</b>		2005	Stare Kiejkuty, Poland	WGAD, opinion No. 29/2006 (USA)(A/HRC/4/40/Add.1),
<b>Bisher al-Rawi</b>	Iraq/ British resident	8 November 2002/Gambia	Gambia/ "Dark prison (Afghanistan)/ Bagram/ Guantanamo	
<b>Binyam Mohamed</b>	Ethiopia (UK resident)	10 April 2002/Karachi	Karachi/ Morocco / Bagram /Guantanamo	
<b>Khaled El-Masri</b>	Germany (Lebanese origin)	31 December 2003/ former Yugoslav Republic of Macedonia	Skopje/Salt Pit	
<b>Suleiman Abdallah</b>	Tanzania	March 2003 /Mogadishu	Mogadishu/Nairobi /Salt Pit/ Bagram	
<b>Abu Yahya al-Libi</b>	Libya		Bagram	
<b>Omar al-Faruq</b>	Kuwait	2002/Bogor, Indonesia	Bagram	
<b>Muhammad Jafar Jamal al-Kahtani</b>	Saudi Arabia	November 2006/ Khost, Afghanistan	Bagram	
<b>Abdullah Hashimi/ Abu Abdullah al-Shami</b>	Syria		Bagram	
<b>Report notes 645 individuals held in Bagram in 2009 whose names where</b>			Bagram	

<i>NAME.</i>	<i>Country of Nationality )</i>	<i>Date and place of capture</i>	<i>Place of detention</i>	<i>What this person subject to a UN communication ?</i>
<b>revealed by the US Government</b>				
<b>Ibn al-Sheikh al-Libi</b>		2003/ Peshawar	Afghanistan/ Libya	
<b>Hassan Raba'l</b>		2003/ Peshawar	Afghanistan/ Libya	
<b>Khaled al-Sharif</b>		2003/ Peshawar	Afghanistan/ Libya	
<b>Abdallah al-Sadeq</b>		2004/ Thailand	Afghanistan/ Libya	
<b>Abu Munder al-Saadi</b>			Afghanistan/ Libya	
<b>Hassan Rabba'i/ Mohamed Ahmad Mohamed al-Shoroeiya</b>			Bagram	
<b>Laid Saidi</b>	Algeria	10 May 2003/ Tanzania	Malawi/ Afghanistan/ Tunisia	
<b>Salah Nasser Salim Ali Darwish</b>	Yemen	October 2003/ Indonesia	Jordan/Afghanistan	WGAD (Opinion No. 47/2005) and E/CN.4/2006/6/Add.1, paragraphs 93, 126, 525 and 550.
<b>Mohammed al-Asad</b>	Yemen	October 2003/ Indonesia	Eastern Europe/ Afghanistan	
<b>Mohammed Farag Ahmad Bashmilah</b>	Yemen	October 2003/ Indonesia	Eastern Europe/ Jordan/Afghanistan	WGAD (Opinion No. 47/2005) and E/CN.4/2006/6/Add.1, paragraphs 93, 126, 525 and 550.

<i>NAME.</i>	<i>Country of Nationality )</i>	<i>Date and place of capture</i>	<i>Place of detention</i>	<i>What this person subject to a UN communication ?</i>
<b>Khaled el-Masri</b>	Germany	31 December 2003/ border of the former Yugoslav Republic of Macedonia	Afghanistan	
<b>Khaled al-Maqtari</b>	Yemen	January 2004/ Iraq	Abu Ghraib/ secret detention facility possibly in Eastern Europe	
<b>Marwan Jabour</b>	Jordanian-born Palestinian	9 May 2004/ Lahore	Afghanistan/ Jordan/ Israel/ Gaza	
<b>Murat Kurnaz</b>	Turkey (German resident)	December 2001/Peshawar	Peshawar/Kandahar/ Guantanamo	
<b>Wassam al-Ourdoni</b>	Jordan	Late 2001/ Iranian authorities	Bagram/ Guantanamo	
<b>Aminullah Tukhi</b>	Afghanistan	Late 2001/ Iran	Afghanistan/ Guantanamo	
<b>Hussein Almerfedi</b>	Yemen	Iran	Afghanistan, including Bagram	
<b>Tawfiq al-Bihani</b>	Yemen	Iran	Iran/Afghanistan / Guantanamo	
<b>Rafiq Alhami</b>	Tunisia		Afghanistan/ Guantanamo	

<i>NAME.</i>	<i>Country of Nationality )</i>	<i>Date and place of capture</i>	<i>Place of detention</i>	<i>What this person subject to a UN communication ?</i>
<b>Walid al-Qadasi/Walid Muhammad Shahir Muhammad al-Qadasi</b>	Yemen	Late 2001/ Iran	Afghanistan/ Guantanamo/Yemen	E/CN.4/2006/6/Add.1 ; response from the US GVT (A/HRC/10/44/Add.4; and WGAD, opinion No. 47/2005 (A/HRC/4/40/Add.1)
<b>Soufian al-Huwari</b>	Algeria	2002/ Georgia	Kabul/Bagram/ Guantanamo/Yemen	
<b>Zakaria al-Baidany/Omar al-Rammah</b>	Yemen	2002 in Georgia	Afghanistan/ Guantanamo	
<b>Jamil El-Banna</b>	Jordan/ British resident	November 2002 /Gambia	Afghanistan/ Guantanamo	
<b>Abdul Rahim Ghulam Rabbani</b>	Pakistan	Karachi	Afghanistan/ Guantanamo	
<b>Mohammed Ahmad Ghulam Rabbani</b>	Pakistan	Karachi	Afghanistan/ Guantanamo	
<b>Abdulsalam al-Hela</b>	Yemen	Egypt	Afghanistan/ Guantanamo	
<b>Adil al-Jazeera</b>	Algeria	Pakistan	Afghanistan/ Guantanamo	
<b>Sanad al-Kazimi</b>	Yemen	UAE	Afghanistan/ Guantanamo	
<b>Saifullah Paracha</b>	Pakistan	Thailand	Bagram/ Guantanamo	

<i>NAME.</i>	<i>Country of Nationality )</i>	<i>Date and place of capture</i>	<i>Place of detention</i>	<i>What this person subject to a UN communication ?</i>
<b>Sanad al-Kazimi</b>	Yemen	January 2003/ Dubai	UAE/Kabul/Bagram/ Guantanamo	WGAD, Opinion No.3/2009 (United States of America) (A/HRC/13/30/Add.1)
<b>Redha al-Najar</b>	Tunisia	May 2002/ Karachi	Bagram	
<b>Amine Mohammad al-Bakri</b>	Yemen	28 December 2002/ Bangkok	Bagram	WGAD, Opinion No.11/2007 (Afghanistan/United States of America) (A/HRC/7/4/Add.1)
<b>Fadi al-Maqaleh</b>	Yemen	2004	Abu Ghraib/ Bagram	
<b>Haji Wazir</b>	Afghanistan	Late 2002/ UAE	Bagram	
<b>12 unidentified men</b>			Bagram/ whereabouts unknown	
<b>Issa al-Tanzani/ Soulayman al-Tanzani</b>	Tanzania	Mogadishu	Afghanistan	
<b>Abu Naseem</b>	Libya	Early 2003/ Peshawar	Afghanistan	
<b>Abou Hudeifa</b>	Tunisia	End of 2002/ Peshawar	Afghanistan	
<b>Salah Din al-Bakistani</b>		Bagdad	Afghanistan	
<b>Yassir al-Jazeera</b>	Algeria	March 2003/ Lahore	Afghanistan	
<b>Ayoub al-Libi</b>	Libya	January 2004/ Peshawar	Afghanistan	
<b>Mohammed</b>	Afghanistan / born Saudi	May 2004/ Peshawar	Afghanistan	
<b>Abdul Basit</b>	Saudi Arabia or Yemeni	Before June 2004	Afghanistan	
<b>Adnan</b>		Before June 2004	Afghanistan	

<i>NAME.</i>	<i>Country of Nationality )</i>	<i>Date and place of capture</i>	<i>Place of detention</i>	<i>What this person subject to a UN communication ?</i>
<b>Shoeab as-Somali /Rethwan as-Somali</b>	Somalia		Afghanistan	
<b>Unidentified Somali</b>	Somalia		Afghanistan	
<b>Marwan al-Adeni</b>	Yemeni	Around May 2003	Afghanistan	
<b>Ghost detainees (number unidentified, but in a report issued in August 2004, two high-level US military noted that eight prisoners were denied access to ICRC)</b>			Abu Ghraib, Iraq	
<b>A suspected leader of Ansar al-Aslam, known as "Triple X"</b>			Iraq	
<b>98 deaths in US custody in Iraq, describing 5 deaths in CIA custody, including Manadel al-Jamadi (report of Human Rights First)</b>			Abu Ghrabi and other locations in Iraq	CAT/C/48/Add.3/Rev. 1, para 30; A/HRC/6/17/Add.3, para 36; A/HRC/4/40, para 43 and 50; E/CN.4/2004/3, para 69; A/HRC/4/41; A/60/316, para 45; CAT/C/USA/CO/2, para 20-21 (proxy detention sites)
<b>Jamal Mar'i</b>	Yemen	23 September 2001/Karachi	Jordan/Guantanamo	
<b>Mohamedou Ould Slahi</b>	Mauritanian	28 November 2001/Jordan	Jordan/Afghanistan/	

<i>NAME.</i>	<i>Country of Nationality )</i>	<i>Date and place of capture</i>	<i>Place of detention</i>	<i>What this person subject to a UN communication ?</i>
			Guantanamo	
<b>Ali al-Hajj al-Sharqawi</b>	Yemen	7 February 2002/Karachi	Jordan/Afghanistan/ Guantanamo	
<b>Hassan bin Attash</b>	Saudi Arabi, born Yemeni	11 September 2002/Karachi (minor)	Jordan/Afghanistan / Guantanamo	
<b>Abu Hamza al-Tabuki</b>	Saudi Arabia	December 2001/ Afghanistan	Afghanistan/Jordan	
<b>Samer Helmi al-Barq</b>		15 July 2003/ Pakistan	Pakistan/ Jordan	
<b>Jamil Qasim Saeed Mohammed</b>	Yemen	23 October 2001/Karachi	Jordan/ whereabouts unknown	
<b>Ibrahim al-Jeddawi</b>	Saudi Arabia	First half of 2003/ Yemen or Kuwait	Jordan/ whereabouts unknown	
<b>At least five unidentified men</b>	3 Algeria/1 Syria/ 1 Georgia (Chechen)	2002/Georgia	Jordan/ whereabouts unknown	
<b>Unidentified Iraqi Kurd</b>	Iraq	Yemen	Jordan/ whereabouts unknown	
<b>One unidentified Tunisian</b>	Tunisia	Iraq	Jordan/ whereabouts unknown	
<b>At least five unidentified men</b>		Between September 2001-2004/ Karachi or Pankisi Gorge (Georgia)	Jordan	

<i>NAME.</i>	<i>Country of Nationality )</i>	<i>Date and place of capture</i>	<i>Place of detention</i>	<i>What this person subject to a UN communication ?</i>
<b>Abdel Hakim Khafargy</b>	Egypt (German resident)	24 September 2001/ Bosnia and Herzegovina	B&H(US Base in Tuzla)/Egypt	
<b>Mamdouh Habib</b>	Australia	November 2001/Pakistan	Pakistan/ Egypt/ Guantanamo	
<b>Muhammad Saad Iqbal Madni</b>	Pakistan/ Egypt	9 January 2002/ Jakarta	Jakarta/ Egypt/ Bagram/ Guantanamo	
<b>Mohammed Alzery</b>	Egypt	Sweden	Egypt	
<b>Ahmed Agiza</b>	Egypt	Sweden	Egypt	
<b>Ibn al-Sheikh al-Libi</b>	Libya	Late 2001/ Afghanistan	Egypt/ Afghanistan	
<b>Abu Omar</b>	UK/Born in Lebanon	Mid-March 2009/Nairobi	Nairobi	
<b>Hassan Mustafa Osama Nasr/ Abu Omar</b>	Egypt	17 February 2003/Milan	Egypt	
<b>Ahmad Abou El-Maati</b>	Canada/ Egypt	11 November 2001/Damascus	Far Falestin prison (Syria)/ Egypt	
<b>Muhammad Haydar Zammar</b>	Germany	8 December 2001/ Morocco	Far Falestin/ other locations in Syria	WGAD, Opinion No.8/2007 (A/HRC/7/4/Add.1); and CAT/C/49/Add.4)
<b>Abdul Halim Dahak</b>		November 2002/Pakistan	Syria/ whereabouts unknown	
<b>Abu Zubaydah</b>		28 March 2002/ Faisalabad, Pakistan	Syria/ Stare Kiejkuty, Poland	

<i>NAME.</i>	<i>Country of Nationality )</i>	<i>Date and place of capture</i>	<i>Place of detention</i>	<i>What this person subject to a UN communication ?</i>
			/whereabouts unknown	
<b>Omar Ghramesh</b>		28 March 2002/ Faisalabad, Pakistan	Syria/whereabouts unknown	
<b>Unnamed teenager</b>		28 March 2002/ Faisalabad, Pakistan	Syria/whereabouts unknown	
<b>Noor al-Deen (teenager)</b>	Syria	28 March 2002/ Faisalabad, Pakistan	Morocco /Syria/ whereabouts unknown	
<b>Abdullah Almalki</b>	Canada/ Syria		Far Falestin/ Sednaya prison (Syria)	
<b>Barah Abdul Latif</b>			Pakistan/ Syria / whereabouts unknown	
<b>Bahaa Mustafa Jaghel</b>			Pakistan/ Syria / whereabouts unknown	
<b>Yasser Tinawi</b>	Syria	17 July 2002/ Somalia	Ethiopia/ Egypt/ Syria	
<b>Maher Arar</b>	Canada/ Syria	26 September 2002/ New York	Manhattan/Far Falestin/ Sednaya prison	A/HRC/4/33/Add.3, para 33, 43-45.
<b>Muayyed Nureddin</b>	Canada/ Iraq	11 December 2002/border between Syria and Iraq	Far Falestin	

<i>NAME.</i>	<i>Country of Nationality )</i>	<i>Date and place of capture</i>	<i>Place of detention</i>	<i>What this person subject to a UN communication ?</i>
<b>Abou Elkassim Britel</b>	Morocco / Italy	10 March 2002 / Lahore	Lahore / Morocco	
<b>Binyam Mohamed</b>	Ethiopia	10 April 2002 / Pakistan	Karachi / Morocco / Kabul / Bagram / Guantanamo	
<b>Omar Deghayes</b>	Libya (UK resident)	April 2002 / Lahore	Lahore/Islamabad / Bagram / Guantanamo	
<b>Moazzam Begg</b>	UK	31 January 2002 / Islamabad	Islamabad / Kandahar / Bagram / Guantanamo	
<b>Mohamed Ezzoueck</b>	UK	20 January 2007 / Kiunga village, Kenya	Nairobi / Somalia	
<b>Bashir Ahmed Makhtal</b>	Canada (born in Ethiopia)	30 December 2006 / Kenya-Somalia border	Kenya-Somalia border / Mogadishu, / Addis Ababa, Mekalawi federal prison, Ethiopia	A/HRC/7/3/Add.1, para. 71.
<b>Mohammed al-Asad</b>		27 December 2003 by plane to Djibouti	Probably Camp Lemonnier, Djibouti	
<b>Salahuddin Amin; Zeeshan Siddiqui; Rangzieb</b>		Unknown, but involvement of British authorities		

<i>NAME.</i>	<i>Country of Nationality )</i>	<i>Date and place of capture</i>	<i>Place of detention</i>	<i>What this person subject to a UN communication ?</i>
<b>Ahmed; Rashid Rauf</b>				
<b>Abdel Hakim Khafagy</b>		Between September 2001 and end of 2005/ involvement of German authorities		
<b>Jamyang Gyatso</b>	China	8 January 2007 / undisclosed place of detention		(A/HRC/7/3/Add.1,) para. 37.
<b>Jamyang Kyi</b>	China	01 April 2008 / Xining City, China		(A/HRC/11/4/Add.1), paras. 502-507.
<b>Washu Rangjung</b>	China	11 September 2008 / Tibet Autonomous Region, China		(A/HRC/11/4/Add.1), paras. 614-617
<b>Majid Pourabdollah</b>	Iran	29 March 2008 / Tabriz, Iran		(A/HRC/10/44/Add.4)
<b>Masood Janjua</b>	Pakistan	Jul-04		A/HRC/10/9, paras 300-302.
<b>Faisal Farz</b>	Pakistan	Jul-06		A/HRC/10/9, paras 300-302.
<b>Raymond Manalo</b>	Philippines	14 February 2006 / San Ildefonso, Philippines	Fort Magsaysay/ San Ildefonso /Sapang/ Bataan/ Zambales/Pangasinan (all in Philippines)	
<b>Reynaldo Manalo</b>	Philippines	15 February 2006 / San Ildefonso, Bulacan, Philippines		

<i>NAME.</i>	<i>Country of Nationality )</i>	<i>Date and place of capture</i>	<i>Place of detention</i>	<i>What this person subject to a UN communication ?</i>
<b>Mr. Nazarov</b>	Turkmenistan			
<b>Boris Shikhmuradov</b>	Turkmenistan	2002/Turkmenistan		HRC/13/31 para 579; and HRC Communication No. 2069/2011
<b>Erkin Musaev</b>	Uzbekistan	31 January 2006 / Uzbekistan		A/HRC/10/21/Add.1; A/HRC/7/3/Add.1; A/HRC/13/30, para 29.
<b>X.Z.</b>	Russia	10 July 2005 / Chechnya, Russia		
<b>X.X.</b>	Russia	March 2004 / Khasavjurt, Dagestan	Kirovsky/ Bynaksk	
<b>X.Y.</b>	Russia	Late 2007 / Dagestan, Chechnya, Russia	Chechnya	
<b>M'hamed Benyamina</b>	Algeria (resident of France)	9 September 2005/Oran, Algeria	Algeria	WGAD, opinion No. 38/2006 (A/HRC/7/4/Add.1).
<b>Mohamed Rahmouni</b>		18 July 2007/Algeria	Algeria	WGAD, opinion No. 33, 2008 (A/HRC/13/30/Add.1)
<b>Mohamed Fahim Hussein; Khaled Adel Hussein; Ahmed Adel Hussein; Mohamed Salah Abdel Fattah; Mohamed Hussein Ahmed Hussein; Adel Gharieb Ahmed; Ibrahim Mohamed</b>			Egypt	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

<i>NAME.</i>	<i>Country of Nationality )</i>	<i>Date and place of capture</i>	<i>Place of detention</i>	<i>What this person subject to a UN communication ?</i>
<b>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.</b>				
<b>Azhar Khan</b>	UK	9 July 2008/Cairo	Egypt	
<b>Mr. al-Dainy and several of his collaborators</b>		Spring 2009	Iraq/ whereab outs of 11 people unknown	report of the SP on torture (A/HRC/13/39/Add.1) / WGEID report (A/HRC/13/31), para. 295
<b>530 Palestinians held in administrative detention</b>			Israel	CAT/C/ISR/CO/4.
<b>Issam Mohamed Tahar Al Barqaoui Al Uteibi and 11 other people</b>		28-Nov-02	Jordan	WGAD, opinion No. 18/2007 (A/HRC/10/21/Add.1)
<b>Edriss El Hassy</b>	Libya	24-Aug-95	Libya	Edriss El Hassy v. Libya (communication No. 1422/2005)

<i>NAME.</i>	<i>Country of Nationality )</i>	<i>Date and place of capture</i>	<i>Place of detention</i>	<i>What this person subject to a UN communication ?</i>
<b>Hatem Al Fathi Al Marghani</b>		December 2004 /Libya	Libya	WGEID- E/CN.4/2006/56, para. 331.
<b>Mohamed Hassan Aboussedra and his four brothers</b>		19 January 1989/Al-Bayda	Abu Salim prison/other unknown locations in Libya	WGAD, opinion No. 16/2007 (A/HRC/10/21/Add.1)
<b>Aissa Hamoudi</b>	Algeria/ Switzerland	18 November 2007/Tripoli	Libya	
<b>Sulaiman al-Rashoudi; Essam Basrawy; Abdulrahman al-Shumairi; Abdulaziz al-Khuraiji; Moussa al-Garni; Abdulrahman Sadeq Khan; Al-Sharif Seif Al-Dine Shahine and; allegedly, Mohammed Hasan al-Qurashi</b>		2 February 2007/Jeddah and Medina	Saudi Arabia	WGAD, opinion No. 27/2007 (A/HRC/10/21/Add.1)
<b>Saud Mukhtar al-Hashimi</b>	Saudi Arabia	2 February 2007/Saudi Arabia	Saudi Arabia	
<b>30 former Kurdish detainees</b>	Syria (Kurdish)	2008/Syria	Syria/ whereabouts unknown	
<b>8 members of the Kurdish community of Kamishli</b>	Syria (Kurdish)		Syria	A/HRC/13/31, para. 546.
<b>Maryam Kallis</b>		15 March 2009/Damascus	Damascus	

<i>NAME.</i>	<i>Country of Nationality )</i>	<i>Date and place of capture</i>	<i>Place of detention</i>	<i>What this person subject to a UN communication ?</i>
<b>Abdeljalil al-Hattar</b>	Yemen	14 December 2007/ Sana'a	Yemen	WGAD, opinion No. 40/2008 (A/HRC/13/30/Add.1)
<b>A.S.</b>	Yemen	15 August 2007/Sana'a	Sana'a	.
<b>Carmelo Ncogo Mitigo</b>	Equatorial Guinea	3 June 2004 / Libreville	Unknown / Bata, Equatorial Guinea	A/HRC/7/4/Add.3, para. 69.
<b>Jesús Michá Michá</b>	Equatorial Guinea	4 June 2004 / Libreville	Unknown / Bata, Equatorial Guinea	A/HRC/7/4/Add.3, para. 69.
<b>Juan Bestue Santander</b>	Equatorial Guinea	5 June 2004 / Libreville	Unknown / Bata, Equatorial Guinea	A/HRC/7/4/Add.3, para. 69.
<b>Juan María Itutu Méndez</b>	Equatorial Guinea	6 June 2004 / Libreville	Unknown / Bata, Equatorial Guinea	A/HRC/7/4/Add.3, para. 69.
<b>Juan Ondo Abaga</b>	Equatorial Guinea		Black Beach prison in Malabo	A/HRC/7/4/Add.3, para. 69. Opinion No. 2/2008 (A/HRC/10/21/Add.1)
<b>Felipe Esono Ntutumu</b>	Equatorial Guinea		Black Beach prison in Malabo	A/HRC/7/4/Add.3, para. 69. Opinion No. 2/2008 (A/HRC/10/21/Add.1)
<b>Florencio Ela Bibang</b>	Equatorial Guinea		Black Beach prison in Malabo	A/HRC/7/4/Add.3, para. 69. Opinion No. 2/2008 (A/HRC/10/21/Add.1)
<b>Antimo Edu Nchama</b>	Equatorial Guinea		Black Beach prison in Malabo	A/HRC/7/4/Add.3, para. 69. Opinion No. 2/2008 (A/HRC/10/21/Add.1)
<b>Unnamed refugee living in Cameroon</b>	Equatorial Guinea	Cameroon	Malabo	A/HRC/13/39/Add.4

<i>NAME.</i>	<i>Country of Nationality )</i>	<i>Date and place of capture</i>	<i>Place of detention</i>	<i>What this person subject to a UN communication ?</i>
<b>Petros Solomon</b>	Eritrea	18 and 19 September 2001 / Asmara, Eritrea		WGAD E/CN.4/2003/8/Add.1 at 54 (2002).
<b>Ogbe Abraha</b>	Eritrea	19 and 19 September 2001 / Asmara, Eritrea		WGAD E/CN.4/2003/8/Add.1 at 54 (2002).
<b>Haile Woldetensae</b>	Eritrea	20 and 19 September 2001 / Asmara, Eritrea		WGAD E/CN.4/2003/8/Add.1 at 54 (2002).
<b>Mahmud Ahmed Sheriffo</b>	Eritrea	21 and 19 September 2001 / Asmara, Eritrea		WGAD E/CN.4/2003/8/Add.1 at 54 (2002).
<b>Berhane Ghebre Eghzabiher</b>	Eritrea	22 and 19 September 2001 / Asmara, Eritrea		WGAD E/CN.4/2003/8/Add.1 at 54 (2002).
<b>Astier Feshation</b>	Eritrea	23 and 19 September 2001 / Asmara, Eritrea		WGAD E/CN.4/2003/8/Add.1 at 54 (2002).
<b>Saleh Kekya</b>	Eritrea	24 and 19 September 2001 / Asmara, Eritrea		WGAD E/CN.4/2003/8/Add.1 at 54 (2002).
<b>Hamid Himid</b>	Eritrea	25 and 19 September 2001 / Asmara, Eritrea		WGAD E/CN.4/2003/8/Add.1 at 54 (2002).
<b>Estifanos Seyoum</b>	Eritrea	26 and 19 September 2001 / Asmara, Eritrea		WGAD E/CN.4/2003/8/Add.1 at 54 (2002).
<b>Germano Nati</b>	Eritrea	27 and 19 September 2001 / Asmara, Eritrea		WGAD E/CN.4/2003/8/Add.1 at 54 (2002).
<b>Beraki Ghebre Selassie</b>	Eritrea	28 and 19 September 2001 / Asmara, Eritrea		WGAD E/CN.4/2003/8/Add.1 at 54 (2002).

<i>NAME.</i>	<i>Country of Nationality )</i>	<i>Date and place of capture</i>	<i>Place of detention</i>	<i>What this person subject to a UN communication ?</i>
<b>Yahya Bajinka</b>	Gambia	April 2007 / Eritrea	Gambia ( maximum security wing of Mile II State Central Prison)	
<b>Hundreds of Darfurians rebels</b>	Sudan	May 2008 / Omdurman, Sudan	undisclosed places of detention	A/HRC/11/2/Add.1
<b>X.W.</b>	Sudan	May 2008 / Khartoum	Bahri, Khartoum / Kober, Sudan	
<b>At least 106 people</b>	Uganda	Between 2006 and 2008	Kololo, Kampala	
<b>30 detainees</b>	Rwanda and Congo (DR of)	2006	Kololo, Kampala	
<b>Mufti Hussain Bhayat</b>	South Africa	18 August 2008 / Entebbe Airport, Uganda	Kololo, Kampala	
<b>Haroon Saley</b>	South Africa	18 August 2008 / Entebbe Airport, Uganda	Kololo, Kampala	
<b>24 human rights defenders and political activists including Broderick Takawira, Pascal Gonzo and Jestina Mukoko (see below)</b>	Zimbabwe	2008 / Zimbabwe		
<b>Broderick Takawira</b>	Zimbabwe	2008 / Zimbabwe		

<i>NAME.</i>	<i>Country of Nationality )</i>	<i>Date and place of capture</i>	<i>Place of detention</i>	<i>What this person subject to a UN communication ?</i>
<b>Pascal Gonzo</b>	Zimbabwe	2008 / Zimbabwe		
<b>Jestina Mukoko</b>	Zimbabwe	3 December 2008 / Zimbabwe		WGEDI A/HRC/13/31, para. 629
<b>Chris Dhlamini</b>	Zimbabwe	2008 / Zimbabwe		
<b>Morgan Tsvangirai</b>	Zimbabwe	25 November 2008 / Zimbabwe	Goromo nzi Prison Complex / undisclos ed locations	