El-Masri v "The Former Yugoslav Republic of Macedonia"

Application No.39630/09

WRITTEN SUBMISSIONS ON BEHALF OF AMNESTY INTERNATIONAL AND THE INTERNATIONAL COMMISSION OF JURISTS

pursuant to Article 36 § 2 of the European Convention on Human Rights and Rule 44 § 3 of the Rules of the European Court of Human Rights

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29 MARCH 2012

EUR 65/001/2012

Introduction

1. These submissions are presented on behalf of Amnesty International and the International Commission of Jurists ('the interveners') pursuant to the leave to intervene granted by the President of the Court on 8 March 2012 under Rule 44 § 3 of the Rules of the Court. The interveners' submissions address the obligations of the High Contracting Parties to the European Convention on Human Rights ('the Convention') in light of and consistently with other obligations and standards under international law. The Court's jurisprudence recognises that Convention rights are not applied in a vacuum[1] but fall to be interpreted in the light of and in harmony with other international law standards and obligations,[2] including under treaty and customary international law.[3] At the same time, it is a fundamental principle that the Convention is interpreted in light of its object and purpose as an instrument for the protection of human rights, so as to ensure that its protection of Convention rights is practical and effective.[4] Frequent reference in these submissions is made to the US-led 'secret detentions and renditions system',[5] a large-scale, organised cross-border system that operated in disregard of national laws as well as international legal obligations, without any judicial or administrative process, that depended on the co-operation, both active and passive, of many states. The interveners submit that this system entailed multiple, composite and cumulative flagrant human rights violations, contrary to international obligations binding on both the United States of America (USA), and on all Council of Europe Member States involved.

2. The interveners' submissions address the applicability of *non-refoulement* obligations arising under certain Convention rights, including Art 5, in connection with Contracting Parties' real or constructive knowledge of the 'system of secret detention and renditions' and the egregious nature of the human rights violations it entailed, including instances of enforced disappearances. Further, the interveners focus on the responsibility of Contracting Parties under the Convention for those practices, in consonance with the Court's own jurisprudence as well as international law principles of state responsibility. The interveners conclude with a comment on the right to truth, as it relates to the renditions and secret detentions system.

A. *Non-refoulement* as a component of the right to liberty and security

3. The principle of *non-refoulement* is well established in international human rights law.[6] The Court has consistently found that a number of Convention rights entail, implicitly, an obligation not to transfer (*refouler)* people when there are substantial grounds for believing that they face a real risk of violations of those rights in the event of their deportation, expulsion, extradition, handover, return, surrender, transfer or other removal[7] from the state's jurisdiction.[8] In those circumstances, human rights law enjoins the removal of the individuals concerned from the Contracting Parties' jurisdiction.[9] The principle dictates that, irrespective of all other considerations, states are not absolved from responsibility "for all and any foreseeable consequences" suffered by an individual following removal from their jurisdiction.[10] This Court has found states liable in cases of indirect *refoulement* -- also known as chain *refoulement*[11] -- as well as constructive *refoulement*.[12]

[1] *Öcalan v. Turkey* [GC], no. 46221/99, 12 May 2005, § 163.

[2] *Demir and Baykara v. Turkey* [GC], no. 34503/97, 12 November 2008, § 67; *Al-Adsani v. UK* [GC], no. 35763/97, 21 November 2001, § 55.

[3] *Al-Adsani*, op cit; *Waite and Kennedy v Germany*, [GC] no. 26083/94, 18 February 1999; *Taskin v Turkey*, no. 46117/99, 10 November 2004.

[4] *Soering v. UK*, no. 14038/88, 7 July 1989, § 87.

[5] Resolution 1433 (2005) adopted by the Parliamentary Assembly of the Council of Europe on 26 April 2005, for example, refers to 'rendition' as the "removal of persons to other countries, without judicial supervision, for purposes such as interrogation or detention", § 7 (vii).

[6] Explicitly codified in, *inter alia*, Art 3, UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Art 16, International Convention for the Protection of All Persons from Enforced Disappearance (ICED); Art. 19, Charter of Fundamental Rights of the European Union; Art 33, 1951 Convention relating to the Status of Refugees; and Principle 5, UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

[7] To avoid repetition the interveners will use the term "removal" throughout these submissions.

[8] This principle was first recognised in the context of Article 3, *Soering*, § 88. *Non-refoulement* obligations have arisen equally in respect of Article 2: see, *inter alia*, *Z and T v UK*, Admissibility Decision, no. 27034/05, 28 February 2006. See also, the Human Rights Committee (HRC), General Comment (GC) No. 31, CCPR/C/21/Rev.1/Add.13, 26/05/2004, § 12.

[9] The *non-refoulement* principle extends and applies extraterritorially in circumstances where states exercise jurisdiction: *Hirsi Jaama and Others v Italy*, [GC] no. 27765/09, 23 February 2012, §§ 70-82; *Medvedyev and Others v. France* [GC], no. 3394/03, 29 March 2010; and *Al-Saadoon and Mufdhi v. UK*, no. 61498/08, 2 March 2010.

[10] See, *inter alia*, *Soering* §§ 85-86; *Hirsi*, §115; *Saadi v. Italy* [GC], no. 37201/06, 28 February 2008, § 126.

[11] See, *inter alia*, *M.S.S. v Belgium and Greece* [GC], no. 30696/09, 21 January 2011, §§ 192, 286, 300, 321.

[12] *M.S. v. Belgium*, no. 50012/08, 31 January 2012, where the Court found that the applicant could not be regarded as having validly waived his right to the protection against *refoulement* guaranteed by Article 3.

4. The *refoulement* prohibition in human rights law, including under the Convention, is absolute.[13] Further, as an obligation directed at securing rights in ways that are both practical and effective, the *non-refoulement* principle is thus a fundamental component implicit in other Convention rights beyond Article 3 of the Convention.[14] Since *Soering*, the Court has recognised as much with respect to the right to a fair trial;[15] additionally, in *Tomic v. UK*, it considered the possibility that being exposed to a risk of arbitrary or unfair procedures reaching a certain level of flagrancy would raise an issue under Article 5;[16] something which it reiterated in *Z and T v UK*. In a similar vein, the Human Rights Committee (HRC) has recognised that *non-refoulement* is also a fundamental component of, *inter alia*, the right to liberty and security of person under article 9 of the Covenant,[17] as has the UN Working Group on Arbitrary Detention (WGAD).[18] Recently in *Othman*, the Court has confirmed that a state is in violation of the *non-refoulement* obligation implicit in Article 5 if it "removes an applicant to a State where she or he was at real risk of a flagrant breach of that article".[19]

5. **In light of the above, the interveners submit that Article 5 of the Convention entails *non-refoulement obligations* enjoining Contracting Parties from acting -- and/or omitting to act -- in ways that would result in the removal of any individuals from their jurisdiction when the Contracting Parties know or ought to know that their removal would expose them to a real risk of flagrant breaches of their right to liberty and security of person.**

B. The 'secret detentions and renditions system' involved flagrant breaches of Article 5 of the Convention, including instances of enforced disappearances

6. As outlined above, *non-refoulement* obligations under Article 5 will be triggered by real or constructive knowledge of a real risk of "flagrant" violations of that right. In *Al-Moayad* the Court shed light on the notion of flagrancy, holding that there would be a flagrant violation of the right to fair trial where there was a "denial of justice", including through pre-trial detention without judicial review, or deliberate and systematic refusal of access to a lawyer, especially for someone detained in a foreign country.[20]

7. The prohibition of arbitrary deprivation of liberty is a rule of customary international law,[21] and there is strong support for the proposition that it has the character of a *jus cogens* norm, particularly in connection with prolonged arbitrary detention.[22] The Court has emphasised the seriousness of enforced disappearances and unacknowledged detention as violations of Article 5.[23] It has characterised four days' unacknowledged detention as a "complete disregard of the safeguards enshrined in Article 5" and a "particularly grave violation of their right to liberty and security secured by Article 5",[24] emphasising that "the unacknowledged

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[13] *Soering*, § 88; *Ireland v. UK*, no. 5310/71, 18 January 1978, § 163; *Chahal v UK*, no. 22414/93, 15 November 1996, § 79; *Selmouni v. France* [GC], no. 25803/94 28 July 1999, § 95, *Al-Adsani* § 59; *Shamayev and Others v. Georgia and Russia*, no. 36378/02, 12 April 2005, § 335; *Indelicato v. Italy*, no. 31143/96, 18 October 2001, § 30; *Ramirez Sanchez v. France* [GC], no. 59450/00, 4 July 2006, §§ 115-116; *Saadi*, § 127.

[14] See, in relation to Article 9, *Z and T v. UK*, Admissibility decision, 28 February 2006, no. 27034/05. See also, *inter alia*, UN HRC GC 31, § 12, referring as an example to the real risk of harm contemplated by articles 6 and 7 ICCPR as a trigger for *non-refoulement* obligations, thus recognizing that a real risk of different types of harm may give rise to *non-refoulement* obligations.

[15] *Soering*, § 113. See, also, *inter alia*, *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, 4 February 2005, §§ 90 and 91; *Al-Saadoon and Mufdhi*, § 149; *Bader and Kanbor v. Sweden*, no. 13284/04, 8 November 2005, § 47; *Al-Moayad v. Germany* (dec.), no. 35865/03, 20 February 2007, §§ 100 and 102; *Ahorugeze v Sweden*, no. 37075/09, 27 October 2011 (request for referral to the GC pending), §§ 113-116; and *Othman (Abu Qatada) v UK*, no. 8139/09, 17 January 2012, §§ 258-285 (not yet final).

[16] *Tomic v. UK*, no. 17837/03, Admissibility decision, 14 October 2003.

[17] See *G.T. v. Australia*, CCPR/C/61/D/706/1996, 4 December 1997, § 8.7.

[18] Report of the Working Group on Arbitrary Detention, UN Doc A/HRC/4/40, 9 January 2007, § 49, emphasising the need for States to "include the risk of arbitrary detention in the receiving State per se among the elements to be taken into consideration when asked to extradite, deport, expel or otherwise hand a person over to the authorities of another State, particularly in the context of efforts to counter terrorism".

[19] *Othman*, §§ 231-233.

[20] *Al-Moayad*, § 101.

[21] See, *inter alia*, HRC, GC no. 29, UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001, § 11; HRC, GC no. 24, UN Doc. CCPR/C/21/Rev.1/Add.6, 4 November 1994, § 8; WGAD, Opinion No. 15/2011 (People's Republic of China, concerning Mr. Liu Xiaobo), 3 February 2011, § 20; WGAD, Opinion No. 16/2011 (People's Republic of China. concerning Ms. Liu Xia), 8 February 2011, § 12; ICRC (Jean-Marie Henckaerts and Louise Doswald-Beck, eds), Customary International Humanitarian Law (Cambridge: Cambridge University Press, 2005), Rule 99 (Vol. I pp. 344-353, Vol. II Ch. 32, Sec. L, pp. 2328-2362; and Restatement (Third) of Foreign Relations Law of the United States § 702 (1986), see § 102 (1987) on sources of international law for the purpose of the Restatement, including customary international law § 102(1)(A).

[22] *Ibid*. See also L. Hannikainen, Peremptory Norms (Jus Cogens) in International Law: Historical Developments, Criteria, Present Status (Helsinki, 1988), pp. 425 ff., T. Meron, "On a Hierarchy of International Human Rights", 80 (1986) AJIL 1.

[23] *Kurt v Turkey*, no 24267/94, 25 May 1998, §129.

[24] *Chitayev and Chitayev v Russia*, no 59334/00, 18 January 2007, §173. In that case the Court also found that failure to keep detention records is "incompatible with the very purpose of Article 5 of the Convention", § 125.

detention of an individual is a complete negation of these guarantees and a most grave violation of Article 5."[25]

8. The HRC has stated that the right to recognition as a person before the law may be violated if an individual last seen in the hands of the authorities, was intentionally removed by them from the protection of the law for a prolonged period and relatives' efforts to obtain effective remedies have been impeded.[26] The European Commission for Democracy through Law noted in its Opinion on the International Legal Obligations of Council of Europe States in Respect of Secret Detention Facilities and Inter-State Transport of Prisoners that "Incommunicado detention[27] […] is clearly not 'in accordance with a procedure prescribed by law' of any of the member States of the Council of Europe, if alone because the detention is not subject to judicial review… incommunicado detention… in view of its secret character… is by definition in violation of the ECHR."[28] Furthermore, in relation to "extraordinary renditions", in *Babar Ahmad and Others v UK* the Court observed that "extraordinary rendition, by its deliberate circumvention of due process, is anathema to the rule of law and the values protected by the Convention. It would be incompatible with a Contracting State's obligations under the Convention if it were to extradite or otherwise remove an individual from its territory in circumstances where that individual was at real risk of extraordinary rendition. To do so would be to collude in the violation of the most basic rights guaranteed by the Convention…."[29]

9. According to, *inter alia*, the definition of enforced disappearances adopted by the International Convention for the Protection of All Persons from Enforced Disappearance, enforced disappearances entail state agents -- or others acting with the state's authorization, support or acquiescence -- placing people outside the protection of the law through arrest, detention, abduction or other deprivation of liberty followed by a refusal to acknowledge such a deprivation of liberty or by the concealment of the victims' fate or whereabouts.[30]

10. By their nature and severity, deprivations of liberty carried out in the context of the 'secret detentions and renditions' system amounted to flagrant violations of Article 5. Further, the interveners submit that in many instances those deprivations of liberty constituted enforced disappearances -- regardless of whether or not their victims resurfaced alive -- since they were premised on secret, unacknowledged and incommunicado detentions. In light of the above, the interveners contend that Contracting Parties that knew or ought to have known of a real risk that individuals would be held in secret and subjected to rendition if removed from their jurisdiction were subject to obligations under Article 5 of the Convention not to transfer or remove, or co-operate in the transfer or removal of those individuals to face such treatment.

C. Enforced disappearances violate Article 3 of the Convention

11. International law recognises that, in cases of enforced disappearance,[31] the combination of the flagrantly unlawful deprivation of liberty in the form of secret, unacknowledged, incommunicado detention (as above) and the removal of the 'disappeared' person from the protection of law, result inevitably in a violation of the detainee's right to be free from torture and inhuman or degrading treatment or punishment.

[25] *Kurt*, §124.

[26] *Grioua v Algeria*, HRC, UN Doc. CCPR/C/90/D/1327/2004 (2007), §§7.5 (Article 9) and 7.8-7.9 (Article 16); *El Abani v Libyan Arab Jamahiriya* HRC, UN Doc. CCPR/C/99/D/1640/2007 (2010) §§7.6 (Article 9) and 7.9 (Article 16). See also, Inter-American Commission on Human Rights, Report on Terrorism and Human Rights, 22 October 2002, OEA/Ser.L/V/II.116 §127.

[27] Any deprivation of liberty where the detainee is denied access to the outside world constitutes incommunicado detention. Incommunicado detention thus includes instances of deprivation of liberty where people are held in custody with or without charge and are deprived of access to family and friends, lawyers and doctors. Incommunicado detention may occur before or after being brought before a judicial authority. Incommunicado detention is not the same as solitary confinement, where a detainee or prisoner is deprived of contact with other inmates. See Amnesty International Fair Trial Manual, AI Index: POL 30/002/1998, 1 December 1998, Chapter 4.

[28] Henceforth: the Venice Commission Opinion on Secret Detention, §§124-5. Further, the WGAD stressed "that detaining terrorist suspects under such conditions, without charging them and without the prospect of a trial in which their guilt or innocence will eventually be established, is in itself a serious denial of their basic human rights and is incompatible with both international humanitarian law and human rights law.", WGAD report to 62nd session of the Commission on Human Rights, E/CN.4/2006/7 12 December 2005.

[29] *Babar Ahmad and Others v. UK*, nos. 24027/07, 11949/08 and 36742/08, Partial Decision as to the Admissibility, 6 July 2010, § 114.

[30] See, *inter alia*, Article 2, ICED.

[31] Enforced disappearance has also been recognized as a crime under international law since the judgment of the Nuremberg Tribunal in 1946: *Judgment of the International Military Tribunal for the Trial of German Major War Criminals*, Nuremberg 30 September and 1 October 1946 (Nuremberg Judgment), Cmd.6964, Misc. No.12 (London: H.M.S.O. 1946), p. 88. It is considered a crime under the *Inter-American Convention on the Forced Disappearance of Persons*, Preamble; International Law Commission 1996 *Draft Code of Crimes against the Peace and Security of Mankind*, Article 18 (i); *Rome Statute of the International Criminal Court*, Article 7 (1)(i) and 7(2)(i); International Criminal Court, Elements of Crimes, Article 7 (1)(i); ICED .

12. The UN General Assembly,[32] the Inter-American Court of Human Rights,[33] and the UN Special Rapporteur on torture[34] have repeatedly found that prolonged incommunicado detention, even on its own, violates the prohibition of torture or other ill-treatment. In the *El-Megreisi* case the HRC found that the enforced disappearance of the victim violated the torture prohibition based solely on his prolonged incommunicado detention.[35] In its conclusions and recommendations on the USA's second periodic report, in 2006, the UN Committee against Torture found that detaining persons indefinitely without charge was *per se* a violation of the Convention.[36] The HRC concluded in the *Rafael Mojica* case, "aware of the nature of enforced or involuntary disappearances in many countries, the Committee feels confident to conclude that the disappearance of persons is inseparably linked to treatment that amounts to a violation of article 7".[37] The Human Rights Chamber for Bosnia and Herzegovina, in a case involving a five-month period of incommunicado detention, considered enforced disappearance to be *per se* a violation of article 3 of the Convention.[38]

13. Further, in a finding consistent with the approach espoused by other human rights bodies in relation to the suffering endured by the family members of the victims of enforced disappearances,[39] in *Kurt* the Court considered, *inter alia*, that the applicant "has been left with the anguish of knowing that her son had been detained and that there is a complete absence of official information as to his subsequent fate. This anguish has endured over a prolonged period of time".[40] On that basis the Court found that there had been a violation of Article 3 in respect of the suffering endured by the applicant, i.e. the mother of the disappeared. **Since, in certain circumstances, the suffering of family members in connection with the enforced disappearance of their loved ones has been found to amount to prohibited ill-treatment, the interveners submit that, in turn, and *a fortiori*, the mental harm inflicted on the disappeared themselves violates Article 3 of the Convention.**

14. In light of the above, the interveners submit that international law recognizes that enforced disappearances, such as those that characterised the 'secret detentions and renditions' system, constitute a violation of the right to freedom from torture and inhuman or degrading treatment or punishment. As such, they give rise to *non-refoulement* obligations under Article 3 of the Convention.

D. Knowledge of the real risk of flagrant human rights violations

15. By January 2004, there was much credible information in the public domain that the USA was engaging in arbitrary, incommunicado, and secret detention, as well as secret detainee transfers, of individuals the authorities suspected of involvement in or having knowledge of international terrorism.[41]

16. In November 2001, President George W. Bush signed a military order authorizing the indefinite detention without trial, and without access to any court in the USA or elsewhere, of foreign nationals held as "enemy combatants".[42] He authorized trials by military commission, executive bodies in which the ordinary rules of criminal justice would not apply. Detentions at the US Naval Base in Guantánamo Bay, Cuba, began on 11 January 2002.

17. In a US federal court in January 2003, the Director of the Defense Intelligence Agency (DIA) asserted that providing an "enemy combatant" access to a lawyer or the courts would damage interrogations.[43]

[32] UN General Assembly resolution A/RES/66/150 17 December 2007, § 15; UNGA res. 63/166, 12 December 2008, § 20; UNGA res. A/RES/66/150, 19 December 2011, § 22.

[33] *Velasquez Rodriguez Case*, Judgment of July 29, 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), § 187; repeated in *Godínez Cruz Case*, Judgment of July 21, 1989, Inter-Am. Ct. H.R. (Ser. C) No. 8 (1989).

[34] Report of the UN Special Rapporteur on Torture, UN Doc. E/CN.4/2001/66, 25 January 2001, § 665.

[35] HRC, *El-Megreisi v. Libya Arab Jamahiriya*, No. 440/1990, UN Doc. CCPR/C/50/D/440/1990 (1994), § 2.2 and § 5.4.

[36] Conclusions and recommendations of the Committee against Torture: United States of America, UN Doc. CAT/C/USA/CO/2, 18 May 2006, § 22.

[37] *Rafael Mojica v. Dominican Republic*, No. 449/1991, UN Doc. CCPR/C/51/D/449/1991 (1994), § 5.7.

[38] *Palić v. Republika Srpska*, case No. CH/99/3196, 11 January 2001, §§ 71-74.

[39] See for instance *Godínez Cruz Case*, §§ 48-9; *Velasquez Rodriguez Case*, § 51; *Blake v. Guatamala*, Inter-Am.Ct.H.R. (Ser. C) No. 36 (1998), §§ 96-97; HRC, *Abdelhakim Wanis El Abani (El Ouerfeli) v. Libya*, No. 1640/2007, UN Doc. CCPR/C/99/D/1640/2007 (2010), § 8.

[40] *Kurt*, § 133.

[41] In Annex A, the interveners provide the hyperlinks to selected Amnesty International documents by way of illustration.

[42] Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism, 13 November 2001.

[43] Declaration of Vice Admiral Lowell Jacoby, Director, Defense Intelligence Agency filed with Respondents' Motion for Reconsideration, *Padilla v. Rumsfeld*, US District Court for the Southern District of New York, 9 January 2003.

Interrogations of "enemy combatants in the War on Terrorism", he said, were being conducted "at many locations worldwide by personnel from DIA and other organizations in the Intelligence Community".[44] He suggested that incommunicado detention in this context could last for "years" (as would occur in the case of detainees held in the program of secret detention operated by the Central Intelligence Agency (CIA)). In April 2003, the USA told the UN that "enemy combatants" in US custody could be denied access to courts and legal counsel indefinitely, and that international human rights law did not apply to such detentions, which were controlled only by the laws of war as interpreted by the USA under its theory of a global war against al-Qa'ida and associated groups.[45]

18. On 18 December 2003, in a case involving a Libyan man [Gherebi], held as an "enemy combatant" at Guantánamo, a US federal court described what the US government had argued before it: "*under the government's theory, it is free to imprison Gherebi indefinitely along with hundreds of other citizens of foreign countries, friendly nations among them, and to do with Gherebi and these detainees as it will, when it pleases, without any compliance with any rule of law of any kind, without permitting him to consult counsel, and without acknowledging any judicial forum in which its actions may be challenged. Indeed, at oral argument, the government advised us that its position would be the same even if the claims were that it was engaging in acts of torture or that it was summarily executing the detainees… [I]t is the first time that the government has announced such an extraordinary set of principles - a position so extreme that it raises the gravest concerns under both American and international law.*"[46]

19. By January 2004, any government handing over to the USA a non-US national suspected of involvement in international terrorism knew or ought to have known[47] that there was a real risk that that individual would be held incommunicado or virtually incommunicado in indefinite military detention without charge or trial, or subject to an unfair trial by military commission, at Guantánamo or elsewhere, without access to the judiciary, and unprotected by human rights law or the ordinary criminal justice system.[48]

20. It was also well-known by January 2004 that those who had been transferred to Guantánamo included individuals picked up far from Afghanistan. By 23 January 2004, for example, six Algerian nationals handed over to the USA by authorities in Bosnia and Herzegovina had been held at Guantánamo for two years. Even the US Department of State referenced the case, albeit cryptically, under the heading "arbitrary arrest" in its global human rights assessment of 2002 published on 31 March 2003.[49] The case was also reported in Amnesty International's 2003 annual report, which also cited two cases of individuals held incommunicado in Gambia from November 2002 with the involvement of the USA. Their rendition to US custody in Afghanistan and thence to Guantánamo was publicized in early 2003.[50] The report also documented the abduction of a UK national, Moazzam Begg, in Pakistan in February 2002 and his subsequent detention in US custody in Afghanistan, where he was held "without charge or trial in harsh conditions", prior to transfer to Guantánamo.

21. The Amnesty International 2003 report,[51]published in May 2003 and distributed widely to governments and the media, not only documented the more than 600 detainees then at Guantánamo – but also reported on the USA's resort to secret detention and transfer of detainees to possible torture in third countries. The Syria entry and multiple other documents reported that Canadian national Maher Arar was being held in a secret location in Syria after transfer there from the USA via Jordan. The report also alleged the use of undisclosed and incommunicado detention by US forces in Afghanistan. The 2003 annual report and documents published during 2002, provided further allegations of the USA's use of secret detention and rendition in the

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[44] *Ibid*.

[45] For example, see UN Doc.: E/CN.4/2003/G/73, 7 April 2003 and UN Doc.: E/CN.4/2003/G/80, 22 April 2003.

[46] *Gherebi v. Bush*, US Court of Appeals for the Ninth Circuit, 18 December 2003.

[47] See, *inter alia*, *Hirsi* at § 128, citing in turn *M.S.S.*, § 353 and *Saadi*, § 147.

[48] Described by a UK court in 2002 as a "legal black-hole" operating in violation of the international prohibition of arbitrary detention. See *Abbasi & Anor., R (on the application of) v Secretary of State for Foreign & Commonwealth Affairs & Secretary of State for the Home Department* [2002] EWCA Civ 1598 (06 November 2002), § 64.

[49] The Bosnia and Herzegovina entry reported that: "On October 11, the BiH's Human Rights Chamber determined that the BiH and Federation governments violated human rights conventions in transferring four of six Algerian terrorism suspects to the custody of a foreign government in January." http://www.state.gov/j/drl/rls/hrrpt/2002/18356.htm. That the "foreign government" was the USA, and the six detainees were in Guantánamo was widely reported elsewhere.

[50] See Amnesty International Urgent Action 359/02, 11 December 2002 and updates.

[51] Amnesty International Report 2003 (covering 2002), http://www.amnesty.org/en/library/info/POL10/003/2003.

context of the "war on terror".[52] They named a number of detainees whose fate and whereabouts had been unknown since being taken into US custody during 2002, but not believed to have been taken to Guantánamo. These included Abu Zubaydah, detained in Pakistan in March 2002, with his whereabouts in US custody remaining unknown by January 2004.[53]

22. Reports of renditions by the USA began as early as October 2001[54] and continued through 2003. In June 2003, for example, Amnesty International reported an apparent US rendition from Malawi of five men, Turkish, Saudi Arabian, Sudanese and Kenyan nationals.[55] During 2003, it widely reported its concern not only about the detentions at Bagram[56] and Guantánamo, but also incommunicado detentions in undisclosed locations "and the 'rendering' of suspects between countries without any formal human rights protections".[57] Issuing a major report in August 2003 on US human rights violations in the "war on terror", Amnesty International warned that "All too often where the US leads others follow" and called on all governments to adhere to human rights principles in this context.[58] **By January 2004, therefore, states knew or should have known about the 'renditions and secret detentions system', and about the grave human rights violations it entailed.**

E. State responsibility for renditions and post-transfer violations

23. The interveners submit that the responsibility of states for co-operation in renditions and secret detentions can be established in light of the jurisprudence of the Court as well as international law principles of state responsibility. In the development of its jurisprudence in accordance with the principles of interpretation (see above in the introduction), the Court has *inter alia* relied on the Articles on State Responsibility[59] of the International Law Commission (ILC), which reflect customary international law.[60] The interveners submit that these principles should inform the Court's analysis of the Contracting Parties' responsibility under the Convention for co-operation in the 'system of renditions and secret detentions'.

24. As set out above, the renditions system was a large-scale, organised cross-border system that depended on the co-operation, both active and passive, of many states. Although the Court has not yet directly addressed the responsibility of states for co-operation in this system, it has considered a partially analogous situation in its jurisprudence on human trafficking, similarly a cross-border criminal operation involving multiple and gross human rights violations, though carried out by non-state actors rather than the agents of a non-Contracting state, and typically not involving the active co-operation of state authorities. It is submitted that the Court's analysis of the obligations of states in relation to cross-border trafficking operations, in *Rantsev v Cyprus and Russia*,[61] should inform its consideration of states' obligations in regard to the renditions system, which involved active, passive and organised inter-state cooperation.

States are responsible for acts of co-operation in internationally wrongful acts

25. International law, reflected in Article 16 of the ILC Articles on State Responsibility ("ILC Articles"), establishes that "A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with knowledge of the

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[52] For example, Memorandum to the US Government on the rights of people in US custody in Afghanistan and Guantánamo Bay, April 2002, and update, December 2002.

[53] See US Secretary of Defence Donald Rumsfeld, US Department of Defense news briefing, 3 April 2002, http://www.defense.gov/transcripts/transcript.aspx?transcriptid=3390.

[54] See, for example, case of Yemeni national Jamil Qasim Saeed Mohammed, handed over to US custody by Pakistan agents and flown out, reportedly to Jordan. *Cole suspect turned over by Pakistan*. Washington Post, 28 October 2001. Mystery man handed over to US troops in Karachi, News International, Pakistan, 26 October 2002, http://209.157.64.200/focus/f-news/556778/posts; Pakistan hands over man in terror probe, Los Angeles Times, 28 October 2001, http://articles.latimes.com/2001/oct/28/news/mn-62724.

[55] See Amnesty International Urgent Action 189/03, 25 June 2003 and update.

[56] A seminal article on 26 December 2002 reported that the CIA was operating a secret facility at Bagram air base. US decries abuse but defends interrogations, Washington Post, 26 December 2002.

[57] See Amnesty International Urgent Action 250/03, 20 August 2003.

[58] The threat of a bad example: Undermining international standards as 'war on terror' detentions continue, 18 August 2003.

[59] Articles of the International Law Commission on responsibility of states for Internationally Wrongful Acts. See also the commentaries, 2008, http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf. The articles were relied on by the Court in *Ilascu and others v Moldova and Russia*, no.48787/99, 8 July 2004, § 320 - 321; and in *Verein Gegen Tierfabriken Schweiz (VgT) v Switzerland (No.2)* no. 32772/02, § 86.

[60] The International Court of Justice (ICJ) has recognised that the rules concerning assistance in the commission of a wrongful act, as enshrined in Article 16 of the ILC Articles, form part of customary international law: Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) ICJ, Judgment of 26 February 2007, § 420.

[61] *Rantsev v Cyprus and Russia*, no. 25965/04, 7 January 2010, §§ 207-208.

circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State."[62] The interveners therefore submit that -- in accordance with Article 16 ILC Articles -- the responsibility of Contracting Parties that co-operated in the 'secret detentions and renditions system' for acts within their jurisdiction can be established from the point where those states had actual or constructive knowledge of the violations of international human rights obligations inherent in that system; and where the action of the Contracting Party contributed to the apprehension, transfer or continued detention of an individual within the rendition system.

26. Furthermore, in the Court's jurisprudence and under Article 7 of the ILC Articles, the co-operation of government agents, even without the authorisation of the government, entails the responsibility of the state.[63] This was affirmed by the Venice Commission in its Opinion on Secret Detention, where it stated that "the responsibility of the Council of Europe member States is engaged also in the case that some section of its public authorities (police, security forces etc) has co-operated with the foreign authorities or has not prevented an arrest without government knowledge."[64]

States are responsible for failure to act to prevent wrongful acts, including violations of Convention rights

27. State responsibility may arise from either active co-operation in, or passive tolerance of, renditions operations. Under international law, responsibility for assistance in an internationally wrongful act may arise either from positive steps taken to assist another state in a wrongful act, or from failure to take action, required by international legal obligations, that would have prevented a wrongful act by another state.[65]

28. Consistent with these principles, the Convention imposes responsibility on states for both acts and omissions that entail co-operation in acts contrary to the Convention. Under the doctrine of positive obligations,[66] states have obligations to take measures to prevent action by third parties leading to violations of Convention rights. A state's positive obligation of prevention will be violated where the state "knew or ought to have known" that the individual in question was at real and immediate risk of violation of his or her Convention rights, and failed to take reasonable measures of protection.[67] While such obligations must not "impose an impossible or disproportionate burden on the authorities", they must do "all that could be reasonably expected of them" to prevent violations and end those that are ongoing.[68] These positive obligations are reflected elsewhere in international human rights law, including under the ICCPR[69] and CAT.[70]

29. Thus, acts of co-operation by state agents of Contracting Parties in renditions operations by the agents of a foreign state, within the Contracting Party's jurisdiction, leading to arbitrary detention, enforced disappearances, torture or other ill-treatment, will incur the Convention responsibility of the Contracting Party. In addition, failure to take effective measures to prevent such operations, in circumstances where the state authorities knew or ought to have known of the risk that they would be carried out, will violate Convention positive obligations, read in light of Article 16 ILC Articles.

30. This is reflected in the conclusions of the Venice Commission Opinion on Secret Detention. With particular reference to states' obligations in respect of arrests by foreign authorities on their territory, it found that: "any form of involvement of the Council of Europe Member State *or receipt of information prior to the arrest taking place* entails responsibility under Articles 1 and 5 ECHR (and possibly Article 3 in respect of the modalities of the arrest). A state must thus prevent the arrest from taking place, unless the arrest is effected by the foreign authorities in the exercise of their jurisdiction under the terms of an applicable SOFA

[62] ILC Articles on State Responsibility, Article 16; See further Commentary to Draft Article 16, paras.1- 6.

[63] Article 7, ILC Articles; *Ireland v UK*, §159.

[64] Secret Detention Opinion, para.119,

[65] ILC Articles, Commentary, op cit, Chapter IV, para.4 "a State may be required by its own international obligations to prevent certain conduct by another State, or at least to prevent the harm that would flow from such conduct."; See also Corfu Channel, Merits, Judgment, I.C.J. Reports 1949, p. 4, at p. 22.

[66] *Osman v UK*, [GC] no.23452/94, 28 October 1998; *X and Y v the Netherlands*, (1985) 8 EHRR 235. *Kaya v. Turkey*, no.22535/93, 28 March 2000; *Storck v. Germany*, no.61603/00, 16 June 2005; *Costello Roberts v. UK*, no.13134/87, 25 March 1993; *Hatton v. UK* [GC], no.36022/97, 8 July 2003; *Keenan v. UK*, no.27229/95, 3 April 2001. See also Reply by the Committee of Ministers to Parliamentary Assembly Recommendation 1801 (2007) on Secret detentions and illegal transfers of detainees involving Council of Europe member states, 16 January 2008, § 3.

[67] *Osman*, op cit, § 375.

[68] *Ibid*, §§ 115 and 116.

[69] Article 2 ICCPR. UN CCPR, GC 31, para.8.

[70] Article 2 UNCAT.

[Status of Forces Agreement]" (emphasis added).[71] The WGAD has further found that "when a Government eludes procedural safeguards, in particular the affected person's right to be heard," the Contracting Party "cannot in good faith claim that it has taken reasonable steps to protect that person's human rights after removal, including the right not to be arbitrarily detained. As a consequence, it will share responsibility for ensuing arbitrary detention."[72] Thus the Contracting Party is responsible for the failure to protect and the arbitrary detention that results.

Additional responsibilities of the state are engaged in regard to jus cogens obligations

31. States are subject to additional obligations to refrain from co-operation in internationally wrongful acts where those acts amount to "a serious breach," that is, "a gross or systematic failure" by a state to fulfil "an obligation arising under a peremptory norm of general international law".[73] In those circumstances, states must not only refrain from co-operation in the wrongful acts but, irrespective of whether they have been implicated in the acts or not, they must also "co-operate to bring to an end through lawful means"[74] such a breach and must not recognise as lawful a situation created by the breach.[75]

32. The interveners submit that these obligations apply to the system of renditions and secret detentions. The system involved violations of the prohibitions on torture, enforced disappearances and prolonged arbitrary detention, which are violations of *jus cogens* norms.[76] These violations were both systematic, in that they were carried out in an organised and deliberate way, and gross, in that they flagrantly contravened and challenged the legitimacy of the international law prohibitions on these acts, in the context of action to counter terrorism.[77]

States are responsible for continuing violations of international obligations

33. The interveners submit that, because of the character of the human rights violations entailed in renditions as continuing violations of the Convention, a state that co-operates in an illegal transfer of an individual from its jurisdiction, retains certain obligations in regard to the continuing violations of which the transfer forms part. International law principles of state responsibility, recognised and applied in the Court's jurisprudence,[78] establish that a breach of an international law obligation, by either an act or an omission of the state, extends over the entire period during which the act continues and remains not in conformity with the international obligation.[79] Under Article 15 of the ILC Articles, applied by the Court in *Illascu and others v Moldova and Russia*, the breach of an international obligation through a series of wrongful acts or omissions "extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation".[80]

34. Enforced disappearances of the kind that took place within the renditions system, fall into this category of composite and continuing violations, responsibility for which extends for as long as the person remains unaccounted for, and his or her disappearance remains uninvestigated. This Court has confirmed, in *Varnava v Turkey*, that enforced disappearances amount to continuing violations of the Convention rights, for as long as the disappeared person remains unaccounted for, and for as long as there is a failure to investigate.[81]

[71] Venice Commission Opinion §.118 and § 159(b).

[72] WGAD Report, 2007 UN Doc A/HRC/4/40 § 50.

[73] See ILC Articles, Chapter III Serious Breaches of Obligations under Peremptory Norms of General International Law: Articles 40, 41.1 and 41.2.

[74] Article 41.1 ILC Articles

[75] Article 41.2 ILC Articles. See also Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004, p. 136, at p. 200, § 159.

[76] *Goiburu et al v Paraguay*, Inter-American Court of Human Rights, Judgment of September 22 2006, ser. C No. 153 § 84 (disappearances); *Prosecutor v Anto Furundzija*, Case No.: IT-95-17/1-T, judgment, 10 December 1998, (torture); and *supra* footnotes 21 and 22 about the *jus cogens* character of the prohibition of prolonged arbitrary detention.

[77] See ILC's Commentary to Article 40, § 8: "To be regarded as systematic, a violation would have to be carried out in an organized and deliberate way. In contrast, the term "gross" refers to the intensity of the violation or its effects; it denotes violations of a flagrant nature, amounting to a direct and outright assault on the values protected by the rule."

[78] *Ilascu and others v Moldova and Russia*, op cit, §§ 320-321.

[79] Article 14 ILC Articles

[80] Article 15.2 ILC Articles; *Ilascu and others v Moldova and Russia*, op cit, § 321. Such composite acts in violation of international obligations may be made up of a series of acts some of which in themselves also constitute violations of the State's international obligations: Commentary to Article 15 ILC Articles, §.9.

[81] *Varnava v Turkey* [GC], nos. 16064/90, and others, 18 September 2009, § 148 and § 208. See also *Palic v Bosnia and Herzegovina*, no.4704/04, 15 February 2011, §§.46-47. It is also established that arbitrary detention amounts to a continuing violation of the Convention for as long as the individual remains in detention: *Longa Yonkeu v Latvia*, no.57229/09, 15 November 2011, §§ 103-110. On continuing violations of Articles 3 and 5

Therefore, when a rendition involving arbitrary detention and enforced disappearance in violation of Article 5 ECHR is perpetrated (in part) due to a Contracting Party's actions or omissions, in violation of its Convention obligations, this entails the continuing responsibility of the Contracting Party, beyond the point at which the act of co-operation took place, for as long as the violations of the Convention rights continue.

Certain positive obligations apply to post-transfer violations of Convention rights

35. The fact that, in a rendition, elements of the continuing violation(s) of rights typically take place outside the jurisdiction of the state where the individual was initially apprehended, does not preclude the responsibility of that state. In general, under the Convention jurisprudence, positive obligations to prevent, investigate and provide remedies apply only in regard to acts taking place within the jurisdiction of the state. [82] However, the Court has held that where an act taking place within the state's jurisdiction has a direct causal connection with acts contrary to the Convention rights, occurring outside the state, then certain positive obligations apply.[83] In *Rantsev v Cyprus and Russia*, the Court held that it was within its competence to consider Russia's responsibility for violations of the Article 2 and 4 rights of a victim of trafficking, transferred by private actors from Russia to Cyprus, despite the fact that the majority of the violations of the victim's rights took place outside Russia. It was open to the Court to consider whether Russia had taken "measures within the limits of its own jurisdiction and powers to protect Ms Rantseva from trafficking and to investigate the possibility that she had been trafficked…." as well as the circumstances leading to her death. [84]

36. **It is therefore submitted that, in cases of such illegal transfers, where the act or omission of a Contracting Party, taking place within its jurisdiction, has a direct causal connection with a rendition involving a continuing violation of Convention rights, taking place partly on its territory and partly elsewhere, both the state's negative and positive Convention obligations are engaged. In such cases, the responsibility of the state is to refrain from any act that would facilitate the rendition operation, and to take such preventative, investigative and remedial measures as are available to it within the limits of its jurisdiction, to prevent, remedy or investigate the continuing violation of Convention rights.**

F. The right to truth[85]

37. The UN Human Rights Council, in its resolutions 9/11, 12/12, recognised the importance of the right to truth to ending impunity and promoting human rights.[86] It stressed the need "to recognize the right of victims of gross violations of human rights and serious violations of international humanitarian law, and their families and society as a whole, to know the truth regarding such violations",[87] and to establish appropriate and effective mechanisms to this end.[88] The UN General Assembly itself recognised "the importance of the right to truth and justice".[89] The Inter-American Court has held that the right to truth is triggered by the violation of the right to access to justice, remedy and information, under Articles 1(1), 8(1), 25, and 13 of the American Convention.[90] This has been affirmed in recent cases,[91] including in *Contreras et al. v. El*

in detention, see also *Ilascu and others v Moldova and Russia*, no.48787/99, 8 July 2004, §§ 401-403. See also HRC *Vladimir Kulomin v. Hungary*, UN Doc. CCPR/C/50/D/521/1992 (1996), §11.2.

[82] *Al-Adsani*, op cit, § 38.

[83] *Al-Adsani*, op cit, §§ 39-40

[84] *Rantsev*, op cit, §§ 207-208

[85] In this section the interveners address the right to truth briefly. The interveners commend to the Court the comprehensive analysis of the right to truth set out in the third party intervention of Redress in this case. In light of this, the interveners' remarks in this section focus only on recent developments.

[86] Resolution 9/11 of 24 September 2008, Article 1; Resolution 12/12 of 1 October 2009, Article 1.

[87] Resolution 9/11, Preamble; Resolution 12/12, Preamble. See also Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, UN Commission on Human Rights, resolution 2005/81, Principle 2; Set of Principles on remedy and reparations, principle 4; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, UN Doc. A/HRC/19/61, 18 January 2012, § 48.

[88] *Ibidem*; Resolution 12/12, Preamble.

[89] Resolution 65/196. In 2011, the UN Human Rights Council established a special procedure on the promotion of truth, justice, reparations and guarantees of non-recurrence: Resolution 18/7 of 29 September 2011.

[90] *Contreras et al. v. El Salvador*, 31 August 2011 (Merits, Reparations and Costs), C No. 232, §§ 173 and 26; *Familia Barrios v. Venezuela*, 24 November 2011 (Merits, Reparations and Costs), C No. 237, in Spanish, § 291; *Gelman v. Uruguay*, 24 February 2011 (Merits and Reparations), C No. 221, § 243. *Radilla-Pacheco v Mexico*, C No. 209, 23 November 2009, §§ 180, 212, 313 and 334.

Salvador, where the Inter-American Court[92] recalled that "the right to know the truth has the necessary effect that, in a democratic society, the truth is known about the facts of grave human rights violations. This is a fair expectation that the state must satisfy, on the one hand by the obligation to investigate human rights violations and, on the other, by the public dissemination of the results of the criminal and investigative proceedings."[93]

Convention duties of investigation and remedy imply a right to truth

38. The right to truth, as it is reflected in the Convention system, arises from the positive obligations of states under, at least, Articles 2, 3, and 5 of the Convention, taken together with the right to an effective remedy under Article 13. It also reflects the freedom to seek, receive and impart information under Article 10. The right to truth embodies the right of the victim and his or her family members to know the truth about the victim's fate and whereabouts and the nature and circumstances of the human rights violations that have taken place. More broadly, it requires public acknowledgement of the violations and public disclosure of the results of the investigation.

39. The Court's jurisprudence has expounded on the right to truth in respect of the characteristics that are required for an investigation to be considered effective. The Court has viewed public scrutiny of the investigation and its results as necessary for public trust in state institutions and for public confidence that action will be taken to prevent impunity.[94] The same principle has been endorsed by the Council of Europe Committee of Ministers in its Guidelines on *Eradicating impunity for serious human rights violations*, approved on 30 March 2011.[95] The Guidelines recommend that "States […] should publicly condemn serious human rights' violations"[96], and that they should provide "information to the public concerning violations and the authorities' response to these violations".[97] Furthermore, the right to reparation, as recognised in the Guidelines, requires public disclosure of the truth regarding serious violations of human rights as an essential element of measures of satisfaction and guarantees of non-repetition. [98]

The right to truth and renditions

40. **The interveners maintain that the right to an effective investigation, under, *inter alia*, Articles 3 and 5, read together with Article 13, entails a right to truth concerning the violations of Convention rights perpetrated in the context of the 'secret detentions and renditions system'. This is so, not only because of the scale and severity of the human rights violations concerned, but also in light of the widespread impunity for these practices, and the suppression of information about them, which has persisted in multiple national jurisdictions.** The interveners point to the failure of the USA to ensure accountability, and access to remedy and the truth relating to the treatment of individuals held in the context of US programmes of secret rendition, interrogation and detention operated between 2001 and 2009. US courts have systematically refused to hear the merits of lawsuits seeking redress for human rights violations committed in this context, citing national security, secrecy and various forms of immunity under US law.[99] At the same time, the operational details of the past detention, rendition and interrogation activities of the CIA remain generally classified Top Secret and exempted from disclosure under the Freedom of Information Act.[100] Criminal investigations into the renditions and secret detention programme have been all but shut down by the US Department of Justice.[101] **In this context, the interveners submit that, where renditions**

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[91] *Fleury y otros v. Haiti*, 23 November 2011 (Merits and Reparations), C No. 236, in Spanish; *Gelman v. Uruguay*, op cit, § 256; *Gomes Lund y otros (Guerrilha do Araguaia) v. Brasil*, 24 November 2010, C No. 219, § 257; *Caracazo v. Venezuela*, 29 August 2002, C No. 95, §§ 117, 118.

[92] Relying on *Gelman v. Uruguay*, op. cit, § 192.

[93] Contreras et al. v. El Salvador, op. cit, § 170.

[94] *Isayev and Others v. Russia*, no. 43368/04, 21 June 2011, § 140; *Al-Skeini and Others v. UK*, [GC], no. 55721/07, 7 July 2011; *McKerr v. UK*, no. 28883/95, 4 May 2001, § 115; *Khamzayev and Others v. Russia*, no. 1503/02, 3 May 2011, §196.

[95] Article VI. The Guidelines stress that "States are to combat impunity as a matter of justice for the victims, as a deterrent with respect to future human rights violations and in order to uphold the rule of law and public trust in the justice system", Article I.3. Also, "impunity for those responsible for acts amounting to serious human rights violations inflicts additional suffering on victims" (*ibid*, Preamble).

[96] Article III.2.

[97] Article III.3.

[98] Article XVI.

[99] For example, see, *Binyam Mohamed et al. v Jeppesen Dataplan, Inc.*, US Court of Appeals for the Ninth Circuit, *en banc* opinion, 8 September 2010; *Certiorari* denied by US Supreme Court, 16 May 2011. In Annex A the interveners provide full citations and hyperlinks to a number of Amnesty International reports by way of illustration.

[100] 5 U.S.C. § 552(b). See, for example, *American Civil Liberties Union and American Civil Liberties Union Foundation v United States Department of Defense and Central Intelligence Agency*, US Court of Appeals for the District of Columbia Circuit, 18 January 2011.

[101] See Statement of the Attorney General Regarding Investigation into the Interrogation of Certain Detainees, US Department of Justice 30 June 2011, http://www.justice.gov/opa/pr/2011/June/11-ag-861.html

or secret detentions have taken place with the co-operation of Convention Contracting Parties, or in violation of those states' positive obligations of prevention, the positive obligations of those states require that they take all reasonable measures open to them to disclose to victims, their families and society as a whole, information about the human rights violations those victims suffered within the renditions system.

Annex A

Amnesty International Report 2003
Published 28 May 2003,
Full report available at http://www.amnesty.org/en/library/info/POL10/003/2003.

'2002 In Focus', page 9 (The USA was treating "alleged al-Qa'ida members and associates as 'enemy combatants' – a concept applied to detainees regardless of the circumstances in which they were captured or taken into custody (including those who were not taken prisoner during armed conflict). Arguing that it was 'at war' with al-Qa'ida, the USA asserted that it was entitled to detain 'enemy combatants' until the 'war' ended – which means they could be detained indefinitely and without the rights afforded to prisoners of war or criminal suspects.")

Entries on:
Afghanistan, page 25;
Bosnia-Herzogovina, page 53;
Gambia, page 107;
Pakistan, page 191;
Syria, page 240;
United States of America, page 264.

USA/Afghanistan
Amnesty International Urgent Action
Incommunicado detention/fear of torture or ill-treatment, 22 November 2002,
http://www.amnesty.org/en/library/info/AMR51/176/2002/en
Possible incommunicado detention/health concerns/fear of torture or ill-treatment,
http://www.amnesty.org/en/library/info/ASA11/009/2003/en (detainee held at an undisclosed location by US forces in Afghanistan for three months after arrest on 1 January 2003. In late March 2003, he was transferred to Guantánamo Bay; see update, http://www.amnesty.org/en/library/info/AMR51/051/2003/en.

USA/Bosnia-Herzegovina
News release
"Transfer of six Algerians to US custody puts them at risk", 17 January 2002,
http://www.amnesty.org/en/library/info/EUR63/001/2002/en
"Human rights chambers decision in the Algerians case must be implemented by Bosnia", 11 October 2002,
http://www.amnesty.org/en/library/info/EUR63/017/2002/en
Public report
Unlawful detention of six men from Bosnia-Herzegovina in Guantánamo Bay, 29 May 2003,
http://www.amnesty.org/en/library/info/EUR63/013/2003/en

USA/Gambia
Amnesty International Urgent Action
Incommunicado detention/Fear of ill-treatment/Health concern, 11 December 2002,
http://www.amnesty.org/en/library/info/AFR27/006/2002/en;
and update 9 January 2003, http://www.amnesty.org/en/library/info/AFR27/002/2003/en;
and update 23 January 2003, http://www.amnesty.org/en/library/info/AFR27/003/2003/en.

USA/Malawi
Amnesty International Urgent Action
Incommunicado detention / Fear of ill-treatment / Legal concern, 25 June 2003,
http://www.amnesty.org/en/library/info/AMR51/093/2003/en
See also update, http://www.amnesty.org/en/library/info/AMR51/116/2003/en

USA/Pakistan
Amnesty International Urgent Action

Incommunicado detention / Fear of ill-treatment, Adil al-Jazeeri, 15 July 2003,
http://www.amnesty.org/en/library/info/AMR51/103/2003/en

News release

Pakistan: Government breaks its own laws to participate in "war against terrorism", 19 June 2002,
http://www.amnesty.org/en/library/info/ASA33/015/2002/en

Public report

Pakistan: Transfers to US custody without human rights guarantees, June 2002,
http://www.amnesty.org/en/library/info/ASA33/014/2002/en

USA/Syria

Amnesty International Urgent Action

Possible disappearance/forcible return, 21 October 2002,
http://www.amnesty.org/en/library/info/AMR51/159/2002/en
Incommunicado detention/Fear of ill-treatment, 20 August 2003,
http://www.amnesty.org/en/library/info/AMR51/119/2003/en
And update 24 October 2002, http://www.amnesty.org/en/library/info/AMR51/161/2002/en
And update 14 March 2003, http://www.amnesty.org/en/library/info/AMR51/040/2003/en
And update 17 August 2003, http://www.amnesty.org/en/library/info/MDE24/030/2003/en
And update 6 October 2003, http://www.amnesty.org/en/library/info/MDE24/036/2003/en

Amnesty International News Release: “Deporting for torture?” 14 October 2003,
http://www.amnesty.org/en/library/info/AMR51/139/2003/en

USA/Yemen

Public reports

Yemen: The rule of law sidelined in the name of security, 23 September 2003,
http://www.amnesty.org/en/library/info/MDE31/006/2003/en

USA

Urgent Action

USA: Legal concern / Death penalty, 7 July 2003,
http://www.amnesty.org/en/library/info/AMR51/099/2003/en

News release

USA: Presidential order on military tribunals threatens fundamental principles of justice, 15 November 2001,
http://www.amnesty.org/en/library/info/AMR51/165/2001/en
USA: Treatment of prisoners in Afghanistan and Guantánamo undermines human rights, 14 April 2002,
http://www.amnesty.org/en/library/info/AMR51/054/2002/en
USA: The threat of a bad example, 19 August 2003,
http://www.amnesty.org/en/library/info/AMR51/118/2003/en

Public reports

Memorandum to the US Government on the rights of people in US custody in Afghanistan and Guantánamo Bay, April 2002, http://www.amnesty.org/en/library/info/AMR51/053/2002/en;
Update, December 2002, http://www.amnesty.org/en/library/info/AMR51/184/2002/en.

USA: The threat of a bad example: Undermining international standards as ‘war on terror’ detentions continue, 18 August 2003, http://www.amnesty.org/en/library/info/AMR51/114/2003/en

Ongoing lack of accountability/remedy in the USA

USA: ‘Congress has made no such decision’: Three branches of government, zero remedy for counter-terrorism abuses, February 2012, http://www.amnesty.org/en/library/info/AMR51/008/2012/en;
USA: Remedy blocked again: Injustice continues as Supreme Court dismisses rendition case, 25 May 2011,
http://www.amnesty.org/en/library/info/AMR51/044/2011/en;
USA: See no evil: Government turns the other way as judges make findings about torture and other abuse, February 2011, http://www.amnesty.org/en/library/info/AMR51/005/2011/en;
USA: Former President’s defence of torture highlights need for criminal investigations, 9 November 2010,
http://www.amnesty.org/en/library/info/AMR51/103/2010/en;

USA: Impunity for crimes in CIA secret detention program continues, 29 January 2010, http://www.amnesty.org/en/library/info/AMR51/008/2010/en;
USA: Blocked at every turn: The absence of effective remedy for counter-terrorism abuses, 30 November 2009, http://www.amnesty.org/en/library/info/AMR51/120/2009/en;
USA: Investigation, prosecution, remedy: Accountability for human rights violations in the 'war on terror', 4 December 2008, http://www.amnesty.org/en/library/info/AMR51/151/2008/en; and
Europe: Open secret: Mounting evidence of Europe's complicity in rendition and secret detention, 15 November 2010, http://www.amnesty.org/en/library/info/EUR01/023/2010/en.

Annex B

International Commission of Jurists

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

Amnesty International

Amnesty International is a worldwide movement of people working to promote respect for and protection of internationally-recognized human rights principles. It monitors law and practices in countries throughout the world in the light of international human rights, refugee and humanitarian law and standards. The movement has over 2.8 million members and supporters in more than 150 countries and territories and is independent of any government, political ideology, economic interest or religion. It bases its work on international human rights instruments adopted by the United Nations and regional bodies. It has consultative status before the United Nations Economic and Social Council and the United Nations Educational, Scientific and Cultural Organization, has participatory status at the Council of Europe, has working relations with the Inter-Parliamentary Union and the African Union, and is registered as a civil society organization with the Organization of American States.