Abu Zubaydah v. Lithuania

Application no. 46454/11

WRITTEN SUBMISSIONS ON BEHALF OF

AMNESTY INTERNATIONAL AND

THE INTERNATIONAL COMMISSION OF JURISTS

INTERVENERS

pursuant to the Section Registrar's notification dated 18 March 2013 that the President of the Chamber (Second Section) had granted permission under Rule 44 § 3 of the Rules of the European Court of Human Rights

---

22 April 2013

Introduction

1. The interveners' submissions focus on: A) knowledge imputable to the Contracting Parties; B) *non-refoulement* obligations; C) the duty to investigate and other procedural obligations; and D) the human rights violations that detainees previously held in the USA's secret detention and rendition programs are currently enduring.

A. Knowledge imputable to the Contracting Parties at relevant times[1]

2. In an interview on 16 September 2001 US Vice President Richard Cheney said that, in response to the attacks of 11 September, US intelligence agencies would operate on "the dark side", and agreed that US restrictions on working with "those who violated human rights" would need to be lifted.[2] Amnesty International warned in November 2001 that the USA might exploit its existing rendition policy in the context of what it was calling the "war on terror" to avoid human rights protections.[3] From early 2002 it became clear that non-US nationals outside the USA suspected of involvement in international terrorism were at a real risk of secret transfer and arbitrary detention by US forces.[4]

3. From January 2002 through 2003 the USA transferred more than 600 foreign nationals to the US naval base in Guantánamo Bay, Cuba, with reports from the outset of ill-treatment during transfers,[5] holding them without charge or trial or access to the courts, lawyers or relatives.[6] By July 2005, there were more than 500 men held there.

4. Cases of arbitrary detention and secret transfer continued to emerge during 2002.[7] In April 2002, along side the case of Abu Zubaydah, arrested in Pakistan and whose whereabouts after transfer to US custody remained unknown, Amnesty International reported that "the US authorities had transferred 'dozens of people' to countries where they may be subjected to interrogation tactics – including torture […]. In some cases, it is alleged that US intelligence agents remained closely involved in the interrogation."[8] Other cases that emerged in late 2002 involved individuals transferred to arbitrary detention, including secret detention, in US custody.[9] Other detentions remained unacknowledged by the USA.[10]

5. In December 2002, the *Washington Post* reported on a secret CIA facility at Bagram, Afghanistan, and the agency's use of "stress and duress" techniques, including sleep deprivation, stress positions and hooding, and the use of renditions by the agency.[11]

6. Thus, as early as the end of 2002, any Contracting Party was or should have been aware that there was substantial credible information in the public domain that the USA was engaging in practices of enforced disappearance, arbitrary detention, secret detainee transfers, and torture or other ill-treatment.

---

[1] Annex A provides hyperlinks to, and relevant excerpts of, selected Amnesty International documents by way of illustration. See also submissions to the Grand Chamber of 29 March 2012 in *El-Masri v. "the former Yugoslav Republic of Macedonia"*, App. No. 39630/09, http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/06/Macedonia-written-submission-legal-submission-2012.pdf; to the Court (Fourth Section) of 5 November 2012 in *Al Nashiri v. Poland*, App. No. 28761/11, http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/11/ICJAI-AmicusBrief-AlNashiri_v_-Poland.pdf; and of 13 March 2013 in *Al Nashiri v Romania*, App. No. 33234/12, http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2013/03/AlNashiri_v_Romania-ICJAIJointSubmission-ECtHR-final.pdf.

[2] The Vice President appears on Meet the Press with Tim Russert, NBC Television, 16 September 2001, transcript at http://georgewbush-whitehouse.archives.gov/vicepresident/news-speeches/speeches/vp20010916.html. *Washington Post* journalist Bob Woodward reported that on 17 September 2001 President Bush had approved the CIA Director's request for "exceptional authorities" for the agency, including close alliances with "Arab Liaison Services", namely intelligence services in countries including Algeria, Egypt and Jordan, and that the President had understood that this meant the USA would be working with human rights violators, including torturers. *Bush at War*, by Bob Woodward. Simon & Schuster UK Ltd. November 2002, pages 76-77. See also document 3 (pages108-109), Annex A.

[3] "In its 'war against terrorism' the US government…may resort to tactics to circumvent extradition protections…there is a history of US conduct – including the use of abduction – that fuels such concern". See document 1 in Annex A, published with more detail in document 2, Annex A.

[4] On 17 January 2002, for example, Amnesty International warned that six Algerian men in Bosnia and Herzegovina suspected of involvement in "international terrorism" were at imminent risk of transfer from local to US custody and to onward rendition and human rights violations (Document 4, Annex A). The men were indeed transferred to US custody and then secretly flown to arbitrary detention at the US naval base in Guantánamo Bay in Cuba. (Documents 5 and 6, Annex A). The representative in Bosnia and Herzegovina for the UN High Commissioner for Human Rights described the transfer as an "extrajudicial removal from sovereign territory", asserting that the "rule of law" had been "clearly circumvented" (Page 13, document 7 Annex A).

[5] See, for example, Document 8, Annex A.

[6] In November 2002, the Court of Appeal of England and Wales referred to arbitrary detention in the "legal black hole" of Guantánamo, *Abbasi v. Secretary of State for Foreign and Commonwealth Affairs*, [2002] EWCA Civ 1598, 6 November 2002, referred in *El Masri v."the former Yugoslav Republic of Macedonia"* [GC], App. No. 39630/09, 13 December 2012, § 106.

[7] In March 2002, for example, the *Washington Post* reported that with the assistance of the CIA, Pakistani national Muhammad Saad Iqbal Madni – who, it later emerged, was transferred to Guantánamo in July 2002 – had been taken into custody in Indonesia in January 2002 and rendered to Egypt in an "unmarked, US-registered Gulfstream V jet parked at a military airport in Jakarta". US behind secret transfer of terror suspects, *Washington Post*, 11 March 2002. The US Deputy Secretary of Defense referred to "great cooperation from the Indonesian authorities in locating and arresting and rendering one particularly dangerous person… I think there's good reason not to get into too many details." Interview, New York Times, 21 March 2002, http://www.defense.gov/transcripts/transcript.aspx?transcriptid=3368.

[8] See page 14 of document 7 in Annex A.

[9] For example, see documents 7 and 10-12 in Annex A (including involvement of US agents in interrogations in Gambia of an Iraqi and a Jordanian national in Gambia and their subsequent transfer from Gambia to Guantánamo Bay via detention in Afghanistan).

[10] See documents 13 and 14 in Annex A (Including list of detainees presumed in secret US custody at undisclosed locations – pages 6-7 of document 13).

[11] US decries abuse but defends interrogations, *Washington Post*, 26 December 2002, http://www.washingtonpost.com/wp-dyn/content/article/2006/06/09/AR2006060901356.html.

7. During 2003 and 2004 such information continued to emerge.[12] In June 2003, for example, Amnesty International reported that the CIA was involved in the arrest in Malawi of five men and their rendition out of that country to an undisclosed location.[13] In August 2003, Amnesty International reported that Indonesian national Riduan Isamuddin, also known as Hambali, was being interrogated in US custody in incommunicado detention at an undisclosed location after his arrest in Thailand.[14]
8. In January 2004, the International Committee of the Red Cross (ICRC) issued a press release stating that "[b]eyond Bagram and Guantánamo Bay, the ICRC is increasingly concerned about the fate of an unknown number of people captured as part of the so-called global war on terror and held in undisclosed locations."[15]
9. A February 2004 confidential report of the ICRC on Coalition abuses in Iraq, leaked in 2004 and published in the media at that time, found that detainees labelled by the USA as "high-value" were at particular risk of torture and other ill-treatment and "high value detainees" had been held for months in a facility at Baghdad International Airport in conditions that violated international law.[16]
10. In an open letter to President Bush on 7 May 2004, Amnesty International reported that it had not received any response to the detailed allegations sent to the US government in 2002 and 2003 of abuses against detainees held in Afghanistan, Guantánamo, Iraq, and at undisclosed locations. In the letter Amnesty International raised, *inter alia*, the case of a Yemeni man who alleged that he had been held in a secret detention facility in Kabul and interrogated by US agents.[17]
11. In May 2004, Amnesty International publicly denounced as torture the interrogation technique known as "water-boarding" reportedly used against Khaled Sheikh Mohammed, a "high-value detainee" who had by then been held in secret US detention for more than a year following his arrest in Pakistan in March 2003. It condemned as torture or other ill-treatment "stress and duress" techniques being used against detainees in US custody. [18]
12. In June 2004, the *Washington Post* published a leaked August 2002 memorandum written in the US Department of Justice's Office of Legal Counsel. The memo advised, *inter alia*, that presidential powers or the doctrines of necessity or self-defence could override the criminal liability for torture under US law, and that a "significant range of acts" would not be punishable as they did not amount to torture.[19] Another government memorandum leaked in 2004 asserted that not applying the Geneva Conventions to "captured terrorists and their sponsors" would reduce the threat of domestic prosecution of US interrogators for war crimes.[20]
13. In June 2004, a December 2002 memorandum signed by the US Secretary of Defense was declassified. It had authorized "counter-resistance" techniques for use at Guantánamo, including stress positions, sleep deprivation, sensory deprivation, stripping, hooding, exploitation of phobias, and prolonged isolation. A 2003 Pentagon Working Group report on "detainee interrogations in the global war on terrorism", declassified and published in June 2004 after an earlier draft of it was leaked, recommended the use of various techniques, including environmental manipulation, threat of rendition, isolation, sleep deprivation, removal of clothing, exploitation of phobias, prolonged standing, and hooding.[21]

---

[12] On 26 June 2003, the Parliamentary Assembly of the Council of Europe adopted resolution 1340(2003) protesting at the conditions of detention in Afghanistan and Guantanamo, at the use of military commission and mentioning transfers of prisoners, including children, from Afghanistan to Guantánamo, Rights of persons held in the custody of the United States in Afghanistan or Guantánamo Bay, http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=17130&lang=EN.

[13] See Documents 15 and 16, Annex A.

[14] See Document 17, Annex A. Also in December 2003, the UN Working Group on Arbitrary Detention wrote that, since 11 September 2001, it had received "from reliable sources, reports of secret detention centres where suspected terrorists are held; […] transfers of detainees from one country to another in violation of the principles of non-refoulement and the guarantees for a normal extradition procedure […]. We now know that dozens of people suspected of collaborating with the al-Qa'ida network or other terrorist organizations are being detained in secret in several countries and that individuals who had been held at Guantánamo Bay or elsewhere have been transferred to their countries of nationality where they remain in detention, either at the request of the country that transferred them or because they were wanted, without a court ever having ruled on the legality of their detention. Such transfers circumvent judicial guarantees […]." UN Doc.: E/CN.4/2004/3, 15 December 2003, §§ 53 and 69.

[15] USA: ICRC President urges progress on detention-related issues, 16 January 2004, http://www.icrc.org/eng/resources/documents/misc/5v9te8.htm.

[16] Report of the International Committee of the Red Cross on the Treatment by the Coalition Forces of Prisoners of War and other Protected Persons by the Geneva Conventions in Iraq during Arrest, Internment and Interrogation. February 2004, http://www.globalsecurity.org/military/library/report/2004/icrc_report_iraq_feb2004.pdf.

[17] See Document 18, Annex. It became clear between 2002 and 2005 that the US administration was generally unresponsive in any positive sense to allegations raised by non-governmental organizations that US forces were engaging in human rights violations, including crimes under international law.

[18] See Document 19, Annex A.

[19] Standards of conduct for interrogation under 18 U.S.C. §§2340-2340A; Memorandum for Alberto R. Gonzales, Counsel to the President, signed by Jay S. Bybee, Assistant Attorney General, Office of Legal Counsel, US Department of Justice, 1 August 2002, http://www.justice.gov/olc/docs/memo-gonzales-aug2002.pdf.

[20] Memorandum for the President, Decision re application of the Geneva Convention on Prisoners of War to the conflict with al Qaeda and the Taliban, Alberto R. Gonzales, 25 January 2002, http://www.torturingdemocracy.org/documents/20020125.pdf.

[21] Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations, 4 April 2003, http://www.defenselink.mil/news/Jun2004/d20040622doc8.pdf. These and other documents were described in pages 57-73 of Document 3, Annex A.

14. In July 2004, the ICRC announced that it was "especially concerned about the fact that the US detains an unknown number of people outside any legal framework…Many of those captured in the context of the so-called War on Terror are being held at US detention facilities in Bagram and Kandahar in Afghanistan and in Guantanamo Bay, Cuba… According to public statements by official US sources, a number of detainees are also being held incommunicado at undisclosed locations. The ICRC has also repeatedly appealed to the American authorities for access to people detained in undisclosed locations."[22]

15. In October 2004, Amnesty International published a 200-page report on US human rights violations in the "war on terror", including case details of secret transfers of detainees, the alleged existence of secret US detention facilities, and torture and other ill-treatment. The numerous rendition cases listed included detailed allegations made by German national Khaled el-Masri.[23]

16. In its annual reports covering each of the years from 2002 to 2005, Amnesty International made multiple references to human rights violations in the context of US counterterrorism operations, not only in the entries on the USA, but also in a number of other country entries.[24] Paper copies of these reports were widely distributed, including to media and governments. For example, copies of the reports were mailed at the time of their publication directly to the President, Prime Minister, Minister of the Interior and Minister of Justice in Vilnius, Lithuania.[25]

17. By early 2005 it was beyond reasonable doubt that the USA was engaging in human rights violations against detainees, including holding individuals in secret custody at undisclosed locations, and that detainees labelled "high-value" were at particular risk as the USA pursued intelligence on al-Qa'ida and associated groups. By 2005 no Contracting Party could reasonably have found credible the USA's assurances that it was committed to human rights and the rule of law in the counter-terrorism detention context, including the prohibition of torture and other ill-treatment.[26]

18. By 2005, any Contracting Party agreeing to host a CIA "black site" on its territory would or should have known that such a site would be part of a programme that involved unlawful transfer, enforced disappearance, and torture or other ill-treatment, and that. Further, any Contracting Party would or should have known that any US assurances that a detainee previously subjected to the US programme would be treated in a manner consistent with international law, in case of further transfer, lacked credibility. Any State would or should have known that even if not transferred to further undisclosed detention, the alternative for a "high-value" detainee would be indefinite arbitrary detention without charge or charging for trial by military commission with the power to hand down death sentences.

B. *Non-refoulement* obligations

19. It is this Court's settled case-law that Contracting Parties are enjoined from deporting, expelling or otherwise removing individuals from their jurisdiction when they have real or constructive knowledge that there is a real risk that upon removal the people concerned would be exposed to certain violations or abuses of their human rights.[27] In the context of

---

[22] US detention related to the events of 11 September 2001 and its aftermath - the role of the ICRC, 26 July 2004 Operational update, http://www.icrc.org/eng/resources/documents/misc/639jbs.htm

[23] See Document 3 in Annex A.

[24] See Documents 20, 21 and 22 in Annex A.

[25] Integrated Mailing List records, held at the International Secretariat, Amnesty International, London, UK. In Annex A, the interveners include references to these annual reports.

[26] *A fortiori*, after the adoption on 26 April 2005 by the Parliamentary Assembly of the Council of Europe of a resolution 1433(2005) calling on Member States of the Council of Europe "to ensure that their territory and facilities are not used in connection with practices of secret detention or rendition in possible violation of international human rights law", (http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta05/ERES1433.htm, § 10(vii)). Further, on 21 November 2005, the Secretary General of the Council of Europe invoked the procedure under Article 52 of the Convention and wrote to the Ministers of Foreign Affairs of all Contracting Parties about allegations of European collusion in secret rendition flights, (Secretary General's report under Article 52 on the question of secret detention and transport of detainees suspected of terrorist acts, notably by or at the instigation of foreign agencies, 28 February 2006, SG/Inf (2006) 5, § 3, https://wcd.coe.int/ViewDoc.jsp?id=976731&Site=COE. See also *El-Masri*, § 38.) A follow-up letter was sent to Contracting Parties on 7 March 2006, (Secretary General's supplementary report under Article 52 on the question of secret detention and transport of detainees suspected of terrorist acts, notably by or at the instigation of foreign agencies, 14 June 2006, SG/Inf (2006)13, § 1, https://wcd.coe.int/ViewDoc.jsp?id=1010167&Site=CM). On 13 December 2005, the President of the Parliamentary Assembly of the Council of Europe asked the Assembly's Committee on Legal Affairs and Human Rights to investigate allegations of "extraordinary rendition", (Parliamentary Assembly of the Council of Europe, Synopsis of the Meeting Held in Paris on 13 December 2005, 19 December 2005, Synopsis No 2005/137, p. 1, http://www.assembly.coe.int/committee/JUR/2005/JUR137E.pdf). Pursuant to this request, on 19 December 2005 Senator Dick Marty wrote to the Chairpersons of all National Delegations of the Parliamentary Assembly of the Council of Europe asking them to respond to a questionnaire on these issues, (Parliamentary Assembly of the Council of Europe, Committee on Legal Affairs and Human Rights, Alleged Secret Detentions in Council of Europe Member States, Information Memorandum II, Doc AS/Jur (2006) 03 rev, 22 January 2006, § 22 and Appendix II, http://assembly.coe.int/main.asp?link=/committeedocs/2006/20060124_jdoc032006_e.htm). In this report, Senator Marty stated "'Rendition' affecting Europe seems to have concerned more than a hundred persons in recent years. Hundreds of CIA-chartered flights have passed through numerous European countries. It is highly unlikely that European governments, or at least their intelligence services, were unaware" (§ 66). Subsequently Senator Dick Marty published his first report on 12 June 2006, (Parliamentary Assembly of the Council of Europe, Committee on Legal Affairs and Human Rights, Alleged Secret Detentions and Unlawful Inter-State Transfers of detainees involving Council of Europe Member States, Report, 12 June 2006, Doc. 10957, http://www.assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=11527&Language=EN).

[27] The Court recognized the principle of *non-refoulement* for the first time in *Soering v. United Kingdom* [plenary], App. No. 14038/88, 7 July 1989, § 88 in the context of Article 3. Further, in *Soering* the Court ventilated the possibility that, in certain circumstances, the Contracting

the *non-refoulement* protection afforded by Article 3, in *Saadi v. Italy* the Grand Chamber summarised the general principles governing the Contracting Parties' responsibilities in the event of expulsion.[28] In identifying what was relevant to assess the risk of exposure to prohibited treatment, the Grand Chamber considered, *inter alia*, "where an applicant alleges that he or she is a member of a group systematically exposed to a practice of ill-treatment, the Court considers that the protection of Article 3 … enters into play when the applicant establishes, where necessary on the basis of the sources mentioned in the previous paragraph [i.e. information contained in recent reports from independent international human-rights-protection associations such as Amnesty International], that there are serious reasons to believe in the existence of the practice in question and his or her membership of the group concerned…"[29] In the light of and by analogy with this and given the information set out in section A above, at all material times, and in particular by early 2005, no Contracting Party could credibly assert that it did not have the requisite knowledge: a) about the existence of the US-led secret detention and rendition programmes and the egregious human rights violations they entailed, including the holding of individuals in secret custody at undisclosed locations; b) that detainees labelled "high-value" were at particular risk as the USA pursued intelligence on al-Qa'ida and associated groups; and c) that even if not transferred to further undisclosed detention, the alternative for a "high-value" detainee would be indefinite arbitrary detention without charge or charging for trial by military commission with the power to hand down death sentences.

20. In *R.C. v Sweden* the Court enunciated another important principle in removal cases. It considered that when applicants had discharged to its satisfaction the burden of establishing that they had already been subjected to prohibited treatment, the onus of proof shifts to the respondent State to dispel "any doubts" that in the event of removal the individuals concerned would not be exposed to a real risk of the said prohibited treatment.[30] In the light of and by analogy with this and given the information set out in section A above, at the very latest by early 2005, all Contracting Parties knew or should have known about the human rights violations that the USA was perpetrating against, in particular, the "high value" detainees. As the Court has highlighted, detainees "designated as enemy combatants or subjected to rendition" would be at "a real risk of Articles 3, 5 and 6 of the Convention."[31] Such risks would be all the greater, and were known to be greater by early 2005, for detainees designated as "high value" detainees and part of the secret detention and rendition programmes.

21. An even greater and more specific degree of knowledge in relation to the real risk of onward human rights violations, particularly in relation to "high value" detainees, should be imputed to Contracting Parties on whose territory individual victims of the secret detention and rendition programs had been held and where they had been subjected to the very violations that would have been in prospect following onward transfer out of the Contracting Parties' jurisdiction.

C. The duty to investigate and other procedural obligations

22. It is this Court's settled jurisprudence that Contracting Parties have investigative obligations in respect of any credible information disclosing evidence of violations of Convention rights, including at least violations of Articles 2, 3, 4, 5, 8 and 14.[32] The UN Committee against Torture (CAT) has noted, in connection with the obligation to ensure redress under

---

Parties' obligations under Article 6 may also be capable of enjoining removals from their jurisdiction (*Soering*, § 113). The principle of *non-refoulement* is well established in international law.

[28] *Saadi v. Italy* [GC], App. No. 37201/06, 28 February 2008, §§ 124-136.

[29] *Ibid.*, § 132.

[30] "Having regard to its finding that the applicant has discharged the burden of proving that he has already been tortured, the Court considers that the onus rests with the State to dispel any doubts about the risk of his being subjected again to treatment contrary to Article 3 in the event that his expulsion proceeds.", *R.C. v Sweden*, App. No. 41827/07, 9 March 2010, § 55. See also, *mutatis mutandis*, the Grand Chamber's remarks about Italy's obligation to ascertain the Libyan authorities' treatment of refugees. "Furthermore, the Court reaffirms that Italy is not exempt from complying with its obligations under Article 3 of the Convention because the applicants failed to ask for asylum or to describe the risks faced as a result of the lack of an asylum system in Libya. It reiterates that the Italian authorities should have ascertained how the Libyan authorities fulfilled their international obligations in relation to the protection of refugees.", *Hirsi Jamaa and Others v. Italy* [GC], App. No. 27765/09, 23 February 2012, § 157.

[31] *Othman (Abu Qatada) v United Kingdom*, App. No. 8139/09, 17 January 2012, § 231; see also §§ 232-233. In *El-Masri* the Court held that in the context of the US rendition programme, "it should have been clear to the Macedonian authorities that, having been handed over into the custody of the US authorities, the applicant faced a real risk of a flagrant violation of his rights under Article 5.", *El-Masri*, § 239.

[32] *McCann and others v United Kingdom* [GC], App No.18984/91, 27 September 1995, §§ 160-164; *Assenov and others v Bulgaria*, Case No. 90/1997/874/1086, 28 October 1998, §§ 101-106; *Mentes and others v Turkey* [GC], App No. 23186/94, 28 November 1997, §§; *Nachova and others v Bulgaria* [GC], App. No. 43577/98, 6 July 2005, §§ 110-113. Further, the Convention's jurisprudence directs that any such investigation must: a) be effective in practice as well as in law (*Aksoy v. Turkey*, App No. 21987/93, 18 December 1996, §95); b) be prompt and thorough (*El-Masri*, §183; *Assenov and Others*, § 103 and *Batı and Others v. Turkey*, App. Nos. 33097/96 and 57834/00, 3 June 2004, § 136, ECHR 2004-IV); c) be independent in law and in practice (*El-Masri*, § 184; *Oğur v. Turkey*, App No. 21594/93, 20 May 1999, §§ 91-92; *Mehmet Emin Yüksel v. Turkey*, App No. 40154/98, 20 July 2004, § 37); d) allow for the participation of the victim (*El-Masri*, §§ 185; see, *mutatis mutandis*, *Oğur*, § 92; *Ognyanova and Choban v. Bulgaria*, App No. 46317/99, 23 February 2006, § 107, 23 February 2006; *Khadzhialiyev and others v. Russia*, App. No. 3013/04, 6 November 2008, § 106; *Denis Vasilyev v. Russia*, App No. 32704/04, 17 December 2009, § 157; and *Dedovskiy and Others v. Russia*, App No. 7178/03, § 92, 15 May 2008, ECHR 2008); and e) be "capable of leading to the identification and punishment of those responsible" (*El-Masri*, § 182; *Assenov and Others v. Bulgaria*, § 102, *Corsacov v. Moldova*, App No. 18944/02, 4 April 2006, § 68; and *Georgiy Bykov v Russia*, App. No. 24271/03, 14 October 2010, § 60). Further, investigations must be initiated *ex officio*, and it is not required that there be a criminal complaint lodged by the victims or their relatives (*El-Masri*, § 186. See, *mutatis mutandis*, *Gorgiev v. the former Yugoslav Republic of Macedonia*, App. No. 26984/05, 19 April 2012, § 64). See also, *Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations* (Adopted by the Committee of Ministers on 30 March 2011 at the 1110th meeting of the Ministers' Deputies), Principle V; UN Commission on Human Rights, 61st sess., provisional agenda item 17, Updated Set

article 14 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment that "[a] State's failure to investigate, criminally prosecute, or to allow civil proceedings related to allegations of acts of torture in a prompt manner, may constitute a *de facto* denial of redress and thus constitute a violation of the State's obligations under article 14."[33] The Court specifically held in *El Masri* that the duty to investigate alleged renditions arises under Articles 3 and 5. Such investigation must be, *inter alia*, "capable of leading to the identification and punishment of those responsible for the alleged events and of establishing the truth."[34] The obligation does not expire with the mere establishment of the whereabouts or death of the victim;[35] it has a continuing nature,[36] and, considering the Court's case-law on investigations under Article 2, *mutatis mutandis*, "binds the State throughout the period in which the authorities can reasonably be expected to take measures with an aim to elucidate the circumstances of death and establish responsibility for it".[37]

23. In cases of renditions or enforced disappearances in which the State authorities may be implicated, the Grand Chamber has underscored that "an adequate response by the authorities in investigating allegations of serious human rights violations […] may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts. For the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory".[38]

24. The Convention principle that the investigation should be effective in practice as well as in law requires that the authorities make a serious attempt to find out what has happened, by taking active and thorough steps, to the extent that these are reasonable and available to them, to secure potential evidence relating to the alleged crimes, including eyewitness testimony and forensic evidence.[39] The investigation may fail to meet the requisite standard of thoroughness where the authorities fail to interview, or to attempt to interview, relevant witnesses[40] or explore the background circumstances that may shed light on a particular incident.[41] The authorities must not rely on hasty or ill-founded conclusions to close their investigation or rely on assumptions unsupported by evidence.[42]

25. Furthermore, the State's duty to initiate and continue an investigation cannot be limited by the fact that alleged victims find themselves in situations where it is impossible for them to produce evidence of violations of their Convention rights. This is the case not only regarding detentions by public authorities but also in cases of detention by third parties.[43] It is also established that, where an individual is held within the exclusive control of the authorities, and there is a *prima facie* indication that the State may be involved in the violations alleged, the burden of proof in establishing the violations shifts to the State, since the events in issue may lie wholly, or in large part, within the exclusive knowledge of the authorities.[44] The interveners submit that these principles apply in cases of enforced disappearances, including those within the renditions system, in which the application of the doctrine of State secrecy has meant that information regarding the violations of human rights entailed in particular renditions remains within the knowledge of the US and other State

---

of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, U.N. Doc. E/CN.4/2005/102/Add.1 (2005) (UN Impunity Principles), Principle 19. As highlighted in the UN Basic Principles and Guidelines on the Right to a Remedy and Re§tion for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (the Basic Principles on the Right to a Remedy), adopted by the UN General Assembly on 21 March 2006, Resolution 60/147, the obligation to investigate is a key component of the States' international legal obligations to "respect, ensure respect for and implement international human rights law and international humanitarian law", Principle 3.

[33] UN Committee against Torture (CAT), General Comment No 3: Implementation of article 14 by States parties, 13 December 2012, UN Doc. CAT/C/GC/3, (GC 3), § 17.

[34] *El Masri*, § 193.

[35] *Er and others v Turkey*, App. No. 23016/04, 31 July 2012, § 50.

[36] This Court observed in *Brecknell v. United Kingdom* that "there is a little ground to be overly prescriptive as regards the possibility of an obligation to investigate unlawful killings arising many years after the events since the public interest in obtaining the prosecution and conviction of perpetrators is firmly recognised, particularly in the context of war crimes and crimes against humanity." See *Brecknell v. United Kingdom*, App. No. 32457/04, 27 November 2007, § 69. In *Yasa v Turkey,* App. No. 22495/93, 2 September 1998, at § 74 the Court held that the investigative obligation in relation to Articles 2 and 13 could not be discharged by an award of damages alone, expressing concern that otherwise "the State's obligation to seek those guilty of fatal assault might thereby disappear." *Varnava and others v Turkey* [GC], App. nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, 18 September 2009, § 148. See also jurisprudence of the Inter-American Court of Human Rights, *Las Palmeras v Colombia*, 26 November 2002, (Reparations), C No. 96, § 70.

[37] *Silih v Slovena* [GC], App. No. 71463/01, 9 April 2009, § 157, citing, *mutatis mutandis*, *Brecknell*, §§ 66-72, and *Hackett v. the United Kingdom* (dec.) App. No. 34698/04, 10 May 2005.

[38] *El-Masri*, §§ 181 and 192; *Assenov v Bulgaria*, § 102; *Labita v Italy* [GC], App. No. 26772/95, 6 April 2000, § 131; *Mentes and others,* § 89. See also,*Varnava and others*, §§ 191, citing *McKerr v. the United Kingdom*, App. No. 28883/95, 4 May 2001, §§ 111 and 114; and *Brecknell*, §§ 65 and 193.

[39] *El-Masri*, § 183*; Gul v Turkey*, App. No. 22676/93, 14 December 2000, §§ 89-91; *Boicenco v Moldova,* App. No. 41088/05, 10 June 2008, § 123.

[40] *Assenov v Bulgaria*, § 103; *Tanrikulu v Turkey* [GC], App. No.23763.94, 8 July 1999, § 104-110; *Zelilof v Greece*, App. No. 17060/03, 24 May 2007, § 62.

[41] *Gul*, § 91.

[42] *Assenov v Bulgaria*, § 103; *El-Masri*, § 183.

[43] See *M. and Others v. Italy and Bulgaria* regarding victim of rape within her family, App. No. 40020/03, 31 July 2012, §§ 100-101, 106;

[44] Grand Chamber, *Varnava and others*, § 184, citing also *Akkum v. Turkey*, App. No. 21894/93, 24 March 2005, § 211; and, amongst many cases concerning the situation in Chechnya, *Goygova v. Russia*, App. No. 74240/01, 4 October 2007, §§ 88-96, and *Magomed Musayev and Others v. Russia*, App. No. 8979/02, 23 October 2008, §§ 85-86.

authorities.[45] The difficulties of victims in adducing evidence of their detention and treatment in detention would have been even more acute when they were still subject to the rendition and secret detention programs or their consequences, which include the suppression of the truth about what happened, in continuing violation of Convention rights. An investigation into alleged violations of Convention rights will not be effective where its findings are based on unproven assumptions and rely on the withholding of information subject to State secrecy. It will also not be effective if the alleged victims or their representatives are unable to adduce evidence of violations of their rights due to the conditions under which victims have been held, or because of their continued detention, and/or the existence of orders or classification schemes severely limiting or preventing disclosure of information or expression of opinions about their situation, location or treatment during the capture, rendition, detention and interrogation.[46]

26. When substantive violations of Convention rights arise from certain crimes under international law such as torture, enforced disappearances, and crimes against humanity, the interveners submit that the content and scope of the corresponding investigative obligations under the Convention should be construed in light of the Contracting Parties' international law obligations arising in connection with these crimes.[47] These include: a) obligations to establish jurisdiction over human rights violations amounting to crimes under international law, including on the basis of the nationality of the perpetrator,[48] or victim;[49] b) an obligation to establish jurisdiction by exercising universal jurisdiction and either extradite or prosecute (*aut dedere aut judicare*) in respect of such offences,[50] subject to human rights safeguards; and c) obligations to provide mutual legal assistance in criminal and civil proceedings in other States.[51]

27. Criminal proceedings are an important element of ensuring an effective remedy for such violations.[52] They are critical to ensure the effective future protection of human rights.[53] Criminal proceedings will also usually be the main avenue by which the victims' right to truth can be realised, which requires identification of the perpetrators.[54] The Inter-American Court of Human Rights has underlined that the State must take "every necessary step […] to know the truth and punish those responsible."[55] Where State authorities or agents have been complicit in unlawful acts, the obligation to bring prosecutions, where there is sufficient evidence, extends also to accessories and to those who may have been negligent.[56]

---

[45] The UN Working Group on Enforced or Involuntary Disappearances (WGEID) has equated "suspension or cessation of an investigation into disappearance on the basis of failure or inability to identify the possible perpetrators" to measures similar to an amnesty law, and as such prohibited under the UN Declaration on Enforced Disappearance and, implicitly, the International Convention for the Protection of All Persons from Enforced Disappearances (ICED), WGEID, General Comment on article 18, 27 December 2005, § 3(a), UN Doc. E/CN.4/2006/56 at § 49. The *Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,* recommended by UN General Assembly resolution 55/89 of 4 December 2000, specify that the "investigative authority shall have the power and obligation to obtain all the information necessary to the inquiry", § 3(a).

[46] The CAT has highlighted as specific obstacles to effective redress "State secrecy laws, evidential burdens and procedural requirements that interfere with the determination of the right to redress", General Comment 3, § 38.

[47] Furthermore, in accordance with the ILC Articles on State Responsibility, where there is a serious breach of international law, including a violation of an obligation *erga omnes*, or a systematic violation of a norm of *jus cogens*, all States have duties not to recognise the situation as lawful, including by refraining from acts that imply recognition; not to render aid or assistance in the violation; and to cooperate to bring the situation of violation to an end. See Articles 40 and 41, International Law Commission Articles on the Responsibility of States for Internationally Wrongful Acts, Text adopted by the International Law Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/56/10); Commentary on Article 41, § 11; and the International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004, p. 200, § 159.

[48] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), Article 5(1)(2); ICED Article 9(1)(b).

[49] Convention against Torture, Article 5(1)(c); ICED, Article 9(1)(c).

[50] Convention Against Torture, Article 5(2); ICED, Article 13(4).

[51] Convention Against Torture Article 9; ICED Article 14; Supplementary Convention on the Abolition of Slavery, the Slave trade and Institutions and Practices Similar to Slavery, 1956, Article 8. See also, Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity, adopted by General Assembly resolution 3074 (XXVIII).

[52] See, *Brecknell,* § 66; *Bazorkina v Russia*, App. No. 69481/01, 27 July 2006, § 117; *El Masri*, § 140: "The Court notes that it has already found in cases against the respondent State that a criminal complaint is an effective remedy which should be used, in principle, in cases of alleged violations of Article 3 of the Convention (see *Jasar v. the former Yugoslav Republic of Macedonia*, No. 69908/01, 15 February 2007; *Trajkoski v. the former Yugoslav Republic of Macedonia*, No. 13191/02, 7 February 2008; *Dzeladinov and Others v.the former Yugoslav Republic of Macedonia*, No. 13252/02, 10 April 2008; and *Sulejmanov v. the former Yugoslav Republic of Macedonia*, No.69875/01, 24 April 2008)", and § 261 under Article 13 ECHR. This point was also underlined, for example, by the Inter-American Commission on Human Rights in the case of *Masacre Las Hojas v. El Salvador*, Case 10.287, Report No. 26/92, 24 September 1992, Inter-Am.C.H.R., OEA/Ser.L/V/II.83 Doc. 14 at 83 (1993).

[53] For example, in *Krastanov v Bulgaria*, App. No. 50222/99, 30 September 2004, § 60, the Court held that "If the authorities could confine their reaction to incidents of intentional police ill‑treatment to the mere payment of compensation, while remaining passive in the prosecution of those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity and the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance, would be ineffective in practice."

[54] *El-Masri*, §§191-193; Inter-American Court of Human Rights, *Contreras et al. v. El Salvador*, 31 August 2011 (Merits, Reparations and Costs), C No. 232, § 170; UN Human Rights Council Resolution 9/11 of 24 September 2008, Article 1; Resolution 12/12 of 1 October 2009, Article 1.

[55] Inter-American Court of Human Rights, *La Cantuta v Peru* (Merits, Reparations and Costs), C No. 162, 29 November 2006.

[56] *Oneryildiz v Turkey*, App. No. 48939/99, 30 November 2004, § 93; Inter-American Court of Human Rights, *Las Palmeras v Colombia*, § 67.

Similarly, this Court has stated that an investigation into allegations of torture "must be conducted diligently and with the required determination to identify and prosecute those responsible"[57].

28. The Council of Europe Committee of Ministers in its Guidelines on *Eradicating impunity for serious human rights violations* (the CoE Guidelines), approved on 30 March 2011, provide further that "States have a duty to prosecute where the outcome of an investigation warrants this."[58] Similarly the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (UN Impunity Principles) note the State's duty to "undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried and duly punished."[59] The Basic Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law contain similar provisions.[60]

29. The CAT has held that lack of investigations and prosecutions by the authorities who "know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed" incurs the responsibility of the State since "the State's indifference or inaction provides a form of encouragement and/or de facto permission."[61] The failure to investigate and prosecute situations where security forces are alleged to have been involved in unlawful acts can foster a general sense of impunity of members of security forces for their actions or omissions and is not compatible with Convention guarantees.[62]

30. The Inter-American Court of Human Rights has underscored that States have an obligation to identify, prosecute, and punish those responsible for crimes under international law.[63] In *Brecknell* this Court observed that "…the public interest in obtaining the prosecution and conviction of perpetrators is firmly recognised, particularly in the context of war crimes and crimes against humanity."[64] It has also specifically required States to "remove all obstacles, de facto and de jure, which maintain the case in impunity."[65] These notions were developed in the context of large-scale impunity for systemic human rights violations in the Americas. Such a context has much resonance in connection with the Contracting Parties' failure to establish and carry out effective investigations with the view to ensuring meaningful accountability for their involvement in the CIA-administered secret detention and rendition programs.[66] Moreover, the interveners submit that such failure – including to instigate prosecutions where appropriate – will fatally undermine public confidence in Contracting Parties' adherence to the rule of law throughout the Council of Europe.

Scope of the investigation

31. In order to meet Convention standards of thoroughness and effectiveness, the investigation must also be comprehensive in its scope and must address all aspects of the human rights violations concerned, including the crimes under international law involved. In *Oneryildiz v Turkey*, for example, the Grand Chamber found a violation of the investigative obligation under Article 2, having regard to the scope of the criminal proceedings in the case, which addressed only the negligence of relevant officials, and did not relate to the right to life or to life-endangering activities at

---

[57] *Velev v. Bulgaria*, App. No. 43531/08, 16 April 2013, § 53. *Shishkovi v. Bulgaria*, App. No. 17322/04, 25 March 2010, § 38.
[58] Article VIII.
[59] UN Impunity Principles, Principle 19.
[60] Principle 4 states: ""[i]n cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him."
[61] Cat General Comment 2, § 18. See also, CAT General Comment 3, § 7**;** *Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* of the Istanbul Protocol, Article 2; ICJ, Hissene Habre cas, § 115.
[62] *Mahmut Kaya v Turkey*, Application No. 22535/93, § 99. The President of the Republic of Italy recently pardoned one of the US citizens convicted for the rendition of Abu Omar. The ICJ called this pardon a blow to the rule of law and the fight against impunity in Europe, see ICJ, "Italy: Presidential pardon for rendition a blow to the rule of law, says ICJ", http://www.icj.org/italy-presidential-pardon-for-rendition-a-blow-to-the-rule-of-law-says-icj/. See also Julia Hall (Amnesty International expert on counter-terrorism and human rights), *Italian pardon of US officer sets stage for impunity*, Al-Jazeera, 18 April 2013, available at: http://www.aljazeera.com/indepth/opinion/2013/04/20134148255211215.html.
[63] *Velasquez Rodriguez v Honduras*, 29 July 1988, C No. 4, § 166; *Las Dos Erres Massacre v Guatemala*, 24 November 2009, C. No. 211, § 233.
[64] *Brecknell*, § 69.
[65] *Las Dos Erres Massacre v Guatemala*, C. No. 211, § 233.
[66] Indeed, the state reaction across Europe has been characterised by resort to secrecy, deployment of doctrine of state immunity, and other measures designed to block accountability. See, for example, Amnesty International, USA: Chronicle of Immunity Foretold: Time for change on counter-terrorism violations after another year of blocking truth, remedy and accountability, 17 January 2013, http://www.amnesty.org/en/library/info/AMR51/003/2013/en; Amnesty International, 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; Amnesty International, Lithuania: Lithuania: Unlock the truth in Lithuania: Investigate secret prisons now, 29 September 2011, http://www.amnesty.org/en/library/info/EUR53/002/2011; European Parliament resolution of 11 September 2012 on alleged transportation and illegal detention of prisoners in European countries by the CIA: follow-up of the European Parliament TDIP Committee report, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0309+0+DOC+XML+V0//EN&language=EN, especially §§ 7-8, 10-20; Report of the UN Special RApp.orteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism: Framework principles for securing the accountability of public officials for gross or systematic human rights violations committed in the context of State counter-terrorism initiatives, 1 March 2013, UN Doc. A/HRC/22/52, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-52_en.pdf.

issue in the case, or allow for the establishment of responsibility for the deaths.[67] In its General Comment No. 2, the CAT confirmed that, in light of the obligation to prosecute crimes of torture under Article 4 of the Convention, it would be a violation of that obligation to prosecute a crime of torture solely as ill-treatment where elements of torture were also present.[68]

32. In the case of *Alzery v Sweden*, concerning the CIA-led rendition of the applicant from Sweden to Egypt, the UN Human Rights Committee (HRC) underlined Sweden's obligation under ICCPR article 7 to "ensure that its investigative apparatus is organised in a manner which preserves the capacity to investigate, as far as possible, the criminal responsibility of all relevant officials, domestic and foreign, for conduct in breach of article 7 committed within its jurisdiction and to bring the appropriate charges in consequence."[69] The HRC criticised the fact that "neither Swedish officials nor foreign agents were the subject of a full criminal investigation, much less the initiation of formal charges under Swedish law whose scope was more than capable of addressing the substance of the offences."[70]

33. In the context of criminal investigations arising from Contracting Parties' involvement in the US-led secret detention and renditions programs, an inappropriately restrictive focus on the part of the investigating authorities – for example one that constrains their ability to address any and all relevant possible crimes under domestic and international law, including those arising from violations of the Convention – will not satisfy investigative and further obligations under the Convention.

Limitation periods

34. Such obligations will not be met in situations where the authorities have wilfully chosen to restrict the scope of a criminal investigation from the outset in a manner inconsistent with the Convention. This may be, for example, by deliberately focusing only on offences which are subject to limitation periods under domestic law when the allegations relate to offences that are imprescriptible under international law. The Court has found violations of the investigative obligations, under Article 13 read in conjunction with Article 3, where time bars, coupled with delays in proceedings, have led to dismissal of prosecutions for treatment amounting to a violation of Article 3. It has held that, "where a State agent has been charged with crimes involving torture or ill-treatment, it is of the utmost importance for the purposes of an 'effective remedy' that criminal proceedings and sentencing are not time-barred."[71] These findings reflect wider principles of international human rights and international criminal law, as affirmed by the CAT,[72] the ICTY,[73] the HRC,[74] and the Convention on Enforced Disappearance,[75] which require that, in crimes involving gross violations of human rights, either time bars should be removed altogether, or they should be proportionate to the gravity of the crime.[76]

35. As this Court has stated, a violation of the Convention may be found when the authorities are inactive[77] or where an investigation is "from the very beginning and throughout it, defined very narrowly."[78] It has further held that "the termination of pending investigations into abductions solely on the grounds that the time-limit has expired is contrary to the obligations under Article 2 of the Convention"[79] and in another case has criticised the "excessively narrow legal framework in which the investigation was conducted."[80] This is consistent with the broader finding that "any deficiency

---

[67] *Oneryildiz*, §§ 116-117

[68] CAT, General Comment No 2: Implementation of article 2 by States Parties, 24 January 2008, UN Doc. CAT/C/GC/2, (GC 2), § 10.

[69] *Mohammed Alzery v Sweden*, CCPR/C/88/D/1416/2005, UN Human Rights Committee, 10 November 2006, §11.7.

[70] *Ibid.*

[71] *Abdulsamet Yaman v Turkey*, App. No. 32446/96, 2 November 2004, §55 and §59-60.

[72] General Comment 2, § 5: "other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violated the principle of non-derogability". See also General Comment 3, § 38, and § 40: "[o]n account of the continuous nature of the effects of torture, statutes of limitations should not be applicable as these deprive victims of the redress, compensation, and rehabilitation due to them".

[73] The International Criminal Tribunal for Yugoslavia (ICTY), in *Prosecutor v Anto Furundzija (Trial Judgment)*, Case No IT-95-17/1-T, ICTY Trial Chamber II, 10 December 1998, has stipulated that "torture may not be covered by a statute of limitations", see § 157.

[74] General Comment no. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, UN Doc. CCPR/C/21/Rev.1/Add. 13, § 18: "unreasonably short periods of statutory limitation in cases where such limitations are applicable" should be removed in respect of "those violations recognized as criminal under either domestic or international law, such as torture and cruel, inhuman and degrading treatment; summary and arbitrary killing; and enforced disappearance". See also HRC, General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Art. 7), 10 March 1992, UN Doc. HRI/GEN/1/Rev.1 at 30 (1994), § 15.

[75] ICED, Article 8, requires that any statute of limitations that may apply to crimes of enforced disappearance is long and proportionate to the gravity of the crime.

[76] Basic Principles on the Right to a Remedy provide in Principle IV that: "Where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law." The UN Impunity Principles state in principle 23 that "prescription – of prosecution or penalty – in criminal cases shall not run for such period as no effective remedy is available. Prescription shall not apply to crimes under international law that are by their nature imprescriptible."

[77] In *Association "21 December 1989" and others v. Romania*, the Court found that an investigation into violations of the right to life was insufficient where it was ended due to prescription, as a result of the inaction of the authorities themselves. *Association "21 December 1989" and others v. Romania***,** App. Nos. 33810/07 and 18817/08, 24 May 2011, § 144.

[78] *Finogenov and others v Russia*, App. Nos. 18299/03 and 27311/03, 20 December 2011, §§ 275 and 282.

[79] *Aslakhanova and others v Russia*, App. Nos. 2944/06, 8300/07, 50184/07, 332/08 and 42509/10, 18 December 2012, § 237.

[80] *Nachova and others* § 115.

in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required measure of effectiveness."[81]

36. As such, where an investigation or prosecution into allegations of crimes under international law – which are either imprescriptible or subject to longer periods of limitation – is limited to national law crimes for which the statute of limitations is short or close to expiry, it will clearly not be effective and thus in violation of the Convention. Such an investigation will not be effective if limited in this way at the outset, but also if it is closed because of the limitation period. International human rights law prohibits the resort to short periods of limitation to prevent investigation or prosecution of offences involving violations of Convention rights that amount to crimes under international law.

Involvement of victims and public scrutiny of the investigation

37. This Court's established jurisprudence is that, to be effective, an investigation must involve the victim of an alleged human rights violation or his or her next-of-kin "to the extent necessary to safeguard his or her legitimate interests".[82] Information must be promptly[83] provided on all significant developments in the investigation[84] and victims or their relatives must be heard by the investigative authorities and must be provided with relevant documents and decisions.[85] The UN Working Group on Enforced and Involuntary Disappearances has specified that "the relatives of the victims should be closely associated with an investigation into a case of enforced disappearance".[86]

38. These duties extend to providing the victims with reasons explaining why a prosecution has not been pursued.[87] EU Member States are also now separately obliged to ensure that victims have the right to a review of a decision not to prosecute.[88] Under the Court's jurisprudence, the right to such review derives from the requirement of a "sufficient element of public scrutiny in respect of the investigation or its results to secure accountability in practice as well as in theory, maintain public confidence in the authorities' adherence to the rule of law and prevent any appearance of collusion in or tolerance of unlawful acts".[89]

39. In *Ramsahai v The Netherlands*, the Court did not find a violation because the applicants were allowed full access to the investigation file, were able to participate effectively in the investigation and were provided with a reasoned decision regarding the decision not to prosecute. In particular, the Court stated that victims must be given sufficient access to the investigation to allow them to "participate effectively in proceedings aimed at challenging the decision not to prosecute."[90] Accordingly, the decision not to prosecute must be reasoned and contain enough detail to allow for an effective challenge to that decision. The issue of public confidence will be especially at stake in the context of allegations relating to a large-scale cross-border system operating in disregard of international legal and national legal obligations. In such situations, a Contracting Party should be required to provide a detailed, public decision setting out the reasons why a prosecution has not been pursued.

40. The CoE Guidelines recommend that States provide "information to the public concerning violations and the authorities' response to these violations".[91] 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.[92] This is consistent with the Grand Chamber's recognition in *El-Masri* of the importance of the right to truth where it "underline[d] the great importance of the present case not only for the applicant

---

[81] *Ibid.,* § 113; *Kelly and Others v. the United Kingdom*, App. No. 30054/96, 4 May 2001, §§ 96-97, and *Anguelova v Bulgaria*, 13 June 2002, App. No. 38361/97, §§ 139 and 144.

[82] *McKerr v UK,* § 115*; Oğur v Turkey*, § 92; *Ognyanova and Choban v. Bulgaria*, App. No. 46317/99, 23 February 2006, § 107

[83] *Denis Vasilyev v. Russia*, App. No. 32704/04, 17 December 2009, § 157.

[84] *Khadzhialiyev and Others v. Russia*, App. No. 3013/04, 6 November 2008, § 106

[85] *Dedovskiy and Others v. Russia*, App. No. 7178/03, 15 May 2008, § 92. These principles are also reflected in Article 24(2) of the International Convention for the Protection of All Persons from Enforced Disappearance which states that "[e]ach victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard."

[86] General Comment on the right to truth in relation to enforced disappearance, § 3, UN Doc. A/HRC/16/48 (§ 39). See also § 4 of the *Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Recommended by General Assembly resolution 55/89 of 4 December 2000, establish that "[a]lleged victims of torture or ill-treatment and their legal representatives shall be informed of, and have access to, any hearing, as well as to all information relevant to the investigation, and shall be entitled to present other evidence."

[87] *Hugh Jordan v. the United Kingdom*, App. No. 24746/94, 4 May 2001, § 42

[88] Article 11, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

[89] *Ramsahai and others v. The Netherlands*, [GC], App. No. 52391/99, § 353; *Isayev and Others v. Russia*, App. No. 43368/04, 21 June 2011, § 140; *Al-Skeini and Others v. UK*, [GC], App. No. 55721/07, 7 July 2011; *McKerr v. UK*, § 114. See also mutatis mutandis, *Bucur and Toma v Romania, on Article 10 and disclosure of information held by secret services*, App. No. 28883/95, 4 May 2001, § 115; *Khamzayev and Others v. Russia*, App. No. 1503/02, 3 May 2011, § 196.

[90] *Ibid,* § 349

[91] Article III.3 and 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). .

[92] Article XVI.

and his family, but also for other victims of similar crimes and the general public, who had the right to know what had happened."[93]

41. 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 detention and rendition programs, including reasonable public disclosure of the conduct and results of investigations into allegations of such violations. 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.[94] The failure of the USA to ensure accountability, and access to an effective 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. In this context where renditions or secret detentions have taken place with the co-operation of Convention Contracting Parties, or in violation of those States' positive obligations of prevention, those States are required to take all reasonable measures open to them to disclose to victims, their families and the public as a whole, information about the human rights violations those victims suffered within the renditions system, including to give reasons why a prosecution has not been pursued.

42. The interveners note the Court's finding that "there is little ground to be overly prescriptive as regards the possibility of an obligation to investigate unlawful killings arising many years after the events, since the public interest in obtaining the prosecution and conviction of perpetrators is firmly recognised, particularly in the context of war crimes and crimes against humanity".[95] In this context, effective future protection of human rights in the Contracting Parties concerned, and realisation of the victims' right to an effective remedy and the truth, will only be achieved if any previously defective investigation is re-opened and conducted in a manner consistent with the Convention.

D. Human rights violations that detainees previously held in the USA's secret detention and rendition programme are currently enduring

43. A number of individuals who were previously held in secret custody or subjected to secret transfers remained in Guantánamo in April 2013. They include 13 of 14 "high-value detainees" who arrived at Guantánamo on 4 September 2006, two days before President Bush confirmed for the first time the existence of the secret detention programme operated by the CIA, from which the 14 had been transferred after up to four and a half years in custody held at undisclosed locations.[96] Today, six of the 14 detainees face trials under the Military Commissions Act (MCA) with the administration seeking the death penalty. Trials under the MCA do not meet international fair trial standards, and any imposition of the death penalty after such trials will violate the right to life under international law.[97]

44. None of the 13 detainees previously held in the CIA high-value detainee programme and now held at Guantánamo have had rulings on the merits of *habeas corpus* challenges.[98] The seven detainees from this group who have not been charged remain in indefinite detention apparently facing one of two futures – eventual charging for trial by military commission or indefinite detention under the "law of war", as contentiously and unilaterally interpreted by the US government. Even a detainee who is brought to trial and acquitted, or after he has been convicted and served a prison sentence, will not necessarily be released, but may be returned to indefinite detention under the USA's law of war framework.[99]

45. The operational details of the now-terminated CIA secret detention and interrogation programme, including conditions of confinement, which interrogation techniques were used against which detainees, and which countries were involved in hosting secret detention facilities, remain classified Top Secret and the detainees and their lawyers are prohibited from disclosing any such information.[100] Those seeking judicial remedy in the USA for human rights violations committed in the context of the CIA secret detention and rendition programmes have been blocked by government invocation of State secrecy.[101] A US Senate Intelligence Committee report on the CIA secret detention and interrogation program remains classified.[102]

46. No official has been charged with crimes committed in the CIA high-value detainee programme. A limited criminal investigation conducted by the current administration was closed down in 2012, with no charges referred against anyone. Among the documents reviewed by the investigating prosecutor were a 2004 report of the CIA Inspector General and the February 2007 "ICRC report on the treatment of fourteen 'high value detainees' in CIA custody".[103] Each report, not to mention the substantial amounts of other information in the public realm, contains detailed evidence of torture and other ill-treatment and enforced disappearance.

---

[93] *El-Masri*, § 191.
[94] See above footnote 62.
[95] *Aslakhanova and others*, § 237; *Brecknell*, § 69.
[96] One of the 14, Ahmed Khalfan Ghailani, was transferred in 2009 to New York for prosecution in federal court. See Document 23, in Annex A.
[97] See Documents 24 and 25, in Annex A.
[98] See, for example, Chapter 6 in Document 26 in Annex A.
[99] See Document 25 in Annex A.
[100] See, for example, Document 27 in Annex A.
[101] See, for example, Document 28 in Annex A.
[102] See, for example, Document 27 in Annex A.
[103] Statement of Attorney General Eric Holder on Closure of Investigation into the Interrogation of Certain Detainees, US Department of Justice, 30 August 2012, http://www.justice.gov/opa/pr/2012/August/12-ag-1067.html

Annex A

Document 1: News release, 29 November 2001, http://www.amnesty.org/en/library/info/AMR51/176/2001/en, ("Amnesty International fears that in its 'war against terrorism' the US government…may resort to tactics to circumvent extradition protections. As the report illustrates, there is a history of US conduct – including the use of abduction – that fuels such concern. Amnesty International believes that for justice to be done, and to be seen to be done, governments must maintain scrupulous standards of legality and transparency. To do otherwise, the report concludes, will only serve to undermine the search for justice") (launching document 2)

Document 2: USA: No return to execution, pages 17-25, http://www.amnesty.org/en/library/info/AMR51/171/2001/en

Document 3: USA: Human Dignity denied: Torture and accountability in the 'war on terror', October 2004, http://www.amnesty.org/en/library/info/AMR51/145/2004/en

Document 4: Bosnia-Herzegovina: 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.

Document 5: Bosnia-Herzegovina: Letter to the US Ambassador regarding six Algerian men, 18 January 2002, http://www.amnesty.org/en/library/info/EUR63/003/2002/en. (Amnesty International transmitted this urgent fax on 18 January, and made public the same day, to the US Ambassador in Bosnia and Herzegovina, calling for six Algerian men who had that day been handed over to US custody to be brought before a court and not transferred out of the country.

Document 6: Bosnia-Herzegovina: Unlawful detention of six men from Bosnia and Herzegovina in Guantánamo Bay, 29 May 2003, http://www.amnesty.org/en/library/info/EUR63/013/2003/en.

Document 7: 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

Document 8: News release, 15 January 2002, http://www.amnesty.org/en/library/info/AMR51/009/2002/en. ("Amnesty International is also concerned about alleged ill-treatment of prisoners in transit and in Guantánamo, including reports that they were shackled, hooded and sedated during transfer, their beards were forcibly shaved...").

Document 9: News release, 14 April 2002, http://www.amnesty.org/en/library/info/AMR51/054/2002/en (launching document 7) ("As the memorandum details, the USA has denied or threatens to deny the internationally recognized rights of people taken into its custody in Afghanistan and elsewhere, some 300 of whom have been transferred to Camp X-Ray in Guantánamo Bay. Among other things, Amnesty International is concerned that the US Government has: transferred and held people in conditions that may amount to cruel, inhuman or degrading treatment, and that violate other minimum standards relating to detention; refused to grant people in its custody access to legal counsel, despite ongoing interrogations which may lead to prosecutions; refused to grant people in its custody access to the courts to challenge the lawfulness of their detention; refused to disclose full information about the circumstances of many of the arrests, including whether they occurred in Afghanistan, Pakistan, or elsewhere; undermined human rights protections in cases of people taken into custody outside Afghanistan and transferred to Guantánamo Bay; undermined the presumption of innocence through a pattern of public commentary on the presumed guilt of the Guantánamo detainees; threatened to apply a second-class justice system by selecting foreign nationals for trial before military commissions – executive bodies lacking clear independence from the executive and with the power to hand down death sentences, and without the right of appeal to an independent and impartial court; raised the prospect of indefinite detention without charge or trial, or continued detention after acquittal by military commission, or repatriation that may threaten the principle of *nonrefoulement*; failed to show that it conducted an impartial and thorough investigation into allegations of human rights violations against Afghan villagers detained by US soldiers in Afghanistan.")

Documents 10-12: Amnesty International Urgent Action, USA/Gambia: Incommunicado detention/Fear of ill-treatment/Health concern, 11 December 2002, http://www.amnesty.org/en/library/info/AFR27/006/2002/en; and updates 11 January 2003, http://www.amnesty.org/en/library/info/AFR27/002/2003/en, and 8 November 2004, http://www.amnesty.org/en/library/info/AFR27/001/2004/en.

Documents 13. Beyond the law: Update to Amnesty International's April Memorandum to the US Government on the rights of detainees held in US custody, 13 December 2002, http://www.amnesty.org/en/library/info/AMR51/184/2002/en, ("Amnesty International is also concerned that a number of people have been publicly reported to have been taken into US custody but are apparently not in Guantánamo and their whereabouts remain unknown. It is feared that such individuals may not have access to any outside representatives, including the ICRC. Incommunicado detention in an undisclosed location is in clear violation of international law and standards. Amnesty International urges the US government to provide clarification on the whereabouts and legal status of the following individuals if still detained…").

Document 14: (launching Document 13) 13 December 2002 news release, http://www.amnesty.org/en/library/info/AMR51/186/2002/en

Documents 15 and 16: Amnesty International Urgent Action, USA/Malawi: Incommunicado detention/Fear of ill-treatment/legal concern, 26 June 2003, http://www.amnesty.org/en/library/info/AMR51/093/2003/en, and update, http://www.amnesty.org/en/library/info/AMR51/116/2003/en

Document 17: Amnesty International Urgent Action, USA: Incommunicado detention/Fear of ill-treatment, 20 August 2003, http://www.amnesty.org/en/library/info/AMR51/119/2003/en.

Document 18: An open letter to President George W. Bush on the question of torture and other cruel, inhuman or degrading treatment, 7 May 2004, http://www.amnesty.org/en/library/info/AMR51/078/2004/en.

Document 19: Amnesty International news release, USA: Interrogation techniques amount to torture, 13 May 2004, http://www.amnesty.org/en/library/info/AMR51/081/2004/en ("Coercive interrogation methods endorsed by members of the US government amount to torture or cruel, inhuman or degrading treatment and violate international law and the USA's treaty obligations, Amnesty International said today, as it called on the USA to end its practice of holding detainees incommunicado and in secret detention. Citing current and former officials, today's New York Times claims that Khalid Shaikh Mohammed, an alleged leading member of al-Qa'ida held in an undisclosed location for more than a year, has been subjected to interrogation techniques including "water boarding"…The New York Times states that the techniques used against Khalid Shaikh Mohammed were among a set of secret rules approved by the administration for use against "high value" detainees in the so-called "war on terror". Separately, Secretary of Defence Donald Rumsfeld told a Senate committee yesterday that Pentagon lawyers had approved methods ofinterrogation in Iraq such as "sleep management", "dietary manipulation" and "stress positions". Such so-called "stress and duress" techniques have been widely alleged by former detainees held in US custody inAfghanistan some of whom were subsequently transferred to Guantánamo Bay")

Document 20. Amnesty International Report 2003 (covering year 2002)
Published 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.

Document 21, Amnesty International Report 2004 (covering year 2003)
Published May 2004
Full report available at http://www.amnesty.org/en/library/info/POL10/004/2004
'Resisting abuses in the context of the 'war on terror', page 5-6, "The current framework of international law and multilateral action is undergoing the most sustained attack since its establishment half a century ago… The US naval base at Guantánamo Bay, Cuba, remained under the spotlight in 2003. Over 600 detainees continued to be held in indefinite detention at the base. They were held outside the protection of US courts, effectively in a legal vacuum without precedent. The US authorities made clear that these detainees were held primarily to be interrogated or simply to be 'kept off the streets'. A handful of them faced the prospect of unfair trial before deeply flawed military commissions. Other detainees were held by, or apparently on behalf of, the US authorities in secret locations around the world."

Entries on:
Gambia, page 52-53
Malawi, page 63
Canada, page 104
USA, pages 135-136
Afghanistan, pages 146-147
Pakistan, page 181
Bosnia-Herzegovina, page 212
Sweden, page 255
Iraq, pages 282- 283

Document 22: Amnesty International Report 2005 (covering year 2004)
Published May 2005
Full report available at http://www.amnesty.org/en/library/info/POL10/001/2005

Foreward, "Despite the near-universal outrage generated by the photographs coming out of Abu Ghraib, and the evidence suggesting that such practices are being applied to other prisoners held by the USA in Afghanistan, Guantánamo and elsewhere, neither the US administration nor the US Congress has called for a full and independent investigation. Instead, the US government has gone to great lengths to restrict the application of the Geneva Conventions and to 're-define' torture. It has sought to justify the use of coercive interrogation techniques, the practice of holding 'ghost detainees' (people in unacknowledged incommunicado detention) and the 'rendering' or handing over of prisoners to their countries known to practice torture".

Introduction, page 8: "The USA continued to hold hundreds of foreign detainees without charge or trial in the US naval base in Guantánamo Bay in Cuba. The refusal of the US authorities to apply the Geneva Conventions to the detainees and to allow detainees access to legal counsel or the courts violated international law and standards and caused serious suffering to detainees and their families. The ruling by the US Supreme Court in June that the US courts have jurisdiction to consider challenges to the lawfulness of such detentions appeared to be a step towards restoring the rule of law for the detainees, but the US administration sought to empty the ruling of any real meaning in order to keep the detainees in legal limbo. The USA also failed to clarify the fate or whereabouts of detainees that it held in secret detention in other countries".

Entries on:
Afghanistan, page 36
Canada, pages 72-73
Iraq, pages 135-137
Pakistan, page 194
Sweden, page 241
USA, pages 268-270
Yemen, page 279

Document 23: USA: Shadow over justice: Absence of accountability and remedy casts shadow over opening of trial of former secret detainee accused in embassy bombings, 1 October 2010, http://www.amnesty.org/en/library/info/AMR51/094/2010/en

Document 24: USA: Wrong court, wrong place, wrong punishment: Five alleged '9/11 conspirators' to be arraigned for capital trial by military commission at Guantánamo, 3 May 2012, http://www.amnesty.org/en/library/info/AMR51/032/2012/en

Document 25: USA: 'Heads I win, tails you lose'. Government set to pursue death penalty at Guantánamo trial, but argues acquittal can still mean life in detention, 8 November 2011, http://www.amnesty.org/en/library/info/AMR51/090/2011/en

Document 26: USA: Detainees continue to bear costs of delay and lack of remedy, 9 April 2009, http://www.amnesty.org/en/library/info/AMR51/050/2009/en

Document 27: USA: Truth, justice and the American way? Details of crimes under international law still classified Top Secret, 19 December 2012, http://www.amnesty.org/en/library/info/AMR51/099/2012/en

Document 28: 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;

Further illustrative documents not cited in text of submission

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
"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

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: The threat of a bad example, 19 August 2003, http://www.amnesty.org/en/library/info/AMR51/118/2003/en
Public reports
USA: Human rights v. public relations, 23 August 2002, http://www.amnesty.org/en/library/info/AMR51/140/2002/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
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;
Lithuania: Amnesty International, Lithuania: Lithuania: Unlock the truth in Lithuania: Investigate secret prisons now, 29 September 2011, http://www.amnesty.org/en/library/info/EUR53/002/2011;
USA: 'Judge us by our actions': A reflection on accountability for US detainee abuses 10 years after the invasion of Iraq, March 2013, http://www.amnesty.org/en/library/info/AMR51/012/2013/en;
USA: Chronicle of immunity foretold. Time for change on counter-terrorism violations after another year of blocking truth, remedy and accountability, January 2013. http://www.amnesty.org/en/library/info/AMR51/003/2013/en;
USA: One-way accountability. Guantánamo detainee pleads guilty; details of government crimes against him remain classified Top Secret, July 2012, http://www.amnesty.org/en/library/info/AMR51/063/2012/en;
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: 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; and
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.