

The Right to Heal

**U.S. Veterans and Iraqi Organizations Seek Accountability
for Human Rights and Health Impacts
of Decade of U.S.-led War**

Preliminary Report
Submitted in Support of Request
for Thematic Hearing Before the
Inter-American Commission on Human Rights
149th Period of Sessions

Executive Summary

Submitted By:

The Center for Constitutional Rights

On Behalf of

Federation of Workers Councils and Unions in Iraq

Iraq Veterans Against the War

Organization of Women's Freedom in Iraq

Submitting Organizations

Federation of Workers Councils and Unions in Iraq (FWCUI) is a national unionist organization for the defense of rights of workers in Iraq, established since 2003, and has representatives in all main cities. FWCUI is known for its continuous positions against the newly introduced neo-liberal economic policies, and the new labor code which the FWCUI describes as “protecting the rights of employers while disempowering workers.”

Iraq Veterans Against the War (IVAW) was founded by Iraq war veterans in July 2004 at the annual convention of Veterans for Peace (VFP) in Boston to give a voice to the large number of active duty service people and veterans who are against this war, but are under various pressures to remain silent. From its inception, IVAW has called for: (1) Immediate withdrawal of all occupying forces in Iraq; (2) Reparations for the human and structural damages Iraq has suffered, and stopping the corporate pillaging of Iraq so that their people can control their own lives and future; and (3) Full benefits, adequate healthcare (including mental health), and other supports for returning servicemen and women.

Organization of Women’s Freedom in Iraq (OWFI). The Organization of Women’s Freedom in Iraq (OWFI), founded in 2003, is a truly pioneering national women’s organization dedicated to rebuilding Iraq on the basis of secular democracy and human rights for all. OWFI has developed innovative anti-violence and political empowerment strategies for women across Iraq. OWFI advocates on behalf of women who are most marginalized, including those who are incarcerated, widowed, displaced or battered.

The Center for Constitutional Rights (CCR). The Center for Constitutional Rights is dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. Founded in 1966 by attorneys who represented civil rights movements in the South, CCR is a non-profit legal and educational organization committed to the creative use of law as a positive force for social change.

Executive Summary

Why This Request?

The U.S.-led war in Afghanistan, begun on October 7, 2001, is now the longest running officially declared war in U.S. history.¹ Followed by the invasion of Iraq less than two years later on March 19, 2003, based on false claims about Iraq's possession of weapons of mass destruction, the combined so-called "War on Terror" has, by conservative estimates, resulted in the deaths due to direct war violence of at least 330,000 people – including civilians, humanitarian workers, journalists and combatants of different nationalities.² The number of indirect deaths due to after-effects of fighting, unexploded munitions, malnutrition, damaged health infrastructure and environmental degradation resulting from these conflicts is likely four times the number of direct deaths – or more than one million.³ And these figures do not include the toll the U.S.'s global "war on terror" has taken on people and communities in other countries where the U.S. war-making has spilled over as in Yemen, nor the countries where the U.S. operated or made use of black sites and torture programs. The violent consequences of these wars have resulted in additional hundreds of thousands of casualties—physical, mental and emotional injuries to individuals and communities that in some cases cannot be healed and in others will take decades, indeed generations, to overcome, even with due and adequate reparations, which have not been made.⁴ For the millions of civilians impacted by these wars, who have lost loved ones, been displaced, harmed and terrorized by the direct and indirect effects of the war-marking policies and practices of the U.S. and its few allies, the so-called war on terror has been instead a global war *of* terror.

On the ten-year anniversary of the invasion of Iraq, U.S. veterans of the war and civil society in Iraq unite in their struggle to heal and demand that the U.S. government take responsibility for the enduring harms inflicted by this misguided and illegal war. Iraq Veterans Against the War, the Organization for Women's Freedom in Iraq, and the Federation of Workers Councils and Unions in Iraq jointly submit this request to the

¹While military involvement in Vietnam had been building for some time, the official formal beginning of the military intervention is dated from Congress's passage of the Tonkin Gulf Resolution in August 1964. U.S. troops were withdrawn 103 months later in March 1973. See, e.g., Rick Hampson, *Afghanistan: America's Longest War*, USA Today, May 28, 2010, available at http://usatoday30.usatoday.com/news/military/2010-05-27-longest-war-afghanistan_N.htm.

² See Cost of War Project, *330,000 Killed by Violence, \$4 Trillion Spent and Obligated*, Watson Institution for International Studies, Brown University, available at <http://costsofwar.org/>.

³ *Id.*

⁴ See, e.g., Neta C. Crawford, *Civilian Death and Injury in Iraq, 2003-2011*, Costs of War Project, Sept. 2011, available at <http://costsofwar.org/sites/default/files/articles/15/attachments/Crawford%20Iraq%20Civilians.pdf>.

Inter-American Commission on Human Rights (the Commission) for a thematic hearing to identify and acknowledge the devastating and long-lasting health effects suffered by Iraqis and servicemembers and the constellation, magnitude and scope of the grave human rights violations perpetuated by the U.S.'s conduct of this unlawful and unjust war and its responsibility for these harms.

Context and Overview of the U.S.'s Decade of War and its Lasting Harms on Civilians and Those Sent to Fight

Labeling the wars in Iraq and Afghanistan as “freedom” operations, U.S. officials portrayed them as battles between good vs. evil. The war efforts, they argued, would establish democracy, rule of law, and freedom in the place of brutal autocratic regimes that violated human rights.⁵ Paradoxically, though predictably, the wars in Iraq and Afghanistan themselves were illegal, undermined democratic principles that the U.S. espoused, and resulted in widespread and systematic human rights violations both at home and abroad, some of which are the subject of this request.

Failure or Refusal to Respect, Protect and Fulfill Rights to Life, Physical Integrity, Association, Equality, and Non-Discrimination

U.S. promises to promote democracy in Iraq have also been shown to be hollow. Soon after the invasion, the U.S. set up the Coalition Provisional Authority (CPA) which served as the transitional government until its dissolution in June 2004.⁶ While in existence and under the authority of Paul Bremer, the CPA issued orders which led to the increasing privatization of Iraq's economy, opening the door to foreign investment, and attempted to privatize more than 200 state-owned firms.⁷ Despite President Bush's assurance that the U.S. would “work on the development of free elections and free markets, free press and free labor unions in the Middle East,”⁸ one law maintained by the CPA was Hussein's 1987 law prohibiting unions among workers in the public sector, which constitutes more than 70 percent of the nation's workforce.⁹ The CPA continued

⁵ Speech to the World Affairs Council of Philadelphia by U.S. President George W. Bush, *The Struggle for Democracy in Iraq*, Dec. 12, 2005.

⁶ James Dobbins, *Occupying Iraq: A history of the Coalition Provisional Authority*, XIII, RAND Corporation (2009).

Seth G. Jones et al., *Records From Coalition Provisional Authority Shed Light on Occupation of Iraq*, RAND CORPORATION, May 12, 2009, available at <http://www.rand.org/news/press/2009/05/12.html>.

⁷ Matthew Harwood, *Pinkertons at the CPA: Iraq's Resurgent Labor Unions Could Have Helped Rebuild the Country's Civil Society. The Bush Administration Of Course Tried to Crush Them*, WASHINGTON MONTHLY, April 2005, available at <http://www.washingtonmonthly.com/features/2005/0504.harwood.html>.

⁸ The Washington Post, *Text of President Bush's 2004 State of the Union Address*, Jan. 20, 2004.

⁹ Harwood, *supra* note 7; See also, David Bacon, *Saddam's Labor Laws Live On*, The Progressive, Dec. 2003, <http://www.progressive.org/dec03/bac1203.html>.

to work to prevent unions from organizing, even reportedly arbitrarily arresting eight members of the Iraqi Federation of Trade Unions for their involvement in labor unions with no apparent basis and no explanation ever given.¹⁰

The U.S. also heavily influenced the drafting of Iraq's constitution, which then U.S. Vice President Dick Cheney described as "progressive and democratic."¹¹ But the new Iraq constitution included a filter insisted upon by U.S.-backed religious-political extremists who desired to pursue a reactionary agenda to the secularism of the Hussein era. Ultimately the U.S. was responsible for pushing Iraq toward theocracy, helping to broker a constitution that established an official state religion and which invalidates any law contradicting established religious principles.¹² The new constitution further conditioned the rights to freedom of expression, press, assembly and peaceful protest on "public order and morality," a qualification subject to wide interpretation and rife with potential for abuse and criminalization of political expression.¹³ Women activists in Iraq have pointed to these and related factors, including the Iraqi penal code's provision allowing men to discipline their wives "within certain limits prescribed by Islamic law, or custom" as serious setbacks which have served to create a climate in which many forms of violence against women have dramatically increased.¹⁴

Civilian "Casualties"

President Bush assured U.S. soldiers that they were "sacrificing for the peace of Iraq and for the security of free nations."¹⁵ The wars in Iraq and Afghanistan, however, have made these countries less secure and resulted in hundreds of thousands of violent deaths, many of them civilian.¹⁶ In October 2010, Wikileaks released U.S. Army field reports

¹⁰ See Steve Early, *Iraqi Labor Unions Still Struggling with U.S. Occupation's Yoke*, Labor Notes, Aug. 21, 2012, available at <http://www.labornotes.org/blogs/2012/08/iraqi-labor-unions-still-struggling-us-occupation%E2%80%99s-yoke>; David Bacon, *From National Pride to War Booty*, CorpWatch, Dec. 15, 2003, <http://www.corpwatch.org/article.php?id=9408>.

¹¹ Yifat Susskind, *Promising Democracy, Imposing Theocracy: Gender-Based Violence and the US War on Iraq*, MADRE (Mar. 2007) <http://www.madre.org/index/resources-12/human-rights-reports-56/promising-democracy-imposing-theocracy-gender-based-violence-and-the-us-war-on-iraq-86.html#sub1.1> (quoting Dick Cheney, *Vice President's Remarks at a Luncheon for Arizona Victor 2006*, Aug. 15, 2006)

¹² Susskind, *supra*, Iraq Constitution, Art. 2, Section A, available at <http://www.wipo.int/wipolex/en/details.jsp?id=10027>.

¹³ *Id.* at Art. 36.

¹⁴ Interview with Yanar Mohammed, Director of Organization for Women's Freedom in Iraq, Feb. 1, 2013. See also Susskind, *supra* note 11; Nadjie Al-Ali and Nicola Pratt, *Conspiracy of Near Silence: Violence Against Iraqi Women*, Middle East Report, Spring 2011, available at http://costsofwar.org/sites/default/files/articles/46/attachments/AIAlPratt_Heath%20combination%20paper%20on%20gender.pdf.

¹⁵ U.S. President George W. Bush, Speech to National Endowment for Democracy, available at <http://georgewbush-whitehouse.archives.gov/news/releases/2003/11/20031106-2.html>.

¹⁶ Human Costs of War Chart: Direct War Death in Afghanistan, Iraq, and Pakistan, October 2001- February 2013, available at http://costsofwar.org/sites/default/files/HMCHART_2.pdf.

known as the Iraq War Logs (IWL), which gave the first official government tally of the death toll.¹⁷ In total, the IWL detailed 109,032 deaths in Iraq from January 1, 2004 – December 31, 2009, 60.6% (or 66,081) of which were civilian deaths.¹⁸ That amounts to nearly 31 civilians dying every day during that six year period.¹⁹ The IWL only reflect what troops actually witnessed²⁰ and organizations that track the loss of civilian life in Iraq estimate the total number of civilian deaths to be much greater. When the non-profit organization Iraq Body Count (IBC) cross referenced the IWL with its own death count for that time period, it determined that approximately 12,000 civilian deaths were not included in the IWL number.²¹ In total, IBC estimates that over 150,000 violent deaths have been recorded since March 2003, with more than 122,000-134,000 (approximately 80-90%) of them civilian.²² “Excess deaths,” which are those deaths above what would have normally been expected had the war not occurred including indirect deaths due to malnutrition, damaged health infrastructure, and environmental degradation, are much higher still. Researchers from Johns Hopkins University, Al Mustansiriya University, and Massachusetts Institute of Technology estimate that already by 2006 approximately 654,956 people had died directly and indirectly as a result of the war in Iraq.²³

The number of civilian deaths in Afghanistan is much harder to estimate. In the early days of that war, General Tommy R. Franks famously said, “We don’t do body counts.”²⁴ In Afghanistan there is also no independent long running tally of civilian deaths like the IBC in Iraq.²⁵ However, the Costs of War project (COW), a nonpartisan, nonprofit, scholarly initiative based at Brown University's Watson Institute for International Studies estimates that approximately 16,725 - 19,013 civilians have been killed in Afghanistan since the initial 2001 invasion.²⁶ By their own admission, these are conservative estimates

¹⁷ The IWL provides U.S. government data taken from January 1, 2004 – December 31, 2009 denoting every “Significant Action of War” as documented by U.S. Forces abroad. Iraq War Logs, *available at* WikiLeaks, <http://www.wikileaks.org/irq>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ John Tirman, *The Forgotten Wages of War*, NY TIMES, Jan. 3, 2012, *available at* http://www.nytimes.com/2012/01/04/opinion/the-forgotten-wages-of-war.html?_r=0.

²¹ Iraq Body Count, <http://www.iraqbodycount.org/analysis/numbers/warlogs/>.

²² *Id.*

²³ Gilbert Burnham, *The Human Cost of the War in Iraq: a Mortality Study, 2002-2006*, Johns Hopkins University, Al Mustansiriya University, and Massachusetts Institute of Technology (2006).

²⁴ John Tirman, *The Forgotten Wages of War*, NY TIMES, Jan. 3, 2012, *available at* http://www.nytimes.com/2012/01/04/opinion/the-forgotten-wages-of-war.html?_r=0.

²⁵ Neta C. Crawford, *Civilian Death and Injury in Afghanistan 2001-2011*, Sept. 13, 2011, <http://costsofwar.org/sites/default/files/articles/14/attachments/Crawford%20Afghanistan%20Casualties.pdf>.

²⁶ Human Costs of War Chart: Direct War Death in Afghanistan, Iraq, and Pakistan, October 2001 - February 2013, *available at* http://costsofwar.org/sites/default/files/HMCHART_2.pdf.

based on third party reporting.²⁷ What can be lost in these staggering numbers is the story and life of each civilian killed.

Shared Trauma

As set forth further below, while there is still growing understanding and study of the effects of war and traumatic situations on servicemembers sent to fight, such as Post-Traumatic Stress Disorder (PTSD) and traumatic brain injuries (TBI), far less is known about the prevalence and experience of these same disorders in the Iraqi and Afghan populations. While acknowledging that the number of TBI cases is underestimated and underreported, the U.S. government still estimates that over 250,000 troops suffer from this disorder.²⁸ Similarly, the U.S. government estimates that 29% of veterans or one in four returning veterans have been diagnosed with PTSD.²⁹ These traumatic injuries have become so prevalent in returning veterans that they are often referred to as the “signature wounds” of the Iraq and Afghanistan wars. Significantly, recent studies have shown that even troops who never set foot in a war zone but who are responsible for directing unmanned aerial (i.e. drone) attacks are reportedly suffering from PTSD as well.³⁰ Researchers are also continuing to delve more into the nature of “moral injury,” described as the psychological damage caused when servicemembers’ actions in battle conflict with their moral codes.³¹ Indeed, the fundamental illegality and injustice of the war is a factor contributing to and exacerbating the psychological harm for some servicemembers.³² Another indication of the manifestation of the deep harms of these wars is the dramatically elevated suicide rate amongst servicemembers, which is nearly double the civilian suicide rate.³³

Not least among the policies of the U.S. military that has given rise to serious health consequences is the brutal redeployment policy that exacerbated the trauma of the wars

²⁷ Crawford, *supra* note 25.

²⁸ U.S. Congressional Research Service, *U.S. Military Casualty Statistics: Operation New Dawn, Operation Iraqi Freedom, and Operation Enduring Freedom*, Feb. 5, 2013.

²⁹ U.S. Congressional Research Service, *Report R41921: Mental Disorders Among OEF/OIF Veterans Using VA Health Care: Facts and Figures*, Feb. 4, 2013.

³⁰ See Elizabeth Bumiller, *Air Force Drone Operators Report High Levels of Stress*, NYTIMES, Dec. 18, 2011, available at http://www.nytimes.com/2011/12/19/world/asia/air-force-drone-operators-show-high-levels-of-stress.html?_r=0

³¹ See Pauline Jelinek, *War Zone Killing: Vets Feel ‘Alone’ in Their Guilt*, ASSOCIATED PRESS, Feb. 22, 2013, <http://bigstory.ap.org/article/im-monster-veterans-alone-their-guilt>; Jan Barry, *Moral Injury: Another Hidden Wound of War*, DailyKos, Feb. 23, 2013, <http://www.dailykos.com/story/2013/02/25/1189664/-Moral-Injury-Another-Hidden-Wound-of-War>.

³² See, e.g., Chris Hedges, *The Crucifixion of Tomas Young*, TruthDig, March 10, 2013, http://www.truthdig.com/report/item/the_crucifixion_of_tomas_young_20130310.

³³ *Id.*; Nancy Berglas and Dr. Margaret C. Harrell, *Losing the Battle The Challenge of Military Suicide*, Center For New American Security, Oct. 2011, available at http://www.cnas.org/files/documents/publications/CNAS_LosingTheBattle_HarrellBerglass.pdf.

for many servicemembers. Repeated and rapid redeployment also gave rise to command overrides of medical opinions as to fitness for duty and resulted in military doctors downwardly adjusting their standards for assessing fitness for duty. The military's response to the health needs of returning servicemembers has also been deplorable in that it reportedly follows policies which often serve to discharge and deny servicemembers benefits for what are likely the manifestations of illness and trauma encountered during their military service. Indeed, one former Veterans Affairs researcher recently testified before a Congressional panel that officials in the Department of Veterans Affairs routinely manipulate or hide data that would support veterans' claims so as to avoid paying costly benefits.³⁴

While there is still much more to be learned about the psychological impacts on returning servicemembers and appropriate and comprehensive institutional responses are urgently needed, much less is known or even discussed about the likely rates of PTSD, TBI and other harms among the populations where the wars are waged. In a study undertaken for the World Health Organization and the Iraq Ministry of Health, it was estimated that nearly half of the population suffers from some sort of psychological disorder due to the realities and consequences of the war, including the death of family members, forced displacement and living in a climate of fear and violence.³⁵ An Iraqi psychologist has estimated that 28 percent of Iraqi children suffer some degree of PTSD and that "their numbers are steadily rising."³⁶

Toxic Legacy

As set out further below, U.S. servicemembers and Iraqi civilians share a terrible toxic bond having been exposed to toxic munitions and carcinogenic waste over a decade that will have devastating effects for a long time to come. The largely unregulated use of burn pits to dispose of any and all materials, including hazardous waste, in hundreds of U.S. military bases has left countless veterans with a wide range of illnesses including respiratory and neurological problems and cancer. In Iraq, cancer rates, birth defects and

³⁴ Kelly Kennedy, *Researcher: Vets' health Data Was Covered Up: Former VA Researcher to Testify Today Before House Panel*, USA TODAY, Mar. 13, 2013, available at <http://www.marinecorpstimes.com/news/2013/03/gannett-researcher-says-officials-covered-up-vets-health-data-031313/>.

³⁵ See Paula Mejia, *Wounds of War: PTSD in Iraqis and Veterans*, THE MAJALLA, Oct. 10, 2010, available at <http://www.majalla.com/eng/2010/10/article55165470>; The Iraqi Mental Health Survey Study Group, *The Prevalence and Correlates of DSM-IV Disorders in the Iraq Mental Health Survey*, 8 WORLD PSYCHIATRY 97 (June 2009). In addition to the factors set out above, the study also recognizes the contributing factor of torture during the three decades under Saddam Hussein's rule to the population's mental health.

³⁶ César Chelala, *Iraqi Children: Bearing the Scars of War*, THE GLOBALIST, Mar. 21, 2009, available at <http://www.theglobalist.com/StoryId.aspx?StoryId=7621>. See also Lourdes Garcia-Navarro, *Treating Iraqi Children for PTSD*, NPR, Aug. 25, 2008, available at <http://www.npr.org/templates/story/story.php?storyId=93937972>.

other illnesses have sky-rocketed since the U.S. invasion. Additionally, depleted uranium used by the U.S. military in Iraq has contaminated civilian areas across Iraq, exposing both U.S. servicemembers and civilians to an unparalleled risk of cancer and other illnesses, as well as having children with birth defects. Despite these grave and widespread harms, the U.S. has failed to provide for servicemembers injured by the toxic exposures, and has not taken action to study or decontaminate affected civilian areas or help treat the illnesses and health conditions of Iraqis suffering as a result. Some veterans who are suffering ill health effects after having been exposed to burn pits have brought civil cases against the private military contractors responsible for burning waste in that manner, which are still pending.³⁷

Lasting Effects of the Use of Internationally Condemned Weapons.

The U.S.'s use of certain weapons has also caused indiscriminate and unnecessary suffering and death of civilians in Iraq and Afghanistan. As discussed further below, U.S. officials have admitted to using napalm-class munitions and white phosphorous, an incendiary agent that can burn to the bone, in Fallujah and elsewhere. These weapons were often used in operations in populated areas and therefore killed and gravely injured countless civilians including children. Similarly, the use of cluster munitions, which spread over a wide area and often fail to explode on impact, resulted in the indiscriminate killing of civilians. The remaining unexploded munitions continue to maim and kill more to this day.

Militarized Sexual and Gender-Based Violence.

As set out in more detail below, sexual and gender-based violence against civilians in Iraq and Afghanistan as well as among U.S. military personnel has been shown to be widespread and systemic. In U.S.-run detention facilities such as Abu Ghraib, sexual violence and psychological torture were commonly inflicted upon both female and male detainees, often in order to elicit information and/or to humiliate and degrade. Likewise, U.S. servicemembers, both male and female, have been subjected to sexual assaults by other members of the military at alarming rates. In 2011 the DOD reported over 3,000 cases of sexual assault while estimating that in 2010 only 13% of sexual assaults were

³⁷ Adam Levine, *Halliburton, KBR sued for alleged ill effects of 'burn pits,'* CNN, April 28, 2009 http://articles.cnn.com/2009-04-28/us/burn.pits_1_burn-toxic-fumes-plaintiffs?_s=PM:US.

likely reported.³⁸ In light of this, officials extrapolate that the number of 2010 sexual assaults in the military was in fact greater than 19,000.³⁹

These sexual assaults often result in lasting physical harm and health issues as well as psychological wounds that can manifest into PTSD, increased suicidal tendencies, and other serious conditions. U.S. servicemembers who have experienced sexual assault at the hands of other servicemembers have historically faced daunting challenges in that the policies and practices of the U.S. military have served more often than not to blame the victims of the assaults and leave the perpetrators of assaults in place. Such practices have also often lead to the denial of health benefits to victims when they are suffering physical and/or deep psychological harm as a result of the sexual assaults. In February 2011, seventeen veterans of the U.S. military brought a civil case against the past and present Secretaries of Defense alleging that they allowed policies and practices which fostered the climate in which the assaults could take place without adequate responses to deter and punish them.⁴⁰ A federal judge dismissed the case in December 2011 under a doctrine that prohibits servicemembers from bringing suits against the federal government arising from matters “incident” to their service.⁴¹ An appeal of that decision is currently pending.

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It is against this backdrop of multi-dimensional and grave harms on all sides of the war that the petitioning organizations request a hearing before the Commission to focus first on the trauma and harms shared by those most affected—the people in communities where these wars were fought and those sent to do the fighting.

³⁸ *Department of Defense Annual Report On Sexual Assault in the Military: Fiscal Year 2011*, Department of Defense, Apr. 2012, at http://www.sapr.mil/media/pdf/reports/Department_of_Defense_Fiscal_Year_2011_Annual_Report_on_Sexual_Assault_in_the_Military.pdf

³⁹ *Department of Defense, Annual Report On Sexual Assault in the Military: Fiscal Year 2010* (Mar. 2011), http://www.sapr.mil/media/pdf/reports/DoD_Fiscal_Year_2010_Annual_Report_on_Sexual_Assault_in_the_Military.pdf [hereinafter SAPRO Report 2010].

⁴⁰ See *Cioca, et al, v. Rumsfeld, et al*, C.A. 1:11cv00151, United States District Court for the Eastern District of Virginia, Complaint. Available at <http://burkepllc.com/files/2011/11/FIRST-AMENDED-COMPLAINT.pdf>.

⁴¹ See *Cioca, et al, v. Rumsfeld, et al*, C.A. 1:11cv00151, United States District Court for the Eastern District of Virginia, Defendants’ Motion to Dismiss.

Why the Need for a Hearing Before the Commission: Impunity for Grave and Ongoing Violations of Human Rights

The rule of law and basic human rights principles have also been casualties of the past decade which has seen the waging of aggressive war, policies of rendition and torture, indefinite and arbitrary detentions, increasing secrecy and even targeted, extra-judicial killings by drones far beyond the context of armed conflict. Indeed, most efforts to seek redress or accountability within the U.S. for many of the harms resulting from these policies and practices have met dead ends judicially and repeated roadblocks politically.⁴² It has been increasingly reported that the U.S. government is using tactics honed in the wars in Iraq and Afghanistan in its ever-expanding “war on drugs” throughout Latin America.⁴³ The reverse is also true as it has been documented that violent tactics notoriously used by U.S. military and civilian officials in covert counter-insurgency operations in the 1980’s and 1990’s in Central America have been applied in Iraq.⁴⁴ It is for these reasons that a hearing before the Inter-American Commission on Human Rights is urgently needed in order to identify the constellation, magnitude and scope of grave human rights violations resulting from an unaccountable war-making apparatus that poses a continued danger to both the region and the world if it is not checked or in some way called to account for the massive devastation it has wrought.

⁴² In all cases brought by victims or their families for torture, rendition and killing programs, the U.S. government has consistently sought to block those cases in the courts, asserting defenses of immunity, political question, special factors, and/or state secrets as reasons why courts should not allow the cases to proceed. And for the most part, courts have gone along with the government’s line. Recent cases for accountability and redress which the U.S. Department of Justice has opposed include *Padilla v. Yoo*, 678 F.3d 748 (9th Cir. 2012)(granting immunity to defendant John Yoo from suit filed by torture victim); *Doe v. Rumsfeld*, 683 F.3d 390, 391 (D.C. Cir. 2012) (finding lower court erred in not dismissing case brought by a U.S. citizen and former detainee in part on the basis of the “special factor” that “litigation of Doe’s case would require testimony from top military officials as well as forces on the ground, which would detract focus, resources, and personnel from the mission in Iraq.”) *Ali v. Rumsfeld*, 649 F.3d 762 (D.C. Cir. 2011) (granting immunity to then -Secretary of Defense Rumsfeld from suit brought by Afghan and Iraqi victims of torture); *Mohamed v. Jeppesen Dataplan, Inc.*, 614 F.3d 1070 (9th Cir. 2010) (upholding lower court’s finding that, “‘allegations’ of covert U.S. military or CIA operations in foreign countries against foreign nationals — [are] clearly a subject matter which is a state secret,” and therefore dismissing the case). See also Lisa Magarrell and Lorna Peterson, *After Torture: U.S. Accountability and the Right to Redress*, International Center for Transitional Justice (August 2010), available at <http://www.ictj.org/sites/default/files/ICTJ-USA-RightRedress-2010-English.pdf> (“a number of cases have been dismissed without ever reaching a hearing on the merits because courts have repeatedly declined to hear cases in which the government asserts that state secrets, classified evidence, evaluations of foreign policy, or national security issues are involved.”).

⁴³ Thom Shanker, *Lessons of Iraq Help U.S. Fight a Drug War in Honduras*, NYTIMES, May 5, 2012, available at <http://www.nytimes.com/2012/05/06/world/americas/us-turns-its-focus-on-drug-smuggling-in-honduras.html?pagewanted=all>.

⁴⁴ See Mona Mahmood et al., *Revealed: Pentagon’s Link to Iraqi Torture Centres: General David Petraeus and ‘Dirty Wars’ Veteran Behind Commando Units Implicated in Detainee Abuse*, THE GUARDIAN, Mar. 6, 2013, available at <http://www.guardian.co.uk/world/2013/mar/06/pentagon-iraqi-torture-centres-link>.

The following is a brief explanation of the legal paradigm governing war-making in the U.S. and some of the failed efforts to bring accountability and seek redress domestically for the human rights violations of the past decade of war:

War-making in the United States and Obstacles to Enforcement and Accountability

The U.S. Constitution vests the power to declare war in Congress.⁴⁵ The constitutional delegation of this particular power to Congress was intended to give that body “the power to decide whether the United States should initiate any offensive military hostilities, however big or little, or for whatever purposes.”⁴⁶ Because of Congressional concern about executive drift into its constitutionally mandated authority and involvement of U.S. forces in situations of conflict in Korea and Vietnam without Congressional declarations of war, Congress passed the War Powers Resolution of 1973 which was intended to put a limit on presidential power to commit U.S. forces to armed conflict without Congressional consent.⁴⁷ The resolution requires the President to notify Congress within 48 hours of committing armed forces to any military action and prohibits the commitment of forces for more than 60 days without congressional authorization or a declaration of war.

Still, the tensions and power struggles between the executive and legislative branches have resulted in violations of this Constitutionally-mandated separation of power.⁴⁸ In 1981, in a situation that is still relevant to and has a number of direct implications for the situation in Iraq, the resolution’s requirements were ignored by President Reagan when he committed U.S. military forces to El Salvador and later to support the Contras in Nicaragua. Eleven members of Congress, represented by the Center for Constitutional Rights, challenged the U.S. military intervention in El Salvador as violating the War Powers Resolution.^{49,50} While sympathetic to the aims of the litigation, the court dismissed the case on the grounds that it presented “unmanageable standards” for fact-finding on such claims. Later in 1990, fifty-four members of Congress, also represented by the Center for Constitutional Rights, sought to challenge President George H.W. Bush’s initiation of a military offensive in Iraq without first obtaining a declaration of

⁴⁵ U.S. Const. Art I, Section 8, Clause 11.

⁴⁶ See Testimony of Professor Jules Lobel before the Subcommittee on International Organizations, Human Rights and Oversight Committee on Foreign Affairs, U.S. House of Representatives, *War Powers for the 21st Century: The Constitutional Perspective*, Apr. 10, 2008, available at <http://democrats.foreignaffairs.house.gov/110/lob041008.htm>.

⁴⁷ War Powers Resolution of 1973, 50 U.S.C. 1541-1548.

⁴⁸ See Testimony of Professor Jules Lobel to House Foreign Affairs SubCommittee, *supra* note 46.

⁴⁹ See *Crockett v. Reagan*, Civ. A No. 81-1034, Order of Oct. 4, 1982, also found at 558 F. Supp. 893 (D.D.C. 1982). Available at <http://openjurist.org/720/f2d/1355/crockett-v-reagan>.

⁵⁰ See Mahmood et al., *supra* note 44.

war from Congress.⁵¹ The Court denied their request to enjoin Bush's actions holding that such relief must be sought by a majority of the Congress.⁵²

In the immediate aftermath of the criminal attacks of September 11, 2001, Congress passed the Authorization for the Use of Military Force (AUMF), which granted sweeping war-making powers to the President to use all “necessary and appropriate force” against “nations, organizations or persons he determines planned, authorized, committed or aided the terrorist attacks that occurred on Sept. 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.”⁵³ The AUMF quickly became the purported basis for and justification of administration policies of: extraordinary renditions, which often involved kidnapping and illegal and often secret detention of hundreds of persons declared to be suspects many of whom were later found to have had no connection to terrorist activity and the use of “black sites” and torture methods;⁵⁴ indefinite and prolonged detentions and the use of military commissions at Guantánamo Bay;⁵⁵ secret electronic surveillance without a warrant as required by the Constitution;⁵⁶ and later for the use of drones to commit purportedly “targeted” killings of alleged or suspected terrorists outside of armed conflict and without evidence of an imminent threat.⁵⁷ As described below, efforts to seek justice and accountability for violations of

⁵¹ See *Dellums v. Bush*, Civ. A. No. 90-2866, Opinion of Dec. 13, 1990, also found at 752 F. Supp. 1141 (D.D.C. 1990), available at

http://scholar.google.com/scholar_case?case=16581780212178521116&hl=en&as_sdt=2&as_vis=1&oi=scholar.
⁵² *Id.* at 1151.

⁵³ See Authorization for the Use of Military Force, Public Law 107-40, 107th Congress (2001), Sec. 2. available at <http://www.gpo.gov/fdsys/pkg/PLAW-107publ40/pdf/PLAW-107publ40.pdf>.

⁵⁴ See, e.g., International Committee of the Red Cross, *ICRC Report on Treatment of Fourteen 'High Value' Detainees' in CIA Custody* (ICRC 2007); Association of the Bar of the City of New York & Center for Human Rights and Global Justice, *Torture by Proxy: International and Domestic Law Applicable to "Extraordinary Renditions"*, (New York: ABCNY & NYU School of Law, 2004); Evan Perez, *Rendition Case Under Bush Gets Obama Backing*, WSJ, Feb. 10, 2009, available at <http://online.wsj.com/article/SB123422915277565975.html>; Marian Wang, *Under Obama Administration, Renditions – and Secrecy Around Them – Continue*, PROPUBLICA, Sept. 6, 2011, <http://www.propublica.org/blog/item/as-rendition-controversy-reemerges-obama-admin-policies-murky>; Council of Europe, Parliamentary Assembly, Resolution 1507 (2006), *Alleged Secret Detentions and Unlawful Inter-State Transfers of Detainees Involving Council of Europe Member States*, available at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/tA06/ERES1507.htm>; Scott Horton, *New CIA Docs Detail Brutal 'Extraordinary Rendition' Process*, HUFFINGTON POST, Sept. 28, 2009, available at http://www.huffingtonpost.com/2009/08/28/new-cia-docs-detail-bruta_n_271299.html.

⁵⁵ See, e.g., *Hamdan v. Rumsfeld*, Case No. 05-184, Opinion of the United States Supreme Court, 126 S.Ct. 2749, 548 U.S. 557 (2006), available at <http://www.supremecourt.gov/opinions/05pdf/05-184.pdf>.

⁵⁶ U.S. Department of Justice White Paper on NSA Legal Authorities, *Legal Authorities Supporting the Activities of the National Security Agency Described by the President*, Jan. 19, 2006, available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB178/surv39.pdf>.

⁵⁷ Scott Shane and Charlie Savage, *Report on Targeted Killing Whets Appetite for Less Secrecy*, NYTIMES, Feb. 5, 2013, available at <http://www.nytimes.com/2013/02/06/us/politics/obama-slow-to-reveal-secrets-on-targeted-killings.html>. The leaked White Paper referred to in the story can be accessed here: http://msnbcmedia.msn.com/i/msnbc/sections/news/020413_DOJ_White_Paper.pdf

the human rights of victims of these policies have encountered obstacles judicially and politically. What is more worrying is reports that the current administration is debating whether the AUMF authorizes the use of all “necessary and appropriate force” to go after groups with little or no connection whatsoever to the organization responsible for the attacks of September 11, 2001.⁵⁸

Less than two years after the passage of the AUMF, Congress passed the Authorization for Use of Military Force in Iraq on October 16, 2002, which cited as a key factor Iraq’s alleged development of weapons of mass destruction.⁵⁹ The theme of weapons of mass destruction was used to galvanize Congressional and political support for invading Iraq, though at the time there was a wealth of evidence that Iraq did not possess and was not close to possessing such weapons, a fact which was later proven incontrovertibly during the course of the war.⁶⁰ On June 10, 2008, twelve members of Congress introduced thirty-five articles of impeachment against President George W. Bush to the House of Representatives.⁶¹ Included among the articles of impeachment were the false justification for the invasion of Iraq, the illegalities around the conduct of the war, the treatment, kidnapping and detention of detainees as part of the global “war on terror,” and the warrantless surveillance program.⁶² The House voted 251 to 166 to refer the resolution to the Judiciary Committee for further consideration, which took no action on it.⁶³ Bush’s second term ended with no accountability whatsoever for the false representations justifying the invasion of Iraq.

As the judiciary has closed itself off in past cases like *Crockett* and *Dellums* as a mechanism for challenging a president’s unilateral decision to enter into armed conflict in violation of the Constitution and as impeachment efforts have been unsuccessful even once it has been established that a Congressional declaration of war was obtained through false representations, there is no viable means domestically through which to challenge and check decisions which can have such far-reaching and egregious ramifications.

⁵⁸ Greg Miller and Karen DeYoung, *Administration Debates Stretching 9/11 Law to Go After new al-Qaeda Offshoots*, THE WASHINGTON POST, March 6, 2013, available at http://www.washingtonpost.com/world/national-security/administration-debates-stretching-911-law-to-go-after-new-al-qaeda-offshoots/2013/03/06/fd2574a0-85e5-11e2-9d71-f0feafdd1394_print.html.

⁵⁹ Authorization for Use of Military Force Against Iraq, Pub.L. 107-243, 116 Stat. 1498, enacted Oct. 16, 2002, available at <http://www.gpo.gov/fdsys/pkg/PLAW-107publ243/pdf/PLAW-107publ243.pdf>

⁶⁰ See Sidney Blumenthal, *Bush Knew Saddam Had No Weapons of Mass Destruction: Exclusive: Two Former CIA Officers Say the President Squelched Top-secret Intelligence, and a Briefing by George Tenet, Months Before Invading Iraq*, Salon, Sept. 6, 2007, at http://www.salon.com/2007/09/06/bush_wmd/; Don Van Natta Jr., *Bush Was Set on Path to War, British Memo Says*, NYTIMES, Mar. 27, 2006, available at http://www.nytimes.com/2006/03/27/international/europe/27memo.html?_r=1&oref=slogin

⁶¹ *Impeaching George W. Bush, President of the United States, of high crimes and misdemeanors*,” H.Res. 1345, June 11, 2008, available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:HE01258:@@P>

⁶² *Id.*

⁶³ *Id.*

Moreover, the United States has rejected international mechanisms that could serve as independent arbiters of these situations. In 1986, the United States withdrew from the compulsory jurisdiction of the International Court of Justice just prior to that court's ruling that the U.S.'s covert war against Nicaragua and mining of its harbors was in violation of international law.⁶⁴ More recently, the U.S. has not only refused to ratify the statute of the International Criminal Court but actively sought under the Bush administration to undermine that court's effectiveness and capacity by pressuring other countries not to ratify the treaty.⁶⁵

Torture

When reports began to surface about the U.S.'s extraordinary rendition program, indefinite detentions and use of torture methods upon detainees at Guantánamo Bay and later at Abu Ghraib, efforts were undertaken to seek redress for some of the victims of these policies and practices with no success to date.⁶⁶

Abu Ghraib and Other Torture Centers in Iraq. When photos depicting torture and humiliating and degrading treatment by U.S. servicemembers of Iraqi detainees at Abu Ghraib first surfaced,⁶⁷ high-ranking officials in the Department of Defense and Bush administration rushed to lay the blame on lower level enlisted and non-commissioned

⁶⁴ See *The Republic of Nicaragua v. The United States of America*, Int'l Court of Justice, Case Concerning Military and Paramilitary Activities in and Against Nicaragua, 1986 I.C.J. 14, June 27, 1986, available at <http://www.icj-cij.org/docket/index.php?sum=367&code=nus&p1=3&p2=3&case=70&k=66&p3=5>.

⁶⁵ See Pam Spees, *The International Criminal Court in Rule of Power or Rule of Law?: An Assessment of U.S. Policies and Actions Regarding Security-Related Treaties*, Eds. Nicole Deller, Arjun Makhijani, John Burroughs, Apex Press (2002).

⁶⁶ For a sample of analyses of these practices by United Nations bodies and experts and other international legal scholars, see, e.g., United Nations Committee Against Torture, Consideration of Reports submitted by States Parties under Article 19 of the Convention - Conclusions and recommendations of the Committee against Torture - United States of America, CAT/C/USA/CO/2, 25 July 2006, at ¶ 24, available at [http://www.unhcr.ch/tbs/doc.nsf/0/e2d4f5b2dccc0a4cc12571ee00290ce0/\\$FILE/G0643225.pdf](http://www.unhcr.ch/tbs/doc.nsf/0/e2d4f5b2dccc0a4cc12571ee00290ce0/$FILE/G0643225.pdf) (recommending that the U.S. "rescind any interrogation technique, including methods involving sexual humiliation, 'water boarding,' 'short shackling' and using dogs to induce fear, that constitute torture or cruel, inhuman or degrading treatment or punishment"); United Nations Commission on Human Rights, Situation of Detainees at Guantánamo Bay - Report of the Chairperson of the Working Group on Arbitrary Detention, Ms. Leila Zerrougui; the Special Rapporteur on the independence of judges and lawyers, Mr. Leandro Despouy; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Manfred Nowak; the Special Rapporteur on freedom of religion or belief, Ms. Asma Jahangir and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mr. Paul Hunt, E/CN.4/2006/120, Feb. 27, 2006, at ¶ 87, available at <http://www.un.org/Docs/journal/asp/ws.asp?m=E/CN.4/2006/120>. See also M. CHERIF BASSIOUNI, *THE INSTITUTIONALIZATION OF TORTURE BY THE BUSH ADMINISTRATION – IS ANYONE RESPONSIBLE?* (2010).

⁶⁷ See Seymour M. Hersh, *Torture at Abu Ghraib: American Soldiers Brutalized Iraqis. How Far Up Does the Responsibility Go?*, THE NEW YORKER, May 10, 2004., available at http://www.newyorker.com/archive/2004/05/10/040510fa_fact.

officers, claiming that this was aberrant behavior.⁶⁸ However, in a report of the investigation into the situation at Abu Ghraib, Major General Antonio Taguba concluded that the torture and humiliating and degrading treatment were the product of structural and command failures or decisions made at higher levels and especially faulted the decision of command to make military intelligence officers and civilian contractors responsible for the military police units conducting detainee operations.⁶⁹ However, similar reports later surfaced about torture and other forms of cruel, inhuman and degrading treatment at Guantánamo Bay and a detention facility at Bagram Air Force Base in Afghanistan.⁷⁰ In 2004, three memos were leaked to the press which were drafted and signed by high-ranking staff at the U.S. Office of the Attorney General and Office of Legal Counsel of the U.S. Department of Justice which advised the Central Intelligence Agency, the Department of Defense and Office of the President on the use of so-called “enhanced interrogation techniques” which included various forms of torture and cruel, inhuman and degrading treatment which the authors advised could be regarded as legally permissible.⁷¹ Later, a report by the Senate Armed Services Committee which was released in full in 2009 further confirmed that the legal memos had served to “redefine torture,”⁷² and “distorted the meaning and intent of anti-torture laws, [and] rationalized the abuse of detainees”⁷³ and led to the torture of detainees in U.S. run facilities in Iraq, Afghanistan and Guantánamo Bay and to the killings of two detainees in Afghanistan.⁷⁴ The Committee additionally concluded that senior administration officials were responsible for the torture program:

⁶⁸ See, e.g., *Editorial: The Abu Ghraib Spin*, NYTIMES, May 12, 2004, available at <http://www.nytimes.com/2004/05/12/opinion/12WED1.html?th>; William Saletan, *Rape Rooms: A Chronology: What Bush Said as the Iraq Prison Scandal Unfolded*, Slate, May 5, 2004, available at http://www.slate.com/articles/news_and_politics/ballot_box/2004/05/rape_rooms_a_chronology.5.html.

⁶⁹ A. TAGUBA, ART. 15-6: INVESTIGATION OF THE 800TH MILITARY POLICE BRIGADE (2004), available at <http://www.dod.mil/pubs/foi/detainees/taguba/> (citing instances of “sadistic, blatant, and wanton criminal abuse” at Abu Ghraib). [hereinafter Taguba Report]

⁷⁰ See Tim Golden, *In U.S. report, Brutal Details of Two Afghan Inmates’ Deaths*, NYTIMES, May 20, 2005, available at <http://www.nytimes.com/2005/05/20/international/asia/20abuse.html?ref=bagramairbaseafghanistan>; See also, CENTER FOR CONSTITUTIONAL RIGHTS, REPORT ON TORTURE AND CRUEL, INHUMAN AND DEGRADING TREATMENT OF PRISONERS AT GUANTANAMO BAY, CUBA (July 2006), available at http://ccrjustice.org/files/Report_ReportOnTorture.pdf.

⁷¹ See *A Guide to the Memos on Torture*, NYTIMES, available at <http://www.nytimes.com/ref/international/24MEMO-GUIDE.html>. See also David Johnston and James Risen, *The Reach of War: The Interrogations; Aides Say Memo Backed Coercion Already in Use*, NYTIMES, June 27, 2004, available at <http://www.nytimes.com/2004/06/27/world/reach-war-interrogations-aides-say-memo-backed-coercion-already-use.html>. See also *Joint Expert Opinion: Liability of the Six Defendants*, submitted in the Central Court for Preliminary Criminal Proceedings No. 6, Summary Procedure 134/2009, available at <http://www.ccrjustice.org/files/FINAL%20English%20Lawyers%20Responsibility%20Submission.pdf>.

⁷² Report by the Senate Armed Services Committee on Detainee Treatment, 110th Congress, 2nd Session, Nov. 20, 2008 at xv, available at <http://documents.nytimes.com/report-by-the-senate-armed-services-committee-on-detainee-treatment#p=1>.

⁷³ *Id.* at xxvii.

⁷⁴ *Id.* at 152.

The abuse of detainees in U.S. custody cannot simply be attributed to the actions of “a few bad apples” acting on their own. The fact is that senior officials in the United States government solicited information on how to use aggressive techniques, redefined the law to create the appearance of their legality, and authorized their use against detainees.⁷⁵

More recently, a joint investigation undertaken by The Guardian and BBC Arabic has surfaced evidence which shows that high-ranking officials in the Bush Administration were in fact more closely involved in and linked to secret detention and torture centers in Iraq and other serious human rights abuses.⁷⁶ The investigation revealed that former Defense Secretary Donald Rumsfeld appointed retired Colonel James Steele to help organize paramilitaries and commando units from 2003 to 2005 and again in 2006.⁷⁷ Steele reported directly to Rumsfeld and reportedly “knew everything that was going on there...the torture, the most horrible kinds of torture.”⁷⁸ Steele had previously worked as a military advisor from 1984-1986 in El Salvador where he reportedly trained counter-insurgency commandos who were documented as having committed serious human rights abuses. It was for this reason that Rumsfeld famously referred to the need for a “Salvador Option” in Iraq.⁷⁹

Despite clear and still emerging evidence of a policy and practice by the Bush administration that encouraged and facilitated the torture and serious ill-treatment of detainees in Iraq, Afghanistan, Guantánamo Bay and elsewhere, no high-level administration or military officials have been held accountable for these serious human rights violations. Due to the complete failure by the competent authorities to hold Bush and other senior administration officials accountable for violations resulting from these programs, efforts have been undertaken to use international law and other national

⁷⁵ *Id.* at xii.

⁷⁶ Mahmood, *supra* note 44.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Michael Hirsch and John Barry, “*The Salvador Option*”: *The Pentagon May Put Special-Forces-Led Assassination or Kidnapping Teams in Iraq*, NEWSWEEK, Jan. 9, 2005, available at <http://web.archive.org/web/20050110030928/http://www.msnbc.msn.com/id/6802629/site/newsweek/>. Steele was also implicated in the Iran-Contra scandal, in which senior officials in the administration of then President Ronald Reagan secretly facilitated arms sales to Iran in order to fund the Nicaraguan Contras, as official government funding had been prohibited by Congress. See Christopher Drew, *Testimony on Contras Still Haunts Colonel*, CHICAGO TRIBUNE, July 7, 1991, available at http://articles.chicagotribune.com/1991-07-07/news/9103170482_1_iran-contra-james-steele-special-prosecutor-lawrence-walsh; See also, Peter Maass, *The Way of Commandos*, NEW YORK TIMES MAGAZINE, May 1, 2005. <http://www.nytimes.com/2005/05/01/magazine/01ARMY.html?pagewanted=all&position=>.

jurisdictions to seek justice. In February 2011, the Center for Constitutional Rights, the International Federation for Human Rights and the Berlin-based European Center for Constitutional and Human Rights announced they would be filing complaints on behalf of torture victims with the Swiss government urging an investigation and prosecution of former President George W. Bush when it was learned that Bush would be traveling to Switzerland.⁸⁰ His trip was cancelled on the eve of filing the complaints, which could not be pursued since the basis of Swiss jurisdiction depended on his presence there. Subsequently, a similar complaint was filed by the Center for Constitutional Rights and the Canadian Centre for International Justice with the Canadian Attorney General upon learning of Bush's plans to speak at an event there. Canada failed to act on the request while Bush was present in the country and a complaint was subsequently filed with the United Nations Committee Against Torture citing Canada's failure to act in accordance with its obligations under the Convention. The Committee has subsequently requested that the government of Canada respond to the complaint.⁸¹ Similarly, with regard to Defense Secretary Rumsfeld, the Center for Constitutional Rights and its partners have undertaken efforts in France and Germany to initiate criminal investigations into his responsibility for torture and war crimes under their laws requiring their authorities to investigate and prosecute complaints when a suspected torturer or war criminal is on their territory.⁸²

Since 2009, the Center for Constitutional Rights and other human rights organization have been engaged in efforts in Spain to address the torture program. One of those cases was brought against Bush administration lawyers, collectively known as the "Bush Six," including the authors of the aforementioned "Torture Memos," for their role in the torture program and for aiding and abetting the torture and other serious abuses of persons detained at U.S.-run facilities at Guantanamo and other overseas facilities.⁸³ In April 2011, the presiding judge issued a ruling staying the case temporarily in Spain, transferring it to the U.S. Department of Justice for further proceedings.⁸⁴ Victims'

⁸⁰ See Preliminary "Indictment for Torture" of George W. Bush: Brought Pursuant to the Convention Against Torture.

⁸¹ See Letter of Ibrahim Salama, Director of the Human Rights Treaties Division, to Katherine Gallagher, Senior Staff Attorney at the Center for Constitutional Rights, of Jan. 22, 2013, *available at* <http://www.ccrjustice.org/files/UN%20CAT%20Response.pdf>.

⁸² See German War Crimes Complaint Against Donald Rumsfeld, et al., *available at* <http://www.ccrjustice.org/ourcases/current-cases/german-war-crimes-complaint-against-donald-rumsfeld%2C-et-al>. See French War Crimes Complaint Against Donald Rumsfeld, et al., *available at* <http://www.ccrjustice.org/ourcases/current-cases/french-war-crimes-complaint-against-donald-rumsfeld%2C-et-al>.

⁸³ For more information and copies of the filings, see *The Spanish Investigation Against the "Bush Six"* at <http://ccrjustice.org/spain-us-torture-case>.

⁸⁴ See Preliminary Report, Summary Proceedings 0000134/2009 of Court for Preliminary Criminal Proceedings No. 006, Apr 13, 2011, *available at* <http://ccrjustice.org/files/13%20April%202011%20Order%20ENG.pdf> ; (Español) <http://ccrjustice.org/files/13%20April%202011%20Order%20SPAN.pdf> .

representatives appealed the decision and the case will next go before the Spanish Constitutional Court. There has been no further action in the United States with regard to these charges. In another case pending in Spain which is investigating the torture program, the judge ruled in January 2012 that the court has jurisdiction over the case and in January 2013 formally admitted the Center for Constitutional Rights and the European Centre for the Constitutional and Human Rights into the case as representatives of two former Guantánamo detainees.⁸⁵

Private Military Contractors

As noted in the Taguba report, private contractors played a significant role in the torture and ill-treatment of detainees at Abu Ghraib. To date, there have been no domestic prosecutions of employees of the contractors who were involved in the egregious mistreatment of detainees. Victims of torture at Abu Ghraib have brought civil cases against contractors who were involved the unlawful treatment of detainees, including torture and other war crimes, as interrogators and interpreters. After nearly five years of struggling to maintain their cases, one case has recently settled and the second is on course to go to trial in 2013.

The Case of Maher Arar: Extraordinary Rendition and Torture

In January 2004, Maher Arar brought a case in New York against high-ranking administration officials seeking accountability and redress for his rendition to Syria where he was tortured, forced to falsely confess, and then released after one year without ever being charged.⁸⁶ His detention and arrest occurred when he was traveling through a New York airport on his way home to Canada. The government of Canada later officially apologized for having provided erroneous information to the United States which led to his detention and subsequent rendition but to date the United States government has refused to provide an apology for the horrific violations of Arar's fundamental rights.⁸⁷ Mr. Arar fought for six years to keep the case alive until the U.S. Supreme Court allowed

⁸⁵ *Suhail Najim Abdullah Al Shimari, et al, v. Caci International, Inc.*, Case No. 1:08-cv-00827, United States District Court for the Eastern District of Virginia, Alexandria Division. For more information, see the Center for Constitutional Rights case page, available at <http://www.ccrjustice.org/ourcases/current-cases/al-shimari-v-caci-et-al>.

⁸⁶ *Maher Arar v. John Ashcroft, et al*, Case No. No. 04-CV-0249, United States District Court for the Eastern District of New York. For more information, please see the Center for Constitutional Rights' case page, available at <http://www.ccrjustice.org/ourcases/current-cases/arar-v-ashcroft>.

⁸⁷ CANWEST News Service, *Harper Apologizes for Canada's Role in Arar's 'Terrible Ordeal'*, Jan. 27, 2007, available at <http://www.canada.com/topics/news/national/story.html?id=54e0c760-750d-4b18-9f6d-15501296a7b2&k=69081>.

an appellate court's decision dismissing the case to stand.⁸⁸ The appellate court and an *en banc* appellate court found that allowing Mr. Arar's claims to proceed would interfere with national security and foreign policy.⁸⁹ A dissenting judge observed that the court's decision gave federal officials license to "violate constitutional rights with virtual impunity."⁹⁰

Kill Lists and Drones

In 2010, the Center for Constitutional Rights filed suit on behalf of Dr. Nasser Al-Aulaqi against President Barack Obama, the Secretary of the Department of Defense, and the Director of the CIA challenging and seeking to enjoin their decision authorizing the targeted killing of his son, U.S. citizen Anwar Al-Aulaqi in violation of the constitution and international law. Dr. Al-Aulaqi's case was dismissed on the grounds that he did not have legal standing to challenge the targeting of his son and that the case raised "political questions" that were not subject to judicial review. On September 30, 2011, U.S. drone strikes killed Anwar Al-Aulaqi, along with U.S. citizen Samir Khan and three others. Two weeks later, on October 14, 2011, the U.S. launched another drone strike at an open-air restaurant in Yemen, killing Anwar Al-Aulaqi's 16-year-old U.S. citizen son, Abdulrahman, and six other civilian bystanders, including another minor. On July 18, 2012, the Center for Constitutional Rights again brought a case seeking accountability and redress for the unconstitutional killings of three U.S. citizens, Anwar and Abdulrahman Al-Aulaqi and Samir Khan.⁹¹

Punishing Whistleblowers

In May 2010, Private First Class Bradley Manning, a U.S. Army analyst, was arrested and charged with a number of offenses based on his now admitted leak of classified information to Wikileaks. During the course of his detention, he was held in so-called

⁸⁸ *Mahe Arar v. John Ashcroft, et al*, Case No. 09-923, Supreme Court of the United States, cert denied June 14, 2010.

⁸⁹ *Mahe Arar v. John Ashcroft, et al*, Case No. 06-4216-cv, United States Court of Appeals, Second Circuit, Opinion Affirming Dismissal of Case, 532 F. 3d 157 (2d. Cir. 2008), available at http://scholar.google.com/scholar_case?case=4195309659193362053&hl=en&as_sdt=2&as_vis=1&oi=scholar. See also, *Arar v. Ashcroft*, 585 F. 3d 559 (2d Cir. 2009) (en banc). available at <http://cjrjustice.org/files/Decision%20on%20Plaintiff's%20Petition%20for%20Rehearing%20En%20Banc%2011.02.09.pdf>.

⁹⁰ *Arar v. Ashcroft*, 532 F. 3d 157 (2008), available at http://scholar.google.com/scholar_case?case=4195309659193362053&hl=en&as_sdt=2&as_vis=1&oi=scholar at 88.

⁹¹ *Nasser Al-Aulaqi, et al., v. Leon E. Panetta, et al.*, Case No. 1:12-cv-01192, United States District Court for the District of Columbia. For more information, please see the Center for Constitutional Rights' case page, available at <http://www.cjrjustice.org/targetedkillings>.

prevention-of-injury status, which amounted to months-long periods of solitary confinement during which he was often forced to remain without clothing and his eyeglasses, conditions of confinement that prompted an international outcry as forms of torture and cruel, inhuman or degrading treatment.⁹² Manning pled guilty to 10 of the 22 charges against him on Feb. 28, 2013. He faces up to twenty years imprisonment on the charges. Among the revelations resulting from Manning's efforts to "blow the whistle," was video which showed a U.S. helicopter firing upon journalists and other civilians as well as a van that was attempting to come to the aid of those who had been fired upon. Ultimately, two children riding in the van were wounded and their father was killed along with at least eleven others.⁹³ But the leaks also led to the lengthy investigation mentioned above into the role and involvement of retired Col. James Steele and former Defense Secretary Rumsfeld in the detention centers in Iraq where torture and other forms of serious ill-treatment were utilized.⁹⁴ At the time of his guilty plea, Manning told the court: "I believe that if the general public, especially the American public, had access to the information contained [in released tables] this could spark a domestic debate on the role of the military and our foreign policy in general...as it related to Iraq and Afghanistan."⁹⁵

* * *

It is in this context of utter impunity and lack of any means of real redress that the undersigned organizations appeal to the Commission for an airing of these matters to help identify and acknowledge the harms as violations of human rights and of the U.S.'s duties under international law and, more specifically, under the American Convention on the Rights and Duties of Man. The Commission has long understood the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man to have extraterritorial application. Under Article 1(1), the American Convention on

⁹² See Juan Mendez, *Addendum to Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the United Nations General Assembly*, A/HRC/19/61/Add.4, at 74, Feb. 29, 2012, available at http://image.guardian.co.uk/sys-files/Guardian/documents/2012/03/12/A_HRC_19_61_Add.4_EFOnly-2.pdf; Ed Pilkington, *Bradley Manning's Treatment Was Cruel and Inhuman, UN Torture Chief Rules*, THE GUARDIAN, March 12, 2012, available at <http://www.guardian.co.uk/world/2012/mar/12/bradley-manning-cruel-inhuman-treatment-un>; *Letter from Amnesty International to Robert M. Gates*, Jan. 19, 2011, available at <http://www.allvoices.com/contributed-news/7975698-amnesty-criticizes-conditions-of-bradley-mannings-confinement>.

⁹³ See Glenn Greewald, *Wikileaks Releases Video of Slaughter in Iraq*, Salon, April 5, 2010, available at http://www.salon.com/2010/04/05/iraq_49/; Elisabeth Bumiller, *Video Shows U.S. Killing of Reuters Employees*, NYTIMES, April 5, 2010. <http://www.nytimes.com/2010/04/06/world/middleeast/06baghdad.html>.

⁹⁴ See Mahmood, *supra* note 44.

⁹⁵ Al Jazeera Inside Story, *Bradley Manning: A Whistleblowing Hero?*, March 5, 2013, available at <http://www.aljazeera.com/programmes/insidestoryamericas/2013/03/20133591256924844.html>.

Human Rights explicitly covers “all persons subject to [the] jurisdiction” of the State parties. While the American Declaration does not include a provision designating its jurisdiction, the Commission has applied the same jurisdictional standards as under the American Convention.⁹⁶ Indeed, recognizing that “individual rights are inherent to the human being” and that all the American states are obligated to respect those rights, the Commission has affirmed that in some cases, “the exercise of [the Commission’s] jurisdiction over extraterritorial events is *not only consistent with but required by* the applicable rules.”⁹⁷

Specifically, the Commission has held that a State Party “may be responsible under certain circumstances for the acts and omissions of its agents which produce effects or are undertaken outside that state’s own territory.”⁹⁸ The Commission’s decisions have addressed different ways in which a State’s liability for extraterritorial violations may arise such as when a State is exercising authority and effective control in the territory of another state⁹⁹ and/or when there is a “causal nexus between the extraterritorial conduct of the State and the alleged violation of the rights and freedoms of an individual.”¹⁰⁰

The focus of the determination of “authority and control” warranting jurisdiction is not tied to any “formal, structured, and prolonged legal relation” between states.¹⁰¹ Applying this standard, the Commission has held that it had jurisdiction over human rights violations committed by U.S. actors occurring in Grenada, Guantánamo Bay, and

⁹⁶ *Coard et al v. United States*, Case 10.951, Inter-Am. Comm’n H.R., Report No. 109/99, OEA/ser.L/V/II.106, doc. 3 rev. at ¶ 37 (1999) (finding the U.S. violated several articles of the American Declaration based on actions taken in Grenada); *Armando Alejandro Jr. and Others v. Cuba*, Case 11.589, Report No. 86/99, [OAS/Ser.L/V/II.104 doc. 10 rev. at] ¶ 23 (1999) (finding jurisdiction where the state party acted in international airspace).

⁹⁷ *Id.* (emphasis added)

⁹⁸ *Victor Saldaño v. Argentina*, Inter-Am. Comm’n H.R., Report No. 38/99, OEA/Ser.L/V/II.95 doc. 7 rev. at 289 ¶ 17 (1998).

⁹⁹ *Id.* at ¶ 19 (“jurisdiction is a notion linked to authority and effective control, and not merely to territorial boundaries”).

¹⁰⁰ *Ecuador ex rel. Molina v. Colombia*, Inter-State Petition IP-02, Inter-Am. Comm’n H.R. Report No. 112/10, OEA/Ser.L/V/II.140 doc. 10 (2010)., see also, *Alikhani v. United States*, Case 4618/02, Inter-Am. Comm’n H.R. Report No. 63/05, ¶ 42 (2005) (finding jurisdiction where the victim was arrested in international airspace); *Coard et al v. United States*, Case 10.951, Inter-Am. Comm’n H.R., Report No. 109/99, OEA/ser.L/V/II.106, doc. 3 rev. at ¶ 37 (1999) (finding the U.S. violated several articles of the American Declaration based on actions taken in Grenada); *Armando Alejandro Jr. and Others v. Cuba*, Case 11.589, Report No. 86/99, [OAS/Ser.L/V/II.104 doc. 10 rev. at] ¶ 23 (1999) (finding jurisdiction where the state party acted in international airspace).

¹⁰¹ *Ecuador ex rel. Molina v. Colombia*, Inter-State Petition IP-02, Inter-Am. Comm’n H.R. Report No. 112/10, OEA/Ser.L/V/II.140 doc. 10 (2010). ¶¶ 98-99, see also, *Victor Saldaño v. Argentina*, Inter-Am. Comm’n H.R., Report No. 38/99, OEA/Ser.L/V/II.95 doc. 7 rev. at 289 ¶ 19 (1998) (“jurisdiction is a notion linked to authority and effective control, and not merely to territorial boundaries” and the focus should be on whether the State has “authority and control” over the alleged victim.)

Bermuda.¹⁰² Additionally, in a case concerning the U.S. military intervention in Panama, the Commission held that when “use of military force has resulted in noncombatant deaths, personal injury, and property loss, the human rights of the noncombatants are implicated” and the Commission is authorized to consider the subject-matter of cases arising therefrom.¹⁰³

As such, the IACHR has jurisdiction over the human rights violations described herein. During the wars, the U.S. exercised authority and control over physical territory in Iraq and Afghanistan. Moreover, as demonstrated in this request, there is a clear nexus between the U.S. actions and inactions and the harm suffered by both servicemembers and civilians in Iraq and Afghanistan.

¹⁰² *Alikhani v. United States*, Case 4618/02, Inter-Am. Comm’n H.R. Report No. 63/05, ¶ 42 (2005); *Coard et al v. United States*, Case 10.951, Inter-Am. Comm’n H.R., Report No. 109/99, OEA/ser.L/V/II.106, doc. 3 rev. at ¶ 37 (1999); Decision on Request for Precautionary Measures (Detainees at Guantánamo Bay, Cuba), Inter-Am. C.H.R., OEA/Ser.L/V/II.117, doc 5 rev. 1 P 80 (Mar. 13, 2002)

¹⁰³ *Salas and Others v United States (U.S. Military Action in Panama)*, no. 10.573, Report No. 31/93, 14 October 1993.