

# Human Rights Council

## The question of terrorist detention centers





<b>Forum</b>	Human Rights Council
<b>Issue:</b>	The question of terrorist detention centers
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## Introduction

Terrorist detention facilities have been on the rise these past two decades simultaneously with the insurgency of extremist and terrorist groups in the Middle East and the spreading of their ideology around the world. However, striking similarities can be identified between security measures in the 1970s and 1980s in the context of Latin America, but also other regions, such as northern Africa and South-East Asia, on the one hand, and the counter-terrorism measures adopted worldwide since 11 September 2001, on the other. This confirms that the use of such detention centers is no new tool in the battle against terror.

These secret detention facilities heavily challenge international and humanitarian law as well as fundamental freedoms, such as the right to the liberty of a person. Therefore, these centers should not be seen nor used as a humane way of carrying out counter-terrorism. The methods used consist of broad emergency laws, the enhanced role of military and special courts, the practice of torture and/or ill-treatment, kidnappings, enforced disappearances and notably secret detention.

## Definition of Key Terms

### Terrorism

The definition of terrorism is extremely complex, however there is a general consensus that it relates to systemic use of violence in order to create a population controlled by fear which allows for a particular political objective to be brought about.

### Incommunicado detention

Incommunicado detention is a situation in which a detained individual is not allowed any access to family, an attorney or an independent physician. Some countries escalate this and ban all individual in incommunicado detention to inform anyone about their arrest.



There is nothing in international law that prevents this, however the UN human rights bodies believe it should be prohibited due to the multiple human rights violations.

### Extraordinary rendition

Extraordinary rendition occurs when a country seizes a person who is thought to have involvements to terrorist activity and then proceeds to transport the person for interrogation to a country where due process of law is unlikely to be respected

## General Overview

Terrorist detention facilities are a rather new concept. The use of secret terrorist detention facilities has been a result of the proceedings on 11 September 2001 and the following war on terror, as well as the insurgence of terrorist organizations such as ISIL in the Middle East. The detention center in Guantanamo Bay is probably the most infamous of any such facilities. In this center people were detained that had a role in conflicts in countries such as Afghanistan, as well as several high-standing figures within terrorist organizations. Guantanamo Bay gave rise to international outcries of human rights abuses and put the question discussed in this research report on the map. To this day, people are still detained in Guantanamo Bay, with little hope of ever getting out. In our contemporary world, the establishment and use of those facilities or primarily focused on and in the countries of conflict in the Middle East.

### Secret detention: a detailed description

When the authorities of a State deprive persons of their liberty, through holding them in indefinite unlawful detention, we speak of detention. Authorities deny or actively conceal this detention, and these people are not allowed to maintain relations to the outside world. This does not only mean that family members have no information of their whereabouts, but it also means that having a lawyer to fight against your detention is impossible. This is called *incommunicado detention*, which adds the secret character to unlawful detention carried out by States.

When we apply this knowledge to the principle of counter-terrorism, a case is recognized when a State has unlawfully detained a person:

- Who has committed, or is suspected of planning a terrorist offence,



- In any situation where terrorism and its notions such as extremism are used to justify the detention,
- In any situation where unusual detention powers or procedures are carried out by the state, for example under ant-terrorism laws.

It is highly important to emphasize that not only the detained persons itself suffer from unlawful detention, but also their family members suffer when any such detention is carried out, as they are cut off from a loved one, with no information on his or her whereabouts and conditions.

### **Terrorist detention and international law**

Secret detention is irreconcilable with international human rights law and international humanitarian law. It amounts to a manifold human rights violations that cannot be justified under any circumstances, including during states of emergency.

### **Terrorist detention and right to liberty of the person**

Secret detention is a practice that violates not only a set of rules and regulations, but also human rights, specifically the right to liberty and security of the person, as well as prohibition of arbitrary arrest. On top of this, anyone deprived of their liberty through detention should be entitled to take proceedings to a court, in order to let the law decide whether or not their detention is lawful at all.

The concept of secret detention in itself however violates the above-mentioned entitlement. Seeing that they are held outside the reach of law, the law is not applied to any of their cases. Secret detention is an arbitrary concept, seeing that any legal grounds for the justification of such actions are impossible to be reasoned, as no jurisdiction allows for detention without any legal process attached to it. Because the illegitimate character of the detention, detainees have no information about the period of time they will pass in the detention facilities.

### **Terrorist detention and right to a fair trial**

Secret detention outside the protection of the law is often resorted to with the purpose of depriving the detainee of the rights that he or she would otherwise enjoy as a person charged with a criminal offence, namely the right to a fair trial. Anyone who is arrested should be promptly informed of any charges against him, and anyone arrested or detained on a



criminal charge has to be brought promptly before a judge or other officer authorized by law to exercise judicial power.

In the majority of cases, Secret detention avoids the route which any person charged with a criminal offence would normally follow, namely the conduction of a trial. Every person has the right to a fair trial, including those held in secret detention. In most cases, secret detention is however not carried out with the motive of charging the detainees with any criminal offense. If any detainees are brought into court, due to the incommunicado character of secret detention, they will not be able to have the appropriate means to fully defend themselves, such as a lawyer. Lastly, because secret detention is carried out outside of the international laws, this means that torture and ill-treatment can be used to influence the detainee's position in court, and there is no guarantee that the court and judges itself will even oblige to the rule of law and will carry out their legal powers justly.

### **Terrorist detention and enforced disappearance**

The practice of secret detention goes automatically with the State carrying out enforced disappearances. Under no situation, including in a state of national security, enforced disappearances and places of detention can be justified. The widespread and systematic practice of enforced disappearance can be described as a crime against humanity, and should be subject to the respective international rules and regulations.

### **Terrorist detention and the absolute prohibition of torture and other forms of ill-treatment**

Incommunicado detention is prone to the use of torture or ill-treatment by the authorities. Because this detention is carried out outside the rule of law, there is no guarantee of the lawful treatment of detainees, without breaching their right to security. On top of this, if this detention is carried out over a prolonged period of time, the detention itself will serve as a form of ill-treatment. Lastly, the emotional torture that family members of persons in secret detention have to go to amounts to another form of ill-treatment that follows the secret detention of a person by the State.

### **Terrorist detention and proxy detention**

Proxy detention is the occurrence of a person being transported from one country to another, this happening outside of any international legal procedures. This is done to exclude



any chance of the review of a case by domestic courts, and is a heavy violation of the principle of non-refoulement in international human rights law.

The practice of “proxy detention” involves the responsibility of both the State that is detaining the victim and the State on whose behalf or at whose behest the detention takes place. Complicity in acts of torture is also prohibited, as it is required that each State party ensure that all acts of torture, including those acts by any person that constitute complicity or participation in torture, are criminal offences under its criminal law. A State would thus also be responsible when it was aware of the risk of torture and ill-treatment, or ought to have been aware of the risk, inherently associated with the establishment or operation of such a facility or a given transfer to the facility, and did not take reasonable steps to prevent it; or when the State received claims that someone had been subjected to torture or other ill-treatment, or an enforced disappearance, or otherwise received information suggesting that such acts may have taken place but failed to have the claims impartially investigated.

Both the State detaining the person and the State at whose behest the detention has been carried out, are responsible for the “proxy detention” and can therefore be held accountable for their role they play in any such activities. As it goes without saying, being complicit to acts of torture is prohibited by international law. Specifically when looking at secret detention linked to the war on terror, any international human right breaches surrounding secret detention and proxy detention cannot be attributed to but one State, as almost always more than one State takes part in the conduction of these acts. Under international law, States are expected to put an end to any such unlawful acts as soon as knowledge on it is received, making complicit countries even more responsible under international human rights law.

### **Terrorist detention and international humanitarian law**

International humanitarian law prohibits secret detention as clearly as international human rights law does. Notwithstanding the capacity to detain individuals, the entire system of detention is founded on the notion that detainees must be registered and held in officially recognized places of detention. As incommunicado detention is also prohibited under international humanitarian law applicable to all armed conflicts and to all persons who no longer take direct part in hostilities, detainees must be registered, provided an effective opportunity to immediately inform their family and a centralized information bureau of their detention and any subsequent transfer, and must be permitted ongoing contact with family members and others outside the place of detention.



International humanitarian law prohibits secret detention as clearly as international human rights law does. The entire system of detention is founded on the principle that detainees must be registered and being held in an official place of detention, this going against the incommunicado character of secret detention. This will ensure that family members now where the detainee is, as well as that this allows the detained person to maintain contact with his family, as well as a lawyer. This will ensure that detainees will be treated in a humane way whilst being in detention.

## Major Parties Involved

### United States of America

The United States Government declared a global “war on terror”, in which individuals captured around the world were to be held neither as criminal suspects, put forward for federal court trials in the United States, nor treated as prisoners of war. Rather, they were to be treated indiscriminately as “unlawful enemy combatants,” who could be held indefinitely without charge or trial or the possibility to challenge the legality of their detention before a court or other judicial authority.

By using this war paradigm, the United States purported to limit the applicable legal framework of the law of international humanitarian law and exclude any application of human rights law. Even if and when human rights law would apply, the United States Government was of the view that it was not bound by human rights law outside the territory of the United States, and therefore established facilities such as a military prison at Guantanamo Bay.

The United States of America currently has 40 prisoners detained in a military prison at Guantanamo Bay. It also hosts military commissions, where cases against several detainees are in the pre-trial phase. However, prominent security officials and legal experts have opposed using military commissions and it is not clear whether detaining and trying ISIS members at Guantanamo is legal. These commissions have previously been found unconstitutional, but after revision they have not yet been reviewed. The commission’s procedural process is said to be flawed, and these commissions are seen to be an unnecessary impediment of justice.



On top of this, the CIA has been found to make use of secret detention facilities, in collaboration with several governments spread out across the globe, mostly found in battle-field zones.

## Afghanistan

Afghanistan is the country where most often these secret detention centers monitored by the CIA were established. 23 detainees that ended up in Guantanamo Bay have previously been held captive in such facilities in Afghanistan. Often these detainees were held in Bagram, about 60 kilometers northwest of the capital, Kabul. They were held captive under inhumane circumstances and with utter disregard to human rights law.

## Iraq

Not only in Afghanistan, but also in Iraq several of these detention centers are situated, most infamously in Abu Ghraib, a prison in the capital of Iraq, Baghdad. Yet again, detainees did not enjoy the rights they were entitled to as stated in international human rights law and humanitarian law.

Both Iraq and Afghanistan play a key role in the issue of secret detention centers. Other countries that have also been used for the purpose of interrogation or detention without charge are most importantly Jordan, Egypt, Syrian Arab Republic & Pakistan

## Amnesty International

Amnesty International has been fighting against unlawful detention since 1961, when the organization was found. They have published a report concerning the topic of (secret) detention, which has been published in the Human Rights Council in 2006. In this report both secret detention in the context of countries such as Afghanistan and Iraq, as well as secret detention carried out by the US government as a tool in the 'war on terror'. As stated by Amnesty International, any such detention has 7 main issues attached of this, all of which apply to the question of terrorist detention centers.

- Prisoners of conscience – someone has not used or advocated violence but is imprisoned because of who they are (sexual orientation, ethnic, national or social origin, language, birth, colour, sex or economic status) or what they believe (religious, political or other conscientiously held beliefs).
- Arbitrary detention – being detained for no legitimate reason or without legal process





- Incommunicado – being detained without access to family, lawyers etc.
- Secret detention – being detained in a secret location.
- Inadequate prison conditions – such as overcrowding and prolonged solitary confinement.
- Unfair trials – trials conducted without ensuring minimum legal process.
- Torture and other forms of ill-treatment.

## UN involvement, Relevant Resolutions, Treaties and Events

- Security Council Resolution of the Investigation of Bombings in Lebanon, 31 October 2005 (S/RES/1636(2005))
- Civil and Political Rights, Including the Questions of Torture and Detention, 18 February 2002 (E/CN.4/2002/NGO/144)
- Joint study on global practices in relation to secret detention in the context of countering terrorism of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, 2010 (A/HRC/13/42)

## Previous Attempts to solve the Issue

The United Nations has paid increasing attention to the issue of secret detention and its relation to enforced disappearances since 1978, in the context of denunciations by numerous non-governmental organizations and widespread concerns with human rights situations in Chile, Cyprus and Argentina. The Inter-American Commission on Human Rights was one of the first international human rights bodies to respond to the phenomenon of enforced disappearances and secret detentions.

In 1978, the General Assembly, deeply concerned by reports from various parts of the world relating to enforced or involuntary disappearances of persons as a result of excess on the part of law enforcement or security authorities or similar organizations, adopted a



resolution dealing specifically with disappeared persons and requested the Commission on Human Rights to make appropriate recommendations.

The Sub-Commission pointed out that the danger involved for such persons warrants urgent reaction on the part of all individuals and institutions as well as of the Governments. It considered the question of enforced and involuntary disappearances and adopted a resolution in which it reiterated the right of families to know the fate of their relatives, and strongly appealed for the reappearance of all detainees who were held in secret detention.

The Commission on Human Rights also created a working group to examine questions relevant to enforced or involuntary disappearances of persons. The same year, the General Assembly welcomed the establishment of the Group and appealed to all Governments to cooperate with it.

The Sub-Commission's Working Group on Detention created a draft declaration on the protection of all persons from enforced or involuntary disappearances was proposed, and following amendments by the intersessional working group, was adopted first by the Commission on Human Rights in 1992.

In 1988, the General Assembly adopted the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. This was a result of a long-standing process of ascertaining detainees' rights that began with the Sub-Commission on Prevention of Discrimination and Protection of Minorities. This instrument provides for the application of a set of safeguards while in detention, compliance with which in principle would avoid or substantially decrease the likelihood of threat to life and limb of detainees.

A decisive moment in the long-standing process of outlawing practices of secret detention was the adoption of the International Convention on the Protection of All Persons from Forced Disappearance, which has been open for signature and ratification since 6 February 2007. This process started in 2001 when the former Commission on Human Rights requested a study to identify any gaps in the existing international criminal and human rights framework with a view to drafting a legally-binding normative instrument for the protection of all persons from enforced disappearance. The Commission drafted the International Convention on the Protection of All Persons from Forced Disappearance, the final text of which was adopted by the Human Rights Council in 2006. The Convention contains elements necessary for filling the gaps in the framework of the current protection against enforced disappearances and secret detentions.



As seen, the United Nations, and especially the Human Rights Council have definitely produced several measures to combat the disregard of human rights in terrorist detention. However, a lot of the previously introduced measures are concerning the implementation of rules, regulations and a legal framework around detention centres. However, seeing that the use of such terrorist detention centres often happens illegally and under the radar, these measures previously implemented fail to actively prevent countries from using these detention facilities to combat terrorism.

## Possible Solutions

One possible solution would be to have member states create strict guidelines on how governments should respond to individuals in terrorist detention centers. Human rights violations occur frequently in these centers, thus strict outlines need to be made. As said previously, this tends to happen under the radar, thus these strict guidelines should be made and enforced by the member states as opposed to the United Nations. If other member states are holding themselves responsible for this, there could be a higher likelihood that these protocols will be followed.

Another solution would be to promote government transparency. As the practices that occur in terrorist detention centers are often fly under the radar, those who implement the practices tend to get away with a lot of things. Ensuring that all actions occurring in these detention centers were shared with the government would encourage more moral practices.

A third solution would be to revolutionize the way the individuals held in the detention centers are treated. Instead of punishing and torturing them, it could be used as an opportunity to improve their cognitive, behavioral, and attitudinal characteristics. With this, post release radicalization and recidivism will be prevented, thus reducing violent extremism and further acts of terrorism.

Keep in mind that any possible solutions should not violate any articles of the UDHR.

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## Appendix or Appendices

For the most comprehensive information regarding this issue, please read this UN document: <http://hrlibrary.umn.edu/instree/A-HRC-13-42.pdf>

