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5 September 2006

Dear Members of the International Commission of Jurists (ICJ) Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights,

This letter and its annexes constitute the written submission of the New York University (NYU) School of Law Center for Human Rights and Global Justice (CHRGJ or the Center) to the ICJ Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights (the Panel) for use in its examination of the impact of terrorism and counter-terrorism measures adopted by the United States on the rule of law and the protection of human rights. In particular, please find enclosed material that addresses the following themes about which the Panel has expressed particular interest:

*(ii) The Government inquiries into cases of alleged torture or ill-treatment, accountability through criminal investigation and prosecution, and civil remedies for abuses;*

On behalf of the Center, Human Rights First, and Human Rights Watch, we enclose a 31-page report entitled [By the Numbers: Findings of the Detainee Abuse and Accountability Project](#) (2006) (Annex 1). This 31-page report presents the preliminary findings of the Detainee Abuse and Accountability Project, a joint project of the Center, Human Rights Watch and Human Rights First. The project is the first comprehensive accounting of credible allegations of torture and abuse in U.S. custody in Iraq, Afghanistan and Guantánamo. By April 2006, the project had collected hundreds of allegations of detainee abuse occurring since late 2001—allegations implicating more than 600 U.S. military and civilian personnel and involving more than 460 detainees. This ongoing project is also tracking criminal and administrative measures taken to punish abusers. See also [Press release: More Than 600 U.S. Personnel Implicated in Detainee Abuse](#) (April 26, 2006) (Annex 2).

*(iii) The transfer of terrorist suspects to third countries from the custody of the United States and its impact on the principle of non-refoulement, including standards and procedures to assess risks of torture and ill-treatment and the use of diplomatic assurances;*

The Center has a number of publications that expose and define extraordinary rendition (the transfer of individuals to another country where they face a real risk of torture or cruel, inhuman, or degrading treatment) as an illegal practice. These publications are enclosed as follows:

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- [\*Torture by Proxy: International Law Applicable to “Extraordinary Renditions”\*](#) (2005) (Annex 3). This 11-page report was prepared for the U.K. All Party Parliamentary Group on Extraordinary Rendition for distribution to members of the U.K. Parliament. It defines extraordinary rendition; provides examples of the practice; outlines how extraordinary rendition violates international human rights, humanitarian, and refugee law; identifies the international law obligations of States with regard to acts of extraordinary rendition by other States; and explains the extent to which international law applies in the “War on Terror.”
- [\*Beyond Guantánamo: Transfers to Torture One Year After Rasul v. Bush\*](#) (2005) (Annex 4). This 30-page report released on the anniversary of the Supreme Court decision in *Rasul v. Bush* reveals and examines the strategies that the Administration employs to keep detainees outside the ambit of the U.S. legal system. These strategies include extraordinary rendition, “reverse rendition,” and transfers into secret detention. *See also* [Case Summary Annex](#) (Annex 5) and [Press release: CHRGI Releases Report on Continued Outsourcing of Torture](#) (June 28, 2005) (Annex 6).
- [\*Torture by Proxy: International and Domestic Law Applicable to “Extraordinary Renditions”\*](#) (2004) (modified June 2006) (with Association of the Bar of the City of New York) (Annex 7). This 131-page report presents a synopsis of alleged instances of extraordinary rendition; an in-depth analysis of applicable domestic and international legal standards; and concludes that extraordinary renditions are contrary to U.S. and international laws and policy. *See also* Press release: [CHRGI Endorses Torture Outsourcing Prevention Act](#) (February 22, 2005) (Annex 8) and [Press release: CHRGI Releases Report on Extraordinary Rendition](#) (October 29, 2004) (Annex 9).
- [\*Enabling Torture: International Law Applicable to State Participation in the Unlawful Activities of Other States\*](#) (2006) (Annex 10). This 28-page report outlines the factual allegations of other countries’ involvement in U.S. activities; considers when and where a state’s human rights obligations apply; comprehensively assesses the role of international aviation law; outlines a state’s primary human rights obligations; and identifies when a state will be derivatively responsible for acts of another state. *See also* [Press release: States Must Investigate Allegations of Torture Assistance](#) (February 28, 2006) (Annex 11).

*(iv) The scope of and justifications for the policy of rendition of terrorist suspects; alleged secret or incommunicado detention of terrorist suspects;*

Please see publications listed above in relation to theme *(iii) The transfer of terrorist suspects to third countries from the custody of the United States and its impact on the principle of non-refoulement, including standards and procedures to assess risks of torture and ill-treatment and the use of diplomatic assurances.* In addition, please find enclosed:

- [\*Fate and Whereabouts Unknown: Detainees in the “War on Terror”\*](#) (2005) (Annex 12). This 34-page report provides the names and detailed backgrounds of 28 individuals who may be held in U.S. secret sites. The 28 include well-known terrorism suspects such as Ramzi Binalshibh and Khalid Sheikh Mohammed, as well as individuals who have not been widely reported as among those “disappeared,” including Suleiman Abdalla, Abu Naseem, and Aafia Siddiqui. The report also draws attention to the connections between extraordinary renditions and enforced disappearances. *See also*

[Press release: U.S. Must Clarify Fate of 28 Individuals](#) (December 17, 2005) (Annex 13).

In addition to these publications, the Panel may also find of interest information concerning the Freedom of Information Act (FOIA) requests submitted by Amnesty International and the CHRGJ-affiliated International Human Rights Clinic at New York University School of Law to various federal agencies for records concerning "disappeared" detainees including "ghost" and unregistered prisoners. Please find enclosed:

- [Amnesty International, Press Release, August 15, 2006](#) (Annex 14).
- [FOIA Requests filed by Amnesty International and the International Human Rights Clinic](#) (Annex 15).
- [Press advisory: International Human Rights Clinic Seeks Information about Disappeared Persons](#) (August 16, 2006) (Annex 16).

*(xii) The impact of counter-terrorism measures on the right to non-discrimination, including the use of racial, religious and ethnic profiling;*

The Center's work in this area has focused on racial and other forms of profiling and the use of lethal force in the "war on terror." In particular, it has sought to draw attention to the ways in which existing and future "shoot-to-kill" policies might seek to rely on behavioral indicators that act as proxies for religious, racial, ethnic and nationality profiling, and to analyze how such profiling violates domestic, regional and international laws prohibiting discrimination. Please find enclosed the following publications addressing this issue:

- [Irreversible Consequences: Racial Profiling and Lethal Force in the "War on Terror"](#) (2006) (Annex 17). This 71-page report critiques two trends in "shoot-to-kill" policies that are embodied in "Training Keys" issued by the International Association of Chiefs of Police: the use of certain behavioral and other indicators to detect a suspected suicide bomber that act as proxies for religious, racial, ethnic and nationality profiling; and removal of the usual safeguards that attach to the use of force when responding to the threat of suicide bombers. *See also* [Press release: Minorities Will Bear the Brunt of "Shoot-To-Kill" Policies](#) (May 10, 2006) (Annex 18).
- *Written Submission to U.N. Human Rights Committee* (July 2006) (Annex 19). This 11-page note was submitted to the Committee for the Committee's examination of the second and third periodic reports of the U.S. and addresses how "shoot-to-kill" policies with respect to suspected suicide bombers may potentially violate Articles 2, 6 and 26 of the International Covenant on Civil and Political Rights.

Please do not hesitate to contact Jayne Huckerby, Research Director, NYU School of Law Center for Human Rights and Global Justice on the contact details below should you have any questions in respect of this material.

Yours sincerely,

Jayne Huckerby  
([Huckerby@juris.law.nyu.edu](mailto:Huckerby@juris.law.nyu.edu); Tel: 1 212 992 8903)

Encl.

- Annex 1: *By the Numbers: Findings of the Detainee Abuse and Accountability Project* (2006) (with Human Rights Watch and Human Rights First)
- Annex 2: Press release: More Than 600 U.S. Personnel Implicated in Detainee Abuse (April 26, 2006)
- Annex 3: *Torture by Proxy: International Law Applicable to "Extraordinary Renditions"* (2005)
- Annex 4: *Beyond Guantánamo: Transfers to Torture One Year After Rasul v. Bush* (2005)
- Annex 5: *Beyond Guantánamo: Transfers to Torture One Year After Rasul v. Bush* (2005): Case Summary Annex
- Annex 6: Press release: CHRGI Releases Report on Continued Outsourcing of Torture (June 28, 2005)
- Annex 7: *Torture by Proxy: International and Domestic Law Applicable to "Extraordinary Renditions"* (2004) (modified June 2006) (with Association of the Bar of the City of New York)
- Annex 8: Press release: CHRGI Endorses Torture Outsourcing Prevention Act (February 22, 2005)
- Annex 9: Press release: CHRGI Releases Report on Extraordinary Rendition (October 29, 2004)
- Annex 10: *Enabling Torture: International Law Applicable to State Participation in the Unlawful Activities of Other States* (2006)
- Annex 11: Press release: States Must Investigate Allegations of Torture Assistance (February 28, 2006)
- Annex 12: *Fate and Whereabouts Unknown: Detainees in the "War on Terror"* (2005)
- Annex 13: Press release: U.S. Must Clarify Fate of 28 Individuals (December 17, 2005)
- Annex 14: Amnesty International, Press Release, 15 August, 2006
- Annex 15: FOIA Requests filed by Amnesty International and the International Human Rights Clinic
- Annex 16: Press advisory: International Human Rights Clinic Seeks Information about Disappeared Persons (August 16, 2006)
- Annex 17: *Irreversible Consequences: Racial Profiling and Lethal Force in the "War on Terror"* (2006)
- Annex 18: Press release: Minorities Will Bear the Brunt of "Shoot-To-Kill" Policies (May 10, 2006)
- Annex 19: *Written Submission to U.N. Human Rights Committee* (July 2006)