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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) and International Human Rights Clinic (IHRC or the Clinic) of Washington Square Legal Services¹ to the ICJ Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights (the Panel) for use in its sub-regional hearing in Cairo, 4- 5 June 2007 to examine and assess the impact of counter-terrorism laws and policies on human rights and the rule of law in Egypt, Jordan, Syria and Yemen.

In particular, this written submission outlines the cases of our clients - Mr. Mohamed Farag Ahmad Bashmilah and Mr. Salah Naser Salem Ali Darwish - in relation to Jordan. These cases provide insight into the following issues about which the Panel has expressed interest in receiving information both in the framework of its global inquiry and specifically in the context of the sub-regional hearing in Cairo:

.....
(4) What has been the impact of the 'war on terror' in your country?

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- (iii) The arrest and detention of terrorist suspects, including the role of intelligence services in those arrests and detentions;*
 - (iv) Issues related to the right to a fair trial of terrorist suspects prosecuted before special courts, including state security courts and military tribunals, and the justification for using those courts and tribunals;*
 - (v) Alleged extrajudicial executions and enforced disappearances of terrorist suspects;*
 - (vi) Alleged torture or ill-treatment of terrorist suspects;*

¹ WSLS is the corporation that supports the International Human Rights Clinic of NYU School of Law. The Clinic is affiliated with NYU Law School's Center for Human Rights and Global Justice.

.....
(x) *The cooperation with foreign governments in the global “war on terror”, in particular the cooperation with foreign security and intelligence services in the transfer of terrorist suspects.*

General: Disappearances, torture and renditions in the global “war on terror”

Our clients are Yemeni nationals and are part of a small group of individuals² who have provided public testimony concerning their apprehension, transfer and detention in secret U.S. detention facilities or “black sites.”³ Both of their stories exemplify the ways in which governments, such as Jordan, co-operate with the U.S. in abuses in the global “war on terror” and the treatment to which individuals targeted in the “war on terror” are subject. Both men were apprehended by foreign governments in the latter half of 2003 and after initial detention and interrogation by local authorities, extraordinarily rendered into the U.S. secret detention network, where they were transported between multiple secret facilities before being sent back to Yemen in early May 2005 for continued proxy detention at the behest of the U.S. until their release in March 2006.⁴

Their secret and irregular apprehension, transfer and detention involved a myriad of human rights violations, including, but not limited to, violations of the: prohibition on torture and cruel, inhuman or degrading treatment; prohibition against the *refoulement*, or transfer, of an individual to another State where that individual faces the risk of torture; prohibition against enforced disappearances; and the requirement to prevent, criminalize, investigate and punish acts of torture, conspiracy in torture, and aiding and abetting in acts of torture. These human rights protections are primary obligations that were owed to our clients by the different government(s) exercising jurisdiction over the individuals at different points, including, but not limited to, the U.S. and Jordan.

In addition to these States being responsible for breaches of their own primary obligations vis-à-vis our clients, countries such as Jordan may also be held responsible under international law for the wrongful acts of other States, such as the U.S., as a result of participating in the U.S.’ breach of its primary obligations in the global “war on terror.”

For further detail concerning the content of the human rights obligations owed to our clients, as well as the legal standards governing foreign government co-operation in the global “war on terror” and the nature and scope of the types of violations to which are clients were subject, please see the following Center publications annexed to this written submission:

- Annex 1: *Enabling Torture: International Law Applicable to State Participation in the Unlawful Activities of Other States* (2006)
- Annex 2: *Fate and Whereabouts Unknown: Detainees in the “War on Terror”* (2005)
- 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)

² See also for example Human Rights Watch, *Ghost Prisoner: Two Years in Secret CIA Detention* (Feb. 2007), available at <http://hrw.org/reports/2007/us0207/us0207web.pdf>.

³ See e.g., Amnesty International, United States of America: *Below the radar: Secret flights to torture and ‘disappearance’* (Apr. 2006), available at <http://www.amnestyusa.org/document.php?lang=e&id=ENGUSA20060404001>; Amnesty International, *United States of America/Yemen: Secret Detention in CIA “Black Sites”* (Nov. 2005), available at [http://web.amnesty.org/library/pdf/AMR511772005ENGLISH/\\$File/AMR5117705.pdf](http://web.amnesty.org/library/pdf/AMR511772005ENGLISH/$File/AMR5117705.pdf).

⁴ *Id.*

- Annex 5: *Beyond Guantánamo: Transfers to Torture One Year After Rasul v. Bush* (2005): Case Summary
- 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)

Jordan: Detention, torture and illegal transfer to U.S. custody

Both Mr. Bashmilah and Mr. Darwish were apprehended, detained in an intelligence detention center and tortured in Jordan and later transferred to U.S. custody. Amnesty International describes the treatment to which Mr. Darwish was subject as follows:

Salah 'Ali described being suspended from the ceiling and having the soles of his feet beaten so badly that when they took him down from the hooks he had to crawl back to his cell. He was stripped and beaten by a ring of masked soldiers with sticks. "When one got tired of hitting me, they would replace him," he told Amnesty International. "They tried to force me to walk like an animal, on my hands and feet, and I refused, so they stretched me out on the floor and walked on me and put their shoes in my mouth". Another time, he said, a guard noticed he had a bad foot, and forced him to stand on it throughout the night while they interrogated him: sometimes during interrogation they held plates of food near his face while they ate, although he was not fed; sometimes they put cigarettes out on his arm. (footnotes omitted).⁵

Mr. Darwish has described his treatment as follows: "I was tortured horribly. It was very bad."⁶ A Yemeni prison official told Amnesty International that he believed that Mr. Bashmilah had been more severely tortured than Mr. Darwish and Mr. Bashmilah has indicated that he was subject to physical and mental torture in Jordan and that the Jordanians threatened to hand Mr. Bashmilah over to the Americans. We have also confirmed that Mr. Bashmilah and Mr. Darwish were subject to torture and cruel, inhuman or degrading treatment in Jordanian custody. The Jordanian government has never acknowledged that Mr. Bashmilah and Mr. Darwish were in custody, and the Jordanian General Intelligence Department, *Da'irat al-Mukhabarat al-'Ammah* (GID) has denied that our clients were detained at the GID detention center and stated that they were "merely deported for exceeding their residence permit..."⁷

Jordan's secret or irregular apprehension, detention and torture of both Mr. Bashmilah and Mr. Darwish violate Jordan's legal obligations, including those arising from instruments that bind Jordan such as the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* ("CAT") (Jordan acceded on November 13, 1991)⁸ and the *International Covenant on Civil and Political Rights* ("ICCPR") (Jordan ratified on May 28, 1975).⁹ The transfer to U.S. custody violated the

⁵ Amnesty International, *Secret Detention in CIA "Black Sites"*, *supra* note 3.

⁶ *Id.*

⁷ *Id.*

⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10 December 1984, *Status of Ratification*, available at <http://www.ohchr.org/english/countries/ratification/9.htm> (last visited May 24, 2007).

⁹ International Covenant on Civil and Political Rights, New York, 16 December 1966, *Status of Ratification*, available at <http://www.ohchr.org/english/countries/ratification/4.htm> (last visited May 24, 2007).

prohibition on *refoulement* contained, *inter alia*, in Article 3 of CAT and Article 7 of the ICCPR on the basis that there were “substantial grounds” for believing that our clients would be subject to torture (Article 3) and/or that they would be “at risk of” either torture or cruel, inhuman or degrading treatment (or both) (Article 7) by being “disappeared” into U.S. custody. It is objectively recognized that disappearances and secret detention are inherently conducive to torture and cruel, inhuman or degrading treatment, and can themselves constitute torture and cruel, inhuman or degrading treatment. A subjective assessment of the risk also points to the likelihood that transfer to U.S. custody would be illegal – indeed, Jordanian interrogators themselves used the prospect of being handed over to the Americans as a threat in interrogation. The failure to either assess this risk at all, or to appropriately assess this risk, is a violation of Jordan’s legal obligations. These direct human rights violations by Jordan, also constitute unlawful assistance to the U.S. in committing its human rights violations in the global “war on terror” through the illegal apprehension, detention and transfer of individuals for the benefit of stocking U.S. secret prisons.

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,

A handwritten signature in black ink, appearing to read "pp Lauren" followed by a stylized flourish.

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Encl.