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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. Salah Naser Salem Ali Darwish, and Mr. Mohammed Abdullah Saleh al-Asad - in relation to Yemen. 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?*

.....
(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 WLSL 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 Yemen, 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 or U.S. 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 Yemen.

In addition to these States being responsible for breaches of their own primary obligations vis-à-vis our clients, countries such as Yemen 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)
- 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)

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.*

Yemen: Proxy detention under U.S. direction

On behalf of Mr. Al-Asad and Mr. Darwish we draw attention to their proxy detention in Yemen under U.S. direction between May 2005 and March 2006 (note that Mr. al-Asad was released on March 14, 2006 and Mr. Darwish released at around midnight on March 27/28, 2006). The extent of U.S. direction is clear from the following excerpt:

A number of Yemeni officials, including the Chairman of the Central Organ for Political Security, Ghalib al-Qamish, have told Amnesty International that US officials had given them explicit instructions on the continued detention of the three men, and that they are "awaiting files" from the US, so that they can try them. When asked if the men would be released if the US requested it, Rajih Hunaish said, without hesitation, "yes". He told Amnesty International that notification of the transfer in May, and further instructions on the detention of the three men, came from the US Embassy in Sana'a.⁵

Further, in September 2005, the Yemeni Minister of the Interior, Rashad Mohammed al-Alimi announced that our clients would be tried in Yemen once the U.S had sent through the relevant files. Mr. al-Asad and Mr. Darwish were kept for more than nine months in arbitrary detention without charge before being put on trial on February 13, 2006. The outcome of that trial is described as follows by Amnesty International:

On the basis of statements they made during their interview with the prosecutor of the Special Penal Court, each was charged with forgery in connection with obtaining a false travel document for personal use. None of the alleged forgeries was presented in evidence. None of the men was charged with any terrorism-related offence; the Chief of Special Prosecutions told Amnesty International that they were not suspected of any such offences. The men all pleaded guilty and the judge had it written into the trial record that they had been detained in an unknown place by US agents. On 27 February the judge sentenced the men each to two years in prison, adding the instructions: 'to count the period that the accused spent in prisons outside the country as part of the sentence'. He calculated that, in addition to their nine months in prison in Yemen, their time in secret US detention had been at least 18 months, and ordered their release. (footnotes omitted).⁶

Yemen's detention of Mr. al-Asad and Mr. Darwish between May 2005 and March 2006 at the behest of the U.S. violated the human rights of Mr. al-Asad and Mr. Darwish, including, the right to be free from arbitrary detention established by, *inter alia*, Article 9 of the *International Covenant on Civil and Political Rights* (to which Yemen acceded on February 9, 1987 and which the U.S. ratified on June 8, 1992).⁷ Proxy detention of a country's own nationals without charge after their "disappearance" by the U.S. may also constitute unlawful assistance to the U.S. in its human rights violations in the global "war on terror," e.g., through failing to lawfully bring to an end the U.S.' violation and by implicitly recognizing the circumstances of return as lawful and assisting in the maintenance of the system of U.S. secret detention.

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

⁶ Amnesty International, *Below the radar: Secret flights to torture and 'disappearance,' supra* note 3.

⁷ 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).

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 Huckerby". The signature is fluid and cursive, with a large, sweeping flourish at the end.

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Encl.