

14 November 2012

Petitions Team  
United Nations Committee against Torture  
Office of the High Commissioner for Human Rights  
Palais Wilson  
52 rue de Pâquis  
1211 Geneva 10, Switzerland

Via *email: petitions@ohchr.org*  
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Re: **Hassan bin Attash, Sami el-Hajj, Muhammed Khan Tumani and  
Murat Kurnaz v. Canada – Communication**  
*(Alleged Violation of Articles 5, 6 and 7 of the Convention against Torture)*

Dear Members of the Committee against Torture:

Please find enclosed a communication against **Canada**, submitted pursuant to Article 22 of the Convention against Torture (“Torture Convention” or “the Convention”),<sup>1</sup> from four individuals subjected to torture while detained in U.S.-run detention centers. We are empowered to present the claims of **Hassan bin Attash**, a national of Yemen currently detained in the U.S.-run detention center in Guantánamo Bay; **Sami el-Hajj**, a Sudanese citizen; **Muhammed Khan Tumani**, a Syrian citizen; and **Murat Kurnaz**, a German-born citizen of Turkey, in this communication and before the Committee.

The named complainants in the communication, with the assistance of the Center for Constitutional Rights (“CCR”) and the Canadian Centre for International Justice (“CCIJ”), had sought to institute criminal proceedings for torture in Canada against the former president of the United States, **George W. Bush**, during a visit by Mr. Bush to British Columbia, Canada in October 2011.<sup>2</sup> Canada breached its obligations as a State party to the Torture Convention by

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<sup>1</sup> *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, G.A. Res. 39/46, Annex, 39 U.N. GAOR Supp. No. 51, U.N. Doc. A/39/51 (1984). Canada recognized the competence of the Committee to receive and consider individual complaints pursuant to Article 22 on 13 November 1989.

<sup>2</sup> *See Factual and Legal Basis for the Prosecution of George W. Bush*, 29 Sept. 2011, *available at* <http://www.ccrjustice.org/files/2011.09.29%20Bush%20Canada%20Indictment.pdf>; *Private Prosecution against George W. Bush*, 18 Oct. 2011, *available at* [http://www.ccrjustice.org/files/Private%20Prosecution\\_Oct\\_18\\_2011.pdf](http://www.ccrjustice.org/files/Private%20Prosecution_Oct_18_2011.pdf). The private prosecution was supported by

failing to investigate and prosecute Mr. Bush while he was present on its territory even though a credible case that such action was appropriate had been presented. The Attorney General of Canada failed to fulfill Canada's Convention obligations in declining to act *proprio motu* on a lengthy dossier presented to the Attorney General in September 2011 in advance of the visit. The dossier, framed as a draft indictment, set forth the factual and legal basis to investigate and prosecute Mr. Bush for torture and was supported by approximately 4,000 pages of evidence. Then, as detailed in the communication, officials thwarted Complainants' efforts to initiate their own proceeding through the filing of a criminal Information while Mr. Bush was present in Canada. Rather than allow the private prosecution to proceed or take over prosecution of the case, officials instead acted to immediately close the proceeding.

Complainant Hassan bin Attash, a Yemeni man born in Saudi Arabia, was seized in Karachi, Pakistan in September 2002 at the age of 16. As set forth in detail in the communication, after being beaten and interrogated in Pakistan, Mr. bin Attash was transferred to, and subjected to torture at, the CIA's "Dark Prison" in Afghanistan; in Jordan, where the Jordanian intelligence service tortured him in the presence of American authorities; at the U.S. military base in Bagram, Afghanistan; and finally, at Guantánamo, where Mr. bin Attash remains, despite having never been charged with any crime.<sup>3</sup>

Complainant Muhammed Khan Tumani, a citizen of Syria, was seized at the age of 17 with his father in Pakistan in late 2001. Mr. Khan Tumani and his father were detained and interrogated first in Pakistan, then transferred to the U.S.-run prison in Kandahar, Afghanistan, where Mr. Khan Tumani's hand was fractured. They were flown to Guantánamo in February 2002. Mr. Khan Tumani was subjected to physical and psychological abuse, including solitary confinement, sleep deprivation, constant noise, food deprivation, being doused with ice and cold water, and sexual abuse. Mr. Khan Tumani attempted suicide while detained at Guantánamo. He was released without ever having been charged with any crime in August 2009.<sup>4</sup>

Complainant Sami el-Hajj, a Sudanese national and Al-Jazeera correspondent, was arrested while working in Pakistan in December 2001. Mr. el-Hajj was detained and tortured in U.S. facilities in Bagram and Kandahar, Afghanistan for nearly five months. Mr. el-Hajj was transferred to Guantánamo in June 2002. He was interrogated approximately 200 times and was routinely beaten and subjected to various forms of mistreatment amounting to torture during his time in Guantánamo. He was held without charge until his eventual release in May 2008.<sup>5</sup>

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more than fifty international experts and human rights organizations. The letter is available at: [http://ccrjustice.org/files/2011-10-19\\_UPDATED\\_FINAL\\_Letter\\_of\\_Support\\_SIGNED.pdf](http://ccrjustice.org/files/2011-10-19_UPDATED_FINAL_Letter_of_Support_SIGNED.pdf).

<sup>3</sup> See Supporting Materials to criminal information filed against Mr. Bush, available at [http://www.ccrjustice.org/files/Private%20Prosecution\\_Oct\\_18\\_2011.pdf](http://www.ccrjustice.org/files/Private%20Prosecution_Oct_18_2011.pdf).

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

Complainant Murat Kurnaz, a German-born citizen of Turkey, was arrested at the age of 19 by Pakistani officials in December 2001. For an alleged fee of US\$3,000, Mr. Kurnaz was handed over to the U.S. military and brought to Kandahar, Afghanistan, where, as detailed in the communication, he was subjected to torture. In February 2002, Mr. Kurnaz was transferred to Guantánamo where he was again subjected to acts of physical and mental torture. Mr. Kurnaz was released without charge in August 2006.<sup>6</sup>

Due to Mr. Bush's actions and omissions in relation to the detention and interrogation of persons held in U.S. detention facilities outside the United States, and the direct and command responsibility that flowed from those acts and omissions, the Complainants sought to hold him legally accountable for the torture to which they were subjected.

In line with the provisions of the Torture Convention, the Canadian *Criminal Code* prohibits torture. Section 269.1 of the *Criminal Code*,<sup>7</sup> which provides jurisdiction over the offence of torture, "reflects the recognition of Parliament that freedom from such intentional mistreatment is a basic human right."<sup>8</sup> The provision explicitly applies to officials and persons acting at the direction or with the acquiescence of an official. Under sections 21 and 22 of the Code, liability extends to persons who commit an offence and those who aid, abet, form a common intention to carry out, counsel, procure, solicit or incite another person to be a party to the offence. Notably, section 7(3.7) of the Criminal Code provides Canada jurisdiction over torture committed abroad when the accused is present in territory under Canada's jurisdiction.

The basis of this communication is that Canada violated:

- **Article 5 (2)** of the Torture Convention by failing to take all measures necessary to ensure that jurisdiction was properly established and/or exercised when an alleged torturer – Mr. Bush – was present in its territory and it did not extradite him pursuant to Article 8;
- **Article 6 (1)** of the Torture Convention by failing to take Mr. Bush into custody or to take other legal measures to ensure his presence following an examination of the evidence provided to Canadian officials, including the draft indictment, the criminal Information filed by CCR, CCIJ and the complainants and the supporting materials thereto; and
- **Article 7 (1)** of the Torture Convention by failing to prosecute or extradite Mr. Bush.

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<sup>6</sup> *Ibid.*

<sup>7</sup> R.S.C., 1985, c. C-46.

<sup>8</sup> *Canada (Prime Minister) v. Khadr*, 2009 FCA 246, [2010] 1 FCR 73, at para. 51.

The Complainants ask the Committee to recommend that Canada remedy the violations by:

- seeking answers from Canada regarding the decisions taken by officials in Canada to not initiate an investigation of Mr. Bush and to stay proceedings initiated on behalf of four torture survivors; and
- make specific recommendations to Canada regarding its failure to comply with the Convention so as to ensure that should an alleged torturer be present in its territory in the future, Canadian officials respond promptly and in accordance with the Convention.

Such steps by the Committee would serve as an important and necessary reminder to Canada – and other State parties – of the central role of the Convention in ending impunity for torture.<sup>9</sup>

We remain available to the Committee to provide any follow-up information or clarification that might be of assistance to its consideration of the communication.

Respectfully submitted,



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<sup>9</sup> CCR and CCIJ note, with serious concern, that despite the well-documented U.S. torture program and the travel of former members of the Bush Administration outside the United States, no investigation or prosecution of any high-level members of the former Bush Administration has been initiated by the United States or any other country under the Convention despite the presence of torture suspects in signatory States.