



10 December 2015

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

**Re: CAT/536/2013, Hassan bin Attash et al., Communication against Canada
(Alleged Violation of Articles 5(2), 6 and 7 of the Convention against Torture)**

Dear Members of the Committee against Torture:

Hassan bin Attash, Sami el-Hajj, Muhammed Khan Tumani and Murat Kurnaz (collectively, “Complainants”), with the assistance of the Center for Constitutional Rights (“CCR”) and the Canadian Centre for International Justice (“CCIJ”), and through their legal representative Katherine Gallagher of CCR, submitted a communication pursuant to Article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Convention”) with this Committee on 14 November 2012.¹ The Complainants are four individuals who were subjected to torture while detained in U.S.-run detention centers, including in Afghanistan and at Guantánamo Bay. The Complainants maintain that Canada failed to uphold its obligations under the Convention by failing to investigate, detain, or prosecute George W. Bush, a person alleged to have committed torture, when present in its territory,² which constitutes a violation of Articles 5, 6, and 7 of the Convention.

The Complainants’ communication remains pending.³ We take the opportunity of Human Rights Day to make this follow-up submission to the Committee.

¹ Hassan Bin Attash, et al., Communication presented to the Committee against Torture Pursuant to Article 22 of the Convention against Torture, for Violation of Articles 5, 6, and 7 of the Convention, 12 November 2012, available at: <http://ccrjustice.org/files/CAT%20Canada%20Petition%20.pdf>. The Committee registered the Communication as No. 536/2013.

² A factual record presented to Canada prior to Bush’s visit sets forth his role in ordering, directing, authorizing, approving, facilitating, and failing to prevent or punish acts of torture against persons detained by the United States between 2001 and 2009, including the Complaints. See *Factual and Legal Basis for Prosecution of George W. Bush Pursuant to the Canadian Criminal Code and the Convention Against Torture*, 29 September 2011, available at: <http://ccrjustice.org/sites/default/files/assets/files/2011.09.29%20Bush%20Canada%20Indictment.pdf>.

³ The last submissions in the case-file were Canada’s Addendum to its Previous Submissions, dated 23 October 2014, and Complainants’ Reply to Canada’s Supplemental Submission dated 17 July 2014, available at: <https://ccrjustice.org/sites/default/files/assets/17%20July%202014%20Final%20Reply%20UN%20CAT%20CCR%20CCIJ.pdf>.

The Complainants recall that they submitted an urgent letter to the Committee on 8 May 2014, in which they alerted the Committee to Bush's return visit to Canada on 12 May 2014 and urged the Committee to issue interim measures to prevent a further breach of Canada's obligations under Articles 5, 6, and 7, as well as its obligations under Article 14. The Complainants maintain that Canada's failure to launch an investigation against Bush *again* in 2014, despite not only having sufficient time for an investigation but also having this petition pending against it before the Committee, constitutes a further breach of Canada's Convention obligations. Nevertheless, the Complainants continue to stand ready to cooperate in any future investigation of Bush in Canada.

Canada has sufficient evidence of Bush's culpability in the U.S. torture program to justify an investigation and the mountain of evidence has only grown in the past year. One year ago this week, the bipartisan U.S. Senate Select Committee on Intelligence released a summarized version of the Committee Study of the Central Intelligence Agency's Detention and Interrogation Program ("Torture Report"). The Torture Report describes the CIA's use of various forms of torture, including so-called "enhanced interrogation techniques," on detainees held in secret detention sites between 2001 and 2006.

Although Bush has not directly commented on his culpability in running the torture program following the release of the Torture Report (we recall that he admitted authorizing torture *prior* to his 2011 visit to Canada⁴), former vice president Dick Cheney has confirmed Bush's role in directing the CIA's torture of detainees. Cheney also rejected any suggestion in the Torture Report that Bush was ignorant about the details of the CIA's actions, declaring:

[Bush] and I met every single morning with the director of the CIA, with the national security advisers six days a week . . . *This man knew what we were doing. He authorized it, he approved it . . .* [Claiming that] the president didn't know what was going on is just a flat-out lie. (emphasis added).⁵

This Committee has recently reminded nations of their obligations under Articles 5, 6, and 7 of the Convention to investigate and prosecute torture through universal jurisdiction. In Concluding Observations from the past year, the Committee expressed concern over countries who failed to investigate allegations of torture, fully prosecute torturers, demonstrate transparency about past torture operations, and exercise universal criminal jurisdiction over torturers. Regarding Spain's universal jurisdiction obligations, for example, the Committee "reminds the State party that, in order to avoid impunity, it must apply the principle of *aut dedere aut judicare* when the alleged perpetrator of acts of torture is in its territory . . ."⁶ Regarding Burundi's universal jurisdiction policy, the Committee recommends that the "State party should amend its Criminal Code in order to ensure that Burundian courts

⁴ CNN, "Bush on Waterboarding: Damn Right," 5 November 2010, available at: <http://www.cnn.com/2010/POLITICS/11/05/bush.book/index.html>

⁵ NBC, Transcript: Interview of Dick Cheney by Chuck Todd, *Meet the Press*, 14 December 2014, available at: <http://www.nbcnews.com/meet-the-press/meet-press-transcript-december-14-2014-n268181>.

⁶ U.N. Committee Against Torture, Concluding Observations on the Sixth Periodic Report of Spain, U.N.Doc. CAT/C/ESP/CO/6, at para. 14 (29 May 2015).

have jurisdiction to try anyone for an act of torture committed in a third country, regardless of whether that country has made torture a criminal offence or not.”⁷ The Committee made similar recommendations to Iraq, the Democratic Republic of Congo, and Serbia within the past year.⁸

Further, in its recent CAT complaint decisions, the Committee has demonstrated its commitment to upholding the principles of the Convention. In *Nouar Abdelmalek v. Algeria*, the Committee found that Algeria violated *inter alia* Articles 6 and 7 when it failed to fairly and promptly investigate multiple allegations of torture brought by an Algerian army officer who had refused to commit acts of torture and violence against civilians during military missions, specifically recalling “the obligation to carry out a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed.”⁹ The Committee also upheld other principles of the Convention by finding violations committed by Morocco, Kazakhstan, Russia, Finland, Switzerland, and Burundi, including in cases of police torture and illegal detention in conditions that amounted to torture,¹⁰ as well as forced extraditions and deportations to countries where complainants would likely be tortured.¹¹ As a State Party, Canada bears the same obligations to follow the Convention as these countries, and the Complainants respectfully submit that its failure to investigate and prosecute Bush when he was present on its territory must be found by the Committee to violate Articles 5, 6, and 7 of the Convention.

⁷ U.N. Committee Against Torture, Concluding Observations on the Second Periodic Report of Burundi, U.N.Doc. CAT/C/BDI/CO/2, at para. 17 (12 December 2014).

⁸ See U.N. Committee Against Torture, Concluding Observations on the Initial Report of Iraq, U.N.Doc. CAT/C/IRQ/CO/1, at para. 28 (7 September 2015); U.N. Committee Against Torture, Concluding Observations on the Initial Report of Congo, U.N.Doc. CAT/C/COG/CO/1, at para. 14 (28 May 2015); U.N. Committee Against Torture, Concluding Observations on the Second Periodic Report of Serbia, U.N.Doc. CAT/C/SRB/CO/2, at para. 11 (3 June 2015); see also Committee Against Torture, Concluding Observations on the Combined Third to Fifth Periodic Reports of the United States of America, U.N. Doc. CAT/C/USA/CO/3-5, at para. 11-17 (19 Dec. 2014) (noting that the U.S. should “[e]nsure that alleged perpetrators of and accomplices to torture, including persons in positions of command and those who provided legal cover, are duly prosecuted and, if found guilty, given penalties commensurate with the grave nature of their acts.” *Id.* at para 12(b)).

⁹ U.N. Committee Against Torture, Communication No. 402/2009, U.N. Doc. CAT/C/52/D/402/2009, para. 11.7 (13 June 2014). Among the other violations, the Committee found that Algeria violated Article 14 – a right to redress, which includes “measures to guarantee that there is no recurrence of the violations” – by “failing to act on his complaint and by not immediately launching a public investigation.” *Id.* at para. 11.8.

¹⁰ See e.g. U.N. Committee Against Torture, *Ali Arrass v. Morocco*, Communication No. 477/201; U.N. Committee Against Torture, *Diory Barry v. Morocco*, Communication No. 372/2009, U.N. Doc. CAT/C/52/D/372/2009 (8 July 2014); U.N. Committee Against Torture, Communication No. 478/2011, U.N. Doc. CAT/C/52/D/478/2011 (24 June 2014) (complaint against Russia); U.N. Committee Against Torture, *Boniface Ntikaragera v. Burundi*, Communication No. 503/2012, U.N. Doc. CAT/C/52/D/503/2012 (12 June 2014).

¹¹ See, e.g., U.N. Committee Against Torture, Communication No. 538/2013, U.N. Doc. CAT/C/54/D/538/2013 (3 July 2015) (complaint against Kazakhstan); U.N. Committee Against Torture, Communication No. 542/2013, U.N. Doc. CAT/C/54/D/542/2013 (30 June 2015) (complaint against Russia); U.N. Committee Against Torture, Communication No. 490/2012, U.N. Doc. CAT/C/54/D/490/2012 (25 June 2015) (complaint against Finland); U.N. Committee Against Torture, *Hussein Khademi v. Switzerland*, Communication No. 473/2011, U.N. Doc. CAT/C/53/D/473/2011 (20 January 2015); U.N. Doc. CAT/C/52/D/477/2011 (24 June 2014); U.N. Committee Against Torture, Communication No. 475/2011, U.N. Doc. CAT/C/52/D/475/2011 (24 June 2014) (complaint against Kazakhstan);



The Convention Against Torture was adopted to combat impunity for torture. As a party to the Convention, Canada must not allow Bush to escape his culpability as a torturer. The Complainants respectfully request that in considering their case, the Committee take the actions necessary to ensure that the core purposes of the Convention are upheld.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Katherine Gallagher'.

Katherine Gallagher
Legal Representative for Complainants

Senior Staff Attorney
Center for Constitutional Rights

666 Broadway, 7th Fl.
New York, NY 10012
Tel: 1-212-614-6455
Fax: 1-212-614-6499
Email: kgallagher@ccrjustice.org

A handwritten signature in black ink, appearing to read 'Matt Eisenbrandt'.

Matt Eisenbrandt

Legal Director
Canadian Centre for International
Justice

52 San Jose Ave.
Victoria, B.C. V8V 2C2
Tel: 1-604-569-1778
Fax: 1-613-746-2411
Email: meisenbrandt@ccij.ca