



**PRESS RELEASE (28.04.23 7.30pm cet)**

**BREAKING: The United Nations Working Group on Arbitrary Detention (UNWGAD) has reached a groundbreaking decision in the case of *Zayn Al-Abidin Muhammad Husayn (Abu Zubaydah) v. United States of America, Thailand, Poland, Morocco, Lithuania, Afghanistan, and the United Kingdom.***

The [decision](#), which has just been released, is unprecedented in several ways.

- It is the **first international decision concerning the notorious torture and ongoing arbitrary detention of ‘forever prisoner’ Abu Zubaydah to be issued against the United States (US).**
  - o The UNGWAD decision finds his detention **has no lawful basis**, and the US is should immediately **release** him and provide reparation.
  - o The UNGWAD expresses ‘grave concern’ about detention at Guantanamo Bay and notes systematic deprivation of liberty may ‘*constitute crimes against humanity.*’
  - o It ‘*urges the Government to ... prioritise closing that facility*’
- It is the **first international case finding against the U.K., Morocco, Thailand and Afghanistan** for their roles in rendition, torture and arbitrary detention.
- It is also the **first case against multiple states** for their contributions to rendition torture and detention at Guantanamo. Seven **states have been found “jointly responsible”** for the many ongoing violations of Abu Zubaydah’s rights established in the decision.
- It *calls on all states to investigate, hold to account those responsible and compensate.*

The UNWG’s decision is a strident condemnation of the torture of Abu Zubaydah during the ‘extraordinary rendition programme’ (ERP) and the ongoing violations at Guantanamo today. It makes damning AND detailed findings regarding Guantanamo - the lack of impartiality of the periodic review boards (PRBs), the failure of habeas review, the dearth of medical care – and the broader failure of investigation and accountability in respect of the worst of the war on terror ‘crimes against humanity’. The ongoing violations established in his case include arbitrary detention, torture, lack of fair procedures/fair trial, discrimination, and the failure to investigate, to hold those responsible to account and to provide an effective remedy. The findings cover responsibility of all respondent states (the US, Thailand, Poland, Morocco, Lithuania, Afghanistan and the UK) for their complicity and ‘joint responsibility’ for the extraordinary rendition and torture of our client, and his ongoing indefinite detention for over two decades.

The decision now calls on the U.S. and other States to

- (i) ensure the **immediate release** of Abu Zubaydah;
- (ii) provide him with **compensation** and other reparation;
- (iii) complete full and independent **investigations** and take appropriate measures against those responsible for violating his rights;
- (iv) disseminate the opinion as widely as possible;
- (v) report to the UNWG within 6 months on steps taken in respect of each of these.



## FINDINGS:

The UNWGAD finds that the United States, Thailand, Poland, Morocco, Lithuania, Afghanistan and the UK are *'jointly responsible for the arrest, rendition and arbitrary detention of Abu Zubaydah,'* *'jointly responsible for the torture and cruel, inhuman, or degrading treatment'* of Abu Zubaydah and the failure to investigate, uncover the truth and ensure accountability.

In relation to the **United States** specifically, UNWGAD finds that:

- (i) Abu Zubaydah has been held in unlawful, prolonged and indefinite detention for over 20 years.
- (ii) **There is no lawful basis to detain Abu Zubaydah.** The AUMF does not specifically authorize arrest or detention, the US has failed to demonstrate that there is an ongoing armed conflict, *'let alone shown the basis in international humanitarian law'* to justify indefinite detention. The government has failed to substantiate the claim that he may constitute an ongoing security threat.
- (iii) He has had **no 'meaningful opportunity' to challenge lawfulness of his detention;** The Periodic review boards in operation in Guantanamo are found to be *'insufficient'* and *'similarly flawed to the CRST,'* *'lacking sufficient independence'* and the UNWG notes they do not purport to review the lawfulness of detention. His habeas corpus claim has also languished for years. Overall, the UNWGAD considers that Abu Zubaydah has been denied an effective right to challenge the legality of his detention and an effective right to a remedy.
- (iv) Abu Zubaydah has never been charged or tried and still has no indication of when, if ever, he will be brought to trial or released. This is *'excessive, unfair and contrary to due process'*, violating Abu Zubaydah's **right to be tried within a reasonable time and without undue delay.**
- (v) Abu Zubaydah's right to **legal representation** has been violated, through denial of access to counsel, communications being restricted and legal privilege infringed.
- (vi) Abu Zubaydah's detention in essentially incommunicado conditions amounts to **enforced disappearance** for the period during which he was deprived the ability to communicate with his family and/or the outside world.
- (vii) There is **no prospect of a fair trial for Abu Zubaydah.** The excessive delay, severity of torture and use of torture-induced evidence contribute to fair trial concerns.
- (viii) The torture of Abu Zubaydah is found to have been established. The use of torture evidence in his case have been referred to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.
- (ix) Serious concerns arise from **lack of medical care;** Abu Zubaydah's *'serious medical conditions, including injuries sustained during torture, which have been exacerbated by years of denial of medical attention'*.
- (x) Finally, the UNWGAD finds his **detention at Guantanamo discriminatory,** as Abu Zubaydah was denied the normal protections of US law on the basis as his status as a foreign national and a muslim.
- (xi) Arbitrary detention can constitute **'crimes against humanity'** (and should be investigated).



**UK:** The decision states that “**the Working Group considers that it [the UK] is responsible for complicity in his detentions.**” It notes the UK passed questions to be put to Abu Zubaydah during torture when the UK had, at least, substantial grounds to believe that he would be subjected to torture or cruel, inhuman or degrading treatment as a result of his inclusion in the ERP. It also refers to the UK facilitating his transfer on-board a CIA aircraft that stopped in London to refuel during rendition. The UNWGAD decision builds on significant evidence of the UK’s support for the US’s rendition programme, including (i) a 2010 UN Joint Study which identified the UK as a state ‘complicit’ in the ERP, (ii) a 2019 UK Parliament’s Intelligence and Security Committee which found that the UK sent questions to be posed and received intelligence from detainees whom they knew or ought to have known had been mistreated, (iii) a parliamentary enquiry which found that the UK provided question for Abu Zubaydah’s interrogation despite being directly aware of his ‘extreme mistreatment’, and (iv) a European Parliament report citing 170 stopovers by CIA-operated aircrafts at UK airports. The lack of investigation, redress or accountability to date are reflected in the decision. It calls on the UK and other states to investigate the torture of Abu Zubaydah.

**Poland is found to have violated his rights by “participat[ing] in the arbitrary detention” and discontinuing the investigation.** Zubaydah was detained in Poland between December 2002 to September 2002. The UNGWAD reinforces the findings of ECtHR that Poland had knowledge of, and actively supported the extraordinary rendition programme and was responsible for torture, arbitrary detention and other violations, and required to make representations to seek to bring them to an end.

**Lithuania is found responsible for complicity** while Abu Zubaydah was detained in a CIA detention centre in Lithuania for 13 months (from February 2005 to March 2005), and for having ‘failed to fulfil the necessary elements of effective investigation, truth-telling and accountability’. The UNGWAD decision builds on these findings of the ECtHR in 2018.

**Thailand** was found to have participated in the arbitrary detention of Abu Zubaydah in 2002, referencing ‘extensive evidence of his torture over 6 months’ in Thailand. Thai officials approved the creation of a CIA secret detention facility, where Abu Zubaydah was detained and tortured.

**Morocco was found responsible for participating in the violations** of Abu Zubaydah’s rights when he was detained in Morocco between March 2004 to February 2005. The UNGWAD dismissed Morocco’s denials on the basis that he was not ‘registered’ on the territory, as typical of secret detention and insufficient to dismiss prima facie credible allegations.

**Afghanistan:** The UNGWAD finds Afghanistan responsible for complicity in the extraordinary rendition program, for violating Abu Zubaydah’s rights while on, and when transferring him from its territory. Abu Zubaydah was held in one of several CIA detention sites in Afghanistan for six months in 2006, before being transferred to Guantanamo.

### **CONTACT AND QUOTES:**

Helen Duffy (HRIP and international legal representative of Abu Zubaydah) commented:

- *Today’s decision is a powerful reminder of the complete unlawfulness of Guantanamo, and our client’s situation in particular. The UN working group found that he has been detained for over 20 years with no lawful basis (in US or international law), is a victim*



*of ongoing torture and disappearance of persons and **must be immediately released and provided rehabilitation.***

- *This decision is a compelling call to action. The UNWG makes clear that the US has prime - but not exclusive – responsibility for Abu Zubaydah’s torture and arbitrary detention. The other states that are found complicit or jointly responsible, including the UK, **must now step up and do everything in their power to bring the violations to an end and afford reparation. This could entail offers of relocation, rehabilitation, compensation, for example, to ensure that after 21 years he has the possibility of establishing a meaningful life beyond Guantanamo.***
- *Its an important vindication of our clients rights, of the need for the US to release him immediately and for all states to play their part in ensuring that after 21 years he can finally live a life with dignity.*
- *The Abu Zubaydah case **epitomizes the worst of the war on terror** and is a dangerous negative symbol. Guantanamo, CIA torture and impunity are rallying calls for violent terrorist organisations, and used as justification by offending states. If we are serious about creating a more secure world in which rule of law is taken seriously, we cannot afford to ignore these findings.*
- *In the third decade of the ‘war on terror’, it is essential that we recognise and reckon with the mistakes of the past. This decision is an invitation for states to engage together to do that.*
- ***We need to reckon with the fact the war on terror, as waged for 20 years, has failed. But we cannot pretend to learn lessons from it while perpetuating its most notorious wrongs.***

## **Background**

Abu Zubaydah (Palestinian, born on 12 March 1971) was captured in March 2002 by US authorities in Pakistan. Between 2002-2006 he was subjected to systematic torture, forced disappearance and secret detention in the network of international CIA black sites. He has been described as the ‘poster child for war on terror’ and a ‘guinea pig’ for CIA’s ‘enhanced interrogation techniques,’ reflected in several articles, books and documentaries [links]. The UNWGAD decisions builds on a firm body of findings of fact, by the Senate Select Committee on Intelligence (SSCI) and the European Court of Human Rights (ECtHR), among others, that Abu Zubaydah was subjected to intense torture (including extended periods of confinement in a coffin-sized spaced, waterboarding, exacerbating phobias, stress positions, threats of death and sensory manipulation, causing him enduring psychological problems) while being secretly detained at CIA black sites around the world. In 2006 he was transferred to Guantanamo Bay where he remains today, held without any review of lawfulness, charge or trial.

The UNWG complaint was brought against the US as well as other states that housed such sites, and/or acted as proxy custodians and torturers for the US, namely Thailand, Morocco, Poland, Lithuania and Afghanistan. The UK provided other forms of support, notably providing questions to be put to our client during his torture and allowing planes to refuel on its territory. The UNWG finds these states together “jointly responsible” for torture and ongoing arbitrary detention.

Before his torture, the CIA gave assurance that Abu Zubaydah would ‘*remain in isolation and incommunicado for the remainder of his life,*’ so that ‘*planned psychological pressure techniques*



*could be implemented. (SSCI Report).* Those undertakings have held true. Twenty years since his capture, Abu Zubaydah has not been tried, charged, convicted or had access to a court to review the lawfulness of his detention (habeas). The UNGWAD confirms that this indefinite detention violates his most basic rights and requires an immediate response.

Although it claimed he was ‘number three’ in al Qaeda when captured, the US conceded in 2008 that Abu Zubaydah was not a member of al-Qaeda. He was delisted from the U.N. al-Qaeda sanctions list in 2017 as he was not a member of al Qaeda. Yet as the response to UNGWAD made clear, the US continues to assert the right to detain indefinitely under the Authorization for Use of Military Force (AUMF) and on the basis for the putative ongoing armed conflict and related security concerns. The UNWG dismissed those arguments: there is no armed conflict and claims that he represents a security threat are unsubstantiated.

In the two decades of his ongoing indefinite detention, Abu Zubaydah has exhausted all avenues to try to challenge his unlawful detention and seek redress. Neither the Combatant Status Review Tribunal (CSRT) (operating at Guantanamo between 2004 to 2011), nor the Periodic Review Board (PRB) (which replaced CSRT in 2011), were able to review the lawfulness of detention, and in any event, Abu Zubaydah was restricted from effectively participating in any proceedings. The US Supreme Court previously determined the CSRT as an inadequate substitute for habeas corpus, while (as the UNWG reflects) his habeas claim has languished in the US District Court of Columbia since 2008. The European Court handed down two important judgements against Poland (2014) and Lithuania (2018) upon which the UNWG drew. The Council of Europe has issued various decision calling for fuller implementation of those judgments (see here).

This urgent action before the UNWGAD was filed by Human Rights in Practice on behalf of Abu Zubaydah against the United States and 6 other states in April 2021. All States responded, except for Afghanistan (and Pakistan which was not part of the original complaint but to which the UNWG also sent the petition). HRIP recognizes that the US at least responded to this process (which it has not done in previous claims). The UNWGAD’s findings are, however, indicative of the stark failure to bring to an end and redress the notorious violations at the heart of this case.

More background information on the legal action is available on our [website](#).

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***ANNEX: EXCERPTS FROM THE DECISION***



**EXCERPTS: Opinion No. 66/2022 concerning Zayn Al-Abidin Muhammad Husayn (Abu Zubaydah) (United States of America, Pakistan, Thailand, Poland, Morocco, Lithuania, Afghanistan and the United Kingdom)**

Allegations Against the U.S.

79. In relation to the [US] Government's claim regarding the Authorization for the Use of Military Force, The Working Group notes that it does not specifically authorize arrest or detention. To the extent the Government is relying on international humanitarian law, it fails to show that there are ongoing circumstances justifying his detention under the "law of war". ... the Government has not satisfied the requirement of demonstrating an ongoing armed conflict, let alone shown the basis in international humanitarian law to detain Mr. Zubaydah indefinitely.

80. Whereas the Government has asserted that Mr. Zubaydah constitutes an ongoing security threat, as reportedly conveyed during the hearings at the Combatant Status Review Tribunal and Periodic Review Board, it has not substantiated this claim. (...) ... Since he was detained, he has not stood trial, he has not been convicted and he is not serving a sentence. The Working Group finds that Mr. Zubaydah has been held in prolonged and indefinite detention for more than 20 years, without a legal basis, in violation of article 9 (1) of the Covenant.

84. With respect to criminal charges, Mr. Zubaydah has never been charged with a crime while being subjected to the extraordinary rendition programme and his counsel have reportedly implored the authorities to press charges and commence proceedings, but these requests have fallen on deaf ears. As a result, Mr. Zubaydah continues to be detained, without prospect of a trial and without a forum in which to meaningfully challenge his detention. This violation of article 9 (1) and (3) of the Covenant amounts to arbitrariness under category I.

86. The Periodic Review Board that replaced the Combatant Status Review Tribunal in 2011 were similarly flawed, as it does not purport to review the lawfulness of detention. The Board lacks sufficient independence to ensure a proper review since its panel is composed of members of the executive. The Working Group does not consider that Mr. Zubaydah enjoyed an effective right to challenge the legality of his detention. Additionally, Mr. Zubaydah also filed a petition for a writ of habeas corpus in the District Court of Columbia on 6 August 2008, however, according to the source, it has languished for years without being decided upon. On these bases, the Working Group concludes that the failure to ensure effective habeas corpus constitutes a denial of an effective remedy under article 8 of the Universal Declaration of Human Rights and articles 2 (3) and 9 (4) of the Covenant.

87. (...) His detention in essentially incommunicado conditions amounts to an enforced disappearance, at least during the period that he was deprived of a meaningful opportunity to communicate with his family and/or the outside world. This amounts to a further violation of article 9 of the Covenant under category I.

88. Finally, the [US] Government violated Mr. Zubaydah's rights through its overarching role in the extraordinary rendition programme, which involved transferring him to or from the various countries listed herein, outside of the protection of the law. ...

Against Thailand

90. The source provides information showing that Thai officials approved the creation of a secret detention facility operated by the Central Intelligence Agency, which came to be called Site Green. They were aware of Mr. Zubaydah's presence there and planned with the Agency's officers how to respond in the event of his death. Given these unrefuted allegations, and the reference to extensive evidence of his torture during approximately six months in Thailand, the



Working Group concludes that the Government of Thailand was complicit, and participated, in the arbitrary detention of Mr. Zubaydah.

#### Against Poland

91. (...) For its part, the Government acknowledges that it violated Mr. Zubaydah's rights and refers to paying just satisfaction to him as ordered by the European Court of Human Rights. However, the Government also notes that it has discontinued one related investigation and suspended another. The Working Group acknowledges the payment of just satisfaction, but also considers that this reaffirms the Government's complicity in and partial responsibility for Mr. Zubaydah's arbitrary detention and rights violations. Accordingly, it finds that the Government participated in the arbitrary detention of Mr. Zubaydah. In relation to the discontinuance of investigations into public officials, it considers that the Polish investigations have not been completed in a timely manner and that this constitutes a violation of Mr. Zubaydah's right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant.

#### Against Morocco

92. The source refers to Mr. Zubaydah's stay of approximately 11 months in Morocco, where he was interrogated and tortured. The Government of Morocco states that his visit there was never "registered". In the Working Group's view, the fact that his visit was never registered is insufficient to undermine the source's prima facie credible allegation that he was present in Morocco during that period. Indeed, a lack of registration of his visit would be expected in the case of extraordinary rendition and secret detention. The Working Group considers that Mr. Zubaydah was detained arbitrarily and subjected to mistreatment and torture in Morocco and that the Government participated in it. Because the involvement of the Government concerned the lack of any demonstrated lawful basis for his deprivation of liberty, but did not concern the subsequent proceedings in the United States and Guantanamo, the Working Group considers that it participated in the violations of article 9 of the Covenant and thereby his arbitrary detention under category I.

#### Against Lithuania

93. In relation to Mr. Zubaydah's stay of approximately 13 months in Lithuania, the source shows that a detention centre operated by the Central Intelligence Agency called Site Violet was housed there. Although Lithuanian prosecutors opened an investigation in 2010, it failed to fulfil the necessary elements of effective investigation, truth-telling and accountability. Consequently, the Working Group considers that the Government of Lithuania is responsible for complicity in the extraordinary rendition programme and violating Mr. Zubaydah's rights while he was on its territory and when he was transferred from its territory, as it was aware of the foreseeable risk of further violations ...and that it participated in his arbitrary detention under category I.

#### Against Afghanistan

94. (...) Although the information regarding Mr. Zubaydah's treatment in Afghanistan is quite vague, it has been sufficiently demonstrated that the Afghan authorities were aware of the arbitrariness of his detention, particularly in light of the Agency's access to him. Consequently, the Working Group considers that the Government of Afghanistan is responsible for complicity in the extraordinary rendition programme and violating Mr. Zubaydah's rights while he was on its territory and when he was transferred from its territory, as it was aware of the foreseeable risk of further violations against him.

#### Against the United Kingdom



95. The source argues that the provision of questions for interrogation by the Government of the United Kingdom amounts to complicity in torture.<sup>53</sup> It recalls that, when third States seek intelligence from a State known to engage in serious rights violations, they contribute to the occurrence of torture and fall afoul of their international obligations.

96. Given that the European Parliament and the European Court of Human Rights have found evidence indicating that an aircraft operated by the Central Intelligence Agency to transport Mr. Zubaydah had stopped in London to refuel on 6 December 2002, and in light of the Government's failure to provide any detailed counter-narrative, the Working Group considers that it is responsible for complicity in his detentions.

**[Summing up Category I]** 97. (...) In light of its findings above, the Working Group is satisfied that the Governments of the United States, Thailand, Poland, Morocco, Lithuania, Afghanistan and the United Kingdom played a role in the extraordinary rendition programme, whether through directly detaining persons subjected to it, or through knowingly assisting the implementation of the programme through transport access and the provision of locations for unregistered detention sites. These States are all jointly responsible for the arrest, rendition and arbitrary detention of Mr. Zubaydah,<sup>55</sup> which amount to violations of article 9 of the Covenant and render his detention arbitrary under category I.

### **Category III (torture and cruel, inhuman, and degrading treatment)**

101. Given that the whole extraordinary rendition programme system was established outside of the usual legal controls, and given the information set out above regarding these respondent States' roles in carrying out mistreatment on behalf of the United States, or participating in the programme with knowledge of its nature, the Working Group considers that, along with the United States, the Governments of Thailand, Poland, Morocco, Lithuania, Afghanistan and the United Kingdom all had at least substantial grounds to believe that Mr. Zubaydah would be subjected to torture or cruel, inhuman or degrading treatment as a result of his inclusion in the extraordinary rendition programme.

102. The Working Group notes with grave concern the allegations regarding the Central Intelligence Agency's use of enhanced interrogation techniques on Mr. Zubaydah...[and] considers these allegations to be established, violating the absolute prohibition of torture as a peremptory norm of international law, article 5 of the Universal Declaration of Human Rights, article 7 of the Covenant and articles 2 and 16 of the Convention against Torture. It is also cognizant of the determination of the European Court of Human Rights that he was tortured.

The Working Group calls on the Governments to investigate Mr. Zubaydah's alleged torture, in accordance with their obligations under articles 4, 12 and 13 of the Convention against Torture, and prosecute anyone found to have been involved.

103. (...) The source has established that torture-induced evidence was used against him. In light of this, the Working Group refers the case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

104. The Working Group...considers that the Governments of the United States, Thailand, Poland, Morocco, Lithuania, Afghanistan and the United Kingdom are jointly responsible for the torture and cruel, inhuman or degrading treatment of Mr. Zubaydah and that this has deprived him of the meaningful ability to benefit from a fair trial, should a trial ever come to pass. ....

### **Additional Category III and V complaints relevant to the USA**

106. Mr. Zubaydah has been deprived of his liberty for approximately 20 years with no indication when, if ever, he will be brought to trial or released. Such a prolonged period with no resolution of proceedings is excessive, unfair and contrary to due process. It violates Mr. Zubaydah's rights





under article 9 (3) of the Covenant to be tried within a reasonable time, and under article 14 (3) (c) to be tried without undue delay. Such a long delay is particularly problematic as he will be significantly hampered in his ability to recall events and thus present a defence, should any trial ever occur.

107. (...) The Working Group does not consider that Mr. Zubaydah enjoyed an effective right to challenge the legality of his detention. Additionally, Mr. Zubaydah also filed a petition for a writ of habeas corpus in the District Court of Columbia on 6 August 2008, however, according to the source, it has languished for years without being decided upon. On these bases, the Working Group concludes that the failure to ensure effective habeas corpus constitutes a denial of an effective remedy under article 8 of the Universal Declaration of Human Rights and articles 2 (3) and 9 (4) of the Covenant

108. Concerning legal representation, the source states that Mr. Zubaydah was not afforded proper access to counsel from 2002 to 2008 ... amounted to a violation of the right to legal representation....

109. The Working Group also notes that Mr. Zubaydah was denied consular access upon arrest and during his detention, ....

110. The fair trial violations set out above violate Articles 2, 9 and 14 of the Covenant and are of such gravity as to give the deprivation of liberty of Mr. Zubaydah an arbitrary character under category III.

**Category V** 112. The Working Group finds that Mr. Zubaydah has been deprived of the fair trial guarantees that would ordinarily apply within the judicial system of the United States. By discriminating on the basis of his status as a foreign national and his religion, the Government has denied Mr. Zubaydah equality before the law ....

### **Concluding Remarks (in full)**

113. The Working Group is concerned about the physical and mental well-being of Mr. Zubaydah, who has been arbitrarily detained for more than 20 years. It notes that Mr. Zubaydah has serious medical conditions, including from injuries sustained during torture, which have been exacerbated by years of denial of medical attention.

114. The arguments that Mr. Zubaydah was tortured stand unrefuted and the European Court of Human Rights has confirmed them. The Working Group notes in this respect that medical care at Guantanamo has been, and remains, grossly deficient and for years, communication between inmates was prohibited, with serious psychological effects. The Working Group feels obliged to remind the Governments, in particular that of the United States, that in accordance with article 10 of the Covenant, all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person and that denial of medical assistance constitutes a violation of the Nelson Mandela Rules, in particular rules 1, 24, 25, 27, 30 and 32, along with principle 19 of the Body of Principles.

115. While the Working Group has specifically addressed Mr. Zubaydah's circumstances in this opinion, the conclusions reached here also apply to other detainees in similar situations at Guantanamo. Over the past 15 years, the Working Group has addressed several cases of detention at Guantanamo.<sup>64</sup> The Working Group expresses grave concern about the pattern that all these cases follow and recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of fundamental rules of international law may constitute crimes against humanity.

116. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has underscored that the evolution of practices from secret detention to transnational transfer in counter-terrorism contexts continue to be marked by an abject lack of adherence to fundamental human rights norms, thin lines of judicial oversight,



meagre to non-existent legal and/or political accountability, targeting of religious and ethnic minorities, and a high degree of tolerance by States for the subversion of the rule of law to enable persons to be rendered to jurisdictions in which they have a high likelihood of being subjected to arbitrary detention, surveillance, torture and other cruel, inhuman and degrading treatment or punishment.

117. The Working Group recalls the findings of its 2016 visit to the United States, including in relation to Guantanamo.<sup>67</sup> The closure of Guantanamo was previously an important priority of the Government. The Working Group urges the Government to once again prioritize closing that facility. In the meantime, the Working Group urges the Government to cooperate with United Nations human rights mechanisms and allow them full access to it. It considers that an invitation to carry out a follow-up visit to the United States would be welcome, with specific authorization to visit Guantanamo.

**Disposition:** 118. ...The deprivation of liberty of Mr. Abu Zubaydah, ... is arbitrary.

The United States of America is responsible for his arbitrary detention under I, II and III .... Thailand, Poland, Morocco, Lithuania, Afghanistan and the United Kingdom are responsible for arbitrary detention I and III.

119. The Working Group requests the Governments found to be responsible for the violations of the rights of Mr. Zubaydah, as detailed herein, to take the steps necessary to remedy the situation of Mr. Zubaydah without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights.

120. The Working Group considers that, taking into account all the circumstances of the case, the **appropriate remedy would be to release Mr. Zubaydah immediately** and accord him an **enforceable right to compensation and other reparations**, in accordance with international law.

121. ...urges the Governments found to be responsible ... to ensure **full, complete and independent investigations** of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Zubaydah and to take appropriate measures against those responsible for the violation of his rights.

122. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

124. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Governments concerned, as detailed herein, to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Zubaydah has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Zubaydah;
- (c) Whether an investigation has been conducted into the violation of Mr. Zubaydah's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the States concerned with their international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

126. The Working Group requests the source and the Governments found to be responsible for the violations of the rights of Mr. Zubaydah to provide the above-mentioned information within six months of the date of transmission of the present opinion.