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CASE DOSSIER

U.S. ACCOUNTABILITY FOR GUANTÁNAMO TORTURE CASES

With a Special Focus on the French Investigation into Guantánamo

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I. Introduction

The US torture program, initiated in the aftermath of the September 11th attacks, remains without any accountability for its architects and implementers – neither in the US, nor before an international court or national judicial systems in foreign countries. The detention camp at Guantánamo Bay is still open and remains an on-going symbol – and site – for torture, endless detention without charge and a blatant violation of international law.

In 2002, France was the first country in which relatives of detainees at Guantánamo filed criminal complaints and demanded justice. Since then, the French judiciary had access to testimonies from numerous former Guantánamo detainees, international legal experts and former US officials, setting forth the illegalities arising out of the Bush-era detention and interrogation program as well as direct witnesses to its approval and implementation. However, investigative judges refused to gather the evidence, hiding behind procedural rules and thus failing to deliver accountability and justice. The summons for former Guantánamo commander Geoffrey Miller in March 2016 was an important step towards accountability, met in the US by a travel warning of the State Department to former high-level officials involved in the torture program. In the upcoming appeals hearing in November 2019, the Investigation Chamber of the Court of Appeal in Paris has the opportunity to correct previous failures and to order the gathering of the vast amounts of readily accessible documentary, testimonial and expert

evidence, which will allow the matter to proceed towards arrest warrants against suspects named in the case, such as former Guantánamo commander Geoffrey Miller, the former General Counsel for the U.S. Department of Defense (DOD) William Haynes and former State Secretary of Defense Donald Rumsfeld, as well as other suspects.

The French judiciary still can deliver justice for survivors of Guantánamo and thereby enforce the UN Convention against Torture and international law as such. Numerous cases related to the US torture program have been brought in other countries, however the French cases remain among the few still before courts. At the same time, the International Criminal Court is reviewing an appeal against a decision not to investigate international crimes committed in Afghanistan, including by US officials. Accordingly, the appeal before the Investigation Chamber of the Court of Appeal in Paris on 7 November 2019 is significant.

II. Guantánamo Investigations in France

After the September 11th attacks in 2001, then president of the United States, George W. Bush, waged a "Global War on Terror." Within the context of this "War on Terror," the US administration established, validated and implemented so-called "enhanced interrogation techniques" in many overseas detention centers for the purpose of questioning suspected terrorist detainees. It has been repeatedly established by various sources, including UN and States that these techniques amount to torture and cruel, inhuman or degrading treatment under international law. Despite the fact that Bush's successor President Barack Obama put an end to the official torture program, it failed to initiate a full investigation into the serious crimes committed by the Bush administration, let alone prosecutions. Under the current Trump administration, there is not only no prospect for accountability but instead, a real risk of recurrence.

The United States' failure to pursue criminal investigations into the role and responsibility of the architects of the torture system for alleged crimes committed against detainees has provided the need for national judicial systems in foreign countries to conduct investigations and initiate prosecutions under the principle of "universal jurisdiction" and jurisdiction based on "passive personality" – meaning, in the home country of the victim.

Since 2002, the French judiciary has conducted investigations in the case of three former Guantánamo detainees from France. Together with the plaintiffs' attorney [William Bourdon](#), the Berlin based European Center for Constitutional and Human Rights ([ECCHR](#)) and the New York-based [Center for Constitutional Rights](#) (CCR) submitted a dossier analyzing the criminal liability of former Guantánamo commander Geoffrey Miller as well as a dossier on the criminal role played by William J. Haynes, the former General Counsel for the U.S. Department of Defense (DOD) during the George W. Bush administration. The latest submission details the criminal liability for former State Secretary of Defense, Donald Rumsfeld. The effect of these dossiers, as well as the testimony of the victims and the extensive documentary record including investigations by the U.S. military and Congress, is a sufficient evidentiary basis for the continuation of criminal proceedings.

See [ECCHR case page](#).

See [CCR case page](#).

Chronological overview of French investigations into US Torture Cases

The cases of Nizar Sassi and Mourad Benchellali, two French citizens who were imprisoned in Guantánamo without charge and tortured there, were the first ones triggering French investigations into the US torture program. In November 2002, the parents of Sassi and Benchellali together with their lawyer, William Bourdon, filed a criminal complaint before French courts alleging arbitrary detention, torture and other serious abuse by US officials.

They made statements about their arrest and detention in Kandahar region in Afghanistan as well as their transfer to and detention in Guantánamo. In their statements, both reported abuses while being detained in Kandahar, including being subjected to beatings, hooding, exposure to cold temperatures, forced nudity, sleep deprivation, rape and other forms of sexual violence, stress positions, shortage of food, electric shocks, threats with instruments, verbal insults and threats with dogs. Moreover, during their transfer to Guantánamo all reported beatings and being shackled in stress positions for more than 20 hours as well as being held in small cages, bad food and sanitary conditions. During the interrogation period in Guantánamo, Sassi and Benchellali each reported being exposed to loud music and extreme temperatures, sexual violence, threats with dogs, bright light 24/7, religious humiliation, use of drugs and isolation.

Info Box 1: The Survivors

Mourad Benchellali

Mourad Benchellali, born 1981 and a French citizen, was detained and tortured for more than two years at Guantánamo Bay between 2002 and 2004. In 2001, Mourad travelled with his childhood friend Nizar Sassi to Afghanistan. He was captured after leaving for Pakistan by Pakistani security forces in November 2001 and handed over to the US military. On 17 January 2002, Mourad Benchellali was taken to Guantánamo. Accounts of the torture he experienced in Guantánamo were published in the [New York Times](#) and in his book [Voyage vers l'enfer](#). On 26 July 2004, Benchellali was released from Guantánamo and transferred to French custody, where he was tried and convicted for “criminal association with a terrorist enterprise.” However, because he had already served over one year in prison waiting for trial he did not serve any additional time. Today, he regularly meets with young audiences in France, Belgium, Switzerland and further afield to speak of the dangers of radicalization.

Nizar Sassi

Nizar Sassi, born in 1979 and a French citizen, was detained and tortured for more than two years at Guantánamo Bay between 2002 and 2004. In 2001, Nizar traveled with his childhood friend, Mourad Benchellali, to Afghanistan. Sassi was captured in Pakistan in Dec. 2001 and handed over to the US military. On 15 February 2002, Sassi was transferred to Guantánamo. Accounts of time and experiences in Guantánamo were published in the book [Prisoner 325, Camp Delta](#). In July 2004, Sassi was released from Guantánamo and was transferred to France. After arriving in France, Sassi, along with four other returned French nationals, was convicted of “criminal association with a terrorist enterprise.” However, because he had already served over one year in prison waiting for trial he did not serve any additional time.

In February 2003, the investigating judge at the Lyon District Court (*Tribunal de grande instance de Lyon*) declined to pursue the matter put forward by Benchellali and Sassi. The judge

found that it is outside the jurisdiction of the French courts to hear proceedings related to the “military order” signed by the President of the United States on 13 November 2001. However, in an order dated 4 January 2005, the French Court of Cassation (*Cour de Cassation*) reversed the decision, ruling that the case was indeed subject to the jurisdiction of French law and the French courts because of the French nationality of survivors Benchellali and Sassi. An investigation was then opened by the Investigation Chamber of the Court of Appeal in Paris in June 2005.

In March 2009, another French citizen, Khaled Ben Mustapha, filed a criminal complaint and claim for civil damages for abduction, false imprisonment, acts of torture, and arbitrary infringements of personal liberty during his arrest in Afghanistan and subsequent transfer to and detention at the military base at Guantánamo Bay. In December 2011, Khaled Ben Mustapha’s complaint was joined with Mourad Benchellali and Nizar Sassi’s complaint.

On 2 January 2012, the French investigative judge assigned to the case, Sophie Clement, sent a formal request, also known as a “letter rogatory,” to the US authorities. In this letter rogatory, the investigative judge requested that the US authorities cooperate with the French authorities by:

- providing all official files of Benchellali, Sassi and Ben Mustapha regarding their arrest, transfer and detention in Afghanistan as well as their transfer to and detention in Guantánamo;
- sharing all official documents regarding the basis, rules and modalities of the military mission to Afghanistan and Pakistan as well as of the treatment of detainees then;
- administering any documents regarding any judicial proceedings directly or indirectly concerning the three claimants;
- identifying and questioning all persons that have been in contact with at least one of the three claimants during their detention in Afghanistan and in Guantánamo; and
- permitting a visit to all relevant installations in Guantánamo and especially the places where the three claimants were detained.

Despite multiple reminders, the United States has never responded to the request made by the French investigating judge.

On 26 February 2014, following the United States' continued refusal to execute the letter rogatory issued by the liaison judge, the plaintiffs' lawyer, William Bourdon, submitted an [expert report](#) of CCR and ECCHR establishing the criminal liability of former Guantánamo commander Geoffrey Miller and urging the French investigating magistrate to order Miller to testify about his role in the detention and torture of Benchellali and Sassi. The parties requested that Miller be questioned as a suspect in the investigation proceedings. ECCHR and the CCR also submitted documents explaining Miller's role, while commander of Guantánamo, in the overall command structure within the United States government. The organizations added background information on the torture program and the implementation of interrogation techniques at Guantánamo that violate international law, based on the findings of the [2008 Senate Armed Services Committee report](#) on detainee torture and abuse.

However, on 1 April 2014, the investigative judges declined the request to summon Miller based on their concern that the United States would not cooperate or make Miller available for questioning. The investigative judges also claimed that since Miller is an official of the United States acting within the framework of action linked to the security of the United States, he could only be heard as a witness. The former detainees appealed this decision with CCR and ECCHR submitting additional [materials](#) (chain of command for Guantánamo; timeline) to assist the court of appeals (*Chambre de l'instruction de la Cour d'appel de Paris*) in understanding Miller's role in the chain of command and key developments regarding interrogation practices at Guantánamo. A year later, in a [judgment](#) dated 2 April 2015, the appeals court reversed the decision and ordered the lower court to summon Miller to explain his role in the alleged abuse of the former detainees. Based on this judgment, the lower court finally [summoned](#) Miller to appear on 1 March 2016, with the status of a "witness under suspicion." Miller has so far disregarded the summons and failed to appear before the court.

In April 2016, plaintiffs' lawyer and ECCHR named a number of former US military officials that offered to serve voluntarily as witnesses. However, the Investigative Judge refused to summon them directly and not through rogatory letters to the US embassy, which does not cooperate in forwarding them to the expert witnesses.

In another attempt to subpoena Miller, the plaintiffs' lawyer requested an arrest warrant for the retired Guantánamo General in July 2016. However, this has not yet been issued by the judge. Finally, in September 2016, another letter rogatory summoning Miller was issued. The US

responded to this letter in December 2016 stating that, based on Article 6 (1) b) of the Mutual Legal Assistance Treaty (MLAT) between France and the United States, cooperation would prejudice the public interest and, thus, no cooperation will take place.

Info Box 2: *Geoffrey D. Miller*

Geoffrey D. Miller has become infamous for his role in the torture and other serious abuse of detainees held in U.S. custody in Guantánamo and Iraq.

Since his enlistment in the United States Army in 1972, Miller rose to the rank of General Major and held multiple positions within the military system. In November 2002, Miller was appointed as commander of Joint Task Force-Guantánamo (JTF-GTMO) and held this position until April 2004 – a period during which all three plaintiffs (Nizar Sassi, Mourad Benchellali and Khaled Ben Mustapha) were detained at Guantánamo.

As commander of JTF-GTMO, Miller was not only responsible for both the military intelligence and military police, but also for all US detainee operations and interrogation operations in Iraq, despite having no prior experience with interrogations. During his time at Guantánamo, Miller reported to Donald Rumsfeld, then Secretary of Defense, and was also in regular contact with him. When Miller took command of Guantánamo in 2002, he oversaw a rapid expansion in the use of new interrogation techniques, which did not conform to the Geneva Conventions and went beyond those approved in the US Army Field Manual. Miller supported and implemented techniques that constituted acts of torture, which he labeled “essential” including hooding, stress positions, removal of clothing, forced grooming, exploitation of individual and cultural phobias (e.g. dogs), isolation for up to 30 days, and removal of all comfort items, including religious items. Further methods were introduced to ‘soften up’ the detainees such as sleep deprivation, extended isolation, forcing detainees to stand or crouch in ‘stress positions,’ stripping detainees and exposure to extremes of heat and cold.

In April 2004, Miller left Guantánamo to take up his new position as Deputy Commanding General of Detention Operations in Iraq – a position he held until July 2006. In this new position Miller was responsible for overseeing military detention in Iraq, where, he wanted to “Gitmo-

ize” U.S.-led prisons such as the notorious Abu Ghraib prison. Miller retired from the U.S. Army on 31 July 2006.

The information above established by the ECCHR and CCR in a [dossier on Geoffrey D. Miller](#), demonstrates that Miller bears individual criminal responsibility for the war crimes and acts of torture inflicted on detainees in U.S. custody at Guantánamo.

On 12 October 2016, plaintiff lawyer William Bourdon submitted a second expert report by ECCHR and CCR, against William “Jim” Haynes, the former General Counsel for the US DoD during the George W. Bush administration. As DoD’s General Counsel from 2001 to 2008, Haynes worked closely with former Secretary of Defense Donald Rumsfeld. The parties requested the investigative judge of the High Court of Paris (*Cour d’Appel de Paris - Tribunal de Grande Instance de Paris*) to question Haynes on his role in the torture and other serious mistreatment of the former detainees. The CCR and ECCHR detail Haynes’ responsibility for torture and war crimes related to detainee treatment in a 26-page [expert report](#). The report establishes that Haynes was a key contributor to, and architect of, the Bush administration’s interrogation and detention policies. The investigative judge failed to act on the dossier and declined to issue an order to summon Haynes.

Info Box 3: William “Jim” Haynes

As the General Counsel of the DoD and the legal advisor to the Secretary of Defense Donald Rumsfeld, William J. Haynes was one of the primary architects of the Bush Administration’s interrogation and detention policies. Haynes held this position during the time when Nizar Sassi, Mourad Benchellali and Khaled Ben Mustapha were detained in Guantánamo.

In this role, Haynes was responsible for *inter alia* providing advice to the Secretary and Deputy Secretary of Defense regarding all legal matters and services performed within, or involving the Department of Defense, and establishing DoD policy on general issues, determining the DoD position on specific legal problems, and resolving disagreements within the DoD on such matters. Haynes also advised President George W. Bush’s administration in its efforts to create military commissions to try individuals held at the Guantánamo Bay detention camp.

More specifically, Haynes played a leading role in arranging for interrogation techniques that amounted to torture and cruel, inhuman, and degrading treatment to be employed at Guantánamo as well as other detention facilities and CIA blacksites in other parts of the world.

In 2002, along with certain administrative, military and political officials, Haynes travelled to Guantánamo Bay where he actively participated in discussions of adopting new – and harsher – interrogation techniques, such as waterboarding. The result of these meetings was the commissioning and drafting of the infamous “Torture Memos,” which authorized the use of so-called “enhanced interrogation techniques” against terrorist suspects after September 11th. Besides being directly involved in making recommendations and integrating interrogation techniques, Haynes also solicited and obtained deeply flawed legal advice in an attempt to provide legal cover for the acts of torture and abuse. Moreover, he silenced the strong dissent from the military and other parties concerning the administration’s radical move away from the Geneva Conventions and domestic U.S. law and the obligation to treat detainees humanely, thus, allowing the torture and abuse at Guantánamo to continue.

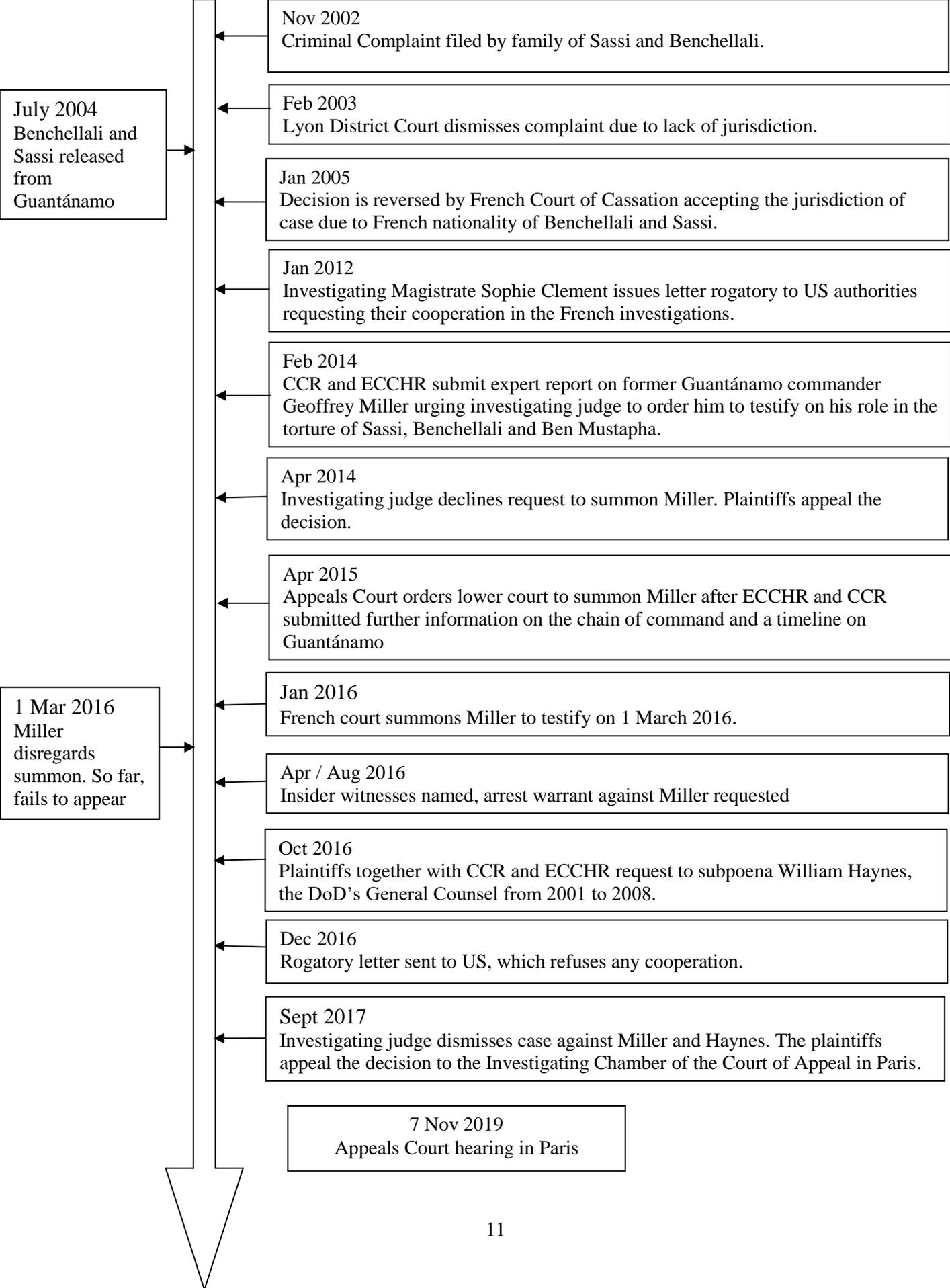
This information, compiled by CCR and ECCHR and published in a comprehensive [dossier on William J. Haynes](#), indicates that Haynes bears individual criminal responsibility for the development, planning, approval and continued use of aggressive interrogation techniques that lead directly to the torture and abuse of detainees in U.S. custody at Guantánamo during his tenure as General Counsel of the Department of Defense.

In January 2017, ECCHR brought a number of former US officials, including former Chief of Staff of the Department of State, Lawrence Wilkerson, former Navy General Counsel Alberto Mora and former NCIS investigator Mark Fallon, as well as Nizar Sassi and Mourad Benchellali together for a public [event](#) in Paris. All participants stressed the need for accountability and the responsibility for the French judiciary to investigate torture at Guantánamo.

However, in April 2017, Judge Kheris sent a notification to the plaintiffs’ lawyer informing him that she intends to close the investigations. In July 2017, lawyers for the plaintiffs offered additional witnesses for voluntary testimonies, among them former Guantánamo detainees Murat Kurnaz and Mustafa Ait Idir as well as former UN Special Rapporteur on Torture, Manfred Nowak. Without hearing the witnesses, on 18 September 2017, the investigation was

closed by the judge. The plaintiffs appealed the decision to the Investigation Chamber of the Court of Appeal in Paris.

Timeline of French Proceedings



III. U.S. Accountability in Europe

1. Criminal Complaints in Germany against Donald Rumsfeld, George Tenet, Gina Haspel and others

In November 2004, CCR together with German lawyer Wolfgang Kaleck (today, General Secretary of ECCHR), supported four Iraqis in submitting a criminal complaint against former US Defense Secretary Donald Rumsfeld, former CIA Director George Tenet, and a number of other current and former senior military officials, for alleged torture and other ill-treatment amounting to war crimes suffered at the hands of US armed forces in the Abu Ghraib prison in Iraq. The complaint was filed with the German Federal Prosecutor's (Generalbundesanwalt) Office in Karlsruhe, Germany, under the universal jurisdiction doctrine as incorporated in the German Code of Crimes against International Law. However, in February 2005, the case was dismissed by the federal prosecutor's office.

In November 2006, CCR together with Wolfgang Kaleck, the International Federation for Human Rights (FIDH), the German Republican Lawyers Association (RAV) and others filed another criminal complaint addressed to the German Federal Prosecutor to open an investigation and, ultimately, a criminal prosecution into the responsibility of Donald Rumsfeld, George Tenet and other high-ranking U.S. officials for participating in and authorizing war crimes in the context of the "War on Terror." Again, the court authorities refused to initiate investigations into the cases ([Factsheet Rumsfeld \(German\); Accountability for U.S. Torture: Germany \(English\)](#)).

In December 2014, following the publication of the executive summary of the CIA Torture Report by the US Senate, ECCHR supported by former UN Special Rapporteur on Torture Manfred Nowak, and the CCR in New York, lodged another criminal complaint to the German Federal Prosecutor against Rumsfeld, Tenet, lawyers of the White House, CIA agents and high ranking US military officials. A summary of the complaint can be read [here](#).

In 2015 and 2016, additional information about CIA and US military torture were filed, including analysis of the chains of command responsible for establishing the system of torture.

On 2 February 2017, US President Donald Trump appointed Gina Haspel as Deputy Director of the CIA. Gina Haspel has held various positions since joining the CIA in 1985. From 2002 to 2005 she was involved in the CIA's rendition and torture program. Prior to 2017, Gina Haspel's work at the CIA was undercover, and it was only on her appointment as Deputy Director that her name, previous posts and areas of work became known.

In June 2017, following Gina Haspel's nomination as Deputy Director of the CIA, ECCHR submitted a [dossier](#) on her to the German Federal Public Prosecutor. The dossier documents Haspel's role in the torture of detainees while she was serving as head of a secret CIA prison in Thailand. ECCHR argues that Haspel oversaw the daily torture of detainees at the black site in 2002 and failed to do anything to stop it. This submission functioned as a follow-up to a criminal complaint on the US torture program filed by ECCHR with the German prosecutors in December 2014 (see above).

After Haspel became CIA Director, ECCHR filed an update to the previous dossier in September 2018, and supported Abdul Rahim Al Nashiri in joining the case. ECCHR has called on the German Federal Prosecutor to issue an arrest warrant against Gina Haspel. An arrest warrant makes Haspel's situation particularly vulnerable, as she will be expected to be travelling to Europe frequently in her position as CIA director.

2. Criminal Complaint against George W. Bush in Switzerland

In February 2011, former US President George W. Bush cancelled a public appearance in Geneva, Switzerland. Newspaper reports suggest the trip was called off amid fears of protests and the threat of criminal proceedings against him. ECCHR and the CCR had prepared a criminal [complaint](#) in Geneva for two victims of the post 9/11 US torture program. The two 2,500-page complaints were supported by more than 50 organizations from around the world as well as from Nobel peace prize winners Shirin Ebadi and Pérez Esquivel and former UN Special Rapporteurs Theo van Boven and Leandro Despouy. However, the two plaintiff-specific criminal complaints were never filed as Bush cancelled his trip to Geneva.

In his capacity as President of the United States of America and Commander in Chief, Bush had authority over the agencies of the United States government involved in the torture program, including *inter alia* the Central Intelligence Agency (CIA), the Department of Defense (DOD), the Department of Justice (DOJ), as well as the Federal Bureau of Investigation (FBI).

Bush is accused of a number of crimes, including violations of the UN Convention against Torture. The possibility of immunity for former heads of state is precluded in the case of torture. The Convention against Torture obliges member states to investigate suspected instances of torture, regardless of whether the allegations relate to former presidents or members of the government, secret services, the army or police forces.

3. Investigations in Spain

Since 2009, the Spanish National Court has undertaken investigations into incidents of systematic torture of detainees occurring in the US detention camp Guantánamo. [ECCHR](#) works on these proceedings together with its cooperation partners in Madrid and New York, representing Murat Kurnaz from Bremen, who was detained and tortured in Guantánamo from January 2002 to August 2006.

In March 2009, Spanish attorneys filed a criminal complaint against six former US officials regarding their accountability for violations of international law, including war crimes and torture. The six US officials became known as the “Bush Six” and encompass six former Bush administration lawyers including Alberto Gonzales, David Addington, William Haynes, John Yoo, Jay Bybee, and Douglas Feith. The Bush Six are accused of having aided and abetted crimes of torture, cruel, inhuman or degrading treatment and grave breaches of the Geneva Conventions of 1949. The crimes in question were committed at US detention facilities at Guantánamo and at other locations.

In April 2009 – a few weeks after the “Bush Six” complaint had been filed – Spanish Investigative Judge Baltasar Garzón opened a preliminary investigation into related allegations concerning Guantánamo. The investigation focused on allegations put forward by four of the former Guantanamo detainees named in the “Bush Six” case: Hamed Abderrahman Ahmed, Lahcen Ikassrien, Jamiel Abdul Latif al Banna, and Omar Deghayes. In May 2009, Garzón

issued letters rogatory to the U.S. and U.K. requesting whether either country was pursuing any investigations with respect to the four individuals. Neither country responded. In 2010, Judge Garzón confirmed Spain's jurisdiction over the cases and complaints filed. In January 2013, the new assigned judge to the case, Pablo Ruz, formally admits CCR and ECCHR into the case as representatives of two former Guantanamo detainees, Murat Kurnaz and Mohammed KhanTumani.

After Spain revoked its laws on prosecuting torture under the universal jurisdiction principle in 2014, the Spanish National Court dismissed the case for lack of jurisdiction in July 2015. The plaintiffs together with CCR and ECCHR filed an appeal against the Spanish National Court's decision to halt the investigation. However, the appeal was dismissed in 2015 and in November 2016 the court dismissed the case on all grounds. On 22 May 2017, Spain's Constitutional Court (*Tribunal Constitucional*) has accepted to hear a complaint against the closing of investigations into incidents of systematic torture and cruel, inhuman and degrading treatment of detainees occurring in Guantánamo after 2001. However, the Constitutional Court rejected the application in April 2019.

4. Investigations in Belgium

On 17 March 2017, the [UN Committee against Torture](#) in Geneva accepted a [complaint](#) (*individual communication*) against Belgium filed by Belgian citizen and former Guantánamo detainee Mosa Zemmouri. The complaint on behalf of Zemmouri had been submitted by ECCHR and its cooperating lawyers in Belgium, Walter van Steenbrugge and Christophe Marchand, on 11 January 2017.

Zemmouri was detained at the US military base in Guantánamo Bay from 2002 to 2005, where he was subjected to brutal beatings as well as sensory deprivation, exposure to extreme temperatures and other severe forms of physical and psychological abuse. In their submission to the UN Committee, Zemmouri, the lawyers and ECCHR argue that Belgian officials were complicit in the abuse, that Belgium knew about the torture but failed to prevent it, and that Belgian authorities subsequently failed to carry out adequate investigations into the crimes.

However, in August 2019, the UN Committee rejected the complaint as inadmissible, although the case hasn't been assessed and heard before any other international court or mechanism. Thus, instead of strengthening the Convention against Torture, the very Committee to oversee its implementation and enforcement, failed to address complicity by a European State with the US at Guantánamo. In the meantime, a damages complaint on behalf of Mosa Zemmouri has been filed in Belgium and is still pending.