

**Human Rights *in* Practice, 2022 Highlights in Review**

I hope it is helpful to once again share a few highlights of the legal work of Human Rights in Practice (HRiP) from 2022, with relevant links that may be of interest or use in your own work. While 2022 was a difficult year for human rights, and at times a frustrating one at HRiP, it was productive and as always a privilege to work with inspiring human rights defenders (HRDs) around the world.

**“COUNTER-TERRORISM,” TORTURE & GUANTÁNAMO**

The work on security and counter-terrorism (CT) remained a firm priority this year, as we enter the third decade of a ‘war on terror’ which continues to spread and intensify its impact on human rights, despite regrettably waning interest by many. Abusive application of CT laws against HRDs, judges, protesters and dissenters was a cross-cutting feature of much of the work (see Turkey, Tunisia or Kazakhstan below). 2022 was also a historically important year as the 20th anniversary of Guantánamo (11 January 2022), and 20 years of detention without charge or trial of our client CIA torture victim and Guantánamo "forever" prisoner Abu Zubaydah (28 March 2022). Among the developments worth flagging are the following:

* **Implementation of ECtHR rendition & torture cases**
	+ 2022 saw the long-awaited ***payment of compensation*** to Abu Zubaydah by Poland (following Lithuania in December 2021). The compensation ordered by the European Court of Human Rights (ECtHR) in judgments against Poland and Lithuania of 2014 and 2018 were finally completed after obstacles to payment were lifted, including through his removal from the UN sanctions list and proceedings before Polish courts. While the compensation is welcome and symbolically significant, it is crucial that it is not considered sufficient to give effect to the ECtHR rendition judgments.
	+ We continued to press for the ***fuller reparation for Abu Zubaydah and others, and fuller implementation*** of the ECtHR judgments. This included first and foremost urging co-responsible states to press for release and an end to ongoing arbitrary detention, and to offer relocation and rehabilitation. We also sought recognition of wrongdoing, apology, investigation and truth-telling, accountability and general measures to ensure non-repetition. These goals were pursued through several [rule 9 submissions](https://static1.squarespace.com/static/5b82ab175b409b90d4c99071/t/62daf23ef23dda67f731ed0e/1658516030978/RULE%2B9%2BJAN%2B2022%2B20122%2Bfinal.pdf) to the Council of Europe (COE) Committee of Ministers (COM). The COM is urged to continue to supervise and to press for comprehensive implementation.
	+ With the Open Society Justice Initiative and European Implementation Network, we also sent an [open letter](http://www.rightsinpractice.org/new-blog/2022/1/18/open-letter-on-non-implementation-of-ecthr-rendition-judgments) to the Parliamentary Assembly of the COE urging it to exercise more rigorous engagement with the implementation of these important ECtHR judgments.
* **State Submissions and Responses: *Abu Zubaydah v US and 6 others* at the UN Working Group on Arbitrary Detention**

During 2022, we followed up on the complaint (available [here](https://static1.squarespace.com/static/5b82ab175b409b90d4c99071/t/63d8f3b42a56173c582ecaab/1675162550358/Abu%2BZubaydah%2Bv%2BUS%2B%26%2B6%2Bothers%2B%28resubmission%2BApril%2B2022%29.pdf)) brought by Abu Zubaydah against 7 states (the US, UK, Thailand, Poland, Morocco, Lithuania, Afghanistan) for their shared responsibility in his rendition, torture and ongoing arbitrary detention. We were gratified that all respondent states, (except Afghanistan) did provide observations in writing; this included the US government which has not often engaged in the past. However, our responses highlighted the ongoing lack of meaningful engagement by states with their responsibility or the need for appropriate reparation (see above, ECtHR). The responses were filed during 2022 to the observations of the [United States](https://humanrightsinpractice.squarespace.com/s/UNWG-AZ-v-US-Response-final.pdf), [Morocco](https://humanrightsinpractice.squarespace.com/s/morocco_response-HD-22-Jul.pdf), [United Kingdom](https://humanrightsinpractice.squarespace.com/s/UK-Response-final-HD-22722-ebtf.pdf), [Poland](https://humanrightsinpractice.squarespace.com/s/poland-final-hd22722.pdf), [Lithuania](https://humanrightsinpractice.squarespace.com/s/draft-lithuania-26-jul-v2.pdf) and [Thailand](https://humanrightsinpractice.squarespace.com/s/thailand-response-HD-22-Jul.pdf). Given the urgency of resolving the situation in Guantanamo at this time, we hope the UNWG will reach a decision without delay.

* **Support for national rendition and torture litigation**

The use of these international mechanisms complemented ongoing national efforts to pursue justice for Abu Zubaydah during 2022. Led by partners, and supported by HRiP, these included the following:

* ***Developments in UK civil action***

There were developments in ongoing civil action in UK courts alleging UK government responsibility for facilitating Abu Zubaydah’s torture by passing questions to the CIA to be put to him despite knowledge of his torture. Following a preliminary hearing at the Ct of Appeal, on 16 March the Court ruled that English tort law applies to the UK's act of sending questions during his torture, firmly rejecting government efforts to require him to plead based on the law of all ‘black site’ states. Among points of interest in the decision was judicial recognition that "there is unlikely to be any serious dispute about the fact of the claimant’s rendition to...CIA ‘black sites’, and that he was subject to treatment...which, in this jurisdiction, would be regarded as torture.."

* ***U.S. v. Abu Zubaydah* in the U.S. Supreme Court**

Legal action made its way to the US Supreme Court in United States v. Abu Zubaydah. The case concerns efforts by US counsel for Abu Zubaydah to subpoena the CIA- contracted psychologists involved in our client’s torture for the purposes of carrying out investigations in Poland. The US government sought to block access to information concerning his torture on foreign soil on ‘state secrecy’ grounds. A US court of appeal found against the government, but in March the [US Supreme Court](https://www.nytimes.com/2021/04/26/us/politics/supreme-court-cia-black-sites-guantanamo.html) upheld the government’s position that information concerning alleged torture abroad was covered by state secrecy, on the dubious basis that the USG must be able to meet its commitment to states never to tell the truth about torture/secret detention.

While troubling, the litigation was not without effect. It drew considerable media attention to the injustice of our client’s situation, engaged many interveners in support of our client’s position, and provoked interesting judicial engagement. It was, for example, the first time a U.S. Court recognised the treatment of our client as ‘torture’, while a dissent notes compellingly that state secrecy *“may shield the government from some further embarrassment, [] we should not pretend it will safeguard any secret”*. The full judgment is [here](https://supremecourt.gov/opinions/21pdf/20-827_i426.pdf%E2%80%A6).

* **Report on Counter-terrorism and Human Rights in Africa**

A research project for the Institute for Security Studies in South Africa considered global trends in counter-terrorism and implications for rule of law and human rights in Africa. Based on interviews with diverse African and international actors, the report reflects on the recent experience of counter-terrorism in Africa, emerging issues and recommendations for the future, if we are to meet the diverse and troubling legal and policy challenges across the continent. The monograph will be published February 2023.

**CLIMATE JUSTICE**

Climate change is undoubtedly one of the greatest human rights challenges of our time, disproportionately affecting the most vulnerable globally, and was among the priorities for HRiP this year. The alarmingly rapid rate of deforestation of the Amazon is a key contributor to the climate crisis and closely linked to a host of human rights violations, including of indigenous peoples and environmental defenders. During 2022 I worked with the Centre for Climate Crime Analysis ([CCCA](http://www.climatecrimeanalysis.org)) on strategic litigation and advocacy to counter the drivers of Amazonian deforestation, with an emphasis on the role of international corporations, investors and markets. One result was the following collective legal action:

* **OECD Complaint challenging corporate deforestation of the Amazon**

An [important OECD complaint](https://climatecrimeanalysis.org/wp-content/uploads/2022/12/2022.12.01.Specific.Instance.LDC-Dutch.NCP_.OECD_.Final_.pdf) was presented in December 2022 by a coalition of NGOs, led by the Centre for Climate Crime Analysis (CCCA), against Dutch palm oil trading giant Louis Dreyfus Company (LDC) for its role in the unlawful deforestation of the Peruvian Amazon and human rights violations. It is the first case of its type, targeting the crucial role of commodity traders breaching OECD guidelines through lucrative business relationships with notorious violators in the palm oil sector. The case concerns unlawful deforestation and its contribution to dangerous climate change, as well as violations of the rights of indigenous peoples of the Santa Clara community, and the misleading of consumers and the public. I was pleased to work on this brief with CCCA colleagues and a range of partners in Peru and internationally (AIDESEP and FECONAU, supported by Forest Peoples Programme, Instituto de Defensa Legal, Instituto de Estudios Forestales y Ambientales – Kené, EIA - Environmental Investigation Agency, and the Center for Climate Crime Analysis). More info on the case and coalition and the brief on CCCA’s website [here](https://lnkd.in/erp2Ju2g) in English (y Español).

**JUDICIAL INDEPENDENCE**

* **Tunisia: new litigation to challenge the disbandment of the High Judicial Council and dismissal of judges**

One of the many places where attacks on judicial independence have caused widespread concern is Tunisia. On 13 February 2022, the Tunisian President dissolved the Tunisia High Judicial Council (HJC), dismissed senior judges and replaced the Council with a temporary council appointed by Presidential Decree. HRiP is working with the International Commission of Jurists on international human rights litigation to protect the rights of judges, judicial independence, access to justice and rule of law more broadly.

* **Pursuing Implementation of the ground-breaking decision in *Garzon v Spain***

During 2022 efforts intensified to secure the implementation of the ground-breaking [2021 decision of the UN Human Rights Committee](https://static1.squarespace.com/static/5b82ab175b409b90d4c99071/t/612777e85b48150450627293/1629976553241/BG%2Bv%2BEsp.%2Bccpr%2B2844%2B%28Fondos%29.pdf) in the case of our client, former Spanish judge Baltazar Garzón against Spain. Regrettably, 18 months later, the decision has still not been implemented. (The decision is here in [Spanish](https://static1.squarespace.com/static/5b82ab175b409b90d4c99071/t/612777e85b48150450627293/1629976553241/BG%2Bv%2BEsp.%2Bccpr%2B2844%2B%28Fondos%29.pdf) - still not available officially in English but further background to the case is [here](https://www.rightsinpractice.org/garzon)). The UNHRC decision is extremely significant, having found as follows: that prosecuting a judge for his judicial decisions was inherently ‘arbitrary’ and a violation of fair trial; that Spanish courts lacked the necessary independence and impartiality; that the right of appeal was denied and that the crime of ‘*prevaricación*’, or rendering ‘unjust judgments’ under the Spanish Criminal Code fell foul of the legal certainty and foreseeability requirements.

During 2022 we presented multiple submissions requesting implementation, and indicating what reparation entails in this context. These include an open letter to the government of Spain (in Spanish) and [submissions to the follow up rapporteur](https://static1.squarespace.com/static/5b82ab175b409b90d4c99071/t/62d6c5b01f4bdf697677bd32/1658242481119/Letter%2BUNHRC%2BFINAL%2B1922022%2BENG%2Bclean.pdf) of the UNHRC. As this decision is important not only for our client, but for legal standards and judicial independence at a time when it is under attack globally, we have also sought to engage the UN Special Rapporteur on Independence of Judges and Lawyers. Towards the end of 2022 outgoing Special Rapporteur wrote to the government of Spain on this matter and we await the report of the special rapporteur’s office.

There was significant [press cover](https://www.eldiario.es/politica/ultima-hora-actualidad-politica-directo_6_9185303_1092432.html) with over 20 Spanish-speaking newspapers addressing the question of implementation, including highlighting important underlying issues.

* **Strategic Litigation of Judicial Independence within the European Union**

HRiP entered into an agreement with ICJ and other partners, funded by the EU, to engage in a project focused on the strategic litigation of judicial independence within the EU. Alongside the most notorious violations of judicial independence in Poland, Hungary and Turkey, concerns arise as to broader threats across the EU and the globe. The project launched in January 2023 and runs until 2025.

**DISMANTLING DEMOCRACY IN TURKEY (WITH TLSP)**

Litigation and advocacy sought to challenge the targeting of democratic actors in Turkey through e.g. repression of human rights defenders, disqualification of elected politicians, attacks on judicial independence and the arbitrary dismissal of public sector workers and academics. It was a pleasure to continue to work with the Turkey Litigation Support Project ([TLSP](https://www.turkeylitigationsupport.com)) during 2022 (as co-supervisor with Phil Leach, working with great lawyers and civil society actors from Turkey). These are just a few aspects of our work with the TLSP:

* **Implementation of the Kavala and Demirtas cases**

Increased focus was placed on exposing and challenging the flagrant non-implementation of ECtHR judgements by Turkey. There were coordinated legal submissions and advocacy by TLSP and other NGOs (eg. HRW, ICJ, Article 19 and Amnesty) concerning the refusal of the state to implement the unusually direct ECtHR order to release detained philanthropist Osman Kavala and Kurdish politician Selattin Demirtas*.* Rule 9 submissions were made in relation to the implementation of the [Kavala](https://static1.squarespace.com/static/5b8bbe8c89c172835f9455fe/t/63288ba6e16bd04fce8125b6/1663601574671/Joint%2BRule%2B9.2%2Bsubmission%2Bby%2BTLSP%2BHRW%2Band%2BICJ%2Bin%2BKavala%2Bv%2BTurkey%2B01092022.pdf) and [Demirtas](https://static1.squarespace.com/static/5b8bbe8c89c172835f9455fe/t/638fa197142c9a674e9ae0d5/1670357399493/Rule%2B9.2%2Bsubmission%2Bby%2Bthe%2BTLSP%2BA19%2BFIDH%2BHRW%2Band%2BICJ%2Bin%2BDemirta%C5%9F%2Bv%2BTurkey%2B%28no.%2B2%29%2B04112022.pdf) cases highlighting the reality behind the government attempts to create a smokescreen around non-implementation, e.g. by filing ‘new’ charges for the same facts. This work appeared to pay dividends when the Committee of Ministers referred the Kavala case back to the Court in February 2022; in July 2022 the Grand Chamber ruled that the Republic of Türkiye had failed to implement the judgment. Advocacy on these and other cases continues.

* **Submission calling for robust supervision of *Pişkin v Turkey***

A [rule 9 submission](https://static1.squarespace.com/static/5b82ab175b409b90d4c99071/t/63d8f997ddb28450fba935e1/1675164055802/Joint%2BRule%2B9.2%2Bsubmission%2Bby%2BTLSP%2BAmnesty%2BInt%2Band%2BICJ%2Bin%2BPi%C5%9Fkin%2Bv%2BTurkey%2B01092022.pdf) urged the Committee of Ministers to review the non-implementation of the Pişkin v Turkey judgment, which is emblematic of the arbitrariness of the massive dismissals of public sector workers during the Turkish state of emergency. The submission, which addresses the failure to provide access to justice or reparation, is relevant to tens of thousands workers who seek reinstatement and/ord or had independent review of their dismissals, but who are subject to what has been described as civil death in Turkey.

* **Closure of Peoples’ Democratic Party (HDP) before the Turkish Constitutional Court**

During 2022, the TLSP filed a third party intervention before the Constitutional Court of the Republic of Türkiye challenging the closure of Peoples’ Democratic Party (HDP). The previous year we supported lawyers to bring challenges to the disqualification of elected politicians before the UNHRC.

* **Academics for Peace**

In January 2022 the ECtHR received the [third party intervention](https://static1.squarespace.com/static/5b8bbe8c89c172835f9455fe/t/61c0c2709cabc84d07143786/1640022640249/3rd%2Bparty%2Bintervention%2Bin%2BKamuran%2BAkin%2Band%2B80%2Bors%2Bv%2BTurkey%2B%28Appl%2BNo.%2B72796-16%29%2Bby%2Bthe%2BCoalition%2Bof%2BAcademics%2Bto%2Bshare.pdf) on academic freedom which we drafted on behalf of a group of international academics in the ‘academics for peace’ case, concerning dismissal and prosecution of Turkish academics for their statement related to the conflict in SE Turkey. Another third party intervention submitted in the same case by the TLSP focused on ineffectiveness of domestic remedies in Turkey for cases concerning state of emergency measures. The case remains pending.

**REPRESSION OF PROTEST AND DISSENT IN KAZAKHSTAN**

* **Advice on Law, Mechanisms and Strategy: Bloody January**

The year commenced with ‘bloody January’ repression of protests in Kazakhstan. HRiP provided advice to a collection of civil society actors on possible international legal avenues. We remain in contact about follow up legal action.

* **Provisional Measures from UNCAT to prevent deportation of HRD/government critic**:

HRIP represented a human rights defender facing torture upon her return from Sweden to Kazakhstan. Our client had previously been tortured and threatened with punitive psychiatry in Kazakhstan in relation to work, yet the Swedish immigration process failed to take due account of the nature of the risks she faced and decided to deport her to Kazakhstan. Attempts to secure interim measures from the ECtHR resulted in frustration when the Court refused, without reasons (as is typical), despite the Court’s stringent criteria being met in this case. Nonetheless, in October 2022 our request for provisional measures to UN Committee against Torture was successful. The UNCAT asked Sweden not to deport pending resolution of this matter. We are gratified that Sweden has not proceeded with the deportation order. We hope it will promptly review the case and revise its decision.

**HUMAN RIGHTS IN ARMED CONFLICT**

In the context of the aggression and conflict in Ukraine many international legal issues arose regarding respect for human rights and IHL in armed conflict. Several interviews were given (see e.g. radio interview with [BBC World Service](https://humanrightsinpractice.squarespace.com/s/HD-BBC-Audio-2022-04-20-at-75729-AM.mpeg) News Hour on genocide and international justice in Ukraine and article in the major Dutch news outlet [NRC](https://www.nrc.nl/nieuws/2022/04/16/binnen-een-jaar-is-president-poetin-aangeklaagd-a4113881)).

There was also follow up to advice concerning the conflict in N.E. Syria, the role of non-state actors under international law and cooperation by states (the advice on proposed prosecutions of ISIS-related crimes by the *de facto* Kurdish authorities is on [HRiP’s website](https://www.rightsinpractice.org/armed-conflictnorth-east-syria)). This was the basis of a chapter on the lawfulness of prosecutions of ISIS by de facto authorities which is now available (see below).

**RESEARCH, PUBLICATIONS & OUTREACH**

Targeted publications, reflecting on issues arising in practice and at times bridging gaps between academic research and practice, is always part of HRiP’s work. During 2022 publications included:

* [‘De Facto Justice? Prosecutions by Non-state actors in armed conflict’](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4326955), to be published in *Armed Groups and International Law: a Shadowland or Legality and Illegality, Heffes and Fortin, Edgar Elgar* (2023).
* [‘Foreign Fighters’, Syrian Camps and the Jurisdictional Quagmire](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4326924), to be published in *Returning Foreign Fighters: Responses, Legal Challenges and Ways Forward, Asser Press* (2023).
* ‘Abu Zubaydah: Contesting Guantanamo through Human Rights Litigation’ in [*Rupture and Reckoning: Guantanamo Turns 20*](https://www.ecchr.eu/fileadmin/Guantanamo/01_ECCHR_GUANTANAMO_FINAL_DP.PDF)*;* an excellent anthology produced by partners ECCHR including voices and art from detainees, advocates and others.
* ‘***Global trends in counter-terrorism and their implications for Africa***’. Noted above, this research project and monograph reflects on the way forward for counter-terrorism in Africa. To be published by the Institute for Security Studies in South Africa, February 2023.

Education & outreach are always an important part of the work at HRiP. This year the practice took place alongside my academic position (now a 0.5 position at Leiden University), and external teaching at the universities of **Melbourne (LLM, terrorism and human rights), Duke/Leiden Institute (strategic litigation) and American University (Justice for Victims of Human Rights violations). Ad hoc outreach included** panels and trainings on other core issues of security, armed conflict, climate change and strategic litigation. A particular focus for outreach this year was CT, rendition and Guantanamo given the anniversaries of Guantanamo and Abu Zubaydah’s detention, and the urgency of the issues. This included a meeting on the margins of the Human Rights Council in March 2022 with the UN Special Rapporteur on Terrorism and Human Rights and NGOs (*ICJ, Amnesty, HRW, and Article19)* on *‘The legacy of rendition, ongoing violations at Guantanamo & the price of impunity.’* I was grateful for invitations to lecture at: the Geneva Academy (opening lecture of the academic year); Maastricht University (human rights day lecture); St Andrews University; Universidad Externado de Colombia and University of Manitoba, and to participate in a podcast w Opinio Juris on the Guantanamo work.

**While limited resources pose constraints, enhancing the visibility and impact of the work through the media is important. Press coverage included on the anniversary of Guantanamo (eg** [France 24 interview](https://www.youtube.com/watch?v=ijP_krSJPPM) and BBC world), throughout the Garzon litigation (see press coverage above) and in the context of the debate on justice for Ukraine (see above).

Final word of thanks… Although HRiP remains essentially a one-person practice, I am very grateful to many, especially the brilliant students and colleagues who lend time and energy to HRiP.[[1]](#footnote-1) Almost all the work is done in partnership with lawyers and other civil society actors around the world. It is an honour to work with them/you and be part of a still resilient, if ever more beleaguered, global human rights network at this critical time.

Many thanks. Look forward to working together in 2023.

Helen Duffy

HRiP

January 2023

1. Contributing students (or former students) at various stages of 2022 included: Brenda Rodriguez, Beatrice Lau, Nina Keese, Sidal Gokalp, Natalia Benedetti, Amanda Misasi, Eleonora Righi, Erland Serendahl, Martha Agudelo Córdoba, Jake Romm, Jared Green, and Satyajit Sarna. [↑](#footnote-ref-1)