

**Human Rights *in* Practice, 2021 Highlights in Review**

2021 was undoubtedly a challenging year for human rights, and for many of our friends and partners defending them around the world. It was a busy and productive year at HRIP, thanks to the support of, and collaboration with, many of you. Here are a few highlights and significant developments from the last year that may be of interest or use in your own work.

* **Judicial independence - ground breaking decision in *Garzon v Spain***

In August of this year a ground-breaking decision was handed down by the UN Human Rights Committee in the case on behalf of former Spanish judge Baltazar Garzón against Spain. Background to the case, which challenged the removal and prosecution of a judge based on his judicial activity, is [here](https://www.rightsinpractice.org/garzon). In a decision of wide-reaching significance, the UNHRC found that: prosecuting a judge for his judicial decisions was inherently ‘arbitrary,’ in violation of Art 14(1)ICCPR guaranteeing a fair trial; Spanish courts lacked the necessary independence and impartiality in their handling of the cases against Judge Garzón, violating the article 14(1) right to an impartial tribunal; Judge Garzón’s fair trial rights were violated by the denial of any right of appeal; the crime of ‘*prevaricación*’, or rendering ‘unjust judgments’ under the Spanish Criminal Code, fell foul of the legal certainty and foreseeability requirements of article 15.

The decision strongly vindicates Judge Garzon’s lengthy legal struggle, and is an indictment on the Spanish process, but it also has broader relevance for judicial independence at a time when it is under attack globally. It also develops jurisprudence on the nature of fair trial, and the inherent arbitrariness of resort to criminal law in certain circumstances, and on the requirements of preserving judicial independence. The decision (in [Spanish](https://static1.squarespace.com/static/5b82ab175b409b90d4c99071/t/612777e85b48150450627293/1629976553241/BG+v+Esp.+ccpr+2844+%28Fondos%29.pdf)) and [statement/summary](https://static1.squarespace.com/static/5b82ab175b409b90d4c99071/t/6128aaeb3a45245213d39111/1630055147753/Press+Statement+HRiP+FINAL+27821.pdf) in English are here. Thanks to many who supported including providing [expert opinions](https://www.rightsinpractice.org/garzon) - on Spanish law, judicial independence, and accountability standards. We would welcome on-going support as we press for full implementation, including reinstatement, removal of criminal record, recognition and the necessary legal reform.

* **New developments in work on “terrorism,” torture & Guantánamo**

It was a historically important year for work on security and counter-terrorism, with the 20th anniversary of 9/11 and the ‘war on terror,’ the lead up to 20 years of Guantánamo (11 Jan 2022) and the troubling continuing spread of excessive counter-terrorism measures globally, despite growing recognition of their counter-productivity. This work will remain a priority, despite waning interest in some contexts, based on the firm conviction that greater reckoning and learning lessons from the war on terror is essential for rule of law and security in the future. A number of significant developments in cases brought on behalf of CIA torture victim and Guantánamo "forever" prisoner Abu Zubaydah (who will soon have been detained without charge or trial for 20 years) are particularly worth flagging.

* + ***Implementation of ECHR rendition & torture cases***
* 2021 closed with the good news of the long-awaited ***payment of compensation*** to Abu Zubaydah by the Lithuanian government on 23 December. The compensation ordered by the ECtHR in 2018 was finally completed when multiple obstacles that had impeded payment were overcome. These included lifting of UN sanctions at the behest of the UN Ombudsperson (as our client is not an al Qaeda member), and the release from Guantanamo of a power of attorney – only 10 years after I began to represent him! We continue to press for payment by Poland, and for the fuller reparation and implementation that remains lacking (see below).
* While compensation has symbolic importance, a key focus has been on ensuring ***fuller implementation of the ECHR judgments -*** recognition of wrongdoing and apology, investigation and truth-telling, accountability and measures to ensure non-repetition, and more effective representations to the US to end the ‘flagrant denial of justice’ at Guantanamo as required by the ECtHR. Far from meeting these, the partial closure of the investigation in Poland this year was a sad indication of the opposite trajectory. Working with the Open Society Justice Initiative and European Implementation Network, we made oral and [written submissions](https://www.justiceinitiative.org/uploads/ffbfce10-b1f6-4f01-a92d-a05cf7c620b6/rule-9-submission-al-nashiri-v-poland-20210701.pdf) to the Council of Europe Committee of Ministers, and [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 Council of Europe urging rigorous engagement and oversight.
  + ***Novel litigation challenging the US and all other states that share responsibility for ongoing arbitrary detention at Guantanamo***
* A ***new international legal case*** was filed before the UN Working Group on Arbitrary Detention on 30 April 2021 against 7 states – US, UK, Thailand, Poland, Morocco, Lithuania, Afghanistan – that shifted tack and was the first case of its kind to be brought against all states that share responsibility for rendition and ongoing arbitrary detention. Unlike previous litigation, it focuses to their shared responsibility for bringing this unlawful detention to an end. The [media attention](https://www.france24.com/en/live-news/20210429-guantanamo-detainee-abu-zubaydah-to-file-complaint-with-un-agency) to the application helped draw attention to his case (see [here](https://www.france24.com/en/live-news/20210429-guantanamo-detainee-abu-zubaydah-to-file-complaint-with-un-agency), [here](https://www.theguardian.com/us-news/2021/apr/30/Guantanamo-torture-abu-zubaydah-un-human-rights) and [here](https://www.jurist.org/news/2021/05/guantanamo-bay-forever-prisoner-asks-un-to-intervene/)) and the need for states to actively engage e.g. offering relocation, increasing pressure on the US at a critical time.
  + ***Support for national rendition and torture litigation***
* Support was also provided to our partner lawyers in ***national proceedings.*** These include a new damages claim against the UK government (for supplying question to the CIA during the client’s torture) pending in *English courts*. It also included an important hearing at the *US Supreme Court*, challenging the application of the ‘state secrecy’ doctrine to preclude the questioning by Polish prosecutors of psychologists involved in the torture of our client in Poland. We are grateful to several experts who provided powerful amicus interventions.
* **Climate litigation in national and international courts**

Climate change is undoubtedly one of the greatest human rights challenges of our time, disproportionately affecting the most vulnerable globally, and was a priority area for HRiP last year. During 2021, work in this field included advising and supporting Greenpeace and other national and international partners with human rights based legal action in the Supreme Court of Norway, with the presentation of strong climate claims against Switzerland and Norway at the European Court of Human Rights, and advising on possible future strategic climate litigation. The recent communication of the Norway ECtHR case is indicative of what is likely to be a busy year for climate justice and we look forward to developing work in this area.

* **New focus on deforestation in Latin America (with CCCA)**

The alarmingly rapid rate of deforestation of the Amazon is a key contributor to the climate crisis and closely linked to a host other human rights violations of indigenous peoples and environmental defenders. Tackling it requires innovative approaches and engaging with emerging legal and advocacy tools. A project was launched this year by the Centre for Climate Crime Analysis ([CCCA](http://www.climatecrimeanalysis.org)) to explore and enable creative strategic litigation and advocacy to counter the drivers of Amazonian deforestation, with an emphasis on thwarting the role of international corporations, investors and markets.  It is a pleasure to be part of this team engaged in legal analysis and developing litigation and advocacy opportunities, which we hope to pursue in the course of 2022-3.

* **Advice on Emerging Rule of law & Accountability challenges relating to Non-state Actor Prosecutions in North East Syria**

At the request of the European Institute for Peace (EIP), two substantial pieces of international legal advice were provided in relation to proposed prosecutions of ISIS-related crimes by the *de facto* Kurdish authorities (the ‘Autonomous Administration’) in control of North East Syria. The first advice (available [here](https://static1.squarespace.com/static/5b82ab175b409b90d4c99071/t/61e54882a9f4220fee6e9d92/1642416261348/Legal+Opinion+on+Al+Hol+Criminal+Justice+issues+2152020+%281%29.pdf)) focused on whether non-state actors can investigate and prosecute consistently with international law, for which crimes and according to what standards, as well as the implications for third state cooperation. Having advised in the affirmative, the second follow up advice focused in more detail on what the requirements of fair trial before an independent, impartial and competent tribunal mean, and the real challenges posed in the context of ISIS suspects detained in the notorious al Hol detention camp. This advice is also now available [here](https://static1.squarespace.com/static/5b82ab175b409b90d4c99071/t/61e548784781ee0cea5bc5ac/1642416250292/Legal+Opinion+NES2+Final.pdf).

* **Litigation challenging the dismantling of democracy in Turkey (with TLSP)**

It was a pleasure to continue to work closely with the Turkey Litigation Support Project ([TLSP](https://www.turkeylitigationsupport.com)) this year (as co-project supervisor alongside Phil Leach) and with lawyers and civil society actors in Turkey to develop effective responses to the unfolding human rights crisis in the country. Responding to growing targeting of diverse democratic actors, litigation work has focused on e.g. repression of human rights defenders, disqualification of elected politicians, dismissal of public sector workers and academics. It has involved support for new cases, multiple third party interventions before the ECtHR on a range of cross-cutting issues (such as lack of effective remedies or the impermissible scope of Turkish anti-terrorism laws) and increased emphasis on post-judgment implementation work. Coordinated legal submissions and advocacy by TLSP and other NGOs (eg. HRW, ICJ, Article 19 and Amnesty) in relation to flagrant refusal to implement the ECHR order to release detained philanthropist *Osman Kavala* and Kurdish politician *Selahattin Demirtas* appeared to pay dividends when in December 2021 the COM took the almost unprecedented step of beginning ‘infringement proceedings’ against Turkey for non-compliance ([here](https://www.turkeylitigationsupport.com/blog/2021/12/3/turkey-council-of-europe-takes-big-step-forward-in-human-rights-enforcement-with-sanction-against-turkey)).

* ***Academic for Peace intervention***

One interesting collaborative initiative was a third party intervention before the ECtHR written and presented on behalf of a group of concerned academics around the globe in the ‘academics for peace’ (*Kamuran Akın & 42 others v Turkey*) case. The brief addressed the significance and nature of academic freedom, which is under serious attack in Turkey and globally. Background and the brief are [here](https://www.rightsinpractice.org/new-blog/2021/12/20/academic-freedom-under-attack-in-turkey-intervention-at-european-court-in-the-academics-for-peace-cases). Thanks to the academic experts in human rights and academic freedom who endorsed this brief.

**Publications, experience-sharing & standard setting**

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. Following the publication of books on the [law applicable in armed conflict](https://www.cambridge.org/core/books/law-applicable-to-armed-conflict/B44C0C8F4E683AB5CBC7A792EFAAAB9D) and on [strategic human rights litigation](https://www.bloomsbury.com/uk/strategic-human-rights-litigation-9781509921973/) in the past couple of years, in 2021 I decided to shift to shorter and more practical publications on key human rights challenges:

* In partnership with the International Commission of Jurists and others, HRiP co-wrote ‘***Counter-Terrorism and Human Rights in the Courts: Guidance for judges******prosecutors and lawyers*** *on the application of EU directive 2017/541 on counterterrorism’* [here](https://www.icj.org/wp-content/uploads/2020/11/Guidance-counter-terrorism-ENG-2020-1.pdf). The Guide addresses problematic terrorism-related offences and their interpretation consistently with international law. It followed trainings/judicial exchanges across the EU (2018-2020).
* Pursuant to a research project and forward-looking think piece developed for the Institute for Security Studies in Africa, I spoke to actors across Africa and globally to identify ‘***Global trends in counter-terrorism and their implications for Africa***’. The report will be published in 2022.
* An updated ***Manual on Counterterrorism and Human Rights*** within the OSCE is being written with staff from ODIHR and is also due to be published in 2022/3.
* A more academic piece co-authored with my colleague at Leiden University Larissa vd Herik, entitled ***Terrorism and the Security Council****: Unaccountable Actors and Unseen Threats appeared* in The Oxford Handbook of Global Security and is [here](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3632897).
* The controversial ***Extra-Territorial Scope*** of Human Rights Obligations was a key issue in practice this year, in light of a range of divergent decisions of human rights courts. Several publications explored and sought to clarify the issue and its implications in specific contexts:
  + a chapter on ***Climate Change and the Extra-Territorial Scope of Human Rights*** ***Obligations***: Global Threats and Fragmented Responses was published in Furthering the Frontiers of International Law: sovereignty, human rights, sustainable development, in honour of Nico Schrijver, [here](https://books.google.de/books?id=j4o5EAAAQBAJ&pg=PA62&lpg=PA62&dq=Climate+Change+and+the+Extra-Territorial+Scope+of+Human+Rights+Obligations:+Global+Threats+and+Fragmented+Responses&source=bl&ots=-oncm4K0Ef&sig=ACfU3U3XP8s6fT6S6_W30gbjcrwRW8c1iQ&hl=de&sa=X&ved=2ahUKEwjfiIa3vLj1AhVQg_0HHVExDKUQ6AF6BAgOEAM#v=onepage&q=Climate%20Change%20and%20the%20Extra-Territorial%20Scope%20of%20Human%20Rights%20Obligations%3A%20Global%20Threats%20and%20Fragmented%20Responses&f=false).
  + a blog entry in Just Security critically reviewed the restrictive approach to ***extra-territoriality in armed conflict*** adopted by the ECHR in Georgia v Russia (2021) is [here](https://www.justsecurity.org/74465/georgia-v-russia-jurisdiction-chaos-and-conflict-at-the-european-court-of-human-rights/):
  + a chapter on the applicability of human rights law to ***repatriation from Syrian camps*** was addressed in another chapter, available here.
* Blogs also addressed other key developments on:
  + ***Climate Justice***, reflecting on key challenges in the Norwegian litigation in which I was acting as adviser as noted above, [here](https://www.ejiltalk.org/people-v-arctic-oil-before-supreme-court-of-norway-whats-at-stake-for-human-rights-protection-in-the-climate-crisis/). A book proposal providing practical guidance on climate justice in human rights courts, with my colleague Margaretha Wewerinke Singh, is pending.
  + the first ***Committee on Rights of the Child*** decision on France’s human rights obligations towards child national detained in Syrian camps was discussed [here](https://www.childrensrightsobservatory.nl/case-notes/casenote2021-3).
  + the 20th anniversary of the International Law Commissions ***Articles on State Responsibility*** saw a symposium on the Articles’ impact, [including my contribution](https://www.ejiltalk.org/articles-on-responsibility-of-states-for-internationally-wrongful-acts-and-human-rights-practice/) on what the Articles have meant – and could mean - for human rights.
  + Finally, a piece reflecting on ***transnational human rights litigation on Guantanamo*** appeared in a remarkable anthology of Guantanamo voices which has just been published by ECCHR and is available [here](https://www.ecchr.eu/fileadmin/Guantanamo/01_ECCHR_GUANTANAMO_FINAL_DP.PDF).

Education & outreach are always an important part of the work, albeit mostly online this year. I was pleased to participate in trainings, meetings, panels etc in Palestine, Colombia, Syria, Washington, Glasgow and Geneva, all sadly without moving an inch. Also delighted to have my first full year as trustee with the wonderful torture NGO Redress.

Final word of thanks… Although HRiP remains essentially a one-person practice, I am very grateful to many. This includes the brilliant students (and colleagues) I meet in my academic work who lend time and energy to HRiP[[1]](#footnote-1); special thanks this year to, among others, Eva Daniel, Brenda Rodrigues and Friederike Loebbert who joined for longer hours than normal, supported by their law schools or governments. To a large extent 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 resilient, if somewhat beleaguered, global human rights network at this critical time.

Many thanks. Look forward to working together in 2022.

Helen Duffy, January 2022

1. Contributing former students in 2021 incl. Mareike van Nieuwkoop, Ekaterina Gostiukhina, Roberta Spiteri, Bernadette Fidler, Victoria Riello, Maria de Arcos Tejerizo, Coralie Klipfel, June Goens & Seonaid Stevenson.

   [↑](#footnote-ref-1)