

Human Rights in Practice, 2023 in Review

The challenges that 2023 posed for human rights and rule of law globally are hard to overstate. This short report shares some of the work of ‘Human Rights *in Practice*’ in response. It was a productive year, with important decisions handed down in our cases, new cases brought and reports published across key current challenges (Counter-Terrorism, Armed Conflict, Judicial Independence & Democracy, Climate Justice). I hope the links are useful in your own work.

“COUNTER-TERRORISM,” TORTURE & GUANTÁNAMO

There were important developments in our (excessively) long-running efforts to secure freedom, justice and reparation for our client ‘forever prisoner’ Abu Zubaydah, now arbitrarily detained without charge or trial for 22 years. These developments provide new tools to be put to work to ensure he is released, relocated, and provided with reparation as a matter of urgency:

Abu Zubaydah v. US and 6 other states: Ground-breaking Decision of the UN Working Group on Arbitrary Detention

The UN Working Group on Arbitrary Detention (UNWGAD) issued an unprecedented [decision](#) this year in a case we brought on behalf of Abu Zubaydah against 7 states - the US, UK, Thailand, Poland, Morocco, Lithuania, and Afghanistan. (The original complaint which we brought 2021 is [here](#).) On 28 April 2023 the UN body reached powerful findings on the unlawfulness of our client’s ongoing arbitrary detention and torture, finding the 7 respondent states ‘jointly responsible’ for Abu Zubaydah’s secret CIA detention, rendition, torture, and ongoing arbitrary detention at Guantanamo. The UNWGAD called for his ‘immediate release’, reparation, and the investigation of what they termed ‘crimes against humanity.’ The UNWGAD’s decision was the first of its kind to address the shared responsibility of the range of implicated states including the US and underscore that together they should ‘take the steps necessary to remedy the situation without delay.’ States were due to report on measures to give effect to this decision by October 2023; we await their responses.

Through our press work, the decision was widely reported and brought detailed attention to the flagrant injustice of his case. See e.g.

- Ed Pilkington, Guardian: <https://www.theguardian.com/law/2023/may/11/abu-zubaydah-drawings-guantanamo-bay-us-torture-policy>;
- Julian Borger, Guardian: <https://www.theguardian.com/us-news/2023/apr/28/un-guantanamo-bay-abu-zubaydah-detention>;
- Spencer Ackerman, Forever Wars: <https://foreverwars.ghost.io/u-n-free-abu-zubaydah-and-pay-him/>;
- Carol Rosenberg, New York Times: <https://www.nytimes.com/2023/05/01/us/politics/un-gitmo-abu-zubaydah.html>;
- Seije Slager, Trouw (NL): <https://bit.ly/3LTGCCV>; and <https://bit.ly/3LTXd9E>.

Our case was relied upon by others to bring similar complaints. I was pleased to collaborate with several Guantanamo detainees’ counsel to maximise the work’s impact and reach.

Council of Europe Resolution – ALL Council of Europe states must step up pressure to end Zubaydah’s unlawful detention.

We continued to make submissions to the Council of Europe Committee of Ministers (COM) as part of the ongoing process to ensure the full implementation of the 2014 and 2018 European Court of Human Rights (ECtHR) judgements in *Abu Zubaydah v. Lithuania* and *Abu Zubaydah v. Poland*. In response, the Council of Europe’s Committee of Ministers (COM) adopted its most far-reaching decisions to date, in relation to [Lithuania](#) and [Poland](#), representing a significant intensification of the Committee of Ministers’ efforts to ensure our client’s plight at Guantanamo is brought to an end and the judgments are given full effect. Finding incomplete implementation by both states, on 21 September 2023, the COM expressed its ‘deepest concern’ about the ‘urgent humanitarian situation’ arising from his ongoing arbitrary detention and called for responsible states to increase efforts to address it. The decisions are also critical of the United States, not only for the CIA torture programme but for the ongoing violations that in their totality amount to torture, cruel inhuman and degrading treatment, and for US non-cooperation with other states’ investigations, which was repeatedly raised as an impediment to accountability and reparation. Notably, the COM adds that, given the growing urgency of the issue, *all other member states of the Council of Europe* and the Secretary General should seek to intervene and to raise his situation in relations with the United States. (See [here](#) for more information).

Submission to UN Human Rights Committee (periodic review USA)

In September 2023 we filed a [submission](#) with the UN Human Rights Committee in relation to violations by the US of its ICCPR obligations in relation to Guantanamo and CIA rendition, with a specific focus on Abu Zubaydah’s case. The submissions, written in partnership with the Promise Institute UCLA, were presented in advance of the periodic review of the United States before the UNHRC in October 2023. The Committee’s report is pending.

Preliminary Judgement in the UK Supreme Court (civil case v UK Government)

Finally, an important [preliminary judgment](#) was issued by the UK Supreme Court, on 20 December 2023, in the civil claim brought on behalf of Abu Zubaydah against the UK government for its complicity in his torture during secret CIA detention and interrogation. The case concerns the provision of questions by the UK government to the CIA to be put to Abu Zubaydah in the knowledge he was being tortured. The December judgement concerns applicable law but is significant in principle and in practice. The Government had argued (on appeal) that the claimant must establish his tort case based not on English law but on the law of the multiple states where he *may* have been secretly detained and tortured at the time of the alleged complicity. In the circumstances of this case, where our client was secretly detained at multiple CIA detention sites, to require him to argue based on foreign law would have been unjust and excessively burdensome. The UK courts agreed and found that in the circumstances it was substantially more appropriate for the applicable law to be English law. We hope the government will now engage constructively to acknowledge and redress the violations to which our client has been - and continues to be - subject.

See [here](#) for the judgement and the [press release](#) by UK lawyers leading the case in English courts. For more information on Abu Zubaydah's international litigation, including the UNWGAD case against the UK, see [here](#).

Advice to OSCE (ODIHR) on the EU-proposed Revision of the Definition of Terrorist Offences in the Council of Europe Convention on Terrorism

We provided advice, as in previous years, to ODIHR's Legislative Support Unit on the compatibility of evolving developments in the counter-terrorism field with IHRL. This advice concerned the definition proposed by the EU in the context of the revision of the Council of Europe Convention on the Prevention of Terrorism, which raised myriad human rights concerns. The legal advice was incorporated into ODIHR's "Note on the Proposed Revision of the Definition of Terrorist Offences in Article 1 of the Council of Europe Convention on the Prevention of Terrorism," available [here](#).

HUMAN RIGHTS IN ARMED CONFLICT

Since 7 October 2023 much of HRiP's work – litigation, advice, publications, outreach, and teaching - has been dominated by the conflict unfolding in Gaza. We were already working on justice for war crimes in Gaza, which assumes heightened significance now:

Ziada v Netherlands: Challenging Immunities of Individuals accused of War Crimes

We have filed an important new case, *Ziada v Netherlands*, before the European Court of Human Rights (ECtHR). The background will be familiar in light of current events: attacks on civilians and residential areas within a refugee camp in Gaza, killing civilians and destroying civilian objects in violation of IHL. Our client in this case is a Dutch Palestinian man who lost his family – mother, brothers, sisters in law and nephew, ranging from 70 to 12 years old - and family home during 'Operation Protective Edge' in Gaza in 2014. OPE reeked what a UN enquiry described as (then) "unprecedented" civilian devastation. Absent any meaningful investigation and with no opportunity for victims to access remedies before Israeli or Palestinian courts, a civil case was brought before Dutch courts. However, Dutch courts dismissed the claim in August 2023 on the basis that former military officials purportedly enjoy complete immunity from civil suit in foreign courts under customary international law. Rather than the justice he sought, Ziada left with a hefty costs order.

Our application to the European Court argues that, on the particular facts of this case, the Dutch courts approach is inconsistent with current international law and a violation of article 6 (access to justice) and article 14 (non-discrimination) of the European Convention on Human Rights (ECHR). The application of immunities to former officials in respect of their individual civil responsibility for war crimes, particularly where there is no alternative forum and results in a denial of justice, violates the ECHR. Our submissions to the ECtHR are [here](#). The case is presented with co-counsel Wout Albers. Ziada is supported in his litigation by the Nuhanovic Foundation and ELSC, and the ISS assisted with outreach ([here](#)).

Press work: We held a press conference on the Ziada case and there was some coverage of the filing despite the time of year [here](#) and [here, here](#).

There were also many press interviews on international law issues arising in the Gaza conflict, and the *South Africa v Israel* case at the International Court of Justice, including:

- [Humanitarian pause v ceasefire – the debate over how to ease Gaza’s suffering](#) (Guardian)
- [Cratered ground and destroyed lives: piecing together the Jabalia camp airstrike](#) (Guardian);
- [Is Israel committing genocide in Gaza?](#) News Agents podcast.

(See other conflict-related work under Turkey cases, and publications, below).

JUDICIAL INDEPENDENCE

Report finds Spain in Non-compliance with Garzón v Spain UNHRC decision

In August 2023, after 2 years of implementation work on the *Garzón v Spain* case, a report was published by the [UN Human Rights Committee’s Rapporteur on Follow Up](#) with damning findings on the complete failure of Spain to comply with the UN Human Rights Committee’s 2021 decision. (That [2021 decision](#), originally in Spanish, was finally made available in [English](#)). The UNHRC decision condemned the arbitrary dismissal and prosecution of Judge Garzón and the lack of judicial independence in Spain, and urged Spain to provide him with “integral reparation.” Since 2021, we have sought to engage with the Spanish state – directly and through the UNHRC procedure - to ensure the holistic reparation required by its decision, which in line with established jurisprudence includes reinstatement, compensation, expunging the criminal record and guarantees of non-repetition to protect judicial independence in the future.

Spain’s ongoing deafening silence is an affront to the authority of the Committee and to its ICCPR obligations. At a time when attacks on judicial independence are a growing global threat, meaningful engagement by the Spanish state and others is imperative.

See press coverage of this 2023 decision on non-implementation in Spain and Latin America (eg. [el Pais](#), [Infolibre](#) or [Pagina 12](#) among others) and elsewhere ([here](#)) and our press release in English [here](#). Further background to the case is [here](#).

Tunisia: new litigation on disbanding the High Judicial Council and dismissing judges

During 2023, HRiP worked with colleagues from the International Commission of Jurists (ICJ) on international human rights litigation challenging the evisceration of judicial independence in Tunisia. This litigation will be launched early in 2024.

Strategic Litigation of Judicial Independence within the European Union

HRiP, in partnership with the ICJ and other NGOs, continued to carry out a project focused on enhancing the strategic litigation of judicial independence across the EU. Fnded by the EU, we held workshops in Brussels and Malta with groups of lawyers grappling with related issues from, among other states, Poland, Hungary, the Czech Republic, Romania, Spain and Malta. The project continues this year and runs until 2025 when a manual on strategic litigation of judicial independence will be published. For more info see [here](#).

Judicial Independence Podcasts:

As part of this project a podcast series “The Judicial Independence Podcasts” got up and running this year. My episode on challenges to strategic litigation of judicial independence, with a focus on the Garzon case, is [here](#).

TURKEY

Many of our priority areas – abusive counter-terrorism, attacks on human rights defenders, democracy and judicial independence, and violations in armed conflict – arise in Turkey litigation. Some highlights of the work, much of which I was happy to do with the Turkey Litigation Support Project ([TLSP](#)) and some independently.

Expert Opinion on the Indictment of Şebnem Fincancı for Turkish Courts (Counter-terrorism and Human Rights Defenders)

I prepared an expert opinion was prepared for Turkish courts on the Indictment filed against academic and human rights defender Rasime Şebnem Fincancı Korur and its compatibility with international human rights law (IHRL). Dr Fincancı is a high level Turkish medical expert and human rights advocate, who was interviewed by Medya Haber TV about the alleged use of chemical weapons by the Turkish state. She opined, based on a video she was shown on the show, that toxic, chemical and poisonous gases had been used and that these allegations should be investigated in line with the Minnesota Protocol. The indictment states that during her interview, and while her name and expertise were shown on the screen, images of deceased PKK members, apparently killed by the chemical weapons in question, were shown by Haber TV with subtitles referring to them as ‘massacred’ ‘guerrillas’. As a result, she was prosecuted for disseminating propaganda in favour of a terrorist organisation. The Indictment Review, highlighting multiple concerns under IHRL, criminal law and ethical prosecutorial practice, is available [here](#).

This remarkable case may epitomize the excessive resort to spreading counter-terrorism laws in Turkey (and beyond) to stifle criticism and accountability of the state.

Other cases on Dismantling Democracy in Turkey (with TLSP)

- **Implementation of Kavala v Turkey & other judgements at the COE Committee of Ministers**

One of the areas of focus this year was the case of philanthropist Osman Kavala, in many ways a litmus test for ECHR system. A successful judgement against Turkey in 2017 ordering Kavala’s immediate release was followed this year by an extremely rare Article 46 infringement proceedings judgement for non-compliance. Despite this, in October 2023 his conviction was upheld, and he was sentenced to life imprisonment. As part of the TLSP, we have filed several submissions, written with and on behalf of other NGOs (eg. HRW, ICJ, Article 19 and Amnesty) to the Committee of Ministers in relation to the execution of these judgements and the flagrant manipulation of the system and Turkey’s brazen non-compliance. Submissions and press reports are available [here](#).

Similar follow up work on the emblematic case of Kurdish politician Selattin Demirtas. Rule 9 submissions were made in relation to the implementation of the judgement in that case during 2023. Advocacy on these and other cases continues.

- **Judgment issued in the first ‘Academics for Peace’ case (Telek v Turkey 2023)**

The European Court of Human Rights handed down the [Telek and Others v Turkey](#) judgment, the first of a number of cases arising from the disciplinary measures taken against

academic signatories of the ‘academics for peace’ petition in January 2016, in which the TLSP intervened jointly with Amnesty International, ARTICLE 19 and PEN International.

The petition, signed by 1,125 academics and intellectuals, condemned human rights abuses during Turkish counterterrorism operations against the PKK in the south-East of Turkey and called for peace negotiations. As a result, the 3 applicants in this case were dismissed by decree from the civil service and had their passports cancelled. Two of them who had been admitted to PhD programs in foreign universities were unable to pursue their doctorates and the third who had moved to Germany was deprived of her main identity document in a foreign country. The Court found violations of the right to respect for a private life and the right to education, and recognised, inter alia, the special importance of freedom of movement for academics’ professional lives and academic freedoms, which required stringent legal safeguards and subjected to strict judicial scrutiny even in the context of a state of emergency. On 25 September 2023, the Grand Chamber rejected the Turkish Government’s request for a referral, so the judgment is final and legally binding.

(Note that a fuller case on academic freedom - the “Academics for Peace” case *Kamuran AKIN v. Turkey and 42 other applications* in which Helen Duffy and Philip Leach intervened on behalf of a large coalition of academics, is still pending at the ECHR, but this bodes well for its outcome.)

- o **Reply to Government Observations: *Birsen Kaya Akat et al v Turkey* (dismissal of politicians and replacement by ‘trustees’)**

We worked with local lawyers on the response to the observations of the Turkish government on admissibility and merits in *Birsen Kaya Akat et al v Turkey* concerning democratic governance and human rights in Diyarbakir region. The underlying facts concerning the practice of removing elected members of the Bağlar Municipal Council, in the Greater Municipality of Diyarbakır, on supposed terrorism-related allegations and replacing them with government appointed trustees. The case is one example of how direct interference with human rights of individuals – including to participate in public service under the ICCPR - is also the evisceration of democracy and human rights in SE Turkey.

CLIMATE JUSTICE

Climate change remains a priority area for HRiP and is one of the greatest human rights challenges of our time. As climate litigation burgeons globally, we try to work with partners to make stronger use of human rights law and to bring more strategic and effective litigation. This includes for a that had been relatively underutilised, such as within the OECD framework:

- o **Process opened in Complaint against commodity trader challenging corporate deforestation of the Amazon (Dutch NCP)**

2023 started with follow up work on the complaint to the Dutch OECD National Contact Point (NCP) that had been presented with the Centre for Climate Crime Analysis ([CCCA](#)) [in December 2022](#). The complaint was brought against Dutch palm oil trading giant Louis Dreyfus Company (LDC) for its role in the unlawful deforestation of the Peruvian Amazon and associated serious human rights violations of indigenous communities, in violation of the OECD Guidelines for Multinational Enterprises. During 2023, the case was admitted and is now subject to confidential negotiations before the OECD National Contact Point.

More background info on the case, the remarkable coalition of NGOs bringing the claim is on the website of the CCA (which will take the case forward). The brief is [here](#) in English y Español).

o **Support for Complaint against Cargill (UK NCP)**

Another interesting example of legal action where HRiP provided informal advice and pro-bono support was provided to partners, concerned Client Earth's complaint against Cargill, alleging that the corporate giant's due diligence policies and procedures do not adequately address the risk of the company's contribution to deforestation, ecosystem conversion and related environmental and human rights impacts through its soy operations in Brazil.

PUBLICATIONS AND RESEARCH PROJECTS

Monograph on Counter-terrorism and Human Rights in Africa

"*Global trends in counter-terrorism: implications for human rights in Africa*" was published this year, following a research project carried out for the Institute for Security Studies in Africa (ISS). The study explores the impact of counter-terrorism on democracy, peace, rule of law and human rights in Africa. It is a broad-reaching report that identifies global trends some of their profound implications for human rights and the rule of law in Africa. It considers factual, legal and policy developments in diverse contexts across the continent, including the proliferating range of actors and aspects of life affected by CT and CVE, and areas of innovation, progress and risk. It is intended as an invitation to reflect on threats and opportunities and to think proactively about the challenges ahead. It was an honour to have the benefit of insights from interviews with diverse African and international actors. The monograph is [here](#).

Other publications in 2023 included chapters in (excellent) edited volumes and blogs:

- [‘De Facto Justice? Prosecutions by Non-state actors in armed conflict’](#), in *Armed Groups and International Law: a Shadowland or Legality and Illegality*, Heffes and Fortin, Edgar Elgar (2023). This chapter based on advice from the practice on accountability processes in N.E. Syria
- [‘Foreign Fighters’, Syrian Camps and the Jurisdictional Quagmire](#), in *Returning Foreign Fighters: Responses, Legal Challenges and Ways Forward*, Asser (2023).
- [La independencia judicial en jaque: España en el foco – Legal Today](#) (October 2023)
- [International Law in the Conflict in Gaza: Meeting the Challenges](#) (w. Giulia Pinzauti, Leiden Law Blog Nov 2023)

New Research Project: Strategic Litigation in Armed Conflict

This year saw a new research project underway, conducted with Philip Leach on behalf of the Wellspring Philanthropic Fund International Human Rights Program. It is a short-term consultancy to explore '*the impact and role of strategic litigation and prosecutions in ensuring accountability for war and other serious crimes and justice for victims, survivors and affected communities*'. With this in mind, we conducted research and interviews with a diverse range of stakeholders during 2023. The overall purpose of this consultancy is to seek to better understand the proliferating forms of litigation that are being used in relation to serious violations in situations of armed conflict (and post-conflict), their impacts and the unique challenges to justice that arise in diverse conflicts situations. The concept note is [here](#). It is hoped that it will lead to a forward-looking report in 2024.

Academia, Teaching and Panels

Education & outreach are always an important part of human rights work, and it was an unusually busy year on that front. Alongside two existing LLM courses as part of my permanent role as part-time professor at Leiden, I began a new short course on strategic litigation and mobilisation (w. Adriaan Bednar), and new external courses on Human Rights for Arbitration at Paris Sciences Po (w. Laurence Burgorgue Larsen) and on Climate Justice at the University of Oxford's summer programme. Existing courses were taught again at American University (Justice for Victims of Human Rights violations) and Duke/Leiden Institute (strategic litigation). Much as I have loved all of them, and especially the international students, I am scaling back some external teaching this year to maintain balance with practice.

Although PHDs do not normally appear here, I want to recognise Floris Tan who, despite being a pioneer (the first brave PhD student to have me as 'first supervisor'), won the Max van Stoel human rights prize for his PHD this year and published it as a book of obvious relevance (*The Duty to Investigate in Armed Conflict*). PHD supervision continues on: Climate Change and Human Rights Litigation (Lianne Baars), Ecocide (Lisa Oldring) and Common Plan liability for Criminal Masterminds (Shadi Sadr).

Lectures and panels in 2023 included:

- 'The Nature of Justice' Showcase Human Rights session (IBA annual conf. Paris);
- 'The Legacy of Extraordinary Rendition' (Asser Institute);
- 'The Israel-Hamas conflict and role of the courts' (Leiden Uni);
- 'Terrorismo y Derecho Penal' (Universidad Externado de Colombia);
- 'UN Human Rights Treaty Bodies in Practice' (American Uni);
- 'Human Rights in Armed Conflict; a Practitioner's Perspective' (Glasgow Uni);
- 'Addressing systemic injustice with legal means' (ECCHR@15, Berlin);
- 'Israel/Palestine Conflict and International Law' (Asser Institute).

Podcasts:

- Judicial independence (see above);
- The UDHR at 75, Conflict and Practice (w Christian Tams), Scottish Council of Human Rights.

Final word of thanks - to all those who have placed their trust in HRiP this year, particularly survivors, partner lawyers and civil society actors around the world, with whom it's an honour and inspiration to work. HRiP remains essentially a one-person practice (though I am exploring possibilities and means to expand), and I am very grateful to the many collaborators, especially the brilliant students and colleagues who lend time and energy to HRiP as research assistants.¹ I look forward to redoubling efforts together in 2024.

Helen Duffy, HRiP, 31 January 2024

¹ Thanks to Roisin Pillay for input as a consultant on one of our projects this year, and to all those who contributed research assistance (often students/former students and too often voluntarily) at various stages of 2023, including: Lottie Hume, Ashley Waye, Nina Keese, Kuberan Kumaresan, Jake Romm, Jared Green, Claudia Barrera Piñeiro, Emile Tournoy, Natalia Venegas Arango, Marcela Romero Montiel, Ahmed AlAmmar, Grant Martin, Luca Guariglia Duffy, Madison Simons, Isabella Mansfield, Zoe Gaspar and Kristina Hon.