

Forum: Commission on Crime Prevention and Criminal Justice (CCPCJ)

Issue # 1: Strengthening legal frameworks to prevent Secret Detentions and unlawful incarceration

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Evans, Michael. "The Forever Prison: Why Guantanamo Bay Is Biden's Toughest Challenge Yet." *The Times*, 5 Nov. 2021, www.thetimes.com/world/us-world/article/the-forever-prison-why-guantanamo-bay-is-bidens-toughest-challenge-yet-5l8btsmhx.

Introduction

In the 21st century, counter-terrorist activities have significantly reshaped security practices worldwide, presenting several challenges to judicial transparency and the

rule of law. In the post-9/11 period, "ghost detention" or the secret detention of individuals without formal charges was becoming a recurring event that undermined legal standards (Dawson, 2016). It was revealed that it was alarmingly easy for intelligence agencies to take people into secret detention facilities like the CIA's "black sites" or secret military prisons like Abu Ghraib, without any concern for any judicial checks or due process, where detainees were left at the mercy of the state instead of being protected by the country's law (Ferstman, 2018). In 2004, a report by Major General Antonio Taguba documented the detention of over 100 individuals in complete isolation without identification, a severe and grave contravention of legal and judicial standards.

While there are measures to tighten legal detention procedures, like making transparency requirements more stringent, strengthening judicial review mechanisms, and ensuring full compliance with international conventions, organizations that seek to bypass legal standards tend to find loopholes (Wessels, 2023). Thus, it is imperative to ensure coordination among states, national judiciary, and international judiciary in presenting binding legal guidelines and functioning regulations effective enough to bar secret and illegal detention. Although such horrors have developed simultaneously with new security challenges, they need to be fought back equally through hard-line judicial reforms in court governance.

Definition of Key Terms

Ghost Prisoners: People who are being detained in detention facilities without being officially registered. This practice has the objective of keeping their detainees anonymous, hidden from surveillance mechanisms like the International Committee of the Red Cross (ICRC), making them vulnerable to violation of human rights and denying them legal protection.

Secret Detentions: The practice of holding individuals in undisclosed locations without informing their families or providing access to legal counsel or courts, violating international human rights law.

Arbitrary Detention: The deprivation of liberty without sufficient legal justification, due to process or judicial oversight. It is considered arbitrary if it is discriminatory or fails to provide detainees with the ability to challenge their detentions before the court.

Incommunicado Detention: Holding detainees without communication to the outer world, such as access to legal counsel, family, or external oversight, increasing the risk of abuse

Black Sites: Facilities operated by intelligence or military agencies, typically outside the legal jurisdiction and without oversight, often used for secret detentions.

Torture and Ill Treatment: The intentional infliction of severe pain or suffering, often physical or mental, particularly in cases where individuals are detained secretly and deprived of oversight.

Enforced Disappearances: When authorities arrest or abduct a person and then deny it or conceal the person's fate or whereabouts, removing them from legal protections.

Unfair Trials: Judicial proceedings that do not meet international standards of fairness, impartiality, and due process, often associated with detainees held unlawfully or secretly.

Extraordinary Rendition: The secret transfer of detainees between countries, often bypassing legal procedures and exposing them to detention without rights and protections.

Legal Frameworks: The set of laws and regulations that establish rights, responsibilities, and procedures. Strong legal frameworks help prevent secret detentions and protect human rights.

General Overview

The Big Picture

Secret detentions and unlawful incarceration occur when individuals are held without legal justification, without official acknowledgment, and often without legal protections. These practices violate basic human rights and undermine the rule of law. Secret detention allows authorities to bypass courts and international norms, making detainees vulnerable to torture, enforced disappearance, and even death. Strengthening legal frameworks is essential to prevent these abuses and to ensure governments are held accountable.

Secret detentions became universal, especially after major global security events, such as the “War on Terror” following 9/11, when several countries operated secret prisons (black sites) to hold terrorism suspects. International bodies, including the United Nations, have condemned secret detention practices as violations of the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture. Despite this, many countries continue detaining individuals without due process, often citing national security as justification.

In many cases, detainees held in secret are denied basic rights such as access to a lawyer, a trial, or family contact. Some disappear for years without any official record. Efforts to regulate and monitor detention practices internationally have been inconsistent, and enforcement remains a major challenge.



Taylor, Andrew. "US Congress Votes to Keep Guantánamo Bay Open." *Global News*, The Associated Press, 4 June 2013, globalnews.ca/news/614838/us-congress-votes-to-keep-guantanamo-bay-open/. Accessed 24 June 2025.

National Security vs. Human Rights

Many governments justify secret detention practices by citing national security concerns, especially in the context of terrorism or organized crime. They argue that secrecy is necessary to protect intelligence sources, prevent future attacks, and maintain public safety. However, human rights organizations argue that security can never justify violating fundamental rights like the right to liberty, the right to a fair trial, and protection against torture. This creates a major conflict between national security priorities and international human rights obligations.

State Sovereignty vs. International Oversight

Some countries resist external monitoring of their detention practices, claiming that how they manage internal security is a matter of national sovereignty. They argue that international organizations, such as the United Nations or the International Criminal Court, should not interfere in domestic affairs. Opponents argue that protecting human rights is a global responsibility and that state sovereignty cannot be used to justify secret or unlawful detention.



"Mapping the CIA's Secret Prisons." *Frontline*, PBS, www.pbs.org/wgbh/frontline/article/mapping-the-cias-secret-prisons/. Accessed 24 June 2025.

Use of Extraordinary Rendition and Outsourcing Abuse

Extraordinary rendition refers to the secret transfer of detainees to other countries known for using torture, which became a common practice in the early 2000s. This allowed governments to avoid legal responsibility for the mistreatment of prisoners. Human rights groups criticize the practice, arguing that it violates the principle of non-refoulement under international law, which prohibits sending people to countries where they may be tortured.

Lack of Accountability and Justice for Victims

When victims of secret detention are released, there is often no official acknowledgment of wrongdoing, no apology, and no compensation. Some countries refuse to prosecute officials responsible for unlawful detentions, citing secrecy laws or national security exemptions. Victims are left without justice, and governments often escape accountability, undermining trust in the legal system and international law.

Transparency vs. Operational Secrecy

Law enforcement and intelligence agencies argue that full transparency about detention practices would compromise operations and endanger public safety. They claim that some level of secrecy is necessary to protect ongoing investigations and national security operations. Human rights experts counter that without transparency, abuses are inevitable, and that legal safeguards like independent judicial review can balance secrecy and accountability without endangering security.

Major Parties Involved and Their Views

United States

After the September 11 attacks, the United States expanded its counterterrorism efforts by establishing a network of secret detention centers called "black sites" in other countries. There, the CIA held suspected terrorists without keeping them on the books, creating a network of "ghost prisoners" that were held beyond both the protection of U.S. law and international legal standards (Human Rights Watch). Ghost detainees were hidden from the International Committee of the Red Cross, denied access to counsel,

and deprived of any form of judicial review at all, in blatant violation of the Geneva Conventions and fundamental standards of due process (Danner, Mark).

Not only was it a violation of human rights, but also a colossal failure on the part of the judicial protection system established to guard against arbitrary detention and abuse. The 2014 U.S. Senate Intelligence Committee report concluded that the majority of detainees were imprisoned without charges or evidence of terrorism, and government officials had deceived Congress and the nation that coercive interrogations had worked (SENATE). Human Rights Watch and Amnesty International launched a scathing attack on the ghost prisoner policy as an intentional dismantling of the rule of law, reminding that enforced disappearance is an international crime (USA: Crimes and Impunity). Through avoiding judicial means and safeguarding detainees from every form of lawful responsibility, the United States' ghost prisoner program significantly diluted global norms CCPCJ has the aim of upholding, such as access to justice, openness of detention, and fair trial assurances.

Russia

In Russia, the ghost prisoner scenario also emerged over its military intervention, that is, in Ukraine, with widespread allegations of secret detention and enforced disappearance. Russian troops have held prisoners of war and civilians in secret locations, essentially taking them out of the juridical system, according to the UN Working Group on Enforced Disappearances (OHCHR). These individuals, often held incommunicado, are imperceptible to both their families and legal counsel, rendering them vulnerable to torture and coercive admissions (Ukraine: Events of 2023). The Organization for Security and Co-operation in Europe (Human dimension mechanisms) has condemned these practices as gross violations of international humanitarian law, since the prisoners are denied fundamental judicial rights like access to legal counsel and a hearing. Secondly, there have been reports that detainees have been held in detention without charges against Russian laws and international conventions, such as those included in the Geneva Conventions. The ghost prisoners trapped in an unchecked judiciary are a certain indicator of inherent judicial failures inherent in the systematic processes that CCPCJ should address to eliminate future abuses and enhance accountability within conflict zones.

China

In China, solitary confinement and ghost prisoners are a recurring phenomenon in the country's judicial system. Residential Surveillance at a Designated Location (RSDL) has emerged as the state's modus operandi for detaining an individual in custody on suspicion for a maximum duration of six months without the necessity of lodging formal charges against them, effectively erasing their existence within the formal system of law (Break Their Lineage, Break Their Roots). The detainees are not offered legal representation or visits from their families in secret detention, and the majority of the detainees reported that they were tortured and forced to make coercive confessions (Cook, Sarah). The secret detention, in which individuals are held in detention without judicial oversight or a chance to contest detention before a court of law, contravenes China's international obligations under the International Covenant on Civil and Political Rights (ICCPR). Freedom House (2022) also confirms that the clandestine system of detentions has increasingly been applied to silence dissent and extinguish human rights activism, leading to a point where ghost prisoners are not only not given a trial but are also placed beyond the ambit of legal remedies. This judicial shortfall obliges CCPCJ to correct the institutional lack of due process within China's detention system so that human rights standards are preserved and accountability under the law can be ensured.

Pakistan

Ghost imprisonment has been a common grievance in Pakistan for years, linked with enforced disappearances of political workers, journalists, and suspected rebels. Human Rights Watch (2011) provided evidence of at least several incidents in which the victims were taken away by the security agencies and secretly held at detention centers under no judicial monitoring. These detainees are effectively taken outside the law, typically detained for months or years without recognized locations (Pakistan). Pakistan has been criticized by the UN Special Rapporteur on Torture (2017) for negating fundamental human rights by allowing these individuals to disappear into a judicial abyss, where they are typically tortured and denied the opportunity to sue for their detention in court. (Committee against Torture examines initial report of Pakistan) In the majority of cases, security forces provide no information about the location of

detainees, thereby excluding families and lawyers from taking legal action (Pakistan). The U.S. State Department (2002–2010) consistently reported international law abuses, including the continued use of secret detentions and failure to provide due process. These ghost prisoners bring to the fore judicial inadequacies in Pakistan's system, and it is thus important that CCPCJ address such abuses to protect due process rights and judicial independence.

United Kingdom

While the United Kingdom officially opposes torture, it has participated in the rendition of people to nations with poor human rights records and their torture. Parliament's Intelligence and Security Committee determined that British intelligence had participated in the CIA's extraordinary rendition program, whereby suspects were held secretly, many of them incommunicado and subjected to inhuman interrogation methods. These actions led to the creation of ghost prisoners because these detainees were kept hidden from the reach of judicial oversight, at times without access to lawyers and the chance to fight detention before a court (Chair: The Rt Hon.). Reprieve (2021) states that British officials not only did nothing to prevent the forced disappearances but may even have been actively involved in them, thus depriving detainees of any legal recourse. The European Court of Human Rights (2020) ruled against the UK in several cases, declaring that the country's role in these kidnappings was a violation of human rights law, specifically the right to a fair trial. The existence of these ghost prisoners reflects CCPCJ's necessity to campaign for judicial reforms that ensure accountability and exclude the use of secret detentions (Gopalan, Preetha).

Timeline of Events

Date	Description of Event
September 2003	CIA requests military intelligence to house ghost detainees at Abu Ghraib prison, leading to the beginning of secret detentions (Wikipedia Contributors, 2025).
Late 2003:	Public awareness of ghost detainees grows with the case of a

		detainee known as "Triple. X."; Additionally, Secretary of Defense Rumsfeld evades questions about hidden prisoners (Wikipedia Contributors, 2025).
September 9, 2004		General Paul J. Kern testifies to the Senate Armed Services Committee that up to 100 ghost prisoners were hidden from the Red Cross at Abu Ghraib in cooperation with the CIA (Wikipedia Contributors, 2025).
December 18, 2004		A detainee named Jabour moved to a secret prison in a CIA-controlled facility with harsh conditions, showing the treatment of ghost prisoners to the world (Human Rights Watch, Ghost Prisoner Two Years in Secret CIA Detention).
September 2006		President George W. Bush publicly acknowledged the CIA's secret detention program and transfers 14 high-value prisoners from secret prisons to Guantánamo Bay, admitting the existence of ghost detentions (Guantánamo Global Justice Initiative).
2007		According to a compilation of information from Human Rights Watch and other records, the use of torture as an interrogation practice and secret detentions contradict U.S. law and international standards (Human Rights Watch, Ghost Prisoner Two Years in Secret CIA Detention).
December 6, 2007		CIA Director confesses to the 2005 incineration of tapes documenting covert detention interrogations that might have served as evidence of the use of torture techniques, including waterboarding (AMNESTY INTERNATIONAL, 2008).
March 14, 2008		Prisoner Muhammad Rahim al-Afghani is confirmed to have been transferred from secret detention to Guantánamo Bay by the Pentagon (AMNESTY INTERNATIONAL, 2008).
April 2009		CIA Director Leon Panetta announces that the CIA no longer operates with secret detentions and will only use interrogation techniques authorized by the Army Field Manual (Rosenbach, Eric, and Aki J. Peritz).
2011		The Obama administration admits to holding a Somali prisoner for

	2 months aboard a U.S. naval ship for interrogation, indicating that secret detention practices continued despite officially ending the practice (Finn and DeYoung, 2011).
December 2014	The U.S. The Senate Intelligence Committee has publicly released a heavily redacted 525-page summary report confirming that the CIA employed harsh and largely ineffective interrogation techniques at secret detentions (SENATE SELECT COMMITTEE ON INTELLIGENCE, 2014).
December 2016	The Office of the Inspector General of the U.S. Department of Justice released a report revealing the ongoing internal investigations into CIA prisoner abuses, including the death of prisoners in CIA custody and the holding of ghost prisoners (Abodo).
December 2018	The Human Rights Watch and others pressed for full transparency and accountability for the secret detention in the CIA, highlighting that the U.S. government hasn't provided a full report of all the people held in secret detentions since 2001 (Human Rights Watch, Ghost Prisoner Two Years in Secret CIA Detention).
January 2022	Human Rights Watch highlights the ongoing legacy and lack of accountability for abuses related to secret detentions and torture programs initiated post-9/11 (REPORT OF THE SPECIAL TASK FORCE).
March 2025	Interrogation techniques used by the CIA and the U.S. military were directly adapted from training techniques used to prepare special forces personnel to resist interrogation by enemies that torture and abuse prisoners (Wikipedia Contributors, 2019).

UN Involvement, Relevant Resolutions, Treaties, and Events

International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), 2006

This treaty strictly bans secret detention and enforced disappearance under any circumstances, including during war or times of emergency (Article 1). It defines

enforced disappearance as the act of depriving someone of their liberty by state agents or others acting with state approval, followed by a refusal to acknowledge the detention or hide the detainee's whereabouts or fate (Article 2). According to Article 17, no one should be held in secret detention, and states are required to ensure that detainees are kept only in officially recognized places, have access to family, legal counsel, and judicial review. States must make enforced disappearance a criminal offense and prevent any hindrance to justice concerning detention records and related information (Articles 4, 17, 22, 23). (UN HRC)

Optional Protocol to the Convention against Torture (OPCAT), 2002

The OPCAT sets up a system of regular visits by independent international and national organizations to all detention facilities to prevent torture and other forms of mistreatment, including secret detention. It requires states to establish national preventive mechanisms and grants these bodies access to all detention sites under state control, ensuring transparency and oversight (Articles 1-4). (OHCHR)

The United Nations Joint Global Study on Secret Detention, 2010

The UN Joint Global Study on Secret Detention, 2010, presented to the UN Human Rights Council, documented the widespread use of secret detention, especially in the context of counter-terrorism after 9/11. It concluded that secret detention cannot be justified under any circumstances and called for urgent legal reforms, including the absolute prohibition of secret detention, judicial oversight, family notification, and accountability for violations (Amnesty International). The study also highlighted the complicity of various states in secret detention networks and emphasized the damaging impact of such practices on the rule of law. (UN Human Rights Council, Joint Study on Global Practices concerning Secret Detention, 2010)

The United Nations General Assembly Resolution 74/143, 2019

This resolution urges countries to eliminate secret detention and unlawful imprisonment, ensure humane treatment in detention, and investigate and prosecute violations related to secret detention. It strengthens international legal standards and encourages member states to improve their legal frameworks accordingly (UN General Assembly Resolution 74/143, 2019).

Subcommittee on Prevention of Torture (SPT) under OPCAT

The SPT, created by the Optional Protocol to the Convention against Torture (OPCAT), plays an essential role by conducting unannounced visits to detention places worldwide, including prisons, police stations, psychiatric hospitals, refugee camps, and immigration centers. Its mission is to evaluate detention conditions and collaborate with National Preventive Mechanisms (NPMs), governments, and civil society to improve measures against torture and secret detention. In 2024, the SPT released its first General Comment, clarifying the definition of "places of deprivation of liberty" and emphasizing that all places under state control, whether formal or informal must be monitored regularly and independently to prevent abuses (OHCHR, "SPT General Comment on Places of Deprivation of Liberty" 2024).

Evaluation of Previous Attempts to Resolve the Issue

CIA

The ghost prisoner and secret detention phenomenon mainly took place in the framework of the U.S. Central Intelligence Agency's (CIA) counter-terrorism campaign following the September 11, 2001, attacks. Under a classified presidential directive of September 17, 2001, the CIA operated a secret detention program that held terrorism suspects in undisclosed places across the world, also referred to as "Black Sites" (Guantanamo Global Justice Initiative). These detainees effectively vanished from the outside world, never allowed to see their families, lawyers, or any outside contact; they were held under conditions that frequently involved torture and inhuman treatment, opposing international law (SENATE SELECT COMMITTEE ON INTELLIGENCE). The program remained a secret for almost five years until President George W. Bush publicly confirmed it in 2006, labeling ghost prisoners as "high-value detainees" in facilities like Guantanamo Bay ("Ghost Prisoner: Two Years in Secret CIA Detention: The CIA's Secret Detention Program").

Extraordinary Rendition, Proxy Detention, and Third-Country Transfers

The secret detention system not only consisted of CIA-run facilities but also extraordinary rendition, proxy detention (a country using another country's security or forces for

imprisoning individuals), and third-country transfers where prisoners were placed to suffer further abuse. Third countries like Afghanistan, Thailand, and Eastern European nations hosted these black sites, and more than 66 countries have been implicated in the secret detention practice worldwide (Guantanamo Global Justice Initiative). The prisoners were exposed to inhumane treatment like solitary confinement, stress positions, forced nudity, and sensory deprivation, which caused extreme, irreversible psychological and physical damage (Human Rights Watch, 2007). Human rights agencies and UN experts have condemned the acts as enforced disappearances and possible crimes against humanity and have demanded transparency, accountability, and the end of secret detentions and ghost prisoners (Human Rights Watch, 2007).

Policy Changes

While some policy changes were made, like the Obama administration's commitment to the closure of CIA black sites, concerns have lingered that secret detentions persist under one authority or another and that full disclosure regarding what became of the prisoners has not been made (SENATE SELECT COMMITTEE ON INTELLIGENCE). The international community still demands loyalty to human rights norms and the rule of law to prevent the recurrence of ghost detention practices and to bring justice to victims of the illegal, dehumanizing black sites (Bigo et al.).

Possible Solutions

Establish Transparent Detention Procedures

A key solution is to introduce clear and standardized procedures for arrest and detention. This would require authorities to inform detainees' families and legal representatives immediately, providing full details of the arrest. Detention records should be mandatory, including time, place, and reason for the detention. This approach ensures transparency and accountability, reducing the risk of secret detentions. Additionally, independent monitoring bodies should be established to regularly review procedures being followed.

Strengthening International Legal Standards

Another potential solution is to reinforce international legal frameworks like the

International Covenant on Civil and Political Rights (ICCPR). Countries should be encouraged to incorporate these standards into their national laws, with specific mechanisms for enforcement. Independent bodies could be created to investigate claims of secret detentions and unlawful incarceration. Moreover, countries could undergo periodic reviews by international human rights organizations to assess their adherence to these global standards.

Enhancing Judicial Oversight and Legal Counsel Access

Strengthening access to legal counsel immediately after arrest is essential in preventing unlawful detention. Laws should require that detainees be granted access to their lawyers without delay. In addition, there should be mandatory judicial review of detentions within a specified time frame. Independent judges or panels should be responsible for reviewing cases of detention, with the power to release individuals if detention is found to be unlawful or secret.

Whistleblower Protection and Reporting Incentives

Strengthening legal protections for whistleblowers who expose unlawful detentions is another possible solution. Laws should be enacted to ensure that individuals who report illegal activities within law enforcement or detention facilities are protected from retaliation. Additionally, incentive programs could be established to encourage insiders to report secret detentions or abuse. This would help create a stronger system of internal accountability and transparency.

Sustainable Development Goals (SDGs)

Goal 16: Peace, Justice, and Strong Institutions

The ghost prisoner issue is the exact opposite of what Sustainable Development Goal 16 stands for, not ensuring peace, justice, or holding strong institutions (United Nations, "Peace, Justice and Strong Institutions"). Holding prisoners in secret detentions without the use of legal processes or judicial systems contradicts the rule of law. It denies humans their freedom of speech and expression, not allowing them to defend themselves, which causes alarming conditions that abuse basic human rights with practices like torture and neglect. This abuse harms the public's trust in governmental

institutions that are supposed to facilitate accountability and transparency, leading to cycles of violence and injustice. Furthermore, bringing attention to ghost prisoners becomes an important part of strengthening inclusive, effective governance and ensuring no one is placed beyond the reach of justice for lasting peace and development. (United Nations, "Goal 16: Peace, Justice and Strong Institutions").

Appendix

This section of the issue bulletin is dedicated to providing delegates with valuable sources to utilize during their research.

https://assembly.coe.int/CommitteeDocs/2006/20060606_Ejdoc162006PartII-FINAL.pdf

Source A: This report shows how European countries helped with secret prisoner transfers and detention, violating human rights.

<https://www.amnesty.org/en/latest/press-release/2010/01/governments-must-be-held-account-secret-detentions-20100127/>

Source B: Amnesty International calls for urgent action to end secret detention worldwide, highlighting the global scope of secret detentions and the serious human rights violations they enable.

https://redress.org/storage/2024/09/Sudan-Arbitrary-Detention-Report_EN-v.2.pdf

Source C: This report shows patterns of secret detention and enforced disappearance in Sudan, including the use of black sites and the impact on victims and their families.

https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_Non-custodial_Measures_Tokyo_Rules.pdf

Source D: The Tokyo Rules provide international standards for non-custodial measures, aiming to limit unnecessary detention and protect the rights of those deprived of liberty.

<https://www.penalreform.org/issues/torture-prevention/preventive-monitoring/tools-resources/>

Source E: This resource hub offers practical tools, guidelines, and monitoring mechanisms to prevent torture and ill-treatment in places of detention.

<https://youtu.be/bQVjvSKXX-0>

Source F: Human Rights Watch exposes torture and secret detentions by Rwanda's military, with survivor accounts.

<https://youtu.be/TthzD7EauD8>

Source G: News Central TV discusses the rise of unlawful detentions in Nigeria, featuring legal experts, personal stories, and calls for reform.

<https://youtu.be/rsMMMyMNNfmU>

Source H: Al Jazeera's report on enforced disappearances and torture in secret detention facilities in Yemen, featuring survivor testimonies and calls for accountability.

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