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MOUNTING EVIDENCE OF EUROPE'S COMPLICITY IN RENDITION AND SECRET DETENTION

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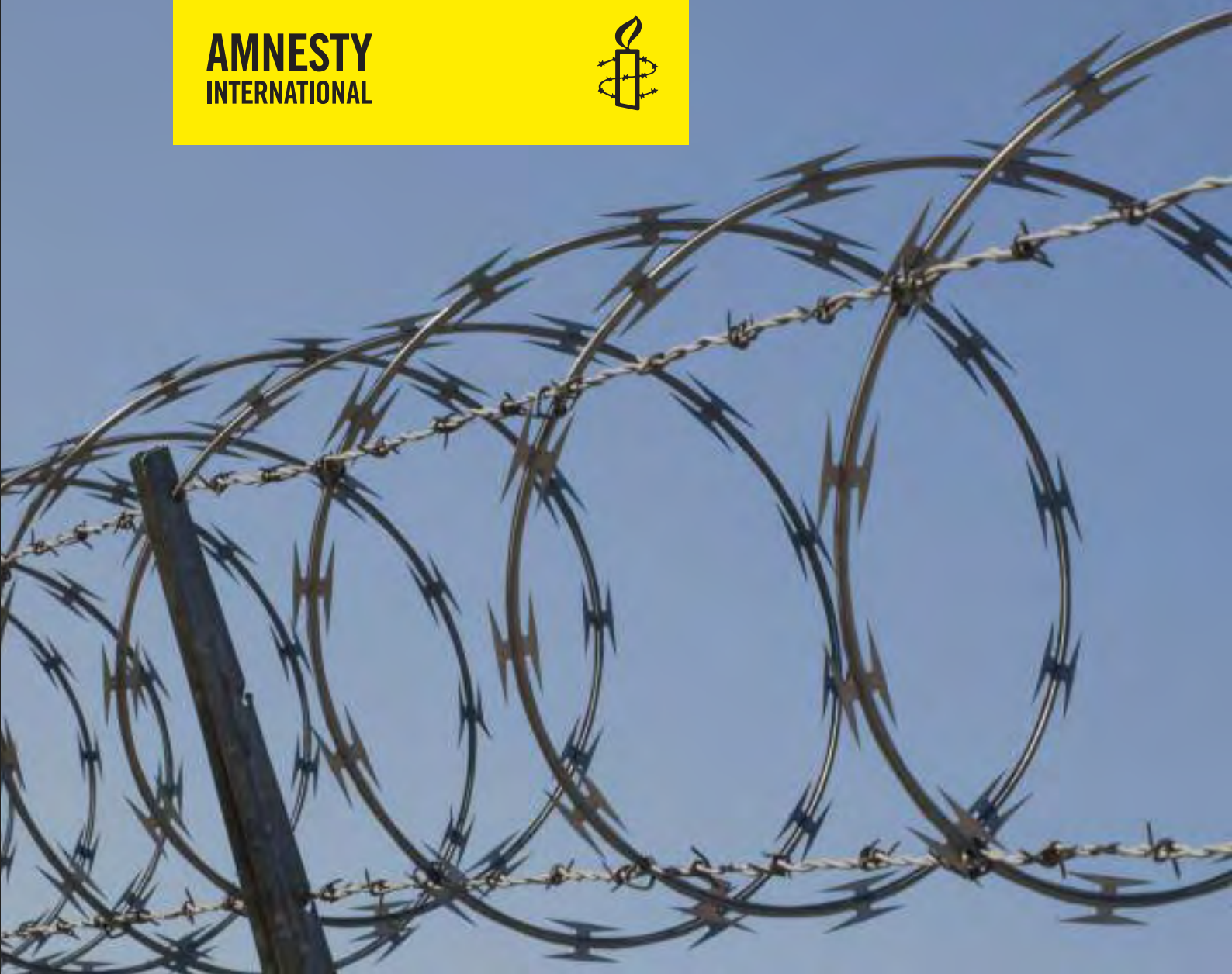

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Cover photo: Coils of contertina wire, a type of razor wire often installed around military and detention buildings, 2009.
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MAP OF EUROPE

Countries accused of hosting secret prisons: Lithuania, Poland, Romania
Countries which allowed US to use territory for abduction and rendition: Italy, Macedonia, Sweden
Countries which appear to have been involved in interrogations of people under torture: Germany, United Kingdom
Alleged secret prisons marked on map as P: Antaviliai (Lithuania), Stare Kiejkuty (Poland), Bucharest (Romania)

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INTRODUCTION

We have to acknowledge that those past human rights abuses existed. And we can't go forward without looking backwards…

US President Barack Obama in March 2010 responding to a television interviewer's question as to whether he is satisfied with military reform and the resolution of past human rights abuses in Indonesia[1]

So today I want to set out how we will deal with the problems of the past… [T]here are questions over the degree to which British officers were working with foreign security services who were treating detainees in ways they should not have done. This has led to accusations that Britain may have been complicit in the mistreatment of detainees. The longer these questions remain unanswered, the bigger the stain on our reputation as a country that believes in freedom, fairness and human rights grows.

UK Prime Minister David Cameron in July 2010 announcing the establishment of an inquiry into allegations that the UK security services were complicit in the torture of UK nationals and residents detained overseas at Guantánamo Bay or by foreign intelligence services in the aftermath of the 11 September 2001 attacks on the USA[2]

The words of US President Barack Obama and UK Prime Minister David Cameron would seem to indicate a degree of common ground in relation to truth and accountability for past human rights abuses. After nearly a decade of widespread impunity and absence of remedy for human rights violations – including enforced disappearance and torture – that have occurred in the context of US-led counter-terrorism operations, however, the legal obligation to look back and ensure full accountability for such violations has been ignored by these governments for too long.

And yet to date, the actual policy responses of the US and UK administrations to accountability for their own involvement in past human rights violations are very different.

Whereas Prime Minister Cameron has announced an inquiry into credible allegations that UK state actors were involved in the rendition, secret detention, and/or torture and other ill-treatment of a number of detainees held abroad, the US government has failed to initiate any such comprehensive investigation.[3] By resorting to secrecy and arguing that disclosure of information would threaten national security, the US government has consistently blocked attempts by individuals to obtain a remedy for the human rights violations they claim to have suffered at the hands of US actors, including agents of the Central Intelligence Agency (CIA).[4]

In contrast to the USA's systematic failure to meet its international obligation to address these past violations, there has been some notable progress toward accountability for European governments' roles in the CIA-operated rendition and secret detention programmes. Such progress has come without the co-operation of the US government and in some cases, in spite of the lack of political will and outright obstruction by some European governments. Although this report includes a short section on the USA, it focuses primarily on the "state-of-play" with respect to accountability for European states' complicity in these abusive practices.[5] The report highlights key developments in Germany, Italy, Lithuania, Macedonia, Poland, Romania, Sweden, and the United Kingdom – countries where inquiries into state complicity or legal processes aimed at individual criminal responsibility have occurred, or are currently in process.

In a June 2008 report titled *State of Denial: Europe's Role in Rendition and Secret Detention*, Amnesty International stated that "International law leaves no place to hide for European states that are legally responsible for their part in facilitating renditions and secret detention" and called on European governments implicated in US-led global counter-terrorism operations post-11 September 2001 to: "immediately open full, effective, independent and impartial investigations into the role of European officials and use of state territory in connection with renditions, secret detention and enforced disappearance, and the involvement of state agents in serious human rights abuses abroad, and make the findings and results public".[6] While the overall "scorecard" to date regarding the establishment of investigations in Europe that are truly independent and effective, as well as sufficiently public, has been disappointing, progress toward accountability gained some momentum between 2008 and 2010 as evidence of European complicity mounted – and indicated that Europe remains fertile ground for accountability.

The key impediment to onward progress in Europe with respect to holding governments accountable, bringing perpetrators to justice, and achieving redress for victims is the oft-repeated "need" for "state secrecy" in order to protect national security, which remains a serious threat to genuine accountability. Europe, however, must not become yet another "accountability-free zone", with governments eager and enabled simply to forget the past or to whitewash inquiries into their involvement in these egregious practices. If such collective amnesia or exoneration by perfunctory investigation is not challenged, Europe will be complicit in a profoundly damaging overarching violation of international law in relation to what the USA previously called the "war on terror": creating an environment of impunity for grave human rights violations and denying victims the redress to which they are so clearly entitled. Any such impunity would constitute a serious failure to respect international human rights law, with the ripple effect of undermining efforts to encourage respect for human rights by governments elsewhere in the world.

Amnesty International urgently calls on European governments to reject such impunity, to capitalize on the momentum in Europe toward accountability, and to commit in full to justice for the victims of rendition, enforced disappearance, and torture and ill-treatment in the context of the fight against terrorism in the aftermath of the 11 September 2001 attacks in the USA. Claims of state secrecy must not be used to shield governments and individuals from scrutiny for their involvement in serious human rights violations. Moreover, in order to ensure that such abuses do not occur in the future, European governments must implement reforms for the civilian oversight of national intelligence and security agencies and of foreign intelligence agencies operating on their territories. This combination of accountability, effective redress for victims and reform will help re-establish respect for human rights law and responsibility of states under that law to provide human rights protection to all persons entitled to it.

INVESTIGATION OF RENDITION AND SECRET DETENTION IS A LEGAL OBLIGATION

The legal obligation to investigate serious human rights violations is not subject to dispute. While states have a duty to protect their populations from violent attack, they must ensure that all counter-terrorism measures are implemented in accordance with their international human rights and humanitarian law obligations.[7] Renditions violate international law because they bypass judicial and administrative due process. Typically, they involve multiple human rights violations, including unlawful and arbitrary detention; torture and other ill-treatment, including violations of the *non-refoulement* obligation, which prohibits exposing individuals to a real risk of such abuse at the hands of another state; and enforced disappearance. Torture and enforced disappearance are not only grave violations of states' international legal obligations, they are also crimes under international law for which individuals may be held criminally responsible. Individuals in the CIA's "high value" detainee programme, along with many of the other victims of rendition, were held in prolonged incommunicado detention in secret places, in violation of international human rights and humanitarian law, and placed outside the protection of the law, amounting to enforced disappearance.[8]

A state is responsible for a violation of international law if it knowingly helps or assists another state to commit a human rights violation and its help or assistance has a substantial impact with respect to the perpetration of the violation or the way in which the violation occurs.[9] Knowing participation by European agents in the CIA rendition and secret detention programmes is in blatant violation of their states' legal obligations. This is true whether their contribution was active or passive, and whether or not others in government knew or authorized their activities. It also obtains in situations where European state actors should have known by the objective circumstances that human rights violations were likely to occur. In such circumstances, officials cannot simply claim that they were never informed of specific operations or acts and that the state was therefore not responsible in relation to the human rights violations in question.[10]

European states could also be responsible in relation to human rights violations committed on their territories or otherwise within their jurisdictions by foreign agents if European state actors acquiesced in or tolerated such violations. With respect to CIA counter-terrorism operations post-11 September 2001, such alleged violations included torture and other ill-treatment, enforced disappearance, or detention of a person in contravention of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).[11]

Other forms of participation that may entail a European state's responsibility, even though the abuses were carried out by states outside Europe, include violations of the *non-refoulement* obligation (knowingly handing over a person to another state where there are substantial grounds to believe that the person would face a real risk of torture or other ill-treatment, including in any "third" state to which the person is subsequently transferred), or seeking to use information obtained by torture or other ill-treatment abroad in proceedings in Europe.[12]

In addition, every European state has a positive obligation to take steps to ensure respect

within its territory for the rights and freedoms set out in the ECHR, both in terms of establishing a general legal framework for protection and in terms of specific measures to protect certain individuals from abuses at the hands of third parties. Even where the state's authority is limited in part of its territory, such as when part of its territory is occupied by another state with or without its consent, it must still take all appropriate measures that remain within its power to prevent human rights violations.[13] A state may breach its obligations not to expose anyone to the risk of torture or other ill-treatment, arbitrary detention, or enforced disappearance, simply by knowingly allowing its territory to be used by another state to commit that violation, or failing to put in place effective measures to prevent it.[14]

If individuals suffered human rights violations on US military bases located in Europe, or on US aircraft operating in European territory or in European airspace, the European state remains responsible for involvement in the violations unless it can establish that it took all appropriate measures within its power to prevent the abuse. A state that effectively voluntarily relinquishes, through a bilateral or other international agreement, its jurisdiction and legal obligation to investigate and remedy serious human rights violations that occur on its territory (for example, under the terms of a Status of Forces Agreement) may fail its general obligation to put in place an appropriate protective legal framework as required by the ECHR and other human rights treaties.

In addition to the responsibility of the state under international law, individual European officials or agents could be subject to criminal prosecution for knowingly assisting foreign agents or others to commit criminal offences linked to renditions and secret detention. With respect to torture, for example, treaties impose obligations on states where cases of torture arise within their territory or jurisdiction to either submit the case to the state's own competent authorities for the purpose of prosecution (with the UN Convention against Torture requiring that the authorities take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of the state) or extradite the accused to another state willing and able to undertake the prosecution.[15] A person does not need to know the precise crime that will be committed as a result of his or her assistance; it is enough that the person was aware that one or more crimes were likely to be committed and one of those crimes is subsequently committed.[16] Persons also can be criminally responsible even though they were not physically present when the crime was committed, or the crime was committed some time after they provided assistance.[17]

In particular, as a principle applicable to all persons under any form of detention or imprisonment, it is also prohibited for any state to take "undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person".[18] An interrogator from a European state who poses questions to a detainee, knowing that he or she is in a situation where he or she is suffering torture or other ill-treatment, risks participation or complicity in that abuse, both in terms of the international legal responsibility of the state, and his or her individual criminal responsibility.[19]

In the context of such laws and standards, this report focuses on a number of European states where allegations of state and/or individual responsibility are sufficiently credible to trigger an obligation on the state to establish and complete a full, effective, independent and impartial investigation with public findings and recommendations. In some cases, the already established evidence clearly requires that known perpetrators be brought to justice and

victims provided with full remedy and reparations. The fact that a state is not mentioned in this report does not mean that it has no obligation to investigate: any state involved in the CIA rendition and detention programmes must establish such an accountability process.

It should be emphasized that the obligation to investigate arises even in cases where individual victims cannot be identified or named. According to the jurisprudence of the European Court of Human Rights, the duty to investigate torture, for example, does not depend on the submission of a complaint; even "in the absence of an express complaint, an investigation should be undertaken if there are other sufficiently clear indications that torture or ill-treatment might have occurred".[20]

Where victims have been identified, they have a right to an effective remedy as enshrined in all major international and regional human rights treaties. The UN Human Rights Committee has affirmed that this right can never be derogated from, even during times of national emergency.[21] International law requires that remedies not only be available in law, but accessible and effective in practice. Victims are entitled among other things to equal and effective access to justice (including "effective judicial remedy") regardless of whom may ultimately be responsible for the violation; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms.[22] Full and effective reparation includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.[23]

"State secrets" or other similar grounds for non-disclosure of evidence should not be invoked in a manner that would prevent an independent, impartial and thorough investigation into allegations of serious violations of human rights, prevent accountability where such violations are established, prevent the truth emerging about serious human rights violations, or prevent those who have suffered human rights violations from accessing and obtaining an effective remedy and reparation.[24]

As this report will show, there has been progress in a number of European countries toward accountability for human rights violations committed by European governments and individual state actors in the context of the CIA-operated rendition and secret detention programmes. To date, however, not a single European government has complied in full with its international obligations to establish human rights-compliant investigations or to provide effective redress for victims of such violations.

INTERGOVERNMENTAL INVESTIGATIONS: DEVELOPMENTS AND ROUND-UP

The time has certainly come to break the conspiracy of silence around the complicity of European governments in the human rights violations which have taken place during the counter-terrorism actions since September 2001.

Thomas Hammarberg, Council of Europe Commissioner for Human Rights, 9 June 2010[25]

As a counterpoint to individual government inaction, cover-up, or delay in pursuing accountability for complicity in renditions and secret detention, intergovernmental organizations such as the Council of Europe, the European Union (EU), and the United Nations (UN) have been at the forefront of investigating human rights violations associated with the CIA rendition and secret detention programmes.

The most recent intergovernmental effort involved a group of UN "special procedures" which collaborated to produce a damning joint study of global practices in relation to secret detention in the context of countering terrorism in February 2010 (hereafter referred to as the UN Joint Study on Secret Detention).[26] A worldwide survey of current practice that included a historical overview with examples of secret detention practices in Nazi Germany, the Gulag-system in the former Soviet Union, and in the context of "disappearances" in Latin and South America in the 1970s and 1980s, the study disturbingly concluded that current practices had many features in common with secret detention abuses at those dramatic historical junctures, notwithstanding the considerable variations in political and social contexts.[27] Concluding that "the practice of secret detention in the context of countering terrorism is widespread and has been reinvigorated by the 'global war on terror'", the study identified the USA as the prime mover for resurrecting the practice among western states and alleged that several European countries aided or abetted the USA, including Italy, Lithuania, Macedonia, Poland, Romania, Sweden, and the UK.[28] Germany was additionally singled out for reportedly having interrogated a man being held in secret detention in Syria in 2002.[29]

All of these states, with the exception of Lithuania, were also identified in a 2007 Parliamentary Assembly of the Council of Europe (PACE) Committee on Legal Affairs and Human Rights report as having been complicit with the CIA in the illegal transfer of individuals to places where they were at risk of torture and/or for providing the CIA with detention facilities where individuals were held in secret and interrogated.[30] A number of additional European states were identified as having permitted aircraft operating in the context of the US rendition and secret detention programmes to land on their territories or to overfly their airspace. The PACE report was followed by resolutions and recommendations that urged all Council of Europe member states to establish independent, impartial, full, and effective investigations into their government's role in these practices; to hold accountable those responsible; to provide effective redress to victims; to ensure that evidence of serious human rights violations was not subject to the "state secrets" privilege; and to improve

democratic oversight of national intelligence services and foreign intelligence services operating on their territories.[31]

Upon learning in August 2009 that Lithuania had been publicly identified as allegedly hosting a CIA secret detention facility (see section below on Lithuania), Swiss Senator Dick Marty, who led the PACE investigation, said, "I have always believed that the 'dynamic of truth' would prevail in the face of state secrecy. But European credibility is damaged by these repeated leaks of only partial truths every few weeks or months. Let us draw a line under this, once and for all, and come clean."[32]

The PACE's work on these operations was underpinned by an inquiry commenced in 2005 by the Council of Europe Secretary General under Article 52 of the ECHR seeking information about member states involvement in renditions and secret detentions. The Article 52 inquiry concluded in 2006 that foreign intelligence agencies operated freely and with impunity in Europe. A March 2006 expert legal opinion by the European Commission for Democracy through Law (Venice Commission) concluded that European involvement in such operations was in clear violation of member states international legal obligations.[33] At the same time, research and analysis by civil society organizations, including Amnesty International and independent journalists, underscored the need for further investigation; accountability; and reparation, including effective remedy, for European states' involvement in renditions and secret detention.[34]

The 2007 report by a special committee of the European Parliament (EP), the Temporary Committee on the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners (TDIP), arrived at similar conclusions to those of the PACE report.[35] In a resolution adopted in plenary in February 2007, the European Parliament endorsed the TDIP report and urged the EU institutions and the member states to take action to shed full light, acknowledge, repair and prevent in the future the human rights violations that occurred in Europe in the context of the US rendition and secret detention programmes. The resolution instructed the EP Committee on Civil Liberties, Justice and Home Affairs (LIBE) to take action to follow-up on the work of the TDIP and stated that the Council's failure to act could be in breach of the principles and values on which the EU is based, implying the possibility of sanctions under article 7 of the Treaty on European Union (TEU).[36] In February 2009, a second EP resolution was adopted reiterating the EP's call for accountability to the Council and member states.[37] But to date, the Council and the member states have yet to act fully on the EP's recommendations, and the LIBE committee has failed to follow-up on the work of the TDIP.

In December 2009, however, the Lisbon Treaty entered into force, strengthening the EU's legal framework on human rights[38] and providing more power to the EP in the field of justice and home affairs.[39] Amnesty International believes that the Lisbon framework will provide new opportunities for progress toward accountability in Europe for EU member states' complicity in renditions and secret detention post-11 September 2001.

Recommendations

Amnesty International calls on the Council of Europe, European Union, and United Nations to continue their work on seeking accountability for human rights violations committed in the

course of the US-led rendition and secret detention programmes. To that end, Amnesty International recommends the following:

Council of Europe

- The PACE Committee on Legal Affairs and Human Rights should recommend that the Committee of Ministers formally remind Council of Europe member states of their obligations: to ensure full, effective, independent and impartial investigations with public findings and recommendations, complying in all respects with ECHR obligations, in all cases of credible allegations of human rights violations in the context of the rendition and secret detention programmes; to ensure that those suspected of responsibility are brought to justice; to provide victims of these abuses effective redress; and to refrain from invoking "state secrets" to shield them from scrutiny of their alleged involvement in serious human rights violations;

- The Committee should consider requesting that the Secretary General commence a new Article 52 inquiry into what steps member states have taken to date to ensure their compliance with these obligations;

- PACE members from relevant countries that have not established ECHR-compliant investigations should take immediate action at national level to seek accountability for their government's role in the rendition and secret detention programmes, effective redress for victims, and reform of national laws and policies to ensure that the human rights violations perpetrated in the course of these operations do not happen in the future.

European Union

- The Council of the European Union should urge member states to comply with the EP resolutions of 2007 and 2009, which call on member states to conduct full, impartial and effective investigations into allegations of complicity in the US-led rendition and secret detention programmes;

- The European Commission, as guardian of the treaties, including the EU Charter of Fundamental Rights and Freedoms, should monitor if and how relevant EU member states are abiding by the legal obligation to conduct full, impartial and effective investigations into allegations of complicity in renditions and secret detention; to afford victims of these abuses effective redress; and to ensure that the laws and policies that gave rise to the violations are reformed in order to prevent such abuses in the future;

- The European Commission should raise the issue of any candidate country's alleged complicity in the rendition and secret detention programme in the context of the enlargement process;

- The European Commission should consider proposing new EU-wide legislative and policy initiatives in the field of Justice, Freedom and Security aimed at the prevention of rendition and secret detention in the future;

- The European parliament should resume its investigation into European countries' complicity in the US-led rendition and secret detention programmes with the goal of updating the 2007 TDIP report and monitoring member state compliance with EP resolutions;

■ The LIBE committee should, as mandated by the 2007 EP resolution, follow-up on the work of the TDIP committee to ensure full public disclosure of European complicity in the CIA's rendition and secret detention programmes, and full accountability of EU institutions and member states for violations of international and European human rights law, including non-compliance with article 2 TEU and the EU Charter of Fundamental Rights.

United Nations

■ The special procedures involved in compiling the UN Joint Study on Secret Detention should request that all relevant UN member states submit a formal written reply to the study's authors, including a response in substance to the allegations and concerns expressed in the study and a description of the measures the state has taken to ensure full, effective, independent and impartial investigations with public findings and recommendations in response to the study's allegations. Written replies should also include a commitment that those suspected of responsibility will be brought to justice; a commitment to provide victims of these abuses effective redress; assurances that "state secrets" will not be invoked to shield public officials from scrutiny of their alleged involvement in serious human rights violations; and the details of the measures states are taking to ensure the effective civilian oversight of intelligence and security agencies so that such violations do not occur in the future. A public report of the responses should be made to the Human Rights Council;

■ The Human Rights Council should call on all relevant UN member states to respond favourably to such a request from the special procedures; remind all states of the unlawfulness of secret detention; and reiterate the measures states must take to prevent secret detention.

Disappearances Convention

■ Amnesty international calls on all member states that have not already done so to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, making the declarations set out in Articles 31 and 32 (recognizing the competence of the UN Committee to receive individual or inter-state complaints), and implement it in national law, in accordance with conventional and customary international law.[40]

UNITED STATES OF AMERICA: "ACCOUNTABILITY-FREE ZONE"

The lack of accountability in the USA for human rights violations committed by the US government in the context of counter-terrorism operations after the 11 September 2001 attacks in the USA is striking. This is particularly so in the case of the CIA-operated rendition and secret detention programmes. Numerous victims have come forward, each telling a story of egregious abuse. In addition to their testimonies, former and current intelligence officials have confirmed various aspects of the programmes, and other forms of evidence, such as flight logs, have also been disclosed. Despite the wealth of information in the public domain, all three branches of the US federal government – the executive, the legislative and the judicial – have failed to take the necessary action to close the accountability gap.

A series of court challenges brought in the USA by individuals claiming that they were subjected to rendition, enforced disappearance, and torture, for example, have been thwarted by the US government's reliance on the "state secrets" doctrine under US law. Disclosure of information relating to the rendition and secret detention programmes, the US government has argued, would threaten the national security of the USA. The government has succeeded in having lawsuits alleging torture and enforced disappearance halted completely based on its claims that, notwithstanding the existence of procedures normally relied upon to prevent such disclosures, there was no way for judges to decide the cases without threatening national security.

In June 2010, for example, the US Supreme Court refused to consider the case of rendition victim Maher Arar, a Canadian-Syrian dual national who was unlawfully transferred in 2003 from the USA to Syria. A Canadian judicial commission of inquiry, which concluded its work in 2006, found no basis for any allegation that Maher Arar may have been involved in terrorism-related activity; confirmed that Canadian state actors had transmitted faulty information to the USA that contributed to his subsequent unlawful transfer to Syria; and verified that Maher Arar had been tortured in Syrian custody.[41] Maher Arar subsequently was awarded 10 million Canadian dollars as compensation from the Canadian government for its role, and the inquiry and partial remedy he received are widely regarded as human rights victories.[42] The US government had argued, however, that litigating the Arar case would interfere with foreign relations and the government's ability to ensure national security.[43] The Supreme Court's refusal to hear the case brought to a close Maher Arar's efforts to seek a judicial remedy in the USA for his illegal transfer and torture.

In September 2010, the US Court of Appeals for the Ninth Circuit dismissed on "state secrets" grounds a case against Jeppesen Dataplan Inc., which alleged that this subsidiary of the Boeing corporation had provided "direct and substantial" services to the CIA for the rendition programme.[44] The lawsuit was brought by five men who claimed they were subjected to enforced disappearance, torture and other cruel, inhuman or degrading treatment at the hands of US personnel and agents of other governments as part of the rendition programme. The US government intervened in the case, arguing that the very subject matter of the lawsuit was a state secret. In support of this claim, the then-Director of

the CIA, General Michael Hayden, filed declarations in a lower court, asserting that proceeding with the case would cause "exponentially grave damage" to national security by revealing CIA methods and sources and "extremely grave damage" to the USA's foreign relations and activities by revealing which governments the CIA had co-operated with.[45]

The US Supreme Court also refused in 2007 to hear the case of Khaled el-Masri, a German national of Lebanese descent who was apprehended in December 2003 and held in secret detention in Macedonia before being handed over to the CIA and unlawfully transferred to Afghanistan in 2004 (see sections below on Germany and Macedonia).[46] The US government also argued in that case that the very subject matter of the litigation was a state secret and the US courts dismissed el-Masri's complaint on that basis, ending his years-long effort to obtain a judicial remedy in the USA. Khaled el-Masri continues to seek justice and in April 2008 filed a complaint against the USA with the Inter-American Commission on Human Rights, which the Commission accepted in August 2009.[47] The US government has yet to reply. In September 2009, Khaled el-Masri lodged an application at the European Court of Human Rights against the government of Macedonia for its role in his illegal detention in Macedonia and rendition to risk of torture (see section below on Macedonia).

Although Attorney General Eric Holder in August 2009 ordered a "preliminary review" into some aspects of the interrogations of some detainees held in the CIA's secret detention programme, this review has been narrowly framed and has been set against a promise of immunity from prosecution for anyone who acted in good faith on legal advice in conducting interrogations.[48] This falls far short of the scope of investigations and prosecutions required by binding legal obligations to which the USA is subject under international law.

Since May 2004, Amnesty International has been calling on the US authorities to establish a comprehensive, independent commission of inquiry into the USA's detention policies and practices since 11 September 2001, including the programmes of rendition and secret detention operated largely by the CIA.[49] Not only have such calls by Amnesty International and others been disregarded, but the US courts have also denied justice to the victims of these practices. The end result is that the USA remains an "accountability-free zone" as far as the CIA programmes of rendition and secret detention are concerned.[50] This in a country where its officials now tell its citizens and the world that "a commitment to human rights starts with universal standards and with holding everyone accountable to those standards, including ourselves…"[51] It will only be to the detriment of accountability elsewhere that other governments responsible for serious human rights violations can point out that the USA does not practise what it preaches.

Amnesty International welcomes the supportive rhetoric of Obama administration officials with regard to human rights, but these words are not enough. The USA is obliged under international law to prevent those who act on its behalf now and in the future from committing, participating in, tolerating, acquiescing in, or otherwise being responsible for any act of torture or other cruel, inhuman or degrading treatment, as defined under international law – as well as preventing state actors' involvement in other human rights violations such as enforced disappearance, secret detention, and arbitrary detention. The USA is also required by its international human rights and humanitarian law obligations to investigate and hold accountable those responsible for authorizing and carrying out such violations in the past, including by bringing to justice those responsible for crimes under international law.

ACCOUNTABILITY FOR EUROPEAN COMPLICITY: COUNTRY UPDATES

Each European country entry in this chapter begins with a summary paragraph of the latest developments up until the end of October 2010. The country sections generally do not review the detailed facts of individual cases, as that has been done in other places, which are amply cited. The report provides an update on the accountability process or lack thereof in each country, and presents only new information or evidence that may have come to light since late 2008.

This report does not cover every country in Europe where there has been or is an on-going accountability process, but highlights key countries where new developments have either propelled accountability processes forward or require that, in the face of new and compelling information, governments make concrete commitments to establish a human rights-compliant process to ensure accountability for their role in the US rendition and secret detention programmes.[52]

GERMANY: UNCONSTITUTIONAL RELIANCE ON STATE SECRETS UNDERMINES INQUIRY

A three-year long parliamentary inquiry completed its work in June 2009 and did not find any German state actor responsible for involvement in any rendition, enforced disappearance, or torture and ill-treatment of detainees. However, also in June 2009, the German Constitutional Court ruled that the German government's failure to co-operate fully with the inquiry violated the Constitution. The profound lack of co-operation from the German authorities in the course of the inquiry, coupled with the identification of Germany in the UN Joint Study on Secret Detention as complicit in some of these abuses, urgently requires further action on the part of the German government.

The parliamentary inquiry into Germany's alleged involvement in the US CIA-led rendition and secret detention programmes issued its report in June 2009.[53] The inquiry focused on alleged German knowledge of or involvement in the renditions of German national Khaled el-Masri from Macedonia (where he was held in secret for 23 days; see section on Macedonia) to Afghanistan in 2004; of lifelong German resident Murat Kurnaz from Pakistan to Afghanistan in late 2001 and then to Guantanamo Bay in 2002; and of German national Muhammad Zammar, who was unlawfully transferred from Morocco to Syria in December 2001.[54] The inquiry also investigated the September 2001 transfer from Bosnia and Herzegovina to Egypt of Munich-based publisher Abdel Halim Khafagy.[55]

The final inquiry report did not find any German state actor responsible for any unlawful involvement in the apprehensions, renditions, enforced disappearances, secret detention and torture and ill-treatment of German nationals and residents in the context of US-led global counter-terrorism operations in the aftermath of the 11 September 2001 attacks in the USA.[56] The report did propose reform of the oversight mechanisms for the German federal secret services and some reforms were implemented in 2009, including the addition of staff to assist the Bundestag Parliamentary Control Commission (Parlamentarisches

Kontrollgremium); provision for the Commission to request that staff from the intelligence agencies testify at hearings; provision to make a dissenting statement public if the Commission grants permission; and the right to receive a direct and timely response from the government to Commission requests/queries.[57] The German government retains the right to decline to provide information in a broadly drawn set of circumstances: to protect sources, the privacy of third persons, or confidentiality with respect to the decision-making processes of the federal government.[58]

During the inquiry proceedings, which began in 2006, dozens of witnesses gave testimony, including former ministers and the former leadership of the German secret services. Some members of German opposition parties, however, lodged a court challenge, arguing that the German government's lack of co-operation with the parliamentary inquiry – by its failure to disclose relevant information allegedly in order to protect the welfare of the state – breached the German Constitution. On 17 June 2009, the German Constitutional Court ruled that the government's failure to co-operate with the inquiry violated the German Constitution by impeding the parliament's right as an oversight body to investigate the government.[59] In particular, the Constitutional Court highlighted the government's failure to disclose some documents or parts of documents requested by the inquiry in the cases of Khaled el-Masri and Murat Kurnaz, and the extremely limited authorization granted by the government to some witnesses to give testimony.[60]

Amnesty International has expressed deep concern that in light of this judicial decision – ruling that the government's actions restricting the information available to the inquiry were unconstitutional – the legitimacy of the inquiry and its conclusions have been fatally undermined.[61]

Concerns about German complicity in renditions and secret detention arose again in the context of the February 2010 UN Joint Study on Secret Detention. The UN joint study specifically identified Germany as a government complicit in secret detention in terms of "knowingly… taking advantage of the situation of secret detention by sending questions to the State which detains the person or by soliciting or receiving information from persons who are being kept in secret detention" referring to the case of Muhammad Zammar, who was reportedly interrogated by German agents while being held in secret detention in Syria in November 2002.[62] Evidence before the German parliamentary inquiry confirmed that said interrogation took place, and also revealed that German agents had additionally sent questions to the Syrians for use by Syrian agents in their interrogations of Muhammad Zammar.[63]

During the parliamentary inquiry, many witnesses, among them the then-presidents of the Federal Criminal Police Office (Bundeskriminalamt, BKA) and the Federal Intelligence Service (Bundesnachrichtendienst, BND) and officials from the Chancellory, including the then co-ordinator of German intelligence services, Frank-Walter Steinmeier, said that they were fully aware of the use of torture in Syrian prisons and during interrogations.[64] According to one inquiry witness who was part of the German delegation that conducted the interrogation in Syria, Muhammad Zammar told the German intelligence agents who interrogated him that he had been ill-treated by the Syrians, indicating that the German government not only took advantage of his detention to question him, but also may have been involved in violations related to Muhammad Zammar's alleged ill-treatment at the hands of the Syrians.[65]

The UN joint study also contains information of conflicting accounts by the German government during the course of the inquiry regarding when the German authorities became aware of the renditions and/or detentions of Murat Kurnaz and Khaled el-Masri.[66] It is important to note that the UN joint study, issued in February 2010, named Germany as a country of concern despite the fact that the UN experts had access to the German parliamentary inquiry report, which, as noted above, did not find any German actor responsible for involvement in renditions and secret detention just the year before.

In a February 2010 letter, Amnesty International called for the reopening of the German inquiry – or the initiation of some other human rights compliant accountability process – with the full support and co-operation of the German government. Interior Minister Thomas de Maizière responded by letter in April 2010 stating that Germany did not consider the rendition and secret detention programmes as legitimate tools in the fight against terrorism, and claiming that German state actors acted lawfully in the context of all the counter-terrorism operations under review by the inquiry. With respect to the June 2009 German Constitutional Court decision, the Interior Minister stated that it had prospective application only; that is, it applied only to future instances where there might be a request for government information in the context of a parliamentary inquiry. He also noted that certain reforms aimed at greater control over the federal secret services had been introduced.

Recommendations

Amnesty International reiterates its call to the German government to establish a human rights compliant accountability process that will address these outstanding issues. The unconstitutional actions of the German authorities in the course of the German parliamentary inquiry, in combination with outstanding valid questions about the actions of its state agents such as those detailed in the UN Joint Study on Secret Detention, are strong indicators that the accountability process in Germany did not meet Germany's international obligations.

ITALY: FIRST CONVICTIONS OF CIA AND FOREIGN AGENTS

An Italian court handed down the first and only convictions to date in relation to human rights violations in the context of the CIA rendition and secret detention programmes. Convicted were 22 CIA agents and one US military official in absentia, and two Italian intelligence operatives, all for their involvement in the abduction of Egyptian national Usama Mostafa Hassan Nasr (better known as Abu Omar) from a Milan street in February 2003. Abu Omar was subsequently unlawfully transferred from Italy to Egypt where he was held in secret and allegedly tortured. Eight other US and Italian defendants were not convicted as the court held that they were protected either by diplomatic immunity or the "state secrets" privilege. The case has been appealed by the prosecutor, who has challenged the interpretation and application of the "state secrets" privilege and the scope of diplomatic immunity.

The convictions in November 2009 of 23 US nationals – including Milan CIA station chief, Robert Seldon Lady, who was sentenced to eight years – and two Italian military intelligence agents for the abduction of Abu Omar from a Milan street in February 2003 marked a significant step forward in terms of efforts to achieve accountability for Abu Omar's mistreatment.[67] Three other US nationals, including the then CIA station chief in Rome, Jeffrey Castelli, were granted diplomatic immunity and the cases against them were dismissed. Two Italian military intelligence agents (of the then-called Servizio per le Informazioni e la Sicurezza Militare or SISMI) were also convicted, and sentenced to three years. The cases against the former head of SISMI, Nicolò Pollari, and his deputy, Marco

Mancini, were dismissed based on the "state secrets" privilege, as were the cases of three other Italians.

The effectiveness and fairness of the prosecution were undermined, however, by successive Italian governments' refusal to transmit the extradition warrants for the US nationals to the US government, leaving the trial to commence *in absentia* (in the absence of the accused US nationals). Although trials *in absentia* are permitted in Italian law, trial in the absence of the accused is not permitted under international human rights law in the circumstances present in this case. Amnesty International believes that an accused should be present in court during a trial. If those US nationals who were convicted *in absentia* are apprehended in the future, they should be entitled to a new trial before a different judge and to the presumption of innocence in that new trial.

None of the defendants in the trial were charged with the unlawful transfer to Egypt or complicity in the alleged torture and ill-treatment of Abu Omar. The charges levelled against the defendants related only to Abu Omar's "kidnapping", a crime under Italian law. Torture and complicity in torture are not specified crimes under the Italian penal code.

In the course of the trial, the Italian daily *Il Giornale* quoted Roberty Seldon Lady as claiming, "I'm not guilty. I'm only responsible for carrying out orders that I received from my superiors".[68] Although he denied responsibility, Robert Seldon Lady also stated, "When you work in intelligence, you do things in the country in which you work that are not legal. It's a life of illegality ... But state institutions in the whole world have professionals in my sector, and it's up to us to do our duty."[69] Regarding Abu Omar's abduction, he said, "Of course it was an illegal operation. But that's our job. We're at war against terrorism… I console myself by reminding myself that I was a soldier, that I was in a war against terrorism, that I couldn't discuss orders given to me."[70]

The Italian government invoked the "state secrets" privilege throughout the trial in an attempt to shield the activities of its intelligence agency from judicial scrutiny. Although it refused to accept the argument that state secrecy required extremely broad application in the Abu Omar case, the Italian Constitutional Court did rule in March 2009 that much of the evidence against particular defendants, particularly high-level officials in SISMI, was covered by the "state secrets" doctrine and could not be admitted at trial.[71] The Constitutional Court stated that judicial authorities were free to investigate, ascertain, and judge upon a criminal act – that is, the abduction – but could not base their determinations upon evidence relating to the relations between the intelligence services of the two countries. The Court went on to state expressly that such relations covered not only the general and strategic guidelines for co-operation between the services, but also the exchanges of information and the acts of reciprocal assistance undertaken in pursuance of specific operations. The Constitutional Court also stated that public officials could raise the "state secrets" privilege before judicial authorities, whether they were witnesses or defendants. The ruling was a blow to the prosecution, which had argued that the "state secrets" privilege should not be used as a shield to cover-up government complicity in egregious human rights violations.

When the court issued the written judgment in February 2010, Judge Oscar Magi noted that it was likely that the Italian spy agency knew about the Abu Omar operation, but he was barred from ruling against high-level SISMI officials due to the "state secrets" privilege.[72]

The Milan prosecutor, Armando Spataro, appealed the decision on 18 March 2010. The primary ground for the appeal focused on Judge Magi's interpretation and application of the Constitutional Court ruling on the "state secrets" privilege.[73] The appeal argued that a more restrictive interpretation of the Constitutional Court's ruling would have complied with the Italian Constitution and would have had a less onerous impact with respect to the exclusion of evidence against high-level SISMI officials, including Nicolò Pollari. According to the prosecutor, the Constitutional Court's ruling only set out general guidelines with respect to the application of the "state secrets" privilege to relations between the two intelligence services. The prosecutor argued that exchanges of information between agents that may be evidence of criminal activity, as a more specific matter, should not have the protection of the "state secrets" privilege as the commission of a crime could not be said to be the subject of "relations" between the intelligence services. Consequently, the "state secrets" privilege would not cover any directives by top SISMI officials relating to the crime under Italian law of kidnapping.

Regarding the CIA agents whose cases were dismissed based on diplomatic immunity, the prosecutor challenged the trial court ruling by referencing article 39(2) of the Vienna Convention on Diplomatic Relations: "When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist".[74] The prosecutor argued that insofar as the acts of CIA officials purporting to serve in Italy as diplomats were at issue in the case, the acts had not in fact been performed "in the exercise of [their] functions *as a member of the mission*" but rather as *intelligence* agents. Consequently, in the appeal the prosecutor asked for the conviction of the CIA officials and the issuance of new arrest warrants against them. The appeal proceedings commenced in October 2010.[75]

Abu Omar and his wife were awarded a preliminary sum as compensation at the end of the criminal trial (€1 million and €500,000 respectively). The exact sum will be determined in separate civil proceedings. Such proceedings can commence only after the criminal trial and all appeals have been concluded.

Recommendations

Amnesty International calls on the Italian government to co-operate in full with the on-going legal proceedings surrounding Abu Omar's case, including by refraining from invoking the "state secrets" privilege to shield from scrutiny alleged criminal acts committed by Italian state actors. Moreover, it reiterates its call for the government to establish an independent, impartial, full and effective inquiry into any other role Italy may have played in other aspects of the CIA rendition and secret detention programmes.

LITHUANIA: CIA SECRET PRISON REVEALED FOR FIRST TIME

A Lithuanian parliamentary inquiry concluded in December 2009 that CIA secret prisons existed in the country, but stopped short at determining whether detainees were actually held there. The two secret sites were subsequently visited in June 2010 by a delegation from the European Committee for the Prevention of Torture (CPT). In January 2010, the Lithuanian Prosecutor General's office opened a criminal investigation into state actors' alleged involvement in the establishment and potential operation of the sites. The Lithuanian criminal investigation is on-going.

The spotlight was turned on Lithuania in August 2009 when US-based *ABC News* quoted unnamed former CIA sources as saying that Lithuania had provided a detention facility outside Vilnius where "high value" detainees had been held in secret by the CIA until late 2005.[76] Lithuania had not been publicly identified previously by the media or any intergovernmental or non-governmental organization as a country that had allegedly hosted CIA secret prisons. The day after the media revelations, however, Swiss Senator Dick Marty, special rapporteur on secret detentions for the PACE's Legal Affairs and Human Rights Committee, publicly stated that his own confidential sources appeared to confirm the report of a secret prison in Lithuania.[77] Within days, Lithuanian President Dalia Grybauskaite called for the establishment of a special parliamentary commission to address the allegations.[78] Amnesty International wrote to President Grybauskaite on 28 August 2009 urging the government to ensure that any such inquiry would be independent, impartial, full, and effective.

On his own initiative, Arvydas Anušauskas, the chairman of the Lithuanian parliamentary Committee on National Security and Defence, lodged confidential inquiries in September 2009 regarding the secret prison allegations with a number of Lithuanian state institutions, among them the State Security Department (SSD), the Ministries of Justice and Interior, and the Civil Aviation Administration. The responses from the state institutions were never made public. In October 2009, a news release from the Committee on National Security and Defence indicated that the Ministry of Foreign Affairs had requested information from the US authorities regarding the secret facilities.[79] A joint meeting of the parliamentary Committee on National Security and Defence and the Committee on Foreign Affairs was then convened. Without making any of its deliberations public, the committees subsequently issued a joint statement concluding that that there was insufficient information to commence a parliamentary inquiry.[80]

The secrecy surrounding this initial "inquiry", coupled with the refusal to recommend a full parliamentary inquiry, indicated that Lithuania might go the route of other European governments, most noticeably Romania (see section below on Romania), and decline to engage in any meaningful way to investigate fully the serious allegation that a secret detention facility existed on its territory.

The visit to Lithuania of Council of Europe Commissioner for Human Rights Thomas Hammarberg in October 2009, however, appears to have triggered a second wave of activity in relation to investigating the secret prison allegations. During Commissioner Hammarberg's visit, he and President Grybauskaite publicly expressed skepticism about the first inquiry, with the President saying that she had "indirect suspicions" that the prisons existed, and both officials calling for a serious investigation as a matter of necessity.[81]

On 5 November, the Lithuanian parliament mandated the Committee on National Security and Defence to conduct a parliamentary inquiry and present findings to the parliament by 22 December. The terms of reference for the parliamentary committee included three questions:

1. *Were CIA detainees subject to transportation and confinement on the territory of the Republic of Lithuania?*

2. *Did secret CIA detention centres operate on the territory of the Republic of Lithuania?*

3. *Did state institutions of the Republic of Lithuania (politicians, officers, civil servants) consider the issues relating to the activities of the CIA with respect to the operation of detention centres on the territory of the Republic of Lithuania, and the transportation and confinement of detainees on the territory of the Republic of Lithuania?*[82]

Notably, the inquiry's mandate did not include the question of whether detainees who may have been held in the alleged secret prisons were tortured and ill-treated under interrogation.

In the course of the parliamentary inquiry's work, *ABC News* reported that it had identified the location of one of the alleged secret prisons, 20 km from Vilnius, in a converted horseback riding facility. Citing unnamed current Lithuanian government and former CIA officials, the news report stated that the CIA had built an interior concrete structure within the facility – a building within a building – to hold up to eight "high value detainees". A spokesman for the CIA refused to comment on the prison, stating that "This agency does not discuss publicly where detention facilities may or may not have been".[83]

The CIA's co-operation, however, was not necessary. The parliamentary inquiry's final report, released on 22 December 2009, confirmed the *ABC News* reports, and concluded that secret detention facilities had, in fact, existed – a firm rebuke to those Lithuanian state actors who sought to obstruct the first inquiry and whitewash Lithuania's involvement in CIA operations. The inquiry report, approved unamended by the Lithuanian parliament as a whole in January 2010, included the following key findings about CIA activities, supported by Lithuanian state actors, on the territory of the Republic of Lithuania territory between 2003 and 2005:

- Lithuanian officials participated in the USA's rendition and secret detention programmes, which were operated by the CIA;

- A number of planes operating in the context of the CIA rendition programme transited over Lithuanian airspace and at least six landings occurred on Lithuanian territory;

- On one occasion, a customs officer tried to approach a plane but was prevented by security personnel. The inquiry committee established that a person had exited that plane and entered a car, which sped away, but could not establish the make of the vehicle, the identity of the person, or the car's destination. No other evidence was presented to the committee to establish that others exited the aircraft that landed on Lithuanian territory;

- The CIA requested that the SSD assist with the preparation of detention facilities that would house persons suspected of terrorism-related activities;

- Two locations were prepared to receive suspects: one was not used (Project No. 1), and with respect to the other at Antaviliai, outside Vilnius, the committee stated that it could not establish, based on the information available to it, whether it was ever used to actually house prisoners (Project No. 2);

- Although it could not be determined that persons had been held in Project No. 2, "the layout of the building, its enclosed nature and protection of the perimeter as well as fragmented presence of the SSD staff in the premises allowed for the performance of actions by officers of the partners [i.e. CIA] without the control of the SSD and use of the infrastructure at their discretion";[84]

- High-level Lithuanian government officials were not informed about the SSD's participation in these specific activities.[85]

The narrow remit of the inquiry precluded the inquiry committee from arriving at any conclusions regarding human rights violations that may have occurred in the course of these activities, despite rigorous investigations by a number of highly credible international bodies (for example, the PACE and TDIP reports) and the release of other documents (for example, from information contained in the International Committee of the Red Cross (ICRC) report on secret detainees and the CIA's own 2004 Inspector General's report; see section below on Poland) concluding that the CIA-operated rendition and secret detention programmes involved serious human rights violations, including the torture and other ill-treatment of individuals.

The key recommendation in the inquiry's final report was a proposal that the Prosecutor General's Office investigate whether the acts of three former senior SSD officials – Mečys Laurinkus, former director general of the SSD (1998-April 2004); Arvydas Pocius, another former director of the SSD (April 2004-December 2006); and Dainius Dabašinskas, former deputy director general of the SSD (December 2001-August 2009) – amounted to the criminal misuse of office or abuse of powers under Lithuanian law.

The inquiry process and final report caused a political firestorm in Lithuania. The then chief of the SSD, Povilas Malakauskas, resigned on 15 December 2009, one week prior to the release of the inquiry report. Arvydas Anušauskas, the head of a parliamentary committee investigating the alleged sites, told the media that the SSD head's resignation was "partially connected" to the inquiry and indicated that Povilas Malakauskas had not fully co-operated with the inquiry.[86] On 16 December 2009, Lithuanian President Grybauskaite recalled Mečys Laurinkus from Tblisi, where he was serving as Lithuanian ambassador to Georgia.[87] Then Foreign Minister Vygaudas Usackas resigned on 22 January 2010, after a public disagreement with President Grybauskaite over whether detainees were ever actually held in a secret prison on Lithuanian territory.[88]

The UN Joint Study on Secret Detention issued in February 2010 was the first public intergovernmental report to include independent evidence that Lithuania was incorporated into the CIA rendition and secret detention programmes. By analyzing "data strings", the study confirmed that planes operating in the context of the CIA rendition and secret detention programmes had landed in Lithuania under cover of "dummy" flight plans:[89]

> *"Two flights from Afghanistan to Vilnius could be identified: the first, from Bagram, on 20 September 2004, the same day that 10 detainees previously held in secret detention, in a variety of countries, were flown to Guantanamo; the second, from Kabul, on 28 July 2005. The dummy flight plans filed for the flights into Vilnius customarily used airports of destination in different countries altogether, excluding any mention of a Lithuanian airport as an alternate or back-up landing point".*[90]

In January 2010, Amnesty International wrote to the Lithuanian Prosecutor General about the inquiry committee's proposal that a criminal investigation be initiated by his office. The letter noted that the admissions in the parliamentary inquiry report that 1) Lithuanian state actors assisted the USA by permitting overflights and landings of aircraft operating in the context of the rendition programme and 2) a detention facility was constructed at the behest of the CIA for the secret imprisonment of terrorism suspects, constituted strong *prime facie* evidence that human rights violations had occurred. The Lithuanian government thus was legally obligated to conduct a criminal investigation to determine possible criminal liability for these activities, *including* any human rights violations that may have occurred in the course of these operations.

In March 2010, the Lithuanian Prosecutor General wrote to Amnesty International saying that a pre-trial investigation had been initiated by the Prosecutor General's office on 22 January 2010 based on the evidence of possible criminal acts committed by Lithuanian state officials under Article 228 (Abuse of Official Position) of the Lithuanian criminal code.[91] With respect to the knowledge of or involvement in alleged human rights violations by Lithuanian state actors, the Prosecutor General assured Amnesty International that there was no limit on the scope of the investigation and that should his investigation reveal information of other criminal acts, the scope of the investigation would be expanded.

In the course of the parliamentary inquiry, members of the inquiry committee visited the sites of Project No. 1 and Project No. 2. The Lithuanian authorities refused to grant permission to the media and civil society actors to visit the sites. In June 2010, however, the European Committee for the Prevention of Torture (CPT) – the monitoring body that comprises the "non-judicial preventive machinery" under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, to which Lithuania is a signatory – issued a news release stating that a CPT delegation had visited both sites during a visit to Lithuania from 14-18 June.[92]

The CPT's landmark visit signified the first time that an independent monitoring body had visited a secret prison established by the CIA in Europe in the context of the US government's global counter-terrorism operations and made that visit known to the public. The CPT operates on the principle of confidentiality between the monitoring body and the state. CPT reports on its visits thus require the agreement of the state that has been visited in order for the CPT to publish the report.

Comments attributed to Prime Minister Andrius Kubilius on a visit to the USA in May 2010, however, gave cause for concern that the political will to get at the truth about the secret sites – and whether and when persons were held in them and how they were treated – was waning. At a press conference with US Secretary of State Hillary Clinton, a reporter asked the Prime Minister how the US government was going to co-operate to resolve the issue of the CIA secret prison in Lithuania. The Prime Minister replied, "Well, I think that all the investigations which we were able to do were done in Lithuania by Lithuanian Parliament, and we have nothing to add. And if some additional information will come, we shall come back to conclusions which were made earlier. So that's an issue which is closed in Lithuania and there is nothing to add."[93]

On 21 September 2010, UK-based NGO Reprieve wrote to the Lithuanian Prosecutor General

alleging that Zayn al-Abidin Muhammad Husayn – aka Abu Zubaydah – had been held in secret detention in Lithuania sometime between 2004 and 2006.[94] The letter claimed that after being held in Thailand, Abu Zubaydah was transferred on 4 December 2002 to a secret detention site in Szymany, Poland (see section below on Poland). He was held at Szymany for almost ten months, the letter alleged, and then transferred in September 2003 to Guantanamo Bay, from which he was subsequently transferred to Morocco in 2004.[95] The letter claimed that Reprieve had received information from an unspecified source that Abu Zubaydah had then been held in a secret CIA prison in Lithuania between Spring 2004 and his second rendition to Guantanamo Bay in September 2006.[96] In response, President Grybauskaite is reported to have stated that any information regarding persons held in the CIA secret sites must be taken up and reviewed in the USA, implying that the co-operation of the US government would be required in order for Lithuania to move forward toward accountability for its role in the CIA rendition and secret detention programmes.[97]

Recommendation

Amnesty International urges the Prosecutor General's Office to continue rigorously to investigate the secret sites allegations in order to determine whether and when detainees were held in the facilities, how they were transported to and from Lithuania, details about their treatment in secret detention, and which Lithuanian state actors are responsible for direct involvement or complicity in any human rights violations that may have occurred in the course of these operations. The Lithuanian government should co-operate in full with the on-going investigation. The Lithuanian authorities should continue the generally transparent manner with which they have thus far addressed the allegations of having hosting secret prisons, and grant permission to the CPT to publish the report on its visit to Lithuania when the report is complete.

MACEDONIA: EUROPEAN COURT TO CONSIDER FIRST RENDITION CASE

Efforts to hold the Macedonian government accountable for its role in the unlawful detention in Macedonia and subsequent CIA-led rendition to Afghanistan in 2004 of German national Khaled el-Masri gained momentum in September 2009 when Khaled el-Masri lodged a case against Macedonia at the European Court of Human Rights. The European Court communicated Khaled el-Masri's application to the Macedonian government in October 2010 for the government's observations. The landmark application represents the first time the European Court is likely to consider the merits of a case involving a Council of Europe member state's alleged complicity in the CIA rendition and secret detention programmes.

On 31 December 2003, Khaled el-Masri – a German national of Lebanese descent – was apprehended by Macedonian law enforcement officials at the Serbian-Macedonian border. They confiscated his passport, detained him for a few hours, and then took him to a hotel in Skopje where he was held under armed guard for 23 days, interrogated, and repeatedly denied consular access and the ability to communicate with his wife and family.He described how he was handcuffed and blindfolded, handed over to the CIA on 23 January 2004 at the Skopje airport where he was beaten, had his clothes cut-off and an object inserted into his anus, and was placed in a diaper. He was then hooded, dressed in a jumpsuit, and shackled before being put on a plane, drugged and transferred to Kabul, Afghanistan, where he remained until his release in Albania four months later. During his detention in Afghanistan, Khaled el-Masri was allegedly beaten, held in inhumane conditions, and force fed following a hunger strike.[98] He was never charged or brought before a judge.

Khaled el-Masri's efforts to hold accountable the US government for its direct and indirect involvement in his apprehension and illegal detention in Macedonia and his rendition to detention and ill-treatment in Afghanistan have failed. Courts in the USA have dismissed his case on the basis of the "states secrets" privilege. A German parliamentary inquiry concluded in July 2009 that neither the German government nor its agents were involved in any manner in the human rights violations allegedly perpetrated against Khaled el-Masri.[99] A case against the German government challenging its refusal to transmit to the US authorities a request for the extradition of 13 CIA agents alleged to have been involved in Khaled el-Masri's rendition remains pending, as does his petition at the Inter-American Commission on Human Rights (see section on USA above). In May 2010, Spanish prosecutors petitioned a Spanish judge to authorize the issuance of arrest warrants for the 13 CIA agents alleged to have been involved in the rendition of Khaled el-Masri based on the allegation that the plane on which the agents were travelling made a stopover in Palma de Majorca before proceeding on to Skopje.[100]

In October 2008, Khaled el-Masri submitted a request with the Office of the Skopje Prosecutor asking the prosecutor to open a criminal investigation into the human rights violations Khaled el-Masri suffered in Macedonia. The request alleged that unnamed personnel of the Macedonian Ministry of the Interior were responsible for his unlawful detention and for the crime of torture or other cruel, inhuman, or degrading treatment or punishment. To Amnesty International's knowledge, the prosecutor has taken no action on the request to date, and the statutory time limit for commencing a criminal case has now expired. Khaled El-Masri filed a civil lawsuit in January 2009 for damages against the Macedonian Ministry of Interior in relation to his unlawful abduction and ill-treatment by Interior Ministry personnel in January 2004. The civil case is still pending.

Under the auspices of the Open Society Justice Initiative (OSJI), Khaled el-Masri has sought justice in the European Court of Human Rights. On 21 September 2009, he lodged an application with the Court alleging that Macedonian state actors were directly responsible for his unlawful detention in Macedonia; his ill-treatment in detention in Macedonia; and handing him over to the CIA with the knowledge that he would be unlawfully transferred, detained, and at risk of torture and ill-treatment in Afghanistan – all violations of Macedonia's obligations under the ECHR.[101] The Macedonian government has previously consistently denied that Khaled el-Masri was held illegally on its territory and handed over to the CIA, pointing to its formal response to the Council of Europe Secretary General's Article 52 inquiry and the May 2007 conclusions of a domestic parliamentary committee that Macedonian law enforcement and intelligence agents had not abused their powers with respect to his apprehension and detention.[102]

The European Court case advanced in October 2010, when the Court communicated Khaled el-Masri's application to the Macedonian government for its observations.[103]

The UN Joint Study on Secret Detention identified Macedonia as liable for a specific form of complicity "where a State holds a person shortly in secret detention before handing them over to another State where that person will be put in secret detention for a longer period."[104] While this type of complicity in an enforced disappearance is not expressly addressed by the text of the ECHR, Khaled el-Masri's alleged deprivation of liberty in Macedonia, ill-treatment at the hands of the CIA in Macedonia, and unlawful transfer to risk of torture and ill-treatment in Afghanistan would all be violations of Macedonia's obligations under the ECHR.

Recommendation

Amnesty International calls on the government of Macedonia to disclose all relevant evidence in the case of Khaled el-Masri to the European Court. Khaled el-Masri's apprehension without charge, detention incommunicado in an unofficial place of detention for 23 days, and transfer to CIA custody unquestionably entitle him to effective redress for the violations he has alleged he suffered at the hands of Macedonian agents, including compensation, rehabilitation, restitution, just satisfaction, and guarantees of non-repetition. In the context of US-led counter-terrorism operations in Europe in 2004, any state actor knowingly transferring a person accused of involvement in terrorism to CIA custody, especially outside of any due process, would or should have been aware that the person would face a real risk of torture or other ill-treatment as a result, making the transfer unlawful. Those responsible for any human rights violations related to Khaled el-Masri's case must be held accountable and where possible responsibility for crimes under international or national law is identified, cases should be referred to the authorities in charge of criminal prosecutions in order that they initiate proceedings to fulfil the obligation to bring perpetrators to justice. Macedonia should establish a human rights compliant inquiry into any and all aspects of its involvement in the rendition and secret detention programmes.

POLAND: EVIDENCE MOUNTS IN SECRET PRISON INVESTIGATION

In response to freedom of information requests, new evidence of Polish complicity in the US-led rendition and secret detention programmes came in 2009-2010 from the Polish Air Navigation Services Agency (PANSA) and the Polish Border Guard Office. A criminal investigation, initiated by the Appeal Prosecutor's Office in Warsaw in 2008, has never made public its terms of reference or timeline. In September 2010, the Prosecutor's Office publicly confirmed that it was investigating claims by Saudi national Adb al-Rahim al-Nashiri that he had been held in secret detention in Poland in 2002-2003. Abd al-Rahim al-Nashiri was granted formal status as a victim by the Prosecutor's Office in October 2010. Also in October 2010, the UN Human Rights Committee called on Poland to ensure that any inquiry into the secret prison allegations had full investigative powers to call witnesses and compel the production of documents.

In compliance with Poland's Statute on Access to Public Information, PANSA released 19 pages of raw flight data to the Polish Helsinki Foundation for Human Rights (HFHR) and the Open Society Justice Initiative (OSJI) in December 2009.[105] The data revealed not only that planes operating in the context of the US rendition and secret detention programmes had landed on Polish territory – mainly at Szymany Airport, near the alleged site of a CIA-operated secret detention facility at Stare Kiejkuty – but also that PANSA had actively collaborated with the CIA to create "dummy" flight plans to cover-up the true destinations of some of the flights: some flight plans listed Warsaw as the destination when in fact the plane had landed at Szymany.[106] According to the data, PANSA also assisted in navigating aircraft into Szymany on two occasions without having received any official flight plans at all.[107]

After eight years of consistent and often vehement denials of any involvement in CIA counter-terrorism operations, the release of the flight data from PANSA marked the first time that a Polish government agency officially confirmed the allegations of Polish involvement in the CIA's rendition programme.[108]

Further confirmation of Polish involvement in these operations came in July 2010 with information released to the HFHR from the Polish Border Guard Office indicating that between 5 December 2002 and 22 September 2003 seven aircraft operating in the context

of the CIA's rendition programme landed at Szymany airport.[109] On five of the flights, passengers were aboard on arrival, but on departure only the crew remained on board. Another plane arrived with seven passengers, but departed with four. A plane that arrived on 22 September 2003, landed at Szymany with no passengers, but departed with five passengers on board and continued on to Romania (see section below on Romania).[110]

The official information about passenger numbers partially resolved the question raised in an interview on Polish radio in February 2009 during which prosecutors from the State Prosecutor's Office publicly acknowledged that they had evidence that 11 flights had landed in Poland, but also stated that they had no evidence that any passengers were aboard.[111] It is also consistent with the claims of unnamed Polish intelligence officials who told the Polish daily *Dziennik* in September 2008 that the CIA had operated a secret prison inside a military intelligence training base in Stare Kiejkuty in north-eastern Poland near Szymany airport.[112]

The findings of the PACE and TDIP reports, in combination with the new evidence disclosed between 2008 and 2010, stand in stark contrast to the conclusions of a 2005 internal inquiry by the Parliamentary Special Services Committee (Komisja do Spraw Służb Specjalnych), which never made its report public, but categorically denied Poland's involvement in the CIA's rendition and secret detention programmes.[113]

Some commentators have analyzed the Border Guard Office information and speculated that the flight landing dates in Poland coincided with the capture and/or transfer of so-called "high value detainees" who the US government has acknowledged were held in secret prisons abroad.[114] Intergovernmental, non-governmental and press reports had previously identified persons that unnamed CIA sources claimed were held in a Polish secret detention facility. Those names included Abu Zubaydah, Khalid Sheikh Mohamed, and Ramzi bin al-Shibh, among others.[115]

Analysis contained in the February 2010 UN Joint Study on Secret Detention, supported by the statements of confidential sources, gave credence to the notion that one of the secret detainees held in Poland was Abd al-Rahim al-Nashiri, a Saudi national alleged to have masterminded the bombing of the USS Cole, and who is currently detained and awaiting trial by military commission in Guantanamo Bay.

The UN Joint Study on Secret Detention specifically linked information contained in the CIA Inspector General's (IG) report of May 2004, "Counterterrorism Detention and Interrogation Activities (September 2001 – October 2003),"[116] – the unclassified version of which was issued in August 2009 – regarding Abd al-Rahim al-Nashiri's questioning in a secret facility under "enhanced interrogation techniques", including "waterboarding" and stress positions, with information given directly to the authors of the UN study by unnamed US sources:

> *"Two US sources with knowledge of the HVD programme informed the [UN] Experts that a passage [of the IG report] revealing that the '[e]nhanced interrogation of Al-Nashiri continued through 4 December 2002' and another, partially redacted, which stated, 'However, after being moved [redacted] Al-Nashiri was thought to have been withholding information', indicate that it was at this time that he [Al-Nashiri] was rendered to Poland. The passages are partially redacted because they explicitly state the facts of Al-Nashiri's rendition – details which remain classified as 'Top Secret'".*[117]

The CIA IG's report included graphic descriptions of how between 28 December 2002 and 1 January 2003 – during the time it has been alleged that Adb al-Rahim al-Nashiri was held in secret detention in Poland – one "debriefer" (interrogator) threatened al-Nashiri by racking an unloaded handgun near his head and a separate time by holding a bitless power drill up to his head, while al-Nashiri stood naked and hooded, and revving up the drill.[118] In another instance, the debriefer threatened to bring Abd al-Rahim al-Nashiri's family to the detention facility believing that al-Nashiri would infer that this meant that women family members would be sexually assaulted.[119] The IG's report labelled these techniques as "unauthorized" and referred the case to the criminal division of the US Department of Justice, which declined to prosecute.[120]

In September 2010, the *Associated Press* reported that the interrogator who had threatened Abd al-Rahim al-Nashiri, having left the CIA some years back, was currently under contract with the agency to train CIA operatives.Unnamed former US intelligence officers, serving as sources for the story, placed the interrogator and Abd al-Rahim al-Nashiri in Poland at the time of the abusive interrogations. US federal prosecutor John Durham is reported to be considering laying charges against the interrogator.[121]

Further representations on Abd al-Rahim al-Nashiri's behalf were made in September 2010 when the Open Society Justice Initiative in co-operation with Polish lawyer Mikołaj Peitrzak submitted a request to the Appeals Prosecutor's Office to pursue specifically a criminal investigation into the ill-treatment of al-Nashiri while in Poland.[122] It was the first time that an individual victim of the CIA's rendition and secret detention programmes had sought a legal remedy in Poland. On 22 September 2010, Polish prosecutor Jerzy Mierzewski confirmed that Abd al-Rahim al-Nashiri's allegations would be handled as part of the on-going investigation into Poland's role in the CIA's secret detention programme.[123] A significant development came on 27 October 2010 when the Prosecutor granted Adb al-Rahim al-Nashiri formal status as a victim, giving his representatives the right to participate in the proceedings.[124] An *Associated Press* story that same day cited unnamed former US intelligence officials stating that Abd al-Rahim al-Nashiri and Abu Zubaydah had been held in a secret detention facility codenamed "Quartz" in northern Poland.[125]

As part of the research for the UN Joint Study on Secret Detention, the UN experts sent a questionnaire to the Polish government seeking information regarding the status of the investigation into the allegations of Polish government involvement in renditions and secret detention. The government's official reply stated that Polish prosecutors would not comply with any request for information because the evidence gathered was classified or secret and the prosecutors were bound by confidentiality. In the UN report, the experts stated that "they are concerned about the lack of transparency into this investigation. After 18 months still nothing is known about the exact scope of the investigation, but the experts expect that any such investigation would not be limited to the question whether Polish officials created an 'extraterritorial zone' in Poland but also whether officials were aware that 'enhanced interrogation techniques' were applied there."[126]

Amnesty International wrote to Polish Premier Donald Tusk in February 2010 requesting that the government urge the investigating prosecutors to follow-up on the information provided in the UN joint study regarding Abd al-Rahim al-Nashiri and also to make as transparent as possible the terms of reference, general lines of inquiry, and timeline for the investigation. A

reply from the Prosecutor's Office on 22 July 2010 reiterated that given to the UN experts: the Polish prosecutors could not comply with Amnesty International's request for information because the evidence gathered was classified and the prosecutors bound by confidentiality; thus, the results would not be published until the investigation was concluded.

Despite the general lack of transparency surrounding the investigation into the secret prison, the Polish daily *Gazeta Wyborcza* has reported that prosecutors were considering laying charges against some of Poland's highest level former officials.[127] The prosecution theory alleges that former officials knew of and authorized the CIA operations and thus assumed legal responsibility for any crimes that may have been committed in the course of these operations. Cases against high-level officials for violations of the Polish Constitution and/or criminal acts require parliamentary approval and referral to Poland's Tribunal of State.

On 27 October 2010 the UN Human Rights Committee called on the government of Poland to ensure that it establishes an independent inquiry, with public findings, into its role in CIA renditions and secret detention that has "full investigative powers to require the attendance of persons and the production of documents... and to hold those found guilty accountable, including through the criminal justice system".[128]

Recommendation

Amnesty International calls on the Polish Prosecutor's Office to ensure that the investigation into the allegations of Polish complicity in renditions and secret detention continues with as much transparency as possible and in conformity with Poland's international legal obligations. Representatives of any persons granted victim status should be permitted to participate in the proceedings in accordance with principles of victims' rights under Polish and international law.

ROMANIA: IMPLAUSIBLE DENIALS AMIDST MOUNTING ALLEGATIONS

New evidence of Romanian participation in the CIA's rendition and secret detention programmes came to light in July 2010 when the Polish Border Guard Office released information indicating that a September 2003 flight took on passengers in Poland and continued on to Romania. Despite steadily mounting public information alleging that detainees were housed in a secret detention centre in Romania, including press reports citing unnamed former US intelligence officials, the Romanian government continued to deny any involvement in the CIA's rendition and secret detention programmes.

Romania was identified as early as 2005 as a country alleged to have hosted a secret CIA detention facility.[129] Reports by the PACE and the TDIP also alleged that Romania hosted such a facility.[130] The European Commission has written to the Romanian authorities seeking further information.[131] Citing an internal investigation conducted in 2005 by governmental authorities and the 2007 conclusions of a Senate Committee of Inquiry, the Romanian authorities responded to the Council of Europe and European Union by vigorously denying any involvement in the rendition and secret detention programmes.[132]

Since late 2008, claims that Romania hosted a secret CIA prison have surfaced from a variety of sources. In August 2009, the *New York Times* reported that Kyle "Dusty" Foggo, then head of a CIA supply facility in Frankfurt, supervised the construction of three CIA detention centres in Europe.[133] Unnamed former US intelligence sources were reported to have claimed that one such centre was located in Bucharest, the Romanian capital city.[134] In

response, the Romanian authorities reiterated their stock denial, stating that they co-operated "in good faith and with utmost transparency" with the international mechanisms investigating the secret sites and claiming categorically that the allegations against Romania were "groundless". [135]

The latest such denial came in response to the February 2010 UN Joint Study on Secret Detention. After summarizing the findings of the PACE report with respect to Romania's involvement in the secret detention programme, the study presented an independent analysis of available data and concluded that a plane operating in the context of the CIA's rendition programme – a Boeing 737, registration number N313P – flew from Poland to Romania on 22 September 2003.[136] The UN experts could not, however, confirm definitively that the flight involved transfers of detainees.[137] In a *note verbale* to the UN experts dated 27 January 2010, the Romanian authorities repeated the denials that planes carrying detainees landed on Romanian territory and that they hosted a secret detention site. The note acknowledged that "a number of airplanes that proved to be rented by the CIA made stopovers on [sic] Romanian airports," but "[t]here is no data whatsoever that detainees were on board those airplanes".[138]

Documents released by the Polish Border Guard Office in July 2010 (see above section on Poland) indicate that the same Boeing 737, registration number N313P, arrived in Poland on 22 September 2003 with no passengers aboard, but took on five passengers before departing Szymany for Bucharest.[139] In August 2010, the *Associated Press*, citing unnamed current and former officials, reported that Khaled Sheikh Mohamed, alleged mastermind of the 11 September 2001 attacks in the USA, was transferred around 22 September 2003 on a Boeing 737 from Szymany, Poland, to a new detention facility codenamed "Britelite" in Bucharest, Romania. The *Associated Press* article alleged that a number of so-called high-value detainees – including Abu Zubaydah, Abd al-Rahim al-Nashiri, Ramzi Binalshibh and Mustafa al-Hawsawi – had been secretly transferred to Guantanamo Bay, arriving on 24 September 2003, after the Boeing 737 on which they were travelling made a number of prior stops, including in Poland and Romania.[140] Citing claims by unnamed former US intelligence officials, the *Associated Press* reported again in October 2010 that Abd al-Rahim al-Nashiri was held in secret detention in Romania.[141]

A delegation from the CPT visited Romania in September 2010. During the visit the delegation "had a meeting with Teodor Viorel Meleşcanu, Vice-President of the Senate, in order to discuss the issue of the alleged existence some years ago of secret detention facilities on Romanian territory operated by the Central Intelligence Agency (CIA) of the United States of America".[142]

Recommendations

Amnesty International calls on the Romanian authorities as a matter of urgency to follow the lead of other EU member states that are engaged in accountability processes aimed at revealing the truth about their respective roles in the CIA's rendition and secret detention programmes post-11 September 2001. Revelations in 2009 and 2010 regarding Romania's alleged complicity in the CIA rendition and secret detention programmes require that the Romanian government commit to the establishment of a full, impartial, independent, and effective investigation into its role in these operations. The Romanian authorities should also approve the publication of the CPT's final report on its visit to Romania.

SWEDEN: RENDITION CASES REQUIRE FULL ACCOUNTABILITY AND REDRESS

The Swedish government has failed to date to satisfy its obligation to fully investigate the renditions in December 2001 of Ahmed Agiza and Mohammed al-Zari from Sweden to Egypt, where the men reported that they were tortured and ill-treated in Egyptian custody. Although the Swedish government has paid the men compensation, it has not established an independent, impartial, full and effective inquiry into Sweden's role in the men's transfers at the hands of the CIA and has yet to fulfil the requirements under international law for effective redress for victims of torture.

Ahmed Agiza and Mohammed al-Zari, Egyptian asylum-seekers, were apprehended in Stockholm in December 2001 by Swedish law enforcement officials. The men were then transported to Bromma airport and handed over to CIA operatives and subjected to rendition to Egypt, where they reported they were subsequently tortured and ill-treated in Egyptian custody.[143] The Swedish government claimed that it had obtained diplomatic assurances against torture and ill-treatment, the death penalty, and unfair trial from the Egyptian authorities prior to transfer.[144]

During consideration of Ahmed Agiza's petition to the UN Committee against Torture, it was revealed that the Swedish government had failed to fully disclose a January 2002 monitoring report which contained allegations by Ahmed Agiza and Mohammed al-Zari that they had been beaten and otherwise ill-treated in Egyptian custody in the weeks following their return. This information, together with other information, including the men's subsequent allegation that they had also been subjected to other abuse such as electric shocks, led the Committee to find in May 2005 that Ahmed Agiza was in fact at risk of torture at the time he was transferred to Egypt and that Egypt's diplomatic assurances did not provide a sufficient safeguard against that manifest risk of torture and other ill-treatment.[145] The Committee's findings triggered the requirement that the Swedish government provide the men with an effective remedy, including compensation, and take steps to prevent similar incidents from happening in the future. In November 2006, the UN Human Rights Committee arrived at the same conclusion in the case of Mohammed al-Zari.[146]

In July 2008 the Swedish Chancellor of Justice (Justitiekanslern) ordered that 3,160,000 Swedish kronor (approximately €307,000) in damages should be paid to Mohammed al-Zari, as compensation for the human rights violations he suffered. In September 2008, the Chancellor of Justice ordered that a similar amount of compensation should be paid to Ahmed Agiza.

Amnesty International is concerned, however, that Sweden has failed to provide full reparation to the men, which should include not only compensation, but also other measures of redress, including guarantees of non-repetition. To that end, the Swedish government should implement preventive measures to ensure full judicial review of all decisions to expel, deport or otherwise transfer persons the authorities allege to be threats to national security whenever allegations are raised (or there is otherwise reason to believe) that a person would face a real risk of torture or other ill-treatment as a result of the transfer. Such preventive measures should include a commitment by the Swedish government not to employ diplomatic assurances against torture or ill-treatment as a basis for removals to countries where there is a real risk to the individual of such treatment.[147]

Although the Swedish government formally rescinded the men's expulsion orders in 2008, in November 2009, it dismissed the men's appeals against the refusal to grant

them residence permits, partly based on information never disclosed to either Mohammed al-Zari or Ahmed Agiza.[148] Ahmed Agiza remains imprisoned in Egypt following an unfair trial before a military court, in violation of international law.[149] Mohammed al-Zari was freed from detention without charge or trial in October 2003.

Awarding both men residence permits would contribute toward ensuring that they receive an effective remedy, including adequate restitution as defined in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.[150]

Amnesty International remains concerned by reports and medical certificates relating to the deteriorating physical health of Ahmed Agiza in prison in Egypt, and by the seeming reticence of Swedish diplomatic representatives in Egypt to seek to ensure continuous medical care for him.

Although the Swedish Parliamentary Ombudsman released a report in March 2005 that harshly criticized the Swedish authorities for involvement in an illegal operation during which the men were subjected to ill-treatment in violation of Sweden's international obligations, he did not call for prosecutions or any other form of accountability.[151] A separate investigation by the parliamentary Standing Committee on the Constitution concluded in 2006 that Swedish government actions violated Swedish laws prohibiting the transfer of anyone from Sweden to a country where they would be at risk of torture.[152] Neither of these inquiries fully satisfied Sweden's legal obligation to investigate the human rights violations that occurred in the context of the men's unlawful transfers and torture or other ill-treatment, and to bring those responsible to account.

In the UN Joint Study on Secret Detention, Sweden's responsibility in relation to Ahmed Agiza's and Mohammed al-Zari's renditions and alleged subsequent torture in Egyptian custody is noted in a section detailing Egyptian detention and torture practices. The study includes the cases of seven men unlawfully transferred by the CIA to Egypt, sometimes with the assistance of third countries like Sweden, where they were tortured and ill-treated.[153]

Recommendation

Amnesty International calls on the Swedish government to establish a full, effective, impartial, and independent inquiry into its role and the role of foreign officials and agents in the renditions of Ahmed Agiza and Mohammed al-Zari. Where possible responsibility for crimes under international or national law is identified, cases should be referred to the authorities in charge of criminal prosecutions in order that they initiate proceedings to fulfil the obligation to bring perpetrators to justice. The Swedish government should exert diplomatic pressure on the Egyptian government to grant Ahmed Agiza a fair retrial in a civil court.

UNITED KINGDOM: GOVERNMENT ANNOUNCES "TORTURE INQUIRY"

The UK government announced in July 2010 that it would establish an inquiry into the involvement of UK state actors in the alleged mistreatment of individuals detained abroad by foreign intelligence services. Despite

allegations of such involvement in a number of cases across a range of countries – including Afghanistan, Egypt, Kenya, Pakistan, and at Guantanamo Bay, Cuba, among others – the previous government refused for years to heed repeated calls for an independent, impartial inquiry. The change in government policy was generally welcomed, but non-governmental organizations raised concerns about the proposed inquiry's independence and its mandate to hear most evidence in secret. Documents disclosed in the course of civil proceedings in 2010 indicated that officials at the highest levels of government were aware of the risk of torture and ill-treatment of detainees held abroad.

On 6 July, UK Prime Minister David Cameron announced the establishment of an independent inquiry into allegations of UK involvement in torture and other human rights abuses, including rendition, in the context of counter-terrorism operations abroad in the aftermath of the 11 September 2001 attacks in the USA.[154] The government stated that sufficient progress had to be made in settling on-going civil claims for damages and criminal investigations closed before the inquiry would commence (see cases below). Public evidence of UK involvement in such abuses had been mounting for years, and although Prime Minister Cameron's statement announcing the inquiry focused on the need to scrutinize the UK's security departments and intelligence services, key pieces of evidence indicated that authorizations for UK involvement had come from the very highest levels of government.

Recent revelations indicated that decisions regarding interrogations in countries where torture was routinely practised came from top government officials. In September 2010, documents disclosed in a civil suit brought by former Guantanamo Bay detainees included a Foreign Office memo dated 18 January 2002, on which former Prime Minister Tony Blair – in a handwritten note on the memo – expressed concern that UK nationals held in US custody in Afghanistan and at Guantanamo Bay may have been tortured.[155] Also in September 2010, The Guardian reported that MI6 (the UK's foreign intelligence service) "always consulted" former Foreign Secretary David Miliband "before embarking on what a source described as 'any particularly difficult' attempts to gain information from a detainee held by a country with a poor human rights record. While Miliband blocked some operations, he is known to have given permission for others to proceed. Officers from MI5 (the UK's domestic intelligence agency) are understood to have sought similar permission from a series of home secretaries in recent years".[156] In a carefully worded statement regarding the detentions of three men in Bangladesh, Foreign Secretary Miliband claimed that no UK government actor had requested the men's detention or ever sanctioned torture, but it remains unclear whether he gave a "green light" to the receipt of information from the men or to MI6 interrogations in other cases where the Foreign Office had good reason to believe – or had actual knowledge – that detainees had been tortured.[157] Moreover, evidence disclosed in judicial proceedings indicated that UK authorities provided information to foreign intelligence agencies that led or could have led to the arrest and detention of individuals abroad who were then subjected to unlawful detention, rendition, and torture and other ill-treatment.[158]

Documents revealed in July 2010 in the course of a civil suit brought by former Guantanamo Bay detainees provide further evidence that UK involvement in and knowledge of human rights violations reached the highest levels of government.[159] Provision of consular access was actively blocked, with the authority and knowledge of the executive, in relation to a UK national held in overseas custody, in order to facilitate his transfer to US custody at Guantanamo Bay and ensure that the UK would not have to take responsibility for the individual in question.[160] Another partly redacted document, apparently authorized by then

UK Foreign Secretary Jack Straw, makes it clear that the UK government supported the transfer of UK detainees from Afghanistan to Guantanamo, stating that such transfers were the best way for the UK to meet its counter-terrorism policy.[161] Additionally, the telegram opportunistically requests that the US delay transfer of the detainees to Guantanamo in order to allow UK security services to interrogate the detainees while in custody.[162] That same set of documents contained written policy and legal guidance generated in 2002 for UK intelligence services advising that if detainees held abroad were not in the direct custody of the UK, intelligence agents were not legally required to act to prevent torture.[163]

A number of notorious cases of alleged abuse lie at the heart of efforts by Amnesty International and other non-governmental organizations, as well as the parliamentary Joint Committee on Human Rights, the All Party Parliamentary Group on Extraordinary Rendition (APPG), a number of UN treaty bodies, and the Council of Europe to advocate for the establishment of a comprehensive, human rights compliant inquiry.[164] In most of these cases, there is credible evidence that UK personnel 1) were present at and/or participated in interrogations of detainees and/or 2) provided information that led other countries to apprehend and detain individuals when the UK knew or ought to have known that individuals would be at risk of torture and/or unlawful detention and/or 3) forwarded questions to be put to individuals detained by other countries in circumstances in which the UK knew or ought to have known that the detainees concerned had been or were at risk of being tortured and/or whose detention was unlawful – and the UK received information extracted from those detainees. Moreover, the government has acknowledged that the UK was involved in the US-led rendition programme through the use of UK territory, for example Diego Garcia.

These cases include, but are not limited to:

- **Guantanamo Bay:** Seven former Guantanamo Bay detainees, all UK nationals or residents – Jamil al-Banna, Bisher al-Rawi, Richard Belmar, Moazzam Begg, Omar Deghayes, Binyam Mohamed, and Martin Mubanga – brought a civil claim for damages against the UK government in 2008, alleging that UK state actors had been involved in their apprehensions, unlawful detentions, and abusive interrogations, including torture and ill-treatment, in various locations (e.g. Afghanistan, Morocco, Pakistan) before their transfers to the detention facility at Guantanamo Bay. Six of the men continue to seek damages over alleged acts or omissions by MI5, MI6, the Foreign Office and the Home Office for the alleged abuse.[165] Shaker Aamer, a Saudi national and former UK resident, remains detained at Guantanamo Bay and has alleged that he was severely beaten during interrogations at Bagram Theater Internment Facility in Afghanistan, including by men who claimed to be from MI5.[166] A number of other former Guantanamo detainees who are not party to any legal proceedings have also made similar allegations against the UK government;

- **Diego Garcia:** After years of denials, in February 2008, then UK Foreign Minister David Miliband acknowledged that planes operating in the context of the CIA's rendition programme had landed at Diego Garcia.[167] The UK-based NGO, Reprieve, alleged in 2009 that Diego Garcia had been a transit stop and/or secret prison location in the rendition and/or secret detention of former Guantanamo Bay detainee, Pakistani national Mohammed Saad Iqbal Madni;[168]

- **Pakistan:** In addition to Binyam Mohamed, a number of UK nationals – including

Salahuddin Amin, Zeeshan Siddiqui, Rangzieb Ahmed and Rashid Rauf (Rauf was reportedly killed in a drone attack in 2008) – have claimed that UK state actors were complicit in their detentions and interrogations under torture and ill-treatment between 2004 and 2007 at the hands of the Pakistani security agencies, including the Inter-Services Intelligence agency (ISI);[169]

- **Other countries:** In addition to the cases above, individuals held in other countries, including Bangladesh, Egypt, Kenya, Somalia, United Arab Emirates, and Yemen have made similar claims against the UK government.[170]

In February 2010, the UN Joint Study on Secret Detention, specifically referencing the allegations of UK collaboration with the Pakistani intelligence services, identified the UK as a country complicit in the secret detention of a person for "knowingly [taking] advantage of the situation of secret detention by sending questions to the State detaining the person or by soliciting or receiving information from persons who are being kept in secret detention".[171] The UN study also contained references to the allegation that persons were held in secret detention on Diego Garcia, including a response from the UK authorities that they had received assurances from the US government that no individual had been interrogated by the USA on Diego Garcia since the 11 September 2001 attacks in the USA.[172] The cases of Binyam Mohamed and Moazzam Begg, among others, were also highlighted as cases of concern.

In response to the UN joint study, the UK government transmitted a *note verbale* in February 2010 to the UN experts, rejecting the study's allegations regarding Diego Garcia and the identification of the UK as a country that had taken advantage of a situation of secret detention.[173] The UK government stated that it could not respond to allegations concerning persons held in Pakistan due to on-going legal proceedings. Despite some evidence of inconsistencies in UK government policy regarding consular access, the government's 26 February 2010 response to the UN joint study maintained that:

> *"Our policy makes clear our opposition to secret detention. [I]n respect of consular matters, whenever a consular official becomes aware that a mono British national (and, under certain circumstances, a dual British national) is detained overseas the first step is to contact them and, if the detainee wishes, to visit them. Once in contact with the detainee they will check if the detainee has any concerns over how they are being treated... If we are aware of the detention of a British national, but are denied access to the detainee, we will urgently push the host government to enable this access".*[174]

It is highly anticipated that the inquiry proposed by Prime Minister Cameron in July 2010 will sort out any inconsistencies between UK government claims regarding its policies and its actions abroad. The inquiry should provide a forum for truth-telling, accountability, justice, and effective redress for the victims and survivors of the alleged abuses. In an attempt to ensure that the inquiry's scope and depth are broad enough to ensure such accountability, a coalition of nine human rights NGOs – including Amnesty International – wrote in September 2010 to Sir Peter Gibson, the chair of the inquiry panel who also currently serves as the Intelligence Services Commissioner, to offer constructive suggestions on the inquiry's terms of reference and rules of procedure.[175]

Recommendations in the letter included that victims/survivors have official standing and the right to publicly-funded representation by counsel of their choice; that nongovernmental organizations be permitted to participate in the inquiry and make submissions; that the inquiry be as transparent as possible, with all hearings open to the public except when absolutely required by the sensitive nature of the evidence; that any resort by the government to invoke state secrecy be subject to independent review; and that the inquiry must look broadly at relevant government policies and the oversight mechanisms for the security services and make recommendations in order to prevent human rights violations in the future. The groups also expressed concern for the one-year time limit on the inquiry's operation, stating that thoroughness should not be sacrificed for expediency and reiterated past calls for the inquiry to be authentically independent, with the persons responsible for and carrying out the inquiry to be "fully independent of any institution, agency or person who may be the subject of, or are otherwise involved in, the inquiry."

Sir Peter Gibson responded to the joint NGO letter on 16 September 2010, welcoming the groups' willingness to engage with the inquiry. The letter noted that the UK government had already set certain parameters for the inquiry – e.g. intelligence material would not be made public, secret service agents would not be required to give public testimony, no evidence would be sought from foreign intelligence agencies and, as a non-statutory inquiry, the panel would not be able to determine legal liability. However, as the panel was at early stages with respect to developing terms of reference and rules of procedure, the NGO community's views would be given careful consideration. Notably, Sir Peter assured Amnesty International and the other NGOs that the inquiry would encourage all those with relevant evidence to produce it for the panel's consideration and that NGO submissions would be welcome.

Recommendations

Amnesty International calls on the UK government to ensure that the proposed inquiry into the involvement of UK state actors in the alleged mistreatment of individuals detained abroad by foreign intelligence services is full, impartial, independent and effective in conformity with the UK's international legal obligations. Where possible responsibility for crimes under international or national law is identified, cases should be referred to the authorities in charge of criminal prosecutions in order that they initiate proceedings to fulfil the obligation to bring perpetrators to justice. Victims of the alleged abuses should be afforded effective redress, including rehabilitation, compensation, restitution, just satisfaction, and guarantees of non-repetition.

CONCLUSION: EUROPE IS FERTILE GROUND FOR ACCOUNTABILITY

The idea that governments and individuals must be held accountable for violating people's rights underpins the modern human rights movement. Identifying abusive governments and individual perpetrators, collecting evidence of their responsibility in relation to human rights abuses (whether by direct perpetration, complicity, or failure to prevent), ensuring the truth is revealed to the victims and survivors as well as the wider public, and bringing that evidence before intergovernmental bodies or courts of law for criminal prosecution or civil suits for damages: these all contribute to real accountability. In the absence of such accountability, impunity prevails and the noble words avowed by states in the text of so many human treaties are robbed of their true value: as basic safeguards for respecting and ensuring the dignity of every human being.

European governments have an opportunity now to recommit to a human rights machinery at the national level that works to end impunity, not perpetuate it. The fact that European states colluded in such egregious violations – illegal transfers, secret detention, and torture and ill-treatment; crimes under international law, in fact – is sobering.

Amnesty International calls on European governments to reject impunity and set a corrective course toward accountability for their role in the CIA's rendition and secret detention programmes. As this report details, Europe is fertile ground for such accountability and governments and the public across the region should capitalize on the momentum generated by on-going accountability processes in a number of countries. Europe must not become an "accountability-free zone".

ENDOTES

[1]RCTI, "Ekslusif! Wawancara Bersama Obama", 23 March 2010, http://video.okezone.com/play/2010/03/23/235/17877/eksklusif-wawancara-bersama-obama-2.

[2]"PM Announces Inquiry on Treatment of Detainees", 6 July 2010, http://www.number10.gov.uk/news/statements-and-articles/2010/07/statement-on-detainees-52943.

[3] Amnesty International uses the term "rendition" to describe the international transfer of individuals from the custody of one state to another by means that bypass judicial and administrative due process. For more detail, see the discussion below under "Investigation of Rendition and Secret Detention is a Legal Obligation".

[4] See, for example, Amnesty International, *USA: Blocked at Every Turn: The Absence of Effective Remedy for Counter-Terrorism Abuses*, (Index: AMR 51/120/2009), 30 November 2009, http://www.amnesty.org/en/library/info/AMR51/120/2009/en.

[5] Amnesty International has issued numerous documents on the question of US accountability and remedy in this context. The organization has been calling since 2004 for a full commission of inquiry into the USA's counter-terrorism detention and interrogation practises. See, for example, *USA: Investigation, Prosecution, Remedy: Accountability for Human Rights Violations in the "War on Terror"*, (Index: AMR51/151/2008), December 2008, http://www.amnesty.org/en/library/info/AMR51/151/2008/en.

[6] Amnesty International, *State of Denial: Europe's Role in Rendition and Secret Detention*, (Index: EUR 01/003/2008), 24 June 2008, p. 8, p. 19, respectively, http://www.amnesty.org/en/library/asset/EUR01/003/2008/en/2ceda343-41da-11dd-81f0-01ab12260738/eur010032008eng.pdf.

[7] Security Council Resolution 1456 of 2004 in UN Doc. S/RES/1456 (2003), Annex, para.6 and UN General Assembly, "United Nations Global Counter-Terrorism Strategy", resolution A/60/288 (8 September 2006), Annex, Plan of Action, introductory paragraph 3 and part IV.

[8] See Conclusions and Recommendations of the Committee against Torture: United States of America, UN Doc. CAT/C/USA/CO/2, 18 May 2006, para. 17; UN Human Rights Committee, United States of America: Concluding Observations, UN Doc. CCPR/C/USA/CO/3/Rev.1, 18 December 2006, para. 12; UN Working Group on Arbitrary Detention, Opinion No. 29/2006 (United States of America), 1 September 2006, para. 21.

[9] International Law Commission (ILC), Articles on Responsibility of States for Internationally Wrongful Acts, Article 16 [UN General Assembly Resolution A/RES/56/83, 12 December 2001]. Article 16 reflects a rule of customary international law, binding on all States: International Court of Justice, *Bosnia and Herzegovina and Herzegovina v Serbia (Genocide Convention)*, 26 February 2007, para. 420. Already recognized examples include facilitating the abduction of a person on foreign soil, knowingly providing an "essential facility" and "placing its own territory at the disposal of another state": see ILC Commentaries, UN Doc. A/56/10, 2001, pp. 66-67, paras. 1 and 8; and European Commission for Democracy through Law (Venice Commission), *Opinion on the international legal obligations of Council of Europe member States in respect of secret detention facilities and inter-State transport of Prisoners*, Opinion no. 363/2005, CDL-AD(2006)009, 17 March 2006, para. 45. See also House of Lords/House

of Commons Joint Committee on Human Rights, *Allegations of UK Complicity in Torture Twenty–third Report of Session 2008–09*, HL Paper 152, HC 230 (4 August 2009), paras. 17-35.

[10] See, for example, House of Lords/House of Commons Joint Committee on Human Rights, *Allegations of UK Complicity in Torture Twenty–third Report of Session 2008–09*, HL Paper 152, HC 230 (4 August 2009), paras. 34-35.

[11] See Venice Commission, paras 118 and 126; and European Court of Human Rights, *Ilaşcu and others v Moldova and Russia*, Judgment, 8 July 2004, para. 318.

[12] See, for example, articles 3 and 6 of the ECHR as applied by the European Court of Human Rights in *Chahal v United Kingdom* (No. 22414/93), 15 November 1996 and *Saadi v Italy* (No. 37201/06), 28 February 2008 [*non-refoulement*, article 3]; and *Gäfgen v Germany* (No. 22978/05), 1 June 2010, paras. 165-167 [inadmissibility of information obtained by torture or other ill-treatment, article 6]; articles 3 and 15 of the UN Convention against Torture; article 7 of the International Covenant on Civil and Political Rights as applied by the Human Rights Committee in, for example, General Comment No. 20 (1992), paras. 9 and 12.

[13] European Court of Human Rights, *Ilaşcu and others v Moldova and Russia*, paras. 331-333; Venice Commission, para. 130.

[14] See Venice Commission, paras 44, 127; UN Convention against Torture, article 2 and 16; European Court of Human Rights, *A v the United Kingdom*, 23 September 1998, paras 19-24; UN Human Rights Committee, General Comment 31, para. 8.

[15] See, for example, the UN Convention against Torture, article 7. See also Human Rights Committee, General Comment No. 31 (2004), para. 18.

[16] See, for example, International Criminal Tribunal for the former Yugoslavia, *Blaškić* Appeal Judgment, 29 July 2004, para. 50; Special Court for Sierra Leone, *Brima and others*, Trial Judgment, 20 June 2007, para. 776.

[17] ICTY, *Blaškić* Appeal Judgment, para. 48; *Delalić* (*"Celebici"*) Appeal Judgment, 20 February 2001, para. 352.

[18] UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN General Assembly resolution 43/173, 9 December 1988, principle 21.

[19] See UN Committee against Torture, Concluding Observations on Canada (2006), para. 16; House of Lords/House of Commons Joint Committee on Human Rights, *Allegations of UK Complicity in Torture Twenty–third Report of Session 2008–09*, HL Paper 152, HC 230 (4 August 2009). Regarding responsibility for knowingly conducting an interrogation in a situation of torture or other ill-treatment, even where actual infliction of pain and suffering is actually perpetrated by others, see also ICTY, *Furundžija* Appeal Judgment (21 July 2000), para. 120; and Articles on State Responsibility, Articles 40 and 41 and associated commentaries.

[20]European Court of Human Rights, *97 Members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v Georgia*, (No. 71156/01), 3 May 2007, para. 97.

[21] Human Rights Committee, General Comment No. 29 on States of Emergency, UN Doc. CCPR/C/21/Rev.1/Add.11 (2001), para 14.

[22] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly resolution 60/147 of 16 December 2005 (hereinafter UN Basic Principles on the Right to a Remedy), principles 11-24.

[23] UN Basic Principles on the Right to a Remedy, principles 18-23.

[24] See Parliamentary Assembly of the Council of Europe, Resolution 1562 (2007) and Recommendation 1801 (2007); Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism, Martin Scheinin, Human Rights Council, UN Doc A/HRC/10/3 (4 February 2009), paras. 58-63,75; Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights, *Assessing Damage, Urging Action* (International Commission of Jurists, Geneva, 2009), p. 90; Amnesty International, "Nine Steps States Must Take against Secret Detention Worldwide", (Index: IOR 41/015/2010), 1 June 2010.

[25]Thomas Hammarberg, Council of Europe Commissioner for Human Rights, "Human Rights Comment: Torture Allegations Must be Properly Investigated", 9 June 2010, http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=45.

[26] United Nations Human Rights Council, Joint study on global practises in relation to secret detention in the context of countering terrorism of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Arbitrary Detention, and the Working Group on Enforced and Involuntary Disappearances, A/HRC/13/42, 19 February 2010, http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-42.pdf. An advanced unedited version was originally published on 26 January 2010.

[27]UN Joint Study on Secret Detention, para. 284.

[28] UN Joint Study on Secret Detention, p. 4. See also, Amnesty International, International Federation for Human Rights (FIDH), Human Rights Watch, and International Commission of Jurists, *Nine Steps States Must Take against Secret Detention Worldwide: UN Experts' Joint Global Study on Secret Detention Presented to UN Human Rights Council Underscores Need for States to End the Use of Secret Detention*, (Index: IOR 41/015/2010), 1 June 2010, http://www.amnesty.org/en/library/asset/IOR41/015/2010/en/3e4a9e10-f7f3-42e9-a2b8-3f67703f2f44/ior410152010en.html.

[29] UN Joint Study on Secret Detention, para. 159(b). In the course of a parliamentary inquiry, German officials admitted having interrogated the man (see section below on Germany).

[30] Parliamentary Assembly Council of Europe, Committee on Legal Affairs and Human Rights, *Secret Detentions and Illegal Transfers of Detainees Involving Council of Europe Member States: Second Report*, Doc. 11302 rev., 11 June 2007, http://assembly.coe.int/Documents/WorkingDocs/Doc07/edoc11302.pdf.

[31] PACE, Resolution 1507 (2006), "Alleged Secret Detentions and Unlawful Inter-State Transfers of Detainees Involving Council of Europe Member States", http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta06/ERES1507.htm and Resolution 1562 (2007), "Secret Detentions and Illegal Transfers of Detainees Involving Council of Europe Member States: Second Report", http://www.assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/ERES1562.htm. PACE,

Recommendation 1754 (2006), "Alleged Secret Detentions and Unlawful Inter-State Transfers of Detainees Involving Council of Europe Member States", http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta06/EREC1754.htm and Recommendation 1801 (2007), "Secret Detentions and Illegal Transfers of Detainees Involving Council of Europe Member States: Second Report", http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta07/EREC1801.htm.

[32] PACE press release, "Dick Marty: Time for Europe to Come Clean Once and For All Over Secret Detentions", 21 August 2009, https://wcd.coe.int/ViewDoc.jsp?id=1491477&Site=DC.

[33] See, respectively, Report by the Secretary General on the use of his powers under Article 52 of the European Convention on Human Rights, in the light of reports suggesting that individuals, notably persons suspected of involvement in acts of terrorism, may have been arrested and detained, or transported while deprived of their liberty, by or at the instigation of foreign agencies, with the active or passive co-operation of States Parties to the Convention or by States Parties themselves at their own initiative, without such deprivation of liberty having been acknowledged, SG/Inf (2006) 5, 28 February 2006, https://wcd.coe.int/ViewDoc.jsp?Ref=SG/Inf(2006)5&Sector=secPrivateOffice&Language=lanEnglish&Ver=original&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75 and Venice Commission, Opinion on the International Legal Obligations of Council of Europe Member States in Respect of Secret Detention Facilities and Inter-State Transport of Prisoners, Opinion No. 363/2005, 17 March 2006, http://www.venice.coe.int/docs/2006/CDL-AD(2006)009-e.asp. The abuses committed in the context of the rendition and secret detention programmes also clearly violated the "Guidelines on Human Rights and the Fight against Terrorism," adopted by the Committee of Ministers in July 2002. See "Guidelines on Human Rights and the Fight against Terrorism," adopted by the Committee of Ministers on 11 July 2002 at the 804th Meeting of the Ministers' Deputies, http://www1.umn.edu/humanrts/instree/HR%20and%20the%20fight%20against%20terrorism.pdf.

[34] See, for example, Amnesty International, *Europe: Partners in Crime: Europe's Role in US Renditions*, (Index: EUR 01/008/2006), 13 June 2006, http://www.amnesty.org/en/library/info/EUR01/008/2006; and *Europe: State of Denial: Europe's Role in Rendition and Secret Detention*, (Index: EUR 01/003/2008), 24 June 2008, http://www.amnesty.org/en/library/info/EUR01/003/2008/en and *Extended Recommendations for European Governments and Institutions on Rendition and Secret Detention* (Index EUR 01/013/2008), 24 June 2008, http://www.amnesty.org/en/library/info/EUR01/013/2008/en.

[35] European Parliament Temporary Committee on the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners (TDIP), *Report on the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners*, A6-0020/2007 FINAL, http://www.europarl.europa.eu/comparl/tempcom/tdip/final_report_en.pdf.

[36] European Parliament resolution of 14 February 2007 on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners, http://www.europarl.europa.eu/comparl/tempcom/tdip/final_ep_resolution_en.pdf. The political mechanism set out in article 7 TEU (sanctions against Member States in cases of a breach – or serious risk of a breach of the principles on which the EU is founded, including human rights) remains practically the same under the Lisbon treaty.

[37] European Parliament resolution of 19 February 2009 on the alleged use of European countries by the

CIA for the transportation and illegal detention of prisoners, http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2009-0073&language=EN&ring=B6-2009-0101.

[38] The Lisbon Treaty now provides a stronger legal basis for ensuring compliance of EU action with European human rights law by giving the EU Charter of Fundamental Rights the same standing as other EU treaties and formally integrating fundamental rights as guaranteed by the European Convention on Human Rights as general principles of the Union's law (new article 6 TEU under Lisbon).

[39] The sharing of legislative power between the European Parliament (EP) and the European Council (Council) – the co-decision procedure – is now the ordinary legislative procedure.

[40] Of the states highlighted in this report: the USA, Macedonia, Poland and the UK have not signed or ratified the Convention; Italy, Lithuania, Romania, and Sweden have signed but not yet ratified it; Germany has ratified but not made the declarations under articles 31 and 32.

[41]Commission of Inquiry into Actions of Canadian Officials in Relation to Maher Arar, Report of the Events Relating to Maher Arar, September 2006.

[42] Amnesty International Good News Story, "Arar Report: A Victory for Human Rights", 3 October 2006, http://www.amnesty.ca/take_action/good_news/canada_maher_arar.php.

[43] US Court of Appeals for the Second Circuit, *Arar v Ashcroft*, No. 06-4216-cv, 2 November 2009, http://www.ca2.uscourts.gov/decisions/isysquery/3efa3576-4240-4699-86e9-99263f22704d/1/doc/06-4216-cv_opn2.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/3efa3576-4240-4699-86e9-99263f22704d/1/hilite/, pp. 11-12. The refusal by the Supreme Court to hear the Arar case left a US Court of Appeals ruling intact, with the majority of the Appeals Court ruling that "it is for the executive in the first instance to decide how to implement extraordinary rendition, and for the elected members of Congress – and not for us judges – to decide whether an individual may seek compensation from government officers and employees directly, or from the government, for a constitutional violation". See also, Amnesty International, "USA: Normalizing Delay, Perpetuating Injustice, Undermining the 'Rules of the Road'", (Index: AMR 51/053/2010), 23 June 2010, http://www.amnesty.org/en/library/info/AMR51/053/2010/en.

[44]*Mohamed, et al. v Jeppesen Dataplan*, United States Court of Appeals for the Ninth Circuit, No. 08-15693, D.C. No. 5:07-CV-02798-JW, 8 September 2010, http://www.ca9.uscourts.gov/datastore/opinions/2010/09/08/08-15693.pdf.

[45] See Amnesty International, *USA: Secrecy Blocks Accountability, Again: Federal Court Dismisses 'Rendition' Lawsuit; Points to Avenues for Non-judicial Remedy*, (Index AMR51/081/2010), 9 September 2010, http://www.amnesty.org/en/library/asset/AMR51/081/2010/en/ea16c3a2-f9de-45cb-b8cf-ba9949dcd02f/amr510812010en.html.

[46]Supreme Court of the United States, Order List 552 U.S., No. 06-1613, *El-Masri, Khaled v. United States*, certiorari denied, 9 October 2007, http://www.supremecourt.gov/orders/courtorders/100907pzor.pdf.

[47] American Civil Liberties Union, "International Tribunal Takes up Case of Innocent Victim of CIA Rendition Program", 27 August 2009, http://www.aclu.org/human-rights_national-security/international-tribunal-takes-case-innocent-victim-cia-extraordinary-r.

[48] Amnesty International, *USA: Attorney General Orders 'Preliminary Review' into CIA Detention Cases –*

Full Investigation Long Overdue, (Index: AMR 51/094/2009), 26 August 2009, http://www.amnesty.org/en/library/info/AMR51/094/2009/en.

[49] Amnesty International, *USA: Human Dignity Denied: Torture and Accountability in the "War on Terror"*, (Index: AMR 51/145/2004), 26 October 2004, http://www.amnesty.org/en/library/info/AMR51/145/2004.

[50] See, for example, Amnesty International, *USA: Impunity for Crimes in CIA Secret Detention Program Continues*, (Index: AMR 51/008/2010), 29 January 2010, http://www.amnesty.org/en/library/info/AMR51/008/2010/en and "USA: Missing from the US 'Human Rights Agenda': Accountability and Remedy for 'War on Terror' Abuses", (Index: AMR51/005/2010), 20 January 2010, http://www.amnesty.org/en/library/info/AMR51/005/2010/en.

[51] Remarks on the Human Rights Agenda for the 21st Century. Hillary Rodham Clinton, US Secretary of State, Georgetown University's Gaston Hall, Washington DC, 14 December 2009, http://www.state.gov/secretary/rm/2009a/12/133544.htm.

[52] See European Center for Constitutional and Human Rights, *CIA "Extraordinary Rendition" Flights, Torture and Accountability – A European Approach (2d Edition)*, January 2009, http://www.ecchr.eu/cia_flights/articles/cia-extraordinary-rendition-flights-torture-and-accountability-a-european-approach.html [documents litigation, parliamentary inquiries, criminal investigations, and/or freedom of information requests in Albania, Bosnia and Herzegovina-Herzegovina, Canada, Denmark, France, Germany, Italy, Macedonia, Poland, Portugal, Romania, Spain, Sweden, UK, and USA]. See also, Amnesty International, *Breaking the Chain: Ending Ireland's Role in Renditions*, June 2009, http://www.amnesty.ie/sites/default/files/report/2010/04/Breaking%20the%20Chain.pdf.

[53] The parliamentary inquiry was referred to as "BND-Untersuchungsausschuss".

[54] For details of the individual cases, see State of Denial, pp. 20-21, http://www.amnesty.org/en/library/asset/EUR01/003/2008/en/2ceda343-41da-11dd-81f0-01ab12260738/eur010032008eng.pdf (see also the case sheets annexed to the report). See also, Human Rights Watch, *No Questions Asked: Intelligence Cooperation with Countries that Torture*, 29 June 2010, pp. 34-43, http://www.hrw.org/en/reports/2010/06/28/no-questions-asked-0.

[55] Human Rights Watch, *No Questions Asked: Intelligence Cooperation with Countries that Torture*, 29 June 2010, p. 40.

[56]Deutscher Bundestag, Beschlussempfehlung und Bericht des 1. Untersuchungsausschusses nach Artikel 44 des Grundgesetzes, Drucksache 16/13400, 18. 06. 2009. Hereinafter "Inquiry Report".

[57] Gesetz zur Änderung des Grundgesetzes, passed by Bundestag on 29 May 2009 and Bundesrat on 10 July 2009; and Gesetz zur Fortentwicklung der parlamentarischen Kontrolle der Nachrichtendienste des Bundes, passed by Bundestag on 29 May 2009 and Bundesrat on 10 July 2009.

[58] Gesetz zur Änderung des Grundgesetzes, passed by Bundestag on 29 May 2009 and Bundesrat on 10 July 2009; and Gesetz zur Fortentwicklung der parlamentarischen Kontrolle der Nachrichtendienste des Bundes, passed by Bundestag on 29 May 2009 and Bundesrat on 10 July 2009.

[59]Federal Constitutional Court press release, "Limited Grant of Permission to Testify and Refusal to Surrender Documents to BND Committee of Inquiry Partly Contrary to Constitutional Law", No. 84/2009, 23 July 2009, http://www.bundesverfassungsgericht.de/en/press/bvg09-084en.html. The full decision (in

German) can be accessed here: http://www.bundesverfassungsgericht.de/entscheidungen/es20090617_2bve000307.html.

[60]Federal Constitutional Court press release, "Limited Grant of Permission to Testify and Refusal to Surrender Documents to BND Committee of Inquiry Partly Contrary to Constitutional Law", No. 84/2009, 23 July 2009.

[61]Amnesty International press release, "BND-Untersuchungsausschuss: Staatsgeheimnisse statt Geheimdienst-Kontrolle? ("Parliamentary Inquiry: State Secrets Instead of Control of Intelligence Services?"), 19 June 2009.

[62] UN Joint Study on Secret Detention, para. 159.

[63]Inquiry Report, op. cit., fn 54.

[64]Inquiry report, p. 709, p. 717, p. 2133.

[65] Inquiry Report, p. 2161.

[66] UN Joint Study on Secret Detention, para. 159. In June 2008, the European Center for Constitutional and Human Rights (ECCHR) sued the German government in an attempt to force the authorities to transmit extradition warrants for 13 CIA agents alleged to have been involved in the rendition of Khaled el-Masri. The ECCHR argues that the German government's refusal to transmit the warrants denies Khaled el-Masri, as a torture victim, the right to an effective remedy guaranteed under the German Basic Law. That case remains pending. See ECCHR, "CIA Rendition Case of Khaled el-Masri: Lawsuit against Germany", June 2008, http://www.spiegel.de/international/germany/0,1518,558496,00.html.

[67] Tribunale di Milano, IV Sezione Penale, Decision No. 12428/09, 4 November 2009 [Judge Oscar Magi presiding as sole judge in non-jury trial]. See also, Amnesty International new release, "Convictions in Abu Omar Rendition Case a Step Toward Accountability," 5 November 2009, http://www.amnesty.org/en/news-and-updates/news/convictions-abu-omar-rendition-case-step-toward-accountability-20091105. See also, Amnesty International, *State of Denial*, pp. 45 (case sheet on Abu Omar).

[68] Phil Stewart, "U.S. Spy Says Just Followed Orders in Italy Kidnap", *Reuters*, 30 June 2009, http://www.reuters.com/article/idUSTRE55T3H420090630.

[69] Phil Stewart, "U.S. Spy Says Just Followed Orders in Italy Kidnap", *Reuters*, 30 June 2009.

[70] L'ex capo Cia 'Così rapimmo Abu Omar'", *Il Giornale*, 30 June 2009, http://www.ilgiornale.it/interni/lex_capo_cia_cosi_rapimmo_abu_omar/cia-abu_omar-terrorismo/30-06-2009/articolo-id=362614-page=0-comments=1

[71] Sentenza della Corte Costituzionale n.106 del 2009.

[72]According to Judge Magi's written judgment, the authorization given to the CIA "makes it presumable that the activity was carried out at least with the knowledge – maybe with acquiescence – of the Italian counterparts" [*lascia presumere che tale attività sia stata compiuta quantomeno con la conoscenza (o forse con la compiacenza) delle omologhe autorità nazionali]*, p. 75. With respect to the state secrets privilege, the judgment noted the "decisive impact" (*impatto determinante)* of the Constitutional court ruling on the interpretation of the state secrets privilege under Italian law, p. 25. According to Judge Magi, the Constitutional Court's ruling was "intrusive" (*invasive)* as it allowed the defendants to escape questioning during the hearings, with the risk of turning the state secrets privilege into "an absolute and

unmanageable exception to the rule of law" (*eccezione assoluta e incontrollabile allo stato di diritto)* and as a "black curtain" (*un sipario negro*) on SISMI activity. pp. 45 and 97, respectively. See also "Judge reveals Italy's secret services knew about CIA's kidnapping of Abu Omar", *Mail Online*, 1 February 2010, http://www.dailymail.co.uk/news/worldnews/article-1247749/Judge-reveals-Italys-secret-services-knew-CIAs-kidnapping-Abu-Omar.html.

[73] Appeal documents on file with Amnesty International.

[74] Vienna Convention on Diplomatic Relations, 18 April 1961, http://treaties.un.org/untc//Pages//doc/Publication/UNTS/Volume%20500/volume-500-I-7310-English.pdf.

[75] "Italy trial of CIA kidnapping case begins", *Associated Press*, 12 October 2010, http://www.msnbc.msn.com/id/39634807/ns/world_news-europe/.

[76] Matthew Cole, "Officials: Lithuania Hosted Secret CIA Prison to Get 'Our Ear'", *ABC News*, 20 August 2009, http://abcnews.go.com/Blotter/story?id=8373807.

[77] Dick Marty, "Time for Europe to Come Clean Once and for All over Secret Detentions", 21 August 2009, http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=4859&L=2.

[78] "Lithuania Investigating CIA Prison Claim", *Agence France Press,* 25 August 2009, http://www.eubusiness.com/news-eu/us-attacks-prison.79/. See also, Amnesty International public statement, "Lithuania: Investigation of Allegations of CIA Secret Prison Must be Effective and Impartial", (Index: EUR 53/007/2009), 28 August 2009, http://www.amnesty.org/en/library/asset/EUR53/007/2009/en/206484c8-9888-48b5-8477-03244ec7e1c7/eur530072009eng.html.

[79] "Head of the Committee on National Security and Defence Met with Commissioner for Human Rights of the Council of Europe", 20 October 2009, http://www3.lrs.lt/pls/inter/w5_show?p_r=7066&p_d=91565&p_k=2.

[80]"Lithuanian Lawmaker: No Evidence CIA Planes Landed", *Associated Press*, 27 October 2009, http://abcnews.go.com/International/wireStory?id=8925204 ("National Security and Defense Committee chairman Arvydas Anusauskas said… that records provided by the Civil Aviation Administration show that no such planes landed or crossed Lithuania airspace on the dates and times specified in U.S. media".)

[81] "Lithuanian Leader Suspects Her Country Hosted CIA Jail", *Agence France Press*, 20 October 2009, http://www.zimbio.com/Valdas+Adamkus/articles/6SPnuaTUao4/Lithuanian+leader+suspects+country+hosted and Council of Europe Commissioner for Human Rights, "The Commissioner Discussed Minorities' Rights and Discrimination during His Visit to Lithuania", 22 October 2009, http://www.coe.int/t/commissioner/News/2009/091022Lithuania_en.asp.

[82] These three questions formed the primary headings in the final inquiry report, "Findings of the parliamentary investigation by the Seimas Committee on National Security and Defence concerning the alleged transportation and confinement of persons detained by the Central Intelligence Agency of the United States of America in the territory of the Republic of Lithuania" (hereinafter "Findings of the parliamentary investigation by the Seimas Committee on National Security and Defence"), 22 December 2009, http://www3.lrs.lt/pls/inter/w5_show?p_r=6143&p_k=2.

[83] Matthew Cole and Brian Ross, "CIA Secret 'Torture' Prison Found at Fancy Horseback Riding Academy", *ABC News*, 18 November 2009, http://abcnews.go.com/Blotter/cia-secret-prison-

found/story?id=9115978.

[84] Findings of the parliamentary investigation by the Seimas Committee on National Security and Defence, p. 7.

[85] In an October 2010 BBC documentary, however, former Lithuanian President Rolandas Paksas stated that the head of the SSD approached him in the summer of 2003 and requested permission to allow "our foreign partner" to bring people in secret to Lithuania and hold them there. Rolandas Paksas claimed in the documentary that he refused this request and also claimed that he paid a price for this by subsequently being removed from office. The BBC commentator notes that Rolandas Paksas was in fact removed from office (by parliament) in 2004 amid allegations of corruption but there is no independent information confirming that his removal was the result of any refusal to permit secret detainees to be held on Lithuanian territory. See BBC Our World Documentary, "Europe's Secret CIA Prisons", October 2010, Part I: http://www.youtube.com/watch?v=X295HEnrzmI and Part II: http://www.youtube.com/watch?v=-5XB5WfVuc4&feature=related (allegations of CIA secret prisons in Poland and Lithuania). Rolandas Paksas appears in Part II of the documentary. See also, Findings of the parliamentary investigation by the Seimas Committee on National Security and Defence, p. 8: "According to the testimony of the former Director General of the SSD Mečys Laurinkus, in mid-2003 he informed the then President of the Republic Rolandas Paksas about a possibility, after Lithuania's accession to NATO, to receive a request to participate in the programme concerning the transportation of detainees. According to the testimony of Rolandas Paksas, Lithuania was requested permission to bring into the country the persons suspected of terrorism. The information submitted to the President of the Republic did not contain any mention of a detention centre or a prison. In August of the same year, when President of the Republic Rolandas Paksas enquired the then acting Director General Dainius Dabašinskas if there was any new information concerning Lithuania's participation in the said programme, he was told that there was no new information".

[86]Craig Whitlock, "Lithuanian Resignation Tied to CIA Inquiry", 15 December 2009, http://www.washingtonpost.com/wp-dyn/content/article/2009/12/14/AR2009121403426.html.

[87] Kevin Dugan, "Another Dismissal for CIA Involvement?" *Baltic Reports*, 16 December 2009, http://balticreports.com/?p=6741,

[88] Leigh Phillips, "Lithuanian Foreign Minister Quits in CIA prison row", *EU Observer,* 22 January 2010, http://euobserver.com/9/29321. Vygaudas Usackas was subsequently appointed the EU's special representative and head of the EU mission for Afghanistan. The EU fended off criticism as some MEPs questioned the appointment in light of Vygaudas Usackas' denials that Lithuanian state actors were complicit in the CIA's rendition and secret detention programmes. See Euractiv, "Barroso sparks row over EU overseas appointments", 23 February 2010, http://www.euractiv.com/en/future-eu/barroso-sparks-row-over-eu-overseas-appointments-news-276317.

[89] According to the UN Joint Study on Secret Detention, "Data strings are exchanges of messages or digital data, mostly in the form of coded text and numbers between different entities around the world on aeronautical telecommunications networks. They record all communications filed in relation to each particular aircraft, as its flights are planned in advance, and as it flies between different international locations". Para. 116, fn. 201.

[90] UN Joint Study on Secret Detention, para. 120.

[91] Letter from the Prosecutor General's Office of the Republic of Lithuania to Amnesty International, 26

March 2010.

[92]European Committee for the Prevention of Torture news release, "Council of Europe Anti-Torture Committee Visits Lithuania", 23 June 2010, http://www.cpt.coe.int/documents/ltu/2010-06-23-eng.htm. According to the release, "Another issue addressed by the CPT's delegation was the alleged existence some years ago on Lithuanian territory of secret detention facilities operated by the Central Intelligence Agency of the United States of America. The delegation had talks with the Chairman of the Lithuanian Parliament's Committee on National Security and Defence, Arvydas Anušauskas, about the findings of the investigation recently undertaken by the Committee in relation to this matter. It met members of the Prosecutor General's Office entrusted with the pre-trial investigation which had subsequently been launched, in order to discuss the scope and progress of the investigation. And the issue was also raised at a meeting with Jonas Markevičius, Chief Adviser to the President of Lithuania. Further, the delegation visited the facilities referred to as 'Project No. 1' and 'Project No. 2' in the report of the Parliamentary Committee. At the end of the visit, the CPT's delegation had consultations with Remigijus Šimašius, Minister of Justice, and Algimantas Vakarinas, Vice-Minister of the Interior, and presented to them its preliminary observations".

[93] US Department of State, Secretary of State Hillary Clinton, "Remarks with Lithuanian Prime Minister Andrius Kubilius after Their Meeting", 6 May 2010, http://www.state.gov/secretary/rm/2010/05/141586.htm.

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[95] Reprieve, Letter to Lithuanian Prosecutor General and President, 20 September 2010. See also, Adam Goldman and Matt Apuzzo, "CIA Moved Gitmo Suspects in 'Game to Hide Detainees from the Courts'", 6 August 2010, http://www.msnbc.msn.com/id/38588813/ns/us_news-security.

[96] Reprieve, Letter to Lithuanian Prosecutor General and President, 20 September 2010.

[97] Delfi, "D.Grybauskaitė: apie CŽV kalinius gali komentuoti tik JAV", 21 September 2010, http://www.delfi.lt/news/daily/lithuania/dgrybauskaite-apie-czv-kalinius-gali-komentuoti-tik-jav.d?id=36762765.

[98] Amnesty International, *State of Denial* (Case Sheet on Khaled el-Masri), June 2008, http://www.amnesty.org/en/library/asset/EUR01/003/2008/en/2ceda343-41da-11dd-81f0-01ab12260738/eur010032008eng.pdf.

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[100] American Civil Liberties Union news release, "Spain Calls for Arrest of CIA Agents Involved in Extraordinary Rendition", 12 May 2010, http://www.aclu.org/human-rights-national-security/spain-calls-arrest-cia-agents-involved-extraordinary-rendition.

[101] Application to European Court of Human Rights, *El-Masri v Macedonia*, Application No. 39630/09, 18 September 2009, http://www.soros.org/initiatives/justice/litigation/macedonia/Application-Public-Version-20090921.pdf.

[102] Letter from Macedonian Ministry of Foreign Affairs to then Secretary General of the Council of Europe, Terry Davis, 3 April 2006, on file with Amnesty International; see also Amnesty International, *State of Denial*, p. 31.

[103] European Court of Human Rights, *El-Masri v Macedonia*, Application No. 39630/09, Statement of Facts and Questions to the Parties, 8 October 2010, http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=el-masri%20%7C%20v%20%7C%20macedonia&sessionid=61179632&skin=hudoc-cc-en.

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[105] Open Society Justice Initiative news release, "Fresh Evidence Shows Polish Government, CIA Cooperation on Renditions", 22 February 2010, http://www.soros.org/initiatives/justice/focus/foi/news/poland-rendition-20100222.

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[107] PANSA raw data, http://www.soros.org/initiatives/justice/focus/foi/news/poland-rendition-20100222/disclosure-20100222.pdf.

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http://www.abc.net.au/news/newsitems/200512/s1537545.htm.

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[119] CIA IG report, para. 94.

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[145] Committee against Torture, *Agiza v Sweden*, Communication No. 233/2003, CAT/C/34/D/233/2003, 20 May 2005, para. 13.4.

[146] Human Rights Committee, *Alzery v Sweden*, Communication No. 1416/2005, CCPR/C/88/D/1416/2005, 10 November 2006, para 11.5.

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[160] "The Torture Files: Whitehall Row", Exhibit SM20, *The Guardian*, 14 July 2010, http://www.guardian.co.uk/law/interactive/2010/jul/14/torture-files-whitehall-row. According to an exhibit in the court case regarding former Guantanamo Bay detainee, Martin Mubanga: "Mubanga is a dual national, who entered Zambia on his Zambian passport. [REDACTIONS] But instructions from London were unequivocal. We should not take responsibility for or take custody of him. This was subsequently reinforced by the message from No. 10 that under no circumstances should Mubanga be allowed to return to the UK. [REDACTIONS]And it became clear that if we requested consular access [REDACTIONS] thereby defacto acknowledging him as a UK national he would have been handed over to us. This would have gone against all other instructions from London".

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[165] *Mohammed et al. v UK*, as above.

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[167]HC Deb 21 February 2008 cc 547, http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080221/debtext/80221-0007.htm.

[168] Reprieve, "British Indian Ocean Territory Diego Garcia has been Used for Illegal Rendition and Detention of Prisoners ", [undated], http://www.reprieve.org.uk/diegogarcia.

[169] Human Rights Watch, *Cruel Britannia: British Complicity in the Torture and Ill-treatment of Terror Suspects in Pakistan*, 24 November 2009, http://www.hrw.org/en/node/86690.

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United Kingdom of Great Britain and Northern Ireland to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights, A/HRC/13/G/12, 1 March 2010.

[175] "UK: Joint letter re: Inquiry into alleged UK involvement in the mistreatment of detainees held abroad", 8 September 2010, http://www.amnesty.org/en/library/asset/EUR45/016/2010/en/fdea4db2-9786-4604-a643-074ac5266430/eur450162010en.pdf. The NGOs that co-signed the letter were The AIRE Centre, Amnesty International, British Irish Rights Watch, Cageprisoners, Justice, Liberty, Medical Foundation for the Care of Victims of Torture, Redress, and Reprieve.

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MOUNTING EVIDENCE OF EUROPE'S COMPLICITY IN RENDITION AND SECRET DETENTION

European states played a shameful role in the covert programme of rendition and secret detention run by the US Central Intelligence Agency (CIA) following the attacks in the USA on 11 September 2001. The US authorities established a global system for unlawfully transferring people to countries where they were detained in isolation and interrogated using torture. Other abuses committed in the context of this programme included abductions, enforced disappearances, and secret detention.

Evidence of European complicity in these violations has mounted over the years. Lithuania, Poland, and Romania stand accused of providing secret prisons for the CIA. Other European states – including Italy, Macedonia and Sweden – allowed US agents to use their territory for abduction and rendition. The German and UK governments appear to have been involved in interrogations of people under torture.

States involved in the CIA's rendition and secret detention operations should conduct effective investigations into their role in these abuses. In key European countries, progress in such investigations demonstrates that there is fertile ground for accountability in Europe. But more needs to be done.

This report is a survey of the "state-of-play" of investigations, parliamentary inquiries and other accountability processes across Europe. Governments and the public should capitalize on the momentum generated by these investigations to ensure that all complicit states are held accountable and those responsible for such serious human rights violations do not get away with their crimes.

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