



DIRECTORATE-GENERAL FOR EXTERNAL POLICIES
POLICY DEPARTMENT



**TORTURE AND SECRET
DETENTIONS:
THE UN PERSPECTIVE
AND
THE ROLE OF THE E.U.**

DROI

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION

DIRECTORATE B

POLICY DEPARTMENT

WORKSHOP

**TORTURE AND SECRET DETENTIONS:
THE UN PERSPECTIVE AND THE ROLE OF THE E.U.**

Abstract

Professor Manfred Nowak, former UN Special Rapporteur on torture, who co-authored in 2010 a major UN report on secret detention with a global scope, concludes that the currently available information underscores the necessity for establishing independent institutions to conduct prompt investigations into any allegation of secret detention. Victims of secret detention should be provided with effective remedies and adequate reparation. He also calls on the European Institutions to support the recommendations of the UN report and to intensify as well as combine their efforts in the fight against impunity for the violations of international and European law related to secret detention. Human rights lawyer Julia Hall, who authored a major report in 2010 on the new evidence linked to rendition and secret detention programmes, states that European Parliament's past work on accountability for the human rights violations committed in the course of rendition and secret detention programmes should be applauded, but argues that Parliament must continue to play a key role in ensuring the investigations compliant to European Convention on Human Rights are established in all relevant member states, that those responsible for human rights violations are brought to justice, that victims have access to effective redress, and that all necessary steps are taken to ensure that such violations never again occur in the European Union.

This workshop was requested by the European Parliament's Subcommittee on Human Rights.

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"Follow-up to the UN global report on secret detention"

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"Current Evidence on Rendition and Secret Detention Programmes"

Based on workshop presentations at a meeting of the Subcommittee on Human Rights, 31 January 2011

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I. FOLLOW-UP TO THE UN GLOBAL REPORT ON SECRET DETENTION (Manfred Nowak¹)

As UN Special Rapporteur on Torture (Dec. 2004 - Oct. 2010) I have published together with the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism and the Working Groups on Arbitrary Detention and Enforced or Involuntary Disappearances, the United Nations joint study on global practices in relation to secret detention in the context of countering terrorism².

The term “secret detention” refers to deprivation of personal liberty, which can occur both in a secret and officially recognised place of detention, where the detainee is not granted contact with the outside world (“incommunicado detention”) and when the detaining or otherwise competent authority denies or refuses to confirm his or her detention or refuses to provide or actively conceals information about the fate and whereabouts of the detainee. Based on this definition, every form of secret detention clearly violates international human rights law and international humanitarian law since it constitutes arbitrary detention as well as enforced disappearance and may as such amount to torture or ill-treatment when the period of detention is prolonged – not only for the victims themselves but also for their family members. Furthermore, the very purpose of secret detention is to facilitate, and ultimately, cover up the perpetration of torture and other forms of ill-treatment which aim at obtaining information or silencing detainees.

Issued in February 2010, the joint study is a most comprehensive analysis of the global practices of secret detention in the context of counter-terrorism activities, covering altogether 66 states, many of which have been involved in secret detention and related activities since 11 September 2001 and the subsequent “Global War on Terror”. Based on responses from 44 States to a detailed questionnaire, interviews with 30 individuals, their family members or legal counsels, and analysis of flight data, the study reveals a fundamental contradiction: Despite its irreconcilable violation both of international human rights law, also in states of emergency and armed conflict, and of international humanitarian law during any form of armed conflict, the practice of secret detention is nevertheless widespread and constitutes a serious problem on a global scale reinvigorated by the “Global War on Terror”. What makes these violations of international law even worse is the fact that there has been almost no case of judicial investigations into allegations of secret detention and rarely have these investigations led to the conviction of the perpetrators, which would bring justice to the victims and their families.

The use of secret detentions by the United States of America in the context of the “Global War on Terror” was only made possible by systems of trans-border cooperation and complicity by third states. Notwithstanding their obligations under international and European law, Member States of the European Union were complicit in practices of “proxy detention” and “extraordinary rendition” of persons to Jordan, Egypt, Syria, Morocco, etc., in violation of the principle of *non-refoulement*.

As the U.S. section of the secret detention report mainly focussed on the complicity of Poland, Lithuania and Romania in the CIA-led rendition and secret detention programme, this follow-up highlights the current developments in these countries. In Poland, in the village of Stare Kiejkuty, the CIA ran a secret

¹ Professor for International Law and Human Rights and Head of the Research Platform “Human Rights in the European Context” at the university of vienna; director of the ludwig boltzmann institute of Human Rights; UN Special Rapporteur on Torture (2004-2010)

² Joint study on global practices in relation to secret detention in the context of countering terrorism, A/HRC/13/42, 19 February 2010, available under: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-42.pdf>

detention facility from 2003 to 2005 under the codename “Quartz” in which eight high-value detainees had been allegedly held. The Polish Intelligence Agency confirmed for the period 2002 until 2004 the landing of CIA flights at Szymany airport and in Warmia-Mazuria province³. Since the release of the UN joint study, the Polish Public Prosecutor launched an official investigation and identified “high value detainee” Abd al-Rahim al-Nashiri, the alleged mastermind behind the USS Cole bombing in 2000 in Yemen and Al Qaeda’s chief of operations in the Persian gulf, as a victim of torture and revealed the identity of two CIA officials, Albert and his supervisor Mike, who had tortured him⁴. Furthermore, Abu Zabaydah was granted formal status as a victim on 20 January 2011⁵.

Concerning Romania, the second report by the Council of Europe’s *Special Rapporteur* Dick Marty alleged that detainees, mainly from Afghanistan and Iraq, were transferred to a Romanian “black site” with CIA flights landing in Mihail Kogalniceanu military airfield⁶. The UN joint study identified a flight from Poland to Romania but there was no definite evidence that it had transferred detainees⁷. Despite the continuous denial of the Romanian government, new information seems to confirm that a small jail in Bucharest was run between 2003 and 2005 under the codename “Britelite”, consisting of six cells⁸. The six high value detainees held there reportedly are Khalid Sheikh Mohammed, Abd al-Rahim al-Nashiri, Janaat Gul Hambali, Waleed bin Attash and Ibn al-Shaykh al-Libi⁹.

In November 2009, the Lithuanian parliament launched investigations into the existence of a CIA secret detention site on Lithuanian territory and the assigned Committee recommended that the Prosecutor General should examine if three SSD officials ‘had abused their authority’ under Lithuanian law. The UN joint study described how Lithuania was integrated into the secret detention and rendition programme in 2004. Lithuanian officials provided the CIA with a detention facility, inside a riding academy in Antaviliai, where eight terrorist suspects were held for more than a year until late 2005. The study further identified two flights from Afghanistan to Vilnius that took place on 20 September 2004 and 28 July 2005¹⁰. Criminal investigations into a secret CIA detention centre that had been launched by the Prosecutor General in January 2010 were closed in January 2011 due to “information shortages”¹¹.

While all secret detention sites in Europe have been closed, these latest developments primarily underscore the necessity for establishing independent institutions to conduct prompt investigations into any allegation of secret detention and “extraordinary rendition”, with a view to bringing the perpetrators to justice. Likewise, victims of secret detention should be provided with effective remedies and adequate reparation. I further reiterate the recommendations of the joint study, calling upon the governments of the EU Member States to ensure that:

³ A/HRC/13/42, para. 114

⁴ Deutsche Welle 2010, available under: <http://www.dw-world.de/dw/article/0,6091363,00.html>; Spiegel Online 2010, available under: <http://www.spiegel.de/politik/ausland/0,1518,716386,00.html>; Amnesty International 2010, “Open secret: Mounting evidence of Europe’s complicity in rendition and secret detention”, p. 28 et sqq., available under: <http://www.europarl.europa.eu/document/activities/cont/201101/20110118ATT11880/20110118ATT11880EN.pdf>

⁵ International Centre for the Legal Protection of Human Rights 2011, available under: <http://www.interights.org/view-document/index.htm?id=609>

⁶ Dick Marty, Council of Europe Doc. 11302 rev., 11 June 2007, available under: <http://assembly.coe.int/Documents/WorkingDocs/Doc07/edoc11302.pdf>

⁷ A/HRC/13/42, para. 117

⁸ CNBS News 2010, available under:

http://www.cbsnews.com/stories/2010/08/06/national/main6749455.shtml?source=related_story

⁹ <http://legalift.wordpress.com/2010/08/17/binalshibh-secret-prison-interrogation-tapes-found-names-of-6-prisoners-in-romania-secret-facility-disclosed/>

¹⁰ A/HRC/13/42, para. 120 et sqq.

¹¹ The Lithuanian Tribune 2011, available under:

<http://www.lithuaniatribune.com/2011/01/15/lithuania-terminates-pre-trial-investigation-on-a-secret-cia-prison/>

- secret detention is explicitly prohibited in their respective national law
- internal inspections and independent mechanisms have timely access to all places where persons are deprived of their liberty for monitoring purposes at all times
- safeguards for persons deprived of their liberty are fully respected
- immediate families of those detained are informed of their relatives' capture, location, legal status and condition of health
- any action by intelligence services are governed by law, which should be in accordance with international norms
- the status of all pending investigations into allegations of ill-treatment and torture of detainees and detainee deaths in custody are made public
- transfers or the facilitation of transfers from one State to the custody of authorities of another State are carried out under judicial supervision and in conformity with international standards
- relevant international instruments are ratified and adequately implemented: International Covenant on Civil and Political Rights, UN Convention against Torture and its Optional Protocol and the International Convention for the Protection of All Persons from Enforced Disappearance are ratified and adequately implemented and an independent national preventive mechanism designated
- their citizens are provided with consular protection
- they provide witness protection
- common efforts in the implementation of the Guidelines to EU Policy Towards Third Countries on Torture and CIDT are ensured

I further urge the institutions of the European Union and the Council of Europe to consistently follow-up on the implementation of these recommendations in their Member States and to intensify as well as combine their efforts in the fight against impunity for these violations of international and European law.

Like Amnesty International¹² I also recommend that Europe, to a greater extent, assists governments of third countries in the elimination of persistent practices of torture and other forms of ill-treatment. An example is the "Atlas of Torture" project, which is funded by the European Commission under the European Instrument for Democracy and Human Rights and aims at strengthening the implementation of my recommendations as *UN Special Rapporteur on Torture* in five selected countries during a period of three years by primarily empowering civil society organisations in their capacity to promote and advocate for the adoption of specific measures for the prevention of torture and ill-treatment¹³.

¹² Amnesty International 2010, Dangerous deals: Europe's reliance on 'diplomatic assurances' against torture, available under:

<http://www.amnesty.org/en/library/asset/EUR01/012/2010/en/608f128b-9eac-4e2f-b73b-6d747a8cbaed/eur010122010en.pdf>

¹³ <http://www.atlas-of-torture.org>

II. CURRENT EVIDENCE ON RENDITION AND SECRET DETENTION PROGRAMMES (Julia Hall)

Introduction

"We have repeatedly stressed the need for member states to start or continue in-depth, independent, impartial investigations to establish the truth of such claims."

José Manuel Barroso, President of the European Commission, on learning of the allegations that Lithuania had hosted CIA-run secret detention sites, 25 August 2009¹⁴

European Union institutions, in particular the European Parliament, have had an important role in uncovering the truth about – and seeking accountability for – EU member states' involvement in the rendition and secret detention programmes operated by the United States of America in the aftermath of the 11 September 2001 attacks in the USA.

Along with the 2006 and 2007 investigative reports by the Parliamentary Assembly of the Council of Europe, under the direction of Swiss Senator Dick Marty,¹⁵ the 2007 report by a special committee of the European Parliament – the Temporary Committee on the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners (TDIP) – comprises an authoritative compilation of information regarding EU member states' complicity in the CIA-operated programmes.¹⁶ Those operations were characterized by serious human rights violations including abductions, unlawful transfers, enforced disappearances, secret detention, and torture and other ill-treatment. 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.¹⁷ 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).¹⁸

¹⁴ Leigh Phillips, "Lithuanian President Regrets Country Named as CIA Prison Collaborator", *EU Observer*, 25 August 2009, <http://euobserver.com/9/28579>.

¹⁵ Parliamentary Assembly Council of Europe, Committee on Legal Affairs and Human Rights, *Alleged Secret Detentions and Unlawful Inter-State Transfers of Detainees Involving Council of Europe Member States*, Doc. 10957, 12 June 2006, <http://assembly.coe.int/Documents/WorkingDocs/doc06/edoc10957.pdf> and PACE, *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>.

¹⁶ See 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.

¹⁷ 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.

¹⁸ Ibid. 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.

In February 2009, a second EP resolution was adopted reiterating the EP's call for accountability to the Council and EU member states.¹⁹ Despite the significant amount of work undertaken by the TDIP to seek accountability for member state involvement in renditions and secret detention, and the reform of laws and policies regarding civilian oversight of intelligence agencies domestic and foreign, the EU institutions have failed to date to engage in meaningful follow-up to the TDIP report or to new information that has come to light since the 2007 report. At the same time, additional research and analysis by civil society organizations, including Amnesty International and independent journalists, has only underscored the need for further investigation; accountability; and reparation, including effective remedy, for EU member states' involvement in renditions and secret detention.²⁰

A December 2010 EP resolution on the situation of fundamental rights in the EU stated that the EP regrets that the Council and Commission have not followed-up on the TDIP report, but the EP's own recent lack of action with respect to accountability for renditions and secret detention signals the failure of all the European institutions to consistently and persistently pursue accountability for state complicity in these programmes and justice for the victims of these operations.²¹

In December 2009, however, the Lisbon Treaty entered into force, strengthening the EU's legal framework on human rights and providing more power to the EP in the field of justice and home affairs.²² 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.

In the intervening years, however, there has been some notable progress toward accountability in Europe, albeit without the cooperation of the US government and in some cases, in spite of the lack of political will and outright obstruction by some European governments.

This briefing paper to the European Parliament Sub-Committee on Human Rights (DROI) focuses on the "state-of-play" with respect to accountability for EU member and candidate states' complicity in these abusive practices. It highlights key developments in Italy, Germany, Lithuania, Former Yugoslav Republic of 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. It also highlights new reports and sources of information that build on the TDIP and PACE reports and have the potential to propel the project for accountability forward, in particular the February 2010 *United Nations Joint Study on Global Practices in Relation to Secret Detention in the*

¹⁹ 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>.

²⁰ See, for example, *Europe: Partners in Crime: Europe's Role in US Renditions*, (AI 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*, (AI 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* (AI Index EUR 01/013/2008), 24 June 2008, <http://www.amnesty.org/en/library/info/EUR01/013/2008/en>.

²¹ European Parliament resolution of 15 December 2010 on the situation of fundamental rights in the European Union (2009) – effective implementation after the entry into force of the Treaty of Lisbon (2009/2161 (INI)), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0483+0+DOC+XML+V0//EN&language=EN>.

²² 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). Moreover, 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.

*Context of Countering Terrorism.*²³ To a great degree, this submission summarizes information from an Amnesty International report that I authored titled *Open Secret: Mounting Evidence of Europe's Complicity in Rendition and Secret Detention*, published in November 2010.²⁴

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 early 2011 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, however, is the oft-repeated “need” for “state secrecy” in order to protect national security, which remains a serious threat to genuine accountability.

Europe must not become yet another “accountability-free zone”, with governments eager and enabled to simply 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 fundamentally undermine international human rights law, an impact that many governments with poor human rights records outside North America and Europe will undoubtedly note and exploit to their advantage.

It is urgent that EU member state and candidate governments reject such impunity, capitalize on the momentum in Europe toward accountability, and commit in full to justice for the victims of rendition, enforced disappearance, and torture and other 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 the primacy of human rights law and the responsibility of states under that law to provide human rights protection to all persons entitled to it.

To that end, it is recommended that the European Parliament should:

- Resume its investigation into EU member and candidate states’ complicity in the US-led rendition and secret detention programmes with the goal of updating the 2007 TDIP report;

²³ United Nations Human Rights Council, Joint study on global practices 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 (hereinafter “UN Joint Study on Secret Detention”), 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. The UN Joint Study on Secret Detention is 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, UN Joint Study on Secret Detention, para. 284.

²⁴ Copies of this report will be made available to participants and attendees at the 17 November 2010 PACE Committee on Legal Affairs and Human Rights hearing on “Human Rights and the Fight against Terrorism”, in Paris.

- Monitor member state compliance with EP resolutions and include that information in any follow-up to the 2007 TDIP report;
- Ensure that the DROI and LIBE committees, in specific and in collaboration as required by the 2007 EP resolution, follow-up on the work of the TDIP to secure full public accountability of EU institutions and member states for violations of international and European human rights law, including article 2 TEU and the EU Charter of Fundamental Rights.
- Urge parliamentarians from relevant countries that have not established European Convention on Human Rights (ECHR)-compliant investigations to 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.

1 Accountability for European Complicity: Country Update Summaries

The short summaries below note significant developments in key European countries where such developments have either propelled accountability processes forward or require that, in the face of new and compelling information, governments recommit to the establishment of a human rights-compliant process to ensure accountability for their role in the US rendition and secret detention programmes.²⁵ For a more detailed account of these developments, see the November 2010 Amnesty International report, *Open Secret: Mounting Evidence of Europe's Complicity in Rendition and Secret Detention*.

1.1 Germany: Unconstitutional Reliance on State Secrets Undermines Inquiry

A three-year long parliamentary inquiry into Germany's alleged involvement in the US CIA-led rendition and secret detention programmes 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.²⁶

Members of German opposition parties lodged a court challenge in 2008, arguing that the German government's lack of cooperation 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 cooperate with the inquiry violated the German Constitution by impeding the parliament's right as an oversight body to investigate the government.²⁷

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 study specifically identified Germany as a

²⁵ See also European Centre 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-Herzegovina, Canada, Denmark, France, Germany, Italy, Former Yugoslav Republic of Macedonia, Poland, Portugal, Romania, Spain, Sweden, United Kingdom, and United States]. 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>.

²⁶ The parliamentary inquiry was referred to as "BND-Untersuchungsausschuss".

²⁷ 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.

government complicit 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 2002.²⁸ Evidence before the German parliamentary inquiry confirmed that Muhammad Zammar was interrogated by German officials in Syria, that high-level German officials were aware of the use of torture in Syrian prisons, that Muhammad Zammar told his German interrogators that he had been ill-treated by the Syrians – and that German agents had additionally sent questions to the Syrians for use by Syrian agents in their interrogations of Muhammad Zammar.²⁹

The profound lack of cooperation from the German authorities in the course of the parliamentary inquiry, coupled with the identification of Germany in the UN Joint Study on Secret Detention as complicit in abuses perpetrated against Muhammad Zammar, urgently require further action on the part of the German government.

1.2 Italy: First Convictions of CIA and Foreign Agents

In November 2009, 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 February 2003 abduction of Egyptian national Usama Mostafa Hassan Nasr (better known as Abu Omar) from a Milan street in February 2003.³⁰ 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 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), which is not permitted under international human rights law in the circumstances present in this case. 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.

The Italian Constitutional Court ruled in March 2009 that much of the evidence against particular defendants, particularly high-level officials in the Italian military intelligence service (then-called Servizio per le Informazioni e la Sicurezza Militare or SISMI), was covered by the state secrets doctrine and could not be admitted at trial.³¹ 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.³²

²⁸ UN Joint Study on Secret Detention, para. 159.

²⁹ Deutscher Bundestag, Beschlussempfehlung und Bericht des 1. Untersuchungsausschusses nach Artikel 44 des Grundgesetzes, Drucksache 16/13400, 18. 06. 2009.

³⁰ 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 news 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: Europe’s Role in Rendition and Secret Detention*, pp. 45 (case sheet on Abu Omar).

³¹ Sentenza della Corte Costituzionale n.106 del 2009.

³² 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” (*invasiva*) as it allowed the defendants to escape questioning during

The prosecutor appealed the verdict in March 2010, challenging the interpretation and application of the “state secrets” doctrine in the lower court and the scope of diplomatic immunity. In December 2010 the appeals court upheld the dismissal of the cases against five high-ranking Italian officials based on the state secrets privilege. Originally sentenced to five and eight years’ imprisonment respectively, the 22 CIA agents and one US military official had their sentences increased by the appeal court to seven and to nine years for their role in the abduction of Abu Omar. The appeal concerning three US officials who benefitted from diplomatic immunity will be examined in a separate appeals proceeding. Amnesty International issued a news release on 16 December calling on the Italian government to stop using the state secrets privilege to shield its officials from accountability for serious human rights violations.³³

1.3 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 spotlight was first turned on Lithuania in August 2009 when US-based *ABC News* quoted unnamed 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 2005.³⁴ The day after the media revelations, Swiss Senator Dick Marty, special rapporteur on secret detentions for the PACE’s Committee on Legal Affairs and Human Rights, publicly stated that his own confidential sources appeared to confirm the report of a secret prison in Lithuania.³⁵

On 5 November 2009, the Lithuanian parliament mandated the Committee on National Security and Defence to conduct a parliamentary inquiry and present findings to the parliament. The inquiry’s final report, released on 22 December 2009, concluded that two secret sites were prepared to receive suspects; it concluded that one was not used (Project No. 1), and that it could not establish on the information available to it whether another, at Antaviliai, outside Vilnius, had ever actually held prisoners (Project No. 2).³⁶ The report stated, however, that although it could not be determined that persons were 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 [State Security Department] 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”.³⁷

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 amounted to the criminal “abuse

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>.

³³ Amnesty International news release, “Italy Prevents Trial of Intelligence Agents Over Abu Omar Rendition”, 16 December 2010, <http://www.amnesty.org/en/news-and-updates/italy-prevents-trial-intelligence-agents-rendition-abu-omar-2010-12-16>.

³⁴ 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>.

³⁵ 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.

³⁶ “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.

³⁷ Findings of the parliamentary investigation by the Seimas Committee on National Security and Defence, p. 7.

of authority” under Lithuanian law. 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 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.³⁸

The two secret sites were subsequently visited in June 2010 by a delegation from the European Committee for the Prevention of Torture (CPT).³⁹ 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 post-11 September 2001 – and made that visit known to the public.

In January 2011, the Lithuanian Prosecutor General announced that the pre-trial investigation of the three SSD officials for “abuse of authority” had come to a close. Press reports indicated that the prosecutor was willing to re-open the investigation upon presentation of new evidence/developments. Amnesty International deplored the closure of the investigation as premature and wrote to the Prosecutor General indicating several lines of inquiry that had not yet been pursued and formally requesting that the criminal investigation continue until all relevant information and evidence were collected and assessed.⁴⁰

1.4 Former Yugoslav Republic of Macedonia: European Court to Consider First Rendition Case

Efforts to hold the Former Yugoslav Republic of Macedonia (FYROM) government accountable for its role in the unlawful detention in FYROM 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 FYROM at the European Court of Human Rights.⁴¹ The landmark application represents the

³⁸ According to the UN Joint Study on Secret Detention, para. 120: “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.”

³⁹ 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.”

⁴⁰ Amnesty International, “Lithuania Must Re-Open CIA Secret Prison Investigation”, 18 January 2011, <http://www.amnesty.org/en/news-and-updates/lithuania-must-reopen-cia-secret-prison-investigation-2011-01-18>

⁴¹ Application to European Court of Human Rights, *El-Masri v Former Yugoslav Republic of Macedonia*, Application No. 39630/09, 18 September 2009, <http://www.soros.org/initiatives/justice/litigation/macedonia/Application-Public-Version-20090921.pdf>.

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.

Khaled el-Masri – a German national of Lebanese descent – was apprehended on 31 December 2003 by FYROM law enforcement officials at the Serbian-FYROM border. He was held under armed guard for 23 days; interrogated; repeatedly denied consular access and then handed over to the CIA on 23 January 2004 at the Skopje airport where he was allegedly beaten and drugged and then transferred to Kabul Afghanistan, where he remained until his release in Albania four months later.⁴²

Khaled al-Masri's application to the European Court of Human Rights alleged that Former Yugoslav Republic of Macedonian state actors were directly responsible for his unlawful detention in Former Yugoslav Republic of Macedonia; his ill-treatment in detention in FYROM; 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 FYROM's obligations under the ECHR.⁴³ The FYROM 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.⁴⁴

Khaled el-Masri's efforts to hold accountable the US government for its direct and indirect involvement in his apprehension and illegal detention in Former Yugoslav Republic of 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.⁴⁵ 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 perpetrated against Khaled el-Masri.⁴⁶

The European Court of Human Rights transmitted the *el-Masri v Former Yugoslav Republic of Macedonia* application to the FYROM authorities for the government's observations in October 2010.⁴⁷

1.5 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. These disclosures appear to have given new momentum to an investigation into secret prison allegations commenced in 2008 by the Appeal Prosecutor's Office in Warsaw.

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

⁴² Amnesty International, *State of Denial: Europe's Role in Rendition and Secret Detention* (Case Sheet on Khaled el-Masri), June 2008, <http://www.amnesty.org/en/library/info/EUR01/003/2008/en>.

⁴³ Application to European Court of Human Rights, *El-Masri v Former Yugoslav Republic of Macedonia*, op. cit., fn 26.

⁴⁴ Letter from Former Yugoslav Republic of 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.

⁴⁵ Supreme Court of the United States, *El-Masri v US*, No. 06-1613, 9 October 2007.

⁴⁶ Regarding the flaws with the parliamentary inquiry process, see the section above on Germany.

⁴⁷ European Court of Human Rights, *El-Masri v Former Yugoslav Republic of 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>.

Initiative (OSJI) in December 2009.⁴⁸ 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 -- but also that PANSAs 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.⁴⁹ According to the data, PANSAs also assisted in navigating aircraft into Szymany on two occasions without having received any official flight plans at all.⁵⁰

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 planes operating in the context of the CIA's rendition programme landed at Szymany airport.⁵¹ 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).⁵²

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.⁵³ Further representations on Abd al-Rahim al-Nashiri's behalf were made in September 2010 when the Open Society Justice Initiative submitted a request to the Appeal Prosecutor's Office to pursue specifically a criminal investigation into the alleged ill-treatment of Abd al-Rahim al-Nashiri while in Poland.⁵⁴

The criminal investigation by the Appeal Prosecutor's Office into Poland's alleged involvement in the CIA rendition and secret detention programmes has never made public its terms of reference or timeline. In September 2010, however, the prosecutor's office publicly confirmed that it was investigating claims by Saudi national, Abd al-Rahim al-Nashiri, that he had been held in secret in

⁴⁸ 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>.

⁴⁹ Open Society Justice Initiative and Polish Helsinki Foundation for Human Rights, Explanation of Rendition Flight Records Released by the Polish Air Navigation Services Agency, 22 February 2010, <http://www.soros.org/initiatives/justice/focus/foi/news/poland-rendition-20100222/flight-records-20100222.pdf>. The raw data which this explanation analyzes can be found at <http://www.soros.org/initiatives/justice/focus/foi/news/poland-rendition-20100222/disclosure-20100222.pdf>.

⁵⁰ Ibid.

⁵¹ Helsinki Foundation for Human Rights news release, "The Border Guard Office has Provided New Information regarding Crew and Passengers of CIA Planes Landing at the Polish Airport in Szymany", 30 July 2010, <http://www.hfhr.org.pl/cia/images/stories/PRESS%20RELEASE%202.pdf>. The HFHR noted that the Polish government refused to release this information to the PACE special rapporteur on renditions and secret detention, Swiss Senator Dick Marty, when he requested cooperation from Poland in the course of his investigation. A breakdown of the data provided by the Polish Border Guard Office can be found here: http://www.hfhr.org.pl/cia/images/stories/Data_flights_eng.pdf. The information included a 23 July 2010 letter from the Border Guard Office confirming that seven flights landed at Szymany between December 2002 and September 2003, http://www.hfhr.org.pl/cia/images/stories/Letter_23_07_2010.pdf.

⁵² See data provided by the Polish Border Guard Office, http://www.hfhr.org.pl/cia/images/stories/Data_flights_eng.pdf.

⁵³ UN Joint Study on Secret Detention, para. 116.

⁵⁴ Open Society Justice Initiative news release, "Lawyers for Rendition Victim Intervene in Polish Investigation of CIA Black Sites: Filing Demands that Polish Prosecutor Investigate al-Nashiri's Illegal Transfer, Detention, and Torture on Polish Soil", 21 September 2010, <http://www.soros.org/initiatives/justice/focus/national-security/news/nashiri-poland-20100921>.

Poland in 2002-2003.⁵⁵ The prosecutor formally granted Adb al-Rahim al-Nashiri status as a victim in October 2010: the first time a rendition victim's claims have been acknowledged in the context of the official investigation into a secret prison in Poland.⁵⁶

In January 2011, the Polish prosecutor granted victim status to Abu Zubaydah, who also remains detained at Guantanamo Bay. In George W. Bush's memoirs, published in November 2010, the former president admitted that he authorized the "waterboarding" (mock drowning) of Abu Zubaydah while the detainee was held in secret prisons run by the CIA. Amnesty International immediately called for the criminal investigation in the US of the former president based on his admission that he authorized interrogation techniques that amounted to torture.⁵⁷

1.6 Romania: Implausible Denials amidst Mounting Allegations

Despite steadily mounting public information alleging that detainees were held in a secret detention centre in Romania, the Romanian government has 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.⁵⁸ Reports by the PACE and the European Parliament also alleged that Romania hosted a secret detention facility.⁵⁹ A secret internal inquiry conducted by the Romanian government in 2007 concluded that the accusations were "groundless".⁶⁰

Since late 2008, however, claims that Romania hosted a secret CIA prison have surfaced from a variety of sources. In August 2009, the *New York Times* reported that unnamed former US intelligence sources claimed that one such centre was located in Bucharest, the Romanian capital city.⁶¹ In response, the Romanian authorities reiterated their stock denial, stating that they cooperated "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".⁶²

The latest such denial came in response to the February 2010 UN Joint Study on Secret Detention, which 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 2003.⁶³ The UN

⁵⁵ "Polish Prosecutors to Probe CIA Prison Acts", *Associated Press*, 22 September 2010, <http://www.google.com/hostednews/ap/article/ALeqM5je7nwMRCExNQyMHkIgyZ-5kcWqAD9ID07100>

⁵⁶ Open Society Justice Initiative news release, "Polish Prosecutor Recognizes Guantanamo Prisoner as Victim in CIA Black Site Investigation", 27 October 2010, <http://www.soros.org/initiatives/justice/focus/national-security/news/poland-cia-nashiri-20101027>. See also, Vanessa Gera and Adam Goldman, "Terror Suspect gets Victim Status in Polish Probe", *Associated Press*, 27 October 2010, http://hosted2.ap.org/txdam/2328593e932a4d72bf7e9798dc61d072/Article_2010-10-27-EU-Poland-CIA-Prison/id-b6d8bb2d5ed244a8b80eb33f6eba4023 [citing unnamed US intelligence officials stating that Abd al-Rahim al-Nashiri was held in secret detention in Poland].

⁵⁷ See Amnesty International news release, "US Must Begin Criminal Investigation of Torture Following Bush Admission" (AI Index: PRE01/370/2010), 10 November 2010, <http://www.amnesty.org/en/node/19467>.

⁵⁸ Human Rights Watch Statement on U.S. Secret Detention Facilities in Europe, 6 November 2005, <http://www.hrw.org/en/news/2005/11/06/human-rights-watch-statement-us-secret-detention-facilities-europe>.

⁵⁹ PACE report, para. 7; TDIP report, para. 164.

⁶⁰ Report of the inquiring committee of investigation on the statements regarding the existence of some CIA imprisonment centres or of some flights or aircraft hired by CIA on the territory of Romania of the Parliament of Romania. This inquiry committee was established by Resolution 29 of the Senate of Romania of 21 December 2005. It finalized its report on 5 March 2007 and held that the accusations against Romania were groundless.

⁶¹ David Johnston and Mark Mazzetti, "A Window into CIA's Embrace of Secret Jails", *New York Times*, 12 August 2009, www.nytimes.com/2009/08/13/world/13foggio.html?_r=2&ref=global-home.

⁶² Letter: Romania and CIA Jails, 22 August 2009, <http://query.nytimes.com/gst/fullpage.html?res=9F00E2DC113DF931A1575BC0A96F9C8B63>.

⁶³ UN Joint Study on Secret Detention, para. 117.

experts could not, however, confirm definitively that the flight involved transfers of detainees.⁶⁴ In a *note verbale* to the UN experts dated 27 January 2010, the Romanian authorities repeated the denials that planes carrying detainees had landed on Romanian territory and that they had hosted a secret detention site.⁶⁵

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.⁶⁶ 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.⁶⁷

Citing claims by unnamed former US intelligence officials, the *Associated Press* also reported in October 2010 that Abd al-Rahim al-Nashiri was held in secret detention in Romania.⁶⁸

Revelations in 2009 and 2010 regarding Romania's alleged complicity in the CIA rendition and secret detention programmes require that the Romanian government recommit to the establishment of a full, impartial, independent, and effective investigation into its role in these operations.

1.7 Sweden: Rendition Cases Require Full Accountability and Redress

The Swedish government has failed to date to satisfy its obligation to fully investigate the renditions at the hands of the CIA 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.⁶⁹ Although the Swedish government claimed that it had obtained diplomatic assurances against torture and ill-treatment from the Egyptian authorities prior to transfer, the UN Committee against Torture and UN Human Rights Committee both held that Sweden violated the prohibition on torture by its involvement in the men's transfers to Egypt -- and that Egypt's diplomatic assurances did not provide a sufficient safeguard against that manifest risk of torture and other ill-treatment.⁷⁰

⁶⁴ The UN joint study suggests that three Yemeni nationals, Mohammad al-Asad, Salah Ali, and Mohammed Farag Ahmad Bashmilahmay have been held in a Romanian secret detention facility: para. 113. See also, Amnesty International, *USA/Yemen: Secret Detention in CIA 'Black Sites'*, AI Index: AMR 51/177/2005, 8 November 2005, <http://www.amnesty.org/en/library/asset/AMR51/177/2005/en/3bbac635-d493-11dd-8a23-d58a49c0d652/amr511772005en.html>.

⁶⁵ Human Rights Council, Note verbale dated 27 January 2010 from the Permanent Mission of Romania to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights, A/HRC/13/G/13, 2 March 2010.

⁶⁶ A breakdown of the data provided by the Polish Border Guard Office can be found here: http://www.hfhr.org.pl/cia/images/stories/Data_flights_eng.pdf.

⁶⁷ 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.

⁶⁸ Vanessa Gera and Adam Goldman, "Terror Suspect gets Victim Status in Polish Probe", *Associated Press*, 27 October 2010, http://hosted2.ap.org/txdam/2328593e932a4d72bf7e9798dc61d072/Article_2010-10-27-EU-Poland-CIA-Prison/id-b6d8bb2d5ed244a8b80eb33f6eba4023.

⁶⁹ See Amnesty International, *Sweden: The Case of Mohammed El Zari and Ahmed Agiza: Violations of Fundamental Human Rights by Sweden Confirmed*, (AI Index: EUR 42/001/2006), 27 November 2006, <http://www.amnesty.org/en/library/info/EUR42/001/2006>; *Europe: Partners in Crime: Europe's Role in US Renditions*, (AI 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*, (AI Index: EUR 01/003/2008), 24 June 2008, <http://www.amnesty.org/en/library/info/EUR01/003/2008/en>.

⁷⁰ Committee Against Torture, *Agiza v Sweden*, Communication No. 233/2003, CAT/C/34/D/233/2003, 20 May 2005, para. 13.4 and Human Rights Committee, *Alzery v Sweden*, Communication No. 1416/2005, CCPR/C/88/D/1416/2005, 10 November

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

Sweden has failed, however, 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.⁷¹

The Swedish government formally rescinded the men's expulsion orders in 2008, but in November 2009 the men's appeals against the government's refusal to grant them residence permits were dismissed, partly based on information never disclosed to either Mohammed al-Zari or Ahmed Agiza.⁷² Awarding both men residence permits would contribute toward ensuring that they receive an effective remedy, including adequate restitution.⁷³

Although the Swedish Parliamentary Ombudsman and the parliamentary Standing Committee on the Constitution conducted internal inquiries, neither satisfied Sweden's legal obligation to investigate the human rights violations that occurred in the context of the men's unlawful transfers and alleged torture or other ill-treatment, and to bring those responsible to account.⁷⁴

1.8 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, Pakistan, and at Guantanamo Bay, Cuba, among others – the former Labour government refused for years to heed repeated calls for an independent, impartial inquiry.

A number of notorious cases of alleged abuse lie at the heart of efforts by Amnesty International and others to advocate for the establishment of a comprehensive inquiry that fully complies with the UK's

2006, para 11.5. See also See Amnesty International, *Dangerous Deals: Europe's Reliance on 'Diplomatic Assurances' against Torture*, (AI Index: EUR 01/012/2010), pp. 27-28, <http://www.amnesty.org/en/library/asset/EUR01/012/2010/en/608f128b-9eac-4e2f-b73b-6d747a8cbaed/eur010122010en.pdf>.

⁷¹ See Amnesty International, *Dangerous Deals: Europe's Reliance on 'Diplomatic Assurances' Against Torture*, (AI Index: EUR/01/012/2010), 12 April 2010, pp. 27-28 [country entry on Sweden and Ahmed Agiza and Mohammed al-Zari cases], <http://www.amnesty.org/en/library/asset/EUR01/012/2010/en/608f128b-9eac-4e2f-b73b-6d747a8cbaed/eur010122010en.pdf>.

⁷² See Amnesty International, Letter to Rafael Rivas Posada, Chairperson UN Human Rights Committee, on Consideration of Sweden's Sixth Periodic Report to the Human Rights Committee, 2 February 2009, http://www2.ohchr.org/english/bodies/hrc/docs/ngos/AI_sweden_HRC95.pdf.

⁷³ See, *UN Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, adopted by the UN General Assembly in Resolution 60/147 of 16 December 2005, paras. 15-24.

⁷⁴ Chefsjustitieombudsmannen Mats Melin, *Avvisning till Egypten - en granskning av Skerhetspolisens verkstllighet av ett regeringsbeslut om avvisning av tv egyptiska medborgare* [Expulsion to Egypt: A review of the execution by the Security Police of a government decision to expel two Egyptian citizens], Reference Number: 2169-2004, 22 March 2005. See also Memorandum from Swedish Ministry of Foreign Affairs, "Government of Sweden's Response to CAT Recommendations", 3 June 2009, <http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.SWE.CO.5.Add.1.pdf>.

human rights obligations. In most of the 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.⁷⁵ 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.⁷⁶

The February 2010 UN Joint Study on Secret Detention, specifically referencing 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”.⁷⁷ 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.⁷⁸

In an attempt to ensure that the inquiry’s scope and depth were 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, and recommended that victims/survivors have official standing and 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 public hearings the ordinary procedure); 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 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”.⁷⁹

⁷⁵ Amnesty International, *United Kingdom: Time for an Inquiry into the UK’s Role in Human Rights Violations Overseas Since 11 September 2001*, (AI Index: EUR45/001/2010), March 2010, <http://www.amnesty.org/en/library/asset/EUR45/001/2010/en/6b65c47e-c1a1-42e6-b382-eae6a948b42a/eur450012010en.pdf>.

⁷⁶ David Miliband Rendition Statement, House of Commons Hansard Debates for 21 February 2008, Column 547, <http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080221/debtext/80221-0007.htm>.

⁷⁷ UN Joint Study on Secret Detention, para. 159(b).

⁷⁸ *Ibid.*, para. 128.

⁷⁹ “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>.

2 Conclusion: The Truth Must Prevail

The idea that governments and individuals must be held accountable for violating people's rights underpins the principle of the rule of law and respect for human rights. Identifying governments and individual perpetrators who have violated human rights, 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 courts of law for criminal prosecution or civil suits for damages and/or intergovernmental bodies or human rights courts: 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.

It is of crucial importance that European governments reject impunity and set a corrective course toward accountability for their role in the CIA's rendition and secret detention programmes. 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.

European Parliament's past work on accountability for the human rights violations committed in the course of these operations should be applauded, but Parliament must continue to play a key role in ensuring that ECHR-compliant investigations are established in all relevant member states, that those responsible for human rights violations are brought to justice, that victims have access to effective redress, and that all necessary steps are taken to ensure that such violations never again occur in the European Union.

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