

STATE OF DENIAL

EUROPE'S ROLE IN
RENDITION AND
SECRET DETENTION

AMNESTY
INTERNATIONAL



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INTRODUCTION

Police in Bosnia and Herzegovina arrested Mustafa Ait Idir and five other men. An Italian officer aided the abduction of Usama Mostafa Hassan Nasr, usually known as Abu Omar, in Milan. Macedonian officials seized Khaled el-Masri. Swedish police picked up Ahmed Agiza and Mohammed El Zari. Information supplied by German security forces may have led to the arrest of Muhammad Zammar in Morocco, and telegrams sent by UK security forces resulted in the detention of Bisher Al-Rawi and Jamil El-Banna in the Gambia.

What unites all these detainees is what happened to them next. All were transferred to the custody of another state, covertly and outside any judicial process, and transported to another country. Some were transferred from US custody to countries where they faced a real risk of torture or other ill-treatment; others were transferred to detention centres in Afghanistan or Guantánamo Bay.¹ All found themselves locked away in places where the rule of law seemed not to apply, where no one would tell them what was going to happen to them next. Some were victims of enforced disappearance, including in US custody. All say they were tortured or otherwise ill-treated. In short, all were victims of the US-led rendition programme.²

The involvement of European states in such cases has long been known, despite repeated denials and obfuscation by individual governments. However, the extent of their involvement has become increasingly clear and disturbing as more and more information has emerged as a result of investigations into European involvement in the US “war on terror”.

The role of European states in renditions and secret detention has ranged from active participation to tacit collusion. European agents have arrested or detained suspects and turned them over to US custody without judicial process. They have directly participated in illegal apprehensions, in one case helping US agents to snatch a suspect off a street in Italy before his rendition to Egypt. Europe's airports have been freely used by US Central Intelligence Agency (CIA)-operated planes that have transported victims of rendition, hooded and chained, to interrogation and ill-treatment in secret incommunicado detention in locations around the world, including in Europe. European state agents have taken advantage of the unlawful detention of some of those held to interrogate them, while doing nothing to alert their families of their whereabouts or to try to remedy the illegal detention, itself a human rights violation. Investigations have established that between 2003 and 2005, Europe was host to secret prisons run by the CIA, where detainees who were victims of enforced disappearance were held in conditions amounting to torture or other cruel, inhuman or degrading treatment.

Amnesty International recognizes the duty of governments to protect populations from violent attack, including acts of terrorism, and that international co-operation can assist in meeting this goal. At the same time, all governments must adhere to internationally recognized principles and legal obligations in respect of human rights and the rule of law, including when responding to threats or acts of terrorism. The UN Security Council, for example, has emphasized that states are obliged to “ensure that any measure taken to combat terrorism comply with all their obligations under international law... in particular international human rights, refugee, and humanitarian law”.³

European states may not have been the driving force behind the covert rendition and secret detention programmes, and may not have been directly responsible for many of the violations suffered by the captives, but they are culpable nonetheless.⁴ Which states, and what their precise level of involvement has been, remains in many instances unclear.

Europe's involvement in renditions was facilitated by North Atlantic Treaty Organization (NATO) military arrangements made in the days after the attacks in the USA on 11 September 2001. These arrangements granted blanket overflight rights across NATO territory to US military flights and access to airport facilities. An investigation by the Parliamentary Assembly of the Council of Europe (PACE) concluded that the arrangements effectively gave CIA agents free rein on European soil, all under a cloak of secrecy and extended co-operation between European and US intelligence services.

European states concealed their role in renditions and secret detention until 2004. Today, after painstaking research by Amnesty International, other NGOs, journalists, lawyers, prosecutors in a few European states, and two bodies of the Council of Europe and the European Parliament, some of the facts are now known – as is the suffering of the victims of rendition and enforced disappearance and their families. But much remains concealed, due largely to the failure of states to co-operate with investigations or to carry out their own independent and impartial investigations.

Snippets of information about the CIA's rendition and secret detention programmes have been belatedly confirmed by US authorities, on occasion to the intense embarrassment of their allies.

On 6 September 2006, US President George W Bush announced the transfer of 14 “high value” detainees (HVDs) to Guantánamo from CIA “black sites”. This was the first public acknowledgement by the US authorities that the CIA was running a clandestine detention operation. A 15th HVD was transferred from secret CIA custody to military detention in Guantánamo in April 2007, and a 16th in March 2008. The CIA has also admitted that at least three detainees in CIA custody have been subjected to “waterboarding” – a form of torture that simulates drowning. Other interrogation techniques approved for CIA use also amounted to torture or other ill-treatment under international law. The HVD secret detention programme itself is effectively a framework for enforced disappearance, which, like torture, is a crime under international law.

On 21 February 2008, UK Foreign Secretary David Miliband announced that information from Washington had “just come to light”, confirming that the UK territory of Diego Garcia in the India Ocean had been used for renditions. In a statement to parliament, the Foreign Secretary said: “Contrary to earlier explicit assurances that Diego Garcia had not been used for rendition flights, recent US investigations have now revealed two occasions, both in 2002, when this had in fact occurred.”⁵ The Director of the CIA, General Mike Hayden, admitted that the information it had earlier provided to the UK government, “supplied in good faith, turned out to be wrong”. General Hayden said that neither of the two detainees transferred had been part of the CIA's secret detention programme, and that one was “ultimately transferred to Guantánamo, and the other was returned to his home country”.⁶

UK government ministers had assured parliament at least 12 times that rendition flights had never landed on UK territory. In 2006, for example, former Foreign Secretary Jack Straw said: “We are clear that the US would not render a detainee through UK territory or airspace, including overseas territories, without our permission...” Yet if the US authorities did not ask permission, even from one of their closest allies, the question remains how many other such flights have passed through European territory that have not yet been revealed. In any case, given what is now known about the range of human rights violations inherent in the US rendition programme, no state should ever grant permission for a rendition flight.

The UN Global Counter-Terrorism Strategy emphasizes that “respect for human rights for all and the rule of law” is “the fundamental basis of the fight against terrorism”, and that “effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing.” Despite this, in July 2007, President Bush issued an executive order that allows the CIA's use of secret detention to continue.⁷ Since then, the CIA Director has defended the use of the secret detention programme as one that was “born of necessity” and cleared as “lawful” by administration lawyers.⁸

This report looks at certain practices of the CIA and other US agencies in Europe and in their dealings with European nationals, sometimes in co-operation with European national intelligence and other agencies, in the context of the “war on terror”. Focusing on the disturbing picture that has emerged in the two years since Amnesty International published *Partners in crime: Europe's role in US renditions*,⁹ it highlights seven aspects of Europe's role in the US programme of renditions and secret detention:

1. European state agents participating in, or otherwise facilitating, arbitrary detentions that led to renditions.
2. US authorities operating secret detention centres (“black sites”) on European soil.
3. CIA planes, identifying themselves as private aircraft, using European airports for the illegal transportation of detainees, and for refuelling and other services while heading to or returning from rendition operations.

4. European agents interrogating, or sending questions to be used in interrogating, victims of rendition in places where the detainees faced a real risk of torture or other ill-treatment, and keeping the whereabouts of such detainees concealed from their families.

5. European states not assisting victims of rendition who are citizens or residents of their countries held abroad in unlawful conditions.

6. European states refusing to investigate effectively and independently allegations related to renditions and secret detention, obstructing investigations, and ignoring recommendations made by European intergovernmental bodies.

7. Victims of rendition and secret detention in which Europe has been involved, not receiving full reparation for the violations they have suffered, and European states not taking adequate measures to prevent recurrence.

Not all European states were involved in these failings or abuses in exactly the same way. Some were guilty simply of looking the other way while the framework for CIA activities in Europe was put in place, or did nothing to prevent their territory¹⁰ from being used to facilitate renditions. Others were guilty of far more. The secret and complex nature of the US renditions and secret detention programmes means it is inherently difficult to prove which European government knew what and when. However, the publicly available information is more than sufficient to trigger specific legal obligations to conduct full, effective, independent and impartial investigations, with the findings and results to be made public.

Yet, despite the mounting evidence, European states continue to deny their involvement in renditions and secret detention, or refuse to disclose the full facts of their involvement on grounds of "state secrecy" or "national security", rather than undertake effective investigations into the allegations.

Six cases – involving 13 individuals – are highlighted in this report, and demonstrate the pattern of illegal apprehension and transfer to unlawful detention and torture for the victims, and the continuing secrecy, denial and obfuscation by European states in the face of growing evidence of their involvement in the US rendition programme. There clearly remains an urgent need for full, effective, independent and impartial investigations with findings and results to be made public, perpetrators to be brought to justice, full remedies and reparations to the victims, and effective preventive measures to be put in place.

The suffering caused by rendition and secret detention extends to the families of the victims. Wives, parents and children have faced years of fear and anguish because of the uncertainty about their loved one's whereabouts and well-being, about when and if they will ever see him again. The suffering has continued even after the detainee has been released. The traumatic consequences of rendition and the stigma of being labelled as associated with terrorism extend far beyond the confines of the rendition plane and the secret detention cell.

Nabila Ghali, the wife of Abu Omar, told Amnesty International shortly after his release from an Egyptian prison:

"When he came back home, he became a different person. Frankly, he has become nervous, impatient and stern. He has changed completely. I understand his suffering and find excuses for him, but who is responsible for this?"

The answer, in part, lies in Europe.

UNDER COVER OF NATO

"From the very beginnings of the 'war on terror' advocated by the United States, European governments could not ignore its true nature; all the members and partners of NATO signed up to the same 'permissive' – not to say illegal – terms that allowed CIA operations to permeate throughout the European continent and beyond; all knew that CIA practices for the detention, transfer and treatment of terrorist suspects left open considerable scope for abuses and unlawful measures; yet all remained silent and kept the operations, the practices, their agreements and their participation secret."

Dick Marty, Rapporteur of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe¹¹

On 12 September 2001, NATO invoked the principle of collective defence under Article 5 of the North Atlantic treaty. According to the PACE report, measures subsequently taken within this framework facilitated CIA covert operations, and made it easier for them to avoid scrutiny and accountability.

On 4 October 2001, the NATO Secretary General announced that "at the request of the United States" it had agreed measures "to expand the options available in the campaign against terrorism", including:

- enhanced intelligence sharing and co-operation;
- blanket overflight clearances for the US and other allies for military flights related to operations against terrorism;
- access to ports and airfields on NATO territory for support of counter-terrorism operations, including for refuelling;
- assistance to states "subject to increased terrorist threats as a result of their support for the campaign against terrorism";
- increased security for US facilities on NATO territory;
- enhanced NATO support for counter-terrorism operations.¹²

However, the text of the actual agreement has never been made public; indeed, NATO refused to provide it to the Council of Europe, even on a confidential basis. Further, it appears that “additional components” not mentioned in the official announcement “have remained secret”.

The 2007 PACE report found that rather than actually constituting an agreement for collective self-defence, the measures put in place by NATO members “comprise the very permissions and protections the United States had sought for itself as it embarked on its own military, paramilitary and intelligence-led counter-terrorism operations”. Thus the NATO measures provided new opportunities for the CIA to operate covertly in Europe without appropriate scrutiny. Blanket overflight clearance for US military flights, access to airfields, and increased security for US facilities on NATO territory facilitated the CIA in conducting renditions in secret and with total impunity.

The scope for such abuse only increased over time, as further bilateral agreements, including with non-NATO states, implemented similar terms. They too remain secret.

REPORTS BY COUNCIL OF EUROPE AND EUROPEAN PARLIAMENT

The laborious process of prising out details of European involvement in the rendition and secret detention programmes began four years ago and is far from over. It has revealed a failure of states across Europe to ensure adherence to human rights law in collaborative measures undertaken with the USA. This failure was compounded by an absence of effective investigations by individual European states, and reluctance on the part of the highest decision-making bodies of the European Union (EU) and Council of Europe to condemn the US rendition and secret detention programmes and to take concrete measures to prevent future involvement of European states in such violations.

Since June 2006, when Amnesty International published *Partners in crime*, several European institutions have issued further reports:

- the Secretary General of the Council of Europe, Terry Davis, issued the June 2006 Council of Europe **Secretary General's Report**¹³ and **Recommendations**;¹⁴
- Senator Dick Marty, the Rapporteur appointed by the Committee on Legal Affairs and Human Rights, on behalf of the Parliamentary Assembly of the Council of Europe, issued the June **2006 PACE report** and the June **2007 PACE report**, which led to the adoption of the **2007 PACE Resolution and Recommendations**;¹⁵
- Giovanni Claudio Fava, Rapporteur of the Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners (TDIP), issued the June **2006 TDIP report** and the January **2007 TDIP report**, which led to the adoption of a **2007 European Parliament Resolution**.¹⁶

By early 2006, Terry Davis had already concluded that Europe was a “happy hunting ground for foreign security services”, and urged European states to improve supervision of national and foreign intelligence agents and monitoring of airports and airspace to prevent future renditions.¹⁷ Nearly two years later, in January 2008, he said that European states had still failed to tighten controls on foreign security agents. He stated: “I think we can safely assume the government of the United States of America is putting a lot of pressure on their allies in Europe to prevent any discussion of this matter.”¹⁸

The 2007 PACE report established “with a high degree of probability” that the CIA had operated secret detention centres – “black sites” – in **Poland** and **Romania**, and perhaps in other European states. It provided new information – gained from confidential interviews with more than 30 current and former members of intelligence services in the USA and Europe – about how the HVD programme operated. It included details from Eurocontrol’s aviation records, which show that CIA-operated aircraft, identified as private flights, had criss-crossed European airspace, making landings at remote airstrips in Poland and Romania. These airports included Mihail Kogălniceanu airfield in Constanța, Romania, on the Black Sea coast; and Szymany airport, near Szczytno, Poland. Analysis of raw aeronautical data revealed how the destination and departure points of some rendition flights in Poland were deliberately disguised using “dummy flight plans”, while efforts to obtain flight details from Romanian officials were largely unsuccessful.

The 2007 TDIP report, adopted by a large majority of parliamentarians, noted the “glaring lack of cooperation from the Polish government” and was unable to find conclusive evidence that a US “black site” had been based in Poland. However, the report noted that a CIA-leased Boeing 737, known to have been used in renditions, had landed in 2003, and that no customs control had been carried out on the passengers that boarded the flight. The TDIP also heard testimony from Szymany airport employees, including the former manager, who said that a US-operated Gulfstream jet landed at the airport on six occasions in 2002 and 2003. On each occasion, the jet stayed at the end of the runway, engines running, while vans from Stare Kiejkuty intelligence base, location of a suspected “black site”, went out to meet it. Polish staff were not permitted to approach the plane, and payment for airport services was always made in cash.¹⁹

On 16 January 2008, the Council of Europe’s Committee of Ministers replied to the recommendations of the Parliamentary Assembly.²⁰ They reaffirmed governments’ obligations to investigate and bring to justice those responsible for serious human rights violations, noting that governments may be held accountable under the European Convention on Human Rights (ECHR) for the action of their officials. However, they failed to clearly condemn rendition and secret detention, to raise concern about European responsibility in relation to these illegal practices and associated human rights violations, or to respond to calls for concrete measures to prevent recurrence.

EUROPE'S RESPONSIBILITY

International law leaves no place to hide for European states that are legally responsible for their part in facilitating renditions and secret detention. Renditions violate international law because they bypass judicial and administrative due process. As this report illustrates, renditions carried out in the name of the "war on terror" have typically involved multiple human rights violations, including unlawful and arbitrary detention; torture or other ill-treatment; and enforced disappearance. Torture and enforced disappearance are not only grave violations of the international legal obligations of states, they are also international crimes for which individuals may be held criminally responsible. Detainees in the CIA's HVD 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,²¹ and placed outside the protection of the law, amounting to enforced disappearance.

A state is responsible for a violation of international law if it helps or assists another state to commit a human rights violation with knowledge of the circumstances of the violation, and its help or assistance has a substantial impact on the violation or the way in which the violation occurs.²² Knowing participation by European agents in the CIA rendition and detention programmes would be in blatant violation of their state's legal obligations. This is true whether their contribution is active or passive, and whether or not others in government knew or authorized their activities.

European states could also be responsible in relation to violations committed by foreign agents where the nature of the violation is such that simple acquiescence or tolerance by the state of actions in its territory makes it accountable. Such violations include torture and other ill-treatment, enforced disappearance, or detention of a person in contravention of the ECHR.²³

Other forms of participation that may entail a European state's responsibility even though the abuses were carried out by states outside Europe, include 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 abroad in proceedings in Europe.

In addition, every European state has a positive obligation to take steps to ensure respect for the rights and freedoms set out in the ECHR within its territory, 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.²⁴ 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.²⁵

This means that if anyone suffers human rights violations on US military bases on European territory, or on US aircraft operating in European territory, the European state remains responsible for the violations unless it can establish that it took all appropriate measures within its power to prevent the abuse. Where the state agreed, in effect, not to exercise its jurisdiction over serious human rights violations happening on its territory, voluntarily relinquishing effective power to investigate and remedy such abuses, through a Status of Forces Agreement or other international agreement, this relinquishing in and of itself may constitute a general failure 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 themselves be subject to criminal prosecution for knowingly assisting foreign agents or others to commit criminal offences linked to renditions and secret detention. 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.²⁶ A person 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.²⁷

In the context of such laws and standards, this report highlights seven areas of possible state and/or individual legal responsibility as spelled out above. In all cases the allegations of such responsibility are sufficiently credible to trigger an obligation on the state to complete full, effective, independent and impartial investigations with public findings and results. In some cases, the already established evidence clearly requires that known perpetrators be brought to justice and victims provided with full remedy and reparations.

European states have naively or expediently sought to rely on the assertions of other governments to excuse or deny their participation in renditions, or to justify their lack of independent and thorough investigations. The UK repeatedly cited US assurances that terrorist suspects had not been held on or transported through Diego Garcia, or its territorial waters or airspace, yet it later emerged they had been. The Swedish authorities accepted diplomatic assurances from Egypt regarding the treatment of two men transferred without due process from Sweden to Egypt by US authorities, yet both the UN Committee against Torture and UN Human Rights Committee held that the transfer of the men based on these simple assurances constituted a breach of Sweden's international human rights obligations.

Promises or assurances from other states do not relieve European states of their responsibilities in relation to the US rendition and secret detention programmes.

Despite the success of various efforts to expose the covert US programmes, to date no government has lived up to its responsibilities under international law and no individuals implicated have been held to account. Virtually no concrete action has been taken at the national or intergovernmental level to ensure that the pattern of illegal activity and human rights abuses is not repeated. On the contrary, the findings and recommendations of the investigations have been met with almost total silence and denial of responsibility.

1/A HELPING HAND: ACTIVE INVOLVEMENT IN RENDITIONS

European states have taken part in or triggered the detention of individuals who were then transferred without due process into the hands of the CIA or other US agents.

Swedish security personnel, for example, detained **Ahmed Agiza** and **Mohammed El Zari** in December 2001 immediately after the men's asylum claims had been rejected, brought them to Bromma airport and turned them over to US agents. Swedish security police stood by as hooded US agents cut off the men's clothing, put them in disposable underpants and overalls, chained their hands and feet, and hooded them. Without due process, the two were flown to Egypt. A Swedish police officer and a civilian interpreter travelled on the flight to Cairo on which Ahmed Agiza and Mohammed El Zari were handcuffed, shackled and strapped to mattresses in painful positions for the duration of the journey. In Egypt, the two men alleged that they had been subjected to incommunicado detention, and torture or other ill-treatment.

Macedonian agents detained **Khaled el-Masri** on his entry to Macedonia and held him incommunicado for 23 days in January 2004, interrogating him regularly. He was then unlawfully handed over to US authorities, who transferred him to detention in Afghanistan, where he was held in secret detention and allegedly subjected to torture or other ill-treatment.

Bosnia and Herzegovina state authorities detained six men in January 2002 – **Mustafa Ait Idir**, **Belkacem Bensayah**, **Lakhdar Boumediene**, **Boudella El Hadj**, **Nechla Mohamed** and **Saber Lahmar Mahfoud** – and transferred them to US/NATO custody. This was despite a court ruling that had explicitly prohibited the transfer of four of them to the custody of another country. The six men were transferred to Guantánamo, where they remain unlawfully detained and where they allege they have been subjected to torture or other ill-treatment.

At least one Italian carabinieri was directly involved in the abduction by CIA agents of **Abu Omar** from a street in Milan in February 2003, with the possible knowledge and approval of Italian military intelligence. Abu Omar was transferred by CIA agents to Egypt, where he was arbitrarily detained and says he was subjected to prolonged torture.

Ahmed Muhammad Haza al-Darbi was reportedly arrested at an airport in Azerbaijan by state civilian police in June 2002, and held in Azerbaijan for several months before being handed over to US agents and flown to Afghanistan. He was taken to Bagram airbase, where he says he was subjected to humiliating and brutal treatment. He was reportedly held at Bagram until

his transfer to Guantánamo in March 2003. He has been charged for trial by military commission in Guantánamo.

In other cases of rendition, European national intelligence agencies have shared information on individuals with their counterparts in US or other intelligence agencies. This information is likely to have facilitated the detention, unlawful transfer and subsequent torture or other ill-treatment of a number of individuals.

For example, German intelligence agencies reportedly provided details about **Muhammad Zammar's** itinerary to their US counterparts. This information may have been instrumental in his detention in Morocco in December 2001 and subsequent rendition to Syria; he was allegedly subjected to torture or other ill-treatment in both countries. Whether German officials knew how the information would be used has not been publicly established, and must be part of a full, effective, independent and impartial investigation with the findings and results being made public.

Bisher Al-Rawi and **Jamil El-Banna** were detained in November 2002 by UK security services at Gatwick airport. The UK notified US intelligence of the arrests, adding that Bisher Al-Rawi's luggage contained a "suspicious" electronic device. The device turned out to be a modified battery charger; the men were released after two days of questioning, and resumed their trip to Gambia a few days later. Further information about the men and their travel plans was provided to the US by the UK, although the misinformation about the battery charger was not corrected, and the men were detained on arrival in Gambia. After being held incommunicado in several locations, the men were turned over to US custody and transferred first to Afghanistan and then to Guantánamo Bay, where both men say they were tortured. The UK authorities say they acted properly in passing information to their US counterparts and could not have foreseen that the men would be subject to rendition on the basis of that information. Again, this claim must be assessed as part of a full, effective, independent and impartial investigation, with the findings and results being made public.

Binyam Mohammed alleges that information supplied by UK security services following his detention in Pakistan was instrumental in his subsequent rendition to Morocco, where he says he was tortured. He was transferred from Morocco to Guantánamo Bay, where he remains. The UK Security Services, who interviewed him in Karachi after his arrest in April 2002, were aware that he would be transferred to US custody in Afghanistan, but said they did not then have any reason to believe that this transfer would lead to ill-treatment, although in "hindsight" the Director General of the Security Services believes that assurances about his treatment should have been obtained from the USA.²⁸ On 3 June 2008 a UK court gave permission for Binyam Mohammed to challenge, by way of judicial review, the UK government's refusal to provide him with any evidence that the UK authorities might have relating to his rendition and alleged torture in Morocco. Binyam Mohammed fears that statements that were allegedly extracted from him under torture will be used as evidence in proceedings before the US military commissions. The UK government has claimed that it is under no legal obligation to assist foreign courts and tribunals in ensuring that torture evidence is not admitted.

Martin Mubanga alleges that co-operation between the USA and UK following his detention in Zambia in March 2002 led to his transfer to Guantánamo Bay. The Director General of the UK Security Service has confirmed that an officer interviewed Martin Mubanga twice in Zambia, adding that there was “...no indication that he had been abused, no complaint about his treatment. [The Service was] not responsible for his detention and subsequent transfer to Guantánamo.”²⁹ These cases must also be made part of a full, effective and independent investigation, in order to establish publicly whether UK co-operation contributed to the rendition and arbitrary detention of the two men.

Renditions either begin with or result in arbitrary detention – and are therefore prohibited by international human rights law³⁰ – and typically involve other serious violations. Knowingly assisting another state to perpetrate renditions is a breach of international law and in some cases may entail individual criminal responsibility for the people involved.

ACTION NEEDED NOW

European states should:

- immediately open full, effective, independent and impartial investigations into the role of European officials, at home and abroad, and the use of state territory by foreign agents, in connection with renditions, secret detention, torture and enforced disappearance, and make the findings and results of the investigations public;
- stop transferring anyone to the custody of the agents of another state, or facilitating such transfers, unless the transfer is carried out under judicial supervision and in line with international standards;
- ensure that no one under their jurisdiction (including in their effective control) or in their territory is forcibly transferred to the territory or custody of another state where there are substantial grounds for believing they would face a real risk of grave human rights violations such as torture or other ill-treatment as a result;
- implement effective measures to ensure that European intelligence agencies do not facilitate or participate in human rights violations, for example, prohibiting the provision of information about individuals to foreign agencies where it can reasonably be foreseen that it will lead to their arbitrary detention, torture or other ill-treatment, or enforced disappearance.

2/HIDDEN AWAY: EUROPE'S SECRET PRISONS

“In [some] cases, it has been necessary to move these individuals to an environment where they can be held secretly, questioned by experts, and – when appropriate – prosecuted for terrorist acts.”

President George W. Bush, revealing the outlines of the CIA's secret detention programme on 6 September 2006

A particularly grave aspect of the unfolding scandal is that the CIA was allowed to operate secret detention facilities in Europe.

The 2007 PACE report concluded that there was “now enough evidence to state that secret detention facilities run by the CIA did exist in Europe from 2003 to 2005, in particular in Poland and Romania”. The report damningly found that officials of these two states were aware that there were CIA-run secret detention centres on their territory, and that they may have been authorized at the highest level of government.³¹

Amnesty International's interviews with four Yemeni men – **Muhammad Bashmilah, Salah 'Ali Qaru, Muhammad al-Assad and Khaled al-Maqtari** – after their release from secret detention in 2005 and 2006, combined with other research and investigations conducted by PACE, indicate that all four could have been held somewhere in Eastern Europe in a CIA “black site”.³²

In the “black sites”, detainees were held in complete isolation and spent nearly every waking hour staring at the four blank walls of their cells. The cells themselves contained only a stainless steel toilet and basin, and a mattress, and although the entry to each cell was protected by double steel doors, detainees were often left chained to the wall, sometimes for months on end. There were no windows and no natural light of any kind seeped in. There was a constant hum of “white noise”, sometimes replaced by loud “western” music, so that the detainees were not able to hear other prisoners or outside sounds. Both heat and air-conditioning were available, although they were more often used as reward and punishment, rather than for comfort. Each cell had two video cameras on opposite walls, with

red lights that blinked whenever the men moved. Their masked guards, referred to by some of the detainees as “the ninjas”, never spoke to them, but communicated with hand gestures.

The PACE report makes clear that the CIA's “chosen partner intelligence agency” in Poland was the Military Information Services (WSI), precisely because the “high value” detainee (HVD) programme had to “remain absolutely outside the mechanisms of civilian oversight”.³³ The report stated that during 2002-05, the period in which US-Polish secret “operating agreements” allegedly allowed for Polish participation in the HVD programme, the hierarchy controlling the WSI was “chronically lacking in formal oversight and independent monitoring”, and that the programme operated directly under the authority of President Alexander Kwaśniewski.³⁴

Details of Romania's role in the US network of secret detention facilities are emerging slowly in the face of official denials and inaction. The 2007 PACE report cited Romanian sources as stating that the US authorities chose to work with the military intelligence services because the military “cover” provided guarantees of secrecy under the NATO framework.³⁵

In February 2008, a high-ranking Romanian official interviewed by the Associated Press said that three times in 2004 and twice in 2005 he saw a black bus arrive in a secluded corner of the heavily guarded Mihail Kogalniceanu airport near Constanta to meet a jet. Parcels that looked like bundled-up prisoners were then brought to the jet, according to the official, which would then leave for North Africa with its cargo and two CIA handlers aboard.³⁶ The official said that US pilots routinely filed bogus flight plans, or none at all, and flew to undeclared destinations.

Khaled al-Maqtari told Amnesty International that while in a CIA “black site” in mid-2006 he was issued a blanket on which was written a tiny message: “To Cuba, to Morocco, to Romania and to this place – Abu Ubeidah al-Hadrami”.³⁷ Abu Ubeidah al-Hadrami is an alias for Ramzi bin al-Shibh, one of the 14 “high-value” detainees transferred to Guantánamo in September 2006, and one of those charged by the US authorities in February 2008 for capital trial by military commission. If accurate, this account suggests that Ramzi bin al-Shibh was held at a CIA “black site” in Romania before being transferred to the facility where Khaled al-Maqtari was held.

Wherever they were taken, these victims of enforced disappearance were held in solitary confinement in undisclosed locations for years on end in conditions that violate the prohibition on torture and other ill-treatment, even without the additional abuses they may have faced during interrogation.

US authorities have acknowledged that the CIA uses a range of “enhanced interrogation” methods on detainees held in secret.³⁸ Some of these methods have become publicly known, and have been shown to include the use of torture or other ill-treatment.³⁹ In February 2008, the CIA Director confirmed that three detainees were subjected to the torture method known as “waterboarding” in secret CIA detention in 2002 and 2003. Even without such techniques,

the UN Human Rights Committee has repeatedly found that prolonged incommunicado detention in an unknown location can in and of itself constitute torture or other cruel and inhuman treatment.

Diego Garcia, a UK overseas territory in the Indian Ocean where the USA and UK have a joint military facility, has been the subject of persistent allegations linking it to the CIA secret detention programme. UK and US authorities have both denied that Diego Garcia has been used for detentions, the CIA Director noting most recently in February 2008 that the speculation about a CIA holding facility on Diego Garcia was "false".⁴⁰ However, Manfred Novak, the UN Special Rapporteur on torture, said he had received credible allegations that detainees had been held in secret on Diego Garcia between 2002 and 2003, as well as on ships operating outside the three-mile zone around Diego Garcia that defines UK territorial waters.

The UN Committee against Torture has specifically declared that holding anyone in secret is in itself a violation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture).⁴¹ Expert bodies have come to a similar conclusion in respect of other human rights instruments, including the ECHR and the International Covenant on Civil and Political Rights (ICCPR).⁴² "Black sites" also facilitate the broader phenomenon of enforced disappearance as a part of the CIA programme. Enforced disappearance means:

*"the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law."*⁴³

All acts leading to enforced disappearance are recognized as violations of a range of rights, including the right to liberty and security of person, the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment and the right of anyone deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person.⁴⁴ Enforced disappearance is a crime under international law.

ACTION NEEDED NOW

European states should:

- immediately open full, effective, independent and impartial investigations into the role of European officials and use of state territory in connection with secret detention and enforced disappearance, and make the findings and results of the investigations public;
- ensure that no part of their territory or subject to its control, including its airspace, waters and all airports and military bases whether or not leased or used by other states or inter-state organizations, is used to carry out or facilitate unlawful or secret detentions;
- demand full disclosure from the US authorities about CIA-run secret detention facilities in Europe;
- ensure that anyone detained in connection with terrorism is brought before a judicial authority promptly and can effectively challenge the lawfulness of their detention before a court;
- require in all cases that accurate information on the status and whereabouts of each individual deprived of his or her liberty is promptly given to his or her relatives or other people of the detainee's confidence, and his or her lawyer;
- establish, where it does not already exist, an independent and impartial national expert body mandated to make unannounced visits to any place where anyone is or may be deprived of their liberty;
- ratify and implement the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- review and amend bilateral or multilateral military arrangements or other agreements which could impede the state's ability to meet its international human rights obligations in practice.

3/LOOKING THE OTHER WAY: USE OF EUROPE'S AIRPORTS AND AIRSPACE

European states turned a blind eye to or assisted in the use of their airports and airspace during US renditions. Planes operated by or for the CIA, known to have taken part in renditions, stopped over in European airports either during detainee transfers or on their way to a pick-up or delivery. **Abu Omar**, for example, was flown from a NATO airbase in Aviano, Italy to a NATO airbase in Ramstein, Germany, and from there transferred to the CIA jet that took him to Egypt. The Boeing 737 that rendered **Khaled el-Masri** from Macedonia to Afghanistan stopped off in Ireland, Cyprus and Spain before the rendition, and returned to the USA afterwards via Romania and Spain.

In Poland and Romania, airport officials allegedly allowed the CIA to create a secret "zone" that was free from their scrutiny and through which the CIA allegedly transferred prisoners as part of its "high value" detainee programme.

The use of planes operating as private aircraft, without the restrictions placed on official or military flights, has been a key component of the rendition programme. A small fleet of private jets operated by or for the CIA that could land discreetly at both commercial airports and US military bases worldwide was essential for making the system work.

In 2006, Amnesty International published research showing that at least 1,000 CIA-linked flights used European airports between 2001 and 2005, while subsequent investigations by the European Parliament and the Council of Europe suggest that the number is even higher. Flight records, however, only tell part of the story; they do not generally include all of the stops made outside of US or European-monitored airspace, and cannot tell whether or not any particular plane has carried out a rendition. The raw data on the flights themselves is of limited use without specific case details, and case details are hard to come by precisely because the secret nature of the practice is aimed at avoiding scrutiny. What is clear is that all of these planes were used in one or more renditions, and all were regularly and freely allowed to land in and cross European airspace under the guise of private aircraft. In a few cases, they actually carried out renditions on European territory, while an unknown number of victims of enforced disappearance were transported in and out of European "black sites". Most of the planes carrying out rendition circuits would have been serviced in Europe heading towards or returning from the rendition.

On 21 October 2007 the Danish newspaper *Politiken* reported that a CIA plane known to have been used for renditions had been given permission to cross Danish airspace on 25 October

2003. This plane, a Gulfstream V jet then registered as N379P, was on route from Washington and landed in both the Czech Republic and Romania before heading to Jordan, where it picked up Yemeni national **Muhammad Bashmilah** from Jordanian custody, and unlawfully transferred him to secret US custody in Afghanistan. On its return from this rendition circuit, the plane refuelled in Portugal. Three months later, the same plane, now registered as N8068V, landed in Ireland and Cyprus before transferring **Khaled al-Maqtari** from Iraq to CIA custody in Afghanistan, then returned to the USA via the Czech Republic.

Use of private planes to conceal flights operating for state purposes does not give the CIA or any other intelligence agency the right to do anything they like without interference. Insofar as these flights identify themselves as civil aircraft, the Convention on International Civil Aviation, also known as the Chicago Convention, makes clear that every state has the right to require that an aircraft flying over its territory must land at a designated airport for inspection if there are "reasonable grounds to conclude that it is being used for any purpose inconsistent with the aims of the convention".⁴⁵ Operating a flight for state purposes but falsely representing it as a civil flight would be inconsistent with the aims of the Convention, as would using the flight to perpetrate human rights violations or other violations of international law, including rendition or enforced disappearance.

The extensive reporting by the media, human rights organizations and parliamentary bodies of specific flight numbers and chartering companies that appear to be involved in renditions constitutes "reasonable grounds" for suspicion, and therefore gives countries the right – and duty – to stop any aircraft suspected of involvement in renditions, and to undertake their own efforts to identify any similar abuses in the future. The Convention also gives each state the right to search any civil aircraft on landing or departure. Where violations have occurred on such aircraft and the state cannot show that it used or is using these possible measures, responsibility for the failure to put in place measures to prevent the violation may follow.

If these flights properly identified themselves as state aircraft, they would require authorization by a state to use its airspace or facilities. This means that European states in principle always have the right to make prior consent to landing, inspections, and jurisdiction over human rights violations occurring on such aircraft a condition of such authorization.

Allowing these planes to land on European territory without implementing any known means to prevent their use for secret detention and rendition facilitated human rights violations. Continuing to allow such flights to operate as civil aircraft, failing to respond to past or present human rights violations and abuses of aviation law by instituting systems of inspection, and refusing to impose prohibitions or restrictions on the countries, agencies or companies involved, could constitute a further violation of the state's human rights responsibilities.

ACTION NEEDED NOW

European states should:

- 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;
- ensure that no part of the territory within the state or subject to its control, including its airspace, waters and all airports and military bases whether or not leased or used by other states or inter-state organizations, is used to carry out or facilitate renditions and other human rights violations, including through the implementation of effective reporting, verification and control measures such as:
 - enforcement of the requirement that aircraft operators carrying out activities of intelligence agencies declare that the aircraft is being used for state purposes, even if the aircraft is chartered from a private company;
 - requiring that aircraft operators seeking to overfly or land in their territory indicate whether they are transporting detainees and, if so, their status, destination and legal basis for their transfer;
 - having in place an effective system for verifying the legality of any detention, and denying passage, requiring landing, and/or carrying out inspections where there are grounds to believe that an aircraft is being used in connection with renditions or other human rights violations;
 - proactively identifying planes and operators that may seek to use state territory or facilities to assist in renditions or other human rights violations, rather than depending solely on investigations carried out by NGOs, journalists and intergovernmental bodies.

4/SCENE OF THE CRIME: EUROPEAN INVOLVEMENT IN INTERROGATIONS

“Thousands of raw intelligence reports from CIA detainees have been passed to EU liaison partners and member countries. In addition, my Agency has provided hundreds of responses to the specific questions your services have posed to the detainees in our custody.”

Extract of a speech reportedly delivered in private in March 2007 by CIA Director, General Michael Hayden, to ambassadors of EU member states in Washington, quoted in the Danish newspaper *Politiker*⁴⁶

Members of European intelligence and law enforcement services have questioned – directly or by proxy – victims of US renditions while the detainees were in a situation of being subjected to torture or other ill-treatment, including through being held in prolonged incommunicado detention in secret locations. If the agents knew or should have known that the detainees were in such a situation, their actions could make European states responsible for violations of their international obligations, and could make individuals guilty of complicity in crimes.

German intelligence agents provided information about, and questions to be posed to, **Muhammad Zammar** to Syrian authorities after his unlawful transfer from Morocco to Syria. Members of German intelligence and law enforcement agencies also interrogated him in Syria, with a Syrian official present, in November 2002 in Far' Falastin, a prison run by Syria's Military Intelligence near Damascus that is notorious for torture of security detainees. Indeed, in the course of a subsequent parliamentary inquiry in Germany, senior officials of the German intelligence agencies as well as government officials conceded that they were either vaguely aware or knew that torture takes place in Syria.

Murat Kurnaz, a lifelong German resident, says he was abused by German special forces soldiers (Kommando Spezialkräfte, KSK) in Kandahar, Afghanistan, following his transfer from Pakistan to US custody in December 2001. “I saw that they were Germans and I thought they might help me”, he told Amnesty International, “but it wasn't so. They didn't ask me anything, one just told me they were KSK and threw me down and kicked me.” Murat Kurnaz says that he had been tortured at the Kandahar camp by US forces, and that the KSK soldiers were aware of the conditions there. He was subsequently transferred to Guantánamo, where he was interrogated by German officials in 2002 and again in 2004.⁴⁷ An investigation into the allegations of abuse against the soldiers was opened in December 2006, but closed in May

2007, after prosecutors determined that there was not enough evidence to charge the two soldiers Murat Kurnaz had identified. The investigation was reopened in August 2007, when new witnesses were found, but closed a second time in March 2008.

Khaled el-Masri says that while he was held in secret US custody in Afghanistan he was interrogated on four occasions by a native German speaker who identified himself as "Sam", but who refused to answer when Khaled el-Masri asked him if he was a representative of the German government.

In none of these cases did German agents notify the families of the detainees in Europe of the fate and whereabouts of the detainees.

Participation by agents of a European state in interrogations conducted abroad in such circumstances is inconsistent with their government's human rights obligations. Principle 21(1) of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states:

"It shall be prohibited 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."

A European interrogator who poses questions to a detainee, knowing that he or she is in a situation of ongoing pain and suffering, risks participation or complicity in the torture, both in terms of the international legal responsibility of the state, and his or her personal criminal responsibility.⁴⁸ Knowingly contributing to or participating in the commission of such a crime can give rise to responsibility even if the agent is not present when the crime is committed.⁴⁹

In some cases, while family members in Europe did not know where or even if their vanished relative was being detained, European states that had actually interrogated the detainee continued to conceal his fate and whereabouts. Where a state refuses to acknowledge the detention of a person who has disappeared, or to disclose their whereabouts and fate, this refusal can constitute a separate violation of the rights of close family members, who may be recognized as having suffered inhuman or degrading treatment themselves as a result.

ACTION NEEDED NOW

European states should:

- 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;
- oppose any secret detention and refuse to participate in any way in the questioning of suspects held unlawfully;
- inform family members of detained persons of their condition and whereabouts, and facilitate communication between family members and the detainee;
- refrain from providing information about a detainee to authorities of a state where the detainee is at serious risk of torture or other grave human rights violations;
- ensure that their agents do not participate, directly or by proxy, in interrogations of a person who is in a situation of torture or other ill-treatment, including being held in prolonged incommunicado detention in a secret location.

5/ABANDONED: FAILURE TO PROTECT THOSE CAUGHT IN THE WEB

“I've realized that they [the Bosnian authorities] want these people forgotten.”

Nadja Dizdarević, the wife of **Boudella El Hadj**, who has spent years campaigning for the release of her husband and the other five men unlawfully transferred from Bosnia and still held at Guantánamo, July 2007

Claims by the German authorities that they did not know about the five-month detention in Macedonia and Afghanistan of **Khaled el-Masri**, a German national, until after he was freed on 31 May 2004 are hard to credit. The German Federal Intelligence Service (BND) has admitted that a German official in Macedonia had been told informally about Khaled el-Masri's detention and transfer to US custody in January 2004 but did not report it. Khaled el-Masri asserts that he was also questioned by a German official in Afghanistan. However, German authorities provided no information on his well-being or whereabouts to his family in Germany during his enforced disappearance. As a result, when Khaled el-Masri returned to his home in Germany in May 2004, he found his house deserted and his family gone. His wife, who had not known where he was or if he would ever return, had gone with their children to her family's home in Lebanon.

In decisions delivered in 2002 and 2003, the Bosnian Human Rights Chamber found that Bosnia and Herzegovina (BiH) authorities had unlawfully expelled **Mustafa Ait Idir**, **Belkacem Bensayah**, **Lakhdar Boumediene**, **Boudella El Hadj**, **Nechla Mohamed** and **Saber Lahmar Mahfoud**, and had unlawfully transferred them to illegal US detention in BiH. US authorities subsequently flew the men to Guantánamo Bay in January 2002. The Bosnian Human Rights Chamber ordered the BiH authorities to use diplomatic channels to protect the men's rights, take all possible steps to contact them, provide them with consular support and ensure they would not be subjected to the death penalty. Despite this, BiH officials have made only one visit to Guantánamo, in June 2004, during which they had limited access to the men. It was only in 2007 that the BiH authorities asked US authorities for the men's return.

German intelligence agents had been in contact with Syrian authorities about the detention of Muhammad Zammar in mid-2002 and had even interrogated him while he was in Syrian

custody in November 2002 (see above). However, the German authorities did not inform his family in Germany of his fate or whereabouts until late December 2002, and the first direct communication from Muhammad Zammar to his family in Germany came in June 2005 in the form of a letter sent through the International Committee of the Red Cross (ICRC). **Muhammad Zammar** was not visited by a German diplomatic official until November 2006. Despite his prolonged period of incommunicado detention and conviction after an unfair trial, German diplomatic officials do not appear to have made any representations for his retrial or return to Germany.

Swedish diplomats making consular visits to **Ahmed Agiza** and **Mohammed El Zari**, Egyptian nationals in prison in Egypt following their expulsion by Sweden to Egypt via a CIA-operated flight in December 2001, failed to consider seriously the men's allegations that they were being tortured. Ahmed Agiza was sentenced to 25 years' imprisonment in April 2004 following an unfair retrial before a military court in Egypt. His sentence was later reduced to 15 years. Neither of the men has been granted a residence permit that would allow them to return to Sweden.

Jamil El-Banna, a Jordanian national resident in the UK since 1994 with indefinite leave to remain as a refugee, and **Bisher Al-Rawi**, an Iraqi national resident in the UK since 1983, were unlawfully transferred from Gambia to US custody in Afghanistan, two days after the UK confirmed by telegram to the US authorities that it had no intention of making representations on their behalf. The UK government did not make representations on their behalf until 2006 and 2007, respectively, despite the fact that the information provided by UK authorities to their US counterparts had been instrumental in their arbitrary detention in Gambia.

Where a state is responsible for a human rights violation, it is obliged to provide the victim with an effective remedy. Thus, if an individual is suffering violations such as torture or other ill-treatment, arbitrary detention, or unfair trial, at the hands of another state, and a European state is legally responsible,⁵⁰ the European state must do what it can to restore the individual to his or her original position. Further, a separate legal obligation can arise for all states where the victim of a rendition is being tortured, as all states have an obligation to co-operate to bring the violation to an end through lawful means, even if they were in no way responsible for the violation.⁵¹

Various international human rights bodies have recognized that seeking and facilitating the return of an individual and making diplomatic representations on their behalf are among the remedial measures available to a state even when the person is no longer within its legal or effective control.⁵² Where the Vienna Convention on Consular Relations or other similar instruments apply, the state has a clear legal right to communicate with, visit and arrange legal representation for the detainee. Any or all of these measures may be legally required of a European state as part of its duty to remedy or put an end to a particular violation.

ACTION NEEDED NOW

European states should:

- 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;
- ensure consular access for all victims of rendition who are entitled and wish to have it, arrange legal representation for those who are nationals or residents facing unfair trial or otherwise suffering grave human rights violations;
- seek and facilitate the return of, and make diplomatic representations on behalf of, all nationals and residents who are victims of rendition or secret detention, including as a result of European state involvement.

6/DODGING RESPONSIBILITY: INVESTIGATIONS FLAWED AND REJECTED

“Some European governments have obstructed the search for the truth and are continuing to do so by invoking the concept of ‘state secrets’.”

2007 PACE report⁵³

European states have invoked claims of confidentiality on national security or state secrecy grounds to block investigations into allegations of human rights violations linked to renditions, including criminal investigations.⁵⁴

However, the procedures followed by the Canadian inquiry (see Chapter 7) into the rendition of **Maher Arar** demonstrate that cases involving rendition and secret detention, potentially implicating domestic intelligence services in torture committed abroad, with evidence touching on sensitive issues of national security, can be examined through an independent and public process with powers to compel testimony and evidence from intelligence officials and with the substantive findings and conclusions being made public.

The European Court of Human Rights has not accepted blanket claims of national security confidentiality, particularly where procedures have been demonstrated to exist elsewhere that protect national security confidentiality while providing the complainant with fuller procedural and substantive justice. Further, both the PACE and the European Parliament declared that claims of confidentiality on national security or state secrecy grounds, or to protect foreign governments from embarrassment, should never be invoked over direct evidence of serious human rights violations.⁵⁵ By blocking investigations and determinations of human rights complaints in cases of rendition and secret detention by overbroad or blanket invocation of state secrecy or national security, European states are violating victims' rights under the ECHR.

States are obliged by international law to undertake prompt, full, effective, independent and impartial investigations of all credible claims of violations, including where the violation was committed by foreign agents and whether or not the state was initially aware of the violation. The European Court of Human Rights has identified, among others, the following requirements:⁵⁶

- the investigation must be “capable of leading to the identification and punishment of those responsible”;
- “the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions... They must take all reasonable steps available to them to secure the evidence concerning the incident”;
- it is necessary for “the persons responsible for and carrying out the investigation to be independent from those implicated in the events... This means not only a lack of hierarchical or institutional connection but also a practical independence”;
- the investigation must be subject to public scrutiny.

Failure to undertake an adequate investigation can constitute a separate violation of human rights obligations, even if the underlying violation is never actually proved. In cases where there are grounds to suspect specific criminal offences have been committed, criminal investigations must be undertaken. Concerning violations of a state's human rights obligations that do not amount to crimes for which individuals may be held responsible, any non-criminal investigations must still be full, effective, independent and impartial.

Disturbingly, governments in European states implicated in renditions or secret detention have failed to complete full, effective, independent and impartial investigations. Most of the investigations that have taken place at the national level have been unsatisfactory. Some were held in secret and never published their detailed findings. Others were partly held in secret or revealed only some of the evidence gathered. Some did not allow victims, relatives, lawyers, NGOs or others to make submissions. Few had the power to compel witnesses to appear and give testimony under oath and to subpoena all relevant documentation. The investigations and proceedings to date have generally been unable or unwilling to initiate effective remedial action, let alone guarantee it in practice. Even where prosecutors in Italy and Germany have carried out investigations leading to efforts to hold CIA operatives to account for abductions and other crimes carried out on their territory or against their nationals, their initiatives have been undermined by their own governments.

In addition, some European states have failed to co-operate fully with the inquiries established by the Council of Europe Secretary General, PACE and the European Parliament. The 2007 PACE report stated: "Many governments have done everything to disguise the true nature and extent of their activities and are persistent in their uncooperative attitude."⁵⁷ Many states, as well as NATO, did not respond to questionnaires distributed by the PACE investigators. The report singled out **Poland, Romania, Macedonia, Italy** and **Germany** (as well as the USA) for particular criticism.

The 2007 TDIP report deplored the lack of co-operation by the governments of **Austria, Italy, Poland, Portugal** and the **UK**. It particularly criticized the representatives of the Berlusconi and Prodi governments responsible for the Italian secret services, and expressed serious concerns about perceived efforts by SISMI, Italy's military intelligence agency, to "systematically mislead" the efforts of the Milan prosecutors, and to do so outside appropriate internal and governmental controls.⁵⁸ The 2007 PACE report went further, saying that Nicolò Pollari, former head of SISMI, "lied unashamedly" to the European Parliament.⁵⁹

Even the **BiH** government, which the TDIP and PACE reports said was the only European government to have fully acknowledged its participation in a US rendition operation, has failed to co-operate fully with investigations. The Council of Europe Secretary General's report, for example, highlighted that BiH authorities only gave incomplete responses to a number of his questions, including whether public officials were involved in the deprivation of liberty, or whether any official investigations were complete or under way.⁶⁰

The reaction of European states to the recommendations of these reports has been little better. **Poland** and **Romania** ferociously denounced the 2007 PACE report as based on unsubstantiated evidence, and no state has complied with the common recommendation of these reports – to fully disclose and take specific measures to end European involvement in rendition and secret detention.

INDIVIDUAL CASES OF RENDITION

Although the government and security services of **Italy** initially denied any knowledge or involvement in the February 2003 abduction and subsequent rendition to Egypt of **Abu Omar**, the Milan prosecutor Armando Spataro and his investigators continued to examine the evidence, and were eventually able to identify 17 mobile phones used in the neighbourhood at the time of the abduction. The phone trail and other evidence eventually implicated a carabinieri officer, senior SISMI officials and 25 CIA agents. The prosecutor issued extradition requests in February 2006 for 22 US citizens in connection with the abduction of Abu Omar; in April the Italian Justice Minister refused to forward them to the US government. In July 2006, the prosecutor again issued extradition requests, this time for 26 people believed to be US citizens, including 25 suspected CIA agents. Once again, the Justice Ministry blocked transmission to the US government.

In February 2007 a judge in Milan ruled that 33 people, including Italian and CIA agents, should go on trial in connection with Abu Omar's abduction. In the run-up to the trial, the Italian government lodged a case before the Constitutional Court on the basis that some of the evidence in the Abu Omar case is protected by state secrecy and therefore should not be used in the trial. The trial resumed in March 2008 although the Constitutional Court case had not been resolved.

Amnesty International has repeatedly called on the Italian authorities to co-operate fully with the prosecution by asking the US authorities for the extradition of the people for whom arrest warrants have been issued, and by giving the judiciary all relevant information they have on the actions of Italian and CIA agents before, during and after the abduction of Abu Omar.⁶¹ The threat by the US authorities to ignore extradition requests is no excuse for Italy's refusal to forward them.

An investigation by Sweden's Parliamentary Ombudsman found that **Ahmed Agiza** and **Mohammed El Zari** suffered ill-treatment at the hands of US agents on Swedish territory as a direct result of Swedish security officials' acquiescence in the actions of their US counterparts during this incident. The UN Committee against Torture and the UN Human Rights Committee found that Sweden was responsible for multiple human rights violations and, in the case of Mohammed El Zari, was obliged to provide effective remedy. The Human Rights Committee specifically found that the fact that Sweden waited for over two years, until a private criminal complaint was made, before referring the ill-treatment of Mohammed El Zari for criminal investigation, violated its obligation to conduct a prompt, independent and impartial investigation.⁶² It also specifically condemned the fact that "neither Swedish officials nor foreign agents were the subject of a full criminal investigation" and held that Sweden had failed in its "obligation to ensure that its investigative apparatus is organized in a manner which preserves the capacity to investigate, as far as possible, the criminal responsibility of all relevant officials, domestic and foreign, for conduct in breach of article 7 [prohibition of torture and other ill-treatment] committed within its jurisdiction and to bring the appropriate charges in consequence".

In Germany, a parliamentary committee of inquiry (Untersuchungsausschuss) was set up to investigate Germany's secret co-operation with the USA and other states in combating international terrorism and the Iraq war. The committee started its work in May 2006, but is not expected to publish its report and recommendations before 2009. The committee is examining cases including those of **Murat Kurnaz**, **Muhammad Zammar** and **Khaled el-Masri** as well as the underlying issue of when German authorities were first aware of unlawful detentions by US counter-terrorism agents.

On 29 May 2008, the committee began closed hearings on the report of Special Prosecutor Joachim Jacob, who was mandated to investigate German involvement in CIA rendition flights more generally. As of 1 June 2008, the report had not been made public. According to weekly magazine *Stern*, which had access to a leaked copy of the report, the Special Prosecutor has castigated the German government for continuing to allow CIA flights to transit German airspace without permission, and without declaring themselves as state flights.

The members of the committee of inquiry have limited access to classified documents – in some cases they are given a highly redacted version of the document and in others they cannot see the documents at all. The committee has gone to the Constitutional Court to seek access to files over which the government claims must be kept secret on security grounds, and a ruling is expected by the end of 2008. Observations at the public hearings suggest that witnesses withheld information from committee members on “sensitive” questions, and government agencies failed to provide files to the committee members in order that witnesses could be examined on particular documents.

Public information about the content and nature of evidence received in the parliamentary hearings is severely limited, and the Special Prosecutor’s report has been classified as secret, although a redacted version may be published. Questions must therefore remain about whether the inquiry carried out by the committee has been thorough, independent and impartial.

The abduction and rendition of **Khaled el-Masri** was also investigated by German prosecutors. On 31 January 2007, public prosecutors in Munich issued arrest warrants for 13 US citizens, of whom at least 10 are thought to be CIA agents responsible for Khaled el-Masri’s rendition. In June 2007 the public prosecutors formally asked Germany’s Ministry of Justice to forward the extradition requests to the US authorities. However, the Ministry, following informal discussions with US officials, declined to put forward the extradition requests. If this situation continues, German courts would seem to be unable to hold fully accountable all individuals against whom there is evidence of involvement in Khaled el-Masri’s abduction, enforced disappearance, unlawful detention and alleged torture and other ill-treatment. The threat by the US authorities to ignore any extradition requests does not excuse Germany’s refusal to forward them.

In 2005, after receiving files from Italian investigators indicating that **Abu Omar** had been transported from Aviano airbase in Italy to Ramstein airbase in Germany by the CIA, en route to Egypt, German prosecutors started a formal investigation. In January 2006 the prosecutor told Amnesty International that he had found no evidence implicating German officials in the abduction of Abu Omar.

In the **United Kingdom**, the Intelligence and Security Committee (ISC) investigated the role of the UK security services in the US programme of renditions. Its June 2007 report noted that the UK security services were “slow to detect” the change in US rendition policy during 2002, and suggested that the examination of the events surrounding the rendition of **Bisher Al-Rawi** and **Jamil El-Banna** be viewed in this context, as the case represented a “step change” from existing practice.⁶³ According to the ISC, this was the first “rendition to detention” of individuals “entirely unrelated to the conflict in Afghanistan”, and the report suggests that the UK security services would therefore not have been expected to realize that their intelligence sharing could lead to the rendition and arbitrary detention of both men. However, the UK still found it necessary to provide the information under a written caveat prohibiting its use as “the basis for overt, covert or executive action”.

Moreover, the ISC’s understanding of the publicly available information detailing the extent of the US programme of renditions prior to November 2002 also appears to have been

incomplete. The public sections of the ISC report make no reference to the case of six men rendered from Bosnia to Guantánamo Bay in January 2002,⁶⁴ which was a well-publicized instance of “rendition to detention” of individuals with no apparent connection to the Afghanistan conflict. It took place more than nine months before the UK decided to provide the US with intelligence information that led to the arrest of Jamil El-Banna and Bisher Al-Rawi.

The ISC itself is not the appropriate body to conduct the kind of full and effective investigation mandated by the international standards outlined above.⁶⁵ Members of the ISC are appointed by the Prime Minister, and the ISC reports directly to the Prime Minister. It is the Prime Minister who decides whether to place any ISC report⁶⁶ before parliament, and decides the extent to which the report’s content should be redacted before presentation on security grounds. The ISC is not endowed with adequate institutional and functional independence from those potentially responsible for the violations, nor sufficient powers or transparency to produce fully effective, impartial and adequately public findings and results as required by international human rights law.

In **Macedonia**, authorities continue to deny that **Khaled el-Masri**’s detention in Macedonia was illegal. In 2006, they refused to co-operate fully with investigations carried out by the Council of Europe and European Parliament.

On 18 May 2007 in a closed hearing, a Macedonian parliamentary committee considered written statements by the Ministry of the Interior. They concluded that the security services had not overstepped their powers in relation to his detention in a Skopje hotel before unlawfully transferring him to the US authorities at Skopje airport. The committee chair noted that unless provided with “strong evidence” to the contrary, the committee would continue to believe the Ministry.

In April 2008, the UN Human Rights Committee urged Macedonia to undertake a “new and comprehensive investigation of the allegations made by Mr. Khaled al-Masri. The investigation should take account of all available evidence and seek the cooperation of Mr. al-Masri himself. If the investigation concludes that the State party did violate the Covenant protected rights of Mr. al-Masri, it should provide him with appropriate compensation. The State party should also review its practices and procedures whereby it would never perpetrate acts such as those alleged by Mr. al-Masri.”⁶⁷

SECRET DETENTION

Reluctance to investigate, hostility towards those making or investigating the allegations, and strident denials have marked the responses of states accused of allowing the CIA to detain people secretly on their territory.

The 2007 TDIP report noted the reluctance of authorities in **Romania** “to investigate thoroughly the existence of secret detention facilities on its territory” and raised concerns that the report of an investigation conducted by a Senate Inquiry Committee was kept secret, except for its

conclusions, which denied all allegations of any role in rendition or secret detention.⁶⁸ The conclusions drawn by the Inquiry Committee, the TDIP report noted, “appear premature and superficial”. In April 2008, the Romanian Senate voted to adopt the Committee’s report, much of which remains classified, which denies that Romania permitted CIA secret prisons in the country. The report concluded that no Romanian institution took part, either by negligence or by omission, in the illegal transportation of prisoners on its territory.

In relation to **Poland**, the 2007 TDIP report deplored “the glaring lack of co-operation by the Polish government with the Temporary Committee”. It noted that no special inquiry committee had been established in Poland; that parliament had not conducted an investigation and should do so; and that “confusing and contradictory statements” were made about CIA flight logs.⁶⁹

The Polish government has repeatedly denied any involvement in the US rendition and secret detention programmes, and has noted that internal inquiries were carried out in November and December 2005, on the basis of which the government was able to state “unequivocally” that no US-run secret prisons operated on Polish territory. The Polish Parliament reiterated the same conclusions in 2006 in a letter to the Council of Europe. No details about the inquiry itself, including details of its findings and methodology, have ever been released. In July 2007 the UN Committee against Torture urged Poland to share information about the scope, methodology and conclusions of this inquiry.⁷⁰

In February 2008, the European Commission said that Poland and Romania have been dodging requests from the Justice and Home Affairs Commissioner to clarify their possible role in hosting clandestine CIA prisons. The Commissioner had urged both countries to carry out judicial inquiries into the existence of secret CIA detention centres in Poland and Romania, and neither country had responded “in an adequate manner”.⁷¹

In April 2008, members of the UN Human Rights Council urged Poland to make public the findings of their investigations into the existence of CIA-operated secret detention centres in Poland, and to reply to the two communications sent by the European Commission requesting clarification on these allegations.

Journalists and human rights investigators have suggested that Diego Garcia and its surrounding waters could have played a role in US renditions and secret detention.⁷² In February 2007, Amnesty International asked the **UK** authorities about persistent reports of US renditions through Diego Garcia. Government ministers have denied such allegations. The February 2008 admission that two flights, each carrying one prisoner, had in fact landed on Diego Garcia in 2002, highlights the urgent need to complete full, effective, independent and impartial investigations into detainee transfer via Diego Garcia as well as into allegations of secret detentions on or around Diego Garcia.

LANDINGS

The slow process of squeezing information out of European states about rendition flights is exemplified by events in **Spain**.

In March 2005 lawyers and civil associations from Palma de Mallorca in Spain filed a complaint before the Public Prosecutor of the Superior Court of Justice of the Balearic Islands, alleging that the CIA was using Son Sant Joan Airport (Palma de Mallorca) during illegal transfers of detainees.

In April 2006, Amnesty International revealed that since 2001, on at least 24 occasions, CIA-leased or CIA-operated aircraft had landed at Palma de Mallorca, Tenerife, Málaga and Barcelona.⁷³ Following these and other revelations, a judge in Mallorca referred the case to the National Criminal Court.

In June 2006, the National Criminal Court began an investigation into stopovers by CIA aircraft.⁷⁴ In October that year, **Khaled el-Masri** appeared before the judge because the plane used in his transfer from Skopje to Kabul had stopped over at least eight times at Son Sant Joan Airport, including en route to Skopje for his rendition on 22 January 2004.

In February 2007, the Spanish government announced that it would comply with the order to declassify a number of intelligence agency files, including those covering investigations about the suspected use of Spanish airports by the CIA. The results of these investigations only confirmed the landing of the flights at Palma de Mallorca and Tenerife, which had already been made public, and concluded that it was not possible to determine the purpose of these flights. The National Criminal Court expanded the investigation into stopovers at Spanish military bases by military planes heading towards or returning from Guantánamo between 2002 and 2007. In May 2008 the judge ordered the Spanish government to provide detailed information about these flights.

In relation to **Portugal**, the 2007 TDIP report found that CIA-operated or linked planes, including many that had been involved in renditions, had stopped over on Portuguese territory on 91 occasions between January 2002 and June 2006. Over the same period, an additional 17 flights "from a number of countries" travelling to or from Guantánamo Bay apparently made stopovers in Portugal. The report found that the government must have been aware of the nature of these flights; Portugal's Foreign Affairs Minister, Luis Amado, rejected these allegations.

On 25 January 2007 the Minister for Foreign Affairs said that the government's investigations into alleged CIA rendition flight stopovers in Portugal had been closed, stating that there was no evidence to support the continuation of the inquiry. However, on 5 February 2007 the Office of Public Prosecutions announced that it was opening a criminal investigation into possible torture and other ill-treatment related to suspected CIA rendition flights, on the basis of information provided to it by a Portuguese Member of the European Parliament and a journalist. The investigation is currently examining both CIA and US military stopovers in

Portugal, including new information, made public in April 2008, on some 56 military flights, most of them bound for Guantánamo, which had used Portuguese airspace between July 2005 and December 2007, including five which made stopovers in the Azores.

The Irish Human Rights Commission (IHRC) found that CIA planes heading towards or returning from renditions had landed and refuelled at Shannon airport in **Ireland**. Since 2005 the IHRC has repeatedly called for a system of inspection of foreign aircraft to ensure that Ireland is never again, even unwittingly, an accessory to renditions or torture. The government's response has been to state that it does not view such a system of inspections as necessary and that it would rely instead on "assurances" from the US administration that prisoners will not be transported illegally through Irish territory.

In its February 2007 resolution, the European Parliament deplored the stopovers by CIA planes in Ireland and recommended a ban on CIA aircraft landing in Ireland unless a regime of inspection of such flights were in place. It specifically urged the government "to launch a parliamentary inquiry into the use of Irish territory as part of the CIA rendition circuit."⁷⁵

The **UK** government has faced mounting accusations since 2005 that it allowed the US authorities to use UK territory for renditions. In January 2006, Amnesty International wrote to the UK Prime Minister to express concern about UK airspace and airports being used to facilitate flights by CIA-chartered aircraft known to have been involved in renditions. Of specific interest was a Gulfstream V turbojet, registered until January 2004 as N379P, and throughout the rest of 2004 as N8068V, which between 2001 and 2005 made at least 78 stopovers at UK airports. Flight records obtained by Amnesty International show that some of these flights were heading towards or returning from known renditions.

Given such evidence Amnesty International repeatedly urged the UK government to launch a thorough and independent investigation. It also urged the authorities to put in place all necessary measures to prevent any action or omission which may, wittingly or unwittingly, result in UK territory being used during renditions.

Amnesty International also met Scotland's Justice Secretary in August 2007 to discuss rendition flights and called for an independent investigation. The Justice Secretary passed Amnesty International's dossier of information to Scotland's Lord Advocate, who passed it on to the relevant police force. No news about any subsequent police investigation has emerged.

The government in Denmark has reported over 100 flights through Danish airspace and 45 stopovers in Danish airports by planes allegedly used by the CIA, including planes known to have been used for renditions on other occasions. In May 2007 representatives of the Danish government reportedly told the UN Committee against Torture that "it was not possible to confirm that illegal CIA activities had taken place in Danish airspace, on Danish soil, or that any Danish official had been involved in such activities".⁷⁶ To date, the Danish government has not instigated a thorough and independent investigation into allegations of Denmark's involvement in the programme of renditions and secret detention.

ACTION NEEDED NOW

European states should:

- 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 at home and abroad, and make the findings and results public;
- ensure that where crimes under international or national law are at issue, the investigations should include criminal investigations;
- ensure that the people responsible for and those carrying out the investigation are independent (hierarchically, institutionally and practically) from the individuals, agencies and institutions under investigation, including where necessary complete independence from the executive;
- give those carrying out the investigation the powers to effectively investigate action taken by state agents, either domestic or foreign, linked to any cases of rendition, including the power to compel the preservation and production of documents, testimony, and other relevant evidence;
- ensure that the investigation is capable of leading to a determination of whether any violations of human rights or national laws have occurred, and to the identification of those responsible for the violations, as well as reviewing any policies and practices that may be relevant;
- ensure that the investigations' procedures and the nature of the evidence received are transparent; in particular, victims and their families should have an opportunity to participate in the proceedings and be kept informed of their progress;
- ensure that hearings are public except where specific evidence or submissions cannot be dealt with in open hearings; any assertion of need for confidentiality, including on the ground of national security or state secrecy, should be determined by an authority that is independent of the executive;
- make public the scope, methods and findings of any investigation;
- take all means necessary to ensure that no claim of confidentiality on grounds of national security, state secrecy, diplomatic relations, or witness protection, is or may be asserted as justification for failure to disclose information or evidence of serious human rights violations, in any investigation or inquiry, prosecution, hearing of a human rights complaint, civil or administrative case;
- ensure that the investigating body refers appropriate information regarding criminal conduct and human rights violations to the relevant authorities;
- act immediately on recommendations made by European bodies aimed at ending the unlawful practices of renditions and secret detention.

7//STILL SUFFERING: EUROPE'S FAILURE TO MAKE AMENDS

On 5 February 2004 the Canadian government established the Commission of Inquiry into the Actions of Canadian Officials in Relation to **Maher Arar**. This looked into Canada's role in the unlawful transfer of Canadian citizen Maher Arar from New York's JFK airport to Syria via Italy and Jordan. Maher Arar was rendered to Syria and arbitrarily detained for 10 months and repeatedly tortured, before being released without charge and flown home to Canada. As a result of the independent Commission's findings, the Canadian government publicly apologized to Maher Arar and offered him financial compensation for its role in his unlawful transfer and torture.

Despite the clear responsibility of some European governments in similar cases, no remedy has been provided for the victims, many of whom remain illegally detained at Guantánamo Bay or in the countries to which they were unlawfully transferred, including Syria and Egypt, where torture is rife.

The ongoing impact of abduction and unlawful transfer to torture and other abuses has been devastating for all of the victims and their families.

Mustafa Ait Idir, Saber Lahmar Mahfoud and **Lakhdar Boumediene**, for instance, are all suffering the physical and psychological problems that they believe result from or have been aggravated by their treatment at Guantánamo Bay. While the Bosnian Human Rights Chamber ordered compensation to be paid, financial compensation alone does not provide the full remedy and reparation required by international human rights law.

Despite clear evidence of the involvement of Macedonian officials in the unlawful detention in Macedonia of **Khaled el-Masri** and his subsequent rendition, the Macedonian authorities have so far failed to admit any wrongdoing or offer any reparations, and have not co-operated fully with investigations carried out by the Council of Europe and European Parliament.

Although Sweden has admitted some responsibility for the unlawful transfer of **Ahmed Agiza** and **Mohammed El Zari** to Egypt, and has apologized for their treatment at Bromma airport, no decision has been announced on the claims for compensation, which have been submitted to the Swedish authorities on behalf of both men, and both men have to date been refused residence permits. Ahmed Agiza remains in prison in Egypt, and **Hannan Atia**, his wife, has repeatedly expressed her concerns about his deteriorating health and his conditions of confinement.

European states are obliged to provide remedies for any violations perpetrated by their agents, whether or not the acts were perpetrated with others, and whether or not their agents initiated the violation or were participants in a violation initiated by agents of another state. They are also obliged to provide remedies for any violations of their positive obligations to prevent foreign agents and others from perpetrating violations on their territory, and for failing to undertake prompt, effective and independent investigations as required.

The remedies should be effective in practice as well as in law. Victims are entitled to equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms. Full and effective reparation includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.⁷⁷

Restitution seeks to restore the victim to the situation he or she was in before the violation, and could include: "restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property."

Among the elements of satisfaction are:

- effective measures aimed at the cessation of continuing violations;
- verification of the facts and full and public disclosure of the truth;⁷⁸
- establishing the fate and whereabouts of people who have disappeared;
- an official declaration or judicial decision restoring the dignity, reputation and rights of the victim;
- a public apology, including acknowledgement of the facts and acceptance of responsibility;
- judicial and administrative sanctions against perpetrators of human rights violations.

Guarantees of non-repetition could include, among other things, ensuring effective civilian control of military and security forces, and reviewing and reforming laws that contribute to or allow the violations to take place.

A state may also demand, through diplomatic representations and, if necessary, an international legal claim, that another state make reparation for injuries to its nationals caused by violations of international law by the other state.⁷⁹

Additionally, where a state refuses to acknowledge the detention of a person who has disappeared, or to disclose their whereabouts and fate, the refusal can constitute a separate violation of the rights of close family members, who may be recognized as themselves suffering inhuman or degrading treatment as a result.

ACTION NEEDED NOW

European states should:

- 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;
- ensure that all victims (including where applicable relatives) of violations committed in the context of the US programme of rendition and secret detention, including torture and enforced disappearance, obtain prompt and effective reparation from the state/s responsible, including restitution, full compensation, rehabilitation, satisfaction and guarantees of non-repetition;
- demand, through diplomatic representations and, if necessary, an international legal claim, that the USA and other responsible states make reparation for injuries to their nationals caused by violations of international law by the other state or states.

8/SIX STEPS FOR EUROPE TO STOP RENDITIONS AND SECRET DETENTION

Regardless of whether they are ultimately determined to be responsible for past human rights violations connected to the rendition and secret detention programmes, all European states have a positive duty to implement effective measures for the prevention of such violations in the future. Some states have taken positive action. In Northern Ireland, for instance, Derry City Council largely agreed proposals put to it by Amnesty International. The Council pledged to prevent City of Derry Airport being used for any illegal practices, including by:

- maintaining and updating a register of aircraft operators whose planes have been implicated in rendition flights;
- requiring these operators to provide detailed information before allowing them landing or flyover rights – such information should include the full flight plan of the aircraft; the full names, nationalities and passport numbers of all passengers on board; whether or not any passengers are detainees; and the purposes of their travel;
- requiring, for passengers listed as prisoners or detainees, more detailed information about their status and the status of their flight, including their destination and the legal basis for their transfer;
- notifying the relevant law enforcement authorities when there is reason to believe that an aircraft might be involved in a rendition or associated operations, and keeping public records of all such notifications.

In Iceland in late 2007, the Foreign Ministry issued a report on suspected rendition flights through the country, confirming that several planes identified by Amnesty International as linked to the rendition programme had landed at Keflavík and Reykjavík airports. The Foreign Minister subsequently announced in parliament that all planes with flight numbers that have been linked to renditions would be inspected.

Building on initiatives such as these, Amnesty International has developed a series of detailed recommendations, which are available on its website, www.amnesty.org. In summary, they are:

1. CONDEMN

European states should publicly condemn rendition and secret detention as unlawful, and call on the US authorities to end all such practices and make public the full truth about them.

2. INVESTIGATE

European states should initiate effective, independent and impartial investigations into allegations of involvement of its agents or territory in renditions, secret detention or enforced disappearances. The investigations should include:

- legal powers to gather all relevant evidence;
- procedures that are transparent and that allow public scrutiny of the nature of the evidence received, the findings and results;
- criminal investigations where crimes under international or national law are at issue.

3. BRING TO JUSTICE

European states should bring to justice anyone reasonably suspected of being responsible for human rights violations in connection with renditions, secret detention and enforced disappearance. States should forward to the appropriate authorities all requests for extradition or other mutual legal assistance regarding any criminal processes.

4. ENSURE ACCOUNTABILITY OF INTELLIGENCE AGENCIES

European states should ensure the accountability of domestic and foreign intelligence agencies including by:

- developing and implementing a regulatory framework and practices that provide effective safeguards against human rights violations;
- providing protection from reprisals for whistleblowers and witnesses of human rights violations in connection with renditions, secret detention and enforced disappearance.

5. PREVENT SECRET DETENTION AND RENDITIONS

European states should introduce measures that include: only transferring individuals to the custody of another state, or facilitating such a transfer, if the transfer is carried out under judicial supervision; and ensuring that no one is forcibly returned to any place where they may be at risk of serious human rights violations. They should also:

Prevent secret detention by:

- prohibiting the holding of individuals anywhere other than in officially recognized places of detention;
- ensuring that anyone detained in connection with terrorism is brought before a judicial authority promptly and can effectively challenge the lawfulness of their detention before a court;
- acknowledging the fate and whereabouts of the detainees;
- ensuring access or meaningful communications between detainees and their relatives and legal representatives;
- reviewing and amending bilateral or multilateral military arrangements or other agreements that could impede the state's ability to meet its international human rights obligations.

Prevent renditions by:

- ensuring that operators of any aircraft used to carry out activities of intelligence agencies declare that the aircraft is being used for state purposes;
- amending any existing blanket overflight or landing clearances to include prior agreement to submit to requirements for search and other inspection measures;
- requiring that aircraft seeking permission to transit or land in European territory indicate whether any passengers on board are deprived of their liberty and, if so, their status, destination and the legal basis for their transfer;
- ensuring that aircraft and vehicles known or suspected to be carrying anyone unlawfully deprived of their liberty are inspected by independent officials;
- ensuring that state authorities take responsibility for systematically and proactively identifying companies and aircraft reasonably suspected to be misrepresenting their status or otherwise involved in human rights violations, without relying exclusively on civil society to provide such information.

6. PROVIDE REPARATIONS FOR VICTIMS

European states should ensure that all victims of rendition, secret detention and enforced disappearance promptly receive adequate reparation from the state or states responsible.

ENDNOTES

- 1 This report does not address the use of European territory to transfer detainees from US Department of Defense (DoD) custody in Afghanistan to US DoD custody at Guantánamo Naval Base. Although Amnesty International considers that these are also unlawful transfers to arbitrary detention, they do not involve a transfer of custody from one state to another, and there is a separate legal framework governing the operation of military flights in European territory or airspace. The use of European territory by military flights carrying out transfers to arbitrary detention should be the subject of further investigation, with a view to determining whether and to what extent the responsibility of particular European states is engaged in assisting or facilitating an unlawful act, particularly in violation of international human rights law. Such investigation should also be directed towards determining criminal responsibility, if any, of individual officials of those states.
- 2 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. Renditions violate international law by failing to respect requirements of due process, and frequently involve multiple human rights violations, including unlawful and arbitrary detention; torture or other ill-treatment; and enforced disappearance. Most of the known victims of rendition were apprehended in Pakistan or Afghanistan; some were transferred by the USA to countries in the Middle East and either remained there or were returned to US custody and sent to Guantánamo or to secret detention in CIA-operated “black sites”.
- 3 S/RES/1456, 20 January 2003.
- 4 This report does not cover in detail the role of the authorities in the USA, Pakistan and Middle Eastern states who have been responsible for most of the serious human rights violations associated with the rendition programme; some of these concerns are addressed in other Amnesty International reports.
- 5 The Foreign Secretary’s oral statement is available at <http://www.fco.gov.uk>.
- 6 Director’s statement on the past use of Diego Garcia, 21 February 2008, <https://www.cia.gov/news-information/press-releases-statements/past-use-of-diego-garcia.html>.
- 7 Amnesty International, *USA: Law and executive disorder – President gives green light to secret detention program* (Index: AMR 51/135/2007), August 2007.
- 8 Director’s statement on lawful interrogation, 13 February 2008, <https://www.cia.gov/news-information/press-releases-statements/directors-statement-on-lawful-interrogation.html>.
- 9 Amnesty International, *Partners in crime: Europe’s role in US renditions* (Index: EUR 01/008/2006), June 2006.
- 10 “Territory” here, and throughout this report, includes all territory within the state or subject to its control, including its airspace, waters and all airports and military bases whether or not leased or used by other states or inter-state organizations, and includes areas outside of its ordinary territory but which are temporarily under its effective control.
- 11 *Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report*, PACE Doc. 11302 rev., 11 June 2007, Explanatory Memorandum (2007 PACE report), para. 39.
- 12 NATO Statement to the press, 4 October 2001, <http://www.nato.int/docu/speech/2001/s011004b.htm>.
- 13 Council of Europe Secretary General, *Secretary General’s supplementary report under Article 52 ECHR on the question of secret detention and transport of detainees suspected of terrorist acts, notably by or at the instigation of foreign agencies*, SG/Inf(2006)13, 14 June 2006.
- 14 Council of Europe Secretary General, *Follow-up to the Secretary General’s reports under Article 52 ECHR on the question of secret detention and transport of detainees suspected of terrorist acts, notably by or at the instigation of foreign agencies* (SG/Inf(2006)5 and SG/Inf(2006)13): *Proposals made by the Secretary General*, SG(2006)01, 30 June 2006.
- 15 *Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states: Report*, PACE Doc. 10957, 12 June 2006 (7 June 2006 PACE report); 11 June 2007 PACE report, op. cit.; Parliamentary Assembly of the Council of Europe, Resolution 1562(2007)1 and Recommendation 1801(2007), adopted by the Assembly on 27 June 2007.
- 16 *Interim Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners*, 15 June 2006; *Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners*, 30 January 2007; European Parliament resolution on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (2006/2200(INI)), P6_TA(2007)0032, 14 February 2007.
- 17 Speaking notes for the press conference on the report under Article 52 of the ECHR, 1 March 2006, http://www.coe.int/T/E/Com/Files/Events/2006-cia/Speaking_notes%20_sg.asp.
- 18 Reuters, 17 January 2008, <http://uk.reuters.com/article/domesticNews/idUKL1784265920080117>
- 19 2007 TDIP report, paras 165-179; see also Nick Hawton, “Hunt for CIA ‘black site’ in Poland”, BBC News, 28 December 2006.

- 20 CM/AS(2008) Rec 1801 final, 18 January 2008, *Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report – Parliamentary Assembly Recommendation 1801 (2007), Reply adopted by the Committee of Ministers on 16 January 2008 at the 1015th meeting of the Ministers' Deputies*.
- 21 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.
- 22 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 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.
- 23 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.
- 24 European Court of Human Rights, *Ilaşcu and others v. Moldova and Russia*, paras 331-333; Venice Commission, para. 130.
- 25 See Venice Commission, paras 44, 127; UN Convention against Torture; 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.
- 26 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.
- 27 ICTY, *Blaškić* Appeal Judgment, para. 48; *Delalić (“Celebici”)* Appeal Judgment (20 February 2001), para. 352.
- 28 UK Intelligence and Security Committee, *Report into Rendition*, July 2007, paras 104-105.
- 29 *Ibid.*, para. 95.
- 30 See, for example, the Opinion of the UN Working Group on Arbitrary Detention, No. 47/2005 (YEMEN), “concerning Walid Muhammad Shahir Muhammad al-Qadasi, Salah Nasser Salim Ali and Muhammad Faraj Ahmed Bashmilah”, in UN Doc. A/HRC/4/40/Add.1, 2 February 2007 at pp. 41-44.
- 31 2007 PACE report, paras 7, 174-179, 211-218.
- 32 See Amnesty International, *USA: Below the radar – secret flights to torture and “disappearance”* (Index: AMR 51/051/2006); Amnesty International, *USA/Yemen: Secret Detention in CIA “Black Sites”* (Index: AMR 51/177/2005), November 2005; Amnesty International, *A case to answer: From Abu Ghraib to secret CIA custody, the case of Khaled al-Maqtari* (Index: AMR 51/013/2008), March 2008.
- 33 2007 PACE report, para. 168.
- 34 2007 PACE report, paras 175-6.
- 35 2007 PACE report, paras 203 and 208.
- 36 William J Kole, “A Black Bus and Large Parcels Fuel Suspicion of Romania’s Role in CIA Secret Prison System”, AP News, 23 February 2008.
- 37 Several former “black site” detainees have described putting messages in blankets, books and articles of clothing.
- 38 See Amnesty International, *USA: Amnesty International calls for criminal investigation following CIA “waterboarding” admission*. <http://www.amnesty.org/en/for-media/press-releases/usa-amnesty-international-calls-criminal-investigation-following-cia-%E2%80%98wa>
- 39 See Amnesty International, *USA: Slippery slopes and the politics of torture* (Index: AMR 51/177/2007).
- 40 <https://www.cia.gov/news-information/press-releases-statements/past-use-of-diego-garcia.html>.
- 41 Conclusions and Recommendations of the Committee against Torture: USA, para. 17, 18 May 2006.
- 42 See for example, 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; Venice Commission, para. 125.
- 43 See the International Convention for the Protection of All Persons from Enforced Disappearance, as well as the Declaration on the Protection of all Persons from Enforced Disappearance, General Assembly resolution 47/133 of 18 December 1992.
- 44 See Declaration, *ibid.*; Human Rights Committee, *El Hassy v. Libya*, UN Doc. CCPR/C/91/D/1422/2005, 13 November 2007, para. 6.6.

- 45 On this, and the following paragraphs, see Venice Commission, paras 93-96, 102-103, 144-146, 148-153, 159(i)(k) and (l).
- 46 *Politiken*, 21 October 2007.
- 47 2007 TDIP report, paras 83-88.
- 48 See UN Committee against Torture, Concluding Observations on Canada (2006), para. 16. 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 ICTY *Furundzija* Appeal Judgment (21 July 2000), para. 120; and ILC Articles on State Responsibility, Articles 40 and 41 and associated commentaries.
- 49 See ICTY, *Blaškić* Appeal Judgment, para. 48; *Delalić ("Celebici")* Appeal Judgment (20 February 2001), para. 352.
- 50 Whether by knowingly providing aid or assistance to the violation, or by otherwise acting in contravention of its human rights obligations in a way that gives substantial grounds to believe the person will be exposed to a real risk of such serious violations as a result.
- 51 The prohibition of torture is a peremptory norm of international law – see the relevant ILC Articles on State Responsibility, Articles 40 and 41.
- 52 European Court of Human Rights, *Ilaşcu and others v. Moldova and Russia*, July 2004, para. 331; UN Human Rights Committee, *Jiminez Vaca v. Colombia*, UN Doc. CCPR/C/74/D/859/1999 (2002) and General Comment no. 31, para. 2; UN Committee against Torture, *Dar v. Norway*, UN Doc. CAT/C/38/D/249/2004 (2007); UN General Assembly, "Basic Principles and Guidelines on the Right to a Remedy and Reparation", Resolution A/RES/60/147 (21 March 2006), para. 12(d).
- 53 June 2007 PACE report, para. 5.
- 54 PACE resolution 1562 paras 8-11, 14.
- 55 2007 PACE report, paras 307-308; European Parliament resolution (2006/2200(INI)) para. 194.
- 56 See, among others, *Kurt v. Turkey*, 25 May 1988, para. 124; *Assenov v Bulgaria*, 28 October 1998, para. 102; *Boicenco v Moldova*, 11 July 2006, paras 121 and 123; *Kucheruk v Ukraine*, 6 September 2007, paras 155, 158.
- 57 2007 PACE report, para. 3.
- 58 2007 TDIP report, paras 56-57, 59.
- 59 2007 PACE report, para. 321.
- 60 28 February 2006 Council of Europe Secretary General's report (SG/Inf2006(5)), paras 83, 86a.
- 61 Amnesty International, *Italy: Minister of Justice must forward CIA extradition requests to US authorities* (Index: EUR 30/002/2007).
- 62 *Mohammed Alzery v Sweden*, CCPR/C/88/D/1416/2005 (10 November 2005), para. 11.7.
- 63 For the ISC's investigation into the case of Bisher Al-Rawi and Jamil El-Banna, see the ISC's *Report into Rendition, 2007*, paras 65-66, 111-147.
- 64 Amnesty International made its concerns public on the unlawful transfer of these six men on 18 January 2002. See Amnesty International, *Bosnia-Herzegovina: Letter to the US Ambassador regarding six Algerian men* (Index: EUR 63/003/2002).
- 65 Amnesty International representatives gave evidence to the ISC during its investigation, but while welcoming the initiative, they made it clear that the organization did not consider the ISC investigation sufficient to fulfil the government's obligation to conduct full and independent investigations into these allegations.
- 66 Other than the ISC Annual Report, which the Prime Minister is required by law to lay before parliament; even this, however, is subject to redaction.
- 67 Concluding observations of the Human Rights Committee on the Former Yugoslav Republic Of Macedonia, 3 April 2008 CCPR/C/MKD/CO/2, para 14.
- 68 2007 TDIP report, para. 159.
- 69 2007 TDIP report, paras 165, 167, 170, 176, 195.
- 70 Conclusions and recommendations of the Committee against Torture on Poland, 25 July 2007, CAT/C/POL/CO/4.
- 71 "EU Commission: Poland, Romania must clarify role in CIA extraordinary rendition program", The Associated Press, 22 February 2008.
- 72 2007 PACE report, para. 70. See also Human Rights First, *Ending Secret Detentions*, June 2004; Human Rights First, *Behind the Wire: An Update to 'Ending Secret Detentions'*, March 2005; and Reprieve, *Enforced Disappearance, Illegal Interstate Transfer, and Other Human Rights Abuses Involving the UK Overseas Territories*, Submission to the Foreign Affairs Select Committee, 19 October 2007.
- 73 *USA: Below the Radar*, op cit.
- 74 *Diligencias Previas* n° 109/06.
- 75 2007 European Parliament Resolution, paras 127-128.
- 76 See Amnesty International, *Denmark: A Briefing for the Committee against Torture* (Index: EUR 18/001/2007).
- 77 On all elements mentioned in this and the following paragraphs, see UN General Assembly, "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", Resolution A/RES/60/147 (21 March 2006).
- 78 See Chapter 6 describing why blanket claims of state secrecy are unacceptable impediments to the right of victims to a remedy that includes disclosure of the truth.
- 79 See Permanent Court of International Justice, *Mavrommatis Palestine Concessions (Greece v Great Britain)* (1924), PCIJ Ser A, No 2, p.12.

CASESHEETS

Amnesty International is highlighting the following cases for membership action



MUSTAFA AÏT IDIR AND FIVE OTHERS

ROLE AND RESPONSIBILITY OF BOSNIA AND HERZEGOVINA

Mustafa Aït Idir, Belkacem Bensayah, Lakhdar Boumediene, Boudella El Hadj, Nechla Mohamed and Saber Lahmar Mahfoud came from Algeria to Bosnia and Herzegovina (BiH) in the early to mid-1990s. All are married with children. At the time of their detention, four had been granted BiH citizenship, one had residency status and one had been stripped of his citizenship.

“
I CAN ONLY HOPE THAT
SOMEBODY WILL HEAR MY
CRY FOR HELP AND CONTACT
THE AUTHORITIES IN BOSNIA
ASKING THEM TO DO
EVERYTHING THEY CAN TO
ENSURE THAT MY HUSBAND
IS RELEASED FROM
GUANTÁNAMO.

Sabiha Delić Aït Idir, the wife of Mustafa Aït Idir, speaking to Amnesty International in April 2008

On 17 January 2002 the six men were arrested by Federation of Bosnia and Herzegovina (FBiH) police. With the help of Sarajevo's cantonal police, they handed the men over early the next morning to US forces then stationed in BiH as part of the North Atlantic Treaty Organization (NATO)-led peacekeeping Stabilization Force (SFOR).

US forces took the six men to the NATO/SFOR base in Tuzla in BiH. From there they transferred the men to the Incirlik airbase in Turkey, where the US Air Force maintains a forward operating base, and then to the US naval base at Guantánamo Bay, Cuba. The men were transferred from Tuzla to Incirlik on a US military C-130 aircraft, not one of the privately leased jets used in other US renditions.

During the flights, the six men were shackled, their eyes were covered by opaque goggles and their hands were put in mittens, all standard operating practice for Guantánamo transfers.

The six men have now been held at Guantánamo Bay for more than six years without charge. Their lawyers say that all have been tortured or otherwise ill-treated, including by extended periods in solitary confinement, exposure to extreme temperatures, sleep deprivation, and infrequent recreation breaks. The lawyers also say that the men are suffering from medical conditions caused or exacerbated by the conditions of detention.

Mustafa Aït Idir alleges that during a cell search in 2004, guards forced him to lie on the floor while men jumped on his back and on the side of his head. A lawsuit filed in April 2005 on his behalf alleges that “one half of his face became paralysed. He was in pain. He could not eat normally; food and drink leaked from his non-functioning mouth. Guards teased him because of his condition.” Mustafa Aït Idir has since been diagnosed with Bell's palsy, which he believes was caused by the 2004 assault.



Mustafa Aït Idir



Belkacem Bensayah



Lakhdar Boumediene



Boudella El Hadj

As of April 2008, Saber Lahmar Mahfoud had been held in isolation in Guantánamo for over 22 months. His lawyers say that the conditions, which include limited space and lack of opportunity for meaningful exercise, have exacerbated existing nerve and muscle damage to both of his legs. When his lawyers visited him in April 2008, he appeared psychologically and physically debilitated, depressed and was suffering severe leg pains. He is reportedly not allowed to send or receive mail from his family and is often refused a pen and paper.

Lakhdar Boumediene has been on hunger strike since December 2006. According to his lawyer, he is kept in isolation. Twice a day, he is strapped in a chair (by his feet, thighs, waist, chest, head, wrists and biceps), with a mask over his mouth, and forcibly fed through a tube inserted through a nostril into his stomach. This is reportedly an excruciatingly painful process.

No information is available about the current condition of the other three men.

BiH'S ROLE

In October 2001 Mustafa Aït Idir, Belkacem Bensayah, Lakhdar Boumediene, Boudella El Hadj, Nechla Mohamed and Saber Lahmar Mahfoud were detained by FBiH police on suspicion of involvement in a plot to attack the US and UK embassies in Sarajevo. Although the US embassy indicated that it had evidence linking the men to al-Qa'ida and the planned embassy attacks, no such evidence was produced. On 17 January 2002 the FBiH Supreme Court, finding there was no basis to hold the men, ordered their release and shortly afterwards the Sarajevo prison authorities freed them.

The same day the Human Rights Chamber of BiH issued an interim order for provisional measures to be taken to prevent the deportation, expulsion or extradition of four of the men, following their applications to the court.

Despite this, FBiH police seized the six men the day of their release and handed them over to US authorities.

The Human Rights Chamber for BiH found that BiH and the FBiH had arbitrarily expelled the men, and acted in contravention of its human rights obligations in transferring them to illegal US detention in BiH. It ordered BiH to use diplomatic channels to protect the men's rights.

As a result, the BiH and FBiH authorities paid compensation for the violation of the men's rights to liberty, their expulsion and the failure of the authorities to secure diplomatic assurances that they would not face the death penalty.

However, the BiH authorities appear to have made no meaningful attempt to negotiate with the US authorities for the repatriation of BiH citizens held in Guantánamo Bay.

In March 2006, the BiH State Commission for the Revision of Decisions on Naturalization of Foreign Citizens began reviewing the status of citizens who acquired BiH citizenship between 1992 and 2006. It was reported that the Commission was recommending that Lakhdar Boumediene and Saber Lahmar Mahfoud should have their citizenship revoked.

If BiH refuses to accept the six men if they are released and wish to return to BiH, they may be sent against their will to countries where they may face a real risk of torture and other human rights violations. There have been rumours that some of the men might be returned to Algeria following visits by Algerian security officials to Guantánamo.

In January 2007, the European Court of Human Rights granted priority treatment to applications filed on behalf of the six men. The applications claim that the failure of the authorities in BiH to implement binding decisions by domestic courts by allowing the men's unlawful transfer to US custody, and to protect the rights of the detainees during their transfer and their detention at Guantánamo Bay, violated a number of provisions of the European Convention on Human Rights.

BiH'S RESPONSIBILITY

BiH is obliged to protect the human rights of its nationals and everyone on its territory. The arbitrary detention of the six men, and their subsequent further unlawful detention and transfer to US custody, constitute serious violations of the right to liberty and security of the person, and other rights. The fact that this was done in the face of the FBiH Supreme Court's ruling that there was no basis for their detention, as well as the interim order for provisional measures to prevent the deportation, expulsion or extradition of four of the men, aggravates the seriousness of the violations and also constitutes a fundamental lack of respect for the rule of law.

BiH is responsible for aiding the unlawful transfer of these men and for any further violations that were the reasonably foreseeable consequence of its actions. In light of BiH having contributed to the men being at Guantánamo Bay, it remains under an obligation to make diplomatic representations on their behalf, and to seek and facilitate their return to BiH if they wish it. It should also insist on providing consular services to its citizens and request to do so in respect of the others.



Nechla Mohamed



Saber Lahmar Mahfoud

“
I'VE REALIZED THAT THEY [THE
BOSNIAN AUTHORITIES] WANT
THESE PEOPLE FORGOTTEN.

Nadja Dizdarević, wife of Boudella El Hadj



**THE BOSNIAN GOVERNMENT
WAS TOLD BY US OFFICIALS
THAT IF THESE SIX PEOPLE
WERE NOT ARRESTED, THE
US WOULD WITHDRAW ITS
SUPPORT FOR BOSNIA.**

Stephen Oleskey, a US lawyer representing
the six men

June 2008
Index: EUR 01/003/2008

Amnesty International
International Secretariat, Peter Benenson House
1 Easton Street, London WC1X 0DW, United Kingdom

www.amnesty.org/counter-terror-with-justice

ACT NOW

The Bosnia and Herzegovina authorities should:

- ensure full implementation of the decisions of the Human Rights Chamber and Human Rights Commission, and any eventual judgment of the European Court of Human Rights, in matters relating to this case;
- bring to justice those responsible for violations of international or national law in relation to the men's rendition;
- review and amend any procedures that allowed the transfer of the six men to US custody;
- take all necessary measures to ensure that the US authorities investigate the allegations of torture and release the six men if they are not to be charged with a recognizably criminal offence and given fair trials without delay;
- take all possible measures to protect the rights of the six men;
- ensure that, if released, the six men are allowed to return to BiH if they so wish;
- grant the six men full reparation – including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition – for the human rights violations they have suffered as a result of actions of BiH;
- insist, through diplomatic representations and, if necessary, an international legal claim, that the USA provide full and effective reparation, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition, for violations of the rights of BiH nationals.

Write to:

Prime Minister
Predsjedavajući Vijeća ministara BiH
Nikola Špirić
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Minister of Foreign Affairs
Ministar vanjskih poslova BiH
Sven Alkalaj
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71000 Sarajevo
Bosnia and Herzegovina
Email: sven.alkalaj@mvp.gov.ba

Salutation: Dear Prime Minister

Salutation: Dear Minister

**COUNTER TERROR
WITH JUSTICE**

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MUHAMMAD HAYDAR ZAMMAR

ROLE AND RESPONSIBILITY OF GERMANY

Muhammad Haydar Zammar, a 47-year-old German national born in Syria, left Germany for Mauritania and Morocco on 27 October 2001. He was detained by Moroccan intelligence agents before boarding his return flight to Germany in early December 2001. He was suspected of involvement in the “Hamburg Cell”, a group that included the presumed leaders of the 11 September 2001 attacks in the USA.

FORMER DETAINEES SAY THE UNDERGROUND SECTION OF FAR’ FALASTIN IS INFESTED WITH RATS AND LICE

Muhammad Zammar was held without charge for several weeks in Morocco, and was reportedly interrogated for over a fortnight. He alleged that he was ill-treated. He was then flown, reportedly in a CIA plane, to Syria, where he was held incommunicado and allegedly tortured or otherwise ill-treated.

Muhammad Zammar was reportedly held without charge in prolonged, solitary and incommunicado confinement in the Palestine Branch (Far’ Falastin) of Military Intelligence near the Syrian capital of Damascus.

To the extent that his conditions of detention are known, they amounted to cruel, inhuman and degrading treatment. He was allegedly tortured or otherwise ill-treated, practices frequently reported at Far’ Falastin. His underground cell was said to be 1.85m long, less than 0.9m wide, and less than 2m high – dimensions that would not allow him to lie down or stand up comfortably. These cells are often referred to as “tombs” or “graves”. Prisoners are not given a mattress, just a couple of dirty blankets. One plastic bottle is provided for drinking water, another for urine. Access to fresh air and sunlight in the yard is restricted to a maximum of 10 minutes a month, but can be as infrequent as 10 minutes every six to eight months.

Amnesty International received information that Muhammad Zammar was taken out of solitary confinement in Far’ Falastin and eventually moved to Sednaya prison, where conditions are poor but better than in Far’ Falastin.

Muhammad Zammar’s family in Germany received its first direct communication from him in a brief letter, dated 8 June 2005, sent via the International Committee of the Red Cross (ICRC) in Damascus.

On 11 February 2007, more than six years after his arrest in Morocco, Muhammad Zammar was sentenced to 12 years in prison for four offences, including membership of the outlawed Syrian Muslim Brotherhood organization, a capital offence. In accordance with current practice, this sentence was immediately commuted to 12 years' imprisonment. No evidence of his membership in the outlawed organization was reportedly presented during the trial.

Since his conviction, his family has been granted more frequent visits, while consular visits by German diplomats are being permitted at irregular intervals.

GERMANY'S ROLE AND INVESTIGATIONS

Muhammad Zammar had been under intermittent surveillance in Hamburg, Germany, for some years before his arrest. He had been questioned by German police after the 11 September 2001 attacks in the USA, and was brought before a court in Hamburg less than a week later. There was not enough evidence to hold him, but the Federal Public Prosecutor initiated an investigation into allegations that he had "supported a terrorist organization". Muhammad Zammar then left Germany for Morocco.

Information about Muhammad Zammar's travel plans, supplied by Germany's BKA (the Bundeskriminalamt, Federal Investigation Office) to US officials, may have been instrumental in his arrest in Morocco and subsequent rendition to Syria.

According to hearings of the German parliamentary committee of inquiry (Untersuchungsausschuss) set up to investigate Germany's secret co-operation with the USA and other states in combating international terrorism and the Iraq war, the BKA had provided a "detailed biography" of Muhammad Zammar, a "list of his relatives in Syria and Morocco", and his flight information in response to requests for information from US intelligence agencies.

The parliamentary inquiry confirmed that information gathered by the BKA and two other German state agencies about Muhammad Zammar had been forwarded to the Syrian intelligence agency. It was also disclosed that the German agencies provided the Syrians with a list of questions to ask during interrogations. The Syrian intelligence agency in return provided the results of its interrogations. Moreover, the inquiry heard how five German intelligence and law enforcement officials went to Syria in November 2002 and interrogated Muhammad Zammar for three days.

The parliamentary inquiry was informed that the government had decided not to pursue consular access for a long period. Muhammad Zammar reportedly received his first visit from a German diplomat on 7 November 2006, a month after his first appearance in court and after nearly five years of detention.

Senior officials of the three agencies have conceded that they were either vaguely aware or knew in more detail that torture takes place in Syria. They also conceded that they did not have detailed information about Muhammad Zammar's conditions of detention.

All witnesses and senior officials stressed that the five officials sent to Damascus were told to break off the interrogation if there was any suggestion that Muhammad Zammar had been tortured or was under duress, but that the officials had been given no indication that this was the case.

German officials knew at a very early stage that Muhammad Zammar had been detained by the Syrians on charges that he was a member of the Muslim Brotherhood, an offence punishable by death. At least one senior BKA official said during the hearing that he had learned this from his Syrian counterparts as early as the summer of 2002.

Amnesty International is concerned by reports that members of the committee of inquiry did not have access to certain classified documents on grounds of state secrecy, or were given highly redacted (censored) versions of documents. It also appeared to observers that witnesses withheld information from committee members on "sensitive" questions, and it was reported that government agencies failed to provide files to committee members in order that witnesses could be questioned about particular documents.

GERMANY'S RESPONSIBILITY

Muhammad Zammar was the victim of an enforced disappearance. In addition, prolonged incommunicado detention, particularly in an undisclosed location, is a violation of human rights and can itself constitute torture or other cruel and inhuman treatment.

It is unclear whether German intelligence and law enforcement agencies knew what use would be made of the information they provided to their US counterparts in 2001, but if it was reasonably foreseeable that it would be used to carry out Muhammad Zammar's detention in Morocco and rendition to Syria, Germany would be responsible for any reasonably foreseeable human rights violations that took place as a result.

Germany violated Muhammad Zammar's human rights when its agents interrogated him in 2002, knowing that he was being held in prolonged incommunicado detention in a prison infamous for the torture of security detainees, and that there was a real risk that he would be tortured or otherwise ill-treated.

ACT NOW

The German authorities should:

- make strong diplomatic representations on Muhammad Zammar's behalf to ensure that his rights are respected in Syria, that allegations of torture or other ill-treatment are investigated, to seek regular consular access to him should he wish it, to demand that he be given a new and fair trial or released, and to seek and facilitate his return to Germany;
- ensure that all allegations of human rights violations relating to German involvement are the subject of full, effective, independent and impartial investigation, including by correcting the deficiencies in the parliamentary committee;
- bring to justice those found responsible, directly or indirectly, for human rights violations suffered by Muhammad Zammar;
- ensure that Muhammad Zammar and his family are granted full reparation for any violations suffered as a result of Germany's actions, including restitution, adequate and fair compensation, rehabilitation, and measures to end the ongoing violations and prevent re-occurrence;
- insist, through diplomatic representations and, if necessary, an international legal claim, that the responsible states provide full and effective reparation, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition, for violations of the rights of its national.

Write to:

Federal Chancellor
Bundeskanzlerin
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Bundeskanzleramt
Willy-Brandt Str. 1
10557 Berlin
Germany

Minister of the Interior
Bundesminister des Innern
Wolfgang Schäuble
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Fax: +49 30 4000 2357
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Salutation: Dear Chancellor

Fax: +49 30 18 681-2926
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Salutation: Dear Minister

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ABU OMAR

ROLE AND RESPONSIBILITY OF ITALY

Usama Mostafa Hassan Nasr, better known as Abu Omar, an Egyptian national with refugee status and Italian residency, was walking down a street in Milan on 17 February 2003. An Italian-speaking man approached him, identified himself as a policeman, and demanded to see his papers. The next thing Abu Omar knew he was being bundled into a white van.

“
WHILE THE CAR WAS
TRAVELLING, I HAD A
SEIZURE... SOMETHING LIKE
FROTH CAME OUT OF MY
MOUTH AND MY BODY BECAME
STIFF AS IF MY SOUL WAS
COMING OUT AND MY LEGS
TOUCHED EACH OTHER AS IF
I WAS DYING.

Abu Omar

US agents took Abu Omar to the NATO airbase at Aviano, northern Italy. At Aviano he was reportedly put on a Learjet LJ-35 (SPAR-92) and flown to Ramstein NATO airbase in Germany. In Ramstein, he was transferred to a CIA-chartered Gulfstream IV jet (N85VM) and flown to Cairo in Egypt, where he was detained in secret for the next 14 months.

Abu Omar says that on arrival in Cairo, he was taken by Egyptian security officers to a building he later discovered was the national intelligence headquarters. He said that he was tortured up to 12 hours a day for seven months. He described being “crucified” on a metal door and on a wooden apparatus which they called *el-arousa* (the bride), during which he was given electric shocks, kicked and beaten.

Abu Omar says he was held in a tiny, poorly ventilated cell infested with rats and cockroaches. The cell was stiflingly hot in summer and cold in winter. He was given one blanket on which to sleep and fed a diet of hard, stale bread.

He was not allowed any contact with the outside world. For 14 months, his family and friends did not know where he was.

On 20 April 2004, Abu Omar was released from prison and warned by Egyptian officials not to tell anyone about what had happened to him.

About three weeks later, however, after he had phoned his wife and friends in Milan and described his ordeal, he was re-arrested, reportedly on the orders of the Interior Minister. He was then taken to State Security Investigations (SSI) office in Nasr City and from there to Istiqbal Tora Prison. Subsequently, he was transferred to Damanhur Prison and held in administrative detention, without charge.

In February 2005 Abu Omar was taken back to Istiqbal Tora Prison and kept in solitary confinement. Although courts ordered his release at least 16 times, the Interior Minister repeatedly renewed his detention order using emergency legislation.

Abu Omar was finally released in February 2007 and is now living in Alexandria. He wants to return to Italy, although he could face charges there. He is under investigation for association with international terrorism, and an arrest warrant was issued against him in 2005.



I WAS HUNG LIKE SLAUGHTERED CATTLE, HEAD DOWN, FEET UP, HANDS TIED BEHIND MY BACK, FEET ALSO TIED TOGETHER, AND I WAS EXPOSED TO ELECTRIC SHOCKS ALL OVER MY BODY AND ESPECIALLY THE HEAD AREA TO WEAKEN THE BRAIN AND PARALYSE IT AND IN THE NIPPLES AND MY GENITALS AND MY PENIS...

Abu Omar in a letter from prison in Egypt

ITALY'S ROLE AND INVESTIGATIONS

The Italian government and security services initially denied any knowledge or involvement in the abduction of Abu Omar and his subsequent rendition to Egypt.

Although Nabila Ghali had reported her husband missing soon after his abduction, investigations stalled until Abu Omar's temporary release in Egypt in April 2004, when he called his wife and a friend in Milan, and described to them the circumstances of his abduction and transfer to Egypt.

Using these details, by mid-2004 Italian investigators led by Milan prosecutor Armando Spataro eventually identified 17 mobile phones used in the neighbourhood at the time of the abduction. The phone trail eventually led to Robert Seldon Lady, an official in the US consulate and thought to be the CIA's highest ranking officer in Milan; he was identified as someone who had been in frequent contact with Luciano Pironi, a carabinieri officer who later admitted to being involved in the abduction. Investigators found a computer in Robert Lady's house with pictures of Abu Omar, a map showing the best route to Aviano airbase, an airline ticket for Robert Seldon Lady to fly to Cairo, and important emails.

The phone trail also led to other CIA agents. The Milan Public Prosecutor's Office sought the extradition of 22 CIA agents in 2005 in connection with the abduction of Abu Omar. In July 2006 the Milan Public Prosecutor's Office issued arrest warrants for four more US citizens, and renewed the application for the extradition of 26 US citizens. Successive Justice Ministers have not forwarded these requests to the USA.

On 5 December 2006 the Milan Public Prosecutor's Office requested that 26 US citizens, eight Italian intelligence and police officials and one journalist involved in the abduction be brought to trial. In February 2007 a judge in Milan ruled that 33 people, seven Italian and 26 US citizens, should face trial. Among the Italians indicted were Nicolò Pollari, head of the Italian Military Intelligence and Security Service (SISMI) at the time of the abduction, and Marco Mancini, head of SISMI's anti-terrorist division. The US authorities said they would not comply with the extradition orders, if forwarded.

In the run-up to the trial, in February and March 2007, the Italian government lodged a case before the Constitutional Court on the basis that the Italian judiciary had exceeded its powers by using classified documents and seeking authorization to wiretap intelligence agents. The then President of the Council of Ministers, Romano Prodi, also declared that documents relating to security including relations between Italy and its allies, after the September 2001 attacks in the USA, constituted state secrets.

On 18 June 2007 the Milan judge suspended the trial pending the Constitutional Court hearing. That decision was confirmed on 31 October 2007, when the judge adjourned the trial to 12 March 2008.

In the meantime, a criminal investigation was triggered in Brescia by complaints lodged by Nicolò Pollari among others relating to charges of “dissemination of information covered by state secrecy”, “procurement of information relating to state security” and other similar crimes. On 4 December 2007, the Brescia judge dismissed the case.

In early March 2008, the prosecutor in the case against those involved in Abu Omar’s abduction and rendition asked for the trial to proceed, and on 19 March the judge re-opened the trial, although the case before the Constitutional Court had yet to be resolved.

ITALY’S RESPONSIBILITY

Abu Omar was the victim of an enforced disappearance. The initial stage of that disappearance was his arbitrary and secret detention in and illegal transfer from Italian territory.

Italy is responsible for violating its obligation to protect those on its territory against human rights violations, particularly as at least one Italian official participated in Abu Omar’s abduction and rendition. Italy is responsible for any further violations suffered by Abu Omar that were the reasonably foreseeable result of actions by any of its agents. Italy has an obligation to investigate and bring to justice both its own agents and any agents of other states, or private actors, who were involved in the abduction and rendition in Italy.

Claims of state secrecy over evidence of such serious human rights violations cannot be permitted to deprive victims of compensation, or to grant impunity to the perpetrators of the violations.

The violations suffered by Abu Omar during his ordeal include his right to personal liberty, his right not to be tortured, his right not to be subjected to enforced disappearance, and his right not to be transferred to a country where there are substantial grounds for believing he would face a real risk of being tortured or otherwise ill-treated.



Usama Mostafa Hassan Nasr,
also known as Abu Omar

“
WHEN HE CAME BACK HOME,
HE BECAME A DIFFERENT
PERSON... I UNDERSTAND HIS
SUFFERING AND FIND EXCUSES
FOR HIM, BUT WHO IS
RESPONSIBLE FOR THIS? WHO
IS RESPONSIBLE FOR THE
CURRENT SITUATION?”

Nabila Ghali



ALL NIGHT LONG, I SUFFER NIGHTMARES, AND ALL DAY LONG I REMEMBER TORTURE SO I SHAKE...

Abu Omar

June 2008
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International Secretariat, Peter Benenson House
1 Easton Street, London WC1X 0DW, United Kingdom

www.amnesty.org/counter-terror-with-justice

ACT NOW

The Italian authorities should:

- do all in their powers to ensure that CIA and SISMI agents committed for trial in Milan in connection with the abduction and unlawful transfer of Abu Omar face prompt and fair judicial proceedings;
- demand that the US authorities extradite the 26 people for whom arrest warrants have been issued;
- give the Italian judiciary all relevant information they have on the actions of CIA and SISMI agents before, during and after the abduction of Abu Omar, including by ensuring that no claim to state secrecy, national security or secrecy in protection of international relations, is made over evidence of serious human rights violations;
- provide appropriate reparation to Abu Omar and his family for any violations of human rights resulting from Italian actions;
- press the Egyptian authorities to investigate the alleged torture or other ill-treatment of Abu Omar, hold accountable any individual responsible, and provide full reparation;
- restore Abu Omar's right of residency in Italy. If he is arrested on his return, ensure that he is charged with a recognizably criminal offence, and tried promptly in accordance with international fair trial standards or released.

Write to:

Prime Minister
Silvio Berlusconi
Palazzo Chigi
Piazza Colonna 370
00187 Rome
Italy

Minister of Interior
Roberto Maroni
Palazzo Viminale
Via Agostino Depretis 7
00184 Rome
Italy

Salutation: Dear Prime Minister

Salutation: Dear Minister

COUNTER TERROR
WITH JUSTICE

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Amnesty International is a global movement of 2.2 million people in more than 150 countries and territories who campaign to end grave abuses of human rights.

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KHALED EL-MASRI

ROLE AND RESPONSIBILITY OF MACEDONIA AND GERMANY

Khaled el-Masri, a 44-year-old German of Lebanese origin, was seized by Macedonian officials on 31 December 2003 while on a trip to Macedonia. He was interrogated at the Serbian border, and then driven to the Macedonian capital Skopje by Macedonian security agents. He was held in a hotel room for 23 days by teams of armed men and interrogated in English, a language he says he barely understands, about his activities and Islamist organizations. He says he asked repeatedly for access to the German embassy, but this was not granted.

“
THE STORY OF EL-MASRI IS
THE DRAMATIC STORY OF A
PERSON WHO IS EVIDENTLY
INNOCENT – OR AT LEAST
AGAINST WHOM NOT THE
SLIGHTEST ACCUSATION
COULD EVER BE MADE – WHO
HAS BEEN THROUGH A REAL
NIGHTMARE IN THE CIA’S
‘SPIDER’S WEB’ ...

Dick Marty, Rapporteur of the Committee on
Legal Affairs and Human Rights of the
Parliamentary Assembly of the Council of
Europe

Khaled el-Masri says he was forced to record a video saying that he had been treated well and was told that he was being flown back to Germany. He was then blindfolded and driven to an airport. There, according to his account, he was beaten severely and his clothes were cut off. He was beaten again and his underwear was forcibly removed. He was thrown to the floor and felt a firm object being forced into his anus. He was then dressed in absorbent underpants and a track suit, and placed in a belt with chains that attached to his wrists and ankles. The men put earmuffs and eye pads on him, blindfolded him, and hooded him. He was then thrown onto the floor of the plane and strapped down.

The CIA transported him first to Kabul, Afghanistan, then to a US-run prison near the airport. Khaled el-Masri says he was detained in a dark cell where he was beaten and interrogated. To protest, he went on hunger strike, and was subsequently force-fed. He says he was interrogated repeatedly by US agents, and towards the end of his stay by a native German-speaker who identified himself only as “Sam”.

On 28 May 2004, Khaled el-Masri was put on a plane and flown to Albania. On arrival, still blindfolded, he was “driven up and down the mountains for hours”. The car finally stopped, and his captors took off the blindfold, sliced off his handcuffs, handed him his passport and told him to walk down the deserted road without looking back. It was dark, he said, and “as I walked I feared that I was about to be shot in the back and left to die.”

In fact, he was met by armed Albanian officials who drove him to an airport. A ticket was bought for him to Frankfurt, Germany, where he arrived on 29 May 2004.

Khaled el-Masri went home to find his family gone. His wife, who had not known where he was or if he would ever return, had taken their children to her family's home in Lebanon. They have since returned to Germany.

A US official reportedly said that Khaled el-Masri had been seized because his name was similar to that of a militant leader and because officials thought his passport was forged.

However, the “mix-up” explanation lacks credibility. In both Macedonia and Afghanistan, Khaled el-Masri was repeatedly interrogated about activities at the cultural centre attached to a mosque in Neu-Ulm, which he regularly attended. If he had really been mistaken for another Khaled el-Masri, an individual identified in a US government report as someone who had been at an al-Qa’ida training camp, the interrogators would surely have asked him about this. In any event, the violations he suffered cannot be justified in any circumstances.



**THERE IS NOTHING THE
MINISTRY HAS DONE
ILLEGALLY... THE MAN IS ALIVE
AND BACK HOME WITH HIS
FAMILY. SOMEBODY MADE A
MISTAKE. THAT SOMEBODY IS
NOT MACEDONIA.**

**Hari Kostiv, then Interior Minister and later
Prime Minister of Macedonia**

MACEDONIA’S ROLE AND INVESTIGATIONS

Macedonian officials apprehended Khaled el-Masri and held him for 23 days without informing his family or a lawyer. According to an inquiry by the Parliamentary Assembly of the Council of Europe (PACE), Macedonia’s Security and Counter-Intelligence Service (UBK) was in contact with the CIA while Khaled el-Masri was being held, and the CIA had asked the UBK “to assist in securing and detaining Mr El-Masri until he would be handed over to the CIA for transfer.” In early 2006, two senior Macedonian officials told *The New York Times* that the USA had asked them to detain Khaled el-Masri in Macedonia, adding: “We cannot refuse them.”

Macedonian authorities, however, continue to deny that Khaled el-Masri was held illegally in Macedonia.

In 2006, Macedonia refused to co-operate fully with investigations carried out by the Council of Europe and European Parliament.

In May 2007, a Macedonian parliamentary committee concluded that the security services had not overstepped their powers in relation to Khaled el-Masri’s detention in a Skopje hotel before unlawfully transferring him to the US authorities at Skopje airport.

MACEDONIA’S RESPONSIBILITY

Khaled el-Masri was the victim of an enforced disappearance. The initial stages of that disappearance were his arbitrary and secret detention in Macedonia and his transfer to US control for rendition.

The actions of Macedonian officials placed Khaled el-Masri outside the protection of the law and were the beginning of his enforced disappearance. His arbitrary and incommunicado detention by Macedonian agents violated his right to liberty and security of the person. His treatment in custody violated his right not to be tortured or otherwise ill-treated.

At all stages of Khaled el-Masri's ordeal in Macedonia, from the beginning of his arbitrary detention to his transfer out of the country, Macedonia is responsible for the violations he suffered, and may also be considered responsible for any further subsequent violations that were a reasonably foreseeable consequence of its actions.



Khaled el-Masri

GERMANY'S ROLE AND INVESTIGATIONS

Khaled el-Masri's lawyer in Germany, Manfred Gnjjidic, believes that the interrogation and reported torture of Khaled el-Masri may have occurred with the knowledge of German officials. There is also evidence that the German authorities became aware that Khaled el-Masri had been detained in Macedonia before he was eventually released. However, the German authorities insisted that they knew nothing of Khaled el-Masri's plight until 31 May 2004, shortly after he was freed.

In February 2006 Khaled el-Masri picked a senior German police official out of a line-up and said he was "90 per cent" certain that this was "Sam", the man who had interrogated him in Kabul. The criminal investigation said, however, that this official had an alibi for the relevant time.

On 31 January 2007, a court in Munich issued arrest warrants for 13 US citizens, of whom at least 10 are thought to be CIA agents, believed to be responsible for Khaled el-Masri's rendition. The German government forwarded the warrants to Interpol in February, which reportedly prompted strong US protests. In June 2007, the public prosecutors formally asked the German Ministry of Justice to ask the US authorities for their extradition. A US Department of State spokesman indicated that the USA would not agree to any such request. In light of this, the German Ministry of Justice decided not to request extradition. As German law does not allow for trials in absentia, this means that German courts will be unable to hold accountable individuals against whom there is evidence of involvement in Khaled el-Masri's abduction, unlawful detention and alleged torture.

GERMANY'S RESPONSIBILITY

Khaled el-Masri was the victim of an enforced disappearance. If a German agent participated in his interrogation in a place where he was being held in prolonged incommunicado detention in a secret location or otherwise tortured or ill-treated, then Germany would be responsible for violations of Khaled el-Masri's human rights. The failure of Germany to ensure that Khaled el-Masri's family was informed of his fate and whereabouts, once that information came within its knowledge, could constitute a separate violation of the rights of his close family members.



AS I WALKED I FEARED THAT
I WAS ABOUT TO BE SHOT IN
THE BACK AND LEFT TO DIE

Khaled el-Masri

June 2008
Index: EUR 01/003/2008

Amnesty International
International Secretariat, Peter Benenson House
1 Easton Street, London WC1X 0DW, United Kingdom

www.amnesty.org/counter-terror-with-justice

ACT NOW

The Macedonian authorities should:

- initiate a full, effective, independent and impartial investigation into the reported violations of Khaled el-Masri's rights from the moment of detention to his departure from Macedonia, including examining whether the violations he subsequently suffered were foreseeable, make its findings and results public, and bring to justice those responsible;
- ensure that Khaled el-Masri is granted full reparation for the abuses he suffered as a result of Macedonian actions.

The German authorities should:

- forward the extradition requests to US authorities;
- insist, through diplomatic representations and, if necessary, an international legal claim, that the USA and Macedonia provide full and effective reparation, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition, for violations of the rights of its national;
- if it is found that German officials contributed to or participated in violations of Khaled el-Masri's rights or those of his family, provide full reparation for any abuses suffered as a result of German actions, and measures to prevent recurrence.

Write to:

Minister of Internal Affairs
Minister za vnatreshni raboti
Dimche Mirchev bb
1000 Skopje
Macedonia

Fax: +389 23 143 400
Email: goran_pavlovski@moi.gov.mk

Salutation: Dear Minister

Federal Chancellor
Bundeskanzlerin
Angela Merkel
Bundeskanzleramt
Willy-Brandt Str. 1
10557 Berlin
Germany

Fax: +49 30 4000 2357
Email: internetpost@bundeskanzlerin.de

Salutation: Dear Chancellor

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AHMED AGIZA AND MOHAMMED EL ZARI

ROLE AND RESPONSIBILITY OF SWEDEN

Ahmed Agiza and Mohammed El Zari, both Egyptian nationals, had their asylum applications to Sweden rejected on 18 December 2001. Their lawyers were not informed and they were not given the opportunity to appeal against the decision. Within hours, Swedish police had picked them up and taken them to Bromma Airport, near Stockholm.

MOHAMMED EL ZARI SAID HE WAS TORTURED WITH ELECTRIC SHOCKS TO HIS GENITALS, NIPPLES AND EARS

At the airport, a masked team of US agents took them to a small changing room where they carried out a body search that amounted to a serious physical assault. The men's clothes were cut off with scissors, and their hair, mouth and ears were examined. One of the men reportedly said that he had something forcibly inserted into his anus. They were then dressed in boiler suits, blindfolded, hooded and photographed.

The two men were escorted onto a plane barefoot, despite the freezing temperature. Once on the plane – a CIA-leased Gulfstream V executive jet (N379P) – they were forced into a painful position. Both men were strapped to mattresses and remained handcuffed and shackled during the entire flight to Egypt.

On arrival in Cairo, Ahmed Agiza and Mohammed El Zari were held incommunicado for five weeks. The Swedish authorities had obtained “diplomatic assurances” from Egypt that the men would not be tortured or subject to the death penalty, and would be given a fair trial. These assurances proved worthless. As early as January 2002, both men told Swedish diplomats that they had been tortured.

Ahmed Agiza later told relatives that he was tortured with electric shocks, placed in solitary confinement in harsh conditions, and threatened that his wife and mother would be sexually assaulted in his presence. Mohammed El Zari said he was tortured with electric shocks to his genitals, nipples and ears.

Ahmed Agiza was sentenced to 25 years' imprisonment on 27 April 2004, after an unfair re-trial before a military court. His sentence was later reduced to 15 years and he remains in prison in Egypt. His wife, Hanan Attia, says she is “extremely

concerned” about her husband’s health and is campaigning for better medical treatment for him.

Mohammed El Zari was released from prison in Cairo on 27 October 2003 without ever having been charged. He remains at liberty in Egypt.



IN REALITY, THE SECURITY POLICE OFFICERS AT THE AIRPORT RELINQUISHED THE ENFORCEMENT TO AMERICAN OFFICIALS AND GAVE THEM FREE HANDS TO EXERCISE PUBLIC AUTHORITY. THERE IS NO BASIS IN LAW FOR CONDUCT OF THIS KIND.

Sweden’s Chief Parliamentary Ombudsman’s inquiry

SWEDEN’S ROLE AND INVESTIGATIONS

Ahmed Agiza and Mohammed El Zari were denied access to a full and fair asylum determination process in Sweden. The immigration authorities found that the men had successfully established that their fear of persecution in Egypt, including the risk of being tortured, was well founded, but referred the case to the government for a final decision, because Sweden’s Security Police (Säpo) had said the men were threats to national security. These decisions were taken on the basis of secret intelligence, allegedly provided by foreign intelligence agencies to Säpo, which was withheld from the two men and their lawyers. The Foreign Affairs Minister’s decision to exclude the two men from refugee protection was not relayed to the men’s lawyers until after Ahmed Agiza and Mohammed El Zari had been returned to Egypt. They were given no opportunity to appeal to an independent or impartial body. Their summary expulsion to Egypt contravened the prohibition of *refoulement*. Sweden apparently recognized that the men were at risk, however, as Swedish authorities sought “diplomatic assurances” from the Egyptian authorities that the men would not be tortured or otherwise ill-treated.

To enforce the expulsion, the CIA offered the Säpo use of a plane, an offer Säpo later said they accepted in order to avoid undue delay. Swedish police officers detained both men and took them to Bromma Airport, just before the CIA plane landed. A Säpo officer and a civilian interpreter, who accompanied the return flight to Cairo, later described the treatment of the two men on the plane. The officer reported the case to the head of the Säpo, who drew up a memorandum on the expulsion and submitted it to the Swedish Ministry of Justice.

The Swedish Ambassador to Egypt made his first prison visit in January 2002, and the men raised allegations of torture and other ill-treatment with him, which they continued to do in subsequent visits. However, the Swedish authorities apparently continued to accept simple assertions from the Egyptian authorities that the men were not being ill-treated.

Sweden’s Parliamentary Committee on the Constitution later concluded that the government should not have accepted the Egyptian authorities’ assurances and therefore should not have expelled the two men.

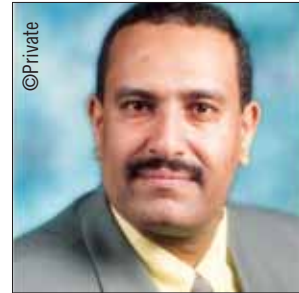
An investigation by Sweden’s Ombudsman concluded that Säpo officers at the airport acquiesced in the acts of US officials, allowing them to exercise public authority on Swedish territory, and that the treatment of Ahmed Agiza and Mohammed El Zari from the time of their arrival at the airport until they arrived in Cairo must in its entirety be characterized as inhuman and degrading.

Once the men were in Egypt, the Swedish authorities failed to take effective steps to try to remedy the consequences of the wrongful expulsion.

In 2007, after a change in government, the Swedish authorities reversed the expulsion orders against both men. The new Minister of Migration and Asylum Policy finally acknowledged that Mohammed El Zari had been subjected to unfair treatment. Both men then reapplied for a residence permit in Sweden.

In May 2007 the Swedish Migration Board rejected Mohammed El Zari's application for a residence permit; he has appealed. In October 2007 the Board refused Ahmed Agiza's application for residence and work permits; he too has appealed.

No decision has yet been made public on the claims for compensation, which have been submitted to the Swedish authorities on behalf of both men.



Ahmed Agiza

SWEDEN'S RESPONSIBILITY

In May 2005 the UN Committee against Torture found that Sweden had violated the Convention against Torture by returning Ahmed Agiza to a country where there were substantial grounds for believing that he would be in danger of torture. It also concluded that Ahmed Agiza had suffered "at least" cruel, inhuman or degrading treatment at the hands of foreign agents on Swedish territory, with the acquiescence of the Swedish police.

In November 2006, the UN Human Rights Committee found that the Swedish authorities were responsible for multiple human rights violations in connection with the summary expulsion of Mohammed El Zari from Sweden to Egypt, including the prohibition of *refoulement*.

The Committee also found that the use of force against Mohammed El Zari at Bromma Airport was excessive and violated international law. Further, it found that Sweden was responsible for these acts, since they had been performed with the consent or acquiescence of Swedish officials. The Committee also held that Sweden's failure to organize its investigative apparatus to allow for the investigation of the criminal responsibility of all officials, domestic and foreign, constituted a further violation of its obligations under the International Covenant on Civil and Political Rights.

In light of this and several other decisions, the Human Rights Committee found that Sweden was obliged to provide Mohammed El Zari with an effective remedy, including compensation.

Despite the findings of the Ombudsman and the UN bodies, the Swedish authorities have failed to instigate a full and independent investigation into all aspects of the role played by the Swedish authorities in the men's transfer and ill-treatment, both at Bromma Airport and after their transfer to US and subsequently Egyptian custody.

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Index: EUR 01/003/2008
Amnesty International
International Secretariat, Peter Benenson House
1 Easton Street, London WC1X 0DW, United Kingdom
www.amnesty.org/counter-terror-with-justice

ACT NOW

The Swedish authorities should:

- ensure a full, effective, independent and impartial investigation into possible individual criminal responsibility of Swedish and foreign agents involved in the human rights violations suffered by Ahmed Agiza and Mohammed El Zari and bring any perpetrators to justice;
- press the Egyptian authorities to investigate the alleged torture of Ahmed Agiza and Mohammed El Zari; and to either release Ahmed Agiza or promptly proceed with a new and fair trial and provide him with unfettered access to his lawyers and family and appropriate medical care;
- provide adequate reparation to Ahmed Agiza and Mohammed El Zari for the human rights abuses suffered as a result of Sweden's actions, including facilitating their return to Sweden.

Write to:

Prime Minister
Frederik Reinfeldt
Prime Minister's Office
Rosenbad 4
103 33 Stockholm
Sweden

Minister of Justice
Beatrice Ask
Rosenbad 4
103 33 Stockholm
Sweden

Email: fredrik.reinfeldt@primeminister.ministry.se

Fax: +46 8 20 27 34
Email: beatrice.ask@justice.ministry.se

Salutation: Dear Prime Minister

Salutation: Dear Minister

COUNTER TERROR
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BISHER AL-RAWI AND JAMIL EL-BANNA

ROLE AND RESPONSIBILITY OF THE UK

On 8 November 2002 Bisher Al-Rawi and Jamil El-Banna flew from the UK to Gambia, reportedly to set up a peanut processing business. Bisher Al-Rawi, an Iraqi national, had been lawfully resident in the UK since 1983; Jamil El-Banna, a Jordanian national, had arrived in the UK in 1994 and was given indefinite leave to remain in the UK as a refugee.

“
[M]Y CHILDREN AND I HAVE
BEEN SUFFERING THIS
INJUSTICE. THEY HAVE NOT
ONLY TREATED MY HUSBAND
UNJUSTLY... BUT THEY HAVE
TREATED MY CHILDREN AND
ME EVEN MORE UNFAIRLY.

Sabah El-Banna, the wife of Jamil El-Banna
in a statement delivered to an Amnesty
International/Reprieve conference in London
in November 2005

On 8 November 2002 Bisher Al-Rawi and Jamil El-Banna flew from the UK to Gambia, reportedly to set up a peanut processing business. Bisher Al-Rawi, an Iraqi national, had been lawfully resident in the UK since 1983; Jamil El-Banna, a Jordanian national, had arrived in the UK in 1994 and was given indefinite leave to remain in the UK as a refugee.

Six days before their trip, Bisher Al-Rawi, Jamil El-Banna and Abdullah El-Janoudi, a UK national, had been detained at London's Gatwick Airport before boarding a flight to Gambia, because a "suspect device" was found in Bisher Al-Rawi's luggage. After two days of questioning by UK authorities about their alleged involvement with international terrorism, the three men were released without charge and told they were free to travel to Gambia.

On arrival at Banjul Airport in Gambia, Bisher Al-Rawi, Jamil El-Banna and Abdullah El-Janoudi were detained by the Gambian National Intelligence Agency (NIA). Bisher Al-Rawi's brother, Wahab Al-Rawi, a UK national who had gone to the airport to meet them, was also detained. After initial questioning at the NIA headquarters in Banjul, the interrogation of the four men was apparently taken over by US agents. The men were held in several undisclosed locations in Banjul during this time.

The US authorities informed the UK security services in November 2002 of their intention to transfer all four men to the US detention facility at Bagram airbase in Afghanistan. The UK authorities made consular representations to their US counterparts on behalf of the two UK nationals, Wahab Al-Rawi and Abdullah El-Janoudi, and both men were released without charge in December 2002 and returned to the UK. However, the UK government told the US authorities in a telegram sent on 6 December that it "would not seek to extend consular protection to non-British nationals".



Jamil El-Banna

Bisher Al-Rawi and Jamil El-Banna were held incommunicado for over a month in Banjul and questioned by US agents about their alleged links with al-Qa'ida. US authorities then secretly transferred both men to Bagram for about a month, before transferring them to Guantánamo Bay in February 2003.

Bisher Al-Rawi and Jamil El-Banna have alleged that they were tortured and otherwise ill-treated during their transfer and during their detention in Afghanistan. They say that they were handcuffed and hooded, had their clothes cut off, were physically assaulted, and were shackled and harnessed on a plane for the transfer from Gambia to Afghanistan. They also allege they were handcuffed, deprived of food and potable water, and kept in freezing, dark cells in Afghanistan.

In April 2006 the then UK Foreign Secretary, Jack Straw, wrote to his US counterpart, Condoleezza Rice, to request the release and return to the UK of Bisher Al-Rawi. A year later he was returned to the UK, after more than four years in Guantánamo. He was not charged with any offence on his return to the UK. The UK's belated intervention on his behalf occurred only following revelations in court about possible connections between Bisher Al-Rawi and the UK security services.

On 7 August 2007, the UK government announced that it was making representations on behalf of five UK residents still held at Guantánamo Bay, including Jamil El Banna on the basis that they "have links to the UK".

Jamil El-Banna was returned to the UK on 19 December 2007 and detained on arrival. He was quickly released on bail pending a full hearing of a request from Spain for his extradition. These extradition proceedings cast a shadow over his life until 6 March 2008, when they were dropped.

Jamil El-Banna's release allowed him to see his youngest child for the first time, as she had been born while he was in Guantánamo.

“THIS CASE, WHICH CONCERNS TWO BRITISH PERMANENT RESIDENTS ARRESTED IN GAMBIA IN NOVEMBER 2002 AND TRANSFERRED FIRST TO AFGHANISTAN AND FROM THERE TO GUANTANAMO... IS AN EXAMPLE OF (ILL-CONCEIVED) COOPERATION BETWEEN THE SERVICES OF A EUROPEAN COUNTRY (THE BRITISH MI5) AND THE CIA IN ABDUCTING PERSONS AGAINST WHOM THERE IS NO EVIDENCE ENABLING THEM TO BE KEPT IN PRISON LAWFULLY...

Dick Marty, Rapporteur of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe

THE UK'S ROLE AND INVESTIGATIONS

From November 2002, Amnesty International repeatedly raised with the UK authorities its concerns about the treatment of Bisher Al-Rawi and Jamil El-Banna, in particular the role the UK may have played in the men's unlawful transfer to US control, and what steps the authorities had taken to intervene on their behalf.

In 2006, the possible extent of the UK's involvement became clearer as the result of a series of revelations during judicial review proceedings before the High Court of England and Wales. Documents disclosed by the UK security services confirmed that the UK security services had kept Bisher Al-Rawi and Jamil El-Banna under surveillance prior to their departure for Gambia. The High Court also heard how the UK security services had provided information about the two men to a country other than Gambia, the identity of which was disclosed as being the USA in a July 2007 report by the UK's Intelligence and Security Committee (ISC).

The UK security services sent a telegram to their US counterparts on 1 November 2002 to inform them of their assessment of Bisher Al-Rawi and Jamil El-Banna. On 4 November, the UK security services sent another telegram to their US counterparts, including details of the travel plans of Bisher Al-Rawi and Jamil El-Banna to Gambia. The telegram included a request for the US authorities to ask the Gambian security services to “cover” the two men while they were in Gambia. On 8 November, the UK security services sent a third telegram to the US authorities, giving details of the men’s flight.



Bisher Al-Rawi

The first two telegrams included caveats stating that US counterparts were not to take “overt, covert or executive action” on the basis of the information they contained, while the third, containing the men’s flight details, included a caveat stating that the information was not for distribution to third countries.

The first telegram included information to the effect that the suspect item found in the men’s luggage was a possible “improvised explosive device”. The UK security services later failed to inform the US that they had examined this device and that it had been shown to be a modified battery charger.

The UK authorities say that its belated decision to make representations on behalf of Bisher Al-Rawi and Jamil El-Banna does not amount to any acknowledgement that the UK was obliged to intervene on their behalf, or that the UK shared any responsibility for the detention of the men or for their subsequent transfer by US authorities to Guantánamo Bay.

An investigation into this case was conducted by the ISC. Amnesty International continues to have serious concerns not only about deficiencies in the ISC report, but also about characteristics of the ISC itself which mean that it was not the appropriate body to carry out an adequately independent, impartial and effective investigation.

THE UK’S RESPONSIBILITY

The various investigations held so far make clear that the UK authorities were instrumental in the arrest of Jamil El-Banna and Bisher Al-Rawi. Although the authorities placed certain caveats on the information they provided, these caveats were not respected in practice. If the UK knew or should have known that the information they provided would be used to carry out the arbitrary detention and rendition of the men, it would be responsible for its contribution to the violations.

The men suffered many human rights violations, including the right to have access to a court to test the legality of their detention; the right to liberty and security of person; the right not to be tortured or otherwise ill-treated; and the right to an effective remedy.



I SINCERELY BELIEVE THAT WITHOUT AMNESTY'S IMMEDIATE INTERVENTION IN OUR CASE DURING THOSE EXTREMELY DIFFICULT FIRST DAYS AFTER OUR ARREST IN THE GAMBIA, WE PROBABLY WOULD HAVE BEEN GONERS.

Bisher Al-Rawi

ACT NOW

The UK authorities should:

- establish a full, effective, independent and impartial investigation into the UK's involvement in the detention and rendition of Bisher Al-Rawi and Jamil El-Banna and make public the findings and results;
- make full reparation for any knowing failure to correct previously provided incorrect information that is found to have exacerbated or prolonged the violations suffered by the men, and, if the investigations find UK responsibility in relation to other violations, provide reparations and bring the perpetrators to justice.

Write to:

Secretary of State for Foreign and Commonwealth Affairs
David Miliband
Foreign and Commonwealth Office
King Charles Street
London SW1A 2AH
United Kingdom

Fax: +44 (0)20 7008 2141
Email: Sosfa-action@fco.gov.uk

Salutation: Dear Secretary of State

Prime Minister
Gordon Brown
10 Downing Street
London SW1A 2AA
United Kingdom

Fax: +44 (0)20 7925 0918
Email via: <http://www.number10.gov.uk/output/Page821.asp>

Salutation: Dear Prime Minister

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**I WANT
TO HELP**

WHETHER IN A HIGH-PROFILE
CONFLICT OR A FORGOTTEN
CORNER OF THE GLOBE,
AMNESTY INTERNATIONAL
CAMPAIGNS FOR JUSTICE AND
FREEDOM FOR ALL AND SEEKS TO
GALVANIZE PUBLIC SUPPORT
TO BUILD A BETTER WORLD

WHAT CAN YOU DO?

Activists around the world have shown that it is possible to resist the dangerous forces that are undermining human rights. Be part of this movement. Combat those who peddle fear and hate.

- Join Amnesty International and become part of a worldwide movement campaigning for an end to human rights violations. Help us make a difference.
- Make a donation to support Amnesty International's work.

Together we can make our voices heard.

I am interested in receiving further information on becoming a member of Amnesty International

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address

country

email

I wish to make a donation to Amnesty International (donations will be taken in UK£, US\$ or €)

amount

please debit my

Visa

Mastercard

number

expiry date

signature

www.amnesty.org

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EUROPE'S ROLE IN RENDITION AND SECRET DETENTION

European involvement in the US-led rendition and secret detention programmes has become increasingly clear as painstaking investigations, including by Amnesty International, have pierced the armour of government denial and obfuscation.

These programmes have seen suspects unlawfully detained in various places around the world and then transferred to the custody of another state, covertly and outside any judicial process. Some were transported to countries where torture is known to be rife; others ended up in US-run prisons in Afghanistan and Guantánamo Bay. All found themselves locked away in places where the rule of law seemed not to apply, where no one would tell them what was going to happen to them next. All those interviewed by Amnesty International say they were tortured or otherwise ill-treated.

The involvement of European states has ranged from active participation to tacit collusion. European agents have detained suspects and turned them over to US custody on the quiet. Europe's airports have been freely used by the same CIA-operated planes that have transported victims of rendition, hooded and chained, to interrogation, ill-treatment and secret detention in locations around the world, including in Europe.

This report focuses on seven aspects of European involvement in renditions and secret detention, and highlights six cases involving 13 victims in which European states are implicated. It calls on European states to open effective investigations into the role of European officials and the use of state territory by foreign agents in connection with renditions, secret detention, torture and enforced disappearances.

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