

AMNESTY INTERNATIONAL
HDIM 2014 – Statement for Working Session 4: Rule of Law I
Human rights and fighting terrorism / Prevention of torture

**Accountability for European Complicity in CIA Torture and Enforced Disappearance:
 An Update on Developments in Europe, 2013-2014**

September 2014

A key component of ensuring human rights protection requires states to conduct independent, impartial, thorough, and effective investigations into allegations of torture and other human rights violations, including those committed in the course of counter-terrorism operations. Such accountability is a cornerstone of the rule of law. With respect to accountability for complicity in the US Central Intelligence Agency's (CIA) rendition and secret detention programmes, however, implicated European states – all of which are participating States of the OSCE – have consistently failed to conduct such investigations and bring perpetrators to justice. This refusal to investigate in a full, independent and thorough manner has undermined the rule of law across the region, and fostered an environment of impunity for state actors responsible for facilitating such fundamental rights violations as torture and enforced disappearance.

Amnesty International has welcomed the OSCE's commitment to producing guidance for member states that emphasizes that protecting national security and upholding human rights go hand-in-hand. In November 2013, for example, the Office for Democratic Institutions and Human Rights (ODIHR) and the OSCE Secretariat Transnational Threats Department (TNTD)/Strategic Police Matters Unit (TNTD/SPMU) jointly launched a manual on "Human Rights in Counter-Terrorism Investigations" – practical guidance for law enforcement officers -- as a complement to the 2007 ODIHR manual titled "Countering Terrorism, Protecting Human Rights," which focused on the applicable international human rights standards and OSCE commitments in the anti-terrorism context.

A central theme in the new manual is that of accountability for law enforcement and other agencies engaged in both overt and covert counter-terrorism operations:¹

Accountability also takes the form of independent and effective investigations, including civilian oversight, into allegations of misconduct. ***States have a duty under international law to mount such investigations when torture is alleged*** or police misconduct is suspected. This duty includes holding superior officers accountable when they give unlawful orders or fail to take all measures in their power to prevent, suppress or report misconduct by their subordinates that they were aware of or should have been.² (emphasis added)

And yet, despite the OSCE's stated commitment to accountability for human rights violations committed in the course of counter-terrorism operations, only a fraction of a fraction of OSCE participating States have been held accountable in any manner for their complicity in the CIA's rendition and secret detention programmes, launched in 2001 in the immediate aftermath of 11 September attacks in the USA.

¹ OSCE, "Human Rights in Counter-Terrorism Investigations: A Practical Manual for law Enforcement Officers" (Manual), 29 November 2013, Manual, p. 51, <http://www.osce.org/odihr/108930?download=true>

² Manual, p. 126

Amnesty International and other reputable organizations have documented in detail that these programmes were characterized by the illegal transfer (aka “extraordinary rendition”), secret detention, enforced disappearance, and torture and other ill-treatment of persons suspected of terrorism-related activity.³ In 2012, the European Parliament (EP) issued a report that focused on those European Union (EU) member states – namely Lithuania, Poland, and Romania -- that actively assisted the US government and its agents in establishing and operating secret detention sites on their territories where individuals were tortured and disappeared.⁴ The EP adopted resolutions in both 2012 and 2013 calling on these and other implicated governments to conduct full and effective investigations into their roles in facilitating these violations. In the OSCE region, the July 2012 Monaco Declaration stands as the organization’s clarion call to member states mandating that effective investigations into complicity in these CIA operations is absolutely essential to ensure accountability for human rights violations and effective redress for victims.⁵

As has been the case from 2001 to the present, there has been virtually no accountability in the USA for the human rights violations attendant to the rendition and secret detention programmes.⁶ The calendar year 2013-2014, however, did bring some accountability in Europe for European complicity in these programmes but there were significant setbacks as well.

ITALY

In **Italy**, the Constitutional Court ruled in February 2014 that only the President of the Council of Ministers can decide when and how the government can invoke the “state secrets” doctrine in national security-related cases, effectively ruling out any role for the judiciary in determining what information can be kept secret and why. Subsequently, the Court of Cassation, Italy’s highest court, affirmed the Constitutional Court ruling, thus annulling the prior convictions of high-level Italian intelligence officials in the kidnapping case of Hassan Mustafa Osama Nasr (Abu Omar), who was abducted from a Milan street in 2003, handed over to CIA operatives, and illegally rendered to Egypt, where he was tortured. Former head of Italian military intelligence Nicolo Pollari and his deputy, Marco Mancini, had been previously sentenced to ten and nine years, respectively, for their roles in the illegal abduction. The convictions of three other Italian intelligence operatives were also annulled by the high court decision.

In March 2014, the Court of Cassation upheld the convictions of three CIA officials, including former Rome CIA chief Jeff Castelli and former Milan CIA chief Robert Selden lady, for the Abu Omar abduction.

³ See for example, Amnesty International, “Open Secret: Mounting Evidence of Europe’s Complicity in Rendition and Secret Detention,” EUR 01/023/2010, 15 November 2010, <http://www.amnesty.org/en/library/asset/EUR01/023/2010/en/3a3fdac5-08da-4dfc-9f94-afa8b83c6848/euro10232010en.pdf>; Amnesty International, HDIM Statement on European Complicity in CIA Rendition and Secret Detention Programmes, HDIM.NGO/0604/13, 4 October 2013, <http://www.osce.org/odihr/106723?download=true>; Open Society Justice Initiative, “Globalizing Torture: CIA Secret Detention and Extraordinary Rendition,” February 2013, <http://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf>

⁴ European Parliament resolution of 11 September 2012 on alleged transportation and illegal detention of prisoners in European countries by the CIA: follow-up of the European Parliament TDIP Committee report, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=%2f%2fEP%2f%2fTEXT%2bTA%2bP7-TA-2012-0309%2bo%2bDOC%2bXML%2bVo%2f%2fEN&language=EN>; and the 2013 resolution: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+P7-RC-2013-0378+0+DOC+XML+Vo//EN>

⁵ OSCE Parliamentary Assembly, Monaco Declaration and Resolutions, Resolution on Extraordinary Rendition Investigations: “Restates its previous call for all participating States to investigate thoroughly allegations that their territory has been used to assist CIA-chartered flights secretly transporting detainees to countries where they may face torture or other ill-treatment;” p. 71, <http://www.oscepa.org/publications/declarations/2012-monaco-declaration/1266-monaco-declaration-english/file>

⁶ Amnesty International, “USA: ‘We Tortured Some Folks’: The Wait for Truth, Remedy, and Accountability Continues as Redaction Issue Delays Release of Senate Report on CIA Detentions,” AMR 51/046/2014, 2 September 2014, <http://amnesty.org/en/library/asset/AMR51/046/2014/en/8doc7580-56f8-4b33-b8c9-78994c4e2c55/amr510462014en.pdf>

The Court ruled that the CIA operatives were not covered by diplomatic immunity. In total, 26 US nationals have been convicted *in absentia* in the Abu Omar case. In 2013, Italian President Giorgio Napolitano had pardoned a previously convicted US military officer implicated in the Abu Omar kidnapping. (Robert Seldon Lady has also been reported to be seeking a presidential pardon.)⁷ Amnesty International condemned the pardon as “shameful pandering to US governmental influence.”⁸

The Court of Cassation ruling on state secrets is an alarming regression in rights protection in Italy. Consolidating such powers of non-disclosure in the hands of the executive branch, with no provision for any type of oversight – democratic or judicial – is a recipe for abuse. Amnesty International’s research in the counter-terrorism context has revealed time and again that governments have invoked claims of “national security” to cover-up egregious human rights violations, and to target political opposition figures, human rights defenders, journalists, and other civil society actors for their views and for activities that seek to bring the government and its agents to account for rights violations. The Italian court’s “blank check” to the executive is a worrying development, worthy of response by the Italian legislative branch and civil society, with a view to re-establishing the balance of powers that would provide some oversight mechanism to hold the government to account for human rights violations committed in the course of counter-terrorism operations.

POLAND

Poland is the first EU member state to have been found complicit by a regional court in the USA’s rendition, secret detention, and torture of alleged terrorism suspects.⁹ In July 2014, the European Court of Human Rights issued two separate rulings finding that the Polish government colluded with the CIA to establish a secret prison at Stare Kiejkuty, which operated between 2002 and 2005.¹⁰ At the site, 180 kilometers north of Warsaw, detainees were held in secret detention and tortured. The Court found Poland in violation of the European Convention on Human Rights (ECHR) for, among other things, the lack of an investigation into two of the victims’ claims; and their torture and other ill-treatment, secret detention, and onward transfer to other places where they were at risk of further human rights violations including torture and other ill-treatment. The Court also reaffirmed the victims’ and the public’s right to know the truth about the CIA operations and Poland’s role in them.

The two claimants lodged their cases with the European Court in 2011 and 2013, respectively, but Poland has been in the spotlight since 2005, when it was first identified as having hosted a secret CIA detention facility.¹¹ In March 2008, the Polish authorities opened a criminal investigation that has been repeatedly delayed due to changes in prosecution personnel, a shift in location from Warsaw to Krakow, and claims

⁷ Amnesty International, “Italy Must Not Pardon Former CIA Agent Involved in Rendition,” 13 September 2013, <http://www.amnesty.org/en/news/italy-must-not-pardon-former-cia-agent-involved-rendition-2013-09-13>

⁸ Julia Hall, “Italian Pardon of US Military Officer Sets Stage for Impunity,” Al-Jazeera, 18 April 2013, <http://www.aljazeera.com/indepth/opinion/2013/04/20134148255211215.html>

⁹ In a separate judgment on 13 December 2012, the European Court of Human Rights held unanimously that the former Yugoslav Republic of Macedonia was responsible for the unlawful detention, enforced disappearance, torture and other ill-treatment of German national Khaled El-Masri. See *el-Masri v The Former Yugoslav Republic of Macedonia*, Application No. 39630/09, 13 December 2012, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115621>

¹⁰ *Al Nashiri v Poland*, Application No. 28761/11, 24 July 2014, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-146044>; and *Husayn (Abu Zubaydah) v Poland*, Application No. 7511/13, 24 July 2014, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-146047>

¹¹ Human Rights Watch Statement on U.S. Secret Detention Facilities in Europe, 7 November 2005, <http://www.hrw.org/news/2005/11/06/human-rights-watch-statement-us-secret-detention-facilities-europe>

that cooperation from the US government had not been forthcoming. “National security” has routinely been invoked as a justification for the secrecy that has shrouded the investigation.¹²

The investigation is still under way, but in the meantime the Open Society Justice Initiative representing Abd al-Rahim al-Nashiri and Interights representing Zayn al-Abidin Muhammed Husayn (Abu Zubaydah), along with the men's Polish lawyers, filed *Al Nashiri v Poland* and *Husayn v Poland* at the European Court of Human Rights. Amnesty International and the International Commission of Jurists had intervened jointly in both cases.¹³ Both men are currently detained at the US Navy's Guantánamo Bay detention facility in Cuba.

Abd al-Rahim al-Nashiri is a Saudi Arabian national alleged by the US government to have masterminded the bombing of the USS Cole off the coast of Yemen in 2000. He claimed that he was questioned in a secret facility in Poland and subjected to “enhanced interrogation techniques” and other human rights violations, such as “mock execution” with a gun and threats of sexual assault against his family members. Abu Zubaydah, a stateless Palestinian born in Saudi Arabia, also claimed to have been held in Poland and subjected to extreme physical pain and psychological suffering. Former US President George W. Bush asserted in his 2010 memoirs that he authorized the use of “enhanced interrogation techniques”, including “waterboarding” – mock drowning – against Abu Zubaydah in secret CIA detention.¹⁴ The European Court found in favour of both men in the June 2013 rulings. On the US side, Al-Nashiri faces a capital trial by military commission in Guantánamo. The US authorities have yet to charge Abu Zubaydah with any crime, more than 12 years after taking him into detention.

In June 2013, a third man who has alleged that he was held at a secret detention site in Poland in 2003 was granted “injured person” status in Poland’s ongoing criminal investigation into the CIA site. Walid bin Attash, a Yemeni national, is currently detained and awaiting trial by military commission at Guantánamo Bay.

A fourth man, Mustafa al-Hawsawi, a Saudi Arabian national, lodged an application with the prosecutors seeking injured person status based on a similar claim. In March 2014 the Prosecutor rejected the application for victim status. The reasons for the decision were confidentially communicated to al-Hawsawi’s lawyers on 18 April 2014, but under Polish criminal procedure they cannot be publicly disclosed. On 25 April 2014, al-Hawsawi appealed the prosecutor’s decision to the District Court of Szczytno. At the time of writing, the prosecutor is considering whether to reverse the negative decision or contest the appeal. As part of that process, the Prosecutor called on al-Hawsawi’s lawyers to provide further information at a hearing in Krakow on 12 June 2014.

Following the European Court ruling in the al-Nashiri and Abu Zubaydah cases, Amnesty International called on the Polish government to conduct a timely and effective investigation, and ensure that those state actors responsible for crimes under international law such as torture and enforced disappearance are brought to justice.¹⁵

LITHUANIA

¹² Amnesty International, “Unlock the Truth: Poland’s Involvement in CIA Secret Detention,” EUR 37/002/2013, 12 June 2013, <http://www.amnesty.org/fr/library/asset/EUR37/002/2013/en/4c2d64c3-efbd-40db-aca6-7d5568efcd80/eur370022013en.pdf>

¹³ *Al Nashiri v Poland*: Written submissions on behalf of Amnesty International and the International Commission of Jurists, 5 November 2012; *Al Nashiri v Poland*: Written supplementary submissions on behalf of Amnesty International and the International Commission of Jurists, 15 February 2013; *Husayn (Abu Zubaydah) v Poland*: Written submissions on behalf of Amnesty International and the International Commission of Jurists, 17 October 2013.

¹⁴ George W. Bush, *Decision Points*, Random House, 9 November 2010, pp. 168-169.

¹⁵ Amnesty International, “Landmark Rulings Expose Poland’s Role in CIA Secret Detention and Torture,” 24 July 2014, <http://www.amnesty.org/en/news/landmark-rulings-expose-poland-s-role-cia-secret-detention-and-torture-2014-07-24>

Mustafa al-Hawsawi has also alleged that he was held in secret detention in **Lithuania**. The Vilnius Regional Court ruled in January 2014 that the Lithuanian Prosecutor General's prior refusal to launch a pre-trial investigation into allegations that al-Hawsawi had been illegally transferred to and detained in a CIA detention centre at Antaviliai had been "groundless".¹⁶ Representatives for Mustafa al-Hawsawi had complained that he was tortured and subjected to enforced disappearance in Lithuania somewhere between 2004 and September 2006. Subsequently, the Prosecutor General opened a pre-trial investigation in February 2014 focusing on al-Hawsawi's alleged illegal transfer to Lithuania. That investigation is ongoing.

The Prosecutor General had previously refused to investigate similar allegations by lawyers for Abu Zubaydah, who allegedly had been held in secret CIA detention and tortured in Lithuania between February 2005 and March 2006. Abu Zubaydah's case against Lithuania is pending at the European Court of Human Rights.

In May, the UN Committee Against Torture expressed concern that a criminal investigation into complicity with the CIA that had begun in 2010 and was abruptly halted in 2011 had been undermined by claims of state secrecy. The UNCAT urged the government to complete the new investigation in a timely and transparent manner.¹⁷ Amnesty International has repeatedly called on the Lithuanian authorities to conduct a full and effective investigation into its role in the CIA rendition and secret detention programmes and to ensure that any and all victims with claims against Lithuania are included in that process.

FINLAND

An investigation by the Parliamentary Ombudsman into **Finland's** possible complicity in CIA rendition operations concluded in April 2014.¹⁸ While the Ombudsman found no evidence that Finnish officials had any knowledge of rendition flights by the CIA in Finland, it "could not give any guarantees" as some flight information was not included in the probe because it was simply no longer available.¹⁹

The Ombudsman's investigation began in October 2012 and covered flights passing through Finnish territory from 2001-2006. Due to flaws and deficiencies in various data and tracking systems in Finland, the Ombudsman could not conclusively rule out Finland's involvement in CIA rendition and secret detention operations. He has called for reform of those systems and greater oversight to ensure that aviation and other agencies' operations ensure that human rights are guaranteed. The Finnish authorities are to report back to the Ombudsman on this progress by the end of the year.

The September 2011 Amnesty International report "Unlock the Truth in Lithuania: Investigate Secret Prisons Now" first identified Finland as a country possibly linked to the Lithuanian secret sites and called on the Lithuanian authorities to re-open investigations into its own and the USA's involvement in these operations in Lithuania.²⁰ The September 2012 European Parliament report subsequently called on

¹⁶ Amnesty International, "Lithuanian Court's Ruling on CIA Rendition Case a Breakthrough for Justice," 29 January 2014, <http://www.amnesty.org/en/news/lithuania-court-decision-cia-detention-2014-01-29>

¹⁷ UNCAT, Concluding Observations on the Third Periodic Report of Lithuania, 20 May 2014, pp. 5-6.

¹⁸ Ombudsman's Report: <http://www.oikeusasiamies.fi/Resource.php/pubman/templates/5.htm?id=1046>

¹⁹ Amnesty International, "Finland: CIA Rendition Probe Findings 'Disappointing'", 29 April 2014, <http://www.amnesty.org/en/news/finland-cia-rendition-probe-findings-disappointing-2014-04-29>

²⁰ Amnesty International, "Unlock the Truth in Lithuania: Investigate Secret Prisons Now," EUR 53/002/2011, 29 September 2011, pp. 23-24, <http://www.amnesty.org/en/library/asset/EUR53/002/2011/en/dd6dc600-25ea-4299-8aec-1d3d16639d4c/eur530022011en.pdf>

Finland and Lithuania to conduct and/or conclude effective investigations into their alleged roles in the CIA operations.

The Ombudsman's investigation failed to clarify some of Amnesty International's key concerns. For instance, whether the Finnish authorities knowingly permitted Finland to be used as a destination in "dummy" flight plans. A UN study conducted in 2010 noted that such plans were drawn up to conceal the real destination of rendition flights. It has been reported in the media that Finland was used as a dummy destination for flights that may have been en route to a secret detention site in Lithuania.²¹

The Lithuanian authorities – who had previously admitted their involvement in the US rendition programme – declined to respond to the Finnish Ombudsman's request for information as part of his investigation.²²

UNITED KINGDOM

The **United Kingdom** government and intelligence agencies have faced a growing number of allegations, including in claims brought in domestic courts by individual victims and as a result of investigative work by NGOs and journalists, of their involvement in human rights violations of people detained overseas since 11 September 2001. The allegations include involvement in torture and other ill-treatment, arbitrary detentions, enforced disappearance, and renditions of individuals detained overseas in the context of counter-terrorism operations. The issue as to whether Diego Garcia was used as a transit point and/or detention site in the context of rendition operations was also back in the news in 2014.²³

To date, however, no genuinely independent, public inquiry has been established into allegations of UK involvement in serious human rights violations of people detained overseas in the context of counter-terrorism operations.

In July 2010, the UK Prime Minister David Cameron announced that he would establish an inquiry (which was later named the 'Detainee Inquiry') into the allegations of involvement of members of the UK intelligence services and other officials in torture and other human rights violations. One year later, on 6 July 2011, the UK government confirmed the terms of reference and protocol for the Detainee Inquiry.²⁴ Amnesty International raised concerns that the protocol did not meet international human rights standards because the government would have retained the final say over disclosure of material relating to national security, which was very broadly defined. This government control over disclosure led to criticism that such executive power would undermine the Inquiry's independence and effectiveness.²⁵ In

²¹ Office of the High Commissioner for Human Rights, Joint Study on Global Practice in Relation to Secret Detention in the Context of Countering Terrorism," A/HRC/13/42, 19 February 2010, p. 54, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-42.pdf>

²² Seimas of the Republic of Lithuania, Findings of the Parliamentary Investigation by the Seimas Committee on National Security and Defence Concerning the Alleged Transportation and Confinement of Persons Detained by the Central Intelligence Agency of the United States of America in the Territory of the Republic of Lithuania, December 2009, [http://www.therenditionproject.org.uk/pdf/PDF%20166%20Seimas%20Cttee%20Report%20on%20Transfers%20and%20Detentions%20in%20Lithuania%20\(22%20Dec%202009\).pdf](http://www.therenditionproject.org.uk/pdf/PDF%20166%20Seimas%20Cttee%20Report%20on%20Transfers%20and%20Detentions%20in%20Lithuania%20(22%20Dec%202009).pdf)

²³ Cori Crider, "7 Things You should Know About Diego Garcia and Renditions," The Guardian, 11 July 2014, <http://www.theguardian.com/commentisfree/2014/jul/11/7-things-diego-garcia-rendition-flights-documentation-water-damage>

²⁴ These documents, published on 6 July 2011, are available to download directly from the Detainee Inquiry's website: <http://www.detaineeinquiry.org.uk/2011/07/news-release-terms-of-reference-and-protocol-published/>. For the formal ministerial statement, see Hansard, 6 July 2011, Column 100WS: <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110706/wmstext/110706m0001.htm#11070675000064>

²⁵ Amnesty International, "UK: Detainee Inquiry Terms of Reference and Protocol Fall Far Short of Human Rights Standards," EUR 45/011/2011, August 2011, <http://www.amnesty.org/en/library/info/EUR45/011/2011/en>

August 2011, Amnesty International and nine other NGOs wrote a letter to the Solicitor to the Detainee Inquiry stating that, given the Inquiry's shortcomings, the NGOs would not cooperate with it.²⁶ Lawyers acting for the individuals who have alleged that they were tortured or otherwise ill-treated also advised their clients that they should not participate in an Inquiry that lacked independence. In January 2012, following further revelations about UK involvement in renditions to Libya and subsequent criminal investigations by the UK police, the UK Justice Secretary announced that the Detainee Inquiry was not capable of completing its task and that it should be closed.²⁷

In December 2013, a report on the Detainee Inquiry's preparatory work was published, after significant delay. The report set out lines of investigation for any future Inquiry to explore in greater detail.²⁸ The UK government announced that the matters raised by the Detainee Inquiry's report would be addressed by the Intelligence and Security Committee (ISC) of the UK Parliament, rather than by an independent, public inquiry.

The ISC, which commenced its inquiry in September 2014, had previously failed to fully investigate – or was not provided adequate powers to secure information to fully investigate – prior allegations of torture and other ill-treatment and rendition in the context of counter-terrorism and national security. Despite some changes to the powers of the ISC following the enactment of the Justice and Security Act 2013, the UK government still retains the right to withhold information from the ISC where material is considered to be "sensitive" or on grounds of national security (Schedule 1 (4)(5)), and retains the right to exclude material "prejudicial to the continued discharge of the functions [of the intelligence agencies]" (Section 3.4) from publication in any report published by the ISC. The UK government's position to date has been that "it would not be possible to initiate an inquiry while related police investigations continue," but that "the Government has left open the question of whether there should be a further judge-led inquiry pending the outcome of the [ISC's] follow up work".²⁹

Amnesty International has maintained the position that any new inquiry initiated by the UK must be in line with its international human rights obligations and should avoid the many deficiencies of the Detainee Inquiry.³⁰ The ISC is not an independent body with the necessary powers to get at the truth. Amnesty International has called on the UK government to implement instead a fully independent, impartial, thorough and effective public inquiry to investigate UK state actors' alleged human rights violations of persons in the context of counter-terrorism operations abroad.

With respect to the ongoing criminal investigation referred to by the UK government, developments in

²⁶ UK: Joint NGO Letter to the Solicitor to the Detainee Inquiry, AI Index EUR 45/010/2011, August 2011, <http://www.amnesty.org/en/library/info/EUR45/010/2011/en>

²⁷ The formal ministerial statement can be found in Hansard, 18 January 2012, Column 751-760, <http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120118/debtext/120118-0001.htm>. See also Statement by Chairman of the Detainee Inquiry, 18 January 2012, <http://www.detaineeinquiry.org.uk/2012/01/statement-by-the-chairman-of-the-detainee-inquiry/>; and Amnesty International, "UK: Detainee Inquiry Closure Presents an Opportunity for Real Accountability," EUR 45/005/2012, 18 January 2012, <http://www.amnesty.org/en/library/info/EUR45/011/2011/en>

²⁸ The full report can be downloaded here: <http://www.detaineeinquiry.org.uk/2013/12/report-of-the-detainee-inquiry/>. For Amnesty International's response to the report's publication, see: "UK: Decision to Hand Torture Inquiry to Intelligence Committee Strongly Criticised," PRE01/667/2013, 19 December 2013, <http://www.amnesty.org/en/for-media/press-releases/uk-decision-hand-torture-inquiry-intelligence-committee-strongly-criticised> and United Kingdom: Joint NGO letter regarding the parliamentary Intelligence and Security Committee's examination of allegations of UK complicity in torture and other ill-treatment of detainees held overseas, EUR 45/005/2014, 7 April 2014, <http://amnesty.org/en/library/info/EUR45/005/2014/en>

²⁹ Letter from William Hague, Secretary of State for Foreign and Commonwealth Affairs to Amnesty International, 4 May 2014.

³⁰ For a detailed analysis of the deficiencies of the Detainee Inquiry, please see Amnesty International, "UK: Detainee Inquiry Terms of Reference and Protocol Fall Far Short of Human Rights Standards," EUR 45/011/2011, August 2011, <http://www.amnesty.org/en/library/info/EUR45/011/2011/en>

2013 and 2014 reflect continuing deference to the government in matters of disclosure of information. Abdul-Hakim Belhaj - currently head of Libya's al-Watan Party though formerly a high-ranking opposition commander during the armed conflict in Libya - has been pursuing a claim that British officials were complicit in his alleged abduction, illegal transfer to Libya and torture as part of the CIA's rendition programme in 2004. During his six-year detention in Libya, he was allegedly beaten, hung from walls, cut-off from human contact and daylight, and sentenced to death. Meanwhile, his wife - Fatima Boudchar - was also rendered to Libya, detained and denied proper medical care despite being pregnant at the time.

In December 2013, the High Court held that the "act of state" doctrine, a rule of common law, prevented a court from judging the acts of foreign states committed on their own territory. The court rejected, however, the UK government's arguments that state immunity (a principle of international law by which a state is protected from being sued in the courts of other states) operated as a bar to the claim.

High Court judge Mr. Justice Simon found "with hesitation" that the Belhaj rendition case could not go forward in the UK courts and expressed his concern that "what appears to be a potentially well-founded claim that the UK authorities were directly implicated in the extraordinary rendition of the claimants, will not be determined in any domestic court; and that Parliamentary oversight and criminal investigations are not adequate substitutes for access to, and a decision by, the Court."³¹ Although Belhaj appealed the High Court decision, Amnesty International publicly noted that avenues for accountability in the Belhaj matter were quickly narrowing, and expressed concern that there might never be genuine accountability for UK involvement in torture and other ill-treatment abroad.³²

In July 2014, Amnesty International, along with the International Commission of Jurists, Justice, and Redress, intervened in the Belhaj case at the UK Court of Appeal.

The groups argued that the "act of state" doctrine must not be used to shield UK officials from accountability over their alleged complicity in the Belhaj affair as that would have the effect of denying the claimants access to a legal remedy.

Amnesty is concerned that the High Court's judgment may act as an absolute bar on litigation against the UK government and its officials in cases where agents from other states are involved, effectively precluding accountability in this and similar cases.

CONCLUSION

In a June 2014 speech at the United Nations, Thomas Wuchte, the head on anti-terrorism issues in the OSCE Secretariat Transnational Threats Department stated that:

The OSCE multi-dimensional approach to security does not call for the balancing of liberty and security, or suggests that liberty, or aspects of it, must be sacrificed to achieve security. On the contrary, the OSCE regards the respect for human rights and the rule of law as an integral element of security. Combating and ultimately overcoming terrorism will not succeed if the means to do so are not in conformity with human rights standards.³³

³¹ High Court of Justice, Queen's Bench Division, *Abdul-Hakim Belhaj and Fatima Boudchar v Rt. Hon. Jack Straw MP, et al.*, Case No. HQ12X02603, 20 December 2013, <http://justsecurity.org/wp-content/uploads/2013/12/Belhaj-Judgement-UK.pdf>

³² BBC News, "Abdul-Hakim Belhaj Torture Case against UK Rejected," 20 December 2013, <http://www.bbc.com/news/uk-25464362>

³³ Review of the United Nations Global Counter-Terrorism Strategy, Remarks by Thomas Wuchte, Head on Anti-Terrorism Issues, Transnational Threats Department, OSCE Secretariat, 12-13 June 2014, <http://www.osce.org/secretariat/119815?download=true>

Amnesty International calls on the OSCE to encourage all participating States implicated in the CIA rendition and secret detention programmes to uphold the rule of law and ensure accountability for their roles in facilitating the human rights violations attendant to the CIA operations. As Thomas Wuchte has maintained, respect for the rule of law is an integral element of national security. The OSCE should also continue monitoring participating States to ensure that all counter-terrorism operations conform to states' international human rights obligations.