

AMNESTY INTERNATIONAL

Statement for working Session 15: Rule of Law II

Returns to risk of torture and accountability for Complicity in the US-led Rendition/Secret Detention Programmes

Amnesty International welcomes the OSCE's continuing commitment to upholding the protection of human rights and the rule of law in all participating States' national counter-terrorism operations and in the context of all forms of cooperation among states in the OSCE region to combat terrorism. The 7 December 2012 "OSCE Consolidated Framework for the Fight Against Terrorism" (Decision No. 1063, PC.DEC/1063) issued by the Permanent Council reiterates this commitment, stating categorically that OSCE participating States "are committed to conducting all measures and to developing co-operation aimed at combating terrorism, in strict accordance with the rule of law, the United Nations Charter and their obligations under international law, including international human rights, refugee and humanitarian law."¹

Amnesty International is deeply concerned, however, that OSCE participating States across the region have consistently failed to comply with their international human rights obligations in the course of counter-terrorism operations and in the development of national security-related laws and policies. This failure has extended beyond national boundaries to forms of cooperation between and among participating States that, either by design or effect, violate people's human rights.

Amnesty International and other human rights organizations are particularly concerned about past and continuing illegal transfers by extradition, expulsion, deportation, and rendition of persons from the OSCE region to other OSCE participating States, and other third countries, where they are at real risk of torture and other ill-treatment. Many such forcible returns occur in the course of a country's counter-terrorism operations or under the mantle of protecting "national security," despite the absolute ban on torture and returning people to risk of torture no matter what they have been accused of. Amnesty International also remains concerned that there has been little accountability for OSCE participating States' complicity in the US-led rendition and secret detention programmes, which operated from late 2001 until roughly 2007 and involved the illegal apprehension and transfer of persons to secret sites where they were subjected to enforced disappearance, and torture and other ill-treatment.

Returns to risk of torture in Central Asia

In a July 2013 report "*Return to Torture: Extradition, Forcible Returns and Removals to Central Asia*" (Index: EUR 04/001/2013), Amnesty International documented the increasing practice of cooperation and collusion between member states of the Commonwealth of Independent States (CIS), for the purpose of returning people to Central Asian countries where they would be at real risk of torture or other ill-treatment.

In executing these illegal transfers CIS states, in particular the **Russian Federation** and **Ukraine**, have prioritized their obligations under regional cooperation and mutual assistance agreements -- purportedly designed to ensure national and regional security and combat terrorism -- over their international human rights obligations, including the absolute ban on torture. Agreements such as the 2001 Shanghai Convention on Combating Terrorism, Separatism, and Extremism and the 1993 CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Minsk Convention) to which the Russian Federation, Ukraine and the Central Asian republics are state parties, contain virtually no human rights provisions and safeguards for individuals facing extradition or other types of transfer. In particular, these instruments do not provide for internationally recognised principles of refugee protection, including the principle of non-refoulement, and the absolute prohibition of torture and other ill-treatment and the return to risk of torture under international law.

¹Page 1, para. 4.

The abduction or attempted abduction, and transfer of asylum-seekers, refugees or other nationals of Central Asian countries by CIS member states' security services – often operating freely on one another's territories -- continue unabated. Such transfer operations now occur with such regularity that they amount to a region-wide “extraordinary rendition” programme. Deliberately intended to circumvent due process, these extra-judicial transfers have been described by the European Court of Human Rights as “an absolute negation of the rule of law” amounting to “a violation of the most basic rights guaranteed by the Convention.”²

In a total of nine cases since August 2011, for example, the **Russian authorities** have ignored orders issued by the European Court of Human Rights enjoining them from transferring applicants and instead have colluded with foreign security services in the illegal abduction of applicants and their unlawful return to Tajikistan or Uzbekistan.³

Amnesty International has closely monitored the human rights situation in **Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan** and **Uzbekistan** since they became independent states on the break-up of the Soviet Union in 1991. In all five Central Asian states there is credible and consistent evidence of pervasive torture and other ill-treatment of detainees by both regular police and security services. Over the past two decades thousands of people across the region have alleged that they have been arbitrarily detained and tortured or ill-treated in custody in order to extract a forced confession or money from relatives. The practices of torture and other ill-treatment are often used on people suspected of ordinary crimes, and routinely used in relation to political opponents, members of banned religious groups, and individuals suspected of involvement in “extremism” and terrorism-related crimes, which are often broadly and vaguely defined.

Amnesty International is concerned that EU and OSCE member states have cooperated with CIS states in the return to **Kazakhstan** and **Uzbekistan** of individuals wanted on national security, anti-terrorism, and/or politically-motivated charges. If governments, inter-governmental, and international organizations continue to privilege cooperation on regional security at the expense of fundamental human rights protection, increasing numbers of people will be at real risk of torture and other ill-treatment in Central Asia.

Russia has been particularly active in illegally transferring individuals to countries in Central Asia, specifically **Kyrgyzstan, Tajikistan** and **Uzbekistan**, where they have been at risk of further grave violations, namely torture and other ill-treatment. As recently as 13 June 2013, Uzbekistani national Ikhromzhon Mamazhonov was abducted upon release from detention in Orenburg, despite a March 2013 order from the European Court of Human Rights that Ikhromzhon Mamazhonov should not be returned to Uzbekistan until the Court deliberated the merits of his case. The frequency with which these deliberate circumventions are now occurring represents a deep structural challenge to the authority of the European Court of Human Rights and the integrity of the Council of Europe as a whole. In its Interim Resolution adopted on 27 September 2013 the Committee of Ministers of the Council of Europe expressed deep regret that Russia had failed generally to “address the need for urgent adoption of special preventive and protective measures that are effective” and “exhorted” the Russian authorities to ensure that applicants to the European Court, in particular for whom the Court had issued an order for interim measures, “benefit (following their release from detention) from immediate and effective protection against unlawful or irregular removal from the territory of Russia...”.⁴

But the problem of returns to torture in Central Asia also extends to EU member states. For example, in May 2013, Alma Shalabaeva, the wife of Kazakhstani opposition figure, Mukhtar Ablyazov, and her young daughter were

² European Court of Human Rights, *Abdulkhakov v Russia*, Application No. 14741/11, para. 156.

³ European Court of Human Rights, *S. Koziev v Russia*, Application No. 58221/10; *S. Dzhurayev v Russia*, 71386/10; *N. Dzhurayev v Russia*, 31890/11; *Y. Kazymakhunov v Russia*, 26261/05; *A. Latipov v Russia*, 77658/11; *Abdulkhakov v Russia*, 14743/11; *R. Zokhidov v Russia*, 67286/10; *Ermakov v Russia*, 43165/10; and *I. Mamadzhanov v Russia*, 17239/13.

⁴ Committee of Ministers of the Council of Europe, Interim Resolution CM/ResDH(2013)200 <https://wcd.coe.int/ViewDoc.jsp?id=2106037&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDBo21&BackColorLogged=F5D383>

illegally expelled from **Italy** and forcibly transferred to Kazakhstan, in violation of Italian and international law. In light of that illegal operation, Amnesty International issued an “urgent action” in June 2013 on behalf of Aleksandr Pavlov, Mukhtar Ablyazov’s former bodyguard, who is currently appealing to courts in **Spain** against extradition to Kazakhstan. After Mukhtar Ablyazov’s own apprehension and detention in **France** in August 2013, Amnesty International called on the French authorities to ensure that he was not extradited to Kazakhstan or to any country where he would be at risk of onward transfer to Kazakhstan. The unenforceable “diplomatic assurances” of humane treatment that the Kazakhstani authorities have proffered - for example, to the Spanish authorities in the Pavlov case - are inherently unreliable and cannot be used to justify transfers to countries like Kazakhstan that routinely violate the absolute ban on torture.

Recommendations

To all OSCE participating States:

- Ensure that no one within their jurisdiction is returned, by means of extradition or otherwise, to any country where they would be at risk of torture or other ill-treatment (the *non-refoulement* obligation).
- Refrain from the use of and reliance on diplomatic assurances to circumvent this obligation and extradite or otherwise return persons to places where they are at risk of torture and other ill-treatment.

To Central Asian States:

- Ensure that all detainees, including those who have been extradited or returned from other countries, are able, from the outset of detention, to exercise their rights to contact their family or another third party, and to consult in private with a lawyer of their choice and with an independent medical practitioner.
- Establish a system of regular, independent, unannounced and unrestricted visits of inspection to all places of detention, with the opportunity for the inspectors to speak privately with any and all detainees.
- Ensure that all trials, including of people extradited or otherwise forcibly returned to Central Asian countries, comply with international law and standards relating to fair trial.

To Ukraine and the Russian Federation:

- Fully comply with all interim measures and judgements of the European Court of Human Rights in relation to cases of return and extradition.

Accountability for Complicity in the US-led Rendition/Secret Detention Programmes

Amnesty International also remains concerned that there has been little accountability for European complicity in the US Central Intelligence Agency’s (CIA) rendition and secret detention programmes, which involved the illegal abduction and transfer, secret detention, enforced disappearance, and torture and other ill-treatment of persons suspected of links to terrorism.

There have been some positive developments. In December 2012, for example, the European Court of Human Rights ruled that **Macedonia** violated the human rights of rendition victim Khaled el-Masri, who the Macedonians illegally detained in 2003 and ill-treated, before handing him over to US operatives. Khaled el-Masri was subsequently transferred to Afghanistan, where he was tortured and ill-treated. The European Court ruled that Macedonia violated the ban on torture and other ill-treatment and was responsible for any of the human rights violations to which el-Masri was subjected after he left Macedonian territory. Significantly, the court ruled that el-Masri had a “right to the truth” about all of the circumstances of his detention, illegal transfer, enforced disappearance and torture and ill-treatment.

The Finnish Ombudsman opened an investigation in December 2012 into possible links between rendition flights into and out of **Finland** and those landing in Lithuania. A report is expected by the end of 2013.

But other positive developments were quickly undermined by political interference. In April 2013, **Italian** President Giorgio Napolitano pardoned Joseph Romano, a US military officer, after he was convicted in an Italian court of involvement in the kidnapping of rendition victim Abu Omar, who was illegally transferred in 2003 from

Italy to Egypt, where he was tortured. Napolitano cited friendly US-Italian relations in his statement and the difficult circumstances the US found itself in post 11 September 2001 to justify the pardon.

There has also been no measurable progress in the **Polish** investigation of its complicity in these CIA operations. A new victim, Walid bin Attash, a Guantanamo Bay detainee in pre-trial hearings in advance of a trial by military commission, lodged a complaint with the Polish Prosecutor General in June 2013 alleging that he was held in secret detention in Poland in 2003. An Amnesty International report released in June 2013 titled "Unlock the Truth: Poland's Involvement in CIA Secret Detention" (Index: EUR 37/002/2013) documented how the Polish investigation, which started in 2008, has been shrouded in secrecy and marked by delay.

The **Lithuanian** government, currently serving as the President of the European Council, continues to state that it will re-open its former ineffective investigation into secret sites on its territory if new information comes to light. A new victim, Mustafa al-Hawsawi, also currently detained at Guantanamo Bay and awaiting trial by military commission, lodged a complaint with the Lithuanian Prosecutor General in September 2013 alleging that he was held in Lithuania between 2004 and 2006. Both Walid bin Attash and Mustafa al-Hawsawi are awaiting answers to their requests for an investigation into their allegations of enforced disappearance and torture in Poland and Lithuania, respectively.

European accountability for counter-terrorism operations that involved the torture and enforced disappearance of persons is both a legal obligation for implicated states and absolutely vital to ensuring that the ban on torture is observed and supported, that victims have access to justice, and that lessons are learned so that egregious violations such as those attendant to the CIA programmes never happen again. The OSCE, the Parliamentary Assembly of the Council of Europe, and the European Parliament all have adopted resolutions calling on member and participating States to comply in full with this obligation to investigate.

Recommendation

Amnesty International calls on all OSCE participating States implicated in the CIA rendition and secret detention programmes to commence immediately or to continue effective, independent, impartial, and thorough investigations into allegations of their complicity in these CIA operations.