

OSCE 2011 HUMAN DIMENSION IMPLEMENTATION MEETING

STATEMENT BY OPEN SOCIETY JUSTICE INITIATIVE ON EUROPEAN GOVERNMENT COMPLICITY IN CIA-DRIVEN TORTURE AND RENDITION

Following September 11, 2001, the Bush administration adopted policies that led to the widespread and systemic torture and abuse of prisoners held in U.S. custody overseas, in military detention facilities in Iraq, Afghanistan, and Guantánamo Bay, as well as in secret CIA prisons overseas under the auspices of the CIA's "extraordinary rendition" program. This program, which involved the extra-judicial transfer of prisoners across the world and their secret detention and torture, was enabled by the cooperation of a large number of countries across the globe, including, *inter alia*, Germany, Italy, Lithuania, Macedonia, Poland, Romania, Sweden and the U.K, thereby undermining the rule of law worldwide.

Yet, today, ten years after September 11, 2001, high-ranking officials in the U.S. government and in the governments of other countries complicit in the CIA rendition program have largely evaded accountability for such human rights abuses, and much remains unknown about the scope of the program. There has been no effective investigation into U.S. torture and rendition, and lawsuits brought in the United States on behalf of rendition victims have been dismissed on grounds of the state secrets privilege or the separation of powers.

Numerous European countries complicit in the CIA rendition program have similarly failed to conduct effective investigations into official responsibility for human rights violations conducted under the program. In Lithuania, a narrowly constructed pre-trial investigation into misfeasance of officials in relation to a secret CIA prison on Lithuanian territory was abruptly abandoned in January 2011, citing statutes of limitations. Previously, a barely two-month long parliamentary investigation had concluded that there may have been two secret CIA prisons in Lithuania while stopping short of concluding that detainees were held there, and also recommended that State Security Department officials should be investigated for the "abuse of power" under Lithuanian law.

Similarly, no effective investigation of a secret CIA prison in Romania has been conducted despite revelations confirming its existence. Instead, the Romanian government has denied any involvement in CIA renditions. In addition, an inquiry into the U.K.'s complicity in the torture and ill-treatment of detainees held abroad suffers from several defects, including excessive secrecy, with nearly all closed hearings for intelligence actors; the government having final say over what information would be disclosed to the public; and the victims not being able meaningfully to participate in the inquiry.

A Polish criminal investigation into the abuse of power associated with a secret CIA prison in Poland has proved similarly ineffective. This investigation commenced in March 2008, almost five years after credible reports of such a prison first surfaced, and remains pending to date with no sign of progress or when the investigation is likely to conclude. On May 6, 2011, the Open Society Justice Initiative filed an application against Poland before the European Court of Human Rights (ECHR) on behalf of Guantánamo prisoner Abd-al-Rahim al-Nashiri who was detained and tortured in a secret CIA prison in Poland from about December 2002 to June 2003. The application challenges Poland's complicity in Mr. al-Nashiri's torture and incommunicado detention on Polish soil, as well as in his transfer from Poland despite the real risks he faced in U.S. custody of further abuse, a flagrantly unfair trial by military commission at Guantánamo Bay, and of being subjected to the death penalty. The application requests the Court, *inter alia*, to direct the Polish government immediately to use all available means at its disposal to ensure that Mr. al-Nashiri is not subjected to the death penalty, including through written submissions before the Convening Authority for the military commission and diplomatic assurances obtained from the U.S.

The gravity of the human rights violations inflicted on Mr. al-Nashiri has received some recognition in Europe. On June 9, 2011, the European Parliament issued a resolution noting, *inter alia*, that Mr. al-Nashiri had been tortured in Poland and calling on the U.S. not to impose the death penalty on him.¹ On June 22, 2011, Council of Europe issued a similar declaration, noting that Mr. al-Nashiri had been detained and tortured in a secret prison in Poland and subsequently held in another secret prison in Bucharest, Romania, calling on the U.S. not to impose the death penalty on Mr. al-Nashiri, and urging the Council of Europe and its member states - including Poland - to immediately use all available means to ensure that he is not subject to the death penalty.² To date, however, the United States has not changed its position that it intends to seek the death penalty in Mr. al-Nashiri's case, nor has Poland acknowledged its role in his case.

The Macedonian government has also consistently denied that rendition victim Khaled el-Masri was secretly detained and abused on its territory before being transferred to CIA custody and being abused in Afghanistan. Mr. el-Masri, a German citizen of Lebanese descent, was detained on December 31, 2003 by Macedonian law enforcement officials. He

¹ See European Parliament resolution of 9 June 2011 on Guantánamo: imminent death penalty decision . Available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2011-0271&language=EN&ring=B7-2011-0371>.

² See Parliamentary Assembly, Council of Europe, Guantánamo prisoner Abd al-Rahim al-Nashiri, Written Declaration No 483, June 22, 2011. Available at: <http://assembly.coe.int/Documents/WorkingDocs/Doc11/EDOC12660.pdf>.

was subjected to twenty-three days of incommunicado detention and abuse in Macedonian custody, after which he was handed over to CIA operatives, who flew him to a CIA-operated detention facility called the “Salt-pit” near Kabul, Afghanistan where he was subjected to further incommunicado detention and abuse for about five months. It was not until May 28, 2004, that he was released without explanation or apology in a remote area in Albania. In September 2009, the Open Society Justice Initiative filed an application on behalf of Mr. el-Masri against Macedonia before the European Court of Human Rights challenging Macedonia’s role in his abuse, arbitrary detention and rendition. The application before the European Court was communicated to the Macedonian government in October 2010, and remains pending before the Court. Macedonia continues to deny its role in Mr. el-Masri’s rendition.

We urge European states complicit in the CIA’s rendition program to acknowledge and disclose information relating to the human rights abuses conducted under the program, to effectively investigate and to hold relevant officials accountable for such abuses. Accountability and transparency with respect to the rendition program is essential to deter cooperation in counter-terrorism operations that violate the rule of law and to ensure that such abuses are not perpetuated in the future.

In particular, we urge the Macedonian government to acknowledge and disclose information relating to its role in Mr. el-Masri’s rendition, conduct an effective investigation directed at holding officials accountable, and issue just compensation in his case.

We also urge the Polish government to acknowledge and disclose information relating to its role in Mr. al Nashiri’s rendition, secret detention and torture in a CIA prison in Poland, conduct an effective investigation directed at holding officials accountable, issue just compensation, and use all available means--including written submissions to the Convening Authority for military commissions and diplomatic assurances obtained from the U.S.—to ensure that Mr. al-Nashiri is not subjected to the death penalty in U.S. custody.