

Ref: TIGO IOR 40/2013.090

Joao Nataf
Secretary
Committee against Torture
Human Rights Treaties Division
Office of the United Nations High Commissioner
for Human Rights
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva
Switzerland

11 October 2013

Dear Mr Nataf

INFORMATION IN ADVANCE OF THE CONSIDERATION OF POLAND'S FIFTH AND SIXTH COMBINED REPORT

Please find enclosed Amnesty International's June 2013 report *Unlock the Truth: Poland's Involvement in CIA Secret Detention* (Index: EUR 37/002/2013, 12 June 2013) for the Committee against Torture's consideration.

The report summarizes Amnesty International's longstanding concerns regarding Poland's failure to ensure accountability for its alleged complicity in the US-led rendition and secret detention programmes, which operated globally between 2001 and 2008. These counter-terrorism operations were characterized by the illegal abduction, transfer, secret detention, enforced disappearance, and torture and other ill-treatment of persons suspected of involvement in terrorism-related crimes or of having information about such acts. Poland has been identified as one of three European countries, along with Romania and Lithuania, as having collaborated with the US Central Intelligence Agency (CIA) to establish and maintain a secret detention facility on its territory in which detainees were illegally held and subjected to enforced disappearance and torture.

A criminal investigation opened by the Polish Prosecutor General began in March 2008 and has now been running for over five years. The report we are submitting for your consideration documents the many concerns that Amnesty International has regarding both procedural and substantive aspects of the investigation. For example, repeated and sustained delays in the investigation's progress have been punctuated by several changes in prosecution personnel staffing the investigation, a change in the base location of the investigation from Warsaw to Cracow in February 2012, and complaints from the two recognized victims – Abd al-Rahim al-Nashiri and Zayn al-Abidin Muhammed Hussein (Abu Zubaydah) -- that they have not been able to participate fully in the proceedings as mandated by Polish law.

The level of secrecy surrounding the Polish criminal investigation is also a key concern. During the past five years, the Polish authorities have been virtually silent about the development and progress of the investigation; there is little to no publicly available information about the investigation's scope, methodology, and terms of reference. To date, the Prosecutor General will not confirm, among other things, whether: anyone has been charged; anyone has been called as a witness; a forensic sweep of the alleged secret detention facility has been conducted; or why precisely the investigation's location was changed from Warsaw to Cracow. The Polish authorities in their November 2012 report to the Committee likewise cited the confidential nature of the investigation to avoid answering the questions posed by the Committee requesting "information on steps taken to undertake an impartial investigation into the alleged CIA 'rendition flights' through Poland and to ensure accountability of anyone responsible for a breach of the Convention in this regard" (Article 3) and on steps "to address the allegations regarding the existence of secret detention facilities for aliens suspected of terrorist activities in its territory"(Article 16).

**AMNESTY
INTERNATIONAL**



AMNESTY INTERNATIONAL INTERNATIONAL SECRETARIAT

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

T: +44 (0)20 7413 5500

F: +44 (0)20 7956 1157

E: amnestyis@amnesty.org

W: www.amnesty.org

While Amnesty International understands that some aspects of a criminal investigation may require confidentiality, an investigation into crimes under international law such as torture and enforced disappearance is a matter of public concern thus requiring a measure of transparency commensurate with that concern.

Amnesty International is also concerned that the charges applied in the criminal investigation adequately reflect the two recognized victims' allegations of torture and other ill-treatment. In its November 2012 report to the Committee, the Polish government responded to the Committee's request for information about the on-going criminal investigation into Polish involvement in the CIA rendition and secret detention programmes by referring only to charges possibly being laid against Polish state actors under Article 231 of the Polish Penal Code, which states that "A public official who, exceeding his authority, or not performing his duty, acts to the detriment of a public or individual interest shall be subject to the penalty of deprivation of liberty for up to 3 years." A maximum sentence of three years for such "abuse of power" also would fall exceedingly short of the requirement under article 4(2) of the UN Convention Against Torture that "Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature." Moreover, charges for "abuse of authority" carry a statute of limitations, which runs counter to states' obligations under the Convention.

If, therefore, the criminal investigation into complicity in the CIA operations is based on provisions of the penal code not associated with the human rights violations attendant to the rendition and secret detention programmes (especially as regards torture and enforced disappearance), this would leave Poland in direct violation of its obligations under the UN Convention Against Torture. Acts such as torture and enforced disappearance shall be criminalized and Poland must effectively investigate allegations of such acts, prosecute those individuals in relation to whom there is sufficient evidence of responsibility for committing the acts and afford victims effective redress.

Since the "Unlock the Truth" report was released, advocates for a third man – Walid bin Attash -- lodged a complaint with the Polish Prosecutor General in June 2013 alleging that Walid bin Attash was held in secret CIA detention in Poland sometime in 2003. To date, the Prosecutor General has not responded to Walid bin Attash's request for formal status as an "injured person" (victim) in the criminal investigation.

The review of the fifth and sixth periodic reports of Poland provides the Committee with a key opportunity to call on the Polish authorities to conduct an independent, impartial, thorough and effective investigation into the secret CIA site allegations and that the government convey to the Committee the information requested by it in its 2010 list of issues. Moreover, the Committee will have the chance to question the Polish government about the status of Walid bin Attash's request for formal status as a victim in the on-going criminal investigation.

I would appreciate if you would distribute a copy of the report and this letter to the committee members. A delegation from Amnesty International will be present at the NGO briefing and consideration and will be at the Committee's disposal should any further information be required.

Sincerely,

Tania Baldwin-Pask
International Advocacy Program

Enclosed: *Unlock the Truth: Poland's Involvement in CIA Secret Detention*" (Index: EUR 37/002/2013, 12 June 2013), available at: <http://amnesty.org/en/library/info/EUR37/002/2013/en>