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Committee Against Torture

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7 May 2007

Dear Committee Members,

In advance of your Committee's consideration of the periodic report of Poland under the Convention against Torture (CAT), I am writing to express the concerns of the International Commission of Jurists (ICJ) about credible allegations of Poland's involvement in renditions and secret detentions by the CIA. Poland's failure to adequately respond to these allegations raises questions of its compliance with the CAT. Its written response to the Committee's questions on secret detention in point 12 of the list of issues¹ does not satisfactorily address the issue.²

The ICJ welcomes your Committee's timely consideration of this matter and hopes that the hearing on 10 and 11 May will provide an opportunity for a thorough and constructive dialogue with the Polish delegation, and for a clear statement by the Committee of Poland's obligations under CAT.

Renditions and Secret Detentions by the CIA

As the Committee is aware, since September 2001, both renditions and secret detentions have been an acknowledged part of the United States' counter-terrorism strategy.³ "Renditions" or "extraordinary renditions" involve the seizure and transfer of suspects, outside of the normal legal procedures of extradition, deportation, expulsion or removal, without due process safeguards. Since September 2001, their purpose has been to transfer those suspected of involvement in terrorism to places of detention outside US territory, where they are held principally for the purposes of

¹ List of Issues to be considered during the examination of the fourth periodic report of Poland, CAT/C/POLQ/4/Rev.1, para.12.

² Written replies by the Government of Poland to the list of issues (CAT/C/POLQ/4/Rev. 1) to be taken up in connection with the consideration of the fourth periodic report of Poland (CAT/C/67/Add.5), para.72.

³ Although the US denies that it renders suspect to countries where it believes they will be tortured: Condoleezza Rice, Remarks on her departure for Europe, 5 December 2005.

interrogation and they are likely to be tortured or subject to cruel, inhuman or degrading treatment.⁴

The United States has now acknowledged that secret detention centres have been used by the CIA as part of its counter-terrorism operations. Following the recent transfer of a “high-value” detainee to Guantánamo Bay, the United States confirmed that he had been held in secret detention, suggesting that the secret detention programme continues.⁵ Although the United States has not specified the location of these centres, its acknowledgment of their use lends weight to the concerns regarding possible secret detention centres in Poland.

Allegations of renditions and secret detentions in Poland

There have been persistent allegations that CIA-run secret detention centres exist or have existed in Poland, and that rendition flights transporting CIA detainees have flown to and from Polish airports. Although there is as yet no conclusive evidence of the existence of secret detention centres in Poland, evidence of flight patterns, testimony of former detainees, as well as accounts by former airport officials and investigations by journalists and NGOs, together raise serious questions about the existence of such centres, which have not been satisfactorily addressed by the Polish government.

The investigation by Senator Marty for the Parliamentary Assembly of the Council of Europe traces flights of an aircraft linked to CIA renditions, from Kabul to Szymany airport in northern Poland, and then to Romania, Morocco and Guantánamo Bay. The flights took place at a time when other evidence indicates that high-value detainees were transferred by the CIA from Kabul. According to accounts of former airport officials presented to the European Parliament Temporary Committee of Inquiry (the TDIP), at least six Gulfstream Jets with civilian registrations landed at the airport without entering customs clearance. Airport authorities were ordered not to approach the aircraft, which were to be dealt with solely by military personnel.⁶

Szymany airport is located near to the Polish intelligence facility at Stare Kiecuty, where former intelligence officials have indicated that the CIA maintained a special zone.⁷ The TDIP heard testimony that the six Gulfstream Jets landing at Szymany were met by military vehicles, which had registrations linked with the Stare Kiejuty base, and on one occasion one of these vehicles was seen driving from the airport towards the base.⁸

In total, the TDIP noted 11 stopovers of aircraft connected with the CIA at Polish airports, which either came from or were bound for countries linked with renditions.⁹ Neither the inquiry by the TDIP, nor that by Senator Marty for the Council of Europe, found sufficient evidence to either confirm or deny the existence of secret detention centres in Poland. However, the inquiry by Senator Marty concluded that, although there was no conclusive evidence of secret detentions in Poland or Romania, there were elements that were “sufficiently serious to reverse the burden of proof: it is now for the

⁴ Reports of the Canadian Commission of Inquiry into actions of Canadian Officials relating to Maher Arar, 12 December 2006, www.ararcommission.ca; Amnesty International, Partners in Crime, Europe’s Role in Renditions, Eur 01/008/2006.

⁵ Washington Post, *CIA held Al-Qaida suspect secretly: officials disclose that use of overseas prisons resumed*, 28 April 2007

⁶ Committee on Legal Affairs and Human Rights, Alleged Secret Detentions and Unlawful inter-State transfers involving Council of Europe Member States, Explanatory Memorandum by Senator Dick Marty, paras.63-75; TDIP report, para. 174; See also Human Rights Watch, Statement on US Secret Detention Facilities in Europe, 7/11/2005.

⁷ Human Rights Watch, Europe: Pending Questions on CIA Activities in Europe, February 21 2006

⁸ European Parliament, resolution on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners P6 TA PROV (2007) 0032, paras.167-176.

⁹ para.117

countries in question to address their “positive obligations” to investigate, to avoid endangering the credibility of their denials.”¹⁰

Inquiries by Polish authorities

In November 2005, the Polish Government issued a statement that following internal investigations, it was satisfied that there was no basis for the allegations as to secret detention centres in Poland. It stated that: “the Polish Government strongly denies the speculation occasionally appearing in the media as to the existence of secret prisons on the territory of the Republic of Poland, supposedly used for the detention of foreigners suspected of terrorism. There are no such prisons in Poland and there are no prisoners detained in contravention of the laws and international conventions, to which Poland is a party.”¹¹

On 10 December 2005, the Polish Prime Minister announced an inquiry into reports of secret detention centres in Poland. Later the same month, the Minister responsible for the intelligence services, Zbigniew Wassermann, reportedly delivered a report to members of a parliamentary Committee, on the basis of which the Committee decided to end the inquiry. No report of the inquiry was published.¹² The TDIP found that the inquiry had been conducted “speedily and in secret, in the absence of any hearing or testimony and subject to no scrutiny.”¹³

Violations of CAT in renditions and secret detentions

Secret detention involves multiple violations of human rights, including violations of the CAT. Prolonged incommunicado secret detention has been found by your Committee to amount in itself to a violation of the CAT.¹⁴ Persons in secret detention are held outside the protection of the law, with no possibility to challenge the legality of their detention, and are therefore highly vulnerable to torture, cruel and inhuman or degrading treatment.

Renditions also involve multiple human rights violations, and violate obligations under CAT in two principal ways. First, transfer of persons to states where they face a risk of torture, cruel, inhuman or degrading treatment violates the right to *non-refoulement*.¹⁵ Second, the process of rendition is likely to itself involve cruel, inhuman or degrading treatment. In particular, it has been affirmed in the views of the Human Rights Committee in *Alzery v Sweden*,¹⁶ that the “security check” routinely imposed prior to transfer, involving the stripping, restraint and sensory deprivation of the suspect by masked men, itself amounts to cruel, inhuman or degrading treatment. Furthermore, the conditions in which the suspect is transferred, and the anguish and uncertainty involved in transfer, are likely in themselves to amount to cruel, inhuman or degrading treatment.

¹⁰ para.224

¹¹ Letter from Mr Stefan Meller, Minister of Foreign Affairs of the Republic of Poland to Mr Terry Davis, Secretary General of the Council of Europe, Warsaw, 17 February 2006.

¹² European Parliament Resolution op cit, para.170; PACE, Explanatory Memorandum by Senator Marty, op cit, para.252.

¹³ European Parliament Resolution, op cit, para.170.

¹⁴ Committee Against Torture, Concluding Observations on the United States, CAT/C.USE.CO/2, 18 May 2006, para.17, where the Committee found that secret detention constituted *per se* a violation of the Convention Against Torture.

¹⁵ Article 3 CAT, Article 7 ICCPR, *Agiza v Sweden*, Committee against Torture, communication No.233/2003

¹⁶ Communication No 1416/2005, Sweden 06/11/2006, CCPR/C/88/D/1416/2005.

The duty to protect

Co-operation in renditions and secret detentions raises issues under Article 2 CAT, by which States Parties must take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction, including through effective enforcement of the criminal law. This positive duty is reflected under the International Covenant on Civil and Political Rights (ICCPR),¹⁷ and in obligations under the European Convention on Human Rights (ECHR)¹⁸ Allegations regarding the existence of secret detentions in Poland, and the use of Polish airports in renditions by the CIA, raise serious questions as to whether Poland has complied with this positive obligation to take preventative action against violations of the CAT on Polish territory.

The Polish Government has stated that, under the NATO Status of Forces Agreement (SOFA), US military personnel at US bases in Poland are subject to the primary jurisdiction of the US, rather than the Polish courts. It remains unclear however whether US intelligence personnel are subject to particular arrangements which exempt them from the jurisdiction of the Polish courts under certain circumstances.¹⁹ Irrespective of agreements which may transfer powers within Polish territory to another State or exempt particular foreign intelligence or military personnel active within Poland from jurisdiction of the Polish courts, Poland retains responsibility for compliance with human rights obligations in relation to powers transferred to the US under the SOFA.²⁰ In particular, Poland's obligations to take appropriate action to prevent acts of torture within its jurisdiction continue to apply.²¹ Where the SOFA prevents effective enforcement of the criminal law against torture, this obligation may be discharged by renegotiation of the agreement or refusal to renew the agreement on terms that do not allow for effective investigations.

The duty to investigate

In the view of the ICJ, there are sufficiently credible and well supported allegations of secret detentions likely to involve torture or cruel, inhuman or degrading treatment, to engage Poland's obligation under Article 12 CAT to ensure that the competent authorities undertake a prompt and impartial investigation into allegations of such treatment. Such an investigation must be independent, thorough, and transparent. It does not appear that the investigations undertaken so far by the Polish authorities satisfy the obligation under Article 12 CAT. In particular, the lack of information about the scope, methodology and conclusions of the Parliamentary inquiry, despite detailed queries from

¹⁷ Article 2 ICCPR. UN Human Rights Committee General Comment 20 (1992) on Article 7 ICCPR, (the right to freedom from torture or cruel, inhuman or degrading treatment or punishment); General Comment 31 of the Human Rights Committee, para.8, para.15.

¹⁸ *Osman v UK*, (2001) 29 EHRR 245; *X and Y v the Netherlands*, (1985) 8 EHRR 235.

¹⁹ Under the terms of the NATO Status of Forces Agreement, US military personnel and their civilian staff at US bases in Poland are obliged to respect Polish law, but are subject to the primary jurisdiction of the US, rather than the Polish courts. In statements to the Council of Europe, the Polish government has left open the possibility that foreign intelligence services co-operating with Polish intelligence services on Polish territory under bilateral agreements would not be subject to Polish law, though the co-operation would remain subject to Polish parliamentary and governmental review. Letter of Mr Stefan Meller, Minister of Foreign Affairs of the Republic of Poland to Mr Terry Davis, Secretary General of the Council of Europe, Warsaw, 17 February 2006; Letter of the Undersecretary of State Mr Witold Waszczykowski to Mr Terry Davis, 10 March 2006.

²⁰ ECtHR, *Matthews v UK*, App No 24833.94, *Bosphorus v Ireland*, App No 45036.98, *M and Co. v Germany*, App No 13258/87.

²¹ ECtHR, *Ilascu v Moldova and Russia* App. No 48787/99 para.333

the Secretary General of the Council of Europe amongst others, mean that the obligation to investigate under Article 12 CAT has not been adequately discharged.²²

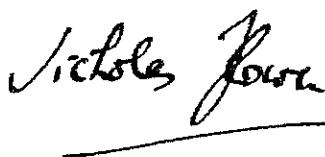
Suggested Questions on Polish compliance with CAT

In light of the allegations of Polish involvement in secret detentions and renditions, and building on the questions in the list of issues, questions which the Committee may wish to put the following questions to the Polish delegation:

- What were the terms of reference for the parliamentary inquiry into allegations of secret detentions in Poland?
- What written or oral submissions were sought or received by the inquiry? Did the inquiry have investigative powers to require the production of papers or the attendance of witnesses, or to search premises, and did it use any such powers?
- Have government or parliamentary investigators visited Stare Kiekiuty base?
- Will a written report of the parliamentary inquiry be published?
- What further steps is the Polish government taking to investigate allegations of secret detentions and renditions on its territory, and to prevent violations of human rights through such operations in the future?
- Taking into account the terms of Status of Forces Agreements or other bilateral agreements with the United States, does Polish law allow for the criminal law to be enforced against US intelligence officials suspected of committing crimes of torture on Polish territory?

The ICJ appreciates the opportunity to make these submissions, and would be glad to assist the Committee's consideration of these issues in any way possible.

Yours sincerely



Nicholas Howen
Secretary-General

²² The investigation of Senator Marty for the Parliamentary Assembly of the Council of Europe considered the Polish inquiry to be inadequate for its lack of transparency: Parliamentary Assembly, Committee on Legal Affairs and Human Rights, Alleged Secret Detentions and unlawful Inter-state transfers involving Council of Europe Member States, Explanatory Memorandum, AS.Jur (2006) 16 Part II, 7 June 2006 Para.252. The TDIP also concluded that the inquiry was conducted speedily and in secret and could not be considered independent. European Parliament resolution, op cit, para.170.