



President Herman Van Rompuy
President of the European Council

Brussels, 15 November 2010
Our Ref: B1014

Dear Mr Van Rompuy,

Subject: EU-US Summit, 20 November 2010 – Accountability and transparency long overdue

On the occasion of the European Union – United States Summit in Lisbon on 20 November 2010, the world will monitor whether these two global actors honour their stated commitment “to advance the ideals of democracy and human rights, and to fight terrorism.” The entry into force of the Lisbon Treaty has strengthened the legal basis on which EU policies - both internal and external - are formulated and implemented. A positive change in tone on human rights as well as increased engagement with the international community has indeed been noticed under the administration of President Obama. The secret detention program, as operated by the Central Intelligence Agency (CIA) under the Bush administration, has been ended by executive order, and the CIA’s use of “enhanced” interrogations techniques has similarly been stopped. Yet, much remains to be done to ensure accountability and remedy for the human rights violations, including the crimes under international law of torture and enforced disappearance, committed in connection with these counter-terrorism operations. Ensuring accountability for past human rights violations is key - not only in providing redress to victims of human rights violations, but also for the credibility of the EU and the USA as global actors in their efforts to ensure respect for human rights worldwide.

The urgent need for the USA to meet its human rights obligations is also highlighted by the continued indefinite detention, without charge or criminal trial, of more than 150 individuals in the Guantánamo detention facility. The USA must abandon military commissions and bring any Guantánamo detainee it intends to prosecute to trial in an ordinary civilian federal court, in accordance with international fair trial standards. Any detainee it does not intend to prosecute should be immediately released. Bringing all those it accuses of involvement in the 11 September 2001 or other unlawful attacks to trials in federal courts would not only be a huge step towards respect for the rights of the detainees, it would also represent an important component of respect for the rights of the survivors and victims of those attacks.

The recent leaks of information on torture and other forms of ill-treatment of detainees held by Iraqi security forces further urgently highlights the obligation of States not to resort to renditions or diplomatic assurances. The leaked documents reveal that the US authorities must have been aware of the systematic abuse by Iraqi security forces. Nonetheless, they summarily transferred thousands of Iraqis who had been detained by US forces into Iraqi custody between early 2009 and July 2010 under an agreement between the USA and Iraq with no provisions ensuring protection of the detainees’ human rights.

The involvement of European governments in the rendition and secret detention programmes operated by the USA in the aftermath of the September 2001 attacks has been well-documented. EU Member States have been complicit in unlawful transfers, enforced disappearances, torture, and secret detention, for which widespread impunity and absence of remedy for human rights violations have reigned for almost a decade. In a report released today entitled *Open Secret: Mounting Evidence of Europe's complicity in rendition and secret detention*, Amnesty International outlines the state-of-play with respect to accountability for European states' complicity in abusive practices in connection with counter-terrorism operations. While some progress has been made, the legal obligation to look back and ensure full accountability for such violations has been ignored by many governments for too long.

Overcoming the accountability gap and ensuring transparency

One of the key impediments to progress – both in Europe and the USA – with respect to holding governments accountable, bringing perpetrators to justice, and achieving redress for victims, is the invocation of “state secrecy” on national security grounds. Europe must refrain from becoming an “accountability-free zone”, similar to that which exists in the USA. If governments are enabled to simply forget the past or to whitewash inquiries into their involvement in these egregious practices, and if such collective amnesia or exoneration by perfunctory investigation is not challenged, an environment of impunity for grave human rights violations is created in which victims are denied the redress they so clearly deserve. More detailed information on the state of play regarding accountability in the USA and in Europe, including reference to specific cases, is contained in Annex I.

As a counterpoint to individual government inaction or cover-up in pursuing accountability, intergovernmental organizations such as the Council of Europe, the European Parliament, and the United Nations have been at the forefront of investigating human rights violations associated with the CIA rendition and secret detention programmes. The UN Joint Study on secret detention, prepared by a group of UN special procedure mechanisms, provides an excellent basis for working towards accountability. The USA and the EU should therefore do everything in their power to ensure that the UN Joint Study receives adequate follow-up.¹

The USA and EU should use the opportunity of the Lisbon-summit to reassert that there can be no security without respect for human rights. Amnesty International urgently calls on the leaders of the EU institutions, the EU Member States and the US administration to commit to the following:

- **Reject impunity and commit in full to justice for the victims of unlawful rendition, enforced disappearance, and torture and other ill-treatment in the context of countering terrorism in the aftermath of the 11 September 2001 attacks in the USA.**
- **Live up to obligations under international law to investigate and hold accountable those responsible for authorizing and carrying out violations in the context of the CIA's rendition and secret detention programmes, including by bringing those responsible for crimes under international law to justice.**
- **Refrain from invoking “state secrecy” to shield themselves from scrutiny for abuses committed in the context of rendition and secret detention operations.**

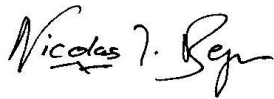
¹ UN Human Rights Council, Joint study on global practices in relation to secret detention in the context of countering terrorism of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Arbitrary Detention, and the Working Group on Enforced and Involuntary Disappearances (“UN joint study on secret detention”), A/HRC/13/42, 19 February 2010, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-42.pdf>

- **Refrain from resorting to or being complicit in renditions and refrain from the use of diplomatic assurances when transferring individuals to third countries.**
- **Ensure adequate follow-up to the UN Joint study on global practices in relation to secret detention in the context of countering terrorism, conducted by a group of relevant UN special procedure mechanisms.**
- **Ensure the EU adequately follows up on the 2007 report by the European Parliament Temporary Committee on the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners (TDIP), and for the USA to cooperate in these efforts.**
- **Report publicly on all actions undertaken to ensure that accountability processes are in place at national and regional level.**

While Amnesty International welcomes positive statements made by the Obama administration with regard to human rights, words are not enough. The USA must ensure that its policies in the counter-terrorism context fully comply with international human rights law and standards. The EU – as a strategic partner of the USA – has a particular role to play in reminding the US of its obligations under international law. The USA has an obligation not only to ensure accountability for its direct involvement in renditions and secret detention, but to cooperate in full with efforts in Europe to ensure accountability for Member States' complicity in these operations.

With this, we wish you fruitful discussions, and remain at your disposal for further discussion and information.

Yours sincerely,



Dr. Nicolas J. Beger
Director

CC:

José Manuel Barroso, President of the European Commission
Catherine Ashton, High Representative of the Union for Foreign Affairs and Security Policy/Vice President of the European Commission

ANNEX I

Accountability for violations committed by the United States of America

Since May 2004, Amnesty International has been calling on the US authorities to establish a comprehensive independent commission of inquiry into the USA's detention policies and practices since 11 September 2001. To date, the US government has failed to initiate any comprehensive investigation into credible allegations that US state actors and agents were involved in the unlawful rendition, secret detention, and torture and other ill-treatment of a number of detainees held abroad.

Numerous victims have come forward, each telling a story of egregious abuse. In addition to their testimonies, former and current intelligence officials have confirmed various aspects of the CIA-program, and other forms of evidence, such as flight logs, have been disclosed. Despite the wealth of information in the public domain, all three branches of the US federal government – the executive, the legislature and the judiciary – have failed to take the necessary action to end the accountability gap. A series of court challenges brought in the USA by individuals claiming that they were subjected to unlawful rendition, enforced disappearance, and torture, for example, have been thwarted by the US government's reliance on the "state secrets" doctrine. Disclosure of information relating to the rendition and secret detention programs, the US government has argued, would threaten the national security of the USA.

The case of Khalid al-Masri – Using the state secrets doctrine

The US administration's invocation of the state secrets doctrine was upheld by the US Court of Appeals for the Fourth Circuit in 2007 when it dismissed the lawsuit brought by Khalid al-Masri, a German national of Lebanese descent who was apprehended in December 2003 and held in secret detention in Macedonia before being handed over to the CIA and unlawfully rendered to Afghanistan in 2004. With doors to a judicial remedy in the USA shut, after the US Supreme Court declined in October 2007 to review the Fourth Circuit's decision, Khalid al-Masri continues to seek justice. He filed a complaint against the USA with the Inter-American Commission on Human Rights in April 2008, and in September 2009 lodged an application at the European Court of Human Rights against the government of Macedonia for its role in his illegal detention and rendition to risk of torture.

Although Attorney General Eric Holder in August 2009 ordered a "preliminary review" into certain aspects of interrogations of some detainees held in the CIA's secret detention program, this review has been narrowly framed and has been set against a promise of immunity from prosecution for anyone who acted in good faith on legal advice in conducting interrogations. This falls far short of the scope of investigations and prosecutions required by binding legal obligations to which the USA is subject under international law.

Today, more than 150 individuals continue to be held in indefinite detention in the Guantánamo detention facility, without charge or criminal trial. Thus far, only one person has been transferred to the US mainland for prosecution in an ordinary federal court, rather than by military commission. Nearly a year after the US Attorney General announced that five other detainees would be brought to New York to be prosecuted in relation to the attacks in the USA on 11 September 2001, the five men remain in Guantánamo without charge or trial. Those detainees, and the survivors of the attacks in relation to which some of them have been accused, must apparently continue to wait for justice.

The case of Saifullah Paracha – Illegal detention and torture in Guantánamo

Saifullah Paracha, a Pakistani national, has been held unlawfully in Guantánamo Bay since 2004. To date, he has not been charged or tried for any offence. Saifullah Paracha travelled to the USA to study when he was 26 and remained there with his family for approximately 10 years before returning to Pakistan. He was arrested in Bangkok, seized, hooded and cuffed, thrown into the back of a vehicle and taken to an unknown location where he was held for a few days. He suffers serious health problems as a result of heart disease. Saifullah Paracha is one of more than 150 men currently held in the Guantánamo detention centre. **The USA should either immediately release Saifullah Paracha or charge him with an internationally recognizable offence and bring him to trial in ordinary federal court in accordance with international fair trial standards.**

The USA must abandon military commissions and bring any Guantánamo detainee it intends to prosecute to trial in ordinary civilian federal court, in accordance with international fair trial standards. Any detainee it does not intend to prosecute should be immediately released. Bringing all those it accuses of involvement in the 11 September or other unlawful attacks to trials in federal courts would not only be a huge step towards respect for the rights of the detainees. It would also be an important component of respect for the rights of the survivors and victims of those attacks.

Accountability for EU Member State complicity**The case of Muhammad Haydar Zammar – Rendition**

Muhammad Haydar Zammar, a Syrian-born German national, was detained in December 2001 by Moroccan officials on suspicion of his alleged involvement in the 11 September 2001 attacks in the USA. Muhammad Zammar reported that he was interrogated and ill-treated in detention whilst in Morocco for a few weeks before illegally transferred to Syria where he was interrogated and again allegedly tortured. He was then transferred to Sednaya Prison in 2004, and after a flagrantly unfair trial was sentenced to 12 years in prison.

A 2009 German parliamentary inquiry report acknowledged that German intelligence actors provided the USA with information on Muhammad Zammar and that their authorities travelled to Syria and interrogated him. In January 2010, a UN report on secret detentions named Germany as a country of concern for its actions in the Zammar case. There has been no accountability or responsibility for complicity in Muhammad Zammar's rendition or alleged torture.

European governments' involvement in the rendition and secret detention programmes operated by the USA in the aftermath of the 11 September attacks has been well-documented. After nearly a decade of widespread impunity and absence of remedy for human rights violations – including unlawful transfer, enforced disappearance, torture, and secret detention – that occurred in the context of these CIA-led operations, the legal obligation to look back and ensure full accountability for such violations has been ignored by many governments for too long.

The Council has yet to act on the European Parliament's recommendation contained in its resolutions of 2007 and 2009 to shed full light, acknowledge, repair and prevent in the future the human rights violations that occurred in Europe in the context of the US rendition and secret detention programme. The EP resolutions instructed the EP Committee on Civil Liberties, Justice and Home Affairs (LIBE) to follow-up on the work of the EP Temporary Committee on the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners (TDIP) and stated that the Council's failure to act could be in breach of the principles and values on which the EU is based, implying the possibility of sanctions under article 7 TEU. To date, there appears to be little appetite in the Council to act on the EP's recommendations.

In contrast to the USA's systematic failure to meet its international obligation to address past violations, there has however been some progress towards accountability in Europe. Such progress has come without the cooperation of the US government, and in some cases in spite of the lack of political will and outright obstruction by some European governments. Yet, the overall "scorecard" to date regarding the establishment of investigations that are truly independent and effective, as well as sufficiently public, has been disappointing. Progress toward accountability gained some momentum, however, between 2008 and 2010 as evidence of European complicity mounted, indicating that Europe remains fertile ground for accountability.

In the recent report entitled *Open Secret: Mounting Evidence of Europe's complicity in rendition and secret detention*, launched on 15 November 2010, Amnesty International outlines the state-of-play with respect to accountability for European states' complicity in abusive practices in connection with counter-terrorism operations. The report highlights key developments in Ireland, Italy, Germany, Lithuania, Poland, Romania, Sweden, and the United Kingdom, i.e. EU Member States where inquiries into state complicity or legal processes aimed at individual criminal responsibility have occurred or are currently in process.

Amnesty International urgently calls on European governments to reject impunity, to capitalize on the momentum in Europe toward accountability, and to commit in full to justice for the victims of rendition, enforced disappearance, and torture and ill-treatment in the context of countering terrorism in the aftermath of the 11 September 2001 attacks in the USA. European governments implicated in US-led global counter-terrorism operations should immediately open full, effective, independent and impartial investigations into the role of European officials and use of state territory in connection with renditions, secret detention and enforced disappearance, and the involvement of state agents in serious human rights abuses abroad, and make the findings and results public.

In order to ensure that abuses do not occur in the future, European governments must implement reforms for the civilian oversight of national intelligence and security agencies and of foreign intelligence agencies operating on their territories. This combination of accountability, effective redress for victims, and reform will help re-establish respect for human rights law and the responsibilities of states under that law to provide human rights protection to all persons entitled to it.