

Alfredo Pérez Rubalcaba
Spanish Interior Minister
Presidency of the European Union

Brussels, 22 February 2010

Dear Minister,

Justice and Home Affairs Council meeting, 25-26 February 2010

In advance of the JHA Council on 25-26 February, which will include consideration of the proposed Internal Security Strategy (ISS), Amnesty International calls on the Ministers to recommit to upholding human rights in the context of countering terrorism and to seek accountability for Member States' alleged complicity in the US-led rendition and secret detention programmes.

The Spanish Presidency's draft of the ISS states that the strategy is bound by the values and principles established in the Treaties and set out in the Charter of Fundamental Rights, such as the respect for fundamental rights, international protection, the rule of law and privacy; the protection of all citizens, especially the most vulnerable, with a focus on victims of crimes; transparency and accountability in security policies and dialogue as the means for resolving differences in line with the principles of tolerance, respect and freedom of expression.

Amnesty International is concerned, however, that fundamental rights stand in the text as a mere formal reference in the context of the ISS's "wide and comprehensive approach to internal security", where law enforcement, security and intelligence operations, and technical cooperation seem to prevail. Human rights protection and accountability for rights violations must be a cornerstone of the strategy.

Recent developments on the global stage and in the region illustrate how Member States have been implicated in serious human rights violations stemming from their alliance with the US government in the so-called "war on terror". On 26 January 2010, a joint study on global practices in relation to secret detention in the context of countering terrorism was issued by four special procedures of the United Nations Human Rights Council. The study highlighted the historic and widespread nature of secret detention in states' efforts to combat terrorism and focused on how the practice of secret detention has been reinvigorated by the so-called "war on terror": "[i]n some cases, persons have been rendered to other countries, precisely to circumvent the prohibition of torture and 'rough' treatment. But practices such as 'hosting' secret detention sites or providing proxy detention were supplemented by numerous other facets of complicity, including authorizing the landing of airplanes for refuelling, short-term deprivation of liberty before handing over the 'suspect', [and] the covering up of kidnappings..."

The UN report identifies a number of EU Member States as having been involved in these practices and points out that "[w]ith very few exceptions, too little has been done to investigate allegations of complicity". Cases of note include:

- **Germany:** A German parliamentary inquiry report was issued in June 2009 and exonerated all German state actors of any involvement in renditions and secret detention. The UN secret detentions report, however, specifically identified Germany as a government complicit in secret detention in terms of "knowingly... taking advantage of the situation of secret detention by sending questions to the State which detains the person or by soliciting or receiving information from persons who are being kept in secret detention" in the case of Muhammad Zammar who was allegedly interrogated by German agents while being held in secret detention in Syria in November 2002.
- **Italy:** An Italian court convicted 23 US nationals and two Italians in November 2009 for the February 2003 abduction in Milan of Hassan Mustafa Osama Nasr (Abu Omar) who was subsequently rendered to Egypt where he reported being tortured. The UN secret detentions report notes that the European Parliament concluded that the Italian secret services assisted the CIA in the abduction and transfer, and the Italian authorities at the time most

likely were aware of the operation. The cases against the head of SISMI and his deputy were dismissed, however, on the ground relevant evidence was covered by “state secrets”. The Italian government continues to deny any knowledge or involvement in the operation.

- **Lithuania:** In January 2010, the Lithuanian parliament adopted a report confirming that two secret detention facilities had been constructed at the behest of the CIA and were prepared to hold terrorism suspects. The narrow remit of the inquiry precluded the parliamentary Committee on National Security and Defence from arriving at any conclusions regarding human rights violations that may have occurred in the course of these activities. The UN secret detention report welcomed the work of the Lithuanian parliament “as an important starting point in the quest for truth” about Lithuania’s role in the US-led rendition and secret detention programme, but stressed that the parliamentary report “can in no way constitute the final word on Lithuania’s role in the programme”.
- **Poland:** The UN secret detentions report also identifies Poland as a country that collaborated with the US with respect to rendition flights and the use of fake flight plans. Regarding allegations that Poland hosted a secret detention facility, the UN report includes claims by unnamed US sources that “high value” detainee Abd al-Rahim Nashiri, in addition to Khlaid Sheikh Mohamed and others, was also held in secret detention in Poland. The UN experts expressed concern about the near total secrecy surrounding the Polish investigation, stating that “[a]fter 18 months still nothing is known about the exact scope of the investigation, but the Experts expect that any such investigation would not be limited to the question whether Polish officials created an ‘extraterritorial zone’ in Poland but also whether officials were aware that ‘enhanced interrogation techniques’ were applied there”.
- **Romania:** Despite documenting a number of rendition flights landing on Romanian territory and allegations of the existence of a secret detention facility in operation in Romania between 2003 and 2005, the UN report noted that a Romanian parliamentary inquiry denied all allegations of any Romanian involvement in these operations. The terms of reference, methodology, and detailed conclusions of the Romanian parliamentary inquiry report were not revealed to the UN experts and remain secret.
- **United Kingdom:** The UN report identifies the UK as allegedly complicit in the abusive interrogations of terrorism suspects overseas, including Binyam Mohamed, who was released from Guantanamo Bay in February 2009. The UK intelligence services supplied the US with information about Binyam Mohamed that was used during interrogations. A February 2010 ruling from the UK Court of Appeal concluded that the British government must disclose evidence of Binyam Mohamed’s treatment while in US custody. Based on that information, the Court concluded that Binyam Mohamed had been subjected “at very least” to cruel, inhuman and degrading treatment, including continuous sleep deprivation and severe psychological stress, while in US custody.

Amnesty International urges the Council to improve on this poor record of government cooperation in seeking accountability for serious human rights violations by urging Member States to recommit themselves to full and impartial inquiries into their own roles in these practices and to holding perpetrators criminally liable for these abuses.

The EU must take the opportunity of the new ISS to send a clear and strong signal that comprehensive reform of the EU’s internal security policies is needed and that such reform must necessarily include full respect for human rights and accountability for both EU institutions and EU Member States.

In this context, Amnesty International welcomes that effective democratic and judicial oversight of security activities is highlighted as one of the guidelines for action in the proposed ISS. This places a responsibility on the EU institutions to ensure that effective mechanisms for the protection of human rights and accountability for human rights violations are fully integrated into the new internal security strategy.

Amnesty International calls on the JHA Council to:

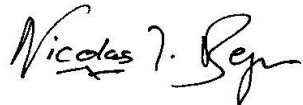
- Include the issue of Member State complicity in the CIA rendition and secret detention programme in the ISS and substantively address due diligence in inquiries to determine government complicity, prosecutions of those responsible for human rights violations, measures to prevent of such abuse in the future, and redress for victims of these practices;
- Urge the Member States to comply with the European Parliament resolutions of 2007 and 2009 which call on states to conduct full, impartial and effective investigations into allegations of complicity in renditions to torture and the existence of secret detention facilities on EU territory.

Amnesty International calls on the Spanish Presidency of the Council of the EU to:

- Convene in 2010 a high-level meeting to evaluate progress in the EU on accountability issues regarding Member States’ involvement in CIA renditions and secret prisons;
- Advocate in specific for progress and accountability in the case of rendition victim and former Guantanamo Bay detainee Binyam Mohamed and call on the UK to investigate in full the alleged complicity of UK intelligence agents in his ill-treatment.

We hope that these concerns will be raised during the discussions and we look forward to hearing from you as to the outcome of the meeting.

Yours sincerely,



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