

## **EP Testimony**

Members of the Temporary Committee,

Thank you for inviting Human Rights Watch to speak before this committee. In particular I would like to thank President Paulo Coelho, Rapporteur Giovanni Fava, and the TDIP Secretariat for giving me the opportunity to exchange views with members of the committee.

I would like to begin by emphasizing that there is no doubt but that in the aftermath of the September 11, 2001 attacks on the United States, the Bush administration began to violate certain basic legal norms in its treatment of security detainees. The issue in question, in this forum, is the extent of European governments' knowledge of or participation in these abuses. As the members of this committee are aware, substantial and credible information has now been published concerning allegations that the U.S. has engaged in abductions, extraordinary rendition, enforced disappearances and secret detention on European soil.

This committee is also no doubt cognizant of the daunting obstacles to carrying out a meaningful investigation of these allegations. Indeed, with regard to this point, it is instructive to recall the European Parliament has already carried out a successful investigation of the ECHELON program, and President Coelho's participation in that investigation. Like the ECHELON investigation, which involved a secret global surveillance system, the present investigation will be examining activities that are covert by their very nature, which involve secrets to which few people are privy, and which no country has any interest in making public.

It is worth noting at the outset that the U.S. government has taken every possible step to guard the secrecy of these activities – refusing even to allow the testimony of detained “high value” terrorism suspects before its own courts -- and has pressured U.S.-based media to refrain from reporting on many aspects of the story. The *Washington Post* and ABC News were both pressured not to name specific countries for stories about secret CIA prisons in Eastern Europe, and the government has initiated an investigation into whether officials may have leaked information to journalists about the detention programs.

Given the seriousness of the abuses at issue, I would also like to underscore that hearings on secret CIA detention and rendition of terrorism suspects should be held in the U.S. Congress, as well as in the European Parliament. It is my hope that European attention to these issues, and the results of what I expect to be a very thorough investigation, will help spark greater U.S. congressional interest. In the meantime, Human Rights Watch extends its sincere thanks to the members of the European Parliament for deciding to initiate this investigation. We are also grateful to the Council of Europe's Parliamentary Assembly for initiating its own investigation, led by Swiss jurist and parliamentarian Dick Marty.

I wish to focus my remarks on the crucial need now for meaningful cooperation from European governments in providing information to assist the temporary committee's investigation into these allegations. Human Rights Watch believes that, in cooperating with this investigation, European governments must at a minimum ensure that their military, intelligence, law enforcement and aviation authorities answer questions and respond to follow-up requests for information from the temporary committee's investigators.

In particular, we believe that European member states should provide investigators with the following specific types of information:

- 1.) Member states should direct their aviation authorities to provide records in response to requests for aviation records or flight plans for particular airplanes.
- 2.) Member states should facilitate meetings and direct officials to cooperate in response to requests to meet with military, law enforcement or intelligence officials.
- 3.) Each member state should provide information on the detention of alleged terrorism suspects by U.S. military or intelligence services in their country or in other states.
- 4.) Each member state should provide information on the use by the United States of detention facilities in their country or in other states.
- 5.) Each member state should provide the names of and detailed information about all persons in their jurisdiction who were transferred into the custody of the United States outside of normal extradition procedures.
- 6.) Each member state should provide information regarding any transfer that occurred based on reliance upon so-called "diplomatic assurances" that the transferred person would not be subject to torture or other ill-treatment in the receiving country.
- 7.) Each member state should provide information as to what mechanisms they have in place to respond to requests for the use of their airspace or territory by aircraft owned or operated by the U.S. government, and what information they require to evaluate such requests.
- 8.) Parliamentarians from member states should initiate national-level inquiries, using parliamentary questions and other such means, to seek information on secret detentions and transfers of prisoners, and should share their findings with European Parliament investigators.

In addition, certain member states also need to provide information about cases that involve operations on their soil. Specifically, we ask governments to provide the following information:

- The governments of Germany and Italy should provide information on the alleged abduction in Milan of Abu Omar, an Egyptian cleric, by CIA personnel on February 17, 2003. A Milan prosecutor, who is participating in today's hearing, has indicted 22 CIA personnel for Abu Omar's abduction. He has credibly alleged that Abu Omar was held for a short time at the U.S. military base at Aviano in

Italy, flown to the Ramstein U.S. military base in Germany, and then transferred to another plane and flown to Cairo, where he was allegedly tortured. Both the German and Italian governments need to provide more information about their knowledge of or involvement in this case and facilitate meetings between relevant officials and investigators with the European Parliament.

- The governments of Germany and Macedonia should also provide information on the case of Khalid el Masri, a German national who was arrested by Macedonian authorities in January 2004. Masri was transferred to U.S. custody in the Macedonian capital Skopje and then flown to Afghanistan, where he was held in a secret CIA detention facility near Kabul until his release in mid-2004. He has alleged that a German official visited him while he was held in that facility.
- Poland and Romania should provide information about CIA operations within their countries since 2003. They should, first of all, provide information about flights by CIA airplanes into their territory. According to flight records and investigations by Polish and international media, aircraft known to have been used by the CIA to transport prisoners flew on several occasions in 2003 and 2004 to closed military bases or remote airfields in Romania and Poland, on flights from Afghanistan, Jordan, and Guantanamo Bay. (By contrast, most other stops by these planes in Europe have taken place at open civilian airports, unlikely locations for covert operations.) Both Poland and Romania should instruct their civilian and military aviation authorities to provide records on flights to and from their airfields by CIA-leased or operated planes credibly linked to past prisoner transports from 2002 to the present. These planes include a Boeing 737 then registered as number N313P, and Gulfstream jets then registered as N379P and N85VM.
- It is notable that the Boeing 737 flew from Kabul to northeastern Poland on September 22, 2003, during a period when several high-value detainees who had been held secretly in Afghanistan were transferred out of the country. The jet flew to Romania that same evening (September 22), and then to Morocco. The next day, September 23, it flew to Guantanamo Bay. The same Boeing 737 also flew from Kabul, Afghanistan, to Romania on January 25, 2004. This is the day after it is believed to have flown CIA detainee Khalid el Masri from Macedonia to Kabul. Because of puzzling inconsistencies in the flight plans filed for the aircraft, it is not clear where exactly in Romania the jet landed. The Polish and Romanian government should provide all the information they have regarding these flights.
- Officials in both Poland and Romania have denied that secret CIA detention facilities existed in their countries. But some former military and intelligence officials who served in the Polish and Romanian governments during the period in which the alleged detentions took place have told the media that their governments provided the CIA with exclusive use of certain areas on their territory where authorities of these countries did not have access. On November 20, former Romanian Defense Minister Ioan Mircea Pascu told the Associated

Press that Romanian authorities did not have access to certain sites used by U.S. services in Romania in 2003-2004. (When later asked about this statement by other journalists, he said his comments were taken out of context, but did not explain how.) On December 15, Zbigniew Siemiatkowski, the former head of Poland's intelligence agency, told the Polish Press Agency that the CIA had a special zone inside a Polish intelligence facility at Stare Kiejkuty, near the Szymany airport in northeastern Poland, as well as at least two other sites within Poland. However, he denied the sites were used for detention. On Polish Radio ZET, Siemiatkowski also confirmed that CIA planes flew into Poland on multiple occasions.

- The Swedish government should provide information about the rendition of Ahmed Agiza and Mohammed al-Zari, two Egyptian asylum seekers in Sweden who were handed over to CIA operatives at Stockholm's Bromma airport and transported together in December 2001 on a CIA-leased plane from Sweden to Egypt. In its May 2005 decision on the Ahmed Agiza case, the U.N. Committee Against Torture found that Sweden had violated article 3 of the Convention Against Torture by handing Agiza over to U.S. authorities in Stockholm and thus assisting in his transfer to Egypt, where both he and al-Zari claim that they were tortured. The U.N. committee noted that the diplomatic assurances allegedly guaranteeing that the men would not be tortured, which the Swedish government had secured from Egypt in advance of the expulsions, did not suffice to protect against the manifest risk of torture that the men faced in Egypt. The Swedish government has neither fully explained the extent of its knowledge of or involvement in the transfer, nor has it taken adequate steps to remedy the violations suffered by Agiza and al-Zari. Agiza remains in a Cairo prison following a patently unfair trial. Al-Zari was released from custody in late 2003, but remains under surveillance by the police. It is worth noting, in considering this case, that Sven-Olof Petersson, former Political Director at Sweden's Ministry for Foreign Affairs, acknowledged in a May 2005 hearing that the original information implicating Agiza and al-Zari was provided by the CIA, and that some time after the September 11 attacks a high-level official with the U.S. embassy in Sweden expressed concern that the two men were still at large.

I would like to emphasize that extraordinary rendition, with or without diplomatic assurances, involves serious abuses of human rights. The absolute prohibition against torture, including the prohibition against returning a person to a place where he or she would be at risk of torture or ill-treatment, is a cornerstone of human rights protection. But perhaps no practice so fundamentally challenges the foundations of human rights law as the long-term, secret, incommunicado detention of terrorist suspects in "undisclosed locations." Such "disappearances" violate a range of fundamental rights and invariably increase the likelihood of torture. Indeed, some of these detainees have reportedly been subject to water-boarding (a form of mock execution) and other forms of torture and abuse.

Human Rights Watch recently issued a list of twenty-six men who we believe are being held by the United States in secret detention.<sup>1</sup> The U.S. government has acknowledged the detention of several of them, although not every person on our list. But even while it acknowledges holding them, the United States has refused to disclose their whereabouts and has denied them all contact with their families, with lawyers, or with the International Committee of the Red Cross. To a much greater extent than even the Guantanamo detainees, the U.S. has kept these so-called “high value” detainees in a hidden, illegal limbo. Almost nothing about their present circumstances has been publicly disclosed.

In closing, I would like to note that, as some members of this committee will remember from the ECHELON investigation, investigating the activities of intelligence services is a profoundly challenging task. It is equally difficult to investigate enforced disappearances. Besides insisting on the cooperation of European member states, this committee will need to follow every lead, every clue that becomes available, and will also need to pay due regard to compelling circumstantial evidence.<sup>2</sup> As the Inter-American Court of Human Rights emphasized in a landmark case involving enforced disappearances: “[c]ircumstantial or presumptive evidence is especially important in allegations of disappearances, because this type of repression is characterized by an attempt to suppress all information about the kidnapping or the whereabouts and fate of the victim.”<sup>3</sup>

Thank you again for inviting me to speak with you about these important matters.

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<sup>1</sup> See Human Rights Watch, List of “Ghost Prisoners” Possibly in CIA Custody, November 30, 2005 (<http://hrw.org/english/docs/2005/11/30/usdom12109.htm>).

<sup>2</sup> As noted by the temporary committee that investigated the ECHELON program, in describing why it is necessary to work on the basis of clues, “[i]t is only natural that secret services do not disclose details of their work. Consequently there is, at least officially, no statement by the foreign intelligence services of the UKUSA states that they work together to operate a global interception system. The existence of such a system thus needs to be proved by gathering as many clues as possible, thereby building up a convincing body of evidence.”

<sup>3</sup> Inter-American Court of Human Rights, Velasquez Rodriguez case, Judgment of July 29, 1988:

130. The practice of international and domestic courts shows that direct evidence, whether testimonial or documentary, is not the only type of evidence that may be legitimately considered in reaching a decision. Circumstantial evidence, indicia, and presumptions may be considered, so long as they lead to conclusions consistent with the facts.

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