



## **International Commission of Jurists**

### **Submission to the Human Rights Council Universal Periodic Review of Poland**

**November 2007**

#### **Introduction**

The International Commission of Jurists (ICJ) welcomes this opportunity to contribute to the Human Rights Council's first round of the Universal Periodic Review. This submission will focus on an issue which should be central to the Council's review of human rights in Poland: the existence of at least one CIA-run secret detention centre in Poland, and of renditions of suspects to and from this centre, between 2003 and 2005. These systematic violations of human rights, as well as Poland's failure to acknowledge or investigate its officials' involvement in renditions and secret detentions, to hold those responsible to account, or to provide reparations to the victims, raise serious and continuing human rights concerns. At this, the first consideration by the Human Rights Council of these matters, it is vital that they be addressed thoroughly and dispassionately, in terms of Poland's international legal obligations, in particular under UN human rights treaties.

In addition, the ICJ wishes to draw the attention of the Council to recent difficulties in the judicial appointments process in Poland, which raise concerns regarding judicial independence.

#### **I. Secret Detentions and Renditions on Polish territory**

##### **Poland and the US programme of renditions and secret detentions**

Since September 2001, both renditions and secret detentions have been an acknowledged part of the United States' counter-terrorism strategy.<sup>1</sup> "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.<sup>2</sup> It has been acknowledged by the United States that some of the "high value detainees" subject to

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<sup>1</sup> 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.

<sup>2</sup> Reports of the Canadian Commission of Inquiry into actions of Canadian Officials relating to Maher Arar, 12 December 2006, [www.ararcommission.ca](http://www.ararcommission.ca); Amnesty International, Partners in Crime, Europe's Role in Renditions, Eur 01/008/2006.

rendition have been held in secret detention centres operated by the CIA. In June 2007, persistent allegations that CIA-run secret detention centres existed in Poland were authoritatively confirmed by the second report of Senator Marty for the Parliamentary Assembly of the Council of Europe (PACE), which drew on multiple sources to conclude that a secret detention centre had existed at Stare Kiejkuty, a military base located near Szymany airport between 2003 and 2005,<sup>3</sup> and that renditions of suspects had taken place to and from that airport.<sup>4</sup>

The investigation of Senator Marty found that the secret detentions in Poland took place on the basis of an agreement negotiated with the US in 2002 and early 2003.<sup>5</sup> The investigation found evidence that, in operating the detentions, the CIA worked with the Polish Military Information Services<sup>6</sup> which provided security and imposed “buffer zones” around CIA operations,<sup>7</sup> and that the Polish Air Navigation Services Agency played an important role in disguising flight records of aircraft involved in renditions.<sup>8</sup> Senator Marty also concluded that some individual high office-holders knew about and authorised Poland’s role in the CIA’s operation of secret detention facilities, from 2002 to 2005, including the President of the Republic of Poland, the Chief of the National Security Bureau, the Minister of National Defence and the Head of Military Intelligence.<sup>9</sup>

In a Resolution adopted following Senator Marty’s report,<sup>10</sup> the Parliamentary Assembly of the Council of Europe stated that it “now considers as established with a high degree of probability that ... secret detention centres operated by the CIA have existed for some years in [Poland]” and that “these secret places of detention formed part of the “HVD” (High Value Detainee) programme publicly referred to by the President of the United States on 6 September 2006.”<sup>11</sup>

### **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

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<sup>3</sup> Committee on Legal Affairs and Human Rights, *Secret Detentions and illegal transfers of detainees involving Council of Europe Member States: Second report*, Doc.11302rev.Explanatory Memorandum by Mr Dick Marty, Rapporteur, paras. 126- 127, 197 – 200. The report built on an earlier report by Senator Marty of June 2006. A Committee of the European Union Parliament, the Temporary Committee on the Alleged Use by the CIA of European Countries for the Transfer and Illegal Detention of Prisoners (TDIP), reported in 2006: 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

<sup>4</sup> Second report of Senator Marty, op cit, para 181.

<sup>5</sup> Ibid, para.126

<sup>6</sup> ibid, para.168

<sup>7</sup> ibid, para.170

<sup>8</sup> ibid, paras.184-186.

<sup>9</sup> ibid, para.174.

<sup>10</sup> Resolution 1562 (2007) on Secret Detentions and Illegal Transfers of Detainees involving Council of Europe Member States, para.4

<sup>11</sup> The Polish delegation to PACE issued a dissent to the Marty report, rejecting its findings. Doc.11302 Addendum, 19 June 2007.

centres in Poland.<sup>12</sup> 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.<sup>13</sup> The European Union Parliament found that the inquiry had been conducted “speedily and in secret, in the absence of any hearing or testimony and subject to no scrutiny.”<sup>14</sup> No further national level investigations have been conducted into allegations of renditions and secret detentions in Poland.

### **Compliance with UN human rights obligations**

Secret detentions and renditions as have been operated by the CIA involve multiple violations of human rights protected by UN human rights treaties, including the right to liberty and security of the person; the freedom from torture and cruel, inhuman or degrading treatment and the right to an effective remedy.<sup>15</sup> Prolonged *incommunicado* secret detention has been found by the Committee against Torture to amount in itself to a violation of the Convention Against Torture,<sup>16</sup> and secret detentions such as those at Stare Kiejkuty amount to disappearances.<sup>17</sup> Persons held in such circumstances, outside the protection of the law, with no possibility to challenge the legality of their detention, are highly vulnerable to torture, cruel and inhuman or degrading treatment.

Co-operation in, or tolerance of, renditions and secret detentions on the territory of the State, violates positive obligations to protect against violations of human rights, imposed by the International Covenant on Civil and Political Rights (ICCPR),<sup>18</sup> the Convention Against Torture (CAT),<sup>19</sup> as well as under the European Convention on Human Rights (ECHR), to which Poland is a party.<sup>20</sup> In allowing and facilitating renditions and secret detentions on its territory, Poland has failed to comply with these positive obligations to protect. These obligations apply irrespective of agreements, such as the NATO Status of Forces Agreement,

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<sup>12</sup> 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.

<sup>13</sup> European Parliament Resolution op cit, para.170; PACE, Explanatory Memorandum by Senator Marty, op cit, para.252.

<sup>14</sup> European Parliament Resolution, op cit, para.170.

<sup>15</sup> On violations of human rights involved in renditions, see for example, *Agiza v Sweden*, Committee against Torture, communication No.233/2003; *Alzery v Sweden* Communication No 1416/2005, Sweden 06/11/2006, CCPR/C/88/D/1416/2005

<sup>16</sup> 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.

<sup>17</sup> United Nations Convention on Enforced Disappearances, adopted by the Third Committee of the UN General Assembly on 13 November 2006, Article 2. See further the UN Declaration on the Protection of all persons from Enforced Disappearance, preamble, para.3, Inter-American Convention on Forced Disappearance of Persons, Article II.

<sup>18</sup> Articles 2, 7 and 9 of the 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, 15; *Delgado Paéz v Columbia* Communication.No.195/1985.

<sup>19</sup> Article 2 CAT.

<sup>20</sup> *Osman v UK*, (2001) 29 EHRR 245; *X and Y v the Netherlands*, (1985) 8 EHRR 235.

which 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.<sup>21</sup>

### **Obligations of investigation and reparation**

Under the ICCPR and CAT, credible allegations of serious breaches of rights including the prohibition on torture and cruel, inhuman or degrading treatment, and disappearances, must be subject to independent and effective investigation.<sup>22</sup> Such investigations should be capable of bringing to justice those responsible for the violation.<sup>23</sup> Following the 2007 report of Senator Marty, there can now be no doubt that in order to comply with its obligations under the ICCPR and Article 12 CAT, Poland must 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. Since the inquiries, which the government claims have taken place, have been entirely secret, and no information has been made available about their methodology or conclusions,<sup>24</sup> it does not appear that the investigations undertaken so far by the Polish authorities satisfy these obligations.

In addition to investigation, victims of renditions and secret detentions are entitled to other measures of reparation for violations of their human rights, including restitution and compensation, and measures of rehabilitation, satisfaction and guarantees of non-repetition.<sup>25</sup> Such obligations attach to States that have aided and assisted in a violation.

### **Recommendations**

It is now beyond doubt that serious and systematic violations of human rights have taken place in Poland as part of the US-led programme of renditions and secret detentions. Although the Committee Against Torture expressed its concerns during the consideration of Poland's periodic report in May this year,<sup>26</sup> the Human Rights Council has yet to seek adherence to the CAT's recommendations by Poland. At this Universal Periodic Review of Poland, therefore, it is essential that the Council carefully scrutinises this issue and produces

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<sup>21</sup> European Court of Human Rights, *Mathews v UK*, App No 24833/94, *Bosphorus v Ireland*, App No 45036/98, *M and Co. v Germany*, App No 13258/87.

<sup>22</sup> Article 12 CAT; Article 2(3) ICCPR; HRC General Comment No 6 on Article 6 ICCPR, HRI/GEN/1/Rev. para.4; *Rodriguez v Uruguay*, CCPR/C/51/D/322/1988; *Almeida de Quinteros v Uruguay* CCPR/C/19/D/1981.

<sup>23</sup> CAT Articles 5, 6, 12, 13; ICCPR Article 2(3); HRC, General Comment 31, The nature of General Legal Obligations imposed on States Parties to the Covenant, 26/05/04, CCPR/C/21/Rev.1/Add.13, Paras. 15, 18.

<sup>24</sup> The first report of the Marty inquiry 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.

<sup>25</sup> UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Human Rights Law, A/60/509/Add.1, 21 March 2006, Principle XI. HRC, General Comment 31, *op cit*, para.15.

<sup>26</sup> CAT/C/POL/CO/4, 16 May 2007. Para.15.

clear conclusions and recommendations, based on the international human rights obligations of Poland.

**The ICJ therefore calls on the Human Rights Council to:**

- **Condemn the serious and systematic violations of UN human rights treaty obligations that have taken place in Poland through renditions and secret detentions;**
- **Urge Poland to establish an independent inquiry, with full investigative powers to require the attendance of persons and the production of documents, to investigate allegations of the involvement of Polish officials in renditions and secret detentions;**
- **Ensure the accountability, including where appropriate through the criminal justice process, of those persons responsible for renditions and secret detentions on Polish territory;**
- **Provide measures of reparation for the victims of renditions and secret detentions in Poland;**
- **Take measures to reform law and practice, including review and accountability of the military intelligence services, to protect against future violations of human rights of this kind, and thereby comply with Poland's positive obligations to protect human rights on its territory.**

## **II. Judicial Appointments**

The National Judicial Council, the independent body that makes recommendations to the President of the Republic of Poland for judicial appointments, has provided an important safeguard for judicial independence in Poland. The ICJ has therefore been concerned that, in a decision of July 2007, the President issued a decision to reject the National Judicial Council's recommendation of nine candidates for judicial appointments.<sup>27</sup> No reasons were provided for this decision. The decision not to appoint the candidates was made more than a year after the recommendation of the National Judicial Council.

### **Compliance with the UN Human Rights Obligations**

A strong and independent judiciary is essential to uphold the rights enshrined in UN human rights treaties, and in particular is fundamental to the right to a fair hearing under Article 14 ICCPR. The UN Basic Principles on the Independence of the Judiciary emphasise the need for safeguards against improper motives being taken into account in judicial appointments (Principle 10).

It is not the mere existence of an advisory body, but the practical implementation of its recommendations, which protects judicial independence and supports public confidence in the institution of the judiciary. As a general principle, recommendations of an independent advisory body for appointment to judicial positions should be followed by the executive in practice.<sup>28</sup> They should only be departed from in exceptional circumstances, and only where

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<sup>27</sup> See statement of ICJ Poland, attached.

<sup>28</sup> Council of Europe Recommendation No.R (94) 12, Principle 12.c.; European Charter on the Statute for Judges and Explanatory Memorandum (Council of Europe): para. 3.1 and Explanatory Memorandum.

clear reasons are provided for the decision. Without clear reasons for decisions not to appoint, there is a risk that public confidence in the appointments system will be undermined. In addition, the ICJ notes that the considerable delay in the decision-making process in this case, and the uncertainty this creates, may place undue pressure on candidates, in particular those who already serve as judges.

## **Recommendations**

### **The ICJ calls on the Human Rights Council to:**

- **recommend that full reasons for the decision of the President be provided;**
- **affirm the importance of the National Judicial Council as a guarantor of judicial independence in Poland, and recommend that its decisions should only be departed from in exceptional circumstances, and where full reasons are given;**
- **recommend that decisions on appointment should be made promptly following recommendations of the National Judicial Council.**

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See also enclosure