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**Human Rights Committee, 6<sup>th</sup> Periodic Report of Poland,  
Submission on the List of Issues**

**Submission of the International Commission of Jurists  
and the Helsinki Foundation for Human Rights  
*January 2010***

**Introduction**

The International Commission of Jurists (ICJ) and the Helsinki Foundation for Human Rights (HFHR) welcome this opportunity to contribute to the examination of the 6<sup>th</sup> periodic report of Poland under the International Covenant on Civil and Political Rights (ICCPR) in advance of the consideration of the list of issues. This submission will address the consequences for Poland's obligations under the Covenant of allegations of CIA-run secret detentions in Poland, and of renditions of suspects to and from this centre, established with a high degree of probability to have taken place between 2003 and 2005. The systematic violations of human rights entailed in the renditions and secret detentions system, as well as weaknesses in investigations into involvement in renditions and secret detentions, and the lack of a system of reparations for the victims, raise serious and continuing human rights concerns.

Following the change of administration in the United States, and as more information regarding the system of secret detention centres, and the interrogation techniques used in the centres, is revealed, there is now a need for all states implicated in this system, including Poland, to address past violations of human rights resulting from their alleged involvement, as well as to take measures to prevent their reoccurrence. The need for such measures, which are required by obligations under Articles 2, 7 and 9 of the Covenant, was emphasised by the recent report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights, established by the ICJ, which highlighted the serious human rights violations caused by illegal cooperative intelligence operations to counter terrorism, and urged states to provide effective remedies and reparation for such violations, and to "conduct thorough and independent investigations

into allegations of human rights violations, such as renditions and secret detentions or ill-treatment.”<sup>1</sup>

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

Between 2001 and 2008, renditions and secret detentions were an acknowledged and central part of the United States’ counter-terrorism strategy.<sup>2</sup> “Renditions” or “extraordinary renditions” as practiced by the US during that time, involved the seizure and transfer of suspects, outside of the normal legal procedures of extradition, deportation, expulsion or removal, without due process safeguards, for purposes of interrogation.<sup>3</sup> It is now accepted that “high value detainees” subject to rendition were held in secret detention centres or “black sites” located outside US territory and operated by the CIA, where they were subjected to special interrogation techniques which amounted to torture.<sup>4</sup> The locations of CIA secret detention centres have never been officially disclosed. However, in June 2007, persistent allegations that a CIA-run secret detention centre 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>5</sup> and that renditions of suspects had taken place to and from that airport.<sup>6</sup>

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<sup>1</sup> *Assessing Damage, Urging Action, Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and human rights*, 2009, p.166.

<sup>2</sup> President Bush announced the suspension of the secret detention programme in September 2006 (thereby officially acknowledging its existence for the first time) but the programme was revived in July 2007 by Exec. Order No. 13,440, 72 Fed. Reg. 40,707 (July 24, 2007), <http://www.fas.org/irp/offdocs/eo/eo-13440.htm> ; See Report of the US House of Representatives, *Reining in the Imperial Presidency: Lessons and Recommendations Relating to the Presidency of George W Bush*, House Committee of the Judiciary Majority Staff Report, 13 January 2009, Section II; Shane, Johnston, & Risen, “Secret U.S. Endorsement of Severe Interrogations,” *N.Y. Times*, Oct. 4, 2007, [www.nytimes.com/2007/10/04/washington/04interrogate.html?\\_r=1&oref=slogin](http://www.nytimes.com/2007/10/04/washington/04interrogate.html?_r=1&oref=slogin). The policy of secret detentions was officially abandoned by the CIA in April 2009: *Message from the Director: Interrogation Policy and Contracts*, April 9 2009, <https://www.cia.gov/news-information/press-releases-statements/directors-statement-interrogation-policy-contracts.html>

<sup>3</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. However the US under the Bush administration denied that it rendered suspects to countries where it believed they would be tortured: Condoleezza Rice, Remarks on her departure for Europe, 5 December 2005.

<sup>4</sup> On 24 August 2009, the US Government released documents, including a 2004 CIA Inspector General’s report, which provide a detailed official account of the CIA’s detention, interrogation and rendition programmes and describe the use of abusive interrogation techniques, including “waterboarding”, mock executions, and threats to kill or rape detainees’ family members; CIA Inspector General, Special Review, Counter-terrorism Detention and Interrogation Activities, (September 2001 – October 2003) (2003 – 7123-IG) 7 May 2008. The ICRC, in a 2007 report on the treatment of 14 “high-value” detainees, leaked to the press in March 2009, described consistent accounts of interrogation techniques which the ICRC considered amounted to torture: New York Review of Books, *US torture: voices from the Black Sites*, 9 April 2009

<sup>5</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

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>7</sup> The investigation found evidence that, in operating the detentions, the CIA worked with the Polish Military Information Services (Wojskowe Służby Informacyjne, dissolved in 2007)<sup>8</sup> which provided security and imposed “buffer zones” around CIA operations,<sup>9</sup> and that the Polish Air Navigation Services Agency played an important role in disguising flight records of aircraft involved in renditions.<sup>10</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>11</sup>

In a Resolution adopted following Senator Marty’s report,<sup>12</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>13</sup>

Subsequently, investigations by Polish media have appeared to corroborate these findings, disclosing documents and witness statements which allegedly attest that part of the Stare Kiejkulty base was leased to the CIA, and that twenty secret service agents were assigned to assist the US in counter-terrorism activities.<sup>14</sup>

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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>6</sup> Second report of Senator Marty, op cit, para 181.

<sup>7</sup> Ibid, para.126

<sup>8</sup> ibid, para.168

<sup>9</sup> ibid, para.170

<sup>10</sup> ibid, paras.184-186.

<sup>11</sup> ibid, para.174.

<sup>12</sup> Resolution 1562 (2007) on Secret Detentions and Illegal Transfers of Detainees involving Council of Europe Member States, para.4

<sup>13</sup> The Polish delegation to PACE issued a dissent to the Marty report, rejecting its findings. Doc.11302 Addendum, 19 June 2007.

<sup>14</sup>Euobserver.com, *Polish media uncover evidence of CIA prison*, 15 April 2009; Der Spiegel online international, *New Evidence of Torture Prison in Poland*, 27 April 2009; UPI.com, *Polish reporters claim CIA jail evidence*, 15 April 2009 (among others in Rzeczpospolita on 15th April and Der Spiegel on 27th April 2009). See further, BBC news, *Polish agents tell of CIA jails*, 6 September 2008.

## **Investigation 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.<sup>15</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>16</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>17</sup>

A criminal investigation opened following the parliamentary inquiry yielded no results, but in August 2008 it was announced that a further prosecutor’s investigation had been begun, following new evidence presented by a member of parliament. The investigation remains ongoing. Little information has been publicly available as to the scope or progress of the investigation, which is classified as secret. According to media reports, it has been limited to questions of state officers acting beyond their powers and the loss of sovereign power over a section of Polish territory.<sup>18</sup> The ICJ and HFHR are concerned that the scope of the investigation may not extend to acts involving international crimes or serious violations of human rights. Both torture<sup>19</sup> and unlawful detention<sup>20</sup> are offences under the Polish criminal code, and both the use of torture and unlawful deprivation of liberty constitute breaches of the Constitution of the Republic of Poland (articles 40 and 41) as well as Poland’s international law obligations.

## **Positive Obligations to Protect Covenant Rights**

Secret detentions and renditions as they have been operated by the CIA involve multiple violations of human rights protected by the Covenant, 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>21</sup> Prolonged *incommunicado* and secret detentions have been found by the Committee against Torture to amount in themselves to

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<sup>15</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>16</sup> European Parliament Resolution op cit, para.170; PACE, Explanatory Memorandum by Senator Marty, op cit, para.252.

<sup>17</sup> European Parliament Resolution, op cit, para.170.

<sup>18</sup> Gazeta Wyborcza.pl, *Government Triggers Official Inquiry into Alleged CIA Prisons in Poland*, 2 September 2002

<sup>19</sup> Art. 123 par. 2 of the Criminal Code

<sup>20</sup> Art. 189 of the Criminal Code

<sup>21</sup> HRC, Concluding Observations on the United States of America, CCPR/C?USE/CO/3/Rev.1, 11 December 2006; *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

violations of the Convention against Torture,<sup>22</sup> and secret detentions such as those that allegedly took place at Stare Kiejkuty amount to enforced disappearances.<sup>23</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. In the case of CIA run secret detention centres, there is clear evidence that US policy and practice was to subject the high value detainees held there to “enhanced interrogation techniques” that amount to torture.<sup>24</sup>

Co-operation in, or tolerance of, practices of torture, secret detention or rendition on the territory of the State, violate positive obligations to protect against violations of the Covenant rights under Articles 2, 7 and 9,<sup>25</sup> as well as obligations under the Convention Against Torture (CAT),<sup>26</sup> and the European Convention on Human Rights (ECHR),<sup>27</sup> to which Poland is a party. If Poland has co-operated in or tolerated such practices on its territory, it has failed to comply with these positive obligations to protect. These obligations apply irrespective of agreements, such as the NATO Status of Forces Agreement, 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>28</sup>

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

Under the Covenant, credible allegations of serious breaches of rights including the prohibition on torture and cruel, inhuman or degrading treatment, and disappearances, must be subject to prompt, thorough, independent and effective independent and investigation.<sup>29</sup> Where such investigations reveal violations of Covenant rights, those

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<sup>22</sup> Committee Against Torture, Conclusions and recommendations of the Committee against Torture, CAT/C.USA.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>23</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>24</sup> CIA Inspector General, Special Review, Counter-terrorism Detention and Interrogation Activities, (September 2001 – October 2003) (2003 – 7123-IG) 7 May 2008; New York Review of Books, *US torture: voices from the Black Sites*, 9 April 2009.

<sup>25</sup> 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; *Delgado Paéz v Columbia* Communication.No.195/1985.

<sup>26</sup> Article 2 CAT.

<sup>27</sup> *Osman v UK*, (2001) 29 EHRR 245; *X and Y v the Netherlands*, (1985) 8 EHRR 235.

<sup>28</sup> European Court of Human Rights, *Matthews v UK*, App No 24833.94, *Bosphorus v Ireland*, App No 45036.98, *M and Co. v Germany*, App No 13258/87.

<sup>29</sup> Article 2(3) ICCPR; HRC General Comment No 6 on Article 6 ICCPR, HRI/GEN/1/Rev.4; *Rodriguez v Uruguay*, CCPR/C/51/D/322/1988; *Almeida de Quinteros v Uruguay* CCPR/C/19/D/1981. The nature of General Legal Obligations imposed on States Parties to the Covenant, 26/05/04, CCPR/C/21/Rev.1/Add.13, Para. 15.

responsible must be brought to justice.<sup>30</sup> The secrecy surrounding both the Parliamentary investigation<sup>31</sup> and the current criminal investigation<sup>32</sup> raise doubts as to whether Poland has met its obligation to undertake a thorough, independent and transparent investigation into violations of Covenant rights in renditions and secret detentions in Poland.

In addition to investigation, States that have carried out or have aided or assisted renditions or secret detentions have obligations to provide victims with 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>33</sup>

## **Recommendations**

**In preparing the list of issues on the Polish periodic report, the Human Rights Committee should:**

- **Address the serious and systematic violations of Covenant rights that have been established with a high degree of certainty to have taken place in Poland through renditions and secret detentions, in violation of Poland's obligations to protect those rights within its jurisdiction;**
- **Request that the government clarify the scope of the current criminal investigation into renditions and secret detentions, and in particular whether it is confined to violations of national sovereignty, or whether it expressly encompasses investigation of crimes of torture, enforced disappearance and other equivalent crimes under Polish criminal law;**
- **Address the need for thorough, effective and independent investigation of the allegations of secret detention and rendition on Polish territory, and for those responsible to be brought to justice;**
- **Consider what systems are in place if the independent investigation confirms Poland's engagement in the secret renditions programme, to allow for reparation for the victims of renditions and secret detentions in Poland, including restitution and compensation, and measures of rehabilitation, satisfaction and guarantees of non-repetition;**
- **Address the need for Poland to take measures to reform law and practice, including review and accountability of the intelligence services, and review of the terms of status of forces agreements for the operation of foreign military**

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<sup>30</sup> 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, Para.18.

<sup>31</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>32</sup> euobserver.com, *Poland in fresh probe on CIA jail claims*, 26 August 2008

<sup>33</sup> ICCPR Article 2.3; HRC, General Comment 31, *op cit*, paras.15-16. 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.

**or 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 within its jurisdiction.**