

Extended recommendations for European governments and institutions on rendition and secret detention

All states and interstate organizations in Europe should take concrete action to ensure that the truth about the US programme of renditions, secret detention and enforced disappearance is exposed, that those responsible for human rights violations are brought to justice, and that effective control is established over foreign and national security services so that such violations never happen again.

European states should:

1. CONDEMN

European states should publicly state that renditions, secret detention and enforced disappearance will not be permitted and issue a clear and forceful public declaration calling on the US authorities to end the practice of secret detention and renditions and to make public the full truth and details of the programme.

2. INVESTIGATE

All European states should initiate effective, independent and impartial investigations into the role of their own agents and officials, as well as the use of state territory¹ by agents of any state, in connection with unlawful transfers, secret detention, enforced disappearance, and other human rights abuses. Where crimes under international or national law are at issue, the investigations should include criminal investigations.

- a) The persons responsible for and those carrying out the investigation must be independent (hierarchically, institutionally and practically) from the individuals, agencies, and institutions under investigation, including where necessary complete independence from the executive.
- b) Those carrying out the investigation should be given powers to effectively investigate action taken by state agents, either domestic or foreign, linked to any cases of rendition, including the power to compel the preservation and production of documents, testimony, and other relevant evidence.
- c) The investigation should be capable of leading to a determination of whether any violations of human rights or national laws have occurred, and to the identification of those responsible for the violations, as well as reviewing any policies and practices that may be relevant.

¹ i.e. all territory within the state or subject to its control, including its airspace, waters and all airports and military bases whether or not leased or used by other states or inter-state organizations.

- d) The investigations' procedures and the nature of the evidence received should be transparent; in particular, victims and their families should have an opportunity to participate in the proceedings and to be kept informed of their progress.
- e) Hearings should be public except where specific evidence or submissions cannot be dealt with in open hearings; any assertion of need for confidentiality, including on the ground of national security or state secrecy, should be determined by an authority which is independent of the executive.
- f) The scope, methods and findings, including a detailed summary of the facts and evidence on which the findings are based, should be made public.
- g) Take all means necessary to ensure that no claim of confidentiality on grounds of national security, state secrecy, diplomatic relations, or witness protection, is or may be asserted as justification for failure to disclose information or evidence of serious human rights violations, in any investigation or inquiry, prosecution, hearing of a human rights complaint, civil or administrative case. All claims for secrecy of possibly relevant information or evidence on grounds of national security, state secrecy, diplomatic relations, or witness protection, should be subject to substantive scrutiny and determination by an impartial authority independent of the executive, which should have the power to order disclosure if it finds the information or evidence to concern a serious human rights violation.
- h) The investigating body should refer appropriate information regarding criminal conduct and human rights violations to the relevant authorities.

3. BRING TO JUSTICE

European states must ensure that anyone reasonably suspected of being responsible for human rights violations in connection with renditions, including crimes under international law such as torture and enforced disappearances, or for aiding or abetting these crimes, is brought to justice. States must forward all requests for extradition or other mutual legal assistance regarding such crimes, even if they believe the recipient state may not respond favourably or may invoke immunities.

4. ENSURE ACCOUNTABILITY OF INTELLIGENCE AGENCIES

European states should ensure the accountability of domestic and foreign intelligence agencies by:

- a) taking immediate steps to develop and implement a regulatory framework governing the activities of national and foreign (civilian and military) intelligence services, so as to provide effective safeguards against human rights violations including through independent and publicly accountable monitoring, scrutiny, oversight and review;

- b) prohibiting the practice of mutual assistance (including providing information to foreign governments, posing questions to detainees held abroad, participating in interrogations) in circumstances where there is a substantial risk that such co-operation would contribute to unlawful detention, torture or other ill-treatment, enforced disappearance, unfair trial or the imposition of the death penalty;
- c) prohibiting in practice the use, in judicial or other proceedings, of information or evidence obtained by torture or other ill-treatment or other serious violations of human rights;
- d) providing protection against reprisals, disciplinary proceedings, or prosecution, for individuals who in good faith disclose information about serious human rights violations, which would otherwise be suppressed from independent and publicly accountable scrutiny and review.

5. PREVENT SECRET DETENTION AND RENDITION

European States must take effective measures to prevent renditions, secret or arbitrary detention, enforced disappearances or torture or other ill-treatment taking place on or through the territory of the state or territory subject to its control, (including airspace and waters) and by agents of the state in any place. Such effective measures should include:

- a) not transferring anyone to the custody of the agents of another state, or facilitating such transfers, unless the transfer is carried out under judicial supervision and is in line with international standards;
- b) ensuring that no one is forcibly returned or transferred to any place where there are substantial grounds to believe that the person would be at risk of serious human rights violations or the death penalty; and not seeking or accepting “diplomatic assurances” where there are substantial grounds for believing that a person for whom a forcible return or transfer is contemplated would be at risk of serious human rights violations, including torture or other ill-treatment;
- c) **preventing secret detention** on its territory. Measures should include:
 - i. prohibiting the holding of an individual deprived of his or her liberty anywhere other than in an officially recognized place of detention;
 - ii. ensuring that all persons detained in connection with terrorism are brought before a judicial authority promptly and can effectively challenge the lawfulness of their detention before a court;
 - iii. requiring in all cases that accurate information on the status and whereabouts of each individual deprived of his or her liberty is promptly given to his or her relatives or other persons of the detainee’s confidence, and his or her lawyer;

- iv. establishing, where it does not already exist, an independent and impartial national expert body mandated to make unannounced visits to any place where anyone is or may be deprived of their liberty;
 - v. ratifying and implementing the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
 - vi. reviewing and amending bilateral or multilateral military arrangements or other agreements which could impede the state's ability to meet its international human rights obligations in practice;
- d) **preventing renditions** on or through its territory. Measures should include:
- i. ensuring enforcement of the requirement that operators of any aircraft used to carry out activities of intelligence agencies declare that the aircraft is being used for state purposes, even if the aircraft in question is chartered from a private company, including by refusing to grant further overflight or landing permission to those state agencies and companies that have been identified, based on credible information, as continuing to violate this requirement;
 - ii. amend any existing blanket overflight clearances granted to state aircraft to include prior agreement to submit to requirements for landing, search and other inspection measures;
 - iii. requiring that operators of aircraft, watercraft, and other vehicles seeking permission to transit or land on state territory indicate whether any passengers on board are deprived of their liberty, and if so, their status, destination and the legal basis for their transfer;
 - iv. ensure that an effective system is in place for inspection by independent officials of aircraft, watercraft, and other vehicles known or suspected to be carrying anyone unlawfully deprived of their liberty, and that others reasonably suspected of being used from time to time for such purposes (including all aircraft operated by or for the CIA) are subject to a system of random inspections, to verify the legality of the detention and that detainees are not being ill-treated;
 - v. implementing a specific programme at the national or regional level whereby intelligence agencies, law enforcement and aviation authorities seek proactively to identify companies and aircraft reasonably suspected to be misrepresenting their status or otherwise involved in human rights violations, without relying exclusively on civil society to provide such information.

6. PROVIDE REPARATIONS

European states should ensure that all victims promptly receive adequate reparation from the state/s responsible, including restitution, full compensation, rehabilitation, and satisfaction and that measures are taken to ensure that there is no repetition of such human rights violations in the future.

The Council of Europe:

1. The Committee of Ministers of the Council of Europe should publicly and unequivocally condemn renditions, secret detentions and enforced disappearances, and the human rights violations that have taken place in the context of the US-led programmes;
2. all relevant bodies and mechanisms of the Council of Europe, including the Committee of Ministers, the Parliamentary Assembly (PACE), the Secretary General, the Commissioner for Human Rights and the European Committee for the Prevention of Torture (CPT), should continue working on the issues related to renditions, secret detention and enforced disappearance. Such work should include:
 - Calling on Council of Europe member states to carry out thorough, independent and impartial investigations without delay;
 - monitoring and publicly reporting on developments;
3. should ensure that PACE monitors and publicly reports on national investigations and inquiries and is provided with sufficient resources to do so;
4. should ensure that the relevant bodies and mechanisms of the Council of Europe take all necessary action to ensure that the shortcomings in law and practice that have facilitated secret detention and renditions are addressed regionally and by the member states (including by implementing the recommendations of the PACE and the Secretary General).

The European Union:

1. The EU Council should condemn unequivocally, in the development of the EU-wide counter-terrorism policy, renditions, secret detention and enforced disappearance as unlawful;
2. all EU institutions, agencies and bodies should implement the recommendations of the European Parliament and the Council of Europe reports on the alleged use of European countries by the CIA for transporting and illegally detaining suspects, and ensure that they make public and review any current or past agreements or other discussions with the US authorities relevant to renditions;

3. the European Parliament should adopt a resolution on the follow-up to its report and continue pressing the EU Member States and the Council for accountability;
4. the EU Council should promote clear and binding safeguards against the use of the airspace or airports of EU member states for unlawful detention and rendition purposes.

NATO and NATO Member states should:

1. Reveal the full terms of the 4 October 2001 agreed measures and any other arrangements which may have facilitated the unlawful actions of the CIA in Europe;
2. review any agreed measures and NATO Status of Forces agreements across Europe to ensure that European states retain sufficient control of such territory and individuals to fully meet their positive obligations under the European Convention on Human Rights;
3. ensure that all activities undertaken individually and collectively are consistent with the respect for and protection of human rights.