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Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

<https://www.hrw.org/news/2015/04/20/letter-members-eu-genocide-network-discussing-ongoing-and-potential-investigations>

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Re: Special meeting of the European Network of Contact Points to discuss ongoing and potential investigations and prosecutions following the release of the US Senate Intelligence Committee Report Summary

Dear National Contact Points,

We write to you ahead of the 18th meeting of the European Network of Contact Points in respect of persons responsible for genocide, crimes against humanity, and war crimes (EU Genocide Network or Network) in order to draw your attention to the US Senate Select Committee on Intelligence's Summary of its Study of the Central Intelligence Agency's (CIA) Detention and Interrogation Program (Senate Report Summary or Senate Summary), which was released on 9 December 2014.^[1] While we call on US authorities to release the full report, we welcome the release of the Senate Summary^[2] and urge you, in your capacity as contact points of the EU Genocide Network, to call for a special meeting of the Network to discuss the contents of the Senate Summary, its implications for contact points and their respective jurisdictions, and the Network's role in seeking accountability for the crimes highlighted in the Senate Summary.

Our organisations believe that a special meeting of the Network is warranted given that EU Member States may have jurisdiction over crimes documented in the Senate Summary and that several Member States are currently looking into or have already looked into these and related crimes. The Senate Summary includes a significant amount of new information that can be highly relevant for investigations by national authorities in EU Member States. In addition, evidence pertinent to these crimes, including victims and witnesses, may be within the jurisdiction of EU Member States, which in some instances obliges prosecutorial authorities to investigate and, where appropriate, prosecute. The close linkages between, and involvement of, some EU Member States and the United States in the CIA program make a meeting appropriate to ensure that accountability extends to all those who bear responsibility for serious abuses.^[3]

The Senate Report Summary is a 525-page partially redacted executive summary, together with findings and conclusions, of a 6,700-page still-classified report that documents the large-scale use of torture and ill-treatment by CIA officials between late 2001 and early 2009. It provides significant new information about the CIA program yet confirms what previous reports^[4] had found: the CIA established a detention and interrogation program that included the use of a range of enhanced interrogation techniques amounting to torture and ill-treatment committed in secret prisons around the world, including in Europe, as well as at the US military detention facility at Guantanamo Bay, Cuba. According to the Senate Report Summary, the torture techniques used were far more brutal, systematic, and widespread than previously acknowledged and included prolonged sleep deprivation, forced rectal feeding or rectal rehydration, waterboarding, the use of painful stress positions, and extensive exposure to bright light and noise. The Senate Summary revealed that the number of persons detained and subjected to these interrogation techniques was higher than had been previously reported by the CIA, including those subjected to waterboarding.

The Senate Report Summary complements information previously made public on the CIA's rendition program, which included the unlawful rendition of individuals from all over the world, including from Europe and by flights through Europe, to secret places of detention so-called black-sites some of which were located in EU Member States, including Poland, Romania, and Lithuania.^[5]

The crimes documented could be prosecuted *inter alia* as torture and as war crimes before national courts in EU Member States. The European Parliament on 11 February 2015 adopted a resolution making the following recommendations in light of the information revealed in the US Senate Report Summary:

The prosecution of those responsible by authorities in EU Member States is also warranted as nationals of EU Member States are among the victims of torture and ill-treatment committed in the context of the CIA program and are entitled to effective redress. In addition, suspects of torture and ill-treatment committed in the context of the CIA program, including US officials and foreign officials (including

from EU Member States) who supported the CIA program, may be present in EU Member States and/or may travel to EU Member States, thereby providing opportunities for their arrest, and, provided there is sufficient evidence, prosecution in EU Member States. Efforts to hold US officials accountable for torture and other abuses committed as part of the CIA program have already been undertaken in a number of EU Member States, in particular through criminal complaints filed by victims and non-governmental organizations. In a few limited instances notably in France and Spain judicial investigations have been opened and remain ongoing.[7] German federal prosecutors have yet to decide whether to open an investigation into senior US officials following the filing of a complaint by the European Center for Constitutional and Human Rights (ECCHR) in December 2014.[8]

Italy is the only country to date to have successfully brought a case to trial, resulting in the conviction of 22 CIA officers, a US army colonel, and two Italian military intelligence officers in connection with the extraordinary rendition of an Egyptian cleric.[9] While the trial is not a model for other EU Member States to follow insofar as the US defendants were not present at their own trial,[10] it demonstrates that investigation and prosecution of CIA abuses is possible even where US authorities do not cooperate.[11]

In addition, national authorities in several EU Member States, including Lithuania and Poland, are currently investigating their own countries involvement in hosting so-called black sites on their territory to facilitate the interrogation, under torture, of suspected terrorists by CIA officials.

The various developments outlined above provide strong justifications for a specific Network meeting. The Network has consistently emphasised its important role in coordinating efforts to combat impunity across the European Union, providing a forum for practitioners with direct contact, best practice and exchange of operational information, therefore facilitating judicial cooperation in criminal matters and improving efficiency of mutual legal assistance.[12] Indeed, contact points consider the Network as indispensable in the global fight against impunity.[13]

To achieve its aim, the Network, among other things, organises specific meetings dedicated to a particular context or to crimes committed in a particular country, provided that there is a link to the Network and EU Member States. The Network has, for instance, in the past organised specific sessions on crimes committed in the former Yugoslavia and in Rwanda, as Member States were confronted with victims and suspects from both regions and faced very similar challenges in the investigation and prosecution of crimes committed in both regions. Following the Arab Spring in 2011 and specifically in regard to persons fleeing from or through those countries in Northern Africa and the Middle East, contact points recommended the development of a policy for the identification of witnesses and persons suspected of having committed crimes within the mandate of the Network.[14] The Network is also organising specific meetings on the continuing conflict in Syria, with contact points stressing the importance of providing States with information/evidence that could be used in further national investigations.[15]

These focused meetings, which may take place in open and closed sessions, allow contact points and other practitioners to share experiences and information, identify potential commonalities and best practices, and discuss continued challenges. Contact points will be in a position to learn from counterparts in other EU Member States about ongoing and potential future investigations.

Contact points have stressed that these types of ad hoc meetings on specific situations facilitate a proactive approach to combatting impunity, including with regard to crimes committed in countries where contact points cannot currently investigate.[16] The organisation of a specific meeting dedicated to the allegations of the use of torture in the context of the CIA's rendition, detention, and interrogation program would serve a similar purpose and falls within the mandate of the Network.[17] The meeting could, for instance, enable contact points to obtain a detailed overview of information available on the program as well as links with EU Member States, discuss ongoing investigations, and share information and experiences.

Information publicly available as outlined above strongly suggests that EU Member States are directly affected by, and at times implicated in, the alleged crimes highlighted in the Senate Report Summary. Investigations into these abuses are ongoing in several EU Member States. As a platform created to facilitate cooperation in the investigation of such crimes, there is an obvious role for the Network to play in identifying to what extent national authorities in Member States can ensure that perpetrators do not escape justice and that countries do not become safe havens for the perpetrators of international crime.[18]

We therefore urge you to use the upcoming 18th meeting of the Network as an opportunity to initiate discussions on the convening of a special meeting on this issue. Please let us know if we can provide further assistance.

Sincerely,

Carla Ferstman, Director, REDRESS

Philip Grant, Director, TRIAL

Richard Dicker, Director, International Justice Program, Human Rights Watch

Wolfgang Kaleck, Secretary General, ECCHR

Antoine Bernard, Chief Executive, FIDH

[1] United States Senate Select Committee on Intelligence, Committee Study of the Central Intelligence Agency's Detention and Interrogation Program together with Foreword by Chairman Feinstein and Additional and Minority Views of Other Senators, 9 December 2014, available at <http://www.intelligence.senate.gov/study2014.html>.

[2] See, e.g., Human Rights Watch, US: Senate Report Slams CIA Torture, Lies, 10 December 2014, <https://www.hrw.org/news/2014/12/10/us-senate-report-slams-cia-torture-lies>; REDRESS, USA must now remedy what went wrong and act decisively on Senate Torture Report, 9 December 2014, <http://www.redress.org/downloads/press-release-torture-report-9-dec-2014.pdf>; European Center for Constitutional and Human Rights (ECCHR), Criminal Complaint against Bush Era Architects of Torture, 17 December 2014, http://www.ecchr.de/us_accountability.html?

[file=tl_files/Dokumente/Universelle%20Justiz/PR_CIA%20Torture_Germany_criminal%20complaint_Tenet%20and%20others_2014_12_17_eng.pdf](#); Center for Constitutional Rights (CCR), CCR Legal Director Says Criminal Prosecutions Must Follow Senate CIA Torture Report Findings, 9 December 2014, <http://ccrjustice.org/newsroom/press-releases/ccr-legal-director-says-criminal-prosecutions-must-follow-senate-cia-torture-report-findings>.

[3] See European Court of Human Rights (ECtHR), *Al-Nashiri v. Poland*, application no. 28761/11, Judgment, 24 July 2014, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-146044>; ECtHR, *Husayn (Abu Zubaydah) v. Poland*, application no. 7511/13, Judgment, 24 July 2014, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-146047>; ECtHR, *El Masri v. The Former Yugoslav Republic of Macedonia*, application no. 39630/09, Judgment, 13 December 2012, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115621>; ECtHR, *Al-Nashiri v. Romania*, application no. 33234/12, ongoing, Statement of Facts, <http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-113814>; Complaint pending before Lithuanian authorities in the case of Mustafa Al-Hawsawi, <http://www.redress.org/downloads/casework/final-lithuania---investigation-request.pdf>.

[4] See for instance, Parliamentary Assembly of the Council of Europe, Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report (Marty Report II), 11 June 2007, <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=11555&lang=en>; Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states (Marty Report I), 12 June 2006, <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=11527&lang=en>; European Parliament, Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (2006/2200 (INI)), 30 January 2007, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2007-0020+0+DOC+PDF+V0//EN>; United Nations Human Rights Council, Joint study on global practices in relation to secret detention in the context of countering terrorism of the special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak; the Working Group on arbitrary detention represented by its vice-chair, Shaheen Sardar Ali; and the Working Group on enforced or involuntary disappearances represented by its chair, Jeremy Sarkin, 19 February 2010, A/HRC/13/42, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-42.pdf>; Human Rights Watch, *Getting Away with Torture: The Bush Administration and Mistreatment of Detainees*, July 2011, <https://www.hrw.org/sites/default/files/reports/us0711webwcover.pdf>; Human Rights Watch, *Delivered into Enemy Hands: US-Led Abuse and Rendition of Opponents to Qaddafi's Libya*, September 2012, https://www.hrw.org/sites/default/files/reports/libya0912webwcover_1.pdf; International Committee of the Red Cross (ICRC), *ICRC Report on the Treatment of Fourteen High Value Detainees in CIA Custody*, February 2007, <http://assets.nybooks.com/media/doc/2010/04/22/icrc-report.pdf>; Open Society Justice Initiative, *Globalizing Torture: CIA Secret Detention and Extraordinary Rendition*, February 2012, <http://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf>; ECCHR, *CIA Extraordinary Rendition Flights, Torture and Accountability- A European Approach*, January 2009, http://www.ecchr.de/ecchr-publications/articles/publications.html?file=tl_files/Dokumente/ECCHR_Rendition_SecondEdition_online.pdf.

[5] Ibid. See also Amnesty International, *Breaking the Silence: USAs European Partners in Crime Must Act After Senate Torture Report*, January 2015, <https://www.amnesty.org/download/Documents/212000/eur010022015en.pdf>; ECCHR, Special Newsletter- ten years of action against US Torture: ECCHR, Centre for Constitutional Rights and Wolfgang Kaleck, 17 December 2014, http://www.ecchr.de/us_accountability.html?file=tl_files/Dokumente/Universelle%20Justiz/ECCHR-Special%20Newsletter-torture%20-en%202014-12-17.pdf.

[6] The Resolution also instructed the Civil Liberties, Foreign Affairs and Human Rights Committee (LIBE) to resume its investigation into the CIAs alleged transportation and illegal detention of prisoners in EU countries. European Parliament Resolution of 11 February 2015 on the US Senate Report on the Use of Torture by the CIA, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0031+0+DOC+XML+V0//EN&language=EN>.

[7] These investigations relate to allegations of torture and other abuses committed against detainees at the US-run detention facility in Guantanamo Bay, Cuba. A French appeals court recently authorized the summoning of former Guantanamo commander Geoffrey Miller. ECCHR, French Court Investigating US Torture: Summons Former Gitmo Commander, 2 April 2015, <http://www.ecchr.de/france.html>. The Spanish investigation was initiated by the investigative judge Baltasar Garzn and not through the filing of a private party complaint. Central Court for Preliminary Criminal Proceedings Number Five, National Court Madrid, Preliminary Investigations 150/09, judicial order, 27 April 2009, http://ccrjustice.org/files/Unofficial%20Translation%20of%20the%20Spanish%20Decision%20004-27-2009_0.pdf (Unofficial English translation).

[8] ECCHR, Criminal Complaint against Bush-Era Architects of Torture, 17 December 2014, http://www.ecchr.de/us_accountability.html.

[9] Following an appeal in the case, the other defendants three CIA agents and five Italian military intelligence officers who had been acquitted in the original trial were convicted in separate trials. However, Italys highest court overturned the convictions of the five Italians on the basis of the state secrecy doctrine. See Human Rights Watch, Italy/US: Italian Court Rebukes CIA Rendition Practice, 4 November 2009, <https://www.hrw.org/news/2009/11/04/italyus-italian-court-rebukes-cia-rendition-practice>; Amnesty International, Italy/USA: Supreme Court orders re-trial of former high-level intelligence officials and upholds all convictions in Abu Omar kidnapping case, AI Index: EUR 30/015/2012, 21 September 2012, <https://www.amnesty.org/download/Documents/20000/eur300152012en.pdf>; Human Rights Watch, Italy: Continue Efforts Toward Justice for CIA Abuses, 20 July 2013, <https://www.hrw.org/news/2013/07/20/italy-continue-efforts-toward-justice-cia-abuses>.

[10] Although not prohibited by international law, trials in absentia do not afford defendants an adequate opportunity to present a defense as required by the International Covenant on Civil and Political Rights.

[11] US authorities failure to conduct criminal investigations into the role and responsibility of high-ranking civilian and military officials for their role in the CIAs rendition, detention, and interrogation program makes foreign states pursuit of accountability all the more warranted. To date, the US Department of Justice has initiated only one investigation, led by Special Prosecutor John Durham,

which was limited to looking into those CIA abuses that went beyond the so-called enhanced interrogation techniques authorized by the Justice Department. The investigation ended in 2012 and resulted in no criminal charges being brought against anyone. See Scott Shane, No Charges Filed on Harsh Tactics Used by the C.I.A., *The New York Times*, 30 August 2012 http://www.nytimes.com/2012/08/31/us/holder-rules-out-prosecutions-in-cia-interrogations.html?_r=0; Spenser Ackerman, Former CIA Detainees Claim US Torture Investigators Never Interviewed Them, *The Guardian*, 11 November 2014, <http://www.theguardian.com/us-news/2014/nov/11/libyan-cia-detainees-torture-inquiry-interview>.

[12] Conclusions of the 17th Meeting of the European Network of Contact Points for investigation and prosecution of genocide, crimes against humanity and war crimes, 30-31 October 2014, <http://www.eurojust.europa.eu/doclibrary/genocide-network/genocidenetworkmeetings/Conclusions%20of%20the%2017th%20meeting%20of%20the%20Genocide%20Network,%2030-31%20October%202014/Conclusions-17th-Genocide-Network-Meeting-2014-10-EN.pdf>.

[13] Ibid.

[14] Conclusions of the 10th Meeting of the European Network of Contact Points in respect of persons responsible for genocide, crimes against humanity and war crimes, 28-29 April 2011, <http://www.eurojust.europa.eu/doclibrary/genocide-network/genocidenetworkmeetings/Conclusions%20of%20the%2010th%20meeting%20of%20the%20Genocide%20Network,%2028-29%20April%202011/Conclusions-10th-Genocide-Network-Meeting-2011-04-EN.pdf>.

[15] Conclusions of the 13th Meeting of the European Network of Contact Points for investigation and prosecution of genocide, crimes against humanity and war crimes, 7-8 November 2012, <http://eurojust.europa.eu/doclibrary/genocide-network/genocidenetworkmeetings/Conclusions%20of%20the%2013th%20meeting%20of%20the%20Genocide%20Network,%207-8%20November%202012/Conclusions-13th-Genocide-Network-Meeting-2012-11-EN.pdf>.

[16] For example, during the Networks May 2014 meeting, contact points concluded that ad hoc meetings on specific situations, such as in relation to the ongoing conflict in Syria facilitate a proactive approach to combating impunity. Conclusions of the 16th Meeting of the European Network of Contact Points for investigation and prosecution of genocide, crimes against humanity and war crimes, 21-22 May 2014, <http://eurojust.europa.eu/doclibrary/genocide-network/genocidenetworkmeetings/Conclusions%20of%20the%2016th%20meeting%20of%20the%20Genocide%20Network,%2021-22%20May%202014/Conclusions-16th-Genocide-Network-Meeting-2014-05-EN.pdf>

[17] As highlighted above, under certain circumstances, the crimes committed could also be prosecuted as war crimes. In addition, the EU Genocide Network has emphasized that the investigation and prosecution of torture as distinct crime is an important component of the overall fight against impunity. Strategy of the EU Genocide Network to combat impunity for the crime of genocide, crimes against humanity and war crimes within the European Union and its Member States, November 2014, <http://www.eurojust.europa.eu/doclibrary/genocide-network/genocidenetwork/Strategy%20of%20the%20EU%20Genocide%20Network%20%28November%202014%29/Strategy-Genocide-Network-2014-11-EN.pdf>.

[18] Conclusions of the 14th Meeting of the European Network of Contact Points for investigation and prosecution of genocide, crimes against humanity and war crimes, 17-18 April 2013, <http://www.eurojust.europa.eu/doclibrary/genocide-network/genocidenetworkmeetings/Conclusions%20of%20the%2014th%20meeting%20of%20the%20Genocide%20Network,%2017-18%20April%202013/Conclusions-14th-Genocide-Network-Meeting-2013-04-EN.pdf>.

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