

# EXHIBIT C

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## **Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states**

Report  
Committee on Legal Affairs and Human Rights  
Rapporteur: Mr Dick Marty, Switzerland, Alliance of Liberals and Democrats for Europe

### *Summary*

Our analysis of the CIA 'rendition' programme has revealed a network that resembles a 'spider's web' spun across the globe. The analysis is based on official information provided by national and international air traffic control authorities, as well as on other information. This 'web' is composed of several landing points, which we have subdivided into different categories, and which are linked up among themselves by civilian planes used by the CIA or military aircraft.

Analysis of the network's functioning and of ten individual cases allows us to make a number of conclusions both about human rights violations – some of which continue – and about the responsibilities of some Council of Europe Member states, which are bound by the European Convention on Human Rights and the European Convention for the Prevention of Torture.

The United States, an observer state of our Organisation, actually created this reprehensible network, which we criticise in light of the values shared on both sides of the Atlantic. But we also believe having established that it is only through the intentional or grossly negligent collusion of the European partners that this "web" was able to spread also over Europe.

Whilst hard evidence, at least according to the strict meaning of the word, is still not forthcoming, a number of coherent and converging elements indicate that secret detention centres have indeed existed and unlawful inter-state transfers have taken place in Europe. It is not intended to pronounce that the authorities of these countries are 'guilty' for having tolerated secret detention sites, but rather it is to hold them 'responsible' for failing to comply with the positive obligation to diligently investigate any serious allegation of fundamental rights violations.

The draft resolution and recommendation propose different measures so that terrorism can be fought effectively whilst respecting human rights at the same time.

189. Mr Zammar's arrest in Morocco was objectively facilitated by exchanges of information between the German services and their Dutch, Moroccan and also American counterparts. These exchanges of information about the travel plans of a person suspected of terrorist activities (the German government's report contains detailed information which seem to justify such suspicion) are part of normal international co-operation in the fight against terrorism. It cannot be deduced from the fact that the German services informed their colleagues of the dates on which Mr Zammar had flight reservations that it was their intention - or even that they suspected - that he would be arrested and held in violation of normal procedures. The facts date back to December 2001, well before the public revelations about the illegal practice of "rendition flights".

190. The German Ministry for Foreign Affairs and the Damascus and Rabat Embassies intervened several times, firstly to establish Mr Zammar's whereabouts, then to give him consular assistance during his detention in Syria. Syria refused any kind of consular intervention, on the basis of its non-recognition of his renunciation of Syrian nationality when he underwent naturalisation in Germany, a policy applied generally by Syria.

191. German officials did indeed question Mr Zammar in Syria. While Mr Zammar is said to have told his German interrogators that he had been beaten both in Morocco and in the early stages of his detention in Syria, but nothing supports the conclusion that this mistreatment related to the presence and intervention of the German agents. The German officials are reported to have found him in a good physical and psychological condition, although he had lost a considerable amount of weight. Relations between Mr Zammar and his Syrian guards did not seem tense, although the German visitors did note a somewhat authoritarian relationship.

192. As indicated above, a *Bundestag* committee of inquiry is looking into the matter, and it is appropriate to await its results.

### 3.9. Binyam Mohamed al Habashi

193. Binyam Mohamed al Habashi is an Ethiopian citizen who has held resident status in the United Kingdom since 1994. While many of his family members emigrated to the United States and became naturalised citizens there, Binyam moved to the UK as a teenager and claimed asylum. He spent seven years pursuing his education in London while his asylum application was considered in a protracted, ultimately unresolved process. He had problems with drugs and converted to Islam at the age of twenty.

194. Binyam is now detained at Guantanamo Bay and has been selected as one of the first group of ten prisoners to appear before a special United States Military Commission, probably later in 2006. We were able to view Binyam's diary, an account of the last five years of his life, and a series of letters he has written from Guantanamo. A member of my team was also able to hear first-hand testimony from members of his family and his legal representatives in the United Kingdom.

195. In treating Binyam's case in my report I shall avoid any reference to the charges he is likely to face before the Military Commission. Suffice to say that I regard such commissions generally as a flawed basis on which to prosecute allegations of the most serious nature, since the defendant's due process rights are severely impaired<sup>173</sup>. I do not consider these commissions to be fair hearings and I reiterate my position that the global effort to bring terrorist suspects to justice should depend primarily upon judicial remedies.

196. Of greatest concern in Binyam's case are the accounts of torture and other serious human rights violations which he says he has suffered. He speaks of being wounded all over his body with a scalpel and a razor blade, beaten unconscious and hung from the walls in shackles. He suffered gross physical injuries, including broken bones. He was constantly threatened with death, rape and electrocution.

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<sup>172</sup> Following my request to the Chair of the *Bundestag* committee responsible for monitoring the special services, I received a copy of the public version of this report. I also received from an anonymous source a version classified "confidential/for official use only", of which I made responsible use, in the spirit of the decision taken by the Legal Affairs Committee at its meeting of 13 March 2006 on the receipt of confidential information. I was also offered a copy of an even more detailed version classified "secret", which I opted not to accept for ethical reasons. I place my trust in the members of the *Bundestag* to whom this document was addressed to take the necessary action on the basis thereof, including appropriate action to alert me to any fact reported in this version directly related to my terms of reference as rapporteur.

<sup>173</sup> Reference to the Executive Order that established Military Commissions for Guantanamo detainees, signed by President Bush in Oct / Nov 2001.

197. It is difficult to say whether this account actually reflects reality. Let us just recall that some of these acts are included in what has been called "enhanced interrogation techniques", which have been developed by the United States in the "war on terror"<sup>174</sup>. Furthermore many of the abuses described by Binyam bear striking similarities to the allegations of other detainees who have been held in the same detention facilities at various points over the last few years<sup>175</sup>.

198. Binyam's case is an example for the very numerous detainees – most of whose names and whereabouts we do not know – who have become trapped in the United States' spider's web during the course of the "war on terror". Binyam has been subjected to two CIA renditions, a US military transfer to Guantanamo Bay and several other clandestine transfers by plane and helicopter. He has been held in at least two secret detention facilities, in addition to military prisons. During his illegal interrogations, he has been confronted with allegations that could only have arisen from intelligence provided by the United Kingdom.

199. Binyam's family told my representative that he disappeared in the summer of 2001. His close-knit family subsequently endured several years of desperate uncertainty about his whereabouts and well-being, only partially clarified by their first visit from FBI agents three years later, in 2004. Although they have received a handful of letters from him in Guantanamo, none of the family has been able to see or speak to Binyam for five years.

200. According to his testimony, Binyam travelled voluntarily to Afghanistan in 2001<sup>176</sup> and spent some time there, probably several months, before crossing into Pakistan and seeking to return to the UK. He was arrested by Pakistani officials at Karachi Airport on 10 April 2002 for attempting to travel on a false passport. Within ten days of his arrest, he was interrogated by American officials. Upon asserting his right to a lawyer, and later upon refusing to answer questions, American officers are alleged to have told him: *"The law has been changed. There are no lawyers. You can co-operate with us the easy way, or the hard way. If you don't talk to us, you're going to Jordan. We can't do what we want here, the Pakistanis can't do exactly what we want them to do. The Arabs will deal with you."*

201. The initial interrogations in Karachi involved Pakistani, American and British agents. Binyam was never accused of a particular crime and was told by MI6 agents that *"they checked out my story and said they knew I was a nobody"*. When he was discharged from Pakistani custody, however, he was not released. Instead, the Pakistani security services took him to a military airport in Islamabad and handed him over to the United States.

202. Binyam testifies that he underwent his first rendition on 21 July 2002. He was set upon by unidentified people *"dressed in black, with masks, wearing what looked like Timberland boots"*. He describes how they *"stripped [him] naked, took photos, put fingers up [his] anus and dressed [him] in a tracksuit. [He] was shackled, with earphones, and blindfolded"*, before being forced onto an aircraft and flown to Morocco. Official flight records obtained by this inquiry show that the known rendition plane, N379P, took off from Islamabad on 21 July 2002 and flew to Rabat, Morocco.

203. Binyam has described various secret detention facilities in which he was held in Morocco, including one prison that was submerged *"almost underground"* and one more sanitary place in which he was apparently placed to recover from injuries sustained from his torture. Between July 2002 and January 2004 Binyam was tortured on numerous occasions by a team of interrogators and other officials, most of whom were Moroccan. Some of the officials wore masks, while others did not; at least one interrogator, who identified herself as a Canadian, is thought to have been an American CIA agent.

204. It appears that the object of the torture was to break Binyam's resistance, or to destroy him physically and psychologically, in order to extract confessions from him as to his involvement in terrorist activities. In addition to the sustained abuse and threats, the torturers used information, apparently obtained from intelligence sources, to indicate to Binyam that they knew a lot about him. Much of the personal information – including details of his education, his friendships in London and even his kickboxing trainer – could only have originated from collusion in this interrogation process by UK intelligence services.

<sup>174</sup> Reference to some of the many documents on interrogation techniques obtained by the ACLU in its series of applications under the Freedom of Information Act.

<sup>175</sup> In this regard, see the Human Rights Watch reports on Temara in Morocco, plus a range of NGO and detainee accounts from the Dark Prison in Kabul.

<sup>176</sup> Binyam told his lawyer that he wanted to travel to Afghanistan to see the Taliban with his own eyes and decide *"whether it was a good Islamic country or not"*. He also wanted to get away from a social life in London that revolved around drug use.

205. Binyam has described his ill-treatment in Morocco to his lawyer in several phases: an initial "softening up"; a routine "circle of torture"; and eventually a "heavy" abuse involving mental torment and the infliction of physical injury. In the first few weeks of his detention he was repeatedly suspended from the walls or ceilings, or otherwise shackled, and brutally beaten: *"They came in and cuffed my hands behind my back. Then three men came in with black ski masks that only showed their eyes... One stood on each of my shoulders and the third punched me in the stomach. The first punch... turned everything inside me upside down. I felt I was going to vomit. I was meant to stand, but I was in so much pain I'd fall to my knees. They'd pull me back up and hit me again. They'd kick me in the thighs as I got up. They just beat me up that night... I collapsed and they left. I stayed on the ground for a long time before I lapsed into unconsciousness. My legs were dead. I could not move. I'd vomited and pissed on myself."*

206. At its worst, the torture involved stripping Binyam naked and using a doctor's scalpel to make incisions all over his chest and other parts of his body: *"One of them took my penis in his hand and began to make cuts. He did it once and they stood for a minute, watching my reaction. I was in agony, crying, trying desperately to suppress myself, but I was screaming. They must have done this 20 to 30 times, in maybe two hours. There was blood all over. They cut all over my private parts. One of them said it would be better just to cut it off, as I would only breed terrorists."*

207. Eventually Binyam began to co-operate in his interrogation sessions in an effort to prevent being tortured: *"They said if you say this story as we read it, you will just go to court as a witness and all this torture will stop. I could not take any more... and I eventually repeated what they read out to me. They told me to say I was with bin Laden five or six times. Of course that was false. They continued with two or three interrogations a month. They weren't really interrogations – more like trainings, training me what to say."*

208. Binyam says he was subjected to a second rendition on the night from 21 to 22 January 2004. After being cuffed, blindfolded and driven for about 30 minutes in a van, he was offloaded at what he believes was an airport. Again, Binyam's description matches the "methodology" of rendition described earlier in this report: *"They did not talk to me. They cut off my clothes. There was a white female with glasses – she took the pictures. One of them held my penis and she took digital pictures. When she saw the injuries I had, she gasped. She said: 'Oh my God, look at that!'"*

209. The second rendition of Binyam Mohamed took place within the "rendition circuit" that I have identified in this inquiry. The aircraft N313P, operated on behalf of the CIA, is shown in my official data to have flown from Rabat to Kabul in the early hours of 22 January 2004. Two days later, as part of the same circuit, the same plane flew back to Europe and was used in the rendition of Khaled El-Masri<sup>177</sup>.

210. Binyam Mohamed's ordeal continued in Kabul, Afghanistan, where he was held in the facility he refers to as "The Prison of Darkness"<sup>178</sup> for four months. Detention conditions in this prison amount to inhuman and degrading treatment. In addition, forcing prisoners to remain in painful positions, sleep alteration, sensory deprivation and other recognised "enhanced interrogation techniques"<sup>179</sup> are known to be deployed there routinely by the United States military and its partners. At various times, Binyam was chained to the floor with his arms suspended above his head, had his head knocked against the wall and describes "torture by music", involving the sounds of loud rap and heavy metal, thunder, planes taking off, cackling laughter and horror sounds that amounted to a "perpetual nightmare".

211. Up until his transfer by helicopter to Bagram at the end of May 2004, Binyam was not allowed to see daylight. He was persistently interrogated and told about terrorist plots and activities in which he was accused of involvement. He was subjected to irregular eating patterns and "weird" sessions with psychiatrists.

212. In a detention facility at Bagram Air Base, Afghanistan, Binyam was forced to write out a lengthy statement prepared by the Americans. The content of the statement is unknown to us. Binyam has told his lawyers that he wrote and signed this document in a state of complete mental disarray: *"I don't really remember [what I wrote], because by then I just did what they told me. Of course, by the time I was in Bagram I was telling them whatever they wanted to hear."*

<sup>177</sup> References to the sections on rendition circuits and the individual case of El-Masri.

<sup>178</sup> Many other accounts in the file of the Rapporteur refer to this facility as the "Dark Prison" or the "Disco Prison".

<sup>179</sup> These so-called "enhanced interrogation techniques", which are considered acceptable in the context of some interrogations by the Americans, were exposed by the ACLU in its application under the *Freedom of Information Act*. In particular, these techniques are enumerated in a document from the FBI, available at [www.aclu.org](http://www.aclu.org).



213. The case of Binyam Mohamed is sufficient grounds for an urgent and decisive change of course in the international effort to overcome terrorism. The Council of Europe is duty-bound to ensure that secret detentions, unlawful inter-state transfers and the use of torture are absolutely prohibited and never resorted to again.

214. It remains to be seen whether a Military Commission process will decide for or against Binyam Mohamed. The only certain legacy of this case is the deeply disturbing recognition that a human being has, in his own words, been completely dehumanised: *"I'm sorry I have no emotion when talking about the past, 'cause I have closed. You have to figure out all the emotional part; I'm kind of dead in the head."*

#### 4. Secret places of detention

215. After the publication of allegations by the Washington Post and Human Rights Watch<sup>180</sup>, we centred our search on certain sites in Poland and Romania.

##### 4.1. Satellite photographs

216. We obtained from the European Union Satellite Centre (EUSC) in Torrejón a number of satellite photographs of the sites concerned<sup>181</sup>, some taken at different times. We studied these with the assistance of an independent expert.

217. These photographs do not constitute conclusive evidence. With the expert's help, we were able to identify several specific locations at a civil airport and a secret services base (in Poland) and at military airfields (in Romania) which would be very suitable for the secret detention of persons flown in from abroad. There are however hundreds of equally favourable locations throughout Europe. As the EUSC did not have available, for most of the places concerned, sequences of photographs which would have shown whether physical structures (huts, fences, watchtowers, and so on) had been altered (added or dismantled) at certain relevant times, the satellite photographs do not enable us to reach any conclusions with a high degree of certainty.

218. On the other hand, they did enable us to request certain clarifications from the Polish and Romanian delegations. All the replies we received, in my opinion, show a lack of transparency and genuine willingness to co-operate in the authorities concerned<sup>182</sup>.

##### 4.2. Documented aircraft movements

219. As we showed above, the information received from Eurocontrol and certain national air traffic control authorities, confirmed by witnesses' accounts, makes it possible to be sure that certain flights were made between known detention centres and the suspected places in Poland and Romania. The geographical position of these places making them unlikely to be used for refuelling, the period spent on the ground in these places by these aircraft, and in particular the fact that the landings in question belong to well-established "rendition circuits"<sup>183</sup>, allow us to suspect that they are or were places of detention which form part of the "spider's web" referred to above.

##### 4.3. Witnesses' accounts

220. Accounts given by witnesses to Amnesty International<sup>184</sup> make it look very likely that a relatively large place of detention had to be located in a European country, without any more detail.

221. A journalist working for German television<sup>185</sup> interviewed a young Afghan in Kabul who said that he had been held in Romania. This witness, very frightened and unwilling to give direct evidence to a member

<sup>180</sup> See para. 7 above.

<sup>181</sup> The following sites were captured in the satellite photographs: Cataloi, Fetesti and Mihail Kogalniceanu in Romania; and Szczytno / Szymany in Poland.

<sup>182</sup> In Poland's case, we detected, at an airfield said not to have been used for military purposes since the end of World War II, a very well-maintained double fence around a structure identified as containing munitions bunkers. Our question as to the reason for keeping this double fence in perfect condition did not receive a convincing reply. Where Romania is concerned, the authorities first stated that the construction works at the airbases concerned were merely being carried out to maintain existing infrastructure; only when the question was raised again, backed up by the only single-site photo sequence available to us, clearly showing the building of a new hangar and an extension of the aircraft parking area, did the Romanian authorities confirm that some new building had also been done.

<sup>183</sup> See para. 52 above.

<sup>184</sup> See para. 184 above, the case of Mr Bashmila and Mr Ali Garu.