



human rights *first*

FORMERLY THE LAWYERS COMMITTEE FOR HUMAN RIGHTS

March 6, 2007

The Honorable Edward J. Markey
House of Representatives
2108 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Markey:

Human Rights First welcomes your introduction of the *Torture Outsourcing Prevention Act*, aimed at ending the practice of transferring detainees to countries where they are likely to face torture. The United States pledged more than a decade ago that it would never send anyone to a place where there was a substantial likelihood they would be tortured. But multiple investigative reports have confirmed that over the past five years the United States has sent individuals – in some cases for the explicit purpose of interrogation – to countries where they have been tortured. We applaud your effort to reinforce the ban on this practice, and make that ban effective.

The Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment bars parties from sending anyone to a country where “there are substantial grounds for believing that he would be in danger of being subjected to torture.” The United States is a party to the Convention and accepted this provision without reservation. Thereafter, Congress reiterated the commitment of the United States to honor this obligation, and instructed federal agencies to promulgate regulations to ensure compliance.

Despite these clear expressions of legislative intent, it has come to light that the United States has secretly transferred terrorism suspects to foreign intelligence services in countries, such as Jordan, Egypt and Morocco, that are known to torture and otherwise abuse prisoners. U.S. senior officials, including Secretary of State Condoleezza Rice, have confirmed the occurrence of such transfers.

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According to Administration officials, the transfer of detainees at risk of torture to the custody of other governments is undertaken pursuant to “diplomatic assurances” that the receiving government – no matter its dismal record on torture – will not torture the detainee rendered to their custody. But experience has shown that such assurances are unreliable and have been violated, without apparent protest from the United States. For example, the U.S. government has claimed that it sought diplomatic assurances in the case of Maher Arar. Arar, a dual citizen of Canada and Syria, endured ten months of torture in a Syrian jail after being sent there by U.S. officials who apprehended him at JFK Airport in New York City while he was en route to his home in Canada. An investigation by the Canadian government concluded that there was no evidence that Arar committed any offense or constituted a security risk, and that the information which led to his detention was inaccurate and misleading. Upon releasing Arar, Syria declared that it never had any interest in holding him, but only jailed and interrogated him to curry favor with the United States. Investigations indicate that while Arar was imprisoned in Syria he was subjected to electric shocks and beatings, and such abuse is consistent with U.S. State Department reports that security forces in Syria “continued to use torture frequently.” *Country Reports on Human Rights Practices for 2005*, United States Department of State, 2006. Your bill would ensure that there are no circumstances under which a person at risk of torture in a place like Syria would be sent there by the United States.

The U.S. practice of rendering individuals to countries where they face a substantial risk of being tortured also threatens to hamper intelligence cooperation between the United States and its European allies. The Council of Europe, the European Parliament and several European governments have undertaken investigations into the involvement of European countries in the U.S. extraordinary rendition program. Last week State Department Legal Advisor John Bellinger reportedly remarked that these investigations — some of which have revealed and condemned European participation in renditions that involved torture — damage intelligence cooperation with our European allies. We believe that it is not the investigations into rendition practices, but rather the practices themselves that have undermined cooperation with the Europeans. Twenty-five CIA operatives and several Italian intelligence officials have been indicted in Italy for their involvement in a kidnapping allegedly related to a rendition that resulted in torture. A German court has issued arrest warrants for thirteen CIA operatives. The failure of the United States to uphold human rights norms – norms that are closely shared by our allies – will continue to hamper the collaboration needed to confront global terrorist networks. Your bill would help to reassure U.S. allies that they can freely cooperate with the United States without fear that they may be aiding torture or exposing themselves to criminal prosecution.

President Bush has said that “[t]he United States is committed to the world-wide elimination of torture and we are leading this fight by example.” But we cannot lead that fight until we ensure that we are not handing people over to the custody governments that will torture them. Your bill will help demonstrate that the United States is serious about living up to the President’s pledge. We look forward to working with you to ensure its passage, and we thank you for your leadership on this important issue.

Sincerely,



Elisa Massimino
Washington Director