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REPRIEVE

AMNESTY INTERNATIONAL

INTERIGHTS

Investigating Lithuania's complicity in the USA's CIA Rendition, Detention and Interrogation Programme

Articles 2-9, 12-14, 16

List of Issues 7 & 9

Submission to the United Nations Committee Against Torture for consideration of Lithuania's 3rd State Party Report

11 April 2014

SUBMISSION TO THE UN COMMITTEE AGAINST TORTURE

FOR CONSIDERATION OF LITHUANIA'S 3rd STATE PARTY REPORT

11 APRIL 2014

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A. INTRODUCTION & SUMMARY

1. This joint report by non-governmental organisations ("NGOs") Amnesty International, Human Rights Monitoring Institute ("HRMI"), INTERIGHTS, REDRESS and Reprieve is based on research, investigations, advocacy, and litigation in relation to:

    a. the United States Central Intelligence Agency's programme of extraordinary rendition, secret detention and interrogation of detainees suspected of terrorism (the "Rendition Detention and Interrogation Programme" or "RDI Programme"); and

    b. the alleged involvement and complicity of other States, including Lithuania, which are suspected of having facilitated and participated in the CIA RDI Programme.

2. Lithuania is one of three European countries (along with Romania and Poland) identified as having collaborated with the CIA to establish and maintain secret detention facilities on its territory. As is by now well established, detainees have been subjected to enforced disappearance and torture in facilities maintained under the CIA RDI Programme.[1] This report focuses on the issue of **allegations of Lithuanian involvement and complicity in the CIA RDI Programme, referred to in paragraphs 7 and 9 of the Committee's List of Issues.**

3. The information contained in this report is based on a variety of sources, including reports by intergovernmental organisations, bodies and special procedures;[2] de-classified or leaked reports of US agencies and of the International Committee of the Red Cross ("ICRC"), US and Lithuanian court filings, applications to the European Court of Human Rights ("ECHR"), official data sets documenting the flight paths of aircraft associated with detainee transport, media reports, NGO reports, and submissions to the United Nations ("UN").

4. Researching human rights violations attendant to covert counter-terrorism operations presents significant challenges, particularly when attempts to uncover key details have been met with the

[1] International Committee of the Red Cross (ICRC), "Report on the Treatment of Fourteen 'High Value Detainees' in CIA Custody", February 2007, http://www.therenditionproject.org.uk/pdf/PDF%20101%20[ICRC,%20Feb%202007.%20Report%20on%20Treatment%20of%2014%20HVD%20in%20CIA%20Custody].pdf, ("**ICRC HVDs Report**"), p. 5; Parliamentary Assembly Council of Europe (PACE), Committee on Legal Affairs and Human Rights (CLAHR), "Alleged Secret Detentions and Unlawful Inter-State Transfers Involving Council of Europe Member States", AS/Jur (2006) 16 Part II, 7 June 2006, http://assembly.coe.int/committeedocs/2006/20060606_ejdoc162006partii-final.pdf ("**First Marty Report**"); Parliamentary Assembly Council of Europe ("PACE"), Committee on Legal Affairs and Human Rights (CLAHR), , "Secret Detentions and Illegal Transfers of Detainees involving Council of Europe Member States: Second Report", 7 June 2007, http://assembly.coe.int/CommitteeDocs/2007/EMarty_20070608_NoEmbargo.pdf ("**Second Marty Report**"); United Nations, "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", A/HRC/13/42, 19 February 2010, http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-42.pdf ("**UN Joint Study on Secret Detention**"); United Nations, "Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson: Framework Principles for securing the accountability of public officials for gross or systematic human rights violations committed in the context of State counter-terrorism initiatives", A/HRC/22/52, 1 March 2013, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-52_en.pdf ("**Emmerson 2013 report**"), paras. 15-16.

[2] Reports by intergovernmental organisations, bodies and special procedures have themselves been based on evidence obtained from diverse sources, including testimony from current and former members of intelligence services in the United States and from Europe.

invocation of "State secrecy" for the protection of national interests. State secrecy has been invoked in a number of investigations, barring victims, and the public, from accessing the truth.[3] There have been vigorous attempts to conceal information with States making "strenuous efforts to keep their involvement in the CIA RDI Programme hidden from public scrutiny".[4] On 11 March 2014, the chairwoman of the US Senate Intelligence Committee alleged that the CIA was deliberately obstructing her committee's investigations into the agency's use of torture. She also accused the agency of intimidating investigators probing the CIA RDI Programme.[5]

5. Notwithstanding these challenges, a considerable amount of information, much of which has been corroborated by multiple sources, is now available in the public domain. The April 2013 report by the Constitution Project's Bipartisan Task Force on Detainee Treatment pointed out that while the CIA RDI Programme "was conceived and operated on the assumption that it would remain secret…It involved hundreds of operatives and the co-operation of many foreign governments and their officials, a poor formula for something intended to remain out of public view forever".[6]

I. SUMMARY

6. The CIA's RDI Programme, with the assistance of third countries, involved serious violations of the prohibition of torture and other ill-treatment and related rights. The programme has been the subject of persistent concerns raised by several human rights bodies and others over the last decade, including the Committee Against Torture. In its 2006 review of the USA's compliance with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "UN Convention against Torture"), this Committee expressed its concerns at allegations of torture in secret detention facilities and the policy of denial surrounding the programme.[7] In its 2007 review of Poland, this Committee outlined its concern at allegations that secret detention facilities for terrorist suspects existed in the State Party's territory and urged Poland to share information about the scope, methodology and conclusions of the Polish Parliament's inquiry into these allegations.[8]

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[3] United Nations, "Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin: The role of the intelligence agencies in the fight against terrorism", A/HRC/10/3, 4 February 2009,, http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/10/3, ("**Scheinin 2009 report**"), paras. 58 - 63; Lithuania, *State Party Report under the UN Committee against Torture's List of Issues Prior to Report*, CAT/C/LTU/3, 14 March 2013; http://www.un.org/ga/search/view_doc.asp?symbol=CAT/C/LTU/3, ("**Lithuania LOIPR Response 2013**") p. 15, para. 58; Council of Europe, "Recommendation 1983 (2011): Abuse of state secrecy and national security: obstacles to parliamentary and judicial scrutiny of human rights violations", Text adopted by the Assembly on 6 October 2011 (34th Sitting), http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=18034&lang=en, ("**European Parliament Recommendation 1983 (2011)**") para. 2.1.

[4] Emmerson 2013 report, para. 19; Second Marty Report, para. 5. For a description of Romanian obstructionism see European Parliament, "Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners", (2006/2200(INI)), Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners, 30 January 2007, http://www.therenditionproject.org.uk/pdf/PDF%2063%20[REP-2007-01-REP%20Report%20on%20the%20alleged%20use%20of%20Europea.pdf, ("**Fava Final Report**"), paras. 157-179.

[5] Dianne Feinstein, "Statement on CIA torture report 'cover-up'", (11 March 2014) The Guardian, http://www.theguardian.com/world/2014/mar/11/dianne-feinstein-cia-senate-statement-full-text.

[6] Constitution Project, "Rendition and the 'Black Sites', Task Force on Detainee Treatment", http://detaineetaskforce.org/read/#/180/, p. 180.

[7] UN Committee against Torture, "Report of the UN Committee against Torture on the USA, Consideration of reports submitted by states parties under article 19 of the Convention against Torture, Conclusions and recommendations of the Committee against Torture", CAT/C/POL/CO/4 (25 July 2006) http://www.un.org/ga/search/view_doc.asp?symbol=CAT/C/USA/CO/2, para. 17.

[8] UN Committee Against Torture, "Report of the UN Committee against Torture on Poland, Consideration of reports submitted by states parties under article 19 of the Convention against Torture, Conclusions and recommendations of the Committee against Torture", CAT/C/POL/CO/4 (25 July 2007), http://www.un.org/ga/search/view_doc.asp?symbol=CAT/C/POL/CO/4, para. 16.

7. In August 2009 media reports identified Lithuania as having provided the CIA with secret detention facilities or black sites for prisoners.[9] Former CIA officials directly involved in the programme told ABC News that "as many as eight suspects were held [in Lithuania] for more than a year, until late 2005 when they were moved because of public disclosures about the programme".[10] These allegations were later supported by investigations by the UN Joint Study on Global Practices in relation to secret detention in the context of countering terrorism ("UN Joint Study").[11] In October 2013, the European Parliament called on Lithuania (and other relevant States) to respond to the letters sent by the authors of the UN Joint Study.[12]

8. In September 2009 the Lithuanian Parliamentary Committee on National Security and Defence ("Seimas CNSD") was mandated to investigate the allegations. It found in December 2009 that at least between 2002 and 2005, aircraft linked to the transportation of CIA detainees repeatedly crossed Lithuanian airspace, and also landed in Lithuania.[13] Although the Seimas CNSD failed to establish conclusively whether CIA detainees were brought into/out of Lithuanian territory, it concluded that the conditions for such transportation were present. The Seimas CNSD also established that the Lithuanian State Security Department ("SSD") had received a request from the USA to equip facilities in Lithuania suitable for holding detainees. On the basis of its findings, the Seimas CNSD suggested that the Lithuanian Prosecutor General conduct a criminal, pre-trial, investigation.[14]

9. In January 2010, the Lithuanian Office of the Prosecutor General initiated a pre-trial investigation into possible "abuse of office" by Lithuanian officials.[15] Later that year allegations were raised by Reprieve that a specific individual, Abu Zubaydah, had been one of those held on Lithuanian territory. However, in January 2011 the Lithuanian Prosecutor General closed the criminal investigation. The reason given by the Prosecutor General for closing the investigation was described at different times as on the grounds that no detainees were held in Lithuania, or that there was no evidence that detainees were held there.[16] It was also stated that the statute of limitations for the crimes investigated (abuse of office) had expired.

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[9] Matthew Cole, "Officials: Lithuania Hosted Secret CIA Prison to get 'Our Ear", ABC News, 20 August 2009, http://abcnews.go.com/Blotter/story?id=8373807 ("**Matthew Cole ABC News (20 August 2009)**").

[10] Matthew Cole ABC News (20 August 2009). See also Dick Marty, "Time for Europe to come clean once and for all over secret detentions", 21 August 2009, http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=4859&L=2 (**"Marty Accountability Statement 2009"**).

[11] UN Joint Study on Secret Detention, (A/HRC/13/42), 19 February 2010, para. 120. The authors of the UN Joint Study sent follow-up letters to the Member States mentioned in the report, requesting further information. Only 11 Member States had responded by 24 February 2014: Communications reports by the UN Special Procedures up to 25th session of the Human Rights Council, A/HRC/25/74, 24 February 2014, A/HRC/21/49, 22 August 2013, A/HRC/22/67, 20 February 2013, A/HRC/20/30, 15 June 2012, A/HRC/19/44, 23 February 2012.

[12] European Parliament resolution of 10 October 2013 on alleged transportation and illegal detention of prisoners in European countries by the CIA (2013/2702(RSP)), available at: http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0418&language=EN&ring=P7-RC-2013-0378, ("**European Parliament Resolution 10 October 2013**"), para. 3.

[13] Since that report was released it has been established that some of the flights the Seimas Committee identified were not linked to CIA renditions, while evidence of additional flights which were linked to CIA renditions has also come to light.

[14] Seimas (of the Republic of Lithuania), "Findings of the Parliamentary Investigation by the Seimas Committee on National Security and Defence Concerning the Alleged Transportation and confinement of persons detained by the Central Intelligence Agency of the United States of America in the territory of the Republic of Lithuania", 22 December 2009, http://www3.lrs.lt/pls/inter/w5_show?p_r=6143&p_d=100241&p_k=2, ("**Seimas Report**"), pp. 7-9.

[15] Under Article 228(1) of the Lithuanian Criminal Code.

[16] Constitution Project, "Rendition and the 'Black Sites', Task Force on Detainee Treatment", http://detaineetaskforce.org/read/#/180/, p. 180.

10. The European Parliament has encouraged the Lithuanian Prosecutor-General's Office to substantiate its affirmations that no CIA high value detainees have been detained in Lithuania.[17] However, as can be seen in the State Party's response to the List of Issues Prior to reporting,[18] the Lithuanian authorities continue to rely on State secrets as a justification to withhold information concerning the investigation from the public.

11. The pre-trial investigation carried out during 2010 displays serious shortcomings. Following a visit to Lithuania, the European Committee on the Prevention of Torture ("CPT") questioned the thoroughness of the pre-trial investigation in view of the paucity of the information available.[19] Information later revealed through litigation in the European Court indicates that investigators carried out only extremely short site visits, did not collect relevant evidence, and did not try to contact potential witnesses in the area.

12. On 28 October 2011, INTERIGHTS brought a case against Lithuania on behalf of Abu Zubaydah,[20] who was subject to the CIA RDI Programme, to the ECHR. As a result of a highly restrictive classification regime in place in Guantánamo Bay (where Abu Zubaydah is currently held, without charge) Abu Zubaydah has been unable to participate in proceedings. His Counsel and Reprieve provided the Lithuanian authorities with information suggesting that Abu Zubaydah was held in Lithuania for a period of his secret detention. In September 2012 Reprieve published a further dossier of Lithuania-related aviation evidence indicating involvement in the CIA RDI Programme.[21]

13. Alongside that litigation significant new information, including flight data and contractual arrangements associated with rendition circuits, has been uncovered by non-governmental organisations and others.[22] This has been brought to the attention of Lithuanian authorities through the proceedings before the European Court and outside of them. However, rather than address the detailed allegations made, the Lithuanian authorities instead questioned whether Abu Zubaydah "exists at all in respect of alleged acts of Lithuania" and whether Counsel for Abu Zubaydah have specific instructions from their client.[23] On 10 May 2013, the Lithuanian government suggested that flights linked to Abu Zubaydah's movements and stopping in Lithuania (evidence of which had been uncovered by Reprieve and Amnesty International) could have taken place for different purposes, including merely "technical reasons". However, a number of inter-governmental bodies, including the UN Human Rights Council, the European Parliament's Committee on Civil Liberties, Justice and Home Affairs ("LIBE"), the European Parliament's Committee on Legal Affairs and Human Rights, and

[17] European Parliament, "Resolution on alleged transportation and illegal detention of prisoners in European countries by the CIA: follow-up of the European Parliament TDIP Committee report", 2012/2033(INI), 11 September 2012, http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0309&language=EN, (**"European Parliament 11 September 2012 Resolution"**), para. 14.

[18] Lithuania LOIPR Response 2013, p. 15, para. 58.

[19] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, "Report to the Lithuanian Government on the visit to Lithuania carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 18 June 2010", 19 May 2011, http://www.cpt.coe.int/documents/ltu/2011-17-inf-eng.htm ("**CPT Lithuania Report**") , para. 72.

[20] Full name: Zain al-Abidin Muhammad Husayn.

[21] See http://www.reprieve.org.uk/articles/csclithuania/. This has also been submitted to the European Court in Abu Zubaydah's case.

[22] Reprieve, "Reprieve calls on Lithuania to re-open CIA torture site inquiry after discovering suspicious flight into Vilnius", 29 September 2011, http://www.reprieve.org.uk/press/2011_09_28_Lithuania_torture_site/. This data has been independently verified by Amnesty International: see Amnesty International, "Unlock the Truth in Lithuania, Investigate Secret Prisons Now", September 2011, http://www.statewatch.org/news/2011/sep/ai-lithuania-report.pdf, ("**Amnesty International: Investigate Secret Prisons (September 2011)**"), in particular pp. 21-7.

[23] [ECHR] *Zayn al-Abidin Muhammad Husayn (Abu Zubaydah) v. the Republic of Lithuania*, Application No. 46454/11, Response of Counsel for Abu Zubaydah to Lithuanian Government (15 July 2013), http://www.interights.org/document/293/index.html, ("[ECHR] ***Abu Zubaydah v Lithuania"***), pp. 7 and 18-9.

the Council of Europe's Parliamentary Assembly have all compiled strong evidence to suggest that such flights were rendition flights.[24]

14. Furthermore, in October 2011, Amnesty International published new evidence alleging that CIA RDI Programme Detainee linked flights had landed in Finland between 2001 and 2006. Previously, the UN Joint Study had found evidence of only three such flights.[25] In November 2012 the Finnish Parliamentary Ombudsman initiated an investigation into the use of Finnish territory, airspace and flight records systems in the CIA RDI Programme. The Ombudsman sent detailed written requests to fifteen government agencies and asked the Lithuanian authorities for specific information on related flights.[26] In October 2013, the European Parliament urged Lithuania to respond in full to requests for information from all EU Member States; and in particular the request for information from the Finnish Ombudsman regarding a possible rendition route linking the two countries.[27]

15. On 13 September 2013, REDRESS and HRMI submitted a new complaint calling for an investigation into allegations that another detainee, Mustafa al-Hawsawi, was illegally transferred to and secretly detained and tortured in Lithuania as part of the CIA RDI Programme. REDRESS and HRMI asked the Lithuanian Prosecutor to conduct a prompt, thorough and effective investigation into the suspected criminal offenses committed in Lithuania against Mustafa al-Hawsawi. The Prosecutor-General's office initially refused to open an investigation, relying on the conclusion drawn from the 2010 pre-trial investigation. However, after an appeal by REDRESS and HRMI, the Vilnius Regional Court ruled on 28 January 2014 that the decision not to open an investigation was unlawful. Following this, the Prosecutor-General's office announced on 20 February 2014 that it had opened an investigation into indications of a criminal activity, provided for in Article 292(3) of the Lithuanian Criminal Code (illegal transportation of persons across state border). No further information has to date been provided about progress in that investigation.

II. RECOMMENDATIONS

16. Appropriate Lithuanian authorities should:

    a. Ensure that the ongoing criminal investigation into allegations concerning Mustafa al-Hawsawi is independent, impartial, thorough, and effective, in conformity with Lithuania's international obligations, including under the Convention against Torture;

    b. Urgently re-open the wider criminal investigation into Lithuanian state agencies' and actors' involvement in the CIA RDI programme, including allegations concerning Abu Zubaydah;

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[24] UN Human Rights Council, "Report of the Working Group on the Universal Periodic Review: Lithuania", 19 December 2011, A/HRC/19/15 (recommendations included "[r]eopen investigations on secret CIA prisons and study all elements regarding Lithuanian sites (Switzerland)" at (para.90.18)); Human Rights Watch, "Lithuania: Reopen Investigation Into Secret CIA Prisons: New EU Presidency Should Set Example for Justice", 25 June 2013, available at http://www.hrw.org/news/2013/06/25/lithuania-reopen-investigation-secret-cia-prisons; European Parliament, Committee on Civil Liberties, Justice and Home Affairs (LIBE), Rapporteur Hélène Flautre, "Report on Alleged Transportation and Illegal Detention of Prisoners in European Countries by the CIA: Follow-Up of the European Parliament TDIP Committee Report" (2012/2033(INI)), A7-0266/2012, 2 August 2012, ("**European Parliament Flautre Follow-Up Report (2012)**") para. 14 ; Second Marty Report, para.118; Dick Marty, "Time for Europe to come clean once and for all over secret detentions", 21 August 2009, available at: http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=4859&L=2; Amnesty International, "Unlock the Truth in Lithuania, Investigate Secret Prisons Now", September 2011, http://www.statewatch.org/news/2011/sep/ai-lithuania-report.pdf, ("**Amnesty International: Investigate Secret Prisons (September 2011)**").

[25] UN Joint Study on Secret Detention, (A/HRC/13/42), 19 February 2010, p. 139. See also the response by Finland to a written question at the Nordic Council of Ministers (Kirjallinen kysymys, CIA-lennoista Pohjoismaissa, E8/2007 Dnro: 07-392-01), 2 April 2007.

[26] European Parliament Resolution 10 October 2013, preambular para. K.

[27] *Ibid*., para. 4.

c. Expand the terms of reference of the investigation/s expressly to include human rights violations arising from collaboration of the Lithuanian government with the USA in the CIA RDI programme;

d. Seek urgent preservation and disclosure of all relevant evidence in the possession of US authorities, including the CIA, Department of Defence, FBI and other relevant agencies, on: the transfer of individuals to and from Lithuania and the treatment of any individuals detained in Lithuania; information concerning the construction of secret detention facilities in Lithuania; and CIA RDI Programme linked flights into and out of Lithuania;

e. Ensure that the criminal investigation examines the potential responsibility not only of Lithuanian actors, but US actors who were engaged in activities on Lithuanian territory;

f. Pursue any and all relevant lines of inquiry, including those that require communication with officials or other persons in foreign countries;

g. Bring to justice in fair trials any individuals identified as responsible for criminal human rights violations – including illegal deprivation of liberty and transfer of detainees; enforced disappearance; and torture and other cruel, inhuman or degrading treatment – that may have occurred in connection with and within secret CIA detention centres established in Lithuania between 2002 and 2006;

h. Provide information to the public and alleged victims about the steps undertaken in the previous criminal investigation and ensure that ongoing investigations and public proceedings take place that are capable of fully documenting, acknowledging, and providing remedies for violations by Lithuania and/or the USA of the states' responsibilities under international human rights law in relation to rendition and secret detention on Lithuanian territory;

i. Comply in good faith with all freedom of information requests submitted to government agencies, bodies, or state actors in conformity with the Lithuanian "Law on the Provision of Information to the Public" and Lithuania's international legal obligations;

j. Refrain from invoking state secrecy to shield the government and state actors from accountability for complicity in the CIA operated programmes of rendition and secret detention;

k. Guarantee that claims of state secrecy on national security grounds are reviewed by an independent judicial mechanism;

l. Cooperate with any judicial process that challenges the government's refusal to comply with freedom of information requests and/or the government's invocation of the state secrets privilege;

m. Ensure that any named victims and/or their representatives are granted the right to full participation in the investigation in conformity with the internationally recognized right of victims of human rights violations to effective redress, and where necessary seek access to such victims to allow this;

n. Cooperate fully with investigations into involvement in the RDI programme in other countries, including those investigations ongoing in Poland and Finland.

o. Respond to the communications sent by the authors of the UN Joint Study without further delay.

III. QUESTIONS FOR LITHUANIA

17. In view of the limited progress made in responding to the serious allegations raised, we urge the Lithuanian State Party to share information about the:

    a. scope and methodology of the Lithuanian Prosecutor General's inquiry of 2010–2011;

    b. scope and methodology of investigating allegations put forward by Reprieve and INTERIGHTS that Abu Zubaydah was illegally transferred to/from and arbitrarily held and tortured in a Lithuanian black site;

    c. intended methodology of the Lithuanian Prosecutor General's inquiry into the request made by REDRESS and HRMI to investigate the possibility that Mustafa al-Hawsawi was held in Lithuania for an unknown period between 2004 and 2006, and steps that have already been taken in that inquiry;

    d. whether the new investigation will include within its scope whether other individuals, including Abu Zubaydah, were also held in Lithuania during the period 2004 and 2006;

    e. what steps Lithuanian authorities have taken to seek information from other countries of relevance to the investigation, including whether they have sought access to those alleged to have been held on Lithuanian territory;

    f. steps that the Lithuanian government will take should the Prosecutor's investigation find evidence that individuals were subject to other crimes outside of "illegal transportation of persons across state border";

    g. its cooperation with any requests for information from the Finnish authorities regarding the possible links between Lithuania and Finland with respect to rendition flights/circuits.

B. BACKGROUND: EUROPEAN INVOLVEMENT IN THE RDI PROGRAMME

18. In the aftermath of the 11 September 2001 attacks in the USA,[28] the US government – with assistance from a number of allies – created and implemented global counter-terrorism operations which included the CIA RDI Programme.[29] This programme is known to have involved:

- the apprehension without due process, or abduction, of persons suspected of involvement in terrorism-related acts. In many cases, these operations amounted to enforced disappearance;[30]
- detention in secret or "black" sites off limits to lawyers, judges or monitoring bodies as well as the press, ICRC, or foreign observers;[31]
- the extraordinary rendition of detainees to countries where they were at risk of torture or other ill-treatment or patently unfair trials, or to CIA secret prisons;[32] and
- interrogation using "enhanced interrogation techniques"[33] intended to influence detainees' behaviour[34] and to elicit information[35] through causing pain and suffering, which amounted to torture or other ill-treatment.[36]

19. The CIA RDI Programme followed a carefully defined pattern, as set out in CIA documents that have become publicly available,[37] and has also been referred to as the "torture program".[38] The UN

[28] In New York City, Washington, D.C., and Pennsylvania
[29] Emmerson 2013 Report, A/HRC/22/52, para. 15.
[30] [ECHR], *El-Masri v The Former Yugoslav Republic of Macedonia*, app. no. 39630/09, 12 December 2012, ("**[ECHR] *El-Masri***") para. 183.
[31] Committee on Armed Services, United States Senate, "Inquiry into the Treatment of Detainees in U.S. Custody", 20 November 2008 (released 22 April 2009, redacted), http://s3.amazonaws.com/nytdocs/docs/211/211.pdf, ("**SASC Detainee Report**"), p. 14. This type of detention has been recognised as being in clear violation of the right to liberty and security and the right to a fair trial, as facilitating the use of torture and ill-treatment, and as constituting, in itself, a form of ill-treatment or torture - see UN Joint Study on Secret Detention, A/HRC/13/42, p. 2-3; CPT Lithuania Report, para 66.
[32] ICRC, "Report of the ICRC on the Treatment by the Coalition Forces of Prisoners of War and other Protected Persons by the Geneva Conventions in Iraq during Arrest, Internment and Interrogation", February 2004, http://www.globalsecurity.org/military/library/report/2004/icrc_report_iraq_feb2004.pdf ("**ICRC Iraq Report**"), p. 3-4.
[33] Central Intelligence Agency Office of the Inspector General, "Special Review", 7 May 2004, http://www.therenditionproject.org.uk/pdf/PDF%2020%20[CIA%20IG%20Investigation%20EITs%202004].pdf ("CIA OIG Review"),("**CIA OAG Review**"), p. 15. See also Jay Bybee, Office of Legal Counsel, Department of Justice, "Memo for Alberto Gonzales, Counsel to the President Re: Standards of Conduct for Interrogation under 18 USC paras.2340-2340A", 1 August 2002, http://www.therenditionproject.org.uk/pdf/PDF%2019%20[Bybee%20Memo%20to%20Gonzales%20Standards%20Interrogation%201%20Aug.pdf; Jay Bybee, Office of Legal Counsel, Department of Justice, "Memo for John Rizzo, Acting General Counsel to the CIA: Interrogation of an Al Qaeda Operative", 1 August 2002, http://www.therenditionproject.org.uk/pdf/PDF%2015%20[Bybee%20Memo%20to%20CIA%201%20Aug%202002].pdf ("**2005 OLC Combined Techniques Advice**").
[34] 2005 OLC Combined Techniques Advice, p. 1. See also CIA OIG Review, p. 15.
[35] Second Marty Report, para. 55.
[36] ICRC Iraq Report), p. 3-4; European Parliament Recommendation 1983 (2011); European Parliament Flautre Follow-Up Report (2012), First Marty Report (7 June 2006), Second Marty Report (7 June 2007), CIA OAG Review**,** UN Joint Study on Secret Detention, A/HRC/13/42, Emmerson 2013 report, (A/HRC/22/52); International Committee of the Red Cross (ICRC), "Report on the Treatment of Fourteen 'High Value Detainees' in CIA Custody", February 2007, http://www.therenditionproject.org.uk/pdf/PDF%20101%20[ICRC,%20Feb%202007.%20Report%20on%20Treatment%20of%2014%20HVD%20in%20CIA%20Custody].pdf, ("**ICRC HVDs Report**"), p. 33; and CIA, "Background Paper on CIA's Combined Use of Interrogation Techniques (undated) (redacted)", Fax from [redacted], Central Intelligence Agency, to Dan Levin, Office of Legal Counsel, Department of Justice, 30 December 2004 (released 24 August 2009), http://www.aclu.org/files/torturefoia/released/082409/olcremand/2004olc97.pdf ("**CIA Background Paper on Combined Techniques**"), p. 1.

Special Rapporteur on the protection and promotion of human rights and fundamental freedoms while countering terrorism has recently characterised this programme as "a systematic campaign of internationally wrongful acts involving the secret detention, rendition and torture of terrorist suspects"[39] and found that:

> There is now credible evidence to show that CIA "black sites" were located on the territory of Lithuania, Morocco, Poland, Romania and Thailand and that the officials of at least 49 other States allowed their airspace or airports to be used for rendition flights.[40]

20. The news that the CIA was secretly detaining and interrogating some of its most important detainees in Europe first broke on 2 November 2005 when *The Washington Post* published an article claiming that former CIA officials had informed them of this.[41] Following the publication of that news article, and subsequent similar reports,[42] the Parliamentary Assembly of the Council of Europe ("PACE") and the European Parliament initiated investigations into the allegations.

21. Reports of the PACE (2006 and 2007) and the European Parliament (2007) concluded that a number of European governments had been complicit in the CIA RDI Programme and found evidence supporting allegations that secret detention facilities had existed in at least Poland and Romania.[43] Dick Marty, PACE's Rapporteur on Alleged Secret Detentions in Council of Europe Member States, stated that "[s]ome European governments have obstructed the search for the truth and are continuing to do so…".[44] Giovanni Claudio Fava, rapporteur to the European Parliament Inquiry, noted that the inquiry's conclusions were "not exhaustive" due to the limited powers and time at its disposal.[45] His report referred to the information cited as "only a tiny fraction of all the cases of 'extraordinary rendition' which have occurred over the last few years" which he described as widespread and methodical.[46]

22. On 20 August 2009, news media identified Lithuania as a third European country that had provided the CIA with secret detention facilities or black sites for detainees.[47] Former CIA officials directly involved in the programme told ABC News that "as many as eight suspects were held [in Lithuania] for more than a year, until late 2005 when they were moved because of public disclosures about the

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[37] CIA Background Paper on Combined Techniques. See also CIA OIG Review, paras. 57-60 (heavily redacted): specific guidelines were issued on conditions of detention and interrogation under this programme in January 2003.

[38] Cited as such by Military Commission Counsel for the individual Mustafa al-Hawsawi in their Urgent Action request to the UN Working Group on Arbitrary Detention; http://www.ohchr.org/EN/Issues/Detention/Pages/WGADIndex.aspx. Urgent Action request is one file with REDRESS.

[39] Emmerson 2013 report, (A/HRC/22/52), para. 14.

[40] Emmerson 2013 report, (A/HRC/22/52), para. 19.

[41] Dana Priest, "CIA Holds Terror Suspects in Secret Prisons. Debate Is Growing Within Agency About Legality and Morality of Overseas System Set Up After 9/11", The Washington Post, 2 November 2005, http://www.washingtonpost.com/wp-dyn/content/article/2005/11/01/AR2005110101644.html.

[42] Dana Priest, "Foreign Network at front of CIA's Terror Fight. Joint Facilities in Two Dozen Countries Account for Bulk of Agency's Post-9/11 Successes", The Washington Post, 18 November 2005; Brian Ross, Richard Esposito "Sources Tell ABC News Top Al Qaeda Figures Held in Secret CIA Prisons. 10 Out of 11 High-Value Terror Leaders Subjected to "Enhanced Interrogation Techniques", ABC News, 5 December 2005, http://abcnews.go.com/Blotter/Investigation/story?id=1375123; Dana Priest, "Covert CIA Program Withstands New Furore. Anti-Terror Effort Continues to Grow", The Washington Post, 30 December 2005, http://www.washingtonpost.com/wp-dyn/content/article/2005/12/29/AR2005122901585.html.

[43] First Marty Report, Fava Final Report.

[44] Second Marty Report, para. 5.

[45] Final Fava Report, paras. 157-179.

[46] Giovanni Claudio Fava, Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners, "Working Document No. 7", PE 380.593, DT\641309EN.doc, 16 November 2006, http://www.europarl.europa.eu/RegData/commissions/tdip/document_travail/2006/380593/TDIP_DT(2006)380593_EN.doc, p. 4.

[47] Matthew Cole, "Officials: Lithuania Hosted Secret CIA Prison to get 'Our Ear", ABC News, 20 August 2009, http://abcnews.go.com/Blotter/story?id=8373807 ("**Matthew Cole ABC News (20 August 2009)**").

programme".[48] Two senior US government officials, cited in the ABC News report, claimed that CIA detainees were held in Lithuania until late 2005, when information on the CIA RDI Programme became public. The following day (21 August 2009), Rapporteur Dick Marty, issued a statement that his own sources confirmed ABC News' report that CIA detainees were held in Lithuania. He called for the Lithuanian authorities to carry out a full, independent and credible investigation.[49]

23. Flight records uncovered by Reprieve suggest that detainees may have been held in Lithuania until 2006.[50] Detainees were then allegedly transferred out of Eastern Europe, to one or more undisclosed locations, now thought to include Afghanistan and Morocco.[51]

C. LITHUANIAN INVESTIGATIONS

I. SEIMAS CNSD INQUIRY (2009)

24. Following a visit in October 2009 by the Council of Europe Commissioner for Human Rights,[52] the Lithuanian Parliament mandated the Seimas CNSD to conduct a parliamentary inquiry focusing on the following questions:

    a. were CIA detainees subject to transportation and confinement in Lithuania?;

    b. did secret CIA detention centres operate in Lithuania?;

    c. did Lithuanian State (politicians, officers, civil servants) consider the issues relating to the activities of the CIA with respect to the operation of detention centres on the territory of Lithuania, and the transportation and confinement of detainees on the territory of the Republic of Lithuania?[53]

25. The Seimas CNSD's findings, issued in December 2009, confirmed that: 1) the CIA had approached Lithuanian authorities in relation to participating in the CIA RDI Programme; and 2) Lithuanian authorities had agreed to participate in the programme and authorised the construction and equipment of two facilities in Lithuania suitable for holding detainees.[54] The Seimas CNSD inquiry further found:

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[48] Matthew Cole ABC News (20 August 2009). See also Dick Marty, "Time for Europe to come clean once and for all over secret detentions", 21 August 2009, http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=4859&L=2 (**"Marty Accountability Statement 2009"**).

[49] Marty Accountability Statement 2009.

[50] Reprieve, "New torture flights between Lithuania and secret CIA prisons in Afghanistan & Morocco revealed as European Parliament debates rendition project", 10 September 2012, http://www.reprieve.org.uk/press/2012_09_10_new_rendition_data_european_parliament/.See also Associated Press, "Secret CIA prison in Romania exposed: report", 8 December 2011, http://www.nydailynews.com/news/world/secret-cia-prison-romania-exposed-report-article-1.988542?pgno=2.

[51] Matthew Cole, ABC News (20 August 2009). See also UN Joint Study on Secret Detention, (A/HRC/13/42), 19 February 2010, para. 124; Adam Goldman, "The hidden history of the CIA's prison in Poland", *Washington Post*, 23 January 2014, http://www.washingtonpost.com/world/national-security/the-hidden-history-of-the-cias-prison-in-poland/2014/01/23/b77f6ea2-7c6f-11e3-95c6-0a7aa80874bc_story.html.

[52] "Lithuanian Leader Suspects Her Country Hosted CIA Jail", Agence France Press, 20 October 2009, http://www.google.com/hostednews/afp/article/ALeqM5jPNgTvHIMlQht54pINzp8Er2v_yA, and Council of Europe Commissioner for Human Rights, "The Commissioner Discussed Minorities' Rights and Discrimination during His Visit to Lithuania", 22 October 2009, http://www.hrmi.lt/uploaded/PDF%20dokai/Hammarberg_News_2009_091022_Lithuania_en.pdf.

[53] Seimas Report, p. 3.

[54] *Ibid*., p. 7.

a. wide-scale direct cooperation between the Lithuanian SSD and CIA;[55]

b. the CIA had asked the Lithuanian SSD to prepare detention facilities that would house persons suspected of terrorism-related activities;

c. two locations had been prepared to receive suspects (labelled by the Seimas CNSD as Projects No. 1 and No. 2, described below);[56]

d. a number of planes operating in the context of the CIA High Value Detainee Programme had transited over Lithuanian airspace and at least five landings occurred on Lithuanian territory;[57]

e. SSD officers had actively received and escorted three aircraft associated with the RDI Programme (identified by tail numbers):

   i. **N787WH**, which landed in Palanga, Lithuania with five passengers on **18 February 2005**;
   ii. **N787WH**, which landed in Vilnius, Lithuania on **6 October 2005**;
   iii. **N733MA**, which landed in Palanga on **25 March 2006**;[58]

f. stops in both Poland and Romania – other alleged host countries for secret CIA detention facilities – had been part of the flight circuits for some of these flights;[59]

g. that, while not being able to establish whether detainees had been brought into Lithuania, "conditions for such transportation did exist";

h. in at least one case passengers - in addition to crew - had been aboard an aircraft that had landed in Lithuania;[60]

i. Lithuanian border guards had been prevented from inspecting some of the flights, which inhibited their ability to determine if passengers were aboard.[61]

26. The Seimas CNSD found that Lithuanian authorities were asked to develop two facilities. Seimas CNSD labeled these two facilities Project No. 1 and Project No. 2. Director General of the SSD Mečys Laurinkus and his deputy Dainius Dabašinskas both had knowledge of the project to construct facilities. When instructing the contractors to equip the facilities, Dainius Dabašinskas mentioned that the project "had been blessed by the top officials of the State", however, according to the testimony of the then political leaders, they had not been informed of it.[62]

27. **Project No. 1** consisted of a small, single-storey, detached building located in a residential area in the centre of Vilnius, according to the Seimas CNSD and CPT (which later visited the site during a periodic visit to Lithuania).[63] The Seimas CNSD reported that the implementation of Project No. 1 began in 2002. At this time, Lithuanian authorities knew, or should have known, of the concerns that

[55] *Ibid*., p. 8-9.
[56] *Ibid*., p. 6-7.
[57] *Ibid*., p. 6.
[58] *Ibid*., p. 4-5.
[59] *Ibid*., p. 4-6.
[60] *Ibid*., p. 6.
[61] *Ibid*., p. 6.
[62] *Ibid*., p. 6.
[63] CPT Lithuania Report, para. 68.

were being raised as regards the USA's treatment of suspected terrorists detained in its detention facilities in the context of the "war on terrorism".[64]

28. ABC News Reporters Matthew Cole and Brian Ross described witnesses' accounts of **Project No. 2** as a building within an indoor house riding area, located in Antaviliai, Lithuania, where prefabricated pods housed prisoners, and separate cells were used for interrogations. It is believed that this was active from 2004 to 2006. All electrical outlets were designed for American appliances.[65] Villagers approaching the facility to ask for work were turned away by English-speaking workers.[66] It is believed that English-speaking contractors built a large warehouse on the site of the original riding barn, with no windows but an array of air-conditioning units. Following an initial flurry of work, the site became very quiet, according to local witnesses, with vehicles coming and going, and guards patrolling the perimeter, but few other obvious signs of life. A former Lithuanian military counter-intelligence officer claimed that the existence of at least one black site was widely known amongst Lithuanian intelligence officers.[67]

29. The facility had been purchased in 2004 by Elite LLC and an individual named Valdas Vitkauskas from local owners.[68] Following the conversion of the site from a horse riding facility in Spring/Summer 2004, the site remained the property of Elite LLC until its sale to the Lithuanian SSD in January 2007, following the revelation of Eastern European black sites.[69]

30. In a later visit to the site, the CPT found two connected buildings located 20 km outside Vilnius. One of the buildings "resembled a large metal container enclosed within a surrounding external structure" and contained remnants of machinery and spare parts (originating from the USA), including notices and instructions in English.[70] The Lithuanian official accompanying the CPT delegation said that the equipment and other materials were left behind by the building's previous occupants. This description comports with the "building inside a building" methodology allegedly used by the CIA in the construction of secret detention sites.[71]

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[64] [ECHR] *Abu Zubaydah v. Lithuania*, Submission by Counsel for the Applicant, http://www.interights.org/abu-zubaydah-v-lithuania/index.html paras. 87-88; see also Amnesty International and International Commission Of Jurists, Third Party Intervention in the same case, *Abu Zubaydah v. Lithuania,* http://www.amnesty.org/en/library/asset/EUR53/002/2013/en/31871251-7203-4d30-8b44-ba879d8c08c5/eur530022013en.pdf. See also [ECHR] *El-Masri*, paras. 111-129.

[65] Matthew Cole and Brian Ross, "Exclusive: CIA 'Torture' Prison Found at Fancy Horseback Riding Academy", ABC News, 18 November, 2009, http://abcnews.go.com/Blotter/cia-secret-prison-found/story?id=9115978.

[66] *Ibid.*

[67] *Ibid*.

[68] Reprieve, Crofton Black gives evidence to the European Parliament on CIA RDI Programme: Summary of Evidence Provided, http://www.reprieve.org.uk/press/2012_03_29_crofton_european_renditions_evidence/, (29 March 2012).

[69] Craig Whitlock, "Lithuania investigates possible CIA 'black site'", 19 November 2009, http://www.washingtonpost.com/wp-dyn/content/article/2009/11/18/AR2009111803994.html, pictures available at http://abcnews.go.com/Blotter/slideshow?id=9124692.

[70] CPT Report, para. 68.

[71] A confidential source cited by ABC News described the internal layout of the Lithuanian site: "On a series of thick concrete pads, [the CIA] installed 'prefabricated pods' to house prisoners, each separated from the other by five or six feet. Each pod included a shower, a bed and a toilet. Separate cells were constructed for interrogations. The CIA converted much of the rest of the building into garage space. Intelligence officers working at the prison were housed next door in the converted stable, raising the roof to add space. Electrical power for both structures was provided by a 2003 Caterpillar autonomous generator. All the electrical outlets in the renovated structure were 110 volts, meaning they were designed for American appliances. European outlets and appliances typically use 220 volts. The prison pods inside the barn were not visible to locals. They describe seeing large amounts of earth being excavated during the summer of 2004. Locals who saw the activity at the prison and approached to ask for work were turned away by English-speaking guards. The guards were replaced by new guards every 90 days". See Matthew Cole and Brian Ross, "CIA Secret 'Torture' Prison Found at Fancy Horseback Riding Academy", ABC News, 18 November 2009, http://abcnews.go.com/Blotter/cia-secret-prison-found/story?id=9115978.

31. The CPT held that the present layout of the two sites observed (Projects No. 1 and 2) were consistent with having been previously used for detention purposes.[72] In 2012 a delegation from the LIBE Committee also visited the site, and found that the "the layout of the buildings and installations inside appears to be compatible with the detention of prisoners".[73]

II. PROSECUTOR GENERAL'S INQUIRY (JANUARY 2010 – JANUARY 2011)

32. The key recommendation in the Seimas CNSD inquiry's final report was for the Prosecutor General's Office to investigate whether the acts of three former senior Lithuanian SSD officials – Mečys Laurinkus, a former SSD director general (1998-April 2004); Arvydas Pocius, another former SSD director (April 2004-December 2006); and Dainius Dabašinskas, former SSD deputy director general (December 2001-August 2009) – amounted to the criminal abuse of office under Lithuanian law.

33. In response, the Prosecutor General's office, on **22 January 2010**, commenced an investigation to inquire into possible criminal acts committed by Lithuanian State officials under Article 228 (Abuse of Official Position) of the Lithuanian Criminal Code. The Prosecutor General assured Amnesty International at the time that there was no limit on the scope of the investigation, which would be expanded should the investigation reveal information of other criminal acts and specifically as regards alleged human rights abuses.[74]

UN Joint Study on Global Practices in relation to Secret Detention (February 2010)

34. While the Prosecutor General's inquiry was ongoing, the UN Joint Study on secret detention was released. The UN Joint Study reported that their research "appear[ed] to confirm that Lithuania was integrated into the secret detention programme in 2004". By analysing data strings, the Joint Study suggested that at least two planes operating in the context of the CIA RDI Programme had landed in Lithuania from Afghanistan under cover of "dummy" flight plans;[75] one on **20 September 2004** (the same day that ten detainees previously held in secret detention, in a variety of countries, were flown to Guantánamo Bay) and the other on **28 July 2005**.[76]

35. Neither of these two flights had been referred to in the Seimas CNSD's report. In referring to that report, the authors of the UN Joint Study welcomed it "as an important starting point in the quest for truth about the role played by Lithuania in the secret detention and rendition programme" but stressed that "its findings can in no way constitute the final word on the country's role"[77] in the CIA RDI Programme.

36. The UN Joint Study clearly articulated the need for further thorough investigations. However, statements made at a press conference with Lithuanian Prime Minister and US Secretary of State Hillary Clinton raised concerns about the political will in Lithuania to uncover the truth about Lithuania's involvement in the CIA RDI Programme. When asked how the USA government was going to co-operate in inquiries concerning Lithuanian participation in the CIA RDI Programme, the Lithuanian Prime Minister reportedly replied:

[72] CPT Lithuania Report, para. 68.
[73] European Parliament 11 September 2012 Resolution, preambular para. T.
[74] Letter from the Prosecutor General's Office of the Republic of Lithuania to Amnesty International, 26 March 2010.
[75] UN Joint Study on Secret Detention, paras 116 and 120. Para. 116, fn. 201: "Data strings are exchanges of messages or digital data, mostly in the form of coded text and numbers between different entities around the world on aeronautical telecommunications networks. They record all communications filed in relation to each particular aircraft, as its flights are planned in advance, and as it flies between different international locations".
[76] UN Joint Study on Secret Detention, para. 120.
[77] *Ibid.,* para. 122.

> Well, I think that all the investigations which we were able to do were done in Lithuania by Lithuanian Parliament, and we have nothing to add. And if some additional information will come, we shall come back to conclusions which were made earlier. So that's an issue which is closed in Lithuania and there is nothing to add.[78]

37. Later the same year, the President is reported to have stated that any information regarding persons held in the CIA secret sites must be taken up and reviewed in the USA, implying that the co-operation of the US government would be required in order for Lithuania to account for its role in the CIA RDI Programme.[79]

European Committee on the Prevention of Torture (CPT) (June 2010)

38. In June 2010, while the Prosecutor General's investigation was ongoing in Lithuania, the CPT (following a periodic review) criticised the Prosecutor for failing to provide it with information concerning the methodology of his investigation – including providing information relating to witnesses interviewed, documents obtained, records of on-site inspections, information sought from foreign authorities and whether such information was received.

39. The CPT stated that it "did not receive the specific information it requested"[80] and noted that the "[p]aucity of the information currently available" leaves open the question whether the pre-trial investigation was sufficiently thorough.[81]

Allegations concerning Abu Zubaydah (2011)

40. On 28 March 2002, agents of the US and Pakistan seized Abu Zubaydah from a house in Faisalabad, Pakistan. For more than four years thereafter, Abu Zubaydah was held in incommunicado detention in secret detention facilities around the world. While the Lithuanian Prosecutor General's pre-trial investigation into complicity in the CIA RDI Programme was still underway, Reprieve wrote to the Prosecutor General with specific allegations concerning Abu Zubaydah's detention in Lithuania, commenting that "recent information ha[d] come to [it] from a confidential and extremely reliable unclassified source, confirming that [Abu Zubaydah] was held in a secret CIA prison in Lithuania".[82] Reprieve's initial letter of 20 September 2010 urging the state to take action was followed by another letter of 18 November 2010; together the correspondence set out detailed allegations, requested 'urgent investigation' by the Government to uncover information on transnational transfers, flights, treatment, and any cooperation with the CIA involving multiple sources such as the applicant, US authorities, and Lithuanian state entities, and provided a series of suggestions designed to assist the government in conducting a thorough investigation.[83]

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[78] United States Department of State, Secretary of State Hillary Clinton, "Remarks with Lithuanian Prime Minister Andrius Kubilius after Their Meeting", 6 May 2010, http://www.state.gov/secretary/20092013clinton/rm/2010/05/141586.htm.
[79] Delfi, "D.Grybauskaitė: apie CŽV kalinius gali komentuoti tik JAV", 21 September 2010, http://www.delfi.lt/news/daily/lithuania/dgrybauskaite-apie-czv-kalinius-gali-komentuoti-tikjav.d?id=36762765; cited in Amnesty International, "Open Secret: Mounting Evidence of Europe's Complicity in Rendition and Secret Detention", https://www.amnesty.org/en/library/asset/EUR01/023/2010/en/3a3fdac5-08da-4dfc-9f94-afa8b83c6848/eur010232010en.pdf, (**"Amnesty International Open Secret"**) p. 25.
[80] CPT Report, para. 72.
[81] CPT Report, para. 72.
[82] Reprieve, "Letter to Darius Valys from Clive Stafford Smith", 20 September 2011, http://www.reprieve.org.uk/static/downloads/2010_09_20_CSS_Letter_Darius_Valys_Lithuania_investigation.pdf.
[83] Application, Annex 26, Letter from Clive Stafford Smith of Reprieve to Darius Valys, Prosecutor General of Lithuania (20 September 2010). *See also*, Annex 28, Letter of Clive Stafford Smith, Director of Reprieve, to Darius Valys, Prosecutor General of Lithuania (18 November 2010) (reiterating requests from 20 September 2010 letter and suggesting additional specific steps for investigation).

41. The US has acknowledged Abu Zubaydah was subject to all of the enhanced interrogation techniques, including "waterboarding", a torture technique that simulates drowning.[84] Abu Zubaydah has been called a "guinea pig" for the US government's attempts to use so-called "enhanced interrogation techniques" on terrorism suspects.[85] Throughout the period of Abu Zubaydah's secret detention, interrogation and torture by the CIA, the US government alleged that he had been a high-level member of al Qaeda and a close associate of Osama bin Laden. Since then, the US government has withdrawn all such allegations and no longer maintains that Abu Zubaydah played any significant role in al-Qaeda.[86] Abu Zubaydah is still held in Guantánamo Bay despite the fact that to date, no charges have been brought against him. A later news report, published in May 2011, stated that two former US intelligence officials had specifically named Abu Zubaydah as one of the CIA detainees held in Lithuania.[87]

Closing of Prosecutor General's Investigation (January 2011)

42. In January 2011 the Lithuanian Prosecutor General closed the criminal investigation without making information regarding the findings of the investigation public, citing the need to protect State secrets.[88] The Prosecutor also held that no data on illegal transportation of any persons by CIA aircraft was received during the pre-trial investigation. He further contended that the allegations of renditions were "just an assumption not supported by any actual data".[89]

43. The Prosecutor concluded that in the absence of factual data, "prosecution cannot be initiated or criminal proceedings cannot be continued at this point".[90] Further, the Prosecutor held that, in any event, the crime of "abuse of office" carried a five year **statute of limitations**. Finally, disciplinary action against three named SSD officials could not be pursued as they were no longer serving in the SSD and, in any event, disciplinary offences carried a one-year statute of limitations.[91]

44. The Prosecutor General stated that no factual supporting information in relation to the claim that Abu Zubaydah had been detained in secret in Lithuania had been provided, although it should be noted that Reprieve had confirmed that it had reliable confidential sources placing Abu Zubaydah in Lithuania, and had suggested a number of concrete steps that the Prosecutor General's Office could take to seek further information, in the face of difficulties caused by the classification regime.[92] It appears that, as part of the investigation, the Prosecutor General did not take these steps or contact

[84] CIA OAG Review, http://media.washingtonpost.com/wpsrv/; see also George W. Bush, Decision Points, Crown Publishers, November 2010. See also, Amnesty International, "USA: US Must Begin Criminal Investigation of Torture Following Bush Admission", 10 November 2010, http://www.amnesty.org/en/news-and-updates/us-must-begin-criminalinvestigation-torture-following-bush-admission-2010-11-10

[85] See Jason Leopold, "Torture Diaries, Drawings and the Special Prosecutor", Truthout, 29 March 2010, p. 5, http://www.truthout.org/torture-diaries-drawings-and-special-prosecutor58108.

[86] *Ibid.*

[87] Vanessa Gera, "Polish Prosecutor Removed from CIA Prison Probe", Huffington Post, 24 May 2011. http://www.huffingtonpost.com/huff-wires/20110524/eu-poland-cia-prison/.

[88] Amnesty International: Investigate Secret Prisons (September 2011), p. 17.

[89] Office of the Prosecutor General of the Republic of Lithuania, Resolution on the Termination of the Pre-Trial Investigation, No 01-2-00016-10 (14 January 2011) file with Amnesty International. Translated into English by Amnesty International ("**Lithuanian Prosecutor General Termination of Pre-Trial Investigation**"). Also cited in *Abu Zubaydah v Lithuania*, Additional submission on behalf of Abu Zubaydah, dated 10 September 2012, http://www.interights.org/abu-zubaydah-v-lithuania/index.html, para 129, p. 49.

[90] Lithuanian Prosecutor General Termination of Pre-Trial Investigation.

[91] *Ibid*., pp. 17-20 .

[92] Reprieve, "Letter to Darius Valys from Clive Stafford Smith", 20 September 2011, http://www.reprieve.org.uk/static/downloads/2010_09_20_CSS_Letter_Darius_Valys_Lithuania_investigation.pdf .

USA officials who were alleged to have knowledge of the rendition, detention and interrogation of Abu Zubaydah.[93]

45. It has recently been made public that two site visits were conducted to the alleged secret detention facilities. These examinations of the sites were limited to visits of 45 minutes and 1 hour 15 minutes respectively. There is no suggestion that any forensic evidence was taken, and the site visit protocol does not include relevant information such as photographs of the interior of Site No. 2.[94] Counsel for Abu Zubaydah in the European Court of Human Rights litigation also note that eyewitnesses living in the vicinity of the site have not been interviewed about their observations during the years that the CIA allegedly made use of the site, even though reports suggest that residents were aware of the existence of some kind of facility on the site and approached it looking for work.

46. In correspondence with researchers from the Constitution Project, Irmantas Mikelionis, of the Organized Crime and Corruption Investigation Unit of the prosecutor general's office, suggested that conditions at Project No. 2 did not necessarily imply that it was a prison, and that it "could just as well have been meant to hold valuables".[95] This explanation seems far-fetched and fails to integrate with any of the other facts surrounding the site or flights made in connection to it.

47. The decision to terminate the investigation stated that much of the information obtained in the course of the investigation "constitutes a state or official secret" and that "the real purpose of the building [Project No. 2] may not be revealed as it constitutes a state secret". To permit a State to close an investigation into alleged secret detentions, on the basis that the purpose of the site where the detentions were alleged to have occurred cannot be revealed because it is a secret, would be to allow the State to avoid its obligation to investigate and address allegations that enforced disappearances were perpetrated or planned on its territory.

48. Moreover, the information already in the public domain demonstrated that continuation of the investigation was warranted: the secret sites had been identified; SSD officials acknowledged that the sites had been established in order to detain terrorism suspects; both parliamentarians and the CPT stated that the physical layout of the sites and the operational dynamic (i.e. no inspections of aircraft were conducted and the CIA had ultimate control over the sites) were easily adaptable to a detention regime; at least one aircraft had carried passengers in addition to crew; and there was a claim that a named individual had been held at a secret facility and ill-treated in Lithuania. As noted above, these facts alone – all in the public domain – constitute strong *prima facie* evidence that human rights violations may have occurred.

49. Notwithstanding this background, Lithuania continues to invoke State secrecy to justify terminating the investigation. In the State Party response to the Committee's List of Issues Prior to Reporting, Lithuania states that:

> More extensive data on the decision to terminate the pre-trial investigation cannot be provided here, as the main part of the information contained in the pre-trial investigation constitutes a state or official secret.[96]

[93] Reply of counsel for Abu Zubahdah to Observations of Lithuania in *Abu Zubaydah v Lithuania* to the European Court of Human Rights (No.46454/11) (10 September 2012), (**"Reply of counsel for Abu Zubahdah to Observations of Lithuania in ECtHR litigation"**) paras. 56 and 58.
[94] *Ibid.,* paras. 63-73.
[95] Constitution Project, "Rendition and the 'Black Sites', Task Force on Detainee Treatment", http://detaineetaskforce.org/read/#/180/, p. 192.
[96] Lithuania LOIPR Response 2013, p. 15, para. 58.

D. NEW FLIGHT DATA & REFUSAL TO REOPEN INVESTIGATION

50. Following the closure of the Prosecutor-General's investigation, significant new flight data associated with rendition circuits has been uncovered by non-governmental organisations including Reprieve and Access Info Europe.[97] Below is a table of now identified possible and probable rendition flight circuits through Lithuania.[98]

51. This shows that between 2004 and 2006, Lithuania became a destination for a number of flights identified by investigators as linked to the CIA, many of which were organised on behalf of the US government by prime contractor Computer Sciences Corporation ("CSC").[99] These flights connected Lithuania to other countries active in the CIA's secret prison and interrogation network including Romania, Morocco, Jordan and Afghanistan. Only some of them were registered by the Seimas CNSD's inquiry.[100]

Date	Plane	Route	Notes
18 Sept. to 21 Sept. 2004	N88ZL	Flight plan filed as: Miami Intl – Washington Dulles Intl – Guantánamo Bay Ns – Gander Intl (Canada) – Bagram AFB (Afghanistan) – Helsinki Vantaa (Finland) – Washington Dulles Intl	Cited in ABC News 21 October 2009 report by Matthew Cole as prisoner transfer flight to Lithuania, which Dick Marty (Rapporteur on Alleged Secret Detentions in Council of Europe Member States of the Parliamentary Assembly of the Council of Europe), in a statement issued on 21 August 2009, appeared to confirm. Also, cited in UN Joint Study on secret detention (2010). According to several former CIA officials, the flight carried an al Qaeda detainee, who was being moved from one CIA detention facility to another.[101]
15 to 18 Feb. 2005	N724CL	Van Nuys - Baltimore - Santa Maria Azores - Gran Canaria - Rabat - Amman - **Vilnius** - Keflavik - Goose Bay - Baltimore - Van Nuys	Disclosed by Reprieve/Access Info Europe and cited by INTERIGHTS in *Abu Zubaydah v Lithuania*.[102] This is highly suggestive of a detainee transfer from Morocco and/or Jordan.

[97] Reprieve, "Reprieve calls on Lithuania to re-open CIA torture site inquiry after discovering suspicious flight into Vilnius", 29 September 2011, http://www.reprieve.org.uk/press/2011_09_28_Lithuania_torture_site/. This data has been independently verified by Amnesty International: see Amnesty International: Investigate Secret Prisons (September 2011), in particular pp. 21-7).

[98] The table has been compiled by the authors of this submission. For supporting data and documents see the rendition flight database at www.therenditionproject.org.uk. The flight information may be incomplete because contractors of rendition planes disguised the routes and because of the confidentiality of the black sites. Also there have been no known cases or investigations in Morocco concerning the CIA black sites. A number of other flights have also been previously identified as potential rendition flights, but only those considered most likely have been included in this table. Other flights include: N8213G (4 Feb 2003), N961BW (2 Jan 2005).

[99] Reprieve, "CSC's covert flights through Lithuania", 7 September 2012, http://www.reprieve.org.uk/articles/csclithuania/.

[100] Two other flights were discussed by ABC News (http://abcnews.go.com/print?id=8874887) but no data corroborating their passage through Lithuania has yet come to light.

[101] Matthew Cole ABC News (20 August 2009).

[102] See also Ruth Blakeley and Sam Raphael , "Rendition circuit: 16-17 February 2005", 2013 http://www.therenditionproject.org.uk/global-rendition/the-flights/rendition-circuits/N724CL-050216.html.

15 to 19 Feb. 2005	N787WH	Baltimore - Santa Maria Azores - Salzburg - Malaga - Rabat - Constanta/Bucharest - **Palanga** - Copenhagen – Gander	Flight plan from Romania filed to Gothenburg. Cited in Seimas CNSD report but without connection to Rabat, Morocco. Full flight plan uncovered by Reprieve / EP LIBE committee in May 2012 and cited by INTERIGHTS in *Abu Zubaydah v Lithuania*.[103] This is highly suggestive of a detainee transfer from Morocco and/or Romania.
28 July 2005	N63MU	Flight plan filed as Kabul Intl – Warsaw – Keflavic – Teterboro – Harrisburg Intl	Cited in ABC News 21 October 2009 report by Matthew Cole as prisoner transfer flight to Lithuania, and referred to in UN Joint Expert Report on secret detention. Several former intelligence officials involved in the CIA's prison programme confirmed the flight as a prisoner transfer to Lithuania.[104]
4 to 7 Oct. 2005	N308AB N787WH	Teterboro - Bratislava - Constanta/Bucharest - Tirana - Shannon/Luton – Montreal Keflavik - Tirana - **Vilnius** - Oslo – Keflavik	EuroControl data on these two flights indicates a plane switch in Tirana, Albania.[105] N308AB was scheduled to arrive in Tirana shortly before departure from there of N787WH. N787WH cited in Seimas CNSD report as coming to Vilnius from Antalya or Tallinn, owing to misrecording of provenance. Highly suggestive of a detainee transfer from Romania to Lithuania.
23 to 27 Mar. 2006	N733MA N740EH	Porto - **Palanga** - Cairo - Iraklion – Keflavik Wilmington – Marrakesh – Cairo – Kabul – Amman – Iraklion - Keflavik	N733MA cited in Seimas CNSD report as returning from Palanga to Porto. It has been established however that it actually went to Cairo, and that in Cairo it was met by another plane, N740EH, that continued the journey to Afghanistan. Cited by INTERIGHTS in *Abu Zubaydah v Lithuania*.[106] This is highly suggestive of a detainee transfer to Afghanistan from Lithuania.

52. The routes of the newly uncovered rendition circuits – originating from other known secret detention sites, particularly in Romania, Morocco and Afghanistan[107] – are strongly suggestive of detainee transfers into Lithuania. They also corroborate reports from former CIA officials directly involved in the programme that suspects were held in Lithuania during 2005, before being moved in response to public disclosures about the programme.[108]

53. This new flight data was brought to the attention of Lithuanian authorities, and non-governmental organisations including Reprieve and Amnesty International called on them to reopen the criminal investigation. However the Lithuanian government maintains that "upon having investigated in

[103] [ECHR] *Abu Zubaydah v Lithuania,* paras. 45-9, 110-4, 256-7.
[104] Matthew Cole ABC News (20 August 2009).
[105] European Parliament 11 September 2012 Resolution, See also Reprieve, "CSC Flights: Romania 2004-5", 4 July 2012, http://www.reprieve.org.uk/articles/CSCRomania/.
[106] [ECHR] *Abu Zubaydah v Lithuania*, Additional submission on behalf of Abu Zubaydah dated 10 September 2012, http://www.interights.org/abu-zubaydah-v-lithuania/index.html ("**Additional Submission in *Abu Zubaydah* ECtHR litigation (10 September 2012**"). See also Reprieve, "CSC's covert flights through Lithuania", 7 September 2012, http://www.reprieve.org.uk/articles/csclithuania/.
[107] Emmerson 2013 Report, A/HRC/22/52, para. 19.
[108] Matthew Cole ABC News (20 August 2009). See also Marty Accountability Statement 2009.

detail both flights N787WH of 18 February 2005 and N733MA of 25 March 2006, it was established by the prosecution beyond any reasonable doubt that no CIA detainee…was transported to/from Lithuania by the said CIA linked aircrafts" and having been considered by the Prosecutor General's office, these flights were "not regarded as an essential new circumstance constituting ground for reopening the pre-trial investigation".[109]

54. The government of Lithuania contends in European Court of Human Rights proceedings that CIA linked planes stopping in Lithuania could have done so for many purposes, including merely "technical reasons".[110] However the UN Joint Study, UN Human Rights Council, European Parliament's LIBE Committee, European Parliament, the European Parliament's Committee on Legal Affairs and Human Rights (led by Dick Marty), and the PACE, have found strong circumstantial evidence to suggest that such flights were rendition flights.[111] Further, as argued in detail by Counsel for Abu Zubaydah in the ECHR litigation, and further explained below, the flights listed above and contracted by the CIA were intricately tied into the rendition programme.[112]

Contractual arrangements pointing to these being rendition flights

55. Civil litigation in New York, between contractors working for the US government,[113] resulted in both parties making clear that they organised flights for the CIA RDI programme. The litigation related to a group of contracts for aviation services between multiple entities, including DynCorp Systems and Solutions LLC, CSC, Capital Aviation, Sportsflight Air and Richmor Aviation. Statements made in court by the principals of Sportsflight Air and Richmor Aviation explicitly recognised that these contracts were designed to facilitate renditions of suspected terrorists around the world. Further research has demonstrated that flights through Lithuania by N787WH (18 Feb. 2005 and 6 Oct. 2005), N724CL (17 Feb. 2005) and N733MA (25 Mar. 2006) were executed within this group of contracts.[114]

56. As court documents show, an initial contract for the provision of flight transport for the RDI programme was drawn up by DynCorp Systems and Solutions LLC ("DynCorp") in 2002, identified as LT050602. In December 2004, CSC bought DynCorp, and inherited operations taking place under this contract and associated subcontracts. Brokers Capital Aviation and Sportsflight, and various plane operators including Richmor Aviation, Victory Aviation (associated with N787WH) and Miami Air International (associated with N733MA), worked together, under DynCorp and CSC, from 2002 until at least 2006.[115]

57. Documents uncovered by Reprieve demonstrate that the February 2005 flights of N787WH and N724CL, travelling from the USA to Lithuania via Morocco and Jordan, were arranged under CSC's subcontract with Sportsflight Air and Capital Aviation identified at S1007312. The March 2006 flights of N733MA and N740EH were arranged under CSC's subcontract with Sportsflight Air identified as

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[109] Observations of Lithuania in *Abu Zubaydah* ECtHR litigation (3 June 2013), para 61.
[110] *Ibid*., para. 7.
[111] *Ibid.* See also Open Society Justice Initiative, "Globalizing Torture, CIA Secret Detention and Extraordinary Rendition", 5 February 2013, pp. 90-93, available at http://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf.
[111] *Ibid*.
[112] [ECHR] *Abu Zubaydah v Lithuania*, Response of Counsel for Abu Zubaydah, http://www.interights.org/document/293/index.html.
[113] [USA] *Richmor Aviation v. Sportsflight Air,* Case File, (N.Y. App. Div 2011) ("**Richmor case file**").
[114] Statements included that "It was ultimately learned that the flights would be going to and from Guantánamo Bay and would be used for assorted rendition missions". (Richmor case file, Brief for the Defendant-Appellant, p. 7); "GIV N227SV [a/k/a N85VM] will always be linked to renditions" (Letter from Mahlon Richards, President of Richmor Aviation, to Donald Moss, President of Sportsflight Air, 19 Oct. 2006, Richmor case file p. 10 and 427). See further examples at [ECHR] *Abu Zubaydah v Lithuania*, Response of Counsel for Abu Zubaydah, http://www.interights.org/document/293/index.html, para. 46.
[115] [ECHR] *Abu Zubaydah v Lithuania*, Response of Counsel for Abu Zubaydah, http://www.interights.org/document/293/index.html, paras. 44-9.

S1008117. Although these subcontract numbers were created in 2004 and 2005 respectively, invoices relating to tasks under these subcontracts retain the original contract number used by DynCorp and Capital Aviation in 2002, namely "LT050602".[116] The pattern of business described in the *Richmor Aviation v. Sportsflight Air* case therefore includes these flights.

58. Reprieve has disclosed two closely matched routes correlating with the reported movements of Abu Zubaydah.[117] N787WH flew from Rabat, Morocco – the site where Abu Zubaydah is alleged to have been held in a secret prison from early 2004 – to Romania and then landed at Palanga Airport, about 300 km northwest of Vilnius, on 18 February 2005 at 18:09. It carried five passengers as well as three crew members. The aircraft remained on the ground at Palanga until 19:30 and then returned to the USA via Copenhagen. The previous day, another aircraft, operated by a different company but working for the same contractor, flew from Morocco to Jordan and then to Vilnius. This aircraft, registration number N724CL, operated by Classic Limited Air, landed in Vilnius on 17 February 2005 and departed shortly after, heading for Iceland.[118] Amnesty International independently secured flight data for N724CL that verifies this circuit.[119] The Seimas CNSD established the arrival of N787WH but not its provenance from Morocco. It failed to disclose any information concerning flight N724CL.[120]

Unusual flight patterns designed to disguise true routes

59. CSC's flights through Lithuania exhibited certain **unusual patterns of behaviour ostensibly designed to disguise their true routes**. These include the filing of false flight plans, incorrect records of origin and destination, and mid-journey plane switches.

60. By way of example, on 18 February 2005, plane N787WH left Malaga, Spain, in the early hours of the morning, arriving in Rabat, Morocco around 02:40. After just over two hours in Morocco it proceeded to Romania, filing a flight plan into Constanta but subsequently out of Bucharest Băneasa. On leaving Romania in the afternoon of 18 February it then filed a flight plan into Gothenburg, Sweden. However, its true destination was Palanga, Lithuania, where it arrived at 18:09.[121]

62. On 6 October 2005 the same plane, N787WH, arrived at Vilnius airport where a handwritten schedule recorded that it had come from Tirana, Albania. The navigation service for their part had recorded that it came from Tallinn, Estonia, while the Border Guard were informed that it came from Antalya, Turkey. Documents uncovered by Reprieve have shown that the plane did indeed come from Tirana, which it had left shortly after the arrival there of another CSC-contracted plane, N308AB, en route from Romania. On leaving Tirana, however, N787WH had filed a false flight plan into Tallinn to disguise its true destination.[122] Analysis of the interlinked routes of the two planes suggests that they met at Tirana to effect a prisoner switch from N308AB to N787WH, further concealing the actual itinerary which was Romania - Albania - Lithuania.

63. N733MA filed a false flight plan from Porto, Portugal, to Helsinki, Finland, in the afternoon of 25 March 2006. Finnish records show that it never arrived in Helsinki. Instead, it went to Palanga, touching down at 22:25 local time. It paused for 90 minutes in Palanga. Lithuanian documents recorded its return to Porto. However, records from EuroControl and the Polish Air Navigation

[116] *Ibid.*, para. 45.
[117] Reprieve, "Reprieve calls on Lithuania to re-open CIA torture site inquiry after discovering suspicious flight into Vilnius", 29 September 2011, http://www.reprieve.org.uk/press/2011_09_28_Lithuania_torture_site/.
[118] [ECHR] *Abu Zubaydah v Lithuania*, First submission of Counsel for Abu Zubaydah, para. 54.
[119] Amnesty International: Investigate Secret Prisons (September 2011), p.21-2.
[120] *Ibid*., p. 22.
[121] Reprieve, "CSC's covert flights through Lithuania", 7 September 2012, http://www.reprieve.org.uk/articles/csclithuania/.
[122] Reprieve, "CSC flights: Romania 2004-5", 4 July 2012, http://www.reprieve.org.uk/articles/CSCRomania/.

Authority both show that on leaving Palanga it actually went to Cairo. Its scheduled arrival time in Cairo (02:19 GMT, 26 March) coincided with the presence of another CSC-contracted plane, N740EH, which was scheduled to leave Cairo shortly after N733MA arrived there (02:45 GMT, 26 March), bound for Afghanistan.[123] Again, the interlinked routes of these two planes suggests that Cairo served as a mid-point for a prisoner transfer taking place between Lithuania and Afghanistan.

64. This data highlights attempts by State authorities to obfuscate transparency. It also indicates that the October 2005 and March 2006 flights through Lithuania were preceded and followed by a switching of planes designed to make it more difficult to decipher the relevant provenance and destination of the missions. Only by analysing the routes of both planes in each case is it possible to discern that the October 2005 mission was most likely intended to connect Romania and Lithuania, while the March 2006 mission was most likely intended to connect Lithuania and Afghanistan.

Failure to submit to regular customs and border control

65. Additionally, these flights were not subject to regular customs and border control. As material from the Lithuanian parliamentary archive shows, the absence of these controls was a surprise to at least one officer of the border guard, who recorded the arrival of N787WH as follows:

> On 2005-10-06 5.15 a.m. an unscheduled airplane from Antalya landed at the Vilnius Airport border control point. As border guard R. Rickevičius, performing airplane escort and inspection duties, tried to walk up to the said aircraft and perform the inspection in accordance with the service regulations (write down the board number and to learn where the airplane arrived from, when it is leaving, and if there are any passengers on board), he was stopped by security employees 400 meters away from the plane, and was not allowed to approach it. There was poor visibility outside, but security employees patrolling around the aircraft and two security patrol vehicles were visible. The officer witnessed a vehicle drive away from the aircraft and leave the airport border control point through the gate. I contacted the head of the aviation security shift, who explained that the State Boarder Guard Central Headquarters were informed about the landing of this aircraft and the security activities being carried out. After the said aircraft had refueled, it left Vilnius Airport at 6.05 a.m.[124]

66. The Seimas CNSD report noted communications from the SSD to the Border Guard on 7 October 2005, and in respect of the 25 March 2006 flight through Palanga.[125]

Timings of flights consistent with reported detainee movements

67. The **timings** of the flights are also consistent with public reporting of prisoner movements within the CIA programme.

    a. Associated Press reported that Abu Zubaydah was held in Morocco in 2004 and also in Lithuania for an unspecified period thereafter, most likely ending before Summer

[123] Reprieve, "CSC's covert flights through Lithuania", 7 September 2012, http://www.reprieve.org.uk/articles/csclithuania/.
[124] Duty report on incident at airport border checkpoint, signed by lieutenant of Vilnius Squad of State Border Guard Service under the Ministry of Interior, 6 October 2005.
[125] Seimas (of the Republic of Lithuania), "Findings of the Parliamentary Investigation by the Seimas Committee on National Security and Defence Concerning the Alleged Transportation and confinement of persons detained by the Central Intelligence Agency of the United States of America in the territory of the Republic of Lithuania", 22 December 2009, http://www3.lrs.lt/pls/inter/w5_show?p_r=6143&p_d=100241&p_k=2.

2006;[126] the flights from Morocco to Lithuania in February 2005 are the only transfers between these two countries which have come to light after extensive record searches.

b. The flights from Romania to Lithuania in October 2005 are consistent with reports that the CIA transferred its prisoners out of Romania before the visit of Secretary of State Condoleezza Rice to Romania in December 2005.[127]

c. Flight data and the UN Joint Study findings relating to CIA related flight movements in September 2004 are consistent with news reports stating that according to several former CIA officials, the September 2004 flight carried an al Qaeda detainee, who was being moved from one CIA detention facility to another.[128]

d. The flights from Lithuania to Afghanistan in March 2006 are consistent with reports that the last of the European secret detention sites were closed by May 2006 and some of their inmates transferred to "a new prison in Kabul".[129]

68. The available evidence (contracts and invoices, patterns of behaviour including flight switches and false flight plans, statements in court proceedings, and the timing of flights) provides a compelling basis to conclude that the purpose of flights by planes N787WH, N724CL, N308AB, N733MA and N740EH was to connect activity between the CIA's various secret prison locations.

69. The Lithuanian government has taken the position in litigation before the European Court that the flights "could have other purposes or simply stopped at some places for some technical reasons" but has not provided answers to the questions that the evidence referred to above raised:

a. how does the government explain the link between these flights and the CIA RDI Programme as outlined through the description of contractual agreements between the flight operators?;
b. why, if these were entirely innocent or "technical" stopovers were the Border Guard prevented from inspecting the planes?;
c. why were the planes cordoned off by the State Security Service?;
d. why was a vehicle seen leaving one of the planes, and the airport, if this was merely a "technical" stop?;
e. why does there appear to have been an effort to disguise the true flight routes if their purposes were legitimate?

70. The fact that Reprieve was able to uncover the information set out above – and that Amnesty International has independently secured data for N724CL's flight circuit for 16-18 February 2005 – leaves open the question as to why neither the Lithuanian parliamentary inquiry nor the Lithuanian Prosecutor General, with a fully resourced office and staff, were unable to obtain it.

71. Alternatively, if the Prosecutor General had discovered this information in the course of the investigation, why was the criminal investigation terminated when an individual (Abu Zubaydah) had alleged that he had been held in secret detention in Lithuania and available information indicated

[126] Associated Press, "Terror Suspects Odyssey through CIA 'Black Sites'" http://hosted.ap.org/specials/interactives/wdc/binalshibh; Vanessa Gera, "Polish Prosecutor Removed from CIA Prison Probe", Associated Press, 24 May 2011. http://www.huffingtonpost.com/huff-wires/20110524/eu-poland-cia-prison/.
[127] Brian Ross, Richard Esposito "Sources Tell ABC News Top Al Qaeda Figures Held in Secret CIA Prisons. 10 Out of 11 High-Value Terror Leaders Subjected to "Enhanced Interrogation Techniques", ABC News, 5 December 2005, http://abcnews.go.com/Blotter/Investigation/story?id=1375123.
[128] Matthew Cole ABC News (20 August 2009).
[129] Adam Goldman, "The hidden history of the CIA's prison in Poland" (23 January 2014), The Washington Post, http://www.washingtonpost.com/world/national-security/the-hidden-history-of-the-cias-prison-in-poland/2014/01/23/b77f6ea2-7c6f-11e3-95c6-0a7aa80874bc_story.html.

that an aircraft had travelled from the site of one secret detention centre where he was alleged to have been held (in Morocco) to another (in Lithuania)?

72. The information described above should have come within the purview of the Lithuanian prosecutors had they conducted a rigorous and comprehensive investigation. Whether the Prosecutor General failed to discover this information or he had this information and failed to pursue it, the investigation was terminated before a thorough and effective investigation in conformity with Lithuania's international obligations was conducted.

European Parliament calls for a new investigation

73. The importance of the new flight data and its impact on Lithuania's obligation to investigate was recognised in a resolution adopted by the European Parliament on 11 September 2012. In that resolution, the European Parliament:

> note[d] new evidence provided by the Eurocontrol data showing that plane N787WH, alleged to have transported Abu Zubaydah, did stop in Morocco on 18 February 2005 on its way to Romania and Lithuania; note[d] that analysis of the Eurocontrol data also reveals new information through flight plans connecting Romania to Lithuania, via a plane switch in Tirana, Albania, on 5 October 2005, and Lithuania to Afghanistan, via Cairo, Egypt, on 26 March 2006; [and] consider[ed] it essential that the scope of new investigations cover possible unlawful detention and ill-treatment of persons on Lithuanian territory.[130]

This understanding of the flight data is mirrored in the findings and reports of other international organisations.[131]

74. The European Parliament called on the "Lithuanian authorities to honour their commitment to reopen the criminal investigation into Lithuania's involvement in the CIA programme if new information should come to light, in view of new evidence provided by the Eurocontrol data".[132]

75. The Resolution also "encourage[s] the Prosecutor-General's Office to substantiate with documentation the affirmations made during the LIBE delegation's visit that the 'categorical' conclusions of the judicial inquiry are that no detainees have been detained in the facilities of Projects No 1 and No 2 in Lithuania".[133]

76. In October 2013, the European Parliament again noted the disparity between reiterated commitments made by Lithuanian officials that they would re-open a criminal investigation into Lithuania's involvement in the CIA RDI Programme if new information was to emerge, and the fact that Lithuania had not done so. The European Parliament resolution referred to the submissions made in the ECHR in *Abu Zubaydah v Lithuania*, noting that the submissions demonstrated critical

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[130] European Parliament Resolution 11 September 2012.

[131] UN Human Rights Council, Report of the Working Group on the Universal Periodic Review : Lithuania, 19 December 2011, A/HRC/19/15 (recommendations included "[r]eopen investigations on secret CIA prisons and study all elements regarding Lithuanian sites (Switzerland)" at (para.90.18)); Human Rights Watch, "Lithuania: Reopen Investigation Into Secret CIA Prisons: New EU Presidency Should Set Example for Justice", 25 June 2013, available at http://www.hrw.org/news/2013/06/25/lithuania-reopen-investigation-secret-cia-prisons; European Parliament Flautre Follow-Up Report (2012), para. 14; Parliamentary Assembly Council of Europe (PACE), Committee on Legal Affairs and Human Rights (CLAHR), "Secret Detentions and Illegal Transfers of Detainees involving Council of Europe Member States: Second Report", 11 June 2007, http://assembly.coe.int/Documents/WorkingDocs/2007/edoc11302.htm, para.118; Dick Marty, "Time for Europe to come clean once and for all over secret detentions", 21 August 2009, http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=4859&L=2; Amnesty International: Investigate Secret Prisons (September 2011).

[132] European Parliament 11 September 2012 Resolution, para. 14.

[133] *Ibid*.

shortcomings in the investigations of Lithuanian officials, and "a failure to grasp the meaning of the new information".[134]

77. The resolution reiterated the European Parliament's call for Member States to fulfil their positive obligations to conduct independent and effective inquiries to investigate human rights violations, taking into account all the new evidence that has come to light, and to disclose all necessary information on all suspect planes associated with the CIA and their territory. It called upon Member States to investigate whether CIA detainees were held in secret facilities on their territory.[135]

78. The resolution specifically urged Lithuania to reopen its criminal investigation into CIA secret detention facilities and to conduct a rigorous investigation considering all the factual evidence that has been disclosed, including by:

- carrying out a comprehensive examination of the renditions flight network;
- contacting persons publicly known to have organised or participated in the flights in question; and
- carrying out forensic examination of the prison site and analysis of phone records.

79. The European Parliament also called upon Lithuania to cooperate fully with the ECHR in the case of *Abu Zubaydah v Lithuania*.

E. NEW COMPLAINT: MUSTAFA AL-HAWSAWI (2013)

80. A new criminal complaint, filed on 13 September 2013 by REDRESS and HRMI, raised allegations that another individual, Mustafa al-Hawsawi,[136] was illegally transferred to and secretly detained and tortured in Lithuania as part of the CIA RDI Programme.[137]

81. Through an extremely restrictive classification regime, and severe restrictions on access, the US has made it impossible for Mr al-Hawsawi or his military counsel to bring any complaint or provide any information himself about where he was held or how he was treated during his time in secret detention.[138]

82. Given the inability to obtain information from Mr al-Hawsawi directly, REDRESS and HRMI submitted a criminal complaint to the Lithuanian Prosecutor General following an analysis of the publicly available evidence. The information indicated that it is highly like that Mr al-Hawsawi was secretly held in Lithuania for an unknown period between March 2004 and September 2006.

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[134] European Parliament resolution of 10 October 2013 on alleged transportation and illegal detention of prisoners in European countries by the CIA (2013/2702(RSP)) http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0418&language=EN&ring=P7-RC-2013-0378; preambular para. F.

[135] *Ibid*., para. 3.

[136] Al-Hawsawi was captured in Pakistan in March 2003, with Khaled Sheikh Mohammad. He was held in secret detention in unknown locations by the CIA until September 2006 when it was announced that he was at Guantánamo Bay, Cuba. He currently faces capital charges before a United States Military Commission there relating to his alleged involvement as media organiser and financer in the September 11, 2001 attacks.

[137] REDRESS Complaint to the Prosecutor General, 13 September 2013, available at: http://www.redress.org/downloads/casework/final-lithuania---investigation-request.pdf.

[138] REDRESS has recently submitted a report to the UN Human Rights Committee that further explains the secrecy regime and its effect in blocking complaints of torture: REDRESS, 'Rendered Silent: Denying defendants in military commission trials the right to complain of torture and enforced disappearance', shadow report to the UN Human Rights Committee for its examination of USA, February 2014, available at: http://www.redress.org/downloads/publications/REDRESS%20USA%20Shadow%20Report%20-%20Final.pdf.

83. On the basis of the information publicly available,[139] and as explained in more detail in the complaint to the Prosecutor General,[140] there are a number of factors pointing to the strong likelihood that Mr al-Hawsawi was held in Europe after being returned to Morocco in March 2004, and that this secret detention was in Lithuania. This inference can be drawn from the known and alleged movements of other CIA High-Value Detainees (HVDs) of a similar profile to Mr al-Hawsawi, some of whom were alleged to have been moved with him to Guantánamo Bay in September 2003, before being flown to Morocco in March 2004.[141]

84. Given the systematic nature of the CIA interrogation programme as outlined above, and the sequencing of treatment by reference to the degree to which the detainee was judged to hold further information, it is highly likely that Mustafa al-Hawsawi was subjected to a similar pattern of treatment as three other HVDs captured during 2002-2003, and moved to Guantánamo Bay in September 2003. This is supported by reports that these four individuals (Abu Zubaydah, Abd Al-Rahim al-Nashiri, Ramzi bin al-Shibh and Mr al-Hawsawi) were moved to Guantánamo Bay in September 2003 because the CIA believed that by that point the men had "revealed their best secrets".[142] A significant number of detainees have been publicly linked to detention in Romania during 2004-5, including Ramzi bin al-Shibh, Abd al-Rahim al-Nashiri, Khaled Sheikh Mohammed, Walid bin Attash, Hambali, Mustafa Faraj al-Azibi and Janaat Gul. Given the report that up to eight detainees were held for around one year in Lithuania, it is likely that, in addition to Abu Zubaydah, other HVDs were moved from Morocco (or elsewhere) to Lithuania, and that Mr al-Hawsawi was among them. This is also supported by the fact that there were two flights from Morocco to Lithuania (one via Romania) within a day of each other.

85. In spite of the detailed criminal complaint submitted by REDRESS and HRMI, on 27 September 2013, the Prosecutor's office decided not to open an investigation into the allegations.[143] The reasons given included that there was insufficient evidence to raise the obligation to investigate, and that the complaint was not based on information obtained from Mr al-Hawsawi or known "directly" to HRMI or REDRESS, but was instead based on "assumptions" made after "analysing 'accessible information'".[144]

86. On 8 October 2013 REDRESS and HRMI appealed the first decision of the Prosecutor General. On 10 October 2013, the European Parliament urged the Lithuanian Prosecutor General to carry out a criminal investigation into Mustafa al-Hawsawi's complaint.[145]

87. The first appeal by REDRESS and HRMI was dismissed, but on 28 January 2014 Vilnius Regional Court overturned the prosecutor's decision not to investigate the case, and the lower court judgment

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[139] Including flight data, information compiled at the Rendition Project, newspaper articles reporting the movements of detainees, the memorandums from the US Department of Justice to the CIA on treatment given to HVDs, the CIA OIG Review (above), and ICRC HVD Report (above).

[140] For further detail on the suspected movements of Mr al-Hawsawi and other HVDs see further REDRESS Complaint to the Prosecutor General, 13 September 2013, http://www.redress.org/downloads/casework/final-lithuania---investigation-request.pdf, paras. 61-62 and Appendix.

[141] *Ibid*.

[142] Adam Goldman and Matt Apuzzo, "CIA Moved Detainees to Avoid US Legal System", 6 August 2010, http://usatoday30.usatoday.com/news/washington/2010-08-06-detainees-transferred_N.htm.

[143] Original decision on file with HRMI and REDRESS. See also, Amnesty International, "Lithuania again refuses to investigate secret detention of Guantánamo Bay detainee", Press Release, http://www.amnesty.org/en/for-media/press-releases/lithuania-again-refuses-investigate-secret-detention-guantanamo-bay-detaine (3 October 2013).

[144] *Ibid*.

[145] European Parliament resolution of 10 October 2013 on alleged transportation and illegal detention of prisoners in European countries by the CIA (2013/2702(RSP)) http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0418&language=EN&ring=P7-RC-2013-0378; para. 4.

upholding that decision.[146] The Vilnius Regional Court found that the Prosecutor's reliance on the previous investigation was not sufficient to satisfy its obligations to investigate new claims.

> As the situation under consideration is related to the alleged violations of fundamental values, established in the Constitution of the Republic of Lithuania, as well as the Convention and international documents, the law enforcement institutions … should demonstrate an adequate response. Taking the opportunity to verify the information provided in the application … i.e. to question Mustafa Ahmed al-Hawsawi and his defence lawyer, and to request information from the responsible U.S. institutions about the alleged illegal transfer and imprisonment of this person, as it is requested in the initial application regarding initiating the pre-trial investigation, before making categorical conclusions that no criminal conduct has been committed, should not be viewed as excessive action but as a necessity. In the case under consideration, a prior finding that no activities bearing the signs of criminal conduct have been committed, without applying the prosecutor's authority to verify the application … would deny the person's and the public's right to protection from the criminal intent, arising from the Constitution of the Republic of Lithuania and the person's right to an appropriate legal process. Article 18 Part 1 of the Constitution of the Republic of Lithuania imposes an obligation on the prosecutor to organize the investigation and lead it in such a way that it would enable him to collect objective, detailed information proving or disproving that actions bearing the signs of crime or criminal offence have been committed. In this case such a conclusion is only possible after collecting or at least trying to collect and assess the aforementioned additional data. Within the entirety of the aforementioned circumstances the prosecutor's decision is to be repealed as ill-founded.[147]

88. The Court remitted the case to the Prosecutor for reconsideration. On 23 February 2014 the Prosecutor General's office informed HRMI and REDRESS that it had opened a pre-trial investigation into the complaint. The investigation is limited to examining whether a crime was committed under Article 292(3) of the Criminal Code of the Republic of Lithuania, which relates to illegal transportation of persons across the State border. The Prosecutor General has assigned the pre-trial investigation to a prosecutor from the Organised Crimes and Corruption Investigation Department at the Prosecutor General's Office.

89. Lithuania should be commended for opening this investigation, however the scope of the investigation does not currently include the other allegations raised in the complaint (unlawful imprisonment, torture, and failing to report the whereabouts of a person, as criminalised under Article 100 of the Lithuanian Criminal Code (Treatment of Persons Prohibited under International Law)). REDRESS and HRMI hope that as the investigation progresses its scope will be widened to include investigation of these allegations and notes previous commitments made by the Prosecutor General in respect of this. They have not yet been provided with any updates as to the progress of the investigation.

[146] [LTH], Appeal No 1S-5-312/2014, Vilnius Regional Court, 28 January 2014, unofficial translation available at: http://www.redress.org/downloads/lithuaniaregional-court-al-hawsawi6-feb-14-2.pdf.
[147] *Ibid*.

F. LEGAL OBLIGATIONS

I. DOMESTIC LAW

90. Lithuanian domestic law expressly prohibits and penalises crimes associated with the CIA RDI Programme.

91. Article 21 of the Lithuanian Constitution clearly prohibits torture and other ill-treatment:

> Article 21 … It shall be prohibited to torture, injure a human being, degrade his dignity, subject him to cruel treatment as well as establish such punishments. No human being may be subjected to scientific or medical experimentation without his knowledge and free consent.[148]

92. The Lithuanian Criminal Code provides a basis for prosecuting crimes by Lithuanian and foreign State actors committed in the context of the CIA RDI Programme. Although the Lithuanian Criminal Code does not expressly adopt the definition of torture contained in the UN Convention against Torture, to which Lithuania is a State Party, Article 100 (Treatment of Persons Prohibited Under International Law) does refer to torture-related crimes:

> A person who intentionally, by carrying out or supporting the policy of the State or an organisation…inflicts on them such conditions of life as bring about their death; engages in trafficking in human beings; commits deportation of the population; tortures, rapes…detains; arrests or otherwise deprives them of liberty where such a deprivation of liberty is not recognised, or fails to report the fate or whereabouts of the persons….shall be punished by imprisonment for a term of five up to twenty years or by life imprisonment.

93. The Lithuanian Constitution also prohibits arbitrary arrest, detention or any unlawful deprivation of liberty.[149] Such violations are criminalised under articles 100 and 146 of the Lithuanian Criminal Code. Article 146(2) makes the offence of unlawfully depriving an individual of his or her liberty for more than 48 hours or by using violence or threats to life punishable by a prison term of up to four years. The provisions apply to both Lithuanian State and non-state actors, as well as any foreign actors alleged to have committed such crimes on Lithuanian territory.

94. Article 95 of the Lithuanian Criminal Code provides for the non-applicability of statutes of limitations for particularly egregious crimes including torture related-crimes.[150] Violations documented to have been committed in the context of the CIA RDI Programme fall squarely within such provisions. However, practice has unfortunately shown that prosecutors and/or investigative judges often restrict the scope of an investigation or prosecution to crimes such as abuse of office, which may result in the applicability of short limitation periods.[151] Such practice is incompatible with international law if the conduct in question amounts to torture.[152] The principle that torture should not be subject to statutes of limitations has been affirmed by the Committee Against Torture,[153]

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[148] Constitution of the Republic of Lithuania, adopted 25 October 1992, http://www.wipo.int/wipolex/en/text.jsp?file_id=188280 ("**Lithuanian Constitution**").
[149] *Ibid.*, art. 20.
[150] Criminal Code of the Republic of Lithuania, art. 95.
[151] REDRESS, "Justice for Torture Worldwide: Law, Practice & Agendas for Change", (October 2013), http://www.redress.org/downloads/publications/Global%20Report.pdf, p. 37 and 46-8.
[152] [ECHR] *Abdulsamet Yaman v Turkey*, App. No. 32446/96, 2 November 2004, para. 55 and paras. 59-60.
[153] Committee Against Torture, General Comment No. 2: Implementation of art. 2 by States Parties, CAT/C/GC/2 (2008), ("**CAT General Comment 2 (2008)**") para. 5; CAT General Comment 3 (2012), para. 38, and para. 40.

international criminal tribunals,[154] the UN Human Rights Committee,[155] and, in relation to enforced disappearance, the International Convention for the Protection of All Persons from Enforced Disappearance,[156] which require either that time bars should be removed altogether, or should be proportionate to the gravity of the crime.[157]

II. INTERNATIONAL LAW

95. Under the UN Convention against Torture (and as a State Party to the European Convention on Human Rights, the International Convention for the Protection of All Persons from Enforced Disappearance, and the International Covenant on Civil and Political Rights ("ICCPR")), Lithuania is obligated to:

- prevent torture and other ill-treatment as well as enforced disappearance or other forms of unacknowledged detention and complicity in such acts;[158]
- refrain from transferring an individual to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance, torture or other ill-treatment;[159]
- ensure that acts such as torture and enforced disappearance are made offences under its criminal law;[160]
- promptly and effectively investigate allegations of human rights violations, including crimes under international law such as torture and enforced disappearance;[161]
- prosecute and bring to justice individuals in relation to whom there is sufficient admissible evidence of responsibility in the commission of acts such as torture and enforced disappearance (wherever the acts were committed) or, where applicable, extradite and/or offer mutual legal assistance to another State willing and able to undertake the prosecution;[162]
- make acts such as torture and enforced disappearance punishable by appropriate penalties which take into account their grave nature;[163] and
- afford victims effective remedies and reparation.[164]

[154] [ICTY], *Prosecutor v Anto Furundzija* (Trial Judgement), Case No IT-95-17/1-T, ICTY Trial Chamber II, 10 December 1998, has stipulated that "torture may not be covered by a statute of limitations", para. 157.
[155] UN Human Rights Committee, General Comment No. 31: The nature of the general legal obligation imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13 (2004), para. 18. See also UN Human Rights Committee, General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Art. 7), 10 March 1992, UN Doc. HRI/GEN/1/Rev.1 at 30 (1994), para. 15.
[156] International Convention for the Protection of All Persons from Enforced Disappearance ("Convention on Enforced Disappearances"), art. 8, any statute of limitations that may apply to crimes of enforced disappearance must be long and proportionate to the gravity of the crime.
[157] Basic Principles on the Right to a Remedy provide in Principle IV that: "Where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law". The UN Impunity Principles state in principle 23 that "prescription – of prosecution or penalty – in criminal cases shall not run for such period as no effective remedy is available. Prescription shall not apply to crimes under international law that are by their nature imprescriptible".
[158] Convention against Torture, art. 2 and 16; CAT General Comment 2 (2007), para 5; see also CAT, art. 16.
[159] Convention against Torture, art. 3; CAT General Comment 2 (2007).
[160] Convention against Torture, art. 4; Convention on Enforced Disappearances, art. 4.
[161] Convention against Torture, arts. 7, 12-14; CAT General Comment 3 (2012), para 17.
[162] Convention against Torture, art. 7.
[163] Rodley. N and Pollard. M, "Criminalisation of Torture: State Obligations under the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment", 2006, E.H.R.L.R 115, p. 128-129.
[164] UN Human Rights Committee General Comment No. 31, para 18; [ECHR] *Assenov and others v Bulgaria*, App no 90/1997/874/1086, 28 October 1998, para 102-106; *M.C. v Bulgaria*, App no 39272/98, 4 December 2003, para 153; *Macovei and others v Romania*, App no 5048/02, judgment of 21 June 2007, para 46; *Bureš v. the Czech Republic*, App no 37679/08, 18 October 2012, paras 121-127; [Grand Chamber], [ECHR] *El-Masri*, paras 182-194.

The duty to investigate and prosecute gross human rights violations perpetrated in the context of the CIA RDI Programme, including torture and enforced disappearance

96. The duty to investigate serious human rights violations – particularly torture – and prosecute perpetrators of violations associated with the CIA RDI Programme is well-established.[165] Any such investigation must be prompt and thorough; be independent in law and practice; effective; allow for the participation of the victim; and be initiated *ex officio* and with no requirement that there be a criminal complaint lodged by the victims of their relatives.[166] States must undertake prompt, effective, and impartial investigations "wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction as the result of its acts or omissions".[167] Any such investigation capable of leading to the identification and punishment of those responsible for the alleged events and capable of establishing the truth.[168]

97. Under the UN Convention against Torture, States must undertake prompt, effective, and impartial investigations "wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction as the result of its acts or omissions".[169]

98. A similar positive obligation to investigate exists under other international treaties to which Lithuania is a party.[170] This obligation is at least to some extent reflected in article 2 of the Lithuanian Criminal Code procedure which provides that: "Where elements of a criminal offence are discovered, the prosecutor and the institutions of pre-trial investigation must, within the limits of their competence, take all measures provided by law to conduct an investigation within a reasonable time".[171]

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[165] [ECHR] *El Masri*, para. 193.

[166] [ECHR] M*cCann and others v United Kingdom* [GC], App No.18984/91, 27 September 1995, paras. 160-164; *Assenov and others v Bulgaria*, Case No. 90/1997/874/1086, 28 October 1998, paras. 101-106; *Mentes and others v Turkey* [GC], App No. 23186/94, 28 November 1997, paras.; *Nachova and others v Bulgaria* [GC], App. No. 43577/98, 6 July 2005, paras. 110-113. Further, the Convention's jurisprudence directs that any such investigation must: a) be effective in practice as well as in law (*Aksoy v. Turkey*, App No. 21987/93, 18 December 1996, para. 95); b) be prompt and thorough (*El-Masri*, para. 183; *Assenov and Others*, para. 103 and *Batı and Others* v. Turkey, App. Nos. 33097/96 and 57834/00, 3 June 2004, para. 136, ECHR 2004-IV); c) be independent in law and in practice (*El-Masri*, para. 184; *Oğur v. Turkey*, App No.21594/93, 20 May 1999, paras. 91- 92; *Mehmet Emin Yüksel v. Turkey*, App No. 40154/98, 20 July 2004, para. 37); and d) allow for the participation of the victim (*El-Masri*, paras. 185; see, *Oğur*, para. 92; *Ognyanova and Choban v. Bulgaria*, App No. 46317/99, 23 February 2006, para. 107, 23 February 2006; *Khadzhialiyev and others v. Russia*, App. No. 3013/04, 6 November 2008, para. 106; *Denis Vasilyev v. Russia,* App No. 32704/04, 17 December 2009, para. 157; and Dedovskiy and Others v. Russia, App No. 7178/03, para. 92, 15 May 2008, ECHR 2008). Further, investigations must be initiated ex officio, and it is not required that there be a criminal complaint lodged by the victims or their relatives (*El-Masri*, para. 186. See, mutatis mutandis, *Gorgiev v. the former Yugoslav Republic of Macedonia*, App. No. 26984/05, 19 April 2012, para. 64). See also, Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations (Adopted by the Committee of Ministers on 30 March 2011 at the 1110th meeting of the Ministers' Deputies), Principle V; UN Commission on Human Rights, 61st sess., provisional agenda item 17, Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, U.N. Doc. E/CN.4/2005/102/Add.1 (2005) (UN Impunity Principles), Principle 19. As highlighted in the 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 Humanitarian Law (the Basic Principles on the Right to a Remedy), adopted by the UN General Assembly on 21 March 2006, Resolution 60/147: the obligation to investigate is a key component of the states' international legal obligations to "respect, ensure respect for and implement international human rights law and international humanitarian law", Principle 3.

[167] CAT General Comment 3 (2012), para 23.

[168] [ECHR] *El Masri*, para. 193.

[169] Committee Against Torture, General Comment No. 3: Implementation of Article 14 by States Parties, CAT/C/GC/3 (2012), ("**CAT General Comment 3 (2012)**"), para 23.

[170] See e.g. Article 12 of the International Convention for the Protection of All Persons from Enforced Disappearance, adopted 20 December 2006, entered into force 23 December 2010; [EctHR], *El-Masri*.

[171] Code of Criminal Procedure of the Republic of Lithuania.

99. Obligations to investigate also arise where credible allegations are made that a State's agents have been complicit in or have participated in torture or unacknowledged detention by another State, regardless of where the violations occur.[172] In cases of serious cross-border human rights violations, States must "cooperate effectively with the relevant authorities of other States concerned in the investigation of events which occurred outside their territories".[173]

Level of evidence required to trigger the obligation

100. Courts have been flexible when considering the level of evidence required to trigger the obligation to undertake a thorough investigation. The ECHR – taking note of the difficulties in obtaining evidence in cases concerning the CIA RDI Programme – has taken a flexible approach that enables the Court to rely on "evidence of every kind",[174] including "circumstantial evidence, based on concrete elements".[175] A flexible approach to evidentiary matters is particularly critical where the nature of the case is such that it would otherwise pose insurmountable difficulties for applicants in their pursuit of justice. In *El-Masri*, which concerned rendition and is, therefore highly relevant,[176] the Grand Chamber of the European Court of Human Rights stated:

> [t]he Court attaches particular importance to the relevant material … which is already a matter of public record, issued by different fora disclosing relevant information about the "rendition programme" run by the US authorities at the time. Even though this material does not refer to the applicant's case as such, it sheds light on the methods employed in similar "rendition" cases to those described by the applicant.[177]

101. In cases of single-jurisdiction enforced disappearance, the Court has found that it is for the applicants to establish that the State has assumed control over that individual; it is then incumbent on the authorities to account for his or her whereabouts.[178] By analogy, where it is established that a State was involved in a covert programme of illegal extraordinary rendition and secret detention of a small number of individuals, it is incumbent on the authorities to investigate the nature of its involvement and whether one of those individuals was held on its territory. In such cases, if a State fails to disclose crucial documents in relation to the allegation, to establish the facts or otherwise provide a satisfactory and convincing explanation, a court may draw strong inferences against the State.[179]

State secrecy cannot block an investigation

102. States must not "shield themselves behind the protective cloak of official secrets to avoid or obstruct the investigation of illegal acts ascribed to members of its own bodies".[180] The ECHR has noted that – particularly in the context of the CIA RDI Programme - an unjustifiably broad

[172] See UN Joint Study on Secret Detention, paras. 39-41 and 159. The obligations to establish jurisdiction over a state's own nationals for complicity in torture under Article 5 of the Convention Against Torture, including the obligation to investigate credible allegations of such complicity, is engaged regardless of whether the torture took place within the state's jurisdiction: see M. Nowak, E. McArthur, and K. Buchinger, *The United Nations Convention Against Torture: a Commentary* (Oxford: Oxford University Press, 2008), p. 254-5. Similarly, the obligation to establish jurisdiction over an accomplice to or participant in enforced disappearance who is a national of a state under Article 9 of the International Convention for the Protection of All Persons from Enforced Disappearance signed by the Respondent party on 6 February 2007) is engaged regardless of where the enforced disappearance occurred.
[173] [EcHR], *Rantsev v Cyprus & Russia* (2010) 51 EHRR 1, para. 289.
[174] [EctHR] *Ireland v. United Kingdom*, app. no. 5310/71, 18 January 1978, para. 209.
[175] [EctHR] *Çakici v. Turkey*, app. no. 23657/94, 8 July 1999, para. 85.
[176] Emmerson 2013 Report, para. 26.
[177] [ECHR] *Abu Zubaydah v Lithuania*, Observations of the Lithuanian government, on file with INTERIGHTS and Reprieve, para 25.
[178] [EctHR] *Kurt v. Turkey*, app. no. 24276/94, 25 May 1998, para. 124.
[179] [EctHR] *El-Masri*, para. 152.
[180] IACommHR, Annual Report, 1985-86, AS Doc. No. OEA/Ser.L/V/II.68, Doc. 8 rev. 1 (26 September 1986) p. 193; IACtHR, *Myrna Mack Chang v Guatemala*, Judgment of February 22, 2002 (Reparations and Costs), (Ser.C) No. 91 (2002), para. 181.

interpretation of State secret privilege has often been invoked to "obstruct the search for the truth".[181]

103. In a February 2009 report on the role of intelligence agencies in the fight against terrorism and the accountability problems that arise from the cooperation between these agencies, Martin Scheinin, the then UN Special Rapporteur on the protection and promotion of human rights and fundamental freedoms while countering terrorism expressed serious concern about the increasing invocation of State secrecy by governments "to conceal illegal acts…or to protect [themselves] from criticism, embarrassment and – most importantly – liability". The Special Rapporteur stated that "[t]he human rights obligations of States, in particular the obligation to ensure an effective remedy, require that such legal provisions must not lead to *a priori* dismissal of investigations, or prevent disclosure of wrongdoing, in particular when there are reports of international crimes or gross human rights violations".[182] Where claims are advanced for classification of material in proceedings "there should be a strong presumption in favour of disclosure, and any procedure adopted must, as a minimum, ensure that the essential gist of the classified information is disclosed to the victim or his family, and made public".[183]

104. In May 2013, the current Special Rapporteur on this theme has asserted the well-settled principle that:

> allegations of State-sanctioned systematic human rights violations in counter-terrorism context must be subjected to penetrating scrutiny by independent judicial, quasi-judicial and/or parliamentary oversight mechanisms that have unfettered access to all classified information. Any claim to withhold publication of evidence on national security grounds must be determined by a body that is independent of the executive, following an adversarial procedure with such adaptations as may be strictly necessary to ensure effective independent oversight without unjustifiably imperilling legitimate national security interests. Where such claims are advanced there should be a strong presumption in favour of disclosure, and any procedure adopted must, as a minimum, ensure that the essential gist of the classified information is disclosed to the victim or his family, and made public.[184]

Requirements of an effective investigation

105. An effective investigation is one in which authorities make a serious attempt to find out what happened, by taking active and thorough steps to secure potential evidence relating to the alleged crimes, including inspecting the scene of the alleged crime, eyewitness testimony and forensic evidence.[185] An investigation fails to meet the requisite standard of thoroughness where the authorities fail to interview, or to attempt to interview, relevant witnesses[186] or explore the background circumstances that may shed light on a particular incident.[187] The authorities must not

[181] [EctHR] *El-Masri*, paras. 191-3.
[182] Scheinin 2009 report, paras. 59-60.
[183] Emmerson 2013 Report, A/HRC/22/52, citing the UN Basic Principles, paras. 22(a) to (d): UN Office of the High Commissioner for Human Rights (OHCHR), Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the "Istanbul Protocol", para. 82, U.N. Doc. HR/P/PT/8/Rev.1 (2001), https://s3.amazonaws.com/PHR_Reports/istanbul-protocol_opt.pdf; [ECHR] *A. v. U.K*. App. No. 3455/05, (2009) paras. 218-220; [ECJ] *Yassin Abdullah Kadi v. European Commission*, Case T-85/09, General Court (Seventh Chamber), 30 September 2010 [2011] CMLR 24, paras. 173-174; [UK] *Home Secretary v AF* (No. 3) [2010] AC 289.
[184] *Ibid.*
[185] [ECHR] *El-Masri*, para. 183; *Gul v Turkey*, App. No. 22676/93, 14 December 2000, paras. 89-91; Boicenco v Moldova, App. No. 41088/05, 10 June 2008, para. 123.
[186] [ECHR] *Assenov v Bulgaria*, para 103; *Tanrikulu v Turkey* [GC], App. No.23763.94, 8 July 1999, para 104-110; *Zelilof v Greece*, App. No. 17060/03, 24 May 2007, para. 62.
[187] *Gul vs. Turkey*, para. 91.

rely on hasty or ill-founded conclusions to close their investigation or rely on assumptions unsupported by evidence.[188]

106. Any criminal investigation into Lithuania's involvement in the CIA RDI Programme must be comprehensive in its scope and must address all aspects of the human rights violations concerned. The investigation must reflect the seriousness – and nature – of the allegations.[189]

107. In *Alzery v Sweden*, concerning the CIA-led rendition of the applicant from Sweden to Egypt, the UN Human Rights Committee underlined Sweden's obligation under the ICCPR article 7 to "ensure that its investigative apparatus is organised in a manner which preserves the capacity to investigate, as far as possible, the criminal responsibility of all relevant officials, domestic and foreign, for conduct in breach of article 7 committed within its jurisdiction and to bring the appropriate charges in consequence".[190] The UN Human Rights Committee criticised the fact that "neither Swedish officials nor foreign agents were the subject of a full criminal investigation, much less the initiation of formal charges under Swedish law whose scope was more than capable of addressing the substance of the offences".[191]

108. The UN Committee Against Torture has emphasised that victim participation is essential to the investigative aspect of the redress process.[192] A victim must be able to participate at the investigation stage[193] "to the extent necessary to safeguard his or her legitimate interests".[194] During the investigations, victims must have prompt access to information[195] on all significant developments in the investigation[196] and victims must be heard by the investigative authorities and be provided with relevant documents and decisions.[197] These duties extend to providing the victims with reasons explaining why a prosecution has not been pursued.[198] EU Member States are also now separately obliged to ensure that victims enjoy the right to a review of a decision not to prosecute. The decision not to prosecute must be reasoned and contain enough detail to allow for an effective challenge to that decision.[199]

109. The Council of Europe Committee of Ministers in its Guidelines on Eradicating impunity for serious human rights violations ("Council of Europe Guidelines on Impunity") recommend that States provide "information to the public concerning violations and the authorities' response to these

[188] [ECHR] *Assenov v Bulgaria*, para. 103; *El-Masri*, para. 183.
[189] CAT General Comment 2 (2008), para. 10.
[190] UN Human Rights Committee Mohammed Alzery v Sweden, CCPR/C/88/D/1416/2005, 10 November 2006, para. 11.7.
[191] *Ibid*.
[192] CAT General Comment 3 (2012), para 4.
[193] [ECHR] *El-Masri,* para 85.
[194] [ECHR] *McKerr v UK*, para. 115; *Oğur v Turkey*, para. 92; *Ognyanova and Choban v. Bulgaria*, App. No. 46317/99, 23 February 2006, para 107.
[195] [ECHR] *Denis Vasilyev v. Russia*, App. No. 32704/04, 17 December 2009, para. 157.
[196] [ECHR] *Khadzhialiyev and Others v. Russia*, App. No. 3013/04, 6 November 2008, para. 106.
[197] [ECHR] *Dedovskiy and Others v. Russia*, App. No. 7178/03, 15 May 2008, para. 92. These principles are also reflected in Article 24(2) of the International Convention for the Protection of All Persons from Enforced Disappearance which states that "[e]ach victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard". See also para. 4 of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Recommended by General Assembly resolution 55/89 of 4 December 2000, establish that "[a]lleged victims of torture or ill-treatment and their legal representatives shall be informed of, and have access to, any hearing, as well as to all information relevant to the investigation, and shall be entitled to present other evidence".
[198] [ECHR] *Hugh Jordan v. the United Kingdom*, App. No. 24746/94, 4 May 2001, para. 109.
[199] Article 11, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

violations".[200] Furthermore, the right to reparation, as recognised in the Guidelines, requires public disclosure of the truth regarding serious violations of human rights as an essential element of measures of satisfaction and guarantees of non-repetition.[201] The purpose of this is to retain public confidence in the rule of law and to respect the right to truth for the victim and his/her family, as well as for other victims of similar crimes and the general public, who had the right to know what had happened.[202]

110. The ECHR has recognised that – as a result of the peculiarities of rendition or enforced disappearance cases – "an adequate response by the authorities in investigating allegations of serious human rights violations […] may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts… there must be a sufficient element of public scrutiny".[203]

111. Criminal proceedings are a critical element of ensuring an effective remedy for violations and ensuring accountability in according with the rule of law.[204] Where there is sufficient evidence, the obligation to prosecute extends also to accessories and to those who may have been negligent.[205] These obligations are reiterated in the Council of Europe Guidelines on Impunity;[206] the UN's Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity;[207] and the Basic Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.[208] The UN Committee Against Torture has held that lack of investigations and prosecutions by the authorities who "know or have reasonable grounds to believe that acts of torture or other ill-treatment are being committed" incurs the responsibility of the State since "the State's indifference or inaction provides a form of encouragement and/or de facto permission".[209]

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[200] Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations, (Adopted by the Committee of Ministers on 30 March 2011 at the 1110th meeting of the Ministers' Deputies), https://wcd.coe.int/ViewDoc.jsp?id=1769177.

[201] *Ibid*. para. XVI

[202] *Ibid*. para. III.4, VII. 3

[203] [ECHR] *El-Masri,* paras. 181 and 192; *Assenov v Bulgaria*, para. 102; *Labita v Italy* [GC], App. No. 26772/95, 6 April 2000, para. 131; *Mentes and others*, para. 89. See also, *Varnava and others*, paras. 191, citing McKerr v. the United Kingdom, App. No.28883/95, 4 May 2001, paras. 111 and 114; and Brecknell, paras. 65 and 193.

[204] See, Brecknell, para. 66; *Bazorkina v Russia*, App. No. 69481/01, 27 July 2006, para. 117; *El Masri*, para. 140: "The Court notes that it has already found in cases against the respondent State that a criminal complaint is an effective remedy which should be used, in principle, in cases of alleged violations of Article 3 of the Convention (see *Jasar v. the former Yugoslav Republic of Macedonia*, No. 69908/01, 15 February 2007; *Trajkoski v. the former Yugoslav Republic of Macedonia*, No. 13191/02, 7 February 2008; *Dzeladinov and Others v. the former Yugoslav Republic of Macedonia*, No. 13252/02, 10 April 2008; and *Sulejmanov v. the former Yugoslav Republic of Macedonia*, No.69875/01, 24 April 2008)", and para. 261 under Article 13 ECHR. This point was also underlined, for example, by the Inter-American Commission on Human Rights in the case of *Masacre Las Hojas v. El Salvador*, Case 10.287, Report No. 26/92, 24 September 1992, Inter-Am.C.H.R., OEA/Ser.L/V/II.83 Doc. 14 at 83 (1993). *El-Masri*, paras.191-193; Inter-American Court of Human Rights, Contreras et al. v. El Salvador, 31 August 2011 (Merits, Reparations and Costs), C No. 232, para. 170; UN Human Rights Council Resolution 9/11 of 24 September 2008, art. 1; Resolution 12/12 of 1 October 2009, art. 1. *Velev v. Bulgaria*, App. No. 43531/08, 16 April 2013, para. 53. *Shishkovi v. Bulgaria*, App. No. 17322/04, 25 March 2010, para. 38.

[205] *Oneryildiz v Turkey*, App. No. 48939/99, 30 November 2004, para. 93; Inter-American Court of Human Rights, *Las Palmeras v Colombia*, para. 65.

[206] Article VIII.

[207] UN Impunity Principles, Principle 19.

[208] Principle 4 states: "[i]n cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him".

[209] CAT General Comment 2, para. 18. See also, CAT General Comment 3 (2012), para. 7; Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Istanbul Protocol, art. 2; ICJ, Hissene Habre case, para. 115.

G. CONCLUSION

112. The right to an effective investigation under international law entails a right to truth concerning the violations perpetrated in the context of the CIA RDI Programme, including reasonable public disclosure of the conduct and results of any investigation into allegations of such violations. This is so not only because of the scale and severity of the alleged human rights violations but also in light of the widespread impunity for these practices, and the suppression of information about them, which has persisted in numerous countries.

113. As shown in this report, previous investigations into Lithuania's involvement in the CIA RDI Program, including the investigation commenced by the Prosecutor-General's office in 2010, and closed in January 2011, have been shrouded in secrecy and do not appear to have taken many fundamental steps required for an effective investigation. It is crucial that new investigations are, and are seen to be, independent, impartial, thorough, and effective.

114. In order to meets its obligations under the Convention against Torture (and other binding international standards), Lithuania should take all reasonable steps to carry out an effective investigation into its involvement in the CIA RDI Programme and disclose as much information as possible concerning previous investigations. This includes:

    a. sharing information about the scope, methodology and conclusions of the Prosecutor General's investigation of 2010 – 2011;

    b. seeking to secure evidence, including, forensic evidence, and testimony of eye witnesses and other key witnesses (including the companies involved in flights into and out of Lithuania linked to the CIA);

    c. seeking clarification from individuals in relation to whom complaints have been made, including Mustafa al-Hawsawi and Abu Zubaydah;

    d. seeking urgent preservation and disclosure of all relevant evidence in the possession of US authorities, including the CIA, Department of Defence, FBI and other relevant agencies, on: the transfer of individuals to and from Lithuania and the treatment of any individuals detained in Lithuania; information concerning the construction of secret detention facilities in Lithuania; and CIA RDI Programme linked flights into and out of Lithuania;

    e. identifying all officials involved in the alleged violations, with a view to commencing prosecutions – where appropriate;

    f. cooperating with investigations being undertaken in other jurisdictions, and by inter-governmental bodies.

Appendix: Information about the organisations submitting the report

Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories, who campaign on human rights. Amnesty International's vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. Amnesty International undertakes research, campaigns, advocacy and mobilisation to end abuses of human rights. Amnesty International is independent of any government, political ideology, economic interest or religion. Amnesty International's work is largely financed by contributions from its membership and donations.

Human Rights Monitoring Institute is a Lithuanian NGO with the purpose of promoting an open democratic society through the implementation of human rights and freedoms. HRMI undertakes strategic litigation, drafts alternative reports to international human rights bodies, raises human rights awareness, and advocates for greater accountability of the government.

INTERIGHTS is an international legal human rights NGO based in London in the United Kingdom. INTERIGHTS provide leadership and support in the legal protection of human rights. INTERIGHTS work to ensure that human rights standards are protected and promoted effectively in domestic courts and before regional and international bodies, contributing to the development of a cumulative and progressive interpretation of international human rights law.

REDRESS is an international human rights NGO based in the United Kingdom with a mandate to assist torture survivors to seek justice and other forms of reparation, hold accountable the governments and individuals who perpetrate torture, and develop the means of ensuring compliance with international standards and securing remedies for victims.

Reprieve is an NGO based in the United Kingdom. Reprieve undertakes investigation, litigation and education, providing legal support to prisoners unable to pay for it themselves. Reprieve promotes the rule of law around the world, prioritising the cases of prisoners accused of the most extreme crimes, such as acts of murder or terrorism.