



**Submission to the Committee on Enforced Disappearances regarding the Review of
the Republic of Lithuania**

August 2017

I. Introduction

1. The Redress Trust (REDRESS) and Human Rights in Practice (HRiP) (“the Organisations”) write to bring to the attention of the Committee on Enforced Disappearances a number of key concerns in relation to Lithuania’s compliance with its obligations under the International Convention for the Protection of All Persons from Enforced Disappearance (the Convention) in advance of the examination of the report submitted by Lithuania under article 29 of the Convention at the 13th Session of the Committee to be held from 4 to 15 September 2017.
2. In the List of Issues in relation to the report submitted by Lithuania under article 29(1) of the Convention, adopted by this Committee during its twelfth session in April 2017, this Committee requested information

“[I]n relation to allegations concerning the involvement of officials of the State party in incidents of rendition and the secret detention of terrorism suspects, including the hosting of secret detention facilities, please provide information on any investigations that have been carried out and their results, and the reparation provided to the victims (arts. 1, 17 and 24).”¹

3. This submission focuses on concerns regarding the information provided by the Lithuanian Government to the Committee in response to this request and in relation to Lithuania’s complicity in, and facilitation of, the United States of America (USA)’s Central Intelligence Agency (CIA)’s Rendition, Detention and Interrogation (RDI) Program and the failures in responding to allegations in this regard.

¹ Committee on Enforced Disappearances, *List of issues in relation to the report submitted by Lithuania under article 29(1) of the Convention*, UN Doc. CED/C/LTU/Q/1, 13 April 2017

4. The submission draws on the experiences of REDRESS pursuing truth, justice and accountability on behalf of Mr. Mustafa al-Hawsawi,² and HRiP's similar efforts representing Mr. Abu Zubaydah,³ who were both allegedly detained in Lithuania during their detention as so-called High Value Detainees (HVDs) in the CIA's RDI Program.
5. Despite extensive evidence revealing Lithuania's complicity in the RDI Program the country has failed to conduct an effective and thorough investigation into allegations of enforced disappearance (as well as torture and other cruel, inhuman or degrading treatment) in the framework of the CIA's RDI Program. As outlined below, the few investigative efforts carried out so far are insufficient and have not contributed to clarifying Lithuania's involvement in the Program. To date, no one has been held accountable and no reparation⁴ has been provided to rendition victims for the acts committed against them whilst in Lithuania's jurisdiction.⁵

II. Enforced Disappearance in the CIA's RDI Program

6. In a 2007 report prepared on the basis of interviews with 14 so-called HVDs, including Mr. al-Hawsawi and Mr. Zubaydah, following their transfer from secret detention in the RDI Program to Guantanamo Bay,⁶ the International Committee of the Red Cross (ICRC)

² See for example: REDRESS and HRMI, *Request for an investigation concerning suspicion of criminal offences committed in Lithuania against Mr. Mustafa al-Hawsawi*, 13 September 2013, available at <http://www.redress.org/downloads/casework/final-lithuania--investigation-request.pdf> ('REDRESS and HRMI request for investigation'); REDRESS and HRMI, Submission to the United Nations Committee against Torture regarding the Periodic Review of Lithuania: List of Issues Prior to Reporting (LOIPR), 22 January 2016, available at <http://www.redress.org/downloads/reports/160122-loipr-lithuania.pdf>; REDRESS and HRMI, Submission to the Human Rights Council's Universal Periodic Review Working Group regarding the Review of the Republic of Lithuania, available at: <http://www.redress.org/downloads/160324eng-upr.pdf>.

³ See for example, *Abu Zubaydah v Lithuania*, Application No. 46454/11, Note of Hearings 28 and 29 June 2016. Available at: http://www.rightsinpractice.org/new_detail2.php?new_id=41

⁴ CED Article 24 (4) Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation; (5) The right to obtain reparation referred to in paragraph 4 of this article covers material and moral damages and, where appropriate, other forms of reparation such as (a) Restitution; (b) Rehabilitation; (c) Satisfaction, including restoration of dignity and reputation; (d) Guarantees of Non-Recurrence. See also, 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, Manfred Nowak; 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*, UN Doc. A/HRC/13/42, 19 Feb 2010, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/134/99/pdf/G1013499.pdf?OpenElement> ('UN Joint Study'), p. 133

⁵ Lithuania states that: "Matters concerning reparation have not been dealt with." Committee on Enforced Disappearances, *List of issues in relation to the report submitted by Lithuania under article 29(1) of the Convention, Replies of Lithuania to the list of issues*, 12 July 2017, para 38.

⁶ The White House, "President Discusses Creation of Military Commissions to Try Suspected Terrorist", The White House Archive website, 6 September 2006, <http://georgewbush-whitehouse.archives.gov/news/releases/2006/09/20060906-3.html>

determined that these individuals had been subjected to enforced disappearance. The report stated that:

“In the ICRC’s view, the fourteen were placed outside the protection of the law during the time they spent in CIA custody. Indeed, one of the main effects of the transfers was to place the fourteen in secret detention facilities in unspecified locations in a number of different countries, outside the reach of any judicial or administrative system. As such, they were, for instance, apparently both precluded from knowing the reasons for their detention and denied access to any mechanism capable of independently reviewing the lawfulness of their detention. They were also denied contact with their families, including any information to the families of their detention. The totality of the circumstances in which the fourteen were held effectively amounted to an arbitrary deprivation of liberty and enforced disappearance, in contravention of international law.”⁷

7. The European Court of Human Rights (ECtHR) has similarly concluded that “*secret detention of terrorist suspects was a fundamental feature of the CIA rendition programme [...] the rationale [...] was specifically to remove those persons from any legal protection against torture and enforced disappearance.*”⁸
8. The Organisations submit that there is ample evidence to conclude that the detainees held in the CIA’s RDI Program were subjected to enforced disappearance as defined in the Convention.⁹

III. Lithuania’s complicity in the CIA’s RDI Program

9. Despite continued efforts by the governments of Lithuania, the United States of America, and other countries complicit in the RDI Program to maintain secrecy around the Program and the countries that facilitated its operation, comprehensive evidence regarding the operation of the Program and Lithuania’s role in hosting a secret detention site and facilitating CIA flights has become public.

⁷ International Committee of the Red Cross (ICRC), “Report on the Treatment of Fourteen ‘High Value Detainees’ in CIA Custody”, February 2007, (“*ICRC HVDs Report*”), p. 24

⁸ ECtHR, *Al Nashiri v. Poland*, App. No. 28761/11, 24 July 2014 (“*Al Nashiri*”), §530; ECtHR, *Husayn (Abu Zubaydah) v. Poland*, App. No. 7511/13, 24 July 2014 (“*Abu Zubaydah*”), §524. See also, *UN Joint Study*, para 28: “*Every instance of secret detention also amounts to a case of enforced disappearance.*”

⁹ CED, Art. 2: For the purposes of this Convention, “enforced disappearance” is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

10. Lithuania's complicity in the CIA's RDI Program has been a subject in the public domain since at least 2009 when media reported that Lithuania was the third European country that had been identified previously as providing the CIA with secret detention facilities for so-called HVDs.¹⁰
11. Following such reports, the Lithuanian Parliamentary Committee on National Security and Defence (Seimas CNSD) conducted an investigation into Lithuania's involvement in the RDI Program. Relying on the basis of state secrecy the data collected during the Seimas CNSD investigation was not made public. However, the 22 December 2009 public summary of the Seimas CNSD findings confirmed that the Lithuanian authorities had agreed to a request from the CIA and authorised the construction and equipment of two facilities in Lithuania suitable for holding detainees.¹¹
12. In addition to media analysis,¹² Lithuania's involvement in the RDI Program, and its response, have been considered in reports and relevant resolutions adopted by the European Parliament in 2012, 2013, 2015 and 2016¹³ as well as reports and comments

¹⁰ Matthew Cole, "Officials: Lithuania Hosted Secret CIA Prison to get 'Our Ear'", ABC News, 20 August 2009, available at: <http://abcnews.go.com/Blotter/story?id=8373807>. See also 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.

¹¹ See 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, available at http://www3.lrs.lt/pls/inter/w5_show?p_r=6143&p_d=100241&p_k=2, ('*Seimas Report*'), p. 7. (Annex 2)

¹² See for example, Matthew Cole and Brian Ross, ABC News, *CIA Secret 'Torture' Prison Found at Fancy Horseback Riding Academy*, 23 November 2009. Available at: <http://abcnews.go.com/Blotter/cia-secret-prison-found/story?id=9115978>; Bureau of Investigative Journalism, *Revealed: The Boom and Bust of The CIA's Secret Torture Sites*, 14 Oct 2015, available at: <https://www.thebureauinvestigates.com/stories/2015-10-14/revealed-the-boom-and-bust-of-the-cias-secret-torture-sites>; The Intercept, *Off the Grid: Nine CIA 'Black Sites' Where Detainees were Tortured*, available at: <https://theintercept.com/2014/12/09/map-of-cia-black-sites/>; Bureau of Investigative Journalism, Crofton Black, "*Site Violet*": *How Lithuania helped run a secret CIA prison*, 10 October 2016. Available at: <https://www.thebureauinvestigates.com/2016/10/10/site-violet-how-lithuania-helped-run-a-secret-cia-prison/>

¹³ See for example, European Parliament, Committee on Civil Liberties, Justice and Home Affairs (LIBE) publishes findings of Delegation visit to Vilnius (Lithuania), LIBE Committee, Mission Report, April 2012; European Parliament, Committee on Civil Liberties, Justice and Home Affairs, "Report on alleged transportation and illegal detention of prisoners in European countries by the CIA: follow-up of the European Parliament TDIP Committee report", 2 August 2012, available at <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&mode=XML&reference=A7-2012-266&language=EN>; 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, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP/TEXT+TA+P7-TA-2012-0309+0+DOC+XML+V0//EN>; European Parliament, "Resolution on alleged transportation and illegal detention of prisoners in European countries by the CIA", 2013/2702 (RSP), 10 October 2013, 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 on the US Senate report on the use of torture by the CIA, 2014/2997 (RSP), 11 February 2015, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP/TEXT+TA+P8-TA-2015-0031+0+DOC+XML+V0//EN&language=EN>; European Parliament resolution, *Follow-up to the resolution of Parliament of 11 February 2015 on the US Senate report on the use of torture by the CIA* (P8_TA(2016)0266), 8 June 2016

from human rights monitoring mechanisms,¹⁴ and civil society,¹⁵ and is the subject of two petitions before the European Court of Human Rights.¹⁶

13. The US Senate Select Committee on Intelligence's Study of the Central Intelligence Agency's Detention and Interrogation Program "*is the most comprehensive review ever conducted of the CIA's Detention and Interrogation Program.*"¹⁷ The full Senate Study remains classified, however, the redacted Executive Summary of the Study, and 20 findings and conclusions, were released in December 2014. The Executive Summary is divided into two parts. The first describes the establishment, development, operation, and evolution of the CIA's Detention and Interrogation Programme. The second part provides information on the effectiveness of the CIA's Detention and Interrogation Programme.

¹⁴ See for example, *Council of Europe*, 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, CPT/Inf(2011)17, 19 May 2011, available at: <https://rm.coe.int/1680697337>, pp. 26-28; UN Human Rights Committee, *Concluding observations regarding Lithuania*, UN Doc. CCPR/C/LTU/CO/3, 31 Aug 2012, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/455/76/pdf/G1245576.pdf?OpenElement>, para 9; 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, available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-52_en.pdf, paras 19, 53(b); 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; UN Joint Study, paras 120-124; UN Committee against Torture, *Concluding observations on the third periodic report of Lithuania*, UN Doc. CAT/C/LTU/CO/3, 17 June 2014, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/060/95/pdf/G1406095.pdf?OpenElement>, para 16.

¹⁵ See for example, Amnesty International, *Open Secret: Mounting Evidence of Europe's Complicity in Rendition and Secret Detention*, 15 Nov 2010, available at: <https://www.amnesty.org/en/documents/eur01/023/2010/en/>, pp. 20-25; Amnesty International, *Unlock the Truth in Lithuania: Investigate Secret Prisons Now*, 29 Sept 2011, available at: <http://www.statewatch.org/news/2011/sep/ai-lithuania-report.pdf>; Constitution Project, *Task Force on Detainee Treatment*, 2013. Available at: <http://detainee-taskforce.org/read>; Open Society Justice Initiative, *Globalizing Torture: CIA Secret Detention and Extraordinary Rendition*, 2013, available at <https://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf>, pp. 90-93.; Amnesty International, *Breaking the Conspiracy of Silence: USA's European 'Partners in Crime' Must Act after Senate Torture Report ('Amnesty Breaking the Conspiracy of Silence')*, 2015, available at <https://www.amnesty.org/en/documents/eur01/002/2015/en/>, pp. 16-18.; Reprieve, *Briefing and Dossier for the Lithuanian Prosecutor General: CIA Detention in Lithuania and the Senate Intelligence Committee Report ('Reprieve Briefing and Dossier re Lithuania')*, 11 January 2015. (Annex 3), briefing available at <http://www.statewatch.org/news/2015/jan/cia-lithuania-reprieve-dossier-briefing.pdf>

¹⁶ See for example, *Abu Zubaydah v Lithuania*, No. 46454/11, Supplementary Submissions to the European Court of Human Rights, 17 September 2015. Available at: http://rightsinpractice.org/Zubaydah-v-Lithuania_1792015.pdf (*'Abu Zubaydah v Lithuania, Supplementary Submissions'*). See also two judgments of the European Court of Human Rights (ECtHR) which examine details in relation to the operation of the RDI Program and the treatment of so-called High Value Detainees, with brief references to Lithuania. ECtHR, *Al Nashiri v Poland*, Application no. 28761/11, 24 July 2014; ECtHR, *Husayn (Abu Zubaydah) v Poland*, Application no. 7511/13, 24 July 2014.

¹⁷ Senate Select Committee on Intelligence: Committee Study of the Central Intelligence Agency's Detention and Interrogation Program, Approved December 13, 2012, Updated for Release April 3, 2014, Declassification Revisions, December 3, 2014, (*'SSCI Summary'*) available at: http://www.feinstein.senate.gov/public/index.cfm/files/serve?File_id=7c85429a-ec38-4bb5-968f-289799bf6d0e&SK=D500C4EBC500E1D256BA519211895909, p. 9.

14. The SSCI Summary does not identify by name the countries in which the CIA's detention sites were located and at the CIA's request "*the Committee replace[d] the original code names for CIA detention sites with new identifiers.*"¹⁸ However, analysis of flight data and publicly available information regarding Lithuania's support of the CIA's RDI Program indicates that the CIA black site referenced in the SSCI Summary as Detention Site VIOLET was located in Lithuania.¹⁹ The SSCI Summary thus confirms previous accounts of CIA secret detention in Lithuania and supports existing public data on transfer dates of prisoners into and out of Lithuania.
15. The SSCI Summary suggests that Lithuania was involved in the RDI Program from as early as 2003 and identifies that DETENTION SITE VIOLET opened in 2005.²⁰ It was closed in 2006 due to difficulties in accessing emergency medical care for detainees held in VIOLET, including Mr. al-Hawsawi.²¹
16. DETENTION SITE VIOLET was the last CIA black site to be opened in Europe and was the second-last detention site that remained open in the RDI Program.²² By 2005, when VIOLET was opened, extensive information regarding violations of human rights of detainees in U.S. custody was already public. By permitting and facilitating the CIA's operations in Lithuania at this time, including "*a request from the [CIA] to equip facilities in Lithuania suitable for holding detainees*",²³ Lithuania's authorities were knowingly complicit in the violations that occurred.

IV. Failure to open a prompt, impartial and thorough investigation into Lithuania's complicity in the CIA RDI Program

Investigative efforts to date are insufficient

17. Following the release of the Seimas CNSD findings, Lithuanian authorities launched a pre-trial investigation into abuse of office on 22 January 2010. The investigation was terminated in January 2011 citing statute of limitations and lack of evidence of criminal

¹⁸ SSCI Summary, p. 10

¹⁹ See for example, Amnesty International, *Amnesty Breaking the Conspiracy of Silence*; Reprieve, *Reprieve Briefing and Dossier re Lithuania*; Amnesty International, *USA Crimes and Impunity: Full Senate Committee Report on CIA Secret Detentions Must be Released and Accountability for Crimes under International Law Ensured*, April 2015 ('*Amnesty, USA Crimes and Impunity*'), available at <https://www.amnesty.org/en/documents/amr51/1432/2015/en/>, pp. 26, 50; Black and Clark, *Negative Publicity: Artefacts of Extraordinary Rendition*, Aperture, 2015; The Bureau of Investigative Journalism, "*Site Violet*": *How Lithuania helped run a secret CIA prison*, 10 October 2016. Available at: <https://www.thebureauinvestigates.com/2016/10/10/site-violet-how-lithuania-helped-run-a-secret-cia-prison/>

²⁰ SSCI Summary, p. 143.

²¹ SSCI Summary, p. 154.

²² SSCI Report, pp.61 and 154; Amnesty USA Crimes and Impunity, pp.24, 27 and 49-50.

²³ Seimas Report at p.7.

activities.²⁴ We note that the State party's response to the list of issues fails to make reference to the reliance on Statute of Limitations in the 2011 termination of the investigation.²⁵ The human rights organisation Reprieve submitted information to the authorities in September and November 2010 regarding confidential allegations that Mr. Zubaydah, the first individual to be detained in the CIA's RDI Program, had been held in Lithuania.²⁶ When the authorities failed to take effective measures to investigate that information, Mr. Zubaydah filed a case against Lithuania in the European Court of Human Rights in 2011.²⁷

18. On 13 September 2013, REDRESS, together with the Human Rights Monitoring Institute (HRMI) filed a request with the Lithuanian Prosecutor General's Office to open an investigation into the extraordinary rendition, secret detention, torture and ill-treatment of Mr. al-Hawsawi. Mr. al-Hawsawi was detained by the CIA in 2003 and held in the RDI Program. Evidence suggests that he was rendered to, and held in, a secret detention site in Lithuania between 2005 and 2006 before being transferred to further incommunicado detention and ill-treatment by the CIA.²⁸ In 2006, following his transfer to Guantanamo Bay, the US Government finally acknowledged his detention. Mr. al-Hawsawi and Mr. Zubaydah remain detained in Guantanamo Bay today.

19. On 27 September 2013, the Prosecutor General's Office denied REDRESS and HRMI's request to open an investigation. When an appeal court found the denial unlawful, the prosecutor in February 2014 opened a pre-trial investigation - limited to "*unlawful transportation of persons across the state border*" (Art. 292 of the Criminal Code).²⁹ The Organisations submit that the limited scope of the prosecutor's investigation is inadequate in light of the range of serious violations of human rights alleged, including enforced disappearance, arbitrary deprivation of liberty and torture and ill-treatment.

²⁴ See for example, *Council of Europe*, Response of the Lithuanian Government to the CPT 2011 Report; Report on measures taken or planned to be taken in order to implement the recommendations provided in the report on the extraordinary inspection in 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, p. 19.

²⁵ Committee on Enforced Disappearances, *List of issues in relation to the report submitted by Lithuania under article 29(1) of the Convention, Replies of Lithuania to the list of issues*, 12 July 2017.

²⁶ 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; Letter from Clive Stafford Smith of Reprieve to Darius Valys, Prosecutor General of Lithuania \(20 September 2010\); Letter of Clive Stafford Smith, Director of Reprieve, to Darius Valys, Prosecutor General of Lithuania \(18 November 2010\)](http://www.reprieve.org.uk/static/downloads/2010_09_20_CSS_Letter_Darius_Valys_Lithuania_investigation.pdf;Letter%20from%20Clive%20Stafford%20Smith%20of%20Reprieve%20to%20Darius%20Valys,%20Prosecutor%20General%20of%20Lithuania%20(20%20September%202010);Letter%20of%20Clive%20Stafford%20Smith,%20Director%20of%20Reprieve,%20to%20Darius%20Valys,%20Prosecutor%20General%20of%20Lithuania%20(18%20November%202010).). See also, *Abu Zubaydah v Lithuania*, Supplementary Submissions.

²⁷ *Abu Zubaydah v Lithuania*, App. No. 46454/11, Statement of Facts. Available at: [http://hudoc.echr.coe.int/eng?i=001-115816#{"itemid":\["001-115816"\]}](http://hudoc.echr.coe.int/eng?i=001-115816#{); See also *Abu Zubaydah v Lithuania*, Supplementary Submissions.

²⁸ SSCI Summary, p. 154- 5. See also, REDRESS and HRMI request for investigation.

²⁹ See, Vilnius Regional Court ruling upholding appeal, 28 January 2014. Available at: <http://www.redress.org/downloads/lithuaniaregional-court-al-hawsawi6-feb-14-2.pdf>

20. In January 2015 - following the release of the SSCI Summary and after requests made to take this new evidence into account - the Lithuanian Prosecutor General's Office re-opened the pre-trial investigation into abuse of office, which had been closed in 2011, and combined the two investigations.³⁰
21. The Government states that the combined pre-trial investigation is currently ongoing,³¹ but it appears to be limited to “*abuse of office*” and “*unlawful transportation of persons across the state border*.”³² Lithuania's submission to this Committee incorrectly states that the 2014 investigation was related to “*custody... in the territory of the Republic of Lithuania*”.³³ In fact Vilnius City District Court, in considering litigation regarding Mr. al-Hawsawi's request for victim status in the pre-trial investigation, stated that “*pre-trial investigation No. 01-2-00015-14 [the combined pre-trial investigation] is not concerned with criminal activities relating to unlawful detention...*”³⁴
22. The limited scope of the ongoing investigation raises concerns in relation to the adequacy of the investigation, in particular its scope and thoroughness.³⁵ Requests made on Mr. al-Hawsawi's behalf to expand the scope of the investigation and include other criminal acts such as unlawful deprivation of liberty, torture and ill-treatment, have been ignored.³⁶
23. The Lithuanian Government has stated that “[*T*]he scope of the pre-trial investigation may be extended if sufficient factual data is collected, other significant circumstances emerge,

³⁰ Human Rights Committee, Concluding observations on the third periodic report of Lithuania, Addendum, Information received from Lithuania on follow-up to the concluding observations, UN Doc. CCPR/C/LTU/CO/3/Add.2, 12 Feb 2016, para 34.

³¹ Committee on Enforced Disappearances, List of issues in relation to the report submitted by Lithuania under article 29(1) of the Convention, Replies of Lithuania to the list of issues, 12 July 2017.

³² Table of Third Round responses to Council of Europe, Article 52 Inquiry, Lithuanian response 23 October 2015, pp. 3-4, available at: <http://website-pace.net/documents/19838/2008330/AS-JUR-INF-2016-06-Table-EN.pdf/9a194df4-4c22-4ec4-b309-10c144c1dc1d>.

³³ Committee on Enforced Disappearances, List of issues in relation to the report submitted by Lithuania under article 29(1) of the Convention, Replies of Lithuania to the list of issues, 12 July 2017, para 36.

³⁴ Vilnius City District Court decision, Nr. ITS-1.9-26121-961/2016, 6 June 2016, available at: <http://www.redress.org/downloads/160606dst-ct-dec.pdf> ; Similarly the 2010 pre-trial investigation did not “address the issue of criminal liability under Article 100 of the CC (Treatment of persons prohibited under international law) and Article 146 of the CC (Unlawful deprivation of liberty)...” *Council of Europe*, Response of the Lithuanian Government to the CPT 2011 Report; Report on measures taken or planned to be taken in order to implement the recommendations provided in the report on the extraordinary inspection in 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, p. 20.

³⁵ For additional information on concerns regarding the failure to conduct an effective investigation see *Abu Zubaydah v Lithuania*, App. No. 46454/11, Response to Government Documents, 6 June 2016. (Annex 6). Please note that while this submission is marked confidential it can now be shared because the Lithuanian Government withdrew its request for confidentiality during a hearing before the ECtHR on 29 June 2016.

³⁶ See for example, Application to grant victim status to Mustafa al-Hawsawi in Pre-Trial Investigation No. 01-2-00015-14, 26 August 2015. Available at: <http://www.redress.org/downloads/15.8.26.victim-status-request.eng.pdf>; Appeal to Vilnius Regional Court, 15 June 2016, available at: <http://www.redress.org/downloads/2016.6.15.submission-to-regional-ct-eng.pdf>

or other alleged criminal offences are detected in the course of the criminal proceedings.”³⁷

24. The Organisations submit that extensive factual data is already available which indicates that the scope of the investigation – if it in fact remains active - should include a range of additional crimes.

25. For example, the Seimas CNSD findings already in 2009 confirmed that:

- The CIA requested that the Lithuanian State Security Department (SSD) assist with the preparation of detention facilities that would house persons suspected of terrorism-related activities and two locations were prepared to receive suspects;³⁸
- A number of planes operating in the context of the CIA rendition programme transited over Lithuanian airspace and at least five landings occurred on Lithuanian territory;³⁹
- SSD officers actively received and escorted three aircraft associated with the RDI Program (identified by tail numbers):
 - i. N787, 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;⁴⁰
- “[C]onditions for such transportation [of detainees into Lithuania] did exist” and in at least one case, according to the data obtained from the State Border Guard Service, ‘passengers’ in addition to crew were aboard an aircraft that had landed in Lithuania;⁴¹
- Lithuanian border guards were prevented from inspecting some of the flights, which inhibited their ability to determine if ‘passengers’ were aboard on each of the flights.⁴²

26. The Seimas CNSD further found that “Povilas Malakausas [Head of the SSD] could not deny the possibility of confinement in Lithuania of the persons detained by the CIA”.⁴³

³⁷ Table of Third Round responses to Council of Europe, Article 52 Inquiry, Lithuanian response 23 October 2015, pp. 3-4. Available at: <http://website-pace.net/documents/19838/2008330/AS-JUR-INF-2016-06-Table-EN.pdf/9a194df4-4c22-4ec4-b309-10c144c1dc1d>. See also, Human Rights Committee, Concluding observations on the third periodic report of Lithuania, Addendum, Information received from Lithuania on follow-up to the concluding observations, UN Doc. CCPR/C/LTU/CO/3/Add.2, 12 Feb 2016, para 34.

³⁸ Seimas Report, pp. 6-7.

³⁹ Seimas Report, pp. 4-6.

⁴⁰ Seimas Report, pp. 4-5.

⁴¹ Seimas Report, p. 6.

⁴² Seimas Report, p. 6.

⁴³ Seimas Report, p. 8.

27. The SSCI Summary's specific information regarding the establishment of DETENTION SITE VIOLET and the detention of persons in the country where DETENTION SITE VIOLET was located provided Lithuanian authorities with further concrete factual data.⁴⁴ For example, the SSCI Summary indicates that:

- The CIA obtained approval of political leadership in the country that hosted DETENTION SITE VIOLET to establish a detention facility;⁴⁵
 - Seimas CNSD findings: “*Director General of the SSD Mečys Laurinkus and his deputy Dainius Dabašinskas both had knowledge of the project. When instructing the contractors to equip the facilities, Dainius Dabašinskas mentioned that the project ‘had been blessed by the top officials of the State’*”⁴⁶
- A “holding cell” was initially established, which the CIA concluded by mid-2003 “was insufficient”;⁴⁷
 - Seimas CNSD findings: “*...the implementation of partnership cooperation project No 1 was commenced by the SSD in 2002. In the course of the project, facilities suitable for holding detainees were equipped, taking account of the requests and conditions set out by the partners... According to the data available to the Committee, the facilities were not used for the purpose of holding detainees.*”⁴⁸
- In light of the growing number of CIA detainees in the program the CIA “sought to build a new, expanded detention facility in the country”;⁴⁹
 - Seimas CNSD findings: “*The implementation of Project No 2, which was examined in the course of the parliamentary investigation, was commenced by the SSD in the beginning of 2004. The necessary acquisitions were made for the purpose of implementation of the project, construction works were carried out to equip the facility, with the progress of works ensured by the partners themselves [the CIA].*”⁵⁰

⁴⁴ SSCI Summary pp. 97-99, 143 and 154-5; See for example, Amnesty Breaking the Conspiracy of Silence; Reprieve Briefing and Dossier re Lithuania; Amnesty, USA Crimes and Impunity; HRMI and REDRESS, *Victim Status Request for Mustafa al-Hawsawi*, 9 January 2015 (Annex 4).

⁴⁵ SSCI Summary, p. 98. Pages 97- 99 of the SSCI Summary follow under the heading “The CIA Established DETENTION SITE BLACK in Country [redacted] and DETENTION SITE VIOLET in Country [redacted].” The start of the text on pages 97-98 considers the country that hosted DETENTION SITE BLACK. The section that begins “In a separate country...” thus considers the country that hosted DETENTION SITE VIOLET. See also, Reprieve Briefing and Dossier re Lithuania; Amnesty, USA Crimes and Impunity..

⁴⁶ Seimas Report, p. 6

⁴⁷ SSCI Summary, p. 98.

⁴⁸ Seimas Report, p. 6

⁴⁹ SSCI Summary, p. 98.

⁵⁰ Seimas Report, p. 6

- The CIA “offered \$ [redacted] million to the [redacted] to “show appreciation” for the [redacted] support for the program... While the plan to construct the expanded facility was approved by the [redacted] of Country [redacted], the CIA and [redacted] developed complex mechanisms to [redacted] in order to provide the \$ [redacted] million to the [redacted].”⁵¹
 - Seimas CNSD findings: “...based on the explanation provided in the course of the parliamentary investigation regarding one of the implemented joint projects and monetary funds used for its implementation, the accounting of these funds was inappropriate. Explanations provided by individual persons in relation to the sources of financing of joint actions, amounts of monetary funds used for separate actions or accounting thereof are not consistent and therefore require further investigation.”⁵²
- DETENTION SITE VIOLET opened in early 2005;⁵³
- In January 2006 the CIA was holding 28 detainees in its two remaining facilities, DETENTION SITE VIOLET and DETENTION SITE ORANGE;⁵⁴
- During his detention at DETENTION SITE VIOLET Mustafa al-Hawsawi required emergency medical care however officers refused to admit him “to a local hospital” and “after failing to gain assistance from the Department of Defense, the CIA was forced to seek assistance from three third-party countries...”;⁵⁵
- DETENTION SITE VIOLET closed in 2006, the precise date redacted, due to lack of emergency medical care for detainees.⁵⁶

28. The information revealed in the SSCI Summary regarding DETENTION SITE VIOLET confirms important findings regarding the operation of the CIA RDI Program in Lithuania published in other reports, including the summary findings of the CNSD investigation.⁵⁷ Following the release of the SSCI Summary, Mr. Arvydas Anušauskas, a member of the Lithuanian Parliament (Seimas) and the former head of the Seimas CNSD investigation stated that the SSCI Summary “perhaps confirms the fact that the place of detention was in

⁵¹ SSCI Summary, p 99.

⁵² Seimas Report, pp. 6-7.

⁵³ SSCI Summary, p. 143.

⁵⁴ *Ibid*, p. 156.

⁵⁵ *Ibid*, p. 154.

⁵⁶ *Ibid*, p. 154 and 155.

⁵⁷ See for example, Application to grant victim status to Mustafa al-Hawsawi in Pre-Trial Investigation No. 01-2-00015-14, 26 August 2015, available at: <http://www.redress.org/downloads/15.8.26.victim-status-request.eng.pdf>; Reprieve Briefing and Dossier re Lithuania; Table of Third Round responses to Council of Europe, Article 52 Inquiry, Lithuanian response 23 October 2015, pp. 3-4, available at: <http://website-pace.net/documents/19838/2008330/AS-JUR-INF-2016-06-Table-EN.pdf/9a194df4-4c22-4ec4-b309-10c144c1dc1d>.

Lithuania.”⁵⁸ Lithuanian authorities themselves recognise such overlaps⁵⁹ and have identified “certain overlaps of the facts in the conclusion of the parliamentary investigation conducted by the National Security and Defence Committee of the Seimas of the Republic of Lithuania in relation to possible transportation of the US Central Intelligence Agency detainees and their imprisonment in the Republic of Lithuania...”⁶⁰

29. Significantly, no other Detention Site in the SSCI Summary matches the publicly confirmed fact scenario of Lithuania’s cooperation with the CIA RDI Program: i.e. first, a smaller detention site - developed between 2002-3 at the CIA’s request - but not utilised, followed by the development – starting in 2004 - of a larger site. While the Lithuanian Government take the position that no detainees were ever held in the sites they refer to as Project No. 1 and Project No. 2, the fact scenario itself is undisputed.

30. Still, in spite of the publication of information regarding Lithuania’s involvement in the RDI Program, there is no evidence to suggest that an effective investigation, compliant with Lithuania’s international human rights obligations, has been, or is being, conducted.⁶¹ The concerns raised in a 2011 report from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) regarding Lithuania remain equally valid - and given the passage of time and lack of progress even more serious – today.⁶² In particular, “[i]t would have been more appropriate for the scope of the pre-trial investigation to have expressly covered, as from the outset, the possible unlawful detention of persons (and their possible ill-treatment) on Lithuanian territory.”⁶³

31. In 2010 a group of UN experts stressed the obligation to investigate complicity in the RDI Program highlighting that: “[f]ailure to investigate effectively might lead to a situation of grave impunity, besides being injurious to victims their next of kin and society as a whole, and fosters chronic recidivism of the human rights violations involved.”⁶⁴

⁵⁸ Lietuvos žinios, *Advokatė: JAV Senato ataskaita patvirtina, kad Lietuvoje veikė CŽV kalėjimas*, 18 September 2015, available at: <http://lzinios.lt/lzinios/Lietuva/advokate-jav-senato-ataskaita-patvirtina-kad-lietuvoje-veike-czv-kalejimas/209101>. See also, Amnesty Breaking the Conspiracy of Silence, p. 16.

⁵⁹ See for example, Committee on Enforced Disappearances, List of issues in relation to the report submitted by Lithuania under article 29(1) of the Convention, Replies of Lithuania to the list of issues, 12 July 2017, para 37.

⁶⁰ Letter from Prosecutor Rojute to HRMI, 30 March 2015, Annex 5.

⁶¹ See for example, CPT 2011 Report, para 69: “in order to be considered as ‘effective’, an investigation must be conducted in a prompt and reasonably expeditious manner, and must be comprehensive and thorough.”; *UN Joint Study*, para 123.

⁶² *Ibid*, paras 70-72. “The Prosecutor General’s Office should itself have taken the initiative and launched an investigation when the issue of the possible existence of secret detention facilities in Lithuania first came to light in the summer of 2009”

⁶³ *Ibid*, para 71

⁶⁴ *UN Joint Study*, para 123

Authorities failure to provide victims and public with access to information

32. Lithuanian authorities have not provided any meaningful information to the public which would allow an accurate assessment whether the pre-trial investigations which have been undertaken have been – or are being - conducted in a way that would uncover the truth and lead to the identification and punishment of those responsible.⁶⁵ In addition, the prosecutor has repeatedly denied requests to grant Mr. al-Hawsawi victim status and he has not been allowed to participate in the pre-trial investigation, access the case file, be heard, or enjoy other basic procedural rights. As a result, more than three years since the investigation regarding Mr. al-Hawsawi was opened, and more than two years since the initial pre-trial investigation was re-opened and the two pre-trial investigations were combined in January 2015, it is unclear what concrete steps, if any, have been taken. In fact it is even unclear whether the pre-trial investigation remains active at all. The State Party's submission to this Committee highlights that “[d]uring the pre-trial investigation, no suspects have been identified, and notifications of suspicions of the investigated possible criminal acts have not been served to any persons.”⁶⁶ This new information confirms concerns regarding the lack of effectiveness of these pre-trial investigations, which have made no tangible progress despite having access to ample evidence to find the truth regarding the renditions and secret detentions which were facilitated by Lithuania.
33. Lithuanian authorities continue to rely on State secrets as a justification to withhold information concerning the pre-trial investigations from the public, from victims, and from human rights monitoring mechanisms, including this Committee.⁶⁷ There are no indications that the Prosecutor has sought testimonies from the victims, to question individuals involved in building and running the secret detention site in Lithuania, or to explore other avenues for further investigation identified in the SSCI Summary, NGO reports and the Seimas CNSD findings in 2009. For example, the Seimas CNSD findings

⁶⁵ Responses to international bodies and freedom of information requests to date indicate that the investigation is ongoing and identify the scope, but provide little further information, stating that “the material of the pre-trial investigation contains information, which has been recognized as the state or official secret in the procedure provided by laws, the detailed information about the progress and results of the pre-trial investigation No. 01-2-00015-14 may not be provided/made public.” See for example, Table of Third Round responses to Council of Europe, Article 52 Inquiry, pp. 3-4, available at: <http://website-pace.net/documents/19838/2008330/AS-JUR-INF-2016-06-Table-EN.pdf/9a194df4-4c22-4ec4-b309-10c144c1dc1d>.

⁶⁶ Committee on Enforced Disappearances, List of issues in relation to the report submitted by Lithuania under article 29(1) of the Convention, Replies of Lithuania to the list of issues, 12 July 2017, para 37.

⁶⁷ See for example, Committee on Enforced Disappearances, List of issues in relation to the report submitted by Lithuania under article 29(1) of the Convention, Replies of Lithuania to the list of issues, 12 July 2017; Human Rights Committee, Concluding observations on the third periodic report of Lithuania, Addendum, Information received from Lithuania on follow-up to the concluding observations, UN Doc. CCPR/C/LTU/CO/3/Add.2, 12 Feb 2016, para 34; Table of Third Round responses to Council of Europe, Article 52 Inquiry, pp. 3-4, available at: <http://website-pace.net/documents/19838/2008330/AS-JUR-INF-2016-06-Table-EN.pdf/9a194df4-4c22-4ec4-b309-10c144c1dc1d>.

identified that “[E]xplanations provided by individual persons in relation to the sources of financing of joint actions, amounts of monetary funds used for separate actions or accounting thereof are not consistent and therefore require further investigation.”⁶⁸

34. Information in the SSCI Summary supports the need for such an investigation as the Summary suggests that several million dollars were provided to the country which hosted DETENTION SITE VIOLET and that “*complex mechanisms*” were developed to effect the transfer.⁶⁹

V. Conclusion

35. Without the cooperation of countries like Lithuania, the CIA’s RDI Program could not have functioned and the prolonged incommunicado detention, enforced disappearance and other forms of torture and prohibited ill-treatment which CIA detainees like Mr. al-Hawsawi and Mr. Zubaydah were subjected to would not have been possible.

36. In this regard the ECtHR noted that the CIA rendition programme

“had to operate outside the jurisdiction of the US courts and in conditions securing its absolute secrecy, which required setting up, in cooperation with the host countries, overseas detention facilities... The rendition operations had therefore largely depended on cooperation, assistance an[d] active involvement of the countries which put at the USA’s disposal their airspace, airports for the landing of aircraft transporting CIA prisoners and, last but not least, premises on which the prisoners could be securely detained and interrogated.”⁷⁰

37. Despite the gravity of the allegations concerning Lithuania’s important role in the CIA’s RDI program, which were first made public eight years ago, Lithuanian authorities have failed to fulfil their obligations to conduct a thorough, independent and effective investigation, duly inform the public and victims of its progress and outcomes, to allow victims to participate, to provide reparation to victims, and to hold those responsible for the violations to account.

⁶⁸ Seimas Report, p. 7

⁶⁹ Reprieve Briefing and Dossier re Lithuania, para 8.

⁷⁰ ECtHR, *Al Nashiri v. Poland*, App. No. 28761/11, 24 July 2014, para 530.

Proposed Recommendations

- Provide information to this Committee, victims of the RDI Program allegedly detained in Lithuania, and the public, demonstrating whether an active pre-trial investigation examining rendition and secret detention on Lithuanian territory is in fact underway.
- If such pre-trial investigation is ongoing, clarify its scope and, where necessary, expand its scope to include all relevant alleged human rights violations arising from Lithuania's complicity in the CIA RDI Program, including enforced disappearance, arbitrary deprivation of liberty, transfer of detainees to further violation of their human rights, and torture and other cruel, inhuman or degrading treatment;
- Take all necessary steps to establish the truth and pursue all relevant lines of inquiry, in the context of an ongoing investigation or a new one, including: pursuing additional investigations recommended in the Seimas CNSD findings; pursuing evidence identified in the SSCI Summary and relevant NGO reports; seeking clarification from rendition victims; interviewing relevant witnesses;
- Ensure that victims and/or their representatives are granted the right to full participation in ongoing and future investigations and are kept informed of the progress and results of any investigation;
- Provide information to the public and the victims and their legal representatives about the steps undertaken in the various pre-trial investigations to date, if all investigations are closed or dormant, make this information public and publish the results of such investigations;
- Acknowledge the role of the State and provide reparation for violations of the State's responsibilities under international human rights law in relation to rendition and secret detention. As well as material and moral damages, reparation should include: an apology to the victims, an acknowledgement of the role of the State in the violations resulting from the CIA RDI Program, as well as implementation of comprehensive Guarantees of Non-Recurrence.
- Bring to justice in fair trials individuals (whether they are Lithuanian or foreign officials) identified as responsible for crimes that occurred in connection with secret CIA detention centres established in Lithuania.

Annex 1: Information about the organisations making this submission

REDRESS is an international human rights NGO based in the United Kingdom and The Hague 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. REDRESS was established in 1992 and has been in consultative status with the Economic and Social Council since 2011. REDRESS represents Mr. Mustafa al-Hawsawi in relation to his claims outside the United States of America arising from his torture and enforced disappearance in the CIA's Rendition, Detention and Interrogation Programme.

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Human Rights in Practice is an international law practice based in The Hague that specialises in strategic human rights litigation before regional and international fora. It provides representation and support to victims in international human rights proceedings, including to Abu Zubaydah in proceedings before ECtHR in cases against Poland and Lithuania.

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