

Mr Darius Valys
Prosecutor General of the Republic of Lithuania
Rinktinės str. 5A,
LT-01515, Vilnius

13 September 2013

Dear Mr Valys,

Request for an investigation concerning suspicion of criminal offences committed in Lithuania against Mr Mustafa al-Hawsawi

REDRESS is an international human rights non-governmental organisation, based in the United Kingdom, with a mandate to assist torture survivors to seek justice and other forms of reparation.¹ It fulfils its mandate through a variety of means, including casework, law reform, research and advocacy. It regularly takes up cases on behalf of victims of torture before national, regional and international human rights mechanisms and courts and tribunals.

Human Rights Monitoring Institute (HRMI) is a non-governmental organisation which acts as a human rights watchdog in Lithuania. Founded in 2003 with the purpose of promoting an open democratic society through implementation of human rights and freedoms, it carries out research, undertakes strategic litigation, raises human rights awareness, and advocates for greater accountability of the government.²

We are writing to request that you open an investigation into the involvement of Lithuanian officials and government bodies in the extraordinary rendition, secret detention, and torture and ill-treatment of Mr Mustafa al-Hawsawi, an individual in the custody of authorities of the United States of America (USA). Mr al-Hawsawi is a Saudi national who faces capital charges in a trial before a USA Military Commission in Guantánamo Bay, Cuba.³ The charges relate to his alleged involvement as media organiser and financier in the September 11, 2001 attacks in the USA. Mr al-Hawsawi was captured by USA authorities in March 2003 and was held in secret detention until USA officials acknowledged his detention at Guantánamo Bay in September 2006.

REDRESS was contacted by Mr al-Hawsawi's legal counsel in Guantánamo Bay and asked to pursue legal remedies on his behalf in relation to potential violations committed against him during his period of secret detention. Mr al-Hawsawi and his military counsel have been precluded by a highly restrictive classification regime from participating in such proceedings, as any information from Mr al-Hawsawi (and therefore his military counsel) on these matters is automatically classified, accessible only to those with high-level security clearance.⁴ However, Mr al-Hawsawi is aware and supportive of the actions REDRESS (with HRMI) is taking on his behalf.

Basis of complaint

Mr al-Hawsawi is categorised by USA authorities as a High Value Detainee (HVD),⁵ and as such was subject to a specific CIA programme of secret detention and interrogation. According to a series of authoritative reports, the programme involved grave violations of human rights including transfer through multiple states without legal process, secret detention in prisons referred to as "black sites" (known to have existed in multiple jurisdictions), and torture and cruel, inhuman and degrading treatment.⁶ Further details of this programme are provided in the attached materials.

There are strong grounds to show that a number of HVDs were held on Lithuanian territory between (at least) September 2004 and September 2006. This conclusion has been drawn by a number of international and regional bodies, and has been strengthened by recently uncovered flight data which shows flight circuits highly suggestive of detainee transfers into and out of Lithuania.⁷ As recognised by the Council of Europe, this flight data provides solid grounds on which investigations into alleged Lithuanian involvement in the CIA's programme of extraordinary rendition and secret detention must be reopened.⁸

Our analysis of the available evidence suggests that it is highly likely that Mr al-Hawsawi was one of the detainees held in Lithuania for a period between March 2004 and 4 September 2006, when his detention at Guantánamo Bay was acknowledged.

Information about the whereabouts of Mr al-Hawsawi and other HVDs has been the subject of extreme secrecy, with the USA and other involved states making “strenuous efforts to keep their involvement in the CIA programme hidden from public scrutiny”.⁹ However, there are a number of factors which, when analysed together, provide good grounds to believe that Mr al-Hawsawi was held in Lithuania. It is reported that Mr al-Hawsawi was transferred with other HVDs Abu Zubaydah, Abd al-Nashiri and Ramzi bin al-Shibh to Guantánamo Bay on 24 September 2003 and was removed from Guantánamo Bay to an alternative black site via Morocco on or around 27 March 2004.¹⁰ The reported movements of other HVDs after that time suggests that it is highly likely that Mr al-Hawsawi was moved to Europe from Morocco, and that it was Lithuania where he was held. This conclusion is consistent with the methodology of the HVD programme, by which detainees were subjected to successive cycles of interrogation and debriefing, and were likely to be held with others at a similar stage in the process. It is also consistent with the number of cells available for HVDs to be held in other known secret detention sites operating during this period in Romania. Flight data provides strong evidence that HVDs were held in Lithuania, and the dates of suspected rendition flights provide a further indication that Mr al-Hawsawi was one of the detainees transferred on those flights. This analysis is set out in full in the attached materials.

Violations of Lithuanian law and Lithuania’s human rights obligations

The allegation that Mr al-Hawsawi and other HVDs were held in Lithuania, and that Lithuanian officials and/or authorities were complicit in the CIA programme, raises serious concerns about violations of both Lithuanian law and Lithuania’s human rights obligations. Article 100 of the Lithuanian Criminal Code (Treatment of Persons Prohibited under International Law) makes it a crime to intentionally, by carrying out or supporting the policy of the state or an organisation, unlawfully imprison or otherwise deprive persons of liberty in violation of international law; to torture; to detain, arrest or otherwise deprive them of liberty, where such a deprivation of liberty is not recognised, or to fail to report the fate or whereabouts of a person. Unlawful deprivation of liberty is also punishable under Article 146 of the Criminal Code. Article 292 of the Code prohibits unlawful transportation (and the organisation of such transportation) of persons across the state border and provides for criminal liability for unlawful transportation of “an alien not having a permanent place of residence in the Republic of Lithuania”.

These allegations also engage Lithuania’s responsibility under international human rights law, including under the European Convention on Human Rights. Secret detention amounts to an enforced disappearance, and violates the right to personal liberty and the prohibition of arbitrary arrest or detention and the right to a fair trial. It also facilitates the perpetration of torture and other cruel, inhuman or degrading treatment or punishment, and may in itself constitute such treatment.¹¹ Further, a February 2004 confidential report of the International Committee of the Red Cross (ICRC) found that detainees labelled by the USA as “HVDs” were at particular risk of torture and other ill-treatment.¹² Investigations by the European Parliament,¹³ the Council of Europe,¹⁴ the ICRC,¹⁵ the CIA’s own 2004 Inspector General’s report (released in redacted form in 2009),¹⁶ the UN Joint Study on Secret Detention,¹⁷ and the March 2013 report to the UN Human Rights Council of UN Special Rapporteur Ben Emmerson QC,¹⁸ have concluded that the CIA-operated rendition and interrogation programmes involved serious human rights violations, including the torture and other ill-treatment of individuals, and removal to countries where detainees faced risk of further torture and ill-treatment.

Request for action

We call on the Prosecutor General to investigate these allegations in full, as required by both Lithuanian law and its international human rights obligations.¹⁹ Article 166 of the Lithuanian Criminal Code provides that pre-trial investigation shall be opened upon receipt of a complaint, statement or notification of a criminal act. As a matter of Lithuania’s international treaty obligations, Lithuanian authorities should conduct a prompt, independent, thorough and comprehensive investigation, capable of leading to the establishment of the facts, the identification and prosecution of those responsible, and provision of redress to the victims. Uncovering the truth about these alleged violations is also a matter of extreme

importance to Mr al-Hawsawi's defence to the capital charges that he currently faces before the USA military commission.

We emphasise that Lithuania's obligation to carry out an investigation into serious human rights violations such as those alleged here exists where an arguable claim is made, or the authorities have reasonable grounds to suspect that a serious human rights violation has occurred, whether or not there is a formal complaint from the victim. The Committee of Ministers of the Council of Europe has stressed that any decision to refuse to initiate or to terminate investigations in these circumstances must be subject to appropriate scrutiny and be generally challengeable by means of a judicial process.²⁰

As is usually the case in such matters, the vast majority of information in relation to these allegations is in the hands of state authorities, including those of Lithuania, the USA, and other states involved in secret detention. In the attached materials we have therefore suggested a number of specific steps which should be taken as a matter of urgency to progress the investigation and to seek further information from Mr al-Hawsawi. We request that you keep us fully informed of steps taken in relation to this complaint, and progress made in the investigation.

We are available to meet with you to discuss the contents of the information provided. REDRESS can be reached by phone (+44 20 7793 1777) or email (carla@redress.org), and HRMI by phone (+370 5 2314 676) or email (meta.adutaviciute@hrmi.lt). A representative of REDRESS will be in Lithuania between 26-27 September 2013 and would be happy to meet with you then. Ms Mėta Adutavičiūtė of the HRMI is available to meet with you at any further time. Please direct any formal correspondence to Human Rights Monitoring Institute, Didžioji str. 5, LT-01128 Vilnius.

We look forward to hearing from you.

Sincerely

[Signed]

Carla Ferstman
Director
REDRESS

[Signed]

Natalija Bitiukova
Deputy Director
Human Rights Monitoring Institute

Enclosures:

- 1) Full form complaint
- 2) Spreadsheet showing reported movements of other HVDs entitled 'Grid of HVDs'
- 3) Questions Proposed in Request for Investigation made by Reprieve to Lithuanian authorities concerning Abu Zubaydah 'Letter from Reprieve to Darius Valys: Request for Investigation' (20 September 2010)

Copied to (with enclosures):

Ms Dalia Grybauskaitė
President of the Republic of Lithuania
S. Daukanto a. 3,
LT-01122 Vilnius, Lithuania

Mr Arturas Paulauskas
Chairman of the Committee on National Security and Defense
Seimas of the Republic of Lithuania
Gedimino Pr. 53,
Vilnius, Lithuania

Ms Laima Andrikiene, MEP
Member of Parliamentary Subcommittee on Human Rights
Šv. Ignoto g. 1,
01120 Vilnius, Lithuania

Mr Leonidas Donskis, MEP
Member of Parliamentary Subcommittee on Human Rights
ASP 10G217
60, rue Wiertz
B-1047 Brussel
Belgium

Ms Barbara Lochbihler, MEP
Chair of the Parliamentary Subcommittee on Human Rights
European Parliament
ASP 08H160
Rue Wiertz, 60
B-1047 Brussels, Belgium

Mr Raimundas Karoblis
Permanent Representative of Lithuania to the European Union
Rue Belliard 41-43
1040 Brussels, Belgium

Ms Hélène Flautre
Committee on Civil Liberties, Justice and Home Affairs Rapporteur
ASP 08G130
60 rue Wiertz.
B-1047 Brussels, Belgium

Notes

¹ REDRESS is a registered charity in the United Kingdom Registered Charity Number 1015787 (The Redress Trust) and is registered with 501c3 status in the USA. See further www.redress.org.

² More information on HRMI can be found on www.hrmi.it

³ See Department of Defence, JTF-GTMO Detainee Assessment: Mustafa al-Hawsawi, 8 December 2006 ("JTF-GTMO Detainee Assessment"), [http://www.therenditionproject.org.uk/pdf/PDF%20444%20JTF-GTMO%20Detainee%20Assessment,%20Mustafa%20Ahmad%20al-Hawsawi%20\(8%20Dec%202006\).pdf](http://www.therenditionproject.org.uk/pdf/PDF%20444%20JTF-GTMO%20Detainee%20Assessment,%20Mustafa%20Ahmad%20al-Hawsawi%20(8%20Dec%202006).pdf); USA Department of Defense, "DOD Announces Charges Sworn Against Five Detainees Allegedly Responsible for 9/11 Attacks", 31 May 2011, <http://www.defense.gov/releases/release.aspx?releaseid=14532>.

⁴ See United Nations, "Communication addressed to the United States of America by the Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment", USA 31/2012, 30 November 2012, [https://spdb.ohchr.org/hrdb/22nd/public-UA_USA_30.11.12_\(31.2012\).pdf](https://spdb.ohchr.org/hrdb/22nd/public-UA_USA_30.11.12_(31.2012).pdf), pp. 1-2.

⁵ 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%20ICRC,%20Feb%202007.%20Report%20on%20Treatment%20of%2014%20HVD%20in%20CIA%20Custody.pdf>, ("ICRC HVDs Report"), p. 5.

⁶ See in particular *ibid* n4, (ICRC HVDs Report); 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; PACE, 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; 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.

⁷ 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 (\$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>; 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)), European Parliament, A7-0266/2012, para. 14 (2 August 2012); 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, "Unlock the Truth in Lithuania, Investigate Secret Prisons Now", September 2011, <http://www.statewatch.org/news/2011/sep/ai-lithuania-report.pdf>

⁸ 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?pubRef=-//EP//TEXT+TA+P7-TA-2012-0309+0+DOC+XML+V0//EN>,

⁹ Emmerson 2013 report, A/HRC/22/52, above n.5, para. 19.

¹⁰ 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, and http://www.cbsnews.com/2100-201_162-6749455.html. The article reports that US agents removed the "HVDs", including al-Hawsawi, from Guantanamo Bay to avoid giving them access to lawyers.

¹¹ UN Joint Study on Secret Detention, A/HRC/13/42, above n.5, pp. 2-3.

¹² 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"), pp. 3-4.

¹³ European Parliament, Committee on Civil Liberties, Justice and Home Affairs, "Abuse of state secrecy and national security: obstacles to parliamentary and judicial scrutiny of human rights violations", 6 October 2011, <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta11/EREC1983.htm>; 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, <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&mode=XML&reference=A7-2012-266&language=EN>.

¹⁴ PACE, CLAHR, "Alleged Secret Detentions and Unlawful Inter-State Transfers Involving Council of Europe Member States", 7 June 2006, above n.5; PACE, CLAHR, "Secret Detentions and Illegal Transfers of Detainees Involving Council of Europe Member States: Second Report", 7 June 2007, above n.5.

¹⁵ ICRC HVDs Report, above n.4.

¹⁶ Central Intelligence Agency, "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; CIA Office of the Inspector General, "Special Review", 7 May 2004, <http://www.therenditionproject.org.uk/pdf/PDF%2020%20CIA%20IG%20Investigation%20EITs%202004.pdf> ("CIA OIG Review").

¹⁷ UN Joint Study on Secret Detention, A/HRC/13/42, above n.5.

¹⁸ Emmerson 2013 report, A/HRC/22/52, above n.5.

¹⁹ Under article 28 of the Lithuanian Code of Criminal Procedure, a person may be recognised as a victim of a criminal offence by the Prosecutor General's decision adopted on his own initiative.

²⁰ Committee of Ministers of the Council of Europe, "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, Article V.

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COMPLAINT

1. Identity of the complainant

A. Family Name:	AL-HAWSAWI ¹
B. First and other names:	Mustafa
C. Sex:	Male
D. Birth date or age:	5 August 1968
E. Nationality:	Saudi Arabian
F. Current Location	USA Military Prison, Guantánamo Bay (Cuba)

2. Background: CIA “High Value Detainee (HVDs)” Programme

1. Immediately following the 11 September 2001 attacks in New York City, Washington, D.C., and Pennsylvania, senior United States of America (USA) officials are known to have authorised a covert Central Intelligence Agency (CIA) programme of secret detention and interrogation of individuals suspected of involvement in terrorism.² The United Nations (UN) Special Rapporteur on the protection and promotion of human rights in the context of counterterrorism has recently characterised this programme as “a systematic campaign of internationally wrongful acts involving the secret detention, rendition and torture of terrorist suspects”.³
2. On 17 September 2001, President Bush sent a twelve page memorandum to the Director of the CIA through the USA National Security Council (NSA), which authorised the CIA to detain terrorists and set up detention facilities known as “black sites” outside the USA.⁴ This programme was used to isolate and interrogate detainees who were considered to have a high intelligence value, known as “High Value Detainees” (“HVDs”).⁵ At the beginning of August 2002 the Justice Department's Office of Legal Counsel purported to authorise the CIA to use a range of “physical and mental abuse”⁶ of terrorist suspects in its custody under the secret detention programme, known as “enhanced interrogation techniques”.⁷ Following the public release of USA government documents it is now known that around

¹ Alleged aliases: Hasim ‘Abd al-Rahman, Zahir, Ayyub, Muhammad Adnan and Abu Ibrahim. See Department of Defence, JTF-GTMO Detainee Assessment: Mustafa al-Hawsawi, 8 December 2006 (“[JTF-GTMO Detainee Assessment](http://www.therenditionproject.org.uk/pdf/PDF%20444%20JTF-GTMO%20Detainee%20Assessment,%20Mustafa%20Ahmad%20al-Hawsawi%20(8%20Dec%202006).pdf)”), [http://www.therenditionproject.org.uk/pdf/PDF%20444%20JTF-GTMO%20Detainee%20Assessment,%20Mustafa%20Ahmad%20al-Hawsawi%20\(8%20Dec%202006\).pdf](http://www.therenditionproject.org.uk/pdf/PDF%20444%20JTF-GTMO%20Detainee%20Assessment,%20Mustafa%20Ahmad%20al-Hawsawi%20(8%20Dec%202006).pdf).

² 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](#)”), para. 15.

³ *Ibid* n.2, para. 14.

⁴ Emmerson 2013 Report, A/HRC/22/52, above n. 2, para. 14; United Nations, “Joint Study on global practices in relation to secret detention in the context of countering terrorism 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” (“[UN Joint Study on Secret Detention](#)”), A/HRC/13/42, 19 February 2010, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-42.pdf>, para. 103.

⁵ Central Intelligence Agency Office of the Inspector General, “Special Review”, 7 May 2004, <http://www.therenditionproject.org.uk/pdf/PDF%2020%20CIA%20IG%20Investigation%20EITS%202004.pdf> (“[CIA OIG Review](#)”), pp.3-4; 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; Stephen G. Bradbury, “Memorandum re: application of United States obligations under article 16 of the Convention against Torture to certain techniques that may be used in the interrogation of high value al-Qaida detainees”, 30 May 2005, <http://www.therenditionproject.org.uk/pdf/PDF%2016%20Bradbury%20Memo%20to%20Rizzo%20Certain%20Techniques%2010%20May%202005.pdf>, p. 6.

⁶ Emmerson 2013 Report, A/HRC/22/52, above n.2, para. 15.

⁷ *Ibid.*; CIA OIG Review, above n.5, 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 §§2340-2340A”, 1 August 2002,

one hundred individuals were held under this programme between September 2001 and May 2005, although by May 2005 there were less than 20 remaining in the CIA's custody.⁸ On 6 September 2006 former USA President Bush confirmed that a number of "HVDs" had been returned to Guantánamo Bay, Cuba, having spent years being held in sites outside the USA, and subject to "an alternative set of procedures."⁹

3. Shortly after September 2001, former USA President Bush authorised the CIA to carry out "extraordinary renditions"¹⁰ enabling detainees to be interrogated whilst in the formal custody of the public officials of other states, including states with a record of using torture.¹¹
4. "HVDs" were subjected to a "very structured" and "rigorous" programme by the CIA of secret detention and interrogation at "black sites" or "exploitation facilities" in order to elicit information.¹² In referring to the "Exploitation Draft Plan" the USA Senate Inquiry into the Treatment of Detainees in Custody Report (SASC Detainee Report) states that "[t]he plan proposed an 'exploitation facility' be established at a [one and a half lines redacted] off limits to non-essential persons, press, ICRC [International Committee of the Red Cross], or foreign observers".¹³ This type of detention has been recognised by both UN and European human rights mechanisms 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.¹⁴
5. The "HVD" interrogation programme followed a carefully defined process which is described in detail in a memorandum produced for the USA Department of Justice by the CIA on 30 December 2004.¹⁵ Specific guidelines were issued on conditions of detention and interrogation under this programme in January 2003.¹⁶ This programme followed a set pattern: capture and handover to the CIA, rendition to a black site, reception at the black site, transitioning to interrogation, interrogation, debriefings and long-term detention.¹⁷ The CIA's programme was designed as a comprehensively integrated

[http://www.therenditionproject.org.uk/pdf/PDF%2019%20\[Bybee%20Memo%20to%20Gonzales%20Standards%20Interrogation%201%20Aug.pdf](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](http://www.therenditionproject.org.uk/pdf/PDF%2015%20[Bybee%20Memo%20to%20CIA%201%20Aug%202002].pdf).

⁸ UN Joint Study on Secret Detention, A/HRC/13/42, above n.4, para. 103, citing Stephen G. Bradbury, Office of Legal Counsel, Department of Justice, "Memorandum for John A. Rizzo, Acting General Counsel, Central Intelligence Agency Re: application of United States obligations under article 16 of the Convention against Torture to certain techniques that may be used in the interrogation of high value al-Qaida detainees", 30 May 2005, [http://www.therenditionproject.org.uk/pdf/PDF%2018%20\[Bradbury%20Memo%20to%20Rizzo%2030%20May%202005\].pdf](http://www.therenditionproject.org.uk/pdf/PDF%2018%20[Bradbury%20Memo%20to%20Rizzo%2030%20May%202005].pdf), p. 5.

⁹ 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>.

¹⁰ The terms "extraordinary rendition" and "rendition" have no publicly available official USA government definition, and are variously used. This report distinguishes post-September 11, 2001, "extraordinary rendition" from pre-September 11, 2001, "rendition," which is defined here as the transfer-without legal process-of a detainee into the USA or to the custody of a foreign government for purposes of criminal prosecution. "Legal process" means procedures prescribed by law for the detainee to challenge the transfer before judicial or administrative adjudicative authorities prior to transfer

¹¹ Emmerson 2013 Report, A/HRC/22/52, above n.2, para. 15.

¹² 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> ("**Second Marty Report**"), para. 55.

¹³ 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://www.armed-services.senate.gov/Publications/Detainee%20Report%20Final_April%2022%202009.pdf, ("**SASC Detainee Report**"), p. 14.

¹⁴ See UN Joint Study on Secret Detention, A/HRC/13/42, above n.4, pp. 2-3; 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 66.

¹⁵ CIA Background Paper on Combined Techniques, above n.5.

¹⁶ CIA OIG Review, above n.58, paras. 57-60 (heavily redacted).

¹⁷ CIA Background Paper on Combined Techniques, above; Stephen G. Bradbury, Office of Legal Counsel, US Department of Justice, "Re: Application of 18 USC §§2340-2340A to the Combined Use of Certain Techniques in the Interrogation of High Value Al Qaeda Detainees", Memo for John A Rizzo, Senior Deputy General Counsel, CIA
10 May 2005,

[http://www.therenditionproject.org.uk/pdf/PDF%2017%20\[Bradbury%20Memo%20to%20Rizzo%20Combined%20Techniques%2010%20May%2020.pdf](http://www.therenditionproject.org.uk/pdf/PDF%2017%20[Bradbury%20Memo%20to%20Rizzo%20Combined%20Techniques%2010%20May%2020.pdf) ("**2005 OLC Combined Techniques Advice**"), pp.5-6.

experience that incorporated purposefully violent and disorientating physical and psychological pressure to influence HVDs' behaviour during these stages.¹⁸

Capture

6. The CIA maintained a list of "High Value Targets (HVTs)". "HVTs" were typically captured by officials of other countries, and once handed over to CIA detention would become "HVDs".¹⁹ The experiences of detainees could vary, although there is evidence that a number of "HVDs" were subjected to torture and ill-treatment following capture and in the first days after their arrest.²⁰

Rendition to a black site

7. Once handed over to the CIA, detainees were brought to a "black site" through rendition flights that were reportedly designed to increase the detainee's sense of isolation and confusion.²¹ According to the CIA's description of the rendition process, a rendition involved the following procedure:
 - a. The HVD is flown to a Black Site [half-line redacted] A medical examination is conducted prior to the flight. During the flight the detainee is securely shackled and is deprived of sight and sound through the use of blindfolds, earmuffs, and hoods. [one line redacted] There is no interaction with the HVD during this rendition movement except for periodic, discreet assessments by the on-board medical officer.
 - b. Upon arrival at the destination airfield, the HVD is moved to the Black Site under the same conditions and using appropriate security procedures.²²
8. Interviews with fourteen "HVDs", including Mr al-Hawsawi, conducted by the International Committee of the Red Cross (ICRC) after they had been transferred to Guantánamo Bay in late 2006 corroborates this description. The ICRC described the rendition process:

The transfer procedure was fairly standardised in most cases. The detainee would be photographed, both clothed and naked prior to and again after transfer. A body cavity check (rectal examination) would be carried out and some detainees alleged that a suppository (the type and the effect of such suppositories was unknown by the detainees), was also administered at that moment.

The detainee would be made to wear a diaper and dressed in a tracksuit. Earphones would be placed over his ears, through which music would sometimes be played. He would be blindfolded with at least a cloth tied around the head and black goggles. In addition, some detainees alleged that cotton wool was also taped over their eyes prior to the blindfold and goggles being applied. ...

The detainee would be shackled by hands and feet and transported to the airport by road and loaded onto a plane. He would usually be transported in a reclined sitting position with his hands shackled in front. The journey times obviously varied considerably and ranged from one hour to over twenty-four to thirty hours. The detainee was not allowed to go to the toilet and if necessary was obliged to urinate or defecate into the diaper.

On some occasions the detainees were transported lying flat on the floor of the plane and/or with their hands cuffed behind their backs. When transported in this position the detainees complained of severe pain and discomfort.

¹⁸ *Ibid.* n.17, p. 1. See also CIA OIG Review, above n.5, p. 15.

¹⁹ Second Marty Report, above n.12, para. 61.

²⁰ See, eg. 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%20ICRC,%20Feb%202007.%20Report%20on%20Treatment%20of%2014%20HVD%20in%20CIA%20Custody\].pdf](http://www.therenditionproject.org.uk/pdf/PDF%20101%20ICRC,%20Feb%202007.%20Report%20on%20Treatment%20of%2014%20HVD%20in%20CIA%20Custody].pdf), ("ICRC HVDs Report"), p. 33.

²¹ ICRC HVDs Report, above n.20, pp. 6-7.

²² CIA Background Paper on Combined Techniques, above n.5, p. 2.

In addition to causing severe physical pain, these transfers to unknown locations and unpredictable conditions of detention and treatment placed mental strain on the fourteen, increasing their sense of disorientation and isolation. The ability of the detaining authority to transfer persons over apparently significant distances to secret locations in foreign countries acutely increased the detainees' feeling of futility and helplessness, making them more vulnerable to the methods of ill-treatment described below.²³

9. In a case concerning the extraordinary rendition of a German citizen (Mr El-Masri) conducted using the methodology described above, the European Court of Human Rights found that the rendition procedure amounted, *inter alia*, to torture in violation of Article 3 of the European Convention on Human Rights.²⁴ The Court also considered that handing the applicant over to USA custody was unlawful as it gave rise to the real risk that he would be subjected to further torture and ill-treatment, given the knowledge of the "practices that have been resorted to or tolerated by the USA authorities and that are manifestly contrary to the principles of the Convention".²⁵

Reception at a black site and transitioning to interrogation

10. Upon arrival at the black site the "HVD" was subjected to administrative procedures which, in the words of the CIA, had the purpose of showing the detainee that he was "in the complete control of the Americans", and which caused "significant apprehension in the HVD".²⁶ The reception procedures included shaving the "HVD's" beard and taking photographs of the detainee naked.²⁷
11. Once these procedures were completed the "HVD" would be subjected to an initial interview to assess their level of cooperation with interrogators. Unless they provided an extremely high level of cooperation, a plan would be developed for their further interrogation using what were termed "permissible interrogation techniques".²⁸

Conditions of detention

12. At black sites, "HVDs" were subjected to conditions of confinement, which were designed to have an impact on the interrogation process. The conditions can be summarised as including:
 - i. Regular blindfolding and/or hooding to prevent the detainee from knowing his or her location or the layout of the place of detention;
 - ii. Incommunicado, solitary detention;
 - iii. White noise/loud sounds played continuously in the walkways, which could be heard in the detainees' cells;
 - iv. Continuous light, such that each cell was lit by two 17-watt tube light bulbs, making the cells the same brightness as an office;
 - v. Common use of leg shackles, including some detainees who wore them 24 hours a day.²⁹
13. USA government documents recognise that:
 - i. The solitary confinement of detainees continued for years;³⁰

²³ ICRC HVDs Report, above n.20, pp. 6-7.

²⁴ European Court of Human Rights (ECtHR), *El-Masri v The Former Yugoslav Republic of Macedonia*, app. no. 39630/09, 12 December 2012, para. 211.

²⁵ *Ibid* n.24, paras. 218-222.

²⁶ CIA Background Paper on Combined Techniques, above n.5, p. 2.

²⁷ CIA Background Paper on Combined Techniques, above n.5, pp. 2-3.

²⁸ CIA Background Paper on Combined Techniques, above n.5, pp. 3-4. See also SASC Detainee Report, above n.13, p.14.

²⁹ Stephen G. Bradbury, Office of Legal Counsel, Department of Justice, "Memorandum for John A. Rizzo, Acting General Counsel, Central Intelligence Agency Re: Application of the Detainee Treatment Act to Conditions of Confinement at Central Intelligence Agency Detention Facilities", 31 August 2006 (released 24 August 2009), <http://www.aclu.org/human-rights-national-security/documents-delivered-responsive-torture-foia> ("2006 OLC DTA Memo"). See also CIA Background Paper on Combined Techniques, above, pp. 4-9.

- ii. Detainees remained “confined to his cell for much of each day, under constant surveillance, and [was] never permitted a moment to rest in the darkness and privacy that most people seek during sleep”;³¹
- iii. These conditions are “unrelenting and, in some cases, have been in place for several years”;³² and
- iv. These conditions “taken together and extended over an indefinite period, may exact a significant psychological toll.”³³

Interrogation

14. CIA interrogators were authorised to use defined “permissible interrogation techniques” on the detainees.³⁴ These included so-called “standard interrogation techniques” (including the use of isolation, sleep deprivation up to 72 hours, use of loud music or white noise, reduced calorific intake and the use of diapers) and “enhanced interrogation techniques”, which involved a higher level of “psychological and physical pressure”.³⁵
15. The authorised enhanced interrogation treatments were divided into three basic categories by a 10 May 2005 memorandum from the USA Department of Justice Office of Legal Counsel: “conditioning techniques”,³⁶ “corrective techniques”,³⁷ and “coercive techniques”.³⁸
16. Conditioning techniques were designed to demonstrate to the detainee that he had no control over basic human needs.³⁹ They include nudity, dietary manipulation and extended sleep deprivation. Corrective techniques were used “principally to correct, startle, or ... achieve another enabling objective with the detainee”.⁴⁰ The specific techniques include facial slaps, abdominal slaps, facial hold and attention grasp.⁴¹ Coercive techniques “place the detainee in more physical and psychological stress”.⁴² They include “walling” (where the detainee is pulled forward and then quickly and firmly pushed into a flexible false wall so that his or her shoulder blades hit the wall, up to thirty times in a row⁴³), water dousing⁴⁴ and water boarding, and the use of stress positions.⁴⁵
17. These techniques have been recognised by the European Committee on the Prevention of Torture (CPT) as having “certainly led to violations of the prohibition against torture and inhuman or degrading treatment”.⁴⁶ According to the Committee:

Any doubts that might have existed on this subject were removed by the publication on 24 August 2009 of a Special Review of CIA counterterrorism detention and interrogation activities, dated 7 May 2004 and covering the period September 2001 to October 2003, carried out by the Agency's own Inspector General. Despite being extensively censored,

³⁰ *Ibid* n.29, p. 17.

³¹ *Ibid* n.29, p. 25.

³² *Ibid* n.29, p. 25.

³³ *Ibid* n.29, p. 25.

³⁴ CIA Background Paper on Combined Techniques, above n.5, pp. 3-4.

³⁵ CIA OIG Review, above n.5, paras. 62-64; see also CIA Background Paper on Combined Techniques, above n.5, pp. 4-9.

³⁶ CIA Background Paper on Combined Techniques, above n.5, pp. 4-5. See also 2005 OLC Combined Techniques Advice, above n.17, p. 12.

³⁷ CIA Background Paper on Combined Techniques, above n.5, pp. 5-7; 2005 OLC Combined Techniques Advice, above n.17, p. 5.

³⁸ CIA Background Paper on Combined Techniques, above, pp. 7-8; 2005 OLC Combined Techniques Advice, above n.17, pp.5-6.

³⁹ 2005 OLC Combined Techniques Advice, above n.17, p. 5.

⁴⁰ 2005 OLC Combined Techniques Advice, above n.17, p. 5; CIA Background Paper on Combined Techniques, above n.5, pp. 4-5.

⁴¹ 2005 OLC Combined Techniques Advice, above n.17, p. 5; CIA Background Paper on Combined Techniques, above n.5, pp. 4-5.

⁴² 2005 OLC Combined Techniques Advice, above n.17, p. 6; CIA Background Paper on Combined Techniques, above n.5, pp. 7-9.

⁴³ “Walling is one of the most effective interrogation techniques because it wears down the HVD physically, heightens uncertainty in the detainee about what the interrogator may do to him, and creates a sense of dread when the HVD knows he is about to be walled again...Because of the physical dynamics of walling, it is impractical to use it simultaneously with other corrective or coercive techniques” CIA Background Paper on Combined Techniques, above, p.8; see also 2005 OLC Combined Techniques Advice, above, p. 6, n.4.

⁴⁴ CIA Background Paper on Combined Techniques, above n.5, pp. 7-8; 2005 OLC Combined Techniques Advice, above n.17, p. 6.

⁴⁵ 2005 OLC Combined Techniques Advice, above n.17, p. 6; CIA Background Paper on Combined Techniques, above n.5, p. 8.

⁴⁶ CPT Lithuania Report, above n.14, para. 66.

the published version of the Special Review makes clear the brutality of the methods that were being used when interrogating terrorist suspects at sites abroad.⁴⁷

18. Once the interrogation techniques were assessed to have made a detainee “cooperative” the detainee would be “debriefed”. According to USA government documents, an interrogator would “transition[...] the detainee from a non-cooperative to a cooperative phase in order that a debriefer can elicit actionable intelligence through non-aggressive techniques during debriefing sessions”.⁴⁸
19. Based on USA government documents released since 2009, it is clear that detainees would be exposed to multiple months or years of successive “cycles” of interrogations and debriefings.⁴⁹ Once it was considered that their information had been effectively exhausted, they would be classified as lower intelligence value, after which time it was less likely that enhanced interrogation techniques would be used.⁵⁰
20. However, even once they were assessed to be of lower intelligence value, those categorised as “HVDs”, including Mr al-Hawsawi, continued to be held in black sites in different jurisdictions for years, subjected to the standard conditions of detention in CIA facilities, including incommunicado detention outlined above, which – aside from any individual interrogation regimes – amount to a violation of the prohibition of torture and other ill-treatment.⁵¹
21. It is now established (after the release of official USA documents in 2009) that by May 2005 the CIA had taken custody of ninety-four detainees under this programme and had employed what were termed “enhanced interrogation techniques” in the interrogations of twenty-eight of those detainees.⁵² The ICRC report shows that among these were all of the “HVDs” who were returned to Guantánamo Bay in September 2006 (and included Mr al-Hawsawi). The report recorded that all of these fourteen individuals had been held in solitary confinement and incommunicado detention for their entire detention periods (ranging from more than three and a half years, to sixteen months), and that they had no knowledge of where they were being held, and no contact with persons other than their interrogators or guards.⁵³ According to the report:

Twelve of the fourteen alleged that they were subjected to systematic physical and/or psychological ill-treatment. This was a consequence of both the treatment and the material conditions which formed part of the interrogation regime, as well as the overall detention regime. This regime was clearly designed to undermine human dignity and to create a sense of futility by inducing, in many cases, severe physical and mental pain and suffering, with the aim of obtaining compliance and extracting information, resulting in exhaustion, depersonalization and dehumanization. The allegations of ill-treatment of the detainees indicate that, in many cases, the ill-treatment to which they were subjected while held in the CIA program, either singly, or in combination, constituted torture. In addition, many other elements of the ill-treatment, either singly or in combination, constituted cruel inhuman or degrading treatment.⁵⁴

22. In two comments marking the tenth anniversary of the 11 September 2001 attacks in the USA, addressing renditions and secret detentions, Council of Europe Human Rights Commissioner Thomas

⁴⁷ CPT Lithuania Report, above, para n.14. 66.

⁴⁸ CIA OIG Review, above n.5, p. 6, fn. 6.

⁴⁹ Thomas Hammarberg, “Advancing accountability in respect of the CIA Black Site in Romania”, CommDH(2012)38, 30 March 2012, [http://www.therenditionproject.org.uk/pdf/PDF%20438%20\[COE,%20Advancing%20Accountability,%20CIA%20Black%20Site%20in%20Romania%20\(30%20March%202012\)\].pdf](http://www.therenditionproject.org.uk/pdf/PDF%20438%20[COE,%20Advancing%20Accountability,%20CIA%20Black%20Site%20in%20Romania%20(30%20March%202012)].pdf), (“Hammarberg Advancing Accountability 2012”) para. 30.

⁵⁰ See *Ibid* n.49, paras. 29-32.

⁵¹ *Ibid* n.49, para. 33.

⁵² UN Joint Study on Secret Detention, A/HRC/13/42, above n.4, para. 103, citing Stephen G. Bradbury, Office of Legal Counsel, Department of Justice, “Memorandum for John A. Rizzo, Acting General Counsel, Central Intelligence Agency Re: application of United States obligations under article 16 of the Convention against Torture to certain techniques that may be used in the interrogation of high value al-Qaida detainees”, 30 May 2005, [http://www.therenditionproject.org.uk/pdf/PDF%2018%20\[Bradbury%20Memo%20to%20Rizzo%2030%20May%202005\].pdf](http://www.therenditionproject.org.uk/pdf/PDF%2018%20[Bradbury%20Memo%20to%20Rizzo%2030%20May%202005].pdf), p. 5.

⁵³ ICRC HVD Report, above n.20, pp. 7-8.

⁵⁴ ICRC HVD Report, above n.20, p. 26.

Hammarberg echoed repeated calls for accountability on the part of European governments complicit in supporting counter terrorism strategies orchestrated by the USA Bush administration and CIA. Hammarberg stated that there is “no doubt” that all aspects of the CIA programme (rendition, secret detention and interrogations) entailed systematic violations of human rights and “violated fundamental tenets of our systems of justice and human rights protection”.⁵⁵

3. Secret detention of “HVDs” in Lithuania

23. On 2 November 2005, *The Washington Post* published an article claiming that the CIA was secretly detaining and interrogating some of its most important detainees in Eastern Europe.⁵⁶ Following the publication of the article, and subsequent similar reports,⁵⁷ the Parliamentary Assembly of the Council of Europe and the European Parliament initiated investigations into the allegations.
24. These investigations published reports in 2006 and 2007, concluding that a number of European governments had been complicit in extraordinary renditions by the CIA and the secret detention of “HVDs” in Europe, and supporting the allegations that secret detention facilities had existed in at least Poland and Romania.⁵⁸ Dick Marty, Rapporteur on Alleged Secret Detentions in Council of Europe member states of the Parliamentary Assembly of the Council of Europe, stated that “[s]ome European governments have obstructed the search for the truth and are continuing to do so...”.⁵⁹
25. Inquiries experienced difficulty in securing evidence from states.⁶⁰ Giovanni Claudio Fava, rapporteur to the European Parliament Inquiry noted the limited powers and time which the inquiry had at its disposal which meant that “its conclusions are therefore not exhaustive”.⁶¹ 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.⁶²
26. More than two years after the conclusion of the Fava and Marty reports, ABC News reported, on 20 August 2009, that Lithuania was the third European country identified as providing the CIA with secret

⁵⁵ Thomas Hammarberg, “Ten years of the global war on terror violated human rights”, Council of Europe Website, 1 September 2011, http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=172. See also Thomas Hammarberg, “Europeans must account for their complicity in CIA secret detention and torture”, Council of Europe Website, 5 September 2011, http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=175.

⁵⁶ 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>.

⁵⁷ 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 Furor. 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>.

⁵⁸ Parliamentary Assembly Council of Europe (PACE), Committee on Legal Affairs and Human Rights (CLAH), “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**”); Second Marty Report above n.12; 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%20REP-2007-01-REP%20Report%20on%20the%20alleged%20use%20of%20Europea.pdf> (“**Fava Final Report**”).

⁵⁹ Second Marty Report, above n.12, para. 5. For a description of Romanian obstructionism see Fava Final Report, above n.58, paras 157-179.

⁶⁰ Second Marty Report, above n.12, paras 118-20: “We have not seen the text of any specific agreement that refers to the holding of High-Value Detainees in Poland or Romania. Indeed it is practically impossible to lay eyes on the classified documents in question or read the precise agreed language because of the rigours of the security-of information regime, itself kept secret, by which these materials are protected. However, we have spoken about the High-Value Detainee programme with multiple well-placed sources in the governments and intelligence services of several countries ... These persons spoke to us upon strict assurances of confidentiality, extended to them under the terms of the special authorisation I received from my Committee last year”.

⁶¹ Final Fava Report, above n.58.

⁶² 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](http://www.europarl.europa.eu/RegData/commissions/tdip/document_travail/2006/380593/TDIP_DT(2006)380593_EN.doc), p. 4.

detention facilities or black sites for so-called “HVDs”.⁶³ 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”.⁶⁴

27. The following day (21 August 2009), Dick Marty issued a statement that his own sources confirmed ABC News’ report that “HVDs” were held in Lithuania. He called for authorities to carry out a full, independent and credible investigation.⁶⁵
28. Two senior USA government officials at the time, cited in the ABC News report, claimed that “HVDs” were held in Lithuania until late 2005, when information on the programme became public. Flight records uncovered later have suggested that detainees may have been held in Lithuania until 2006.⁶⁶ Detainees were then allegedly transferred out of Eastern Europe, to one or more undisclosed locations described simply as “war zone facilities”.⁶⁷

Domestic investigation

29. In November 2009, the Lithuanian Parliamentary Committee on National Security and Defence (Seimas CNSD) authorised an inquiry into the CIA secret detention programme focusing on the following questions:
- i) Were CIA detainees subject to transportation and confinement on the territory of the Republic of Lithuania?
 - ii) Did secret CIA detention centres operate on the territory of the Republic of Lithuania?
 - iii) Did state institutions of the Republic of Lithuania (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 the Republic of Lithuania, and the transportation and confinement of detainees on the territory of the Republic of Lithuania?⁶⁸
30. The report of its findings, issued in December 2009, 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.⁶⁹ The Seimas CNSD inquiry found:
- a. Wide-scale direct cooperation between the State Security Department (SSD) and CIA ;⁷⁰
 - b. The CIA requested that the Lithuanian 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;⁷¹

⁶³ 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>.

⁶⁴ Matthew Cole ABC News (20 August 2009), above n.63 . 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**”).

⁶⁵ *Ibid*, above n.64, [Marty Accountability Statement 2009](#).

⁶⁶ 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>.

⁶⁷ Matthew Cole ABC News (20 August 2009), above n.63. See also UN Joint Report on Secret Detentions, above n.4, para. 124.

⁶⁸ 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, http://www3.lrs.lt/pls/inter/w5_show?p_r=6143&p_d=100241&p_k=2, (“**Seimas Report**”), p. 3.

⁶⁹ *Ibid*, above n.68, Seimas Report, p. 7.

⁷⁰ *Ibid*, above n.68, Seimas Report, pp. 8-9.

⁷¹ *Ibid*, above n.68, Seimas Report, pp. 6-7.

- c. 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;⁷²
- d. SSD officers actively received and escorted three aircraft associated with the Black Site programme (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;⁷³
- e. stops in both Poland and Romania – other alleged host countries for secret CIA detention facilities – were part of the flight circuits for some of these flights;⁷⁴
- f. it failed to establish whether detainees were brought into Lithuania, but found that “conditions for such transportation 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;⁷⁵
- g. Lithuanian border guards were prevented from inspecting some of the flights, which inhibited their ability to determine if passengers were aboard.⁷⁶

31. The Seimas CNSD inquiry further found that:

Facilities suitable for holding detainees were equipped, taking account of the requests and conditions set out by the partners. Director General of the State Security Department (“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’; however, according to the testimony of the then political leaders, they had not been informed of it.⁷⁷

32. The Seimas CNSD report referred to the two known facilities in Lithuania which were fitted out in a manner suitable to hold detainees (at the request of USA partners) as “Project No. 1” and “Project No. 2”.⁷⁸ Project No. 1 apparently “consisted of a small, single-storey, detached building located in a residential area in the centre of Vilnius”.⁷⁹ According to the Seimas CNSD, the implementation of Project No. 1 began in 2002. At this time, Lithuanian authorities knew, or should have known, of the concerns that were being raised as regards USA treatment of suspected terrorists detained in the context of the “war on terrorism”.⁸⁰

33. ABC News Reporters Matthew Cole and Brian Ross described witnesses’ accounts of Project No.2 as a building within an indoor riding area, located in Antavilai, Lithuania, where prefabricated pods housed prisoners, and separate cells were used for interrogations. All electrical outlets were designed for

⁷² *Ibid*, above n.68, Seimas Report, p. 6.

⁷³ *Ibid*, above n.68, Seimas Report, pp. 4,5.

⁷⁴ *Ibid*, above n.68, Seimas Report, pp. 4-6.

⁷⁵ *Ibid*, above n.68, Seimas Report, p. 6.

⁷⁶ *Ibid*, above n.68, Seimas Report, p. 6.

⁷⁷ *Ibid*, above n.68, Seimas Report, p. 6.

⁷⁸ *Ibid*, above n.68, Seimas Report, p. 6.

⁷⁹ CPT Lithuania Report, above n. 14, para. 68.

⁸⁰ See Interights application on behalf of *Zayn al-Abidin Muhammad Husayn (Abu Zubaydah) v. the Republic of Lithuania* to the European Court of Human Rights, 27 October 2011 (No.46454/11, <http://www.interights.org/abu-zubaydah-v-lithuania/index.html>), paras. 87-88 and AI and ICJ Intervention in the same case. See also ECtHR, *El-Masri v The Former Yugoslav Republic of Macedonia*, app. no. 39630/09, 12 December 2012, paras. 111-129 (summary of public sources highlighting concerns as to human rights violations allegedly occurring in USA run detention facilities in the aftermath of 11 September 2001).

American appliances.⁸¹ Villagers approaching the facility to ask for work were turned away by English-speaking guards.⁸² A former Lithuanian military counter-intelligence officer claimed that the existence of at least one black site was widely known amongst Lithuanian intelligence officers.

34. Project No.2 was bought by Elite LLC, an unincorporated USA company no longer in operation.⁸³ It is reported that Elite LLC sold the site back to the Lithuanian government after the revelation of Eastern European black sites.⁸⁴
35. The CPT conducted visits to the two detention facilities identified by the Seimas CNSD and concluded that the facilities could easily have been converted from detention centres to their present layout and that the sites observed were consistent with having been previously used for detention purposes.⁸⁵
36. In 2012 a delegation from the European Parliament's Committee on Civil Liberties, Justice and Home Affairs ("LIBE") 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".⁸⁶
37. According to the data collected by the Seimas CNSD, aircraft which official investigations had linked to the transportation of CIA detainees repeatedly crossed Lithuanian airspace during the period 2002 to 2005 and did land in Lithuania during that period. Further, although the Seimas CNSD failed to establish whether CIA detainees were brought into/out of Lithuanian territory, it concluded that the conditions for such transportation did exist. The Seimas CNSD also established that the Lithuanian SSD had received a request from the partners to equip facilities in Lithuania suitable for holding detainees. And, although reaching the conclusion that the facilities of Project No. 1 were ultimately not used for detention purposes, the Committee explicitly refrained from ruling out such a possibility as regards the facilities of Project No. 2.⁸⁷

Prosecutor General's Inquiry

38. In January of 2010, the Lithuanian Office of the Prosecutor General initiated a pre-trial investigation into possible abuses of office by Lithuanian officials.⁸⁸
39. Shortly afterwards UN experts released a 'Joint Study on Global Practices in relation to Secret Detention', and reported that their research for study, including data strings relating to Lithuania, "appear[ed] to confirm that Lithuania was integrated into the secret detention programme in 2004". The experts confirmed that at least two planes operating in the context of the CIA rendition and secret detention programmes had landed in Lithuania under cover of "dummy" flight plans.⁸⁹ The experts referred to in the Seimas CNSD Report and said that, while they 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, they stress that its findings can in no way constitute the final word on the country's role".⁹⁰
40. In June 2010, while the Prosecutor's investigation was ongoing, the CPT carried out a periodic visit to Lithuania. The CPT's report of that visit found that arguably "the Prosecutor General's Office should itself have taken the initiative and launched an investigation when the issue of the possible existence

⁸¹ 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>.

⁸² *Ibid.*

⁸³ *Ibid* n.81.

⁸⁴ 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>.

⁸⁵ CPT Lithuania Report, above n.14, para. 68.

⁸⁶ 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?pubRef=-//EP//TEXT+TA+P7-TA-2012-0309+0+DOC+XML+V0//EN>, ("European Parliament 11 September 2012 Resolution"), preambular para. T.

⁸⁷ Seimas Report above n.68, p. 7.

⁸⁸ Under Article 228(1) of the Lithuanian Criminal Code.

⁸⁹ UN Joint Study on Secret Detention, above n.4, para. 120.

⁹⁰ *Ibid*, above n.4, para. 122.

of secret detention facilities in Lithuania first came to light in the summer of 2009”, given the facts which were by then already in the public domain, and concern about European involvement in secret detention.⁹¹

41. The CPT noted that it had sought specific information on the question of thoroughness, but “did not receive the specific information it requested”.⁹² It also noted that the “[p]aucity of the information currently available” leaves open the question whether the pre-trial investigation was thorough.⁹³ It was also concerned that the investigation appeared to be limited to investigating potential abuse of office,⁹⁴ although we note the government’s position before the European Court of Human Rights that the Prosecutor General’s investigation did consider potential abuses of the following articles of the Criminal Code: Article 228 (Abuse of Office); Articles 100 (Treatment of Persons Prohibited Under International Law); 146 (Unlawful Deprivation of Liberty); 292 (Unlawful Transportation of Persons across the State Border).⁹⁵
42. While the Prosecutor General’s pre-trial investigation was still underway, specific allegations were raised by UK NGO Reprieve, on behalf of “HVD” Zain al-Abidin Muhammad Husayn (otherwise known as Abu Zubaydah), that he was held in Lithuania as part of the CIA’s programme of secret detention at some time between 2004 and 2006. Reprieve stated that “recent information ha[d] come to it from a confidential and extremely reliable unclassified source, confirming that Mr Husayn was held in a secret CIA prison in Lithuania”.⁹⁶ A later news report, published in May 2011, stated that two former USA intelligence officials had specifically named Abu Zubaydah as one of the “HVDs” held in Lithuania.⁹⁷
43. However, in January 2011 the Lithuanian Prosecutor General closed the criminal investigation without making information regarding the investigation public.⁹⁸ The need to protect state secrets was cited but the Prosecutor also stated that:
 - a. No data on illegal transportation of any persons by [CIA] aircraft was received during the pre-trial investigation. Aircraft operating as part of the CIA-led rendition programme had flown over and in fact landed in Lithuania, but the absence of data regarding passengers precluded the Prosecutor General’s office from initiating criminal charges under Lithuanian law;
 - b. The statute of limitations on a criminal charge of “abuse of office” under Lithuanian law runs for five years from the commission of the crime. Project No. 1 was completed in 2003, thus the statute of limitations expired in 2008. No data was received to indicate that Project No. 2 was used to detain individuals, therefore no criminal charges of “abuse of office” or unlawful treatment of persons or illegal restriction on liberty could be applied.
 - c. Lithuanian law does not require that the details of “international cooperation” between the Lithuanian intelligence services and foreign intelligence services be “cleared” at any political level; such information sharing may be carried out on a “need to know” basis. Although SSD officials did not inform high-level state officials about Projects No. 1 and No. 2, this type of communication was not stipulated under the law and therefore no criminal activity had

⁹¹ *Ibid*, above n.14, para. 70.

⁹² *Ibid*, above n.14, para. 72.

⁹³ *Ibid*, above n.14, para. 72.

⁹⁴ *Ibid*, above n.14, para. 71.

⁹⁵ Observations of the government of the Republic of Lithuania (3 June 2013) in *Abu Zubaydah v Lithuania* to the European Court of Human Rights (No.46454/11) (10 September 2012), (“**Observations of Lithuania in Abu Zubaydah ECtHR litigation (3 June 2013)**”) para. 36

⁹⁶ *Ibid.*, p. 4.; 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.

⁹⁷ Vanessa Gera, “Polish Prosecutor Removed from CIA Prison Probe”, *The Guardian*, 24 May 2011.

⁹⁸ 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)**”) p.

17.

occurred. Moreover, 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.⁹⁹

- d. The allegations of renditions were “just an assumption not supported by any actual data, which is equivalent to an assumption about transportation of any other persons or items in the civil circulation of prohibited items”;¹⁰⁰ and
- e. In the absence of factual data, “prosecution cannot be initiated or criminal proceedings cannot be continued at this point”.¹⁰¹

44. The Prosecutor General stated that Reprieve had not supplied factual supporting information in relation to the claim that Abu Zubaydah had been detained in secret in Lithuania, however 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.¹⁰² It appears that, as part of the investigation, the Prosecutor General did not take these steps or contact USA officials who were alleged to have knowledge of the rendition, detention and interrogation of Abu Zubaydah.¹⁰³

45. It has recently been made public that two site visits were conducted to the alleged secret detention facilities, however 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. 2.¹⁰⁴ 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. Yet, the ABC news piece revealing information about the projects cited an officer in the Lithuanian military claiming that the USA detention centre was widely known amongst Lithuanian intelligence officers, and villagers approaching the facility were turned away by English-speaking workers.¹⁰⁵

New flight data and allegations of detention

46. Following the closure of the investigation, significant new flight data associated with rendition circuits has been uncovered by non-governmental organisations including Reprieve and Access Info Europe.¹⁰⁶ This information and supporting documents has since been carefully collated, and key suspicious

⁹⁹ *Ibid* above n.98., pp. 17-20 .

¹⁰⁰ 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) 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.

¹⁰¹ *Ibid* above n.100.

¹⁰² 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.

¹⁰³ 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.

¹⁰⁴ *Ibid* above n.103, paras. 63-73.

¹⁰⁵ 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>.

¹⁰⁶ 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), above n.98, in particular pp. 21-7).

flights analysed, by a collaborative research project between Dr Ruth Blakeley (University of Kent) and Dr Sam Raphael (Kingston University) in the United Kingdom.¹⁰⁷

47. The data currently available suggests the following possible and probable rendition flight circuits through Lithuania:¹⁰⁸

Date	Flight No.	Route	Notes
04/02/2003	N8213G	Portsmouth - Ponta Delgada - Frankfurt - Algiers - Paris - Frankfurt - <u>Vilnius</u> - Warsaw - Frankfurt - Tirana - Athens - Frankfurt - Madrid - Ponta Delgada – Stephenville	Cited in Seimas CNSD report.
09/2004	Unknown	Unknown – eventually arriving in <u>Vilnius</u>	Cited in ABC News 21 October 2009 report by Matthew Cole 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
02/01/2005	N961BW	Flesland - <u>Palanga</u> – Simferopol	Cited in Seimas CNSD report.
17/02/2005	N724CL	Morocco - Amman - <u>Vilnius</u> – Reykjavik	Disclosed by Reprieve/Access Info Europe and cited by Interights in <i>Abu Zubaydah v Lithuania</i> . ¹⁰⁹ This is highly suggestive of a detainee transfer from Morocco and/or Jordan.
18/02/2005	N787WH	Morocco - Bucharest - <u>Palanga</u> – Copenhagen	Cited in Seimas CNSD report but without connection to Morocco. Full flight plan uncovered by Reprieve / EP LIBE committee in May 2012 and cited by Interights in <i>Abu Zubaydah v Lithuania</i> . ¹¹⁰ This is highly suggestive of a detainee transfer from Morocco and/or Romania.
06/10/2005	N380AB N787WH	Bucharest – Tirana / Tirana - <u>Vilnius</u> – Oslo	N787WH cited in Seimas CNSD report as coming to Vilnius from Antalya or Tallinn. Eurocontrol data reveals flights connecting Romania to Lithuania via a plane switch in Tirana, Albania. ¹¹¹ This is highly suggestive of a detainee transfer from Romania.

¹⁰⁷ Ruth Blakeley and Sam Raphael, “The Rendition Project”, 2013, available online: <http://www.therenditionproject.org.uk>.

¹⁰⁸ 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.

¹⁰⁹ 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>.

¹¹⁰ Ibid, above n.109.

¹¹¹ [European Parliament 11 September 2012 Resolution, above n.86](http://www.reprive.org.uk/articles/CSCRomania/). See also Reprieve, “CSC Flights: Romania 2004-5”, 4 July 2012, <http://www.reprive.org.uk/articles/CSCRomania/>.

25/03/2006	N733MA N740EH	Porto - Palanga – Cairo / Cairo - Kabul	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 that continued the journey to Afghanistan. Cited by Interights in <i>Abu Zubaydah v Lithuania</i> . ¹¹² This is highly suggestive of a detainee transfer to Afghanistan from Lithuania.
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48. Non-governmental organisations (with limited resources and limited access to information) have been unable to uncover further specific flight details, and to clarify flight paths in relation to flights mentioned in the Seimas CNSD report. The flights uncovered by no means provide an exhaustive complete list of flights connected to the CIA secret detention and extraordinary rendition programmes. The Lithuanian authorities are far better placed to undertake investigations, as information about the flights and any treatment of detainees must be known to relevant officials within Lithuania, and Lithuanian authorities have an obligation to do so.
49. The routes of the newly uncovered rendition circuits – originating from other known black sites, particularly in Romania, Morocco and Afghanistan¹¹³ – are strongly suggestive of detainee transfer into Lithuania (the last, to a known black site, is strongly suggestive of a transfer out of 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 due to public disclosures about the programme.¹¹⁴ The flight data is therefore strong supporting evidence that “HVDs” were in fact held in secret detention in Lithuania.
50. The government has maintained in the context of the *Abu Zubaydah* litigation that “upon having investigated in detail both flights N787WH of 18 February 2005 and N766MA 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.”¹¹⁵
51. However, the government does not provide adequate information enabling the stakeholders and the public to understand the basis of the decision and contextual evidence about the flights (described below) points clearly to them being rendition flights. Indeed, 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

¹¹² Interights, *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/>.

¹¹³ See Emmerson 2013 Report, A/HRC/22/52, above n.2, para. 19.

¹¹⁴ Matthew Cole ABC News (20 August 2009), above n.63. See also [Marty Accountability Statement 2009, above n. 64](#).

¹¹⁵ Observations of Lithuania in *Abu Zubaydah* ECtHR litigation (3 June 2013), above n.95, para 61.

investigations cover possible unlawful detention and ill-treatment of persons on Lithuanian territory.¹¹⁶

This understanding of the flight data is mirrored in the findings and reports of other international organisations.¹¹⁷

52. 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”.¹¹⁸
53. The Resolution also stressed that it is essential that “the scope of new investigations cover, beyond abuses of power by state officials, possible unlawful detention and ill-treatment of persons on Lithuanian territory”, and “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”.¹¹⁹

Rendition flights

54. The government of Lithuania attests that CIA linked planes stopping in Lithuania could have done so for many purposes, including merely “technical reasons”. However a number of inter-governmental bodies including the UN Human Rights Council, the European Parliament's LIBE Committee, the European Parliament, the European Parliament's Committee on Legal Affairs and Human Rights (led by Dick Marty), the Council of Europe's Parliamentary Assembly, have found strong evidence to suggest that such flights were rendition flights.¹²⁰
55. The Seimas CNSD report concluded that:
- a. in at least one case, the Lithuanian SSD reported that passengers in addition to crew were aboard an aircraft that had landed in Lithuania;¹²¹ and
 - b. Lithuanian border guards were prevented from inspecting the flights, which inhibited their ability to determine if passengers were aboard other flights.¹²²

This raises questions as to why innocent or “technical” stopovers were exempt from the Border Guard inspections. Further information and disclosure is required.

56. Further, as has been demonstrated in detail by Counsel for Abu Zubaydah in the European Court of Human Rights litigation, the flights listed above and contracted by the CIA were intricately tied into

¹¹⁶ European Parliament resolution of 11 September 2012 on alleged transportation and illegal detention of prisoners in European countries by the CIA: follow-up of the European Parliament TDIP Committee report, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bTA%2bP7-TA-2012-0309%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>.

¹¹⁷ 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 (\$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>; 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)), European Parliament, A7-0266/2012, para. 14 (2 August 2012); 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, “Unlock the Truth in Lithuania, Investigate Secret Prisons Now”, September 2011, <http://www.statewatch.org/news/2011/sep/ai-lithuania-report.pdf>

¹¹⁸ [European Parliament 11 September 2012 Resolution](#), above n.86, para. 14.

¹¹⁹ *Ibid.*

¹²⁰ *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>.

¹²¹ *Ibid.*

¹²² Seimas Report, above n.68, p. 6.

¹²³ *Ibid.*, p. 6.

the rendition program.¹²³ It is worth citing their Reply on this point in detail. As shown in the Reply “[a] clear line of evidence connects these flights to Lithuania”.¹²⁴

44. All of the flights involved in rendition into and out of Lithuania were contracted by a US company, Computer Sciences Corporation (CSC), on behalf of the US government. This prime contract originated in 2002 with another US company, DynCorp Systems and Solutions LLC (DynCorp), and was then inherited by CSC through its purchase of DynCorp in 2004. The US government’s initial contract with DynCorp gave rise to a succession of subcontracts including the “Single Entity Charter Agreement” LT050602 with Capital Aviation¹²⁵ of 17 June 2002 and a similar agreement between Sportsflight Air as authorized agent for DynCorp and plane operator Richmor Aviation on 18 June 2002.¹²⁶ These companies, along with various other plane operators including Victory Aviation (N787WH) and Miami Air International (N733MA and N740EH), thereby established a method and pattern of doing business which lasted at least until 2006.

45. The February 2005 flights of N787WH and N724CL, travelling from the USA to Lithuania via Morocco, were arranged under CSC’s subcontract with Sportsflight Air Inc. dba Capital Aviation, S1007312, as task orders 20 and 21. As set out in the Application, these flights correspond with the dates on which information indicates that the applicant was transferred from Morocco to Lithuania in early 2005.¹²⁷ The March 2006 flights of N733MA and N740EH were also arranged under CSC’s successor subcontract with Sportsflight, S1008117, as task order 66. Despite the changes in subcontract numbers over the years, invoices to CSC for all these flights retained the original contract number, namely LT050602, thereby tying all the tasks undertaken in the context of this group of subcontracts into a single coherent whole.

46. Flights organised and billed by Sportsflight and CSC were the subject of civil litigation in New York, concluding in 2011, between Sportsflight and Richmor Aviation¹²⁸. During this litigation, both parties made clear that the flights were part of the rendition programme and that the contracting arrangements, under which these flights were arranged were set up to facilitate this programme. The court transcripts and documents put on record in the *Richmor v. Sportsflight* case support the conclusion that the flights performed and billed under LT050602 and subsequent contracts were rendition flights, not merely flights contracted by the US government for “other purposes” as the government asserts.¹²⁹ Among the evidence from that case file that the flights carried out a) under subcontract LT050602 and b) under subsequent successor contracts invoiced with reference to LT050602 were rendition flights are the following excerpts:

- *Richmor Aviation v Sportsflight Air*, Brief for the Defendant-Appellant: “It was ultimately learned that the flights would be going to and from Guantanamo Bay and would be used for assorted rendition missions.”¹³⁰

- Letter from Mahlon Richards, President of Richmor Aviation, to Donald Moss, President of Sportsflight Air, 19 Oct. 2006: “GIV N227SV [a/k/a N85VM] will always be linked to renditions.”¹³¹

- *Richmor Aviation v Sportsflight Air*, Brief for the Defendant-Appellant: “Richmor suffered severe unintended consequences from allowing its Gulfstream IV aircraft to be used by the Government for rendition flights”¹³²

¹²³ Reply of counsel for Abu Zubahdah to Observations of Lithuania in ECtHR litigation, above n.103.

¹²⁴ *Ibid.*, paras. 44-48.

¹²⁵ *Richmor Aviation v. Sportsflight Air*, Case File, (N.Y. App. Div 2011) (“*Richmor case file*”), pp. 852-861.

¹²⁶ *Ibid.* n.125, *Richmor case file*, pp. 328-332.

¹²⁷ See Application *Abu Zubaydah v Lithuania* to the European Court of Human Rights (No.46454/11) (10 September 2012), paras 51 – 59.

¹²⁸ *Richmor case file*, above n.125.

¹²⁹ Observations of Lithuania in *Abu Zubaydah* ECtHR litigation (3 June 2013), above n.95, para 7.

¹³⁰ *Richmor case file* p. 7.

¹³¹ *Ibid.*, p. 10 and 427.

¹³² *Ibid.*, p.10.

- *Richmor Aviation v Sportsflight Air*, Brief for the Defendant-Appellant: "The nature of the Government flights were not disclosed at that time, but it was later learned that the flights were rendition flights for suspected terrorists."¹³³

- *Richmor Aviation v Sportsflight Air*, Brief for the Defendant-Appellant: "Prior to flying the first of the rendition flights under the Charter Contract, Richmor had several meetings with personnel from its client (the Government), and with Steve Lee, a DynCorp employee who was known to Richards as the "primary representative" for the Government in matters concerning the Charter Contract."¹³⁴

- *Richmor Aviation vs Sportsflight Air*, Brief of the Plaintiff-Respondent: "Plaintiff sought payment and noted that it performed despite negative publicity regarding the rendition flights."¹³⁵

- Donald Moss, President of Sportsflight Air, under cross-examination from William Ryan, representing Richmor Aviation: "There were blogs and newspaper articles that were appearing providing more or less negative information about these flights that the government was using aircraft for rendition flights."¹³⁶

- Donald Moss, President of Sportsflight Air, under cross-examination from William Ryan, representing Richmor Aviation: "A. [This invoice] is actually tracking the hours as requested by DynCorp of all activity. I don't know when dating back. It doesn't specify a date, but all flights flown through the Capital Aviation and SportsFlight relationship. In other words, we had flown flights prior to this contract so we tracked hours from day one. Q. Does this concern the rendition flights? A. Yes."¹³⁷

47. Subsequent reports by Reprieve have also correlated flights flown under these contracts with the well-documented movements of other prisoners.¹³⁸ Furthermore, all the flights connecting with Lithuania in February 2005 and March 2006, as well as that less relevant to this case of N787WH in October 2005, exhibit a common pattern of behaviour designed for the sole purpose of disguising the true flight routes. This behaviour is set out in detail in the Additional Submission to the Court dated 10 September 2012.¹³⁹ The failure of the parliamentary inquiry to accurately or fully report the routes of the planes in question may suggest this behaviour succeeded to a certain degree. The prosecutor, subsequent to this, appears to have accepted at face value the findings of the parliamentary inquiry without any further research or consideration.

48. Taking into account, on a cumulative basis, all the available evidence such as the contracts and invoices, the patterns of behaviour, the statements set out in the court proceedings referred to above, the timing of the flights, and the overall context within which rendition flights have been shown to take place, there is compelling basis to conclude that the sole purpose of the cited flights of N787WH, N724CL, N733MA and N740EH was to interconnect the CIA's various secret prison locations. In addition, these interconnections were made at times when, according to authoritative news reporting, prisoner transfers were being made between the respective countries.¹⁴⁰

¹³³ *Ibid.*, p. 14.

¹³⁴ *Ibid.*, p. 16.

¹³⁵ *Ibid.*, p. 82.

¹³⁶ *Ibid.*, p. 790.

¹³⁷ *Ibid.*, p. 807.

¹³⁸ see <http://www.reprieve.org.uk/investigations/rendition/>

¹³⁹ See for example [Additional Submission in Abu Zubaydah ECtHR litigation \(10 September 2012\), above n.112](#), paras 16 – 19.

¹⁴⁰ Matthew Cole ABC News (20 August 2009), above n.63; Craig Whitlock, Washington Post, Lithuania investigates possible "black site" (19 November 2009), available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/11/18/AR2009111803994.html>. See also, *Rendition on Record*, Access Info Europe and Reprieve, December 2011, available at http://www.accessinfo.org/documents/Access_Docs/Using/Civil_Liberties/ROR/Rendition_on_Record_19_December_2011.pdf (discusses receipt of flight data concerning Lithuania).

49. The government suggests an alternative hypothesis, that the flights "could have other purposes or simply stop at some places for some technical reasons,"¹⁴¹ while providing no evidence to support this hypothesis, and failing to refute the considerable evidence against. Even if one were to leave aside the entire significance of the contracting background to these flights, a number of questions remain. Why, if these were entirely innocent or "technical" stopovers were the Border Guard prevented from inspecting the planes? Why were the planes cordoned off by the State Security Service? Why was a vehicle seen leaving one of the planes, and the airport, if this were merely a "technical" stop? Why does there appear to have been an effort to disguise their true routes if their purposes were legitimate?

4. There is a strong likelihood that Mr al-Hawsawi was among the "HVDs" held in secret detention in Lithuania

57. Restrictions imposed by the USA presently preclude Mr al-Hawsawi and other "HVDs" from giving any direct evidence as to their whereabouts and treatment during the relevant period. According to these restrictions, Mr al-Hawsawi is barred from communicating with the outside world and from presenting evidence in support of his case.¹⁴² It is also impossible to obtain any information from Mr al-Hawsawi or his military lawyer (Commander Walter Ruiz) as anything that could be said by Mr al-Hawsawi or Commander Walter Ruiz on these matters is deemed to be automatically classified.
58. Nevertheless, as shown above, through the work of the Council of Europe, the CPT, UN mechanisms and special procedures, NGOs and journalists, and through cases brought in European Court of Human Rights, the UN Human Rights Committee and the Committee against Torture, reliable information about the programme and the states involved is now available.¹⁴³
59. On the basis of the information publicly available,¹⁴⁴ 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 "HVDs" of a similar profile to Mr al-Hawsawi, some of whom were alleged to have been moved with him in September 2003 and March 2004.
60. A spreadsheet is attached showing reported movements of the fourteen "HVDs" who were acknowledged to have been moved to Guantánamo Bay in September 2006 (where timing is estimated/incomplete this is shown hatched).¹⁴⁵ Two additional individuals who are alleged to have been held in secret detention in Poland and Romania have also been included. These movements have been pieced together from information divulged by CIA and other sources, and analysis of flight data suggesting rendition circuits. Supporting evidence for the position shown on this spreadsheet in relation to each individual has been collated and analysed by The Rendition Project, and, unless otherwise stated, evidence supporting the position shown in the spreadsheet can be found under 'detainee profiles' on the project's website.¹⁴⁶
61. The spreadsheet demonstrates that:

¹⁴¹ Observations of Lithuania in *Abu Zubaydah* ECtHR litigation (3 June 2013), above n.95, para 7.

¹⁴² Guantanamo Bay Detainee Litigation, Case no: 1:08-ev-01360, Amended Protective Order (9 January 2009). See also United Nations, "Communication addressed to the United States of America by the Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment", USA 31/2012, 30 November 2012, [https://spdb.ohchr.org/hrdb/22nd/public-UA_USA_30.11.12_\(31.2012\).pdf](https://spdb.ohchr.org/hrdb/22nd/public-UA_USA_30.11.12_(31.2012).pdf), pp. 1-2.

¹⁴³ See Emmerson 2013 Report, A/HRC/22/52, above n.2, para. 19.

¹⁴⁴ 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).

¹⁴⁵ For the list of names see the ICRC HVD Report, above n.20, p. 5.

¹⁴⁶ Ruth Blakely and Sam Raphael (2013), "The detainees", <http://www.therenditionproject.org.uk/global-rendition/the-detainees/index.html>.

- a. Leaving aside the three detainees captured in Thailand (about whose movements little is known), the following seven “HVDs” were captured in 2002-2003:
 - i. Abu Zubaydah;
 - ii. Ramzi Bin al-Shibh;
 - iii. Khaled Sheikh Mohammed;
 - iv. Majid Khan;
 - v. Ammar al-Baluchi;
 - vi. Walid bin Attash; and
 - vii. Mustafa al-Hawsawi.
- b. It appears that unlike the others, Majid Khan may have been kept in Afghanistan after his capture.¹⁴⁷ In relation to the others:
 - i. little is known about Ammar al-Baluchi and Mustafa al-Hawsawi’s movements;
 - ii. all four others have been publicly linked to secret detention in Europe during 2004 and 2005 (see immediately below).
- c. The USA Department of Defense Joint Task Force detainee assessment of Mr al-Hawsawi shows that the other “HVDs” who he was allegedly linked to were Abu Zubaydah, Ramzi bin al-Shibh, Khaled Sheikh Mohammed and Walid bin Attash. Each of these other individuals is also alleged to have been held in Europe during 2003-2005/6.¹⁴⁸
- d. Of the fourteen “HVDs” who resurfaced in Guantánamo Bay in September 2006, three are alleged to have been sent to Guantánamo Bay in September 2003 with Mr al-Hawsawi, and were also removed from there in March or April 2004. These individuals are Abu Zubaydah, Abd al-Nashiri and Ramzi bin al Shibh.¹⁴⁹ Each of these is reported to have been relocated to Europe after their secret detention at Guantánamo Bay.
 - i. Abu Zubaydah is alleged to have been held in Lithuania, after being flown from Morocco to Lithuania between 15-19 February 2005, on either flight N787WH¹⁵⁰ or N724CL.¹⁵¹ It is alleged that he remained in Lithuania until 25 March 2006, when he was removed on flight N733MA, which flew to Cairo where it connected with flight N740EH, flying onto Kabul.¹⁵²
 - ii. Abd Al Nashiri is reported to have been held in Romania after March 2004, either via a period of detention in Morocco, or directly from Guantánamo Bay on 12-13 April 2004 on flight N85VM.¹⁵³

¹⁴⁷ Khaled el-Masri, who was detained in Afghanistan from late January to May 2004, said that Majid Khan was detained in the same prison as him in Afghanistan: Carol D. Leonnig and Eric Rich, “US seeks silence on CIA prisons”, Washington Post, 4 November 2006, http://www.washingtonpost.com/wp-dyn/content/article/2006/11/03/AR2006110301793_pf.html.

¹⁴⁸ See the relevant detainee profiles at Ruth Blakely and Sam Raphael (2013), “The detainees”, <http://www.therenditionproject.org.uk/global-rendition/the-detainees/index.html>.

¹⁴⁹ 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.

¹⁵⁰ Which flew Baltimore (KBWI) – Santa Maria, Azores (LPAZ) – Salzburg (LOWS) – Malaga (LEMG) – Rabat (GMME) – Constanta / Bucharest (LRCK / LRBS) – Palanga (EYPA) – Copenhagen (EKCH) – Gander (CYQX) – Baltimore (KBWI). See *Abu Zubaydah v Lithuania*, [Additional Submission in Abu Zubaydah ECtHR litigation \(10 September 2012\)](#), above n.112, para. 5.

¹⁵¹ Which flew Van Nuys (KVNY) – Baltimore (KBWI) – Santa Maria, Azores (LPAZ) – Gran Canaria (GCLP) – Rabat (GMME) – Amman (OJAM) – Vilnius (EYVI) – Keflavik (BIKF) – Goose Bay (CYR) – Baltimore (KBWI) – Van Nuys (KVNY). See *Abu Zubaydah v Lithuania*, [Additional submission in Abu Zubaydah ECtHR litigation](#), (10 September 2012), above n.112, para. 11.

¹⁵² [Additional Submission in Abu Zubaydah ECtHR litigation \(10 September 2012\)](#), above n.112, para. 18.

¹⁵³ Hammarberg Advancing Accountability 2012, above n.49, p. 14.

- iii. Ramzi bin Al Shibh is alleged to have been held in Romania, after being flown from Morocco to Bucharest on either 1 October 2004, aboard flight N85VM,¹⁵⁴ or 18 February 2005, aboard flight N787WH.¹⁵⁵
 - e. 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 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 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”.¹⁵⁶
 - f. 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. 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.
62. Given the alleged return of Mr al-Hawsawi to Rabat (Morocco) with other so-called “HVDs” on 28 March 2004, the number of other “HVDs” reported to have been held in Romania and Lithuania after that time, the methodology of the “HVD” programme, the reported number of cells available in alleged Romanian and Lithuanian secret detention facilities, and the number of suspected rendition flights to Romania and Lithuania during the relevant period, there is a strong likelihood that Mr al-Hawsawi was held in Lithuania between March 2004 and September 2006, and indeed that he was transferred there on one of the two rendition flights known to have taken place on 17 and 18 February 2005, or in September 2004 as contended by several former CIA officials and several former intelligence officials involved in the CIA’s “HVD” programme. In the ABC News item, they stated that in September 2004 and July 2005 aircrafts landed in Lithuania carrying detainees. The UN study on global practices in relation to secret detention in the context of countering terrorism (UN Joint Study on Secret Detention) (February 2010) appeared to confirm aircraft landings in Lithuania in September 2004 and July 2005).¹⁵⁷
63. In light of the concerns raised regarding the conduct of the inquiry, and the allegations made on behalf of Mr al-Hawsawi, we formally request that the investigation be opened and that claims of unlawful deprivation of liberty, unlawful transportation across the border of Lithuania, arbitrary detention, and torture and other ill-treatment made in relation to Mr al-Hawsawi, be investigated by the Lithuanian authorities. The failure to establish the full facts about the extent of Lithuanian cooperation with the CIA’s programme is a continuing violation of Lithuania’s obligations under international law, particularly article 3 of the European Convention on Human Rights, articles 12 and 13 of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and article 7 in conjunction with article 2 (3) of the International Covenant of Civil and Political Rights.

¹⁵⁴ Associated Press, “Secret jails: Terror suspect’s odyssey through CIA’s black sites,” 2010 (interactive), <http://hosted.ap.org/specials/interactives/wdc/binalshibh/>; Ruth Blakely and Sam Raphael (2013), “Detainee Profile, Ramzi bin al Shibh”, <http://www.therenditionproject.org.uk/global-rendition/the-detainees/ramzi-bin-al-shibh.html>.

¹⁵⁵ Hammarberg Advancing Accountability 2012, above n.49, , p. 14.

¹⁵⁶ 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.

¹⁵⁷ Matthew Cole, “Lithuanian President Announces Investigation into CIA Secret Prison”, ABC News, 21 October 2009, <http://abcnews.go.com/Blotter/lithuania-investigating-secret-cia-prisons/story?id=8874887>; Matthew Cole, “Lithuanian President Announces Investigation into CIA Secret Prison”, ABC News, 21 October 2009; UN Joint Study on Secret Detention, paras. 120-122, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-42.pdf>.

5. Request and Responsibility to Investigate

The investigation into Lithuanian involvement in the CIA's black site programme must be opened – Lithuania must carry out a thorough, effective and transparent investigation into these allegations

64. In line with its obligations under international human rights law, including the European Convention on Human Rights and the UN Convention against Torture, we call upon the Lithuanian authorities to undertake a prompt, independent, thorough and effective investigation, capable of establishing the facts, and leading to the identification and prosecution of perpetrators.¹⁵⁸
65. The prohibition against torture and other prohibited forms of ill-treatment is universally recognised and enshrined in all of the major international and regional human rights instruments.¹⁵⁹ The prohibition is recognised as absolute and non-derogable in character.¹⁶⁰ The European Court of Human Rights has made it clear that states must investigate effectively allegations of torture or cruel, inhuman or degrading treatment or punishment.¹⁶¹ The state has the same obligation under articles 12 and 13 of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, under Article 7 and read with Article 2(3) of the International Covenant on Civil and Political Rights.¹⁶² The UN Committee against Torture has stressed that "States parties shall 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 actions or omissions".¹⁶³
66. There is also an internationally acknowledged principle prohibiting prolonged arbitrary, unacknowledged and incommunicado detention.¹⁶⁴ The European Court of Human Rights has characterised unacknowledged detention without any of the safeguards contained in Article 5 (which provides for the right to liberty and security) as "a most grave violation" of that article.¹⁶⁵ The European Court of Human Rights has held that Article 5 – like Article 3 – imposes positive obligations in such circumstances on a state to conduct a "prompt effective investigation into an arguable claim

¹⁵⁸ For the requirements of an effective investigation see ECtHR, *El-Masri v The Former Yugoslav Republic of Macedonia*, app. no. 39630/09, 12 December 2012, paras. 182-184.

¹⁵⁹ Article 5 of the Universal Declaration of Human Rights 1948; Article 7 of the International Covenant on Civil and Political Rights 1966, "ICCPR"; Article 5 of the American Convention on Human Rights 1969; Article 5 of the African Charter on Human and Peoples' Rights 1981; Article 13 of the Arab Charter on Human Rights 1997; United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 ("UNCAT") and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1987. The prohibition against torture is also reflected throughout international humanitarian law, in e.g. the Regulations annexed to the Hague Convention IV of 1907, the Geneva Conventions of 1949 and their two Additional Protocols of 1977.

¹⁶⁰ The prohibition of torture and ill-treatment is specifically excluded from derogation provisions: see Article 4(2) of the ICCPR; Articles 2(2) the UNCAT; Article 27(2) of the American Convention on Human Rights; Article 4(c) Arab Charter of Human Rights 1997; Article 5 of the Inter-American Convention to Prevent and Punish Torture 1985; Articles 3 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975). On the absolute nature of the prohibition even in the context of protecting communities from terrorist violence, see ECtHR *Chahal v United Kingdom*, app. no. 22414/93, 15 November 1996, para. 149 and *Tomasi v France*, app. no. 12850/87, 27 August 1992, paras. 114-15.

¹⁶¹ ECtHR, *El-Masri v The Former Yugoslav Republic of Macedonia*, app. no. 39630/09, 12 December 2012, para. 182. See also UN Joint Study on Secret Detention, above n.4, para. 123.

¹⁶² See Committee Against Torture, General Comment No. 2: Implementation of Article 2 by States Parties, CAT/C/GC/2 (2008), para. 7; Committee Against Torture, General Comment No. 3: Implementation of Article 14 by States Parties, CAT/C/GC/3 (2012), para. 23; 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. 15.

¹⁶³ Committee Against Torture, General Comment No. 3: Implementation of Article 14 by States Parties, CAT/C/GC/3 (2012), para. 23.

¹⁶⁴ American Law Institute, "Restatement of the Law of the Foreign Relations Law of the United States", Section 702(e) (Customary International Law of Human Rights), "A state violates international law if, as a matter of state policy, it practices, encourages, or condones (e) prolonged arbitrary detention...". The Restatement recognises this as a principle of *jus cogens* (Reporter's Notes, para. 11). United Nations treaty bodies and office holders have repeatedly characterised prolonged incommunicado detention at secret detention centres as breaching *jus cogens* principles and as potentially constituting torture or inhuman or degrading treatment in and of itself (see e.g. Human Rights Committee, General Comment No. 24: Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.6 (2004), para.8; Joint Study on Secret Detention, above n.4, pp. 2, 4, 5 and paras. 20, 32, 34, 35, 49, 55).

¹⁶⁵ ECtHR, *Kurt v Turkey* (1999) 27 EHRR 373, para. 124; ECtHR, *El-Masri v The Former Yugoslav Republic of Macedonia*, app. no. 39630/09, 12 December 2012, para. 233.

that a person has been taken into custody and has not been seen since".¹⁶⁶ Such an obligation is also explicitly included in the International Convention for the Protection of All Persons from Enforced Disappearance, signed by Lithuania in 2007.¹⁶⁷ Given the grave nature of the violation, such positive obligations continue following the reappearance of the victim.

Cross border violations

67. Where serious violations have a cross-border character, states implicated in one part of those violations have an obligation to investigate that involvement. This principle was illustrated clearly by the case of *Goiburú v Paraguay*, heard before the Inter-American Court of Human Rights and concerning human rights violations carried out as part of a transborder programme of cooperation between Southern Cone Latin American states, with the involvement of the USA, known as "Operation Condor".¹⁶⁸ The case was brought on behalf of four Paraguayan individuals who had been arrested (one in Argentina, one in Paraguay, two at border crossings) and forcibly disappeared with the alleged involvement of both Paraguayan and Argentinean security services. There, the Court held that, although it was tasked with determining the international responsibility of Paraguay:

[T]he torture and forced disappearance of the alleged victims, the prohibition of which is a non-derogable provision of international law or *jus cogens* ..., was perpetrated with the collaboration of authorities of other States of the continent and partial impunity remains owing to the failure to comply with the obligation to investigate these acts.¹⁶⁹

68. These principles are equally applicable in the European context. In a trafficking case, for example, where the victim was killed in one member state, but was alleged to have been recruited in another, the state of recruitment (Russia) had the obligation to investigate that recruitment. According to the European Court of Human Rights, in such circumstances:

[T]he need for a full and effective investigation covering all aspects of trafficking allegations from recruitment to exploitation is indisputable. The Russian authorities therefore had an obligation to investigate the possibility that individual agents or networks operating in Russia were involved in trafficking [the victim]. ...The ... Russian authorities were best placed to conduct an effective investigation into [the victim's] recruitment. The failure to do so in the present case was all the more serious in light of [the victim's] subsequent death and the resulting mystery surrounding the circumstances of her departure from Russia.¹⁷⁰

69. For serious cross-border human rights violations, the European Court of Human Rights has made it clear that each member state must not only conduct a domestic investigation into events occurring on their own territories, but must "cooperate effectively with the relevant authorities of other states concerned in the investigation of events which occurred outside their territories".¹⁷¹ In this case, Lithuanian investigation into the events that took place on its territory will assist other states alleged to have been involved in the secret detention program and linked to it by alleged rendition flights to uncover the truth of whether detainees were held in their territories, and if so, their identities.

Obligation to investigate triggered

70. The obligation to investigate is triggered as soon as credible allegations are raised that violations of such a grave nature have a connection to the state's jurisdiction: it is not necessary that the

¹⁶⁶ ECtHR, *El-Masri v The Former Yugoslav Republic of Macedonia*, app. no. 39630/09, 12 December 2012, para. 233.

¹⁶⁷ 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.

¹⁶⁸ IACtHR, *Goiburú et al v Paraguay*, Judgment of 22 September 2006 (Merits, Reparations and Costs). In relation to Operation Condor, see from para. 61(5).

¹⁶⁹ IACtHR, *Goiburú et al v Paraguay*, Judgment of 22 September 2006 (Merits, Reparations and Costs), para. 93.

¹⁷⁰ ECtHR, *Rantsev v Cyprus & Russia* (2010) 51 EHRR 1, paras. 307-8. See also IACtHR, *Goiburú et al. v. Paraguay*, Judgment of 22 September 2006, Inter-Am. Ct. H.R. (Ser. C) No. 153 (2006), para. 93.

¹⁷¹ ECtHR, *Rantsev v Cyprus & Russia* (2010) 51 EHRR 1, para. 289.

allegations be proved or even that they may be made directly by the victim. In his 1 March 2013 report to the UN Human Rights Council, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson QC, 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.¹⁷²

71. In another case concerning rendition of an individual as part of the CIA’s interrogation programme, the European Court of Human Rights found that that:

[T]he applicant’s description of events and the available material were sufficient to raise at least a reasonable suspicion that the said Convention grievances could have been imputed to the State authorities as indicated by the applicant. He has thus laid the basis of a *prima facie* case of misconduct on the part of the security forces of the respondent State, which warranted an investigation by the authorities in conformity with the requirements of Article 3 of the Convention.¹⁷³

72. Similarly, the obligation will be engaged where there are credible allegations that a state’s agents have transferred a person to another state’s jurisdiction where substantial grounds exist to believe that there is a real risk that the person will be tortured or subjected to unacknowledged detention.¹⁷⁴ Such obligations will also arise under international law where 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.¹⁷⁵

Thorough investigation

73. For an investigation to be considered thorough the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or to use as the basis of their decisions. Officials must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.¹⁷⁶
74. The investigation must be capable of “establishing the truth, allowing the victim to be “informed of what ... happened, including of getting an accurate account of the suffering ... allegedly endured and the role of those responsible for [the] alleged ordeal”.¹⁷⁷ There must therefore be mechanisms to

¹⁷² Emmerson 2013 report, A/HRC/22/52, above n.2, para. 19.

¹⁷³ ECtHR, *El-Masri v The Former Yugoslav Republic of Macedonia*, app. no. 39630/09, 12 December 2012, para. 186.

¹⁷⁴ On torture or ill-treatment see ECtHR, *Soering v United Kingdom* (1989) 11 EHRR 439, para. 90. On unacknowledged detention through extraordinary rendition see ECtHR, *Babar Ahmad & Others v United Kingdom* (2010) 51 EHRR SE6, para. 114 (“It would be incompatible with a Contracting State’s obligations under the Convention if it were to extradite or otherwise remove an individual from its territory in circumstances where that individual was at real risk of extraordinary rendition. To do so would be to collude in the violation of the most basic rights guaranteed by the Convention”); on removal to a flagrant breach of Article 5 see *Othman (Abu Qatada) v. United Kingdom*, app. no. 8139/09, 17 January 2012, para. 233.

¹⁷⁵ See UN Joint Study on Secret Detention, above n.4, 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 Manfred Nowak, Elizabeth McArthur, and Kerstin Buchinger, *The United Nations Convention Against Torture: a Commentary* (Oxford: Oxford University Press, 2008), pp. 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.

¹⁷⁶ ECtHR, *El-Masri v The Former Yugoslav Republic of Macedonia*, app. no. 39630/09, 12 December 2012, para. 183.

¹⁷⁷ ECtHR, *El-Masri v The Former Yugoslav Republic of Macedonia*, app. no. 39630/09, 12 December 2012, para. 192. These requirements have been explicitly affirmed by the Committee of Ministers of the Council of Europe, in the *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 (“Impunity Guidelines”).

allow victims to participate in the investigation,¹⁷⁸ and it must have a sufficient element of public scrutiny for its results to secure accountability (in practice as well as in theory), to maintain public confidence in the authorities' adherence to the rule of law and to prevent any appearance of collusion in or tolerance of unlawful acts.¹⁷⁹

75. In the *El Masri* case, the Macedonian public prosecutor relied exclusively on the information and explanations given by the Ministry of the Interior, whose agents were, broadly speaking, suspected of having been involved in the applicant's treatment. The European Court of Human Rights found that this was not in any way sufficient:

[h]aving regard to the considerable, at least circumstantial, evidence available at the time of the submission of the applicant's complaint, such a conclusion falls short of what could be expected from an independent authority. The complexity of the case, the seriousness of the alleged violations and the available material required independent and adequate responses on the part of the prosecuting authorities.¹⁸⁰

76. The European Court of Human Rights has recognised that European Convention on Human Rights proceedings "do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation)."¹⁸¹ In certain circumstances, the Court will draw "inferences" or "presumptions" of fact, and shift the burden of proof to the state. In *El-Masri*, the European Court of Human Rights stated that it:

adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof, are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake.¹⁸²

77. 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 the his or her whereabouts.¹⁸³ 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.¹⁸⁴

78. The European Court of Human Rights takes a flexible approach that enables the Court to rely on "evidence of every kind",¹⁸⁵ including "circumstantial evidence, based on concrete elements."¹⁸⁶ A

¹⁷⁸ ECtHR, *El-Masri v The Former Yugoslav Republic of Macedonia*, app. no. 39630/09, 12 December 2012, para. 185. See also Committee of Ministers of the Council of Europe, Impunity Guidelines, above, Articles VI and VII; CPT General Report CPT/Inf (2004) 28, para. 36; EU Council Framework on the Standing of Victims in Criminal Proceedings 2001/220/JHA, Article 4, para. 2.

¹⁷⁹ ECtHR, *Angelova v Bulgaria*, app. no. 38361/97, 13 June 2002, para. 140; ECtHR, *El-Masri v The Former Yugoslav Republic of Macedonia*, app. no. 39630/09, 12 December 2012, para. 192.

¹⁸⁰ ECtHR, *El-Masri v The Former Yugoslav Republic of Macedonia*, app. no. 39630/09, 12 December 2012, para. 189.

¹⁸¹ ECtHR, *Khudoyorov v. Russia*, app. no. 6847/02, 12 April 2006, para. 113; See ECtHR, *El-Masri v The Former Yugoslav Republic of Macedonia*, app. no. 39630/09, 12 December 2012, para. 152.

¹⁸² ECtHR, *El-Masri v The Former Yugoslav Republic of Macedonia*, app. no. 39630/09, 12 December 2012, para. 151.

¹⁸³ ECtHR, *Kurt v. Turkey*, app. no. 24276/94, 25 May 1998, para. 124.

¹⁸⁴ See ECtHR, *El-Masri v The Former Yugoslav Republic of Macedonia*, app. no. 39630/09, 12 December 2012, para. 152.

¹⁸⁵ ECtHR, *Ireland v. United Kingdom*, app. no. 5310/71, 18 January 1978, para. 209.

¹⁸⁶ ECtHR, *Çakici v. Turkey*, app. no. 23657/94, 8 July 1999, para. 85.

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.

79. In *El-Masri*, which concerned rendition and is, therefore highly relevant,¹⁸⁷ 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.¹⁸⁸

80. The secrecy that underpins the CIA programme creates extraordinary levels of difficulty for Mr al-Hawsawi to gain access to evidence related to his rendition in and out of Lithuania and to present it. This is compounded by the fact that the USA classification regime renders it impossible for Mr al-Hawsawi to present evidence himself. Nonetheless, given the strong evidence that HVDs were held in secret detention of Lithuania’s territory, Lithuania must, based on the international standards set out above, open an investigation into the operation of the CIA programme on its territory as in relation to Mr al-Hawsawi in particular. Strong inferences can be drawn that he was among those held in a black site in Lithuania, and it is Lithuania’s responsibility to investigate that allegation and to provide an explanation as to what happened to him if he is found to have been held in Lithuania.

81. Any conclusion that there is insufficient evidence to open the investigation in this case would be tantamount to hampering the submission of this, and similar complaints, and would reward states conducting secret rendition practices, making it virtually impossible to ever establish the facts of what happened. In these circumstances, even if Mr al-Hawsawi was not held in Lithuania, Lithuanian authorities have an obligation to cooperate with investigations into his secret detention and torture given their participation in the black site programme that he was subjected to.

82. In the specific circumstances of the rendition programme, whose effectiveness relies on secrecy, governments should not be allowed to exploit national security arguments to bar processes which seek to redress the violations masked by that secrecy. In a 2009 report,¹⁸⁹ the then UN Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism indicated that the invocation of the state secrets doctrine renders the right to a remedy illusory and may amount to a violation of the ICCPR.¹⁹⁰ Similarly, the Parliamentary Assembly of the Council of Europe has called on the Committee of Ministers to:

draw up a recommendation on the notion of state secrecy and the use to be made of it, specifying that the legislation of a member state cannot rely on state secrecy and national security in a way which would prevent an independent, effective and impartial investigation of alleged human rights violations, prevent perpetrators from being held accountable, prevent victims from having an effective remedy and from receiving an effective reparation, or prevent public disclosure of the truth about the alleged human rights violations.¹⁹¹

¹⁸⁷ *Emmerson 2013 Report*, above n.2, para. 26.

¹⁸⁸ Observations of Lithuania in *Abu Zubaydah* ECtHR litigation (3 June 2013), above n.95 para 25.

¹⁸⁹ Human Rights Council, “Report of the Special Rapporteur on the Promotion and Protection of Human Rights While Countering Terrorism”, U.N. Doc. A/HRC/10/3 (2009), http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/10/3.

¹⁹⁰ “The blanket invocation of State secrets privilege with reference to complete policies, such as the United States secret detention, interrogation and rendition programme or third-party intelligence ... effective investigation and renders the right to a remedy illusory. This is incompatible with article 2 of the International Covenant on Civil and Political Rights” (emphasis added), *ibid.*, para. 60.

¹⁹¹ 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>, para. 2.1. See also Human Rights Council, “Report of the Special Rapporteur on the Promotion and Protection of Human Rights While Countering Terrorism”, U.N. Doc. A/HRC/10/3 (2009), above n.189, paras. 59-63..

83. The Grand Chamber of the European Court has stressed the crucial nature of investigations into allegations of European complicity in extraordinary rendition by the CIA, both from the perspective of the individual victim, and for society as a whole and in terms of its impact on the right to the truth. In the *El Masri* case, the Court stated that it wished to:

...address another aspect of the inadequate character of the investigation in the present case, namely its impact on the right to the truth regarding the relevant circumstances of the case. In this connection it underlines the great importance of the present case not only for the applicant and his family, but also for other victims of similar crimes and the general public, who had the right to know what had happened. The issue of “extraordinary rendition” attracted worldwide attention and triggered inquiries by many international and intergovernmental organisations, including the UN human rights bodies, the Council of Europe and the European Parliament. The latter revealed that some of the States concerned were not interested in seeing the truth come out. The concept of ‘State secrets’ has often been invoked to obstruct the search for the truth State secret privilege was also asserted by the US government in the applicant’s case before the US courts The Marty inquiry found, moreover, that “the same approach led the authorities of ‘the former Yugoslav Republic of Macedonia’ to hide the truth”

The Court considers that the prosecuting authorities of the respondent State, after having been alerted to the applicant’s allegations, should have endeavoured to undertake an adequate investigation in order to prevent any appearance of impunity in respect of certain acts. The Court does not underestimate the undeniable complexity of the circumstances surrounding the present case. However, while there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, an adequate response by the authorities in investigating allegations of serious human rights violations, as in the present case, 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. For the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory As the Council of Europe stated in its Guidelines of 30 March 2011 on eradicating impunity for serious human rights violations ..., “impunity must be fought as a matter of justice for the victims, as a deterrent to prevent new violations and to uphold the rule of law and public trust in the justice system”. The inadequate investigation in the present case deprived the applicant of being informed of what had happened, including of getting an accurate account of the suffering he had allegedly endured and the role of those responsible for his alleged ordeal.¹⁹²

84. The impact on Mr al-Hawsawi of any failure to investigate his allegations is even more serious, considering that he currently faces a trial on capital charges based on evidence likely to have been obtained during his time in secret detention. We therefore call upon the Lithuanian authorities to engage in a thorough and effective investigation, which is a prerequisite to the overall procedural aspect of the right to remedy and reparation: access to justice. In rendition cases, which involve disappearances in the context of secrecy knowledge of the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities. In such cases the burden of proof may “be regarded as resting on the authorities to provide a satisfactory and convincing explanation”.¹⁹³

¹⁹² ECtHR, *El-Masri v The Former Yugoslav Republic of Macedonia*, app. no. 39630/09, 12 December 2012, para. 192.

¹⁹³ ECtHR, *El-Masri v The Former Yugoslav Republic of Macedonia*, app. no. 39630/09, 12 December 2012, para. 152; ECtHR, *Salman v. Turkey*, app. no. 21986/93, 27 June 2000, para. 100; *Varnava and Others v. Turkey*, app. no. 16064/90, 18 September 2009, para. 183; ECtHR, *Akdeniz and Others v. Turkey*, no. 23954/94, 31 May 2001, para. 96.

Request for specific steps

85. As part of its investigation into these claims, we submit that the following steps should be urgently undertaken.¹⁹⁴ In order to progress its investigation in relation to Mr al-Hawsawi in particular, Lithuania should:

(a) Take all reasonable steps available to secure evidence concerning the incident under investigation, 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);

(b) Attempt to seek clarification from Mr al-Hawsawi

We suggest that one clear way to shed light on these allegations is to seek clarification from Mr al-Hawsawi himself. We suggest that Lithuanian authorities should present the list of non-leading questions appended to the complaint concerning Abu Zubaydah¹⁹⁵ be provided to Mr al-Hawsawi. As in that case, Lithuanian authorities should request that these questions are provided to Mr al-Hawsawi and that answers are declassified, or that Lithuanian authorities interview Mr al-Hawsawi on these matters, with his military counsel present.

(c) Seek urgent preservation and disclosure of all relevant evidence in the possession of USA authorities, including the CIA, Department of Defense, FBI and other relevant agencies, on:

- a. Mr al-Hawsawi's transfer to and from, and secret detention and treatment in, Lithuania;
- b. the construction and operation of secret detention facilities in Lithuania; and
- c. flights in and out of Lithuania connected to the secret detention programme.

(d) Seek urgent preservation and disclosure of all relevant evidence in the possession of Lithuanian authorities on:

- a. Mr al-Hawsawi's transfer to and from, and secret detention and treatment in, Lithuania;
- b. the construction and operation of secret detention facilities in Lithuania; and
- c. flights in and out of Lithuania connected to the secret detention programme.

(e) Identify all officials involved in the alleged violations.

¹⁹⁴ Questions Proposed in Request for Investigation made by Reprieve to Lithuanian authorities concerning Abu Zubaydah 'Letter from Reprieve to Darius Valys: Request for Investigation' (20 September 2010), (pps. 7 and 8), Available here:

http://www.reprieve.org.uk/static/downloads/2010_09_20_CSS_Letter_Darius_Valys_Lithuania_investigation.pdf

¹⁹⁵ *ibid.*; see enclosure 3)