

REDRESS

Ending torture, seeking justice for survivors

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**Submission to the Human Rights Council's
Universal Periodic Review Working Group regarding the Review of
the Republic of Lithuania**

12 July 2021

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INFORMATION ABOUT THE ORGANISATION MAKING THIS SUBMISSION:

REDRESS is an international human rights NGO based in the United Kingdom and The Netherlands with a mandate to deliver justice and reparation for survivors of torture, challenge impunity for perpetrators, and advocate for legal and policy reforms to combat torture. REDRESS was established in 1992 and has been in consultative status with the Economic and Social Council since 2011. REDRESS represents Mr. Mustafa al-Hawsawi in relation to his claims outside the United States of America arising from his torture and enforced disappearance in the CIA's Rendition, Detention and Interrogation Programme.

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I. EXECUTIVE SUMMARY

1. The Redress Trust (REDRESS) makes this submission as part of the Universal Periodic Review (UPR) of Lithuania, to be held in January-February 2022. It focuses on the lack of follow-up of issues raised in the State's UPR in 2011 and 2016 in relation to Lithuania's complicity in, and facilitation of, the United States' (US) Central Intelligence Agency (CIA)'s Rendition, Detention and Interrogation (RDI) Program.
2. This submission is based primarily on REDRESS' experience of pursuing truth, justice and accountability on behalf of Mustafa al-Hawsawi,¹ a Saudi national who has been identified as one of the so-called High Value Detainees (HVDs) under the CIA RDI Program. He was allegedly detained in Lithuania for an undisclosed period of time between 2005 and 2006, during which he was subjected to torture and ill-treatment.² Mr al-Hawsawi faces the death penalty in a trial before a US Military Commission in Guantánamo Bay, Cuba, where he remains in detention, in poor physical health.
3. In 2011, Lithuania accepted a number of recommendations to "further pursue investigations on human rights implications of counter-terrorism measures, such as secret detention programs, with a view to identifying allegations of torture or cruel, inhuman or degrading treatment of detainees" and to "strengthen its measures to ensure effective investigations into all allegations of torture and ill-treatment committed by law enforcement officials." Similarly, in 2016, Lithuania received and supported a recommendation to "complete the investigation on its involvement in Central Intelligence Agency rendition and secret detention programmes, within a reasonable time".³⁴
4. However, since then no tangible progress has been made by Lithuania in investigating allegations of torture or other ill-treatment of detainees in the framework of the CIA's RDI Program. This remains a concerning issue despite the recent judgement of the European Court of Human Rights (ECtHR) in 2018 in the case of Abu Zubaydah, the first individual to be detained in the CIA's RDI Program, who has been held in Lithuania. In *Abu Zubaydah v. Lithuania*, the ECtHR found the State in breach of its procedural obligations within Article 3 (prohibition of torture and ill-treatment) of the European Convention on Human Rights (European Convention) precisely for failing to conduct

¹ See for example: REDRESS and HRMI, Request for an investigation concerning suspicion of criminal offences committed in Lithuania against Mr. Mustafa al-Hawsawi, 13 September 2013, available at <http://www.redress.org/downloads/casework/final-lithuania---investigation-request.pdf> ('REDRESS and HRMI request for investigation'); REDRESS and HRMI, Submission to the United Nations Committee against Torture regarding the Periodic Review of Lithuania: List of Issues Prior to Reporting (LOIPR), 22 January 2016, available at <http://www.redress.org/downloads/reports/160122-loipr-lithuania.pdf>.

² International Committee of the Red Cross (ICRC), "Report on the Treatment of Fourteen 'High Value Detainees' in CIA Custody", February 2007, ('ICRC HVDs Report'); Senate Select Committee on Intelligence: Committee Study of the Central Intelligence Agency's Detention and Interrogation Program, Approved December 13, 2012, Updated for Release April 3, 2014, Declassification Revisions, December 3, 2014, ('SSCI Summary'), p. 154-5 and 459, available at: http://www.feinstein.senate.gov/public/index.cfm/files/serve?File_id=7c85429a-ec38-4bb5-968f-289799bf6d0e&SK=D500C4EBC500E1D256BA519211895909. See also, REDRESS and HRMI request for investigation.

³ Human Rights Council, Report of the Working Group on the Universal Periodic Review: Lithuania, 19 December 2011, UN Doc. A/HRC/19/15, para 88.43, p. 16 (Brazil); Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Lithuania*, 27 December 2016, UN Doc. A/HRC/34/9, para 100.171, p. 25 (Islamic Republic of Iran); Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Lithuania, Addendum, 1 March 2017, UN Doc. A/HRC/34/9/Add.1, para. 3, p. 2.

⁴ *Ibid*, para 88.30, p. 15 (Azerbaijan).

an effective investigation into the applicant's allegations of torture and undisclosed detention within the CIA's RDI Program.⁵

II. LITHUANIA'S COMPLICITY IN THE CIA'S RDI PROGRAM

5. Lithuania's complicity in the CIA's RDI Program has been extensively reported since at least 2009.⁶ Following this, the Lithuanian Parliamentary Committee on National Security and Defence (Seimas CNSD) conducted an inquiry into Lithuania's involvement in the CIA's secret detention program, which confirmed that 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.⁷
6. Lithuania's further implication in the CIA's RDI Program has been revealed in reports and relevant resolutions adopted by the European Parliament in 2012, 2013 and 2015,⁸ NGOs Reports,⁹ and the US Senate Select Committee on Intelligence.¹⁰

⁵ *Abu Zubaydah v Lithuania* App no. 46454/11 (ECtHR, 31 May 2018), paras 617 and 621 (See paras 206-211 for a summary of the investigation). Note that the investigation examined in *Abu Zubaydah's* case in relation to which the ECtHR concluded to be ineffective is the same investigation relating to the violations suffered by Mr al-Hawsawi.

⁶ Matthew Cole, "Officials: Lithuania Hosted Secret CIA Prison to get 'Our Ear'", ABC News, 20 August 2009, at <http://abcnews.go.com/Blotter/story?id=8373807>. See also Dick Marty, "Time for Europe to come clean once and for all over secret detentions", 21 August 2009, at http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=4859&L=2.

⁷ 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, at http://www3.lrs.lt/pls/inter/w5_show?p_r=6143&p_d=100241&p_k=2, ('Seimas Report'), p. 7. The data collected during the Seimas CNSD inquiry was not made public due to state secrecy.

⁸ See for example, 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, at <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&mode=XML&reference=A7-2012-266&language=EN>; European Parliament, "Resolution on alleged transportation and illegal detention of prisoners in European countries by the CIA: follow-up of the European Parliament TDIP Committee report", 2012/2033(INI), 11 September 2012, at https://www.europarl.europa.eu/doceo/document/TA-7-2012-0309_EN.html; European Parliament, "Resolution on alleged transportation and illegal detention of prisoners in European countries by the CIA", 2013/2702 (RSP), 10 October 2013, at https://www.europarl.europa.eu/doceo/document/TA-7-2013-0418_EN.html; European Parliament, "Resolution on the US Senate report on the use of torture by the CIA, 2014/2997 (RSP), 11 February 2015, at https://www.europarl.europa.eu/doceo/document/TA-8-2015-0031_EN.pdf.

⁹ See for example, Constitution Project, Task Force on Detainee Treatment, 2013. Available at: <http://detaineeataskforce.org/read>; Open Society Justice Initiative, Globalizing Torture: CIA Secret Detention and Extraordinary Rendition, 2013; Amnesty International, Breaking the Conspiracy of Silence: USA's European 'Partners in Crime' Must Act after Senate Torture Report, 2015; Reprieve, Briefing and Dossier for the Lithuanian Prosecutor General: CIA Detention in Lithuania and the Senate Intelligence Committee Report, 11 January 2015. See also, 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 and *Abu Zubaydah v Lithuania*, No. 46454/11, Supplementary Submissions to the European Court of Human Rights, 17 September 2015. Available at https://static1.squarespace.com/static/5b82ab175b409b90d4c99071/t/5b9ad8d488251b08ce3bae6e/1536874711248/Zubaydah-v-Lithuania_1792015.pdf ('*Abu Zubaydah v Lithuania*, Supplementary Submissions').

¹⁰ Senate Select Committee on Intelligence: Committee Study of the Central Intelligence Agency's Detention and Interrogation Program, Approved December 13, 2012, Updated for Release April 3, 2014, Declassification Revisions, December 3, 2014, ('SSCI Summary') available at: http://www.feinstein.senate.gov/public/index.cfm/files/serve?File_id=7c85429a-ec38-4bb5-968f-289799bf6d0e&SK=D500C4EBC500E1D256BA519211895909. See also *Abu Zubaydah v Lithuania* App no. 46454/11 (ECtHR, 31 May 2018), paras 20-60.

7. In 2019, the Rendition Project published the Report “*CIA Torture Unredacted: An Investigation into the CIA Torture Programme*”, which drew on earlier research,¹¹ and provides the most comprehensive public account of the CIA RDI programme.¹² It concludes that the CIA black site called DETENTION SITE VIOLET was in Lithuania, operated from February 2005 to March 2006,¹³ and that Lithuania was involved in the RDI Program from as early as 2003.¹⁴
8. This was confirmed in 2018 by the ECtHR in *Abu Zubaydah v. Lithuania*.¹⁵ The ECtHR found “beyond reasonable doubt” that the CIA detention facility codenamed DETENTION SITE VIOLET was in Lithuania, having operated either from 17 February 2005 or 18 February 2005 until its closure on 25 March 2006.¹⁶
9. As regards to Lithuanian authorities’ knowledge and complicity in the CIA’s Program, the ECtHR found “beyond reasonable doubt” that the authorities (i) “knew of the nature and purposes of the CIA’s activities on its territory”, (ii) “cooperated in the preparation and execution of [such] operations on its territory”, and (iii) thus “knew that, by enabling the CIA to detain terrorist suspects [...] on their territory, they were exposing them to a serious risk of treatment contrary to the Convention.”¹⁷
10. Despite the comprehensive evidence and this recent judgement, the Lithuanian authorities have still not completed an effective investigation into Lithuania’s complicity in the CIA’s RDI program, over 16 years since the opening of the CIA detention facility in its territory. As outlined below, the status of the investigation is unclear, and the few investigative efforts carried out to date are insufficient. As of the date of this submission, the Lithuanian authorities have failed to clarify the extent of the State’s involvement in the program, to hold any individuals involved accountable and to provide redress to victims.

III. FAILURE TO EFFECTIVELY INVESTIGATE LITHUANIA’S COMPLICITY IN THE CIA RDI PROGRAM

11. The first criminal investigation by Lithuanian authorities on the matter was launched on 22 January 2010 and was limited to abuse of office (Article 228(1) of Lithuania’s Criminal Code). This investigation was terminated in January 2011 citing lack of evidence of criminal activities and statute of limitations. The authorities refused to take effective investigative measures relating to information submitted by the human rights organisation Reprieve in September and November 2010 regarding confidential allegations that Mr. Abu Zubaydah had been held in detention in Lithuania.¹⁸
12. On 13 September 2013, REDRESS and the Human Rights Monitoring Institute of Lithuania (HRMI) filed a request with the Lithuanian Prosecutor General’s Office to open an investigation into the extraordinary rendition, secret detention, torture and ill-treatment of Mr Mustafa al-Hawsawi. This

¹¹ See, for example: SSCI Summary; Seimas Report; Amnesty International, *Breaking the Conspiracy of Silence: USA’s European ‘Partners in Crime’ Must Act after Senate Torture Report*, 2015 (‘Amnesty Breaking the Conspiracy of Silence’); Reprieve, *Briefing and Dossier for the Lithuanian Prosecutor General: CIA Detention in Lithuania and the Senate Intelligence Committee Report*, 11 January 2015, para 18 (‘Reprieve Briefing and Dossier re Lithuania’); Amnesty International, *USA Crimes and Impunity: Full Senate Committee Report on CIA Secret Detentions Must be Released and Accountability for Crimes under International Law Ensured*, April 2015 (‘Amnesty, USA Crimes and Impunity’).

¹² Raphael S, Black C and Blakeley R, *CIA Torture Unredacted* (The Bureau Investigative Journalism; The Rendition Project 2019), (‘The Rendition Project Report’), available at <https://www.therenditionproject.org.uk/documents/RDI/190710-TRP-TBIJ-CIA-Torture-Unredacted-Full.pdf>

¹³ The Rendition Project Report, p. 36-37; SSCI Summary, p. 143 and 154.

¹⁴ The Rendition Project Report, p. 39.

¹⁵ *Abu Zubaydah v Lithuania* App no. 46454/11 (ECtHR, 31 May 2018).

¹⁶ *Abu Zubaydah v Lithuania* App no. 46454/11 (ECtHR, 31 May 2018), para 532.

¹⁷ *Abu Zubaydah v Lithuania* App no. 46454/11 (ECtHR, 31 May 2018), para 576.

¹⁸ See *Abu Zubaydah v Lithuania*, Supplementary Submissions. See, also: *Abu Zubaydah v Lithuania* App no. 46454/11 (ECtHR, 31 May 2018), paras 191-195.

request was denied on 27 September 2013. However, when an appeal court found the denial unlawful, the prosecutor in February 2014 opened a criminal inquiry, limited in scope to “unlawful transportation of persons across the state border” (Art. 292.3 of Lithuania’s Criminal Code).¹⁹

13. On 22 January 2015, following the release of the SSCI Summary and after requests made by REDRESS and HRMI to take the new evidence into account, the Lithuanian Prosecutor General’s Office re-opened the criminal inquiry into abuse of office, which had been closed in 2011, and combined the two investigations under No. 01-2-00015-14.²⁰ This investigation was limited to “abuse of office” and “unlawful transportation of persons across the state border” and is apparently ongoing.²¹

Scope of the investigation

14. In relation to the scope of the pre-trial investigation, there has been some progress since Lithuania’s last UPR examination in 2016. Nearly nine years since the first pre-trial investigation was launched in January 2010, on 12 November 2018 Lithuanian authorities finally decided to conduct an investigation under Article 100 of the Lithuanian Criminal Code,²² which prohibits “treatment of persons” that is “prohibited by international law”.
15. This is significant because, for the first time, the investigation relating to the CIA RDI program can now encompass allegations of torture, ill-treatment, enforced disappearance, arbitrary deprivation of liberty and the range of other serious violations of human rights alleged. Additionally, unlike the offences under previous investigations, the offence under Article 110 of Lithuania’s Criminal Code is not subject to the statute of limitations.
16. REDRESS and the HRMI had been insisting on such an investigation under Article 110 regarding Mr al-Hawsawi since September 2013. Although belated, the expansion of the scope of the investigation does represent some progress.

Unclear status of the investigation

17. However, this broader scope of the investigation will be meaningless if no effective investigative measures are undertaken by the authorities, which seems to be the case. In fact, it is unclear even whether the investigation is active or not. This is because the Lithuanian government has provided inconsistent information on the status of the pre-trial investigation, and has argued the need for ‘non-publicity’ or state secrecy to withhold information from victims and the general public. Several UN treaty-bodies have already expressed concern regarding this investigation and urged the State to complete it within a reasonable time.

¹⁹ See, Vilnius Regional Court ruling upholding appeal, 28 January 2014. See: <https://redress.org/news/lithuanian-court-urges-prosecutors-to-investigate-guantanamo-detainee-rendition-claims-vilnius-lithuania/>

²⁰ Human Rights Committee, Concluding observations on the third periodic report of Lithuania, Addendum, Information received from Lithuania on follow-up to the concluding observations, UN Doc. CCPR/C/LTU/CO/3/Add.2, 12 Feb 2016, para 34.

²¹ *Abu Zubaydah v Lithuania* App no. 46454/11 (ECtHR, 31 May 2018), para 208-211.

²² Communication from Lithuania concerning the case of *Abu Zubaydah v. Lithuania* (Application No. 46454/11) to the Committee of Ministers of the Council of Europe, DH-DD(2019)396, 9 April 2019, available at <https://rm.coe.int/native/090000168093de2b>. Although this communication refers to the case of *Abu Zubaydah v. Lithuania*, it must be stressed that the investigation regards allegations of human rights violations suffered by Mr Abu Zubaydah and Mr al-Hawsawi (pre-trial investigation No. 01-2-00015-14): see *Abu Zubaydah v Lithuania* App no. 46454/11 (ECtHR, 31 May 2018), paras 207-211.

UN Human Rights Committee (HRC)

18. In its State report to the HRC published in November 2017, the Lithuanian government stated that it could not disclose detailed information on the course and results of the pre-trial investigation due to State or official secrets. It also pointed out that “active investigation actions are not currently conducted in the pre-trial investigation No. 01-2-00015-14, but the investigation has not been stopped or terminated.”²³
19. In its Concluding Observations of August 2018, the HRC expressed concern that Lithuania had “not fully and comprehensively investigated the complicity of the State party and State officials in human rights violations in counter-terrorism operations, including secret detention” and that the pre-trial investigation No. 01-2-00015-14 remained incomplete, with no suspects identified. It also noted with concern that “all information on the progress and results of this investigation has been kept secret.”²⁴ It recommended, *inter alia*, that the pre-trial investigation be completed “within a reasonable time.”²⁵

UN Committee on Enforced Disappearances (CED)

20. Similar concerns were raised by the CED in October 2017, following Lithuania’s examination by the Committee in September of that year. In its Concluding Observations, CED noted previous recommendations from both HRC in 2012 and the UN Committee against Torture in 2014, and it urged the State to complete the investigation within reasonable time, hold those responsible accountable, duly recognise victims, and provide them with appropriate redress and reparation.²⁶
21. On 25 January 2019, CED published a further report addressing the information provided by Lithuania as part of the Committee’s follow-up procedures.²⁷ The State explained at that time that no relevant data had been obtained as a result of its requests for legal assistance submitted to the US, Morocco, Poland, Romania and Afghanistan. Additionally, the government of Lithuania affirmed that

[I]t is not possible to finalise the pretrial investigation by adopting definitive procedural decisions because no response to the request for legal assistance has been received from the Islamic Republic of Afghanistan, and, consequently, no active investigations are being conducted presently in the pretrial investigation No 01-2-00015-14, yet the investigation has not been suspended or closed either.²⁸

22. When referring to the ECtHR’s findings in *Abu Zubaydah v. Lithuania*, the State noted that despite that judgement, there was insufficient evidence in Lithuania’s pre-trial investigation to support a conclusion that the alleged human rights violations had indeed occurred in Lithuania, nor to identify

²³ Human Rights Committee, *Fourth periodic report submitted by Lithuania under article 40 of the Covenant pursuant to the optional reporting procedure*, due in 2018, 29 November 2017, CCPR/C/LTU/4, para 104.

²⁴ Human Rights Committee, *Concluding observations on the fourth periodic report of Lithuania*, 29 August 2018, CCPR/C/LTU/CO/4, para 23.

²⁵ Human Rights Committee, *Concluding observations on the fourth periodic report of Lithuania*, 29 August 2018, CCPR/C/LTU/CO/4, para 24.

²⁶ Committee on Enforced Disappearances, *Concluding observations on the report submitted by Lithuania under article 29 (1) of the Convention*, 16 October 2017, CED/C/LTU/CO/1, para 22.

²⁷ Committee on Enforced Disappearances, *Concluding observations on the report submitted by Lithuania under article 29 (1) of the Convention, Addendum: Information received from Lithuania on follow-up to the concluding observations*, 25 January 2019, CED/C/LTU/CO/1/Add.1, at Section II.

²⁸ Committee on Enforced Disappearances, *Concluding observations on the report submitted by Lithuania under article 29 (1) of the Convention, Addendum: Information received from Lithuania on follow-up to the concluding observations*, 25 January 2019, CED/C/LTU/CO/1/Add.1, at Section II, para 3.

beyond reasonable doubt and hold accountable the persons responsible.²⁹ The Lithuanian government added that “the pretrial investigation is continuing in order to conduct all possible procedural steps and to dissolve any doubt concerning the fact that Lithuania failed to exercise all possible efforts in investigating the suspected human rights violations on its territory”, but did not provide further details on how they intended to do this and the next steps of the investigation.³⁰

UN Committee against Torture (CAT)

23. Moreover, in its State report to the CAT published in March 2019, the Lithuanian government asserted that the investigation was “not suspended or discontinued”.³¹ Yet, once again it did not give details of any effective investigative steps that had been undertaken. It simply referred to unsuccessful requests for legal assistance submitted to various countries.³²

Committee of Ministers of the Council of Europe

24. Finally, in April 2019 the government of Lithuania submitted a communication to the Committee of Ministers of the Council of Europe concerning the case of *Abu Zubaydah v. Lithuania*, related to the same investigation referred to above, which also concerns violations suffered by Mr al-Hawsawi. On that occasion, the State referred to “procedural acts taken and planned in order to reactivate the pending criminal investigation”, noting nonetheless that those steps could not be disclosed due to “the binding provision on non-publicity of the pre-trial investigation data”.³³ While it is unclear whether any investigative measures were actually taken or simply planned (and, if so, which measures), this statement suggests that the investigation was not active.

25. Again, the State noted the US authorities’ negative response to the requests for international legal assistance on the matter and concluded that the Lithuanian authorities would “continue their efforts taking the possible procedural actions with a view to advance the investigation, including invoking international legal assistance measures.”³⁴

26. Following this, in December 2020 the Committee of Ministers reaffirmed the “importance of completing [the domestic investigation] swiftly, while ensuring that a sufficient degree of public scrutiny is maintained” and urged the authorities to explore “all possible avenues to move forward” to overcome the effects of the US authorities’ refusal for legal assistance.³⁵ In response, in June 2021 the Lithuanian government noted the complexity of the investigation and its dependence on

²⁹ Committee on Enforced Disappearances, *Concluding observations on the report submitted by Lithuania under article 29 (1) of the Convention, Addendum: Information received from Lithuania on follow-up to the concluding observations*, 25 January 2019, CED/C/LTU/CO/1/Add.1, at Section II, para 5.

³⁰ Committee on Enforced Disappearances, *Concluding observations on the report submitted by Lithuania under article 29 (1) of the Convention, Addendum: Information received from Lithuania on follow-up to the concluding observations*, 25 January 2019, CED/C/LTU/CO/1/Add.1, at Section II, para 5.

³¹ Committee against Torture, *Fourth periodic report submitted by Lithuania under article 19 of the Convention pursuant to the optional reporting procedure, due in 2018*, 8 March 2019, UN Doc. CAT/C/LTU/4, para 93.

³² Committee against Torture, *Fourth periodic report submitted by Lithuania under article 19 of the Convention pursuant to the optional reporting procedure, due in 2018*, 8 March 2019, UN Doc. CAT/C/LTU/4, para 92.

³³ Communication from Lithuania concerning the case of *Abu Zubaydah v. Lithuania* (Application No. 46454/11) to the Committee of Ministers of the Council of Europe, DH-DD(2019)396, 9 April 2019, available at <https://rm.coe.int/native/090000168093de2b>.

³⁴ Communication from Lithuania concerning the case of *Abu Zubaydah v. Lithuania* (Application No. 46454/11) to the Committee of Ministers of the Council of Europe, DH-DD(2019)396, 9 April 2019, available at <https://rm.coe.int/native/090000168093de2b>.

³⁵ Decision of the Committee of Ministers of the Council of Europe, H46-15 *Abu Zubaydah v. Lithuania* (Application No. 46454/11), 1390th meeting, 1-3 December 2020 (DH), paras 6-7, available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a09182

international co-operation, affirming that it is exploring “alternative forms” of co-operation.³⁶ Yet, no tangible progress has been made.

Insufficient investigative efforts

27. Notwithstanding the State’s assertions as summarised above, there is no evidence to suggest that effective investigative measures have been undertaken. The State has expressly indicated on different occasions that, indeed, no investigative action is being conducted and that the investigation must be *reactivated*. In other words, whilst in theory the investigation is open and ongoing, in practice it seems dormant. Whether ongoing or dormant, it has been ineffective.
28. Furthermore, the State’s investigative efforts, which apparently can be resumed to requests for international assistance, are manifestly insufficient. Lithuania’s involvement in the CIA RDI Program was first made public well over a decade ago, and this present investigation has been ongoing for nearly eight years. Hence, one would reasonably expect that other significant and effective investigative measures would have been carried out alongside those requests for international assistance.
29. Even though the State argued that it could not finalise the investigation due to the lack of international assistance, there are several other lines of inquiry to pursue, some of which were recommended by REDRESS in Lithuania’s last UPR examination, for example: pursuing additional investigations recommended in the Seimas CNSD findings; pursuing evidence identified in the SSCI Summary and relevant NGO reports; seeking clarification from rendition victims; and interviewing relevant witnesses.³⁷ Up to now, the Lithuanian authorities have not effectively investigated the involvement of Lithuanian officials, by using evidence that would be held by the State and that would not require assistance from other countries.
30. Not surprisingly, in *Abu Zubaydah v. Lithuania* the ECtHR concluded that “on the basis of the Government’s summary description of the fresh investigation, ongoing since 22 January 2015, it does not appear that any meaningful progress in investigating Lithuania’s complicity in the CIA HVD Programme and identifying the persons responsible has so far been achieved.”³⁸

Failure to provide victims and public with access to information

31. As noted above, the Lithuanian authorities’ failure to provide meaningful information to the public is an issue of significant concern and has been raised by UN treaty-bodies. This hinders the assessment of the steps taken (or not) by the Lithuanian authorities to secure further evidence, and provide accountability of those responsible. To date Mr al-Hawsawi has not been granted victim status and, consequently, cannot participate in the inquiry, access the case file, be heard or enjoy other basic procedural rights. This right was also recently denied to Mr. Abu Zubaydah, which suggests the government’s unwillingness to address this issue.³⁹

³⁶ Communication from Lithuania concerning the case of *Abu Zubaydah v. Lithuania* (Application No. 46454/11) to the Committee of Ministers of the Council of Europe, DH-DD(2021)678, 6 July 2021, available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a318e0

³⁷ REDRESS and Human Rights Monitoring Institute submission to the Human Rights Council’s Universal Periodic Review Working Group regarding the Review of the Republic of Lithuania, 24 March 2016, available at <https://redress.org/wp-content/uploads/2018/05/Submission-to-UPR-Working-Group-on-Lithuania.pdf>

³⁸ *Abu Zubaydah v Lithuania* App no. 46454/11 (ECtHR, 31 May 2018), paras 206-211.

³⁹ Communication from Lithuania concerning the case of *Abu Zubaydah v. Lithuania* (Application No. 46454/11) to the Committee of Ministers of the Council of Europe, DH-DD(2021)678, 6 July 2021, available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a318e0

32. In *Abu Zubaydah v. Lithuania*, the ECtHR stressed that considering the relevance and gravity of the issues involved, the authorities must ensure, “without compromising national security, a sufficient degree of public scrutiny is maintained in respect to the investigation”.⁴⁰

IV. Conclusion

33. It is important to recall that without the cooperation of States like Lithuania, the CIA’s RDI Program could not have functioned and the prolonged incommunicado detention, enforced disappearance and other forms of torture and prohibited ill-treatment which CIA detainees like Mr al-Hawsawi were subjected to would not have been possible. So far, the Lithuanian authorities have failed to fulfil their obligations to conduct a thorough, independent and effective investigation, and duly inform the public of its progress and outcomes.

Recommendations

- Ensure that the pending investigation is undertaken within reasonable time, and in compliance with international human rights standards, including the UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol);
- Take concrete steps to establish the truth, pursuing all relevant lines of inquiry to enable the identification and accountability of the persons responsible for crimes that may have occurred in connection with and within secret CIA detention centres established in Lithuania;
- Ensure victims and/or their representatives are granted the right to full participation in the investigations in conformity with the internationally recognised right of victims of human rights violations to effective redress;
- Publicise the results and steps taken during the investigation to enable a significant degree of public scrutiny;
- Bring to justice in fair trials any individuals identified as responsible for those violations of human rights.

⁴⁰ *Abu Zubaydah v Lithuania* App no. 46454/11 (ECtHR, 31 May 2018), p. 295, paras 619-620.