



## **Submission to the United Nations Committee against Torture regarding the Periodic Review of Lithuania**

### **List of Issues Prior to Reporting (LOIPR)**

**22 January 2016**

1. REDRESS and the Human Rights Monitoring Institute (HRMI)<sup>1</sup> write to bring to the attention of the Committee against Torture a number of key concerns in relation to Lithuania's compliance with its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in advance of the adoption of the List of Issues Prior to Reporting (LOIPR) at the 57th Session of the Committee to be held from 18 April to 13 May 2016.

#### **Investigations in the context of countering terrorism: Impunity for torture, lack of effective access to complaint mechanisms and adequate investigations for victims of torture and cruel, inhuman or degrading treatment**

2. In its 2014 Concluding Observations this Committee expressed concern that in Lithuania the “[P]arliamentary investigation failed to determine whether Central Intelligence Agency [CIA] detainees were held in or transited through Lithuanian territory and that the pre-trial investigation launched by the Prosecutor General’s Office was terminated owing to the applicability of the statute of limitations, which precludes disciplinary action, and the fact that the file constitutes an official secret.”<sup>2</sup>
3. The Committee thus urged “[T]he State party to complete the investigation into allegations of its involvement in the Central Intelligence Agency rendition and secret detention programmes within a reasonable time. It also recommend[ed] that the State party inform the public and ensure that its investigation process is transparent.”<sup>3</sup>

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<sup>1</sup> Information regarding the organisations making this submission is set out in the Appendix below.

<sup>2</sup> CAT, Concluding observations on the third periodic report of Lithuania, UN Doc. CAT/C/LTU/CO/3, 17 June 2014, para. 16.

<sup>3</sup> *Ibid.*

4. The Committee further requested the State party “to provide it with an update on the outcome of the pre-trial investigation initiated by the Prosecutor General’s Office in relation to article 292, paragraph 3, of the Criminal Code regarding the unlawful transportation of persons across the State border.”<sup>4</sup>
5. Since the 2014 Concluding Observations were adopted little progress has been made in relation to these recommendations, but new information has become public providing more detailed information in relation to the extent of the CIA’s Rendition, Detention and Interrogation (RDI) Programme and further implicating Lithuania in its operation. Of particular relevance is the redacted Executive Summary of the Senate Select Committee on Intelligence’s Study of the Central Intelligence Agency’s Detention and Interrogation Programme (‘the SSCI Summary’), which was released in December 2014.<sup>5</sup>
6. While the SSCI Summary does not identify the countries in which the CIA’s detention sites were located by name, research by multiple sources, comparing the information in the Summary with publicly available information, has found that the site identified as DETENTION SITE VIOLET in the SSCI Summary was located in Lithuania.<sup>6</sup> Following the release of the SSCI Summary, Mr. Arvydas Anušauskas, a member of the Lithuanian parliament (Seimas) and the former head of the Seimas Committee that investigated allegations regarding Lithuania’s involvement in the RDI Programme stated that the Summary “makes a convincing case that prisoners were indeed held at the Lithuanian site.”<sup>7</sup>
7. DETENTION SITE VIOLET was the last of the CIA’s detention sites to be established in Europe and was only opened in early 2005.<sup>8</sup> It closed in 2006, likely in March although the precise date is redacted,<sup>9</sup> due to the lack of emergency medical

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<sup>4</sup> *Ibid.*

<sup>5</sup> 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](http://www.feinstein.senate.gov/public/index.cfm/files/serve?File_id=7c85429a-ec38-4bb5-968f-289799bf6d0e&SK=D500C4EBC500E1D256BA519211895909). See also, two judgments of the European Court of Human Rights which consider details in relation to the operation of the RDI Programme and the treatment of so-called High Value Detainees, with brief references to Lithuania. ECtHR, *Al Nashiri v Poland*, Application no. 28761/11, 24 July 2014; ECtHR, *Husayn (Abu Zubaydah) v Poland*, Application no. 7511/13, 24 July 2014

<sup>6</sup> See for example, Washington Post, Adam Goldman and Julie Tate, *Decoding the secret black sites on the Senate’s report on the CIA interrogation program*, Dec 9, 2014, available at:

<https://www.washingtonpost.com/news/worldviews/wp/2014/12/09/decoding-the-secret-black-sites-on-the-senates-report-on-the-cia-interrogation-program/>; 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, para 18; 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 International, USA Crimes and Impunity’)

<sup>7</sup> Amnesty International, *Breaking the Conspiracy of Silence: USA’s European ‘Partners in Crime’ Must Act after Senate Torture Report*, 2015, p. 16.

<sup>8</sup> SSCI Summary, p. 143. DETENTION SITE BLUE in Poland opened in 2002 while DETENTION SITE BLACK in Romania opened in 2003.

<sup>9</sup> Reprieve, *Briefing and Dossier for the Lithuanian Prosecutor General: CIA Detention in Lithuania and the Senate Intelligence Committee Report*, 11 January 2015, Paras 19-21: “A transfer into Kabul, organised by

care for detainees held in VIOLET, including in relation to Mr. Mustafa al-Hawsawi.<sup>10</sup> REDRESS is representing Mr. al-Hawsawi in relation to his claims outside the United States of America, including in proceedings in Lithuania where we believe he was detained in DETENTION SITE VIOLET for an undisclosed period of time between 2005 and 2006.<sup>11</sup>

8. The SSCI Summary indicates that Mr. al-Hawsawi required emergency medical care while detained in Lithuania and that the CIA encountered serious difficulties in obtaining the required medical care because “[O]fficers refused to admit CIA detainee Mustafa Ahmad al-Hawsawi to a local hospital despite earlier discussions with country representatives about how a detainee’s medical emergency would be handled”.<sup>12</sup> It appears that medical care was obtained with the assistance of third-party countries at a cost of millions of dollars.<sup>13</sup>
9. The International Committee of the Red Cross (ICRC) interviewed fourteen so-called High Value Detainees who had been held by the CIA in the RDI Programme after their secret detention was finally acknowledged. The ICRC Report does not name the countries where detainees were held, other than Afghanistan, however, it makes a number of assessments which are relevant to all of the detention sites in the RDI Programme, including DETENTION SITE VIOLET.<sup>14</sup> Based on those interviews, the ICRC assessed that all fourteen detainees:

were placed outside the protection of the law during the time they spent in CIA custody. Indeed, one of the main effects of the transfers was to place the fourteen in secret detention facilities in unspecified locations in a number of different countries, outside the reach of any judicial or administrative system... The totality of the circumstances in which the fourteen were held effectively amounted to an arbitrary deprivation of liberty and enforced disappearance, in contravention of international law.<sup>15</sup>

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Computer Sciences Corporation within their rendition contracting network, has been revealed by Reprise as having taken place on 25-26 March 2006. This transfer came from Lithuania, and used two planes, travelling via Cairo. One plane carried out the leg of the trip from Lithuania to Cairo, the other from Cairo to Kabul. This March 2006 transfer matches the closure of VIOLET. Site VIOLET was closed as a result of lack of available medical care in [c. 5 lower-case characters redacted] 2006. ‘The CIA then transferred its remaining detainees to DETENTION SITE BROWN. At that point, all CIA detainees were located in Country [1 upper case character redacted].’ The c. 5-letter redacted month could only correspond to ‘March’ or ‘April’ on account of the length of the redaction. Of these two possibilities, March fits the data given on p. 96 of the Redacted Summary for Khaled Sheikh Mohamed’s transfer into BROWN.”

<sup>10</sup> SSCI Summary, p. 154- 5.

<sup>11</sup> SSCI Summary, p. 154- 5. See also, REDRESS and HRMI, *Request for an investigation concerning suspicion of criminal offences committed in Lithuania against Mr. Mustafa al-Hawsawi*, 13 September 2013. <http://www.redress.org/downloads/casework/final-lithuania---investigation-request.pdf> .

<sup>12</sup> SSCI Summary, p. 154.

<sup>13</sup> SSCI Summary, p. 154. See also, Amnesty International, *USA Crimes and Impunity*, above n. 6, p. 26

<sup>14</sup> International Committee of the Red Cross (ICRC), “Report on the Treatment of Fourteen ‘High Value Detainees’ in CIA Custody”, February 2007, (‘ICRC HVDs Report’).

<sup>15</sup> ICRC HVDs Report, p. 24

10. These serious allegations notwithstanding, no effective investigation has been undertaken and nobody has yet been held to account.
11. In January 2015, in light of information contained in the SSCI Summary and overlaps with the earlier parliamentary investigation, the Chief Prosecutor of the Organised Crimes and Corruption Investigation Department of the Prosecutor General's Office in Lithuania quashed the 2011 decision to terminate the earlier pre-trial investigation.<sup>16</sup> This investigation, which was thus re-opened in 2015, was combined with the investigation regarding Mr. al-Hawsawi, which was opened in February 2014,<sup>17</sup> and the two pre-trial investigations have been joined and given No 01-2-00015-14.
12. We are concerned that although the investigation regarding Mr. al-Hawsawi has now been open for almost two years – when the Committee meets later this year it will be over two years – little progress appears to have been made. These investigations, now proceeding as one joint pre-trial investigation, do not meet the Article 12 requirement of promptness and serious questions remain unanswered in relation to the effectiveness of the investigation process. The investigation process is shrouded in secrecy; it is not clear what steps have been taken to date or what the timeframe of the investigation is. Furthermore there is a lack of clarity in relation to the scope of crimes the investigation is examining.
13. Finally, Mr. al-Hawsawi remains in detention in Guantanamo Bay where he is denied the right to a fair trial,<sup>18</sup> facing the death penalty, and does not have access to adequate medical care to treat the injuries he sustained as a result of the treatment he was subjected to.<sup>19</sup> Despite these ongoing violations, the Lithuanian Government has taken no actions to ensure the provision of redress and rehabilitation (Article 14) or to seek assurances in relation to Mr. al-Hawsawi's treatment (Article 3).

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<sup>16</sup> Correspondence from Prosecutor Ona Rojute to HRMI, ref: 30-03-2015 No. 17.2.-3816. *See also*, "Lithuanian Prosecutors Restart Investigation into Secret CIA Jail," Reuters, April 2, 2015, <http://rt.com/news/246365-lithuania-restart-probe-cia/>.

<sup>17</sup> REDRESS press release, Prosecutor launches new investigation into Lithuania CIA rendition claims, 20 February 2014. Available at: <http://www.redress.org/downloads/lithuania-investigation-press-release---final.pdf>

<sup>18</sup> UN Working Group on Arbitrary Detention, Communication addressed to the Government of the United States of America on 25 August 2014 and to the Government of Cuba on 15 September 2014, Concerning Mustafa al Hawsawi, UN Doc. A/HRC/WGAD/2014, 23 Jan 2015, available at: <http://www.redress.org/downloads/wgad-decision.pdf>, para 79

<sup>19</sup> SSCI Summary, p. 100, fn 584. "[R]ectal exams were conducted with "excessive force" on two detainees at DETENTION SITE COBALT... CIA records indicate that one of the detainees, Mustafa al-Hawsawi, was later diagnosed with chronic haemorrhoids, an anal fissure, and symptomatic rectal prolapse." Inter-American Commission on Human Rights, Resolution 24/2015, Matter of Mustafa Adam Al-Hawsawi regarding the United States of America, Precautionary Measure No. 422-14, July 7, 2015, July 7, 2015. Available at: <http://www.redress.org/downloads/resolution-24-2015---precautionary-measures-al-hawsawi.pdf>

*Recalling its recommendations at para 16,<sup>20</sup> as well as paras 10<sup>21</sup> and 14,<sup>22</sup> of its 2014 Concluding Observations on the third periodic report of Lithuania, we urge the Committee against Torture in its LOIPR to request the State to provide information regarding the measures it has taken to investigate the operation of the CIA's Rendition, Detention and Interrogation Programme in Lithuania, to prosecute perpetrators of alleged torture and other ill-treatment and to prevent future violations. Specifically we urge the Committee to ask the State party to provide detailed information regarding:*

- *The scope of the ongoing investigation regarding Mr. al-Hawsawi and actions that have been taken to carry out an impartial and effective investigation regarding the alleged violations of Mr. al-Hawsawi's rights in Lithuania;*
- *The scope of the investigation which was re-opened in 2015, in particular what crimes are covered by the investigation<sup>23</sup> and what actions have been taken to carry out an impartial and effective investigation in relation to the operation of the CIA's Rendition, Detention and Interrogation Programme in Lithuania;*
- *Actions taken to investigate the provision of medical care to detainees in Lithuania as indicated in the SSCI Summary;*
- *Actions taken to investigate payments by the CIA in relation to the CIA's RDI Programme, as indicated in the SSCI Summary;*
- *Actions taken to seek clarifications from Mr. al-Hawsawi;*
- *The statute of limitations applicable to the crimes being examined. This Committee's 2014 Concluding Observations noted that the previous investigation "was terminated owing to the applicability of the statute of limitations, which precludes disciplinary action, and the fact that the file constitutes an official*

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<sup>20</sup> CAT, Concluding observations on the third periodic report of Lithuania, UN Doc. CAT/C/LTU/CO/3, 17 June 2014, Para 16, The Committee: (a) Urges the State party to complete the investigation into allegations of its involvement in the Central Intelligence Agency rendition and secret detention programmes within a reasonable time. It also recommends that the State party inform the public and ensure its investigation process is transparent; (b) Requests the State party to provide it with an update on the outcome of the pre-trial investigation initiated by the Prosecutor General's Office in relation to paragraph 3 of article 292 of the Criminal Code regarding the unlawful transportation of persons across the State border.

<sup>21</sup> *Ibid* Para 10: The State party should take effective measures to guarantee that all detained persons are afforded, by law and in practice, all the fundamental legal safeguards from the outset of deprivation of liberty, in particular being informed of and understanding their rights, prompt access to a lawyer and, if necessary, to legal aid; to notify a member of family or another appropriate person of their own choice; and to have access to a medical examination by an independent doctor, and if possible a doctor of their choice, in accordance with international standards. All health-related tasks in police stations should be performed by qualified medical personnel.

<sup>22</sup> *Ibid*. Trafficking in human beings, Para 14: The State party should: (a) Take effective measures to prevent human trafficking, including vigorous enforcement of anti-trafficking legislation and enhancing international cooperation to combat trafficking, in particular for the purpose of sexual exploitation; (b) Continue conducting specialized training for the police, prosecutors and judges, migration officers and border police, including on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on effective prevention, investigation, prosecution and punishment of acts of trafficking and continue nationwide awareness-raising and media campaigns about the criminal nature of such acts; (c) Promptly, effectively and impartially, investigate, prosecute and punish trafficking in persons and related practices; (d) Provide redress to victims of trafficking.

<sup>23</sup> For example, whether crimes in relation to enforced disappearance are included. *See*, Report of the Republic of Lithuania under Article 29 of the International Convention on the Protection of All Persons from Enforced Disappearance, 11 September 2015.

*secret.*<sup>24</sup> *The State party should advise whether the relevant statute of limitations has been revised and if not how the difficulties in this regard have been overcome;*

- *The provision of information to the public and the actions taken to ensure that the investigation process is transparent;*
- *The participation of victims and/or their representatives in the investigation process;*
- *Cooperation with relevant authorities in the United States of America as well as in European countries,*<sup>25</sup> *pursuant to CAT Article 9.*

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<sup>24</sup> CAT, Concluding observations on the third periodic report of Lithuania, UN Doc. CAT/C/LTU/CO/3, 17 June 2014, para. 16. This Committee further recommended that: “The State party should ensure that there is no statute of limitations for acts of torture, including with regard to persons not protected under international humanitarian law, so that acts of torture and attempts to commit torture can be investigated, prosecuted and punished without a time bar.” (para 9).

<sup>25</sup> See for example, Letter from REDRESS, FIDH, ECCHR, TRIAL and Human Rights Watch re: Special meeting of the European Network of Contact Points to discuss ongoing and potential investigations and prosecutions following the release of the US Senate Intelligence Committee Report Summary, April 2015, Available at: <http://www.redress.org/downloads/publications/NGO%20Letter%20to%20EU%20Network.pdf>

## **Appendix: Information about the organisations submitting the report**

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

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