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HUMAN RIGHTS**

UNLOCK THE TRUTH IN LITHUANIA

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First published in 2011 by
Amnesty International Ltd
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom

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Index: EUR 53/002/2011 English
Original language: English
Printed by Amnesty International,
International Secretariat, United Kingdom

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Cover photo: The training centre of the Lithuanian State Security Department in Antaviliai near Vilnius, Lithuania, 17 November 2009. The site housed a secret CIA prison that is alleged to have held terrorism suspects between 2004 and 2005.
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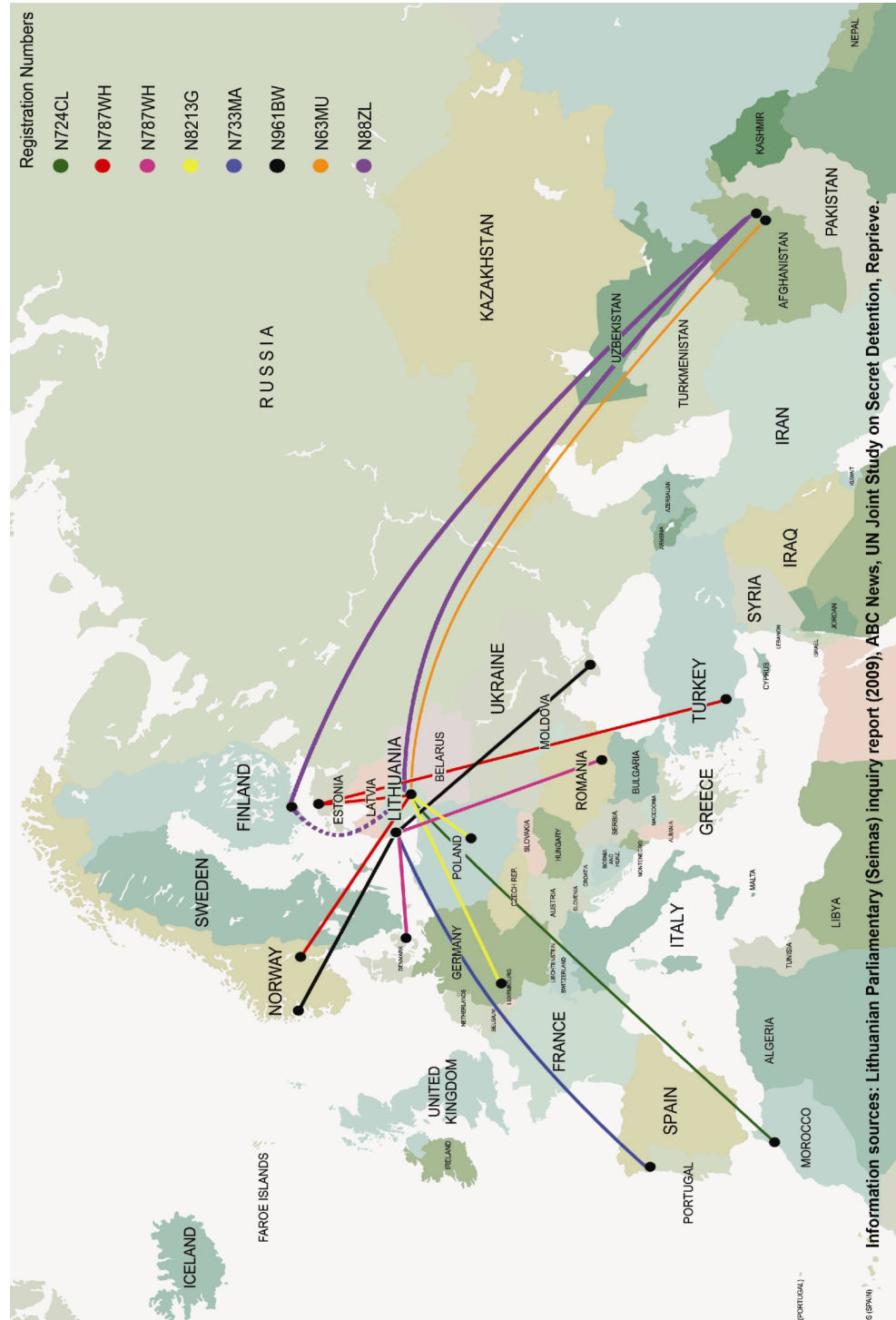
Back cover: Part of the global "Unlock the truth" campaign in London, UK, 7 April 2011, where Amnesty international members called on Lithuania to unlock the truth over allegations of complicity in rendition and secret detention.
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Flight paths including landings in Lithuania of aircraft operating in the context of the US rendition and secret detention programme. © Amnesty International



INTRODUCTION

Revelations in 2009 that Lithuania had hosted secret detention facilities operated by the US Central Intelligence Agency (CIA) did not come as a surprise to observers of global counter-terrorism operations over the past decade. The European Union's human rights reputation had suffered as governments across the EU, and indeed the wider region of Europe, acquiesced to US demands for assistance and facilitation with counter-terrorism operations that clearly violated international law. Operated roughly from late 2001 until 2006, the US-led rendition and secret detention programmes involved the apprehension of persons suspected of links to terrorism and their unlawful transfer to third countries, where they were held in secret – sometimes for years – and questioned using techniques that violated the prohibition of torture and other ill-treatment. The fact that a number of these secret detention facilities allegedly were located in EU member states – including Poland and Romania – was a shameful setback for human rights protection in the region.

Lithuania did surprise the international community, however, when a parliamentary inquiry committee publicly released its findings in December 2009 having concluded that state agents had in fact collaborated with the CIA and that detention facilities operated by the US intelligence agency had existed in Lithuania. The sites themselves were identified and independent monitors eventually visited them. It was the first time a European government confessed that it had hosted secret CIA detention centres and appeared to signal a willingness on the part of the Lithuanian government to hold its agents and officials accountable for covert actions that involved fundamental human rights violations.

The novelty of Lithuania's admission wore off quickly, however, as the subsequent criminal investigation into the CIA secret sites by the Lithuanian Prosecutor General – started in January 2010 -- stalled and then came to an abrupt and inexplicable halt precisely one year later. Whatever good will Lithuania generated by acknowledging its complicity in the USA's discredited use of enforced disappearances, torture and other human rights violations in its global counter-terrorism operations was spent by January 2011 when the Lithuanian Prosecutor General halted the investigation, justifying the termination on highly dubious grounds, including reliance on the state secrets privilege. Amid concerns from various quarters of an official government cover-up, the investigation remains closed and no person has been held accountable for facilitating construction of the secret sites or for any human rights violations that may have occurred in them.

While the Lithuanian government stands alone as having publicly acknowledged that it permitted the CIA to renovate existing buildings in and near Vilnius for use as secret prisons, it remains solidly in the pack of European states that have failed miserably at investigating -- and holding any state actor accountable for -- the attendant human rights violations that are known to have occurred in such secret CIA sites. The failures of these states to shed light on their complicity and hold persons accountable may be the subject of a new report of the European Parliament which will follow-up in 2011-2012 on the EP's 2007 investigation into EU member states' roles in the CIA rendition and

secret detention programmes.¹

This report reflects the state-of-play regarding Lithuanian complicity in the US-led rendition and secret detention programmes. It is a clarion call to the Lithuanian authorities to re-open the investigation into the secret detention sites. Information gleaned from numerous public sources, coupled with additional information secured by Amnesty International and other organizations – including the discovery of a flight from Morocco to Vilnius in 2005 -- make it abundantly clear that the investigation can and should continue. The Lithuanian government must reveal the full truth of its involvement in these operations, hold accountable those institutions and individuals responsible for complicity in human rights violations (including bringing to justice any individual whose conduct involved crimes under international law), and provide full and effective redress for any victims of these practices.

In the continuing absence of any meaningful accountability in the USA,² and increasingly disturbing signs that the same may happen in other European countries, the Lithuanian government should re-open its criminal investigation into both its own involvement in these operations, and that of the USA and its agents on Lithuanian territory, and conduct an independent, impartial, thorough and effective investigation that will serve as a model for accountability across the region.

SECRET SITES FIRST IDENTIFIED: AUGUST 2009

The spotlight was turned on Lithuania in August 2009 when US-based ABC News quoted unnamed former CIA sources as saying that Lithuania had provided a detention facility outside Vilnius where “high value” detainees had been held in secret by the CIA until late 2005.³ Unnamed former US intelligence officials also stated that some flights into Lithuania had involved detainee transfers from Bagram and Kabul to Vilnius.⁴ Unlike Poland and Romania, Lithuania had not been publicly identified previously by the media or any intergovernmental or non-governmental organization as a country that had allegedly hosted secret CIA detention sites. The day after the media revelations, however, Swiss Senator Dick Marty, special rapporteur on secret detentions for the Parliamentary Assembly of the Council of Europe’s Legal Affairs and Human Rights Committee (CLAHR), publicly stated that his own confidential sources appeared to confirm the report of a secret prison in Lithuania.⁵

Within days, Lithuanian President Dalia Grybauskaitė called for the establishment of a special parliamentary commission to address the allegations.⁶ Amnesty International wrote to President Grybauskaitė in August 2009 urging the government to ensure that any such inquiry would be independent, impartial, thorough, and effective in compliance with Lithuania’s international obligations.

On his own initiative, Arvydas Anušauskas, the chairman of the Lithuanian parliamentary Committee on National Security and Defence, lodged confidential inquiries in September 2009 regarding the secret prison allegations with a number of Lithuanian state institutions, among them the State Security Department (SSD), the Ministries of Justice and Interior, and the Civil Aviation Administration. The responses from the state institutions have never been made public. In October 2009, a news release from the Committee on National Security and Defence indicated that the Ministry of Foreign Affairs had requested information from the US authorities regarding the secret facilities.⁷ A joint meeting of the parliamentary Committee on National Security and Defence and the Committee on Foreign Affairs was then convened. Without making any of its deliberations public, the committees subsequently issued a joint statement concluding that there was insufficient information to commence a full parliamentary inquiry.⁸ The committees claimed that they had not received any data confirming the existence of a secret CIA prison in Lithuania and that written replies by state institutions categorically denied that such a prison could have existed.⁹

The secrecy surrounding this initial “inquiry”, coupled with the refusal to recommend a full parliamentary inquiry, indicated that Lithuania might go the route of other European governments, most noticeably Romania, and decline to engage in any meaningful way to investigate fully the serious allegation that secret detention facilities existed on its

territory.

The visit to Lithuania of Council of Europe Commissioner for Human Rights Thomas Hammarberg in October 2009, however, appears to have triggered a second wave of activity in relation to investigating the secret prison allegations. During Commissioner Hammarberg's visit, he and President Grybauskaite publicly expressed scepticism about the first inquiry, with the President saying that she had "indirect suspicions" that the prisons existed, and both officials calling for a serious investigation as a matter of necessity.¹⁰

PARLIAMENTARY (SEIMAS) INQUIRY: NOVEMBER-DECEMBER 2009

Apparently in response to Thomas Hammarberg's visit and the misgivings of its own President, the Lithuanian parliament (Seimas) on 5 November 2009 mandated the Committee on National Security and Defence to conduct a full parliamentary inquiry and present findings to the parliament by 22 December 2009.¹¹ The terms of reference for the parliamentary committee included three questions:

1. *Were CIA detainees subject to transportation and confinement on the territory of the Republic of Lithuania?*
2. *Did secret CIA detention centres operate on the territory of the Republic of Lithuania?*
3. *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?*¹²

Notably, the inquiry's mandate did not include the question of whether detainees who may have been held in the alleged secret prisons were tortured or otherwise ill-treated.

In the course of the parliamentary inquiry's work, ABC News reported that it had identified the location of one of the alleged secret prisons, 20 km from Vilnius, in a converted horseback riding facility at Antaviliai. Citing unnamed current Lithuanian government and former CIA officials, the news report stated that the CIA had built an interior concrete structure within the facility – a building within a building – to hold up to eight "high value detainees". A spokesman for the CIA refused to comment on the prison, stating that "This agency does not discuss publicly where detention facilities may or may not have been".¹³

The CIA's co-operation, however, was not necessary. The parliamentary inquiry's final report, released on 22 December 2009, confirmed the ABC News reports, and concluded that secret detention facilities had, in fact, existed – a firm rebuke to those Lithuanian state actors and institutions that had sought to obstruct the first inquiry and whitewash Lithuania's involvement in CIA operations. The inquiry report, approved without amendment by the Lithuanian parliament as a whole in January 2010, included the following key findings about CIA activities, supported by Lithuanian state actors, on

the territory of the Republic of Lithuania territory between 2002 and 2006:

- Lithuanian officials participated in the USA's rendition and secret detention programmes, which were operated by the CIA;
- 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; 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;¹⁴
- The Committee failed to establish whether detainees were brought into Lithuania, but “conditions for such transportation did exist” and in at least one case, the State Border Guard Service (SBGS) reported that passengers in addition to crew were aboard an aircraft that had landed in Lithuania;¹⁵
- Although information from the SBGS indicated that passengers had been aboard at least one of the planes that landed in Lithuania, a former SSD official – who apparently had the same information -- failed to mention this fact while giving testimony to the Committee. As well, Lithuanian customs officials were prevented from inspecting the flights, which inhibited their ability to determine if passengers were aboard other flights;¹⁶
- The CIA requested that the SSD assist with the preparation of detention facilities that would house persons suspected of terrorism-related activities;¹⁷
- Two locations were prepared to receive suspects. The Committee concluded that, based on the information made available to it, one facility was not used for the purpose of holding detainees (Project No. 1), and with respect to the other at Antaviliai, outside Vilnius, the Committee stated that persons who gave testimony denied that detainees were held in Project No. 2, but “the layout of the building, its enclosed nature and protection of the perimeter as well as fragmented presence of the SSD staff in the premises allowed for the performance of actions by officers of the partners [i.e. CIA] without the control of the SSD and use of the infrastructure at their discretion”,¹⁸
- High-level Lithuanian government officials were not informed about the SSD's participation in these specific activities.¹⁹

The narrow remit of the inquiry precluded the inquiry committee from arriving at any conclusions regarding human rights violations that may have occurred in the course of these activities. This was a glaring oversight since rigorous investigations by a number of highly credible international bodies such as the European Parliament, the Council of Europe, the International Committee of the Red Cross (ICRC) and the CIA's own 2004 Inspector General's report (released in redacted form in 2009), had previously concluded that the CIA-operated rendition and secret detention programmes involved serious human rights violations, including the torture and other ill-treatment of individuals.²⁰

The key recommendation in the inquiry's final report was a proposal that the Prosecutor

General's Office investigate whether the acts of three former senior SSD officials – Mečys Laurinkus, former director general of the SSD (1998-April 2004); Arvydas Pocius, another former director of the SSD (April 2004-December 2006); and Dainius Dabašinskas, former deputy director general of the SSD (December 2001-August 2009) – amounted to the criminal misuse of office or abuse of powers under Lithuanian law.

The inquiry process and final report caused a political firestorm in Lithuania. The then chief of the SSD, Povilas Malakauskas, resigned on 15 December 2009, one week prior to the release of the inquiry report. Arvydas Anušauskas, the head of a parliamentary committee investigating the alleged sites, told the media that the SSD head's resignation was "partially connected" to the inquiry and indicated that Povilas Malakauskas had not fully co-operated with the inquiry.²¹ On 16 December 2009, Lithuanian President Grybauskaitė recalled Mečys Laurinkus from Tbilisi, where he was serving as Lithuanian ambassador to Georgia.²² Then Foreign Minister Vygaudas Usackas resigned on 22 January 2010, after a public disagreement with President Grybauskaitė over whether detainees were ever actually held in a secret prison on Lithuanian territory.²³

In January 2010, Amnesty International wrote to the Lithuanian Prosecutor General about the inquiry committee's proposal that a criminal investigation be initiated by his office. The letter noted that the admissions in the parliamentary inquiry report that 1) Lithuanian state actors assisted the USA by permitting overflights and landings of aircraft operating in the context of the rendition programme and 2) the establishment of detention facilities constructed at the behest of the CIA for the secret imprisonment of terrorism suspects, constituted strong prima facie evidence that human rights violations had occurred. The Lithuanian government thus was legally obligated to conduct investigations aimed at, among other things, determining possible criminal liability in relation to these activities, including any crimes under international law or other human rights violations that may have occurred in the course of these operations.

In March 2010, the Lithuanian Prosecutor General wrote to Amnesty International saying that a pre-trial investigation had been initiated by the Prosecutor General's office on 22 January 2010 based on the evidence of possible criminal acts committed by Lithuanian state officials under Article 228 (Abuse of Official Position) of the Lithuanian criminal code.²⁴ With respect to the knowledge of or involvement in alleged human rights violations by Lithuanian state actors, the Prosecutor General assured Amnesty International that there was no limit on the scope of the investigation and that should his investigation reveal information of other criminal acts, the scope of the investigation would be expanded.

UNITED NATIONS NAMES LITHUANIA IN JOINT STUDY ON SECRET DETENTION: FEBRUARY 2010

Although the international community was slow publicly to identify Lithuania as a host state for CIA secret detention facilities, the August 2009 media revelations spurred various international organizations to further action. In February 2010, for example, the UN Joint Study on Secret Detention was the first public intergovernmental report to include independent evidence that Lithuania was incorporated into the CIA rendition and secret detention programmes.²⁵ By analyzing flight data in the form of “data strings”, the study confirmed that planes operating in the context of the CIA rendition and secret detention programmes had landed in Lithuania under cover of “dummy” flight plans.²⁶

“Two flights from Afghanistan to Vilnius could be identified: the first, from Bagram, on 20 September 2004, the same day that 10 detainees previously held in secret detention, in a variety of countries, were flown to Guantanamo; the second, from Kabul, on 28 July 2005. The dummy flight plans filed for the flights into Vilnius customarily used airports of destination in different countries altogether, excluding any mention of a Lithuanian airport as an alternate or back-up landing point.”²⁷

The December 2009 Lithuanian parliamentary inquiry report, however, issued just two months before the UN report, stated that the parliamentary inquiry committee had not received any information confirming a September 2004 or July 2005 landing at Vilnius Airport. However, the committee acknowledged that:

“In the course of the parliamentary investigation, the SSD submitted information regarding its cooperation with the SBGS in 2002-2006. It is evident from the documents submitted to the Committee that there had been an intensive exchange of data (including data provided by partners regarding the search for persons suspected of terrorism) in the field of combating terrorism. A period of time from April 2004 until September 2005 during which the SSD did not provide any information on the suspected terrorists to the SBGS should be singled out” (emphasis added).²⁸

The failure of SSD officials to disclose information relevant to the parliamentary inquiry (e.g. regarding passengers aboard flights operating in the context of the rendition programme), coupled with the significant gap in information-sharing between the SSD

and SBGS from April 2004-September 2005, suggested a concerted effort by Lithuanian intelligence actors to ensure that the truth of Lithuanian involvement remained secret. The UN Joint Study on Secret Detention independently provided another piece of the puzzle.

EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE (CPT) VISITS SECRET SITES: JUNE 2010

Another missing piece was provided when an independent monitoring body confirmed that the secret detention sites existed, provided descriptions of them, and verified their locations. In the course of the parliamentary inquiry, members of the inquiry committee visited the sites of Project No. 1 and Project No. 2, but the Lithuanian authorities refused to grant permission to the media and civil society actors to visit the sites. In June 2010, however, the European Committee for the Prevention of Torture (CPT) – the monitoring body that comprises the “non-judicial preventive machinery” under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, to which Lithuania has been a party since 1999 – issued a news release stating that a CPT delegation had visited both sites during a visit to Lithuania from 14-18 June.²⁹

The CPT’s landmark visit signified the first time that an independent monitoring body had visited a site where a secret prison had been established by the CIA in Europe and made that visit known to the public. The CPT operates on the principle of confidentiality between the monitoring body and the state. CPT reports on its visits thus require the agreement of the state that has been visited in order for the CPT to publish the report.

To Lithuania’s credit, the government not only granted the CPT access to the sites, but also gave permission for the CPT to publish its report, which the CPT did in May 2011 (the text of the report, however, was adopted by the CPT in November 2010). In addition to visiting the sites, a key objective for the CPT was to assess the status of the Lithuanian Prosecutor General’s criminal investigation. With respect to the sites, the CPT found that Project No. 1 “consisted of a small, single-storey, detached building located in a residential area in the centre of Vilnius.”³⁰ Project No. 2, consisting of two connected buildings, was located 20 km outside Vilnius.

One of the buildings “resembled a large metal container enclosed within a surrounding external structure” and contained remnants of machinery and spare parts of US origin, including notices and instructions in English.³¹ The Lithuanian official accompanying the CPT delegation said that the equipment and other materials were left behind by the building’s previous occupants. The CPT concluded that while “the premises did not contain anything that was highly suggestive of a context of detention; at the same time, both of the facilities could be adapted for detention purposes with relatively little effort”.³² This description comports with the “building inside a building” methodology allegedly used by the CIA in the construction of secret detention sites, including in Lithuania.³³

Of key concern to the CPT were the conduct of the Lithuanian Prosecutor General and the status of the criminal investigation into the secret sites. The CPT criticized the Prosecutor General for failing to initiate a criminal investigation when the media revelations first occurred in the summer of 2009, particularly given the amount and gravity of the public information available regarding the serious human rights violations that were alleged to have occurred in CIA secret prisons. The CPT also concluded that the scope of the pre-trial investigation – focused only on “abuse of authority” – was too narrow and that it was “clear that it would have been more appropriate for the scope of the pre-trial investigation to have expressly covered, as from the outset, the possible unlawful detention of persons (and their possible ill-treatment) on Lithuanian territory”.³⁴

Finally, the CPT criticized the Prosecutor General for its failure to convey to the delegation information regarding the investigation – including witnesses interviewed, documents obtained, records of on-site inspections, information sought from foreign authorities and whether such information was received – and justifying the failure to disclose such information by invoking state secrets. The CPT recommended that restrictions on access to information on grounds of state secrecy be kept to an absolute minimum and concluded that it was an “open question” whether the investigation was thorough as required by Lithuania’s international obligations.³⁵

ALLEGATIONS THAT ABU ZUBAYDAH WAS DETAINED IN LITHUANIA

Throughout the parliamentary inquiry, Lithuanian officials claimed that no information was presented indicating that persons were actually held and interrogated in either Project No. 1 or Project No. 2. On 21 September 2010, however, UK-based NGO Reprieve wrote to the Lithuanian Prosecutor General alleging that Zayn al-Abidin Muhammad Husayn – aka Abu Zubaydah – had been held in secret detention in Lithuania sometime between 2004 and 2006.³⁶ The letter claimed that after being held in Thailand, Abu Zubaydah was transferred on 4 December 2002 to a secret detention site in Szymany, Poland, where he was held for almost 10 months before his transfer in September 2003 to Guantanamo Bay, from which he was subsequently transferred to Morocco in 2004.³⁷ The letter claimed that Reprieve had received information from an unspecified source that Abu Zubaydah had then been held in a secret CIA prison in Lithuania between spring 2004 and his second rendition to Guantanamo Bay in September 2006.³⁸ In response, President Grybauskaite is reported to have stated that any information regarding persons held in the CIA secret sites must be taken up and reviewed in the USA, implying that the co-operation of the US government would be required in order for Lithuania to move forward toward accountability for its role in the CIA rendition and secret detention programmes³⁹ (see section below on “ Outstanding Lines of Inquiry” about new information regarding the allegation that Abu Zubaydah was held in secret detention in Lithuania).

In May 2011, the Associated Press cited two former unnamed US intelligence officials as claiming that Abu Zubaydah was held in “a secret prison in Lithuania.”⁴⁰

The US government has acknowledged that its agents subjected Abu Zubaydah to “waterboarding”, a torture technique that simulates drowning, while he was in secret detention.⁴¹ In his November 2010 memoir, former President George W. Bush admitted that he authorized the use of waterboarding and other “enhanced interrogation techniques” on Abu Zubaydah.⁴² As a result, Abu Zubaydah was subjected to prolonged solitary confinement; injurious stress positions; beatings and kicking; prolonged forced nudity; sleep deprivation; prolonged exposure to extreme cold; food deprivation; prolonged use of shackles and handcuffs to bind hands and feet; and threats of torture or other ill-treatment, including threats of use of electric shocks, infection with HIV, and the rape of him or his family. He was also confined inside small boxes. Abu Zubaydah has been called a “guinea pig” for the US government’s attempts to use so-called “enhanced interrogation techniques” on terrorism suspects.⁴³

Throughout the period of Abu Zubaydah’s secret detention, interrogation and torture by the CIA, the US government falsely alleged that he had been a high-level member of al Qaeda and a close associate of Osama bin Laden. He was also falsely alleged to have

had a role in various al Qaeda terrorist acts – including the attacks on 11 September 2001. Since then, the US government has withdrawn all such allegations and no longer maintains that Abu Zubaydah played any significant role in al-Qaeda.⁴⁴ It remains unclear whether the US government will level new charges against Abu Zubaydah and bring him before a Military Commission for trial. No one has ever been held accountable for his rendition, torture and ill-treatment, and enforced disappearance at the hands of the CIA.

TERMINATION OF INVESTIGATION: JANUARY 2011

Amnesty International released a report in November 2010 titled *Open Secret: Mounting Evidence of Europe's Complicity in Rendition and Secret Detention*, which contained a detailed section on Lithuania.⁴⁵ In a series of meetings in Vilnius that same month, an Amnesty International delegation presented the report in person to Lithuanian parliamentarians, government officials and to prosecution staff in the office of the Prosecutor General.⁴⁶ The delegation was assured by the Prosecutor General's staff that the investigation into the secret sites would continue. On 19 November 2010, Algimantas Kliunka, Chief Prosecutor of the Division against Organized Crime and Corruption, announced during a press conference that the pre-trial investigation would continue.⁴⁷

In a surprise announcement on 14 January 2011, however, the Prosecutor General publicly declared that the investigation would be closed.⁴⁸ Amnesty International called the termination of the investigation "premature" because it was apparent that there were numerous relevant lines of inquiry that the Prosecutor General had failed to pursue (see the section below on "Outstanding Issues for Investigation").⁴⁹ Written reasons for the termination of the investigation were also released by the Prosecutor General's office, and presented three purported grounds for the decision:⁵⁰

- Aircraft operating in the context 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;
- The statute of limitations on a criminal charge of "abuse of authority" 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 authority" or unlawful treatment of persons or illegal restriction on liberty could be applied. Moreover, there was a limit of one year in which to bring disciplinary charges against the three named SSD officials, who, in any event no longer served in the department;
- 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 occurred. Moreover, disciplinary action against the 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.

In a May 2011 letter to the Prosecutor General, Amnesty International argued that to properly conclude that there was no evidence that individuals were ever transported to Lithuania and/or held in secret detention facilities, the state would have needed to conduct a thorough and effective investigation, including outreach and communication with a variety of relevant actors, many beyond Lithuania's borders. It was clear that such an investigation had not been conducted (see the section below on "Outstanding Lines of Inquiry").

The decision to terminate the investigation put some responsibility on the London-based NGO Reprieve for not supplying "any factual information to support" Reprieve's claim that Abu Zubaydah had been detained in secret in Lithuania. However, even if that were accurate, it would not in itself have justified any decision by the prosecutors simply to dismiss the allegations as unfounded. As Amnesty International noted in the May 2011 letter, the Lithuanian state has an independent obligation to seek information for the investigation of alleged human rights violations; it is not the exclusive duty of the individuals who make the allegations to provide all the evidence to support them, particularly where the nature of the violations indicates that the ability to provide key evidence lies uniquely or especially with government authorities, for instance vis-à-vis detainees.

In any event, Reprieve's letters to the Prosecutor General had in fact included a number of lines of inquiry for the Prosecutor General's office to pursue.⁵¹ Further, Reprieve had noted the complexities of gathering information about Guantanamo Bay detainees, particularly the "high value detainees" held in secret detention prior to transfer to Guantanamo Bay, and requested sufficient time to develop its own dossier on the case. The termination of the pre-trial investigation on 14 January 2011, merely one year after its commencement and only two months after Reprieve's last submission to the Prosecutor General's office on 18 November 2010, precluded the organization and possibly others from making further relevant submissions (see section below on "Outstanding Lines of Inquiry" regarding new information about the allegation that Abu Zubaydah was held in secret detention in Lithuania).

With respect to the statutes of limitation on the criminal charge of "abuse of authority" and on the disciplinary charges under the SSD's statute, the statutory provisions were well-known at the outset of the criminal investigation, which commenced in January 2010 (which, if the Prosecutor General's reasoning were followed, would have been after the statutes of limitation would have already expired.) In March 2010, however, the Prosecutor General's Office had assured Amnesty International in writing that there was no limit on the scope of the investigation and that, indeed, should the investigation reveal information of other criminal acts, the scope of the investigation could be expanded. A similar assurance was given to the CPT delegation by the Prosecutor General in June 2010.⁵² The failure to thoroughly investigate the allegations, and to pursue obvious and numerous additional lines of inquiry, effectively precluded any expansion of the investigation's terms of reference expressly to include violations such as torture and other ill-treatment and enforced disappearance, which carry no statute of

limitations under international law.

Finally, the decision to terminate the investigation stated that much of the information obtained in the course of the investigation “constitutes a state or official secret” and also that “the real purpose of the building [Project No. 2] may not be revealed as it constitutes a state secret”. To permit a state to close an investigation into alleged secret detentions, on the basis that the purpose of the site where the detentions were alleged to have occurred cannot be revealed because it is a secret, would be to allow the state to avoid its obligation to investigate and address allegations that enforced disappearances were perpetrated or planned on its territory. Moreover, the information already in the public domain in this case in itself demonstrated that continuation of the investigation was warranted: the secret sites had been identified; SSD officials acknowledged that the sites were established in order to detain terrorism suspects; both parliamentarians and the CPT stated that the physical layout of the sites and the operational dynamic (i.e. no inspections of aircraft were conducted and the CIA had ultimate control over the sites) were easily adaptable to a detention regime; at least one aircraft had carried passengers in addition to crew; and there was a claim by a named individual that he had been held at a secret facility and ill-treated in Lithuania. As noted above, these facts alone – all in the public domain -- are strong *prima facie* evidence that human rights violations may have occurred.

It is of particular concern that Lithuanian state actors invoked state secrecy to justify terminating the investigation. In a February 2009 report on the role of intelligence agencies in the fight against terrorism and the accountability problems that arise from the cooperation between these agencies, Martin Scheinin, UN Special Rapporteur on the protection of human rights while countering terrorism, urged member states to reduce to a minimum restrictions on transparency based on concepts of state secrecy and national security. Expressing serious concern about the increasing invocation of state secrecy by governments “to conceal illegal acts...or to protect [themselves] from criticism, embarrassment and – most importantly – liability”, the Special Rapporteur stated that “[t]he human rights obligations of States, in particular the obligation to ensure an effective remedy, require that such legal provisions must not lead to a *priori* dismissal of investigations, or prevent disclosure of wrongdoing, in particular when there are reports of international crimes or gross human rights violations”.⁵³

It is unclear whether the Prosecutor General’s office itself invoked state secrecy or whether the Lithuanian government refused to cooperate with the investigation by claiming a state secrets privilege. The Prosecutor General’s office, however, should not have accepted at face value any claim of state secrecy by the Lithuanian government if fundamental human rights violations were alleged to have occurred, but rather sought to ensure that any such claims were independently and thoroughly reviewed by a judicial authority.

In a June 2011 letter, the Lithuanian Prosecutor General responded to Amnesty International, characterizing the organization’s May 2011 letter “as a complaint about the termination of a pre-trial investigation, ... arguing that the aforementioned investigation had not been exhaustive and subjective [sic]”.⁵⁴ The Prosecutor General stated that:

"[A]ccording to Article 214 of the [Lithuanian] Penal Process Code, a complaint about the termination of a pre-trial investigation can be submitted by the suspect, their representative, a defence lawyer, victim and civilian plaintiff as well as their representatives. You are not (were not) a part of this process in the aforementioned pre-trial investigation and therefore you have no right to submit a complaint in relation to the termination of this pre-trial investigation... a prosecutor may reinstate a pre-trial investigation on his/her own initiative, when there is a basis for that, however, having familiarised himself with your letter, the prosecutor has not established the existence of such a basis, and therefore his decision is not to reinstate the pre-trial investigation".

FREEDOM OF INFORMATION

The termination of the criminal investigation and refusal by the Prosecutor General to re-open it left few avenues in Lithuania for human rights advocates to pursue with respect to revealing the full truth about Lithuanian complicity in the CIA-operated rendition and secret detention programmes, and the actions of the USA and its agents on Lithuanian territory. In June 2011, however, the Vilnius-based Human Rights Monitoring Institute (HRMI), with support from the Open Society Justice Initiative (OSJI), embarked on a project to use the Lithuanian "Law on Provision of Information to the Public" as a basis on which to seek additional information from a range of Lithuanian government agencies and other public bodies regarding state actors' and agencies' cooperation with the CIA between 2002 and 2006.⁵⁵ Information requests were sent to a number of agencies and bodies, including the 2010 parliamentary inquiry committee; Ministry of Foreign Affairs; SSD; SBSG; Civil Aviation Administration; and Oro Navigacija, a state enterprise that is the sole provider of air traffic services in Lithuania.

At the time of writing, HRMI had received responses from several agencies, many invoking state secrecy and potential harm to national security as a justification either for not disclosing the requested information or for providing incomplete information. At the time of writing, HRMI was preparing an application for submission to a Lithuanian administrative court challenging the invocation of state secrecy and requesting that the court order the agencies to comply with the group's freedom of information requests.

OUTSTANDING LINES OF INQUIRY

In an effort to persuade the Prosecutor General that critical and numerous lines of inquiry remained open for investigation, Amnesty International wrote to the prosecutor on 24 January 2011 in the aftermath of the announcement that the investigation had been terminated, and requested that he reinstate the investigation on his own initiative. Some of the lines of inquiry detailed in that letter had been discussed with the Prosecutor General's staff during the November 2010 meeting in Vilnius with Amnesty International. Others arose from a review of various public sources. In addition, critical, previously undisclosed information has been recently uncovered by London-based NGO Reprieve regarding an aircraft operating in the context of the rendition programme that landed in Vilnius in 2005.

All the lines of inquiry detailed below require immediate investigation by the Lithuanian authorities.

ABU ZUBAYDAH'S ALLEGED DETENTION IN LITHUANIA

The Lithuanian parliamentary inquiry and subsequent criminal investigation appear to have limited their terms of reference to a predetermined list of aircraft and failed to look outside this list for additional flights that had the hallmarks of operating within the US rendition programme.

Aware that this limitation could compromise the investigation, Reprieve wrote to the Lithuanian Prosecutor General in November 2010 expressly requesting that he not only secure more information about the aircraft mentioned in the parliamentary inquiry report of December 2009, but also that he investigate other aircraft landings in Lithuania that could have occurred in the context of the US rendition programme. The Prosecutor General did not respond to this and other suggestions by Reprieve.

Reprieve has since uncovered significant new information about aircraft landings in Lithuania that do not appear to have been investigated by the prosecutor. One telling example is a February 2005 flight into Vilnius from Morocco of an aircraft associated with the CIA rendition programme. This flight was not included in the parliamentary inquiry report nor, to Reprieve's and Amnesty International's knowledge, was it the subject of investigation by the Lithuanian Prosecutor General.

Documents acquired by Reprieve show that the aircraft, a Boeing 727 registered as N724CL, was subcontracted to perform flights starting in February 2005 by a US company known to have been involved in contracting aircraft for renditions flights.⁵⁶ The plane flew from Rabat, Morocco – the site where Abu Zubaydah is alleged to have been held in a secret prison from early 2004 – to Amman, Jordan and then landed at Vilnius International Airport on 17 February 2005 at 18:03. The aircraft remained on the ground in Vilnius until 19:31 and then returned to the USA via Iceland. Amnesty International independently secured flight data for N724CL that verifies this circuit.

This flight into Lithuania occurred at the same time that another aircraft, operated by a different company but working for the same contractor, flew from Bucharest into Palanga, Lithuania, about 300 km northwest of Vilnius. The aircraft, registration number N787WH, operated by Victory Aviation, landed in Palanga on 18 February 2005 at 18:09 and departed at 19:30, heading for Copenhagen. That flight carried five passengers as well as three crew members. The parliamentary inquiry established these facts concerning N787WH but allowed N724CL, arriving the day before en route from Morocco, to slip through the net.

Moreover, it appears that no steps were taken to ascertain other destinations in the flight circuits cited in the parliamentary inquiry report, with the result that the inquiry failed to consider whether N787WH or other aircraft also passed through Morocco on their way to Lithuania.

The fact that Reprieve was able to uncover this information – and that Amnesty International has independently secured data for N724CL's flight circuit for 16-18 February 2005 – leaves open the question as to why neither the Lithuanian parliamentary inquiry nor the Lithuanian Prosecutor General, with a fully resourced office and staff, were unable to unearth it.⁵⁷ Alternatively, if the Prosecutor General had discovered this information in the course of the investigation, why was the criminal investigation terminated when an individual had alleged that he had been held in secret detention in Lithuania and information existed indicating that an aircraft had travelled from the site of one secret detention centre where he was alleged to have been held (in Morocco) to another (in Lithuania)? As noted above, in its written justification for terminating the investigation, the Prosecutor General claimed that much of the information collected in the course of the investigation could not be disclosed because it constituted a "state secret", thus prohibiting Amnesty International and Reprieve from knowing conclusively what information the Prosecutor General did have at the time.

This information would have easily come within the purview of the Lithuanian prosecutors had they conducted a rigorous and comprehensive investigation. Whether the Prosecutor General failed to discover this information or he had this information and failed to pursue it, the investigation was terminated before a thorough and effective investigation in conformity with Lithuania's international obligations was conducted. It is the duty of the state to uncover relevant evidence in its pursuit of the truth and to disclose to the maximum extent possible such information to the victims and to the public.

AIRCRAFT LANDINGS IN LITHUANIA IN SEPTEMBER 2004 AND JULY 2005

Another specific line of inquiry that remains ripe for further investigation is the allegation that aircraft operating in the context of the US-led rendition and secret detention programmes landed in Lithuania in September 2004 and July 2005.

According to an October 2009 *ABC News* report:

"In September 2004, European and American flight records examined by ABC News reveal CIA-contracted flights directly from Afghanistan to Lithuania. On September 20th,

2004, a Boeing 707 with tail number N88ZL flew directly from Bagram Airbase to Vilnius. According to several former CIA officials, the flight carried an al Qaeda detainee, who was being moved from one CIA detention facility to another. Additionally, in July 2005, a CIA-chartered Gulfstream IV, tail number N63MU, flew direct from Kabul to Vilnius. Several former intelligence officials involved in the CIA's prison program confirmed the flight as a prisoner transfer to Lithuania".⁵⁸

As noted earlier, the December 2009 parliamentary inquiry report issued by the Lithuanian parliamentary inquiry, however, stated that "[a]ttention should be drawn to the fact that the Committee did not receive any data or documents from Vilnius International Airport or airport service companies confirming that on 20 September 2004 and in July 2005 (the exact date was not specified by the US television channel ABC News) presumable CIA-related aircraft landed at Vilnius International Airport".⁵⁹ The parliamentary inquiry report noted that there was an "intensive exchange of data" between the SSD and the SBGS between 2002 and 2006, but for a period of time from April 2004 until September 2005 "the SSD did not provide any information on the suspected terrorists to the SBGS".⁶⁰

The February 2010 UN Joint Study on Secret Detention, as noted above, appeared to confirm aircraft landings in Lithuania in September 2004 and July 2005.⁶¹

Also on 20 September 2004, a Boeing 707 with tail number N88ZL was spotted on a runway in Helsinki, Finland. Three separate flight enthusiasts photographed the plane at Helsinki-Vantaa airport.⁶² In a press report, Arvydas Anušauskas, head of the parliamentary Committee on National Security and Defence, commented that N88ZL had landed in Finland on 20 September 2004, not in Lithuania.⁶³ This statement confirms information in the public domain, i.e. the photos of N88ZL on the runway in Helsinki, but fails to take into consideration the possibility that the plane also may have landed in Lithuania. The parliamentary inquiry report does not state categorically that the inquiry committee was able to confirm that N88ZL had not landed in Lithuania, only that it had not received information on the flight from Vilnius International Airport or airport service companies. Moreover, the gap in information from the SSD to the SBGS between April 2004 and September 2005 raises the question as to whether the SBGS itself was aware of this landing.

It has also been reported that a military plane with tail number RCH947 departed from Portuguese territory on 20 September 2004 carrying detainees from Afghanistan and other countries destined for Guantánamo Bay.⁶⁴ According to the Swiss newspaper *Blick*, a Boeing 707, with tail number N88ZL and registered under Lova Ltd. in Miami, Florida, flew on 19 September 2004 from Guantánamo Bay to Bagram Air Force Base in Afghanistan. On 21 September 2004, the jet returned to the USA: to Washington, DC, via Miami.⁶⁵ On 22 September, the US Defense Department stated that 10 prisoners from Afghanistan had arrived at Guantánamo.⁶⁶ German sources have reported that N88ZL flew the route Guantánamo-Washington DC-Bagram on 18 September 2004.⁶⁷ It has been reported that the same aircraft overflew Greenland on 21 September 2004 on its way back from Helsinki to Washington, DC and then on to Miami.⁶⁸

Given the information compiled by Amnesty International, a number of questions arise with respect to the Boeing 707 with tail number N88ZL and the Lithuanian Prosecutor

General's investigation, including:

- What was N88ZL's specific flight plan/path from 18 to 22 September 2004 and, given the information now publicly available, did the Prosecutor General's office continue to work to determine if it had landed in Lithuania during that time period?
- If the aircraft did land in Lithuania as has been reported, were there detainees aboard and, if so, were any detainees held in the secret sites identified in the parliamentary inquiry report or elsewhere?
- Is there any link between the alleged landing of N88ZL in Lithuania in September 2004 and the transfer of detainees to Guantanamo Bay around that same time?
- Has the prosecutor formally requested that the SSD provide information about counter-terrorism operations from April 2004-September 2005, which represents the gap in the exchange of data between the SSD and the SBGS referred to in the parliamentary inquiry report (as noted above). If so, has the SSD responded? If not, has the prosecutor considered legal action to compel such disclosure or, in the alternative, to get a definitive ruling that the material is in fact protected by a national security-related privilege?

To that end, and also considering the allegation that N63MU landed in Lithuania in July 2005, Amnesty International asked the Prosecutor General whether he had contacted or was willing to communicate with the authors of the UN Joint Study on Secret Detention to consult with them regarding the study's allegations about landings in Lithuania of aircraft operating in the context of the US rendition programme, specifically about planes N88ZL on 20 September 2004 and N63MU on 28 July 2005. Amnesty International is aware that *ABC News* has refused to communicate to the Prosecutor General's office any information regarding its confidential sources. It is standard practice for media outlets to refuse to disclose such information. However, it may be the case that information about these flights may be culled from other sources.

Amnesty International also wrote to the government of Finland in November 2010 and formally requested that authorities there investigate the landing of N88ZL in Helsinki on 20 September 2004 and other aircraft landings in Finland suspected to have occurred in the context of the CIA rendition and secret detention programmes. (Such an investigation should include allegations that "dummy" flight plans listing Finland and Poland as destinations had been filed for aircraft actually destined for and having landed instead in Lithuania).⁶⁹ In mid-December 2010 the Finnish government indicated that it would in fact investigate these flights. Amnesty International will continue to liaise with the Finnish authorities as they move forward and had urged the Lithuanian Prosecutor General's office to liaise with the Finnish Ministry of Foreign Affairs at its earliest convenience with regard to the Finnish investigation and the possible sharing of relevant information.

LINKS TO POLAND

An investigation by the Appeals Prosecutor in Warsaw into allegations that Poland hosted a secret CIA detention site where so-called "high value detainees" were held is

now in its third year.⁷⁰ The prosecutor there has granted to two individuals, who claim they were victims, formal status in the investigation: Abd al-Rahim al-Nashiri and Abu Zubaydah, who Reprieve also alleges had been detained in Lithuania.⁷¹ *ABC News* and others have alleged that detainees were moved between and among secret detention sites in a number of countries, including Lithuania, Poland, and Romania in Europe. As well, it has been reported that “dummy” flight plans listing Poland as a destination had been filed for aircraft actually destined for and having landed instead in Lithuania.⁷² Indeed, an aircraft identified by the Lithuanian parliamentary inquiry as operating in the context of the rendition programme had a flight circuit that included stops in Vilnius and Warsaw. According to the inquiry report of December 2009, on 4 February 2003, an aircraft with registration number N8213G landed at Vilnius International Airport at 18:15 and departed at 19:27 en route to Warsaw. Moreover, as noted above, Abu Zubaydah has alleged that he was held in secret detention in both Poland and Lithuania, and had been granted status as a victim in the Polish investigation.

There would be obvious potential for the Lithuanian Prosecutor General's office to obtain relevant evidence for its own investigation by opening a line of communication with Polish prosecutors investigating similar allegations. Amnesty International specifically requested that the Lithuanian Prosecutor General's office communicate with Polish counterparts who are conducting a similar investigation into allegations that a secret detention site operated by the CIA existed on Polish territory between 2002 and 2004.

LINKS TO PORTUGAL

The involvement of the government of Portugal in the CIA's rendition programme has been well-documented.⁷³ A number of aircraft linked to the rendition programme had landed on Portuguese territory and departed for a variety of destinations, including Guantánamo Bay, primarily between 2002 and 2006. Amnesty International had urged the Lithuanian Prosecutor General's office to liaise with the relevant Portuguese officials to determine whether there were any links between alleged rendition flights landing in Lithuania and those that landed in and/or departed from Portuguese territory – and any related detainee transfers. The Lithuanian parliamentary inquiry report included information regarding a flight on 25 March 2006 that made a return trip from Porto-Palanga-Porto.

In addition to liaising with government officials, Amnesty International strongly recommended that the Prosecutor General's office consult with Ana Gomes, MEP, who was a member of the European Parliament's Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners (TDIP) and has been instrumental in the effort to have all relevant information disclosed with regard to Portugal's involvement in the rendition programme. Amnesty International specifically requested that the Lithuanian Prosecutor General contact relevant officials in the government of Portugal or other Portuguese actors to determine whether there is any link between a possible landing/detainee transfer involving N88ZL on or around 20 September 2004 to/from Lithuania and the transfer of detainees from Portuguese territory to Guantánamo Bay on or around 20-22 September 2004.

LITHUANIAN RESPONSE TO SUGGESTED LINES OF INQUIRY

In response to Amnesty International's 24 January 2011 letter, which suggested such further lines of inquiry, the Lithuanian Prosecutor General wrote on 15 February 2011:

"The Office of the Prosecutor General of the Republic of Lithuania has received your request of 24 10 2011 in which you formulate questions on the progress of the pre-trial investigation of 01-2-00016-10, the actions that have been taken and the factual circumstances that have been established. This information cannot be supplied to you as you are not a participant of the process who has the right to get familiarized with the material of the pre-trial investigation and also as in accordance with the Penal Code of the Republic of Lithuania, Article 177, Part 1 the data of pre-trial investigation cannot be made public and also because a large part of the material of the pre-trial investigation is classified".⁷⁴

This response mischaracterized the substance and intent of Amnesty International's letter. The letter was written in the form of questions that the Prosecutor General's office should *itself* have been asking and to which prosecutors should have been seeking answers for the purposes of the investigation. These were questions that Amnesty International believed had not been adequately investigated by the Prosecutor General's office. The primary purpose was *not* to ask the Prosecutor General's office to provide Amnesty International with evidence from its investigation, but to indicate questions that the Prosecutor General's office itself should be pursuing if it was to satisfy Lithuania's obligations to conduct a thorough investigation into the matters.

In addition to elaborating on the information the Prosecutor General's office might seek through pursuing those lines of inquiry, the 24 January letter included detailed contact information for government actors, prosecutors in other countries, persons in inter-governmental organizations, and relevant others who could have been contacted confidentially for the purpose of obtaining information relevant to the Lithuanian investigation. The intent of the letter was to provide the Prosecutor General with descriptions of issues of importance and to provide "leads" and sources for the pursuit of information regarding those issues. Indeed, in the 19 November 2010 meeting in Vilnius with the Amnesty International delegation, Lithuanian prosecutors strongly encouraged the submission of such information.

CONCLUSION

That Lithuania is under an international legal obligation to investigate all allegations of serious human rights violations is indisputable.⁷⁵ Any such investigation must be thorough and effective. Based on the publicly available information, it appears that the investigation by the Prosecutor General's office into alleged Lithuanian complicity in the CIA-run rendition and secret detention programmes has failed to meet this standard. The Lithuanian government's own admissions, other information in the public domain, recent developments, and clear lines of inquiry that have not been adequately pursued indicate that the criminal investigation should be re-opened immediately.

Any investigation by Lithuania must examine the possible individual criminal responsibility of Lithuanian officials and nationals for human rights violations, but also that of any agents of the USA who may have been responsible for acts carried out on Lithuanian territory. Any individuals identified as responsible in relation to crimes under international or national law must be brought to justice in fair trials. Investigations must look not only at the possible criminal responsibility of individuals, but also the international legal responsibility of Lithuania and the USA for violations of international human rights law on Lithuanian territory. Even if it cannot ultimately be determined that any identifiable individual was actually held in the secret detention facilities in Lithuania, the already publicly-available information supporting the fact that the facilities were constructed for the purpose of using Lithuanian territory in the perpetration of enforced disappearance, establishes violations of international human rights obligations, for which the USA or Lithuania or both are responsible. Such violations cannot go without a full accounting of the truth, acknowledgement of responsibility, provision of effective redress to any victims, and implementation of steps to prevent any such events from happening again in the future. All of this demands further investigation by the Lithuanian authorities.

RECOMMENDATIONS

To the Government of Lithuania

- Re-open as a matter of urgency the criminal investigation into Lithuanian state agencies' and actors' involvement in the CIA operated rendition and secret detention programmes;
- Ensure that the on-going investigation is independent, impartial, thorough, and effective, in conformity with Lithuania's international obligations;
- Expand the terms of reference of the investigation expressly to include human rights violations attendant to the collaboration of the Lithuanian government with the USA in the context of the CIA operated rendition and secret detention programmes;
- Ensure that the criminal investigation examines the potential responsibility not only of Lithuanian actors, but US actors who were engaged in activities on Lithuanian territory;
- Pursue any and all relevant lines of inquiry, including those that require communication with officials or other persons in foreign countries;
- Bring to justice in fair trials any individuals identified as responsible for criminal human rights violations -- including illegal deprivation of liberty and transfer of detainees; enforced disappearance; and torture and other cruel, inhuman or degrading treatment -- that may have occurred attendant to and within secret CIA detention centres established in Lithuania beginning in 2002 until 2006;
- Ensure that investigations and public proceedings take place that are capable of fully documenting, acknowledging, and providing remedies for violations by Lithuania and/or the USA of the states' responsibilities under international human rights law in relation to rendition and secret detention on Lithuanian territory;
- Comply in good faith with all freedom of information requests submitted to government agencies, bodies, or state actors in conformity with the Lithuanian "Law on the Provision of Information to the Public" and Lithuania's international legal obligations;
- Refrain from invoking state secrecy to shield the government and state actors from accountability for complicity in the CIA operated programmes of rendition and secret detention;
- Guarantee that claims of state secrecy on national security grounds are reviewed by an independent judicial mechanism;
- Cooperate with any judicial process that challenges the government's refusal to comply with freedom of information requests and/or the government's invocation of the state secrets privilege;

- Grant formal participatory status in the criminal investigation to alleged victims who credibly allege to have been detained in secret CIA detention facilities in Lithuania and subjected to human rights violations therein;
- Ensure that any named victims are granted the right to full participation in the investigation in conformity with the internationally recognized right of victims of human rights violations to effective redress;
- Cooperate in full with the European Parliament LIBE committee's 2011-2012 follow-up work on the 2007 report of the Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners (TDIP).

To the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Arbitrary Detention; and the Working Group on Enforced or Involuntary Disappearances

- Commit to follow-up on the January 2010 UN Joint Study on Secret Detention; in particular, monitor member states', including Lithuania's, compliance with the recommendations therein and open up direct lines of communications with the states in question;
- Make available any information and research related to the CIA operated rendition and secret detention programmes to the UN Human Rights Committee ahead of their consideration in 2012 of Lithuania's implementation of the International Covenant on Civil and Political Rights.

To the International Community

- Ensure that Lithuania's alleged complicity in the CIA operated rendition and secret detention programmes is fully considered during Lithuania's Universal Periodic Review (UPR) process in October 2011.

To the European Union

Presidency (Poland: July-December 2011)

- Make clear your intention to seek accountability for Poland's own alleged complicity in the CIA rendition and secret detention programmes and to encourage other EU member states to do so, with or without US cooperation;
- Call on the Lithuanian government to re-open the criminal investigation into Lithuania's alleged complicity in the CIA rendition and secret detention programmes and urge that the investigation be conducted in a manner that is independent, impartial, thorough and effective, with full and effective participation of any named victims;
- Encourage other European governments alleged to have been complicit in the US rendition and secret detention programmes to conduct independent, impartial, thorough

and effective inquiries and investigations into their own involvement in the programmes and the responsibilities of the USA and its individual agents for any actions taken on their state's territory;

- Include the monitoring of accountability processes in Europe and the USA on the EU's political/ Justice and Home Affairs agenda;
- Recall in meetings and consultations with the Lithuanian, US, and other relevant governments that by refusing to conduct independent, impartial, thorough, and effective investigations into the human rights violations committed by their state actors in the course of the CIA rendition and secret detention programmes; by failing to bring all those responsible for torture, enforced disappearance or other human rights violations to justice; and by failing to provide those who allege that they were victims of such violations access to effective remedies and redress, they are not abiding by their human rights obligations as enshrined in domestic law and the EU treaties, including the Charter of Fundamental Rights of the EU;
- Provide remedies for any deficiencies in EU law or practice which may have allowed such complicity to occur in counter-terrorism operations that violate human rights.

European Parliament

- Ensure that the work of the LIBE committee in 2011-2012 regarding follow-up to the 2007 Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners (TDIP) continues with a view to guaranteeing that there is no impunity in Europe for the human rights violations committed in the course of the CIA rendition and secret detention programmes and that any EU member state, including Lithuania, implicated in the human rights violations attendant to these CIA operations conducts an independent, impartial, thorough and effective investigation into such complicity.

APPENDIX

EUROPEAN STATES' LEGAL OBLIGATION TO INVESTIGATE HUMAN RIGHTS VIOLATIONS IN RELATION TO RENDITION AND SECRET DETENTION

States must ensure that all counter-terrorism measures are implemented in accordance with their international human rights and humanitarian law obligations.⁷⁶ Renditions violate international law because they bypass judicial and administrative due process. Typically, they involve multiple human rights violations, including unlawful and arbitrary detention; torture and other ill-treatment, including violations of the *non-refoulement* obligation, which prohibits exposing individuals to a real risk of such abuse at the hands of another state; and enforced disappearance. Torture and enforced disappearance are not only grave violations of states' international legal obligations; they are also crimes under international law for which individuals may be held criminally responsible. Individuals in the CIA's "high value" detainee programme, along with many of the other victims of rendition, were held in prolonged incommunicado detention in secret places, in violation of international human rights and humanitarian law, and placed outside the protection of the law, amounting to enforced disappearance.⁷⁷

A state is responsible for a violation of international law if it knowingly helps or assists another state to commit a human rights violation and its help or assistance has a substantial impact with respect to the perpetration of the violation or the way in which the violation occurs.⁷⁸ Knowing participation by European agents in the CIA rendition and secret detention programmes is in blatant violation of their states' legal obligations. This is true whether their contribution was active or passive, and whether or not others in government knew or authorized their activities. It also obtains in situations where European state actors should have known by the objective circumstances that human rights violations were likely to occur. In such circumstances, officials cannot simply claim that they were never informed of specific operations or acts and that the state was therefore not responsible in relation to the human rights violations in question.⁷⁹

European states could also be responsible in relation to human rights violations committed on their territories or otherwise within their jurisdictions by foreign agents if European state actors acquiesced in or tolerated such violations. With respect to CIA counter-terrorism operations post-11 September 2001, such alleged violations included torture and other ill-treatment, enforced disappearance, or detention of a person in contravention of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).⁸⁰

Other forms of participation that may entail a European state's responsibility, even though the abuses were carried out by states outside Europe, include violations of the *non-refoulement* obligation (knowingly handing over a person to another state where there are substantial grounds to believe that the person would face a real risk of torture or other ill-treatment, including in any "third" state to which the person is subsequently transferred), or seeking to use information obtained by torture or other ill-treatment abroad in proceedings in Europe.⁸¹

In addition, every European state has a positive obligation to take steps to ensure respect within its territory for the rights and freedoms set out in the ECHR, both in terms of establishing a general legal framework for protection and in terms of specific measures to protect certain individuals from abuses at the hands of third parties. Even where the state's authority is limited in part of its territory, such as when part of its territory is occupied by another state with or without its consent, it must still take all appropriate measures that remain within its power to prevent human rights violations.⁸² A state may breach its obligations not to expose anyone to the risk of torture or other ill-treatment, arbitrary detention, or enforced disappearance, simply by knowingly allowing its territory to be used by another state to commit that violation, or failing to put in place effective measures to prevent it.⁸³

If individuals suffered human rights violations on US military bases located in Europe, or on US aircraft operating in European territory or in European airspace, the European state remains responsible for involvement in the violations unless it can establish that it took all appropriate measures within its power to prevent the abuse. A state that effectively voluntarily relinquishes, through a bilateral or other international agreement, its jurisdiction and legal obligation to investigate and remedy serious human rights violations that occur on its territory (for example, under the terms of a Status of Forces Agreement) may fail its general obligation to put in place an appropriate protective legal framework as required by the ECHR and other human rights treaties.

In addition to the responsibility of the state under international law, individual European officials or agents should be subject to criminal prosecution if they knowingly assisted foreign agents or others to commit crimes under international or national law that were linked to renditions and secret detention. With respect to torture, for example, treaties impose obligations on states where cases of torture arise within their territory or jurisdiction to either submit the case to the state's own competent authorities for the purpose of prosecution (with the UN Convention against Torture requiring that the authorities take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of the state) or extradite the accused to another state willing and able to undertake the prosecution.⁸⁴ A person does not need to know the precise crime that will be committed as a result of his or her assistance; it is enough that the person was aware that one or more crimes were likely to be committed and one of those crimes is subsequently committed.⁸⁵ Persons also can be criminally responsible even though they were not physically present when the crime was committed, or the crime was committed some time after they provided assistance.⁸⁶ As regards crimes under international law alleged to have been perpetrated on the territory of European states, states must investigate possible individual and state responsibility not only in relation to the acts of their own nationals, but those of nationals of other states as well – for instance, USA responsibility for the acts of the CIA or other agents, and the individual criminal responsibility of any agents of the USA themselves.

In particular, as a principle applicable to all persons under any form of detention or imprisonment, it is also prohibited for any state to take "undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person".⁸⁷ An interrogator from a European state who poses questions to a detainee, knowing that the answers are likely to be the result, whether direct or indirect, of severe pain or suffering

because the detainee is in a situation where he or she is suffering torture or other ill-treatment, places his or her own state in breach of its international human rights obligations, and risks being held personally responsible for having participated or been complicit in any such crimes.⁸⁸

It should be emphasized that the obligation to investigate arises even in cases where individual victims cannot be identified or named. According to the jurisprudence of the European Court of Human Rights, the duty to investigate torture, for example, does not depend on the submission of a complaint; even “in the absence of an express complaint, an investigation should be undertaken if there are other sufficiently clear indications that torture or ill-treatment might have occurred”.⁸⁹

Where victims have been identified, they have a right to an effective remedy as enshrined in all major international and regional human rights treaties. The UN Human Rights Committee has affirmed that this right can never be derogated from, even during times of national emergency.⁹⁰ International law requires that remedies not only be available in law, but accessible and effective in practice. Victims are entitled among other things to equal and effective access to justice (including “effective judicial remedy”) regardless of whom may ultimately be responsible for the violation; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms.⁹¹ Full and effective reparation includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.⁹²

“State secrets” or other similar grounds for non-disclosure of evidence should not be invoked in a manner that would prevent an independent, impartial and thorough investigation into allegations of serious violations of human rights, prevent accountability where such violations are established, prevent the truth emerging about serious human rights violations, or prevent those who have suffered human rights violations from accessing and obtaining an effective remedy and reparation.⁹³

ENDNOTES

1 Decision of LIBE political coordinators' meeting, 28 February 2011.

2 Amnesty International, USA: See No Evil: Government Turns the Other Way as Judges Make Findings about Torture and Abuse, (Index AMR 51/005/2011), 3 February 2011, <http://www.amnesty.org/en/library/asset/AMR51/005/2011/en/3487b6e3-b01f-4a71-9792-012a8636b3e2/amr510052011en.pdf>.

3 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>.

4 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>.

5 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.

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9 This information was included in the final report of a subsequent full parliamentary inquiry (see below): "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" (hereinafter "Findings of the parliamentary investigation by the Seimas Committee on National Security and Defence"), 22 December 2009, p. 2 http://www3.lrs.lt/pls/inter/w5_show?p_r=6143&p_k=2.

10 "Lithuanian Leader Suspects Her Country Hosted CIA Jail", Agence France Press, 20 October 2009, <http://www.zimbio.com/Valdas+Adamkus/articles/6SPnuaTUa04/Lithuanian+leader+suspects+country+hosted> and Council of Europe Commissioner for Human Rights, "The Commissioner Discussed Minorities' Rights and Discrimination during His Visit to Lithuania", 22 October 2009, http://www.coe.int/t/commissioner/News/2009/091022Lithuania_en.asp.

11 Seimas Resolution No. XI-459, 5 November 2009.

12 These three questions formed the primary headings in the final inquiry report, "Findings of the parliamentary investigation by the Seimas

Committee on National Security and Defence", 22 December 2009, p. 3, http://www3.lrs.lt/pls/inter/w5_show?p_r=6143&p_k=2.

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

14 A number of aircraft transited Lithuanian airspace. The actual landings identified in the Seimas report included: 1) C-130, No. N8213G; route: Frankfurt (Germany) – Vilnius (Lithuania) – Warsaw (Poland); arrived Vilnius at 6:15 p.m., departed at 7:27 p.m. on 4 February 2003; 2) CASA C-212, No. N961BW, operated by Presidential Airways; route: Flesland (Norway) – Palanga (Lithuania) – Simferopol (Ukraine); landed at Palanga International Airport on 2 January 2005, departed 5 January 2005; 3) Boeing 737, No. N787WH, operated by Victory Aviation; route: Bucharest (Romania) – Palanga (Lithuania) – Copenhagen (Denmark); landed at 6:09 p.m. on 18 February 2005 at Palanga, departed at 7:30 p.m. (according to information provided by the Lithuanian State Border Guard Service (SBGS), five passengers in addition to three crew members were aboard this flight); 4) Boeing 737, No. N787WH; route: Antalya (Turkey) – Tallinn (Estonia) – Vilnius (Lithuania) – Oslo (Norway); arrived Vilnius 6 October 2005 (info from Vilnius International Airport stated that the aircraft arrived from Tirana, not Antalya, at 4:54 a.m. and departed at 5:59 a.m., but documents from the SBGS indicated that the aircraft arrived from Antalya and departed for Oslo.); 5) Boeing 737-800, No. N733MA; route: Porto (Portugal) – Palanga (Lithuania) – Porto (Portugal); arrived Palanga at 10:25 p.m., departed at 11:55 p.m. on 25 March 2006. Findings of the parliamentary investigation by the Seimas Committee on National Security and Defence, p. 4.

15 Findings of the parliamentary investigation by the Seimas Committee on National Security and Defence, p. 6.

16 Findings of the parliamentary investigation by the Seimas Committee on National Security and Defence, p. 5.

17 Findings of the parliamentary investigation by the Seimas Committee on National Security and Defence, p. 7.

18 Findings of the parliamentary investigation by the Seimas Committee on National Security and Defence, p. 7. The chairperson of the parliamentary inquiry suggested in public comments that the site was operated without Lithuanian oversight, observing that "the lay-out of the buildings, their secret nature, the fence around the site, plus the only sporadic visits by VSD [Lithuanian intelligence] operatives, enabled our partners to carry out activities without VSD control and to use the place however they liked". See Marielle Vitureau, "Lithuania May Have Hosted Two US 'War on Terror' Jails", Agence France Press, 22 December 2009, <http://www.thejakartaglobe.com/afp/lithuania-may-have-hosted-two-us-war-on-terror-jails/348872>.

19 In an October 2010 BBC documentary, however, former Lithuanian President Rolandas Paksas stated that the head of the SSD approached him in the summer of 2003 and requested permission to allow "our foreign partner" to bring people in secret to Lithuania and hold them there. Rolandas Paksas claimed in the documentary that he refused this request and also claimed that he paid a price for this by subsequently being removed from office. The BBC commentator notes that Rolandas Paksas was in fact removed from office (by parliament) in 2004 amid allegations of corruption but there is no independent information confirming that his removal was the result of any refusal to permit secret detainees to be held on Lithuanian territory. See BBC Our World Documentary, "Europe's Secret CIA Prisons", October 2010, Part I: <http://www.youtube.com/watch?v=X295HENrzmI> and Part II: <http://www.youtube.com/watch?v=-5XB5WfVuc4&feature=related> (allegations of CIA secret prisons in Poland and Lithuania). Rolandas Paksas appears in Part II of the documentary. See also, Findings of the parliamentary investigation by the Seimas Committee on National Security and Defence, p. 8: "According to the testimony of the former Director General of the SSD Mečys Laurinkus, in mid-2003 he informed the then President of the Republic Rolandas Paksas about a possibility, after Lithuania's accession to NATO, to receive a request to participate in the programme concerning the transportation of detainees. According to the testimony of Rolandas Paksas, Lithuania was requested permission to bring into the country the persons suspected of terrorism. The information submitted to the President of the Republic did not contain any mention of a detention centre or a prison. In August of the same year, when President of the Republic Rolandas Paksas enquired the then acting Director General Dainius Dabašinskas if there was any new information concerning Lithuania's participation in the said programme, he was told that there was no new information".

20 European Parliament Temporary Committee on the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners (TDIP), Report on the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners, A6-0020/2007 FINAL, http://www.europarl.europa.eu/comparl/tempcom/tdip/final_report_en.pdf; Parliamentary Assembly Council of Europe, Committee on Legal Affairs and Human Rights, Secret Detentions and Illegal Transfers of Detainees Involving Council of Europe Member States: Second Report ("Marty Report"), Doc. 11302 rev., 11 June 2007, <http://assembly.coe.int/Documents/WorkingDocs/Doc07/edoc11302.pdf>; International Committee of the Red Cross, "Report on the Treatment of Fourteen 'High Value Detainees' in CIA Custody", February 2007, http://humanrights.ucdavis.edu/projects/the-guantanamo-testimonials-project/testimonies/testimonies-of-the-red-cross/icrc_20070214.pdf; Central Intelligence Agency Inspector General, "Special Review: Counterterrorism Detention and Interrogation Activities (September 2001–October 2003) (2003-7123-IG), 7 May 2004 (unclassified version released in August 2009), http://media.washingtonpost.com/wp-srv/nation/documents/cia_report.pdf.

21 Craig Whitlock, "Lithuanian Resignation Tied to CIA Inquiry", Washington Post, 15 December 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/12/14/AR2009121403426.html>.

22 Kevin Dugan, "Another Dismissal for CIA Involvement?" Baltic Reports, 16 December 2009, <http://balticreports.com/?p=6741>.

23 Leigh Phillips, "Lithuanian Foreign Minister Quits in CIA Prison Row", EU Observer, 22 January 2010, <http://euobserver.com/9/29321>. Vygaudas Usackas was subsequently appointed the EU's special representative and head of the EU mission for Afghanistan. The EU fended off criticism as some MEPs questioned the appointment in light of Vygaudas Usackas' denials that Lithuanian state actors were complicit in the CIA's rendition and secret detention programmes. See Euractiv, "Barroso Sparks Row Over EU Overseas Appointments", 23 February 2010, <http://www.euractiv.com/en/future-eu/barroso-sparks-row-over-eu-overseas-appointments-news-276317>.

24 Letter from the Prosecutor General's Office of the Republic of Lithuania to Amnesty International, 26 March 2010.

25 United Nations Human Rights Council, Joint study on global practises 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, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Arbitrary Detention, and the Working Group on Enforced and Involuntary Disappearances [hereinafter "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>. An advanced unedited version was originally published on 26 January 2010.

26 According to the UN Joint Study on Secret Detention, "Data strings are exchanges of messages or digital data, mostly in the form of coded text and numbers between different entities around the world on aeronautical telecommunications networks. They record all communications filed in relation to each particular aircraft, as its flights are planned in advance, and as it flies between different international locations". Para. 116, fn. 201.

27 UN Joint Study on Secret Detention, para. 120.

28 Findings of the parliamentary investigation by the Seimas Committee on National Security and Defence, p. 5.

29 European Committee for the Prevention of Torture news release, "Council of Europe Anti-Torture Committee Visits Lithuania", 23 June 2010, <http://www.cpt.coe.int/documents/ltu/2010-06-23-eng.htm>. According to the release, "Another issue addressed by the CPT's delegation was the alleged existence some years ago on Lithuanian territory of secret detention facilities operated by the Central Intelligence Agency of the United States of America. The delegation had talks with the Chairman of the Lithuanian Parliament's Committee on National Security and Defence, Arvydas Anušauskas, about the findings of the investigation recently undertaken by the Committee in relation to this matter. It met members of the Prosecutor General's Office entrusted with the pre-trial investigation which had subsequently been launched, in order to discuss the

scope and progress of the investigation. And the issue was also raised at a meeting with Jonas Markevičius, Chief Adviser to the President of Lithuania. Further, the delegation visited the facilities referred to as 'Project No. 1' and 'Project No. 2' in the report of the Parliamentary Committee. At the end of the visit, the CPT's delegation had consultations with Remigijus Šimašius, Minister of Justice, and Algimantas Vakarinas, Vice-Minister of the Interior, and presented to them its preliminary observations".

30 European Committee for the Prevention of Torture, "Report to the Lithuanian Government on the Visit to Lithuania Carried Out from 14-18 June 2010", [hereinafter "CPT Report"] CPT/Inf (2011) 17, Strasbourg, 19 May 2011, para. 68, http://www.cpt.coe.int/documents/ltu/2011-17-inf-eng.htm#_Toc281836516.

31 CPT Report, para. 68.

32 CPT Report, para. 68.

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

34 CPT Report, para. 71.

35 CPT Report, para. 72.

36 Reprieve, Letter to Lithuanian Prosecutor General and President, 20 September 2010, http://www.reprieve.org.uk/static/downloads/2010_09_20_CSS_Letter_Darius_Valys_Lithuania_investigation.pdf. See also, BBC Our World Documentary, "Europe's Secret CIA Prisons", October 2010, Part I: <http://www.youtube.com/watch?v=X295HENrzmI> and Part II: <http://www.youtube.com/watch?v=-5XB5WfVuc4&feature=related> (allegations of CIA secret prisons in Poland and Lithuania).

37 Reprieve, Letter to Lithuanian Prosecutor General and President, 20 September 2010. See also, Adam Goldman and Matt Apuzzo, "CIA Moved Gitmo Suspects in 'Game to Hide Detainees from the Courts'", 6 August 2010, http://www.msnbc.msn.com/id/38588813/ns/us_news-security.

38 Reprieve, Letter to Lithuanian Prosecutor General and President, 20 September 2010.

39 Delfi, "D.Grybauskaitė: apie CŽV kalinius gali komentuoti tik JAV", 21 September 2010, <http://www.delfi.lt/news/daily/lithuania/dgrybauskaitė-apie-czv-kalinius-gali-komentuoti-tik-jav.d?id=36762765>.

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43 See Jason Leopold, "Torture Diaries, Drawings and the Special Prosecutor", Truthout, 29 March 2010, p. 5, <http://www.truth-out.org/torture-diaries-drawings-and-special-prosecutor58108>.

44 Jason Leopold, "US Recants Claims on 'High Value' Detainee Abu Zubaydah", Truthout, 30 March 2010, <http://www.truth-out.org/government-quietly-recants-bush-era-claims-about-high-value-detainee-zubaydah58151>.

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47 19 November 2010, "Ikitėisminio tyrimo dėl CŽV kalėjimo nenutrauks"/"Pre-trial Investigation of the CIA Prison will not be Closed", Irytas.lt, <http://www.irytas.lt/-12901707261288646487-ikiteisminio-tyrimo-d%C4%97i-c%C5%BEv-kal%C4%97jimo-nenutrauks.htm>;

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77 See Conclusions and Recommendations of the Committee against Torture: United States of America, UN Doc. CAT/C/USA/CO/2, 18 May 2006, para. 17; UN Human Rights Committee, United States of America: Concluding Observations, UN Doc. CCPR/C/USA/CO/3/Rev.1, 18 December 2006, para. 12; UN Working Group on Arbitrary Detention, Opinion No. 29/2006 (United States of America), 1 September 2006, para. 21.

78 International Law Commission (ILC), Articles on Responsibility of States for Internationally Wrongful Acts, Article 16 [UN General Assembly Resolution A/RES/56/83, 12 December 2001]. Article 16 reflects a rule of customary international law, binding on all States: International Court of Justice, *Bosnia and Herzegovina and Herzegovina v Serbia* (Genocide Convention), 26 February 2007, para. 420. Already recognized examples include facilitating the abduction of a person on foreign soil, knowingly providing an "essential facility" and "placing its own territory at the disposal of another state": see ILC Commentaries, UN Doc. A/56/10, 2001, pp. 66-67, paras. 1 and 8; and European Commission for Democracy through Law (Venice Commission), Opinion on the international legal obligations of Council of Europe member States in respect of secret detention facilities and inter-State transport of Prisoners, Opinion no. 363/2005, CDL-AD(2006)009, 17 March 2006, para. 45. See also House of Lords/House of Commons Joint Committee on Human Rights, *Allegations of UK Complicity in Torture Twenty-third Report of Session 2008-09*, HL Paper 152, HC 230 (4 August 2009), paras. 17-35.

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Covenant on Civil and Political Rights as applied by the Human Rights Committee in, for example, General Comment No. 20 (1992), paras. 9 and 12.

82 European Court of Human Rights, *Ilaşcu and others v Moldova and Russia*, paras. 331-333; Venice Commission, para. 130.

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88 See UN Committee against Torture, *Concluding Observations on Canada* (2006), para. 16; House of Lords/House of Commons Joint Committee on Human Rights, *Allegations of UK Complicity in Torture Twenty-third Report of Session 2008–09*, HL Paper 152, HC 230 (4 August 2009). Regarding responsibility for knowingly conducting an interrogation in a situation of torture or other ill-treatment, even where actual infliction of pain and suffering is actually perpetrated by others, see also ICTY, *Furundžija Appeal Judgment* (21 July 2000), para. 120; and Articles on State Responsibility, Articles 40 and 41 and associated commentaries.

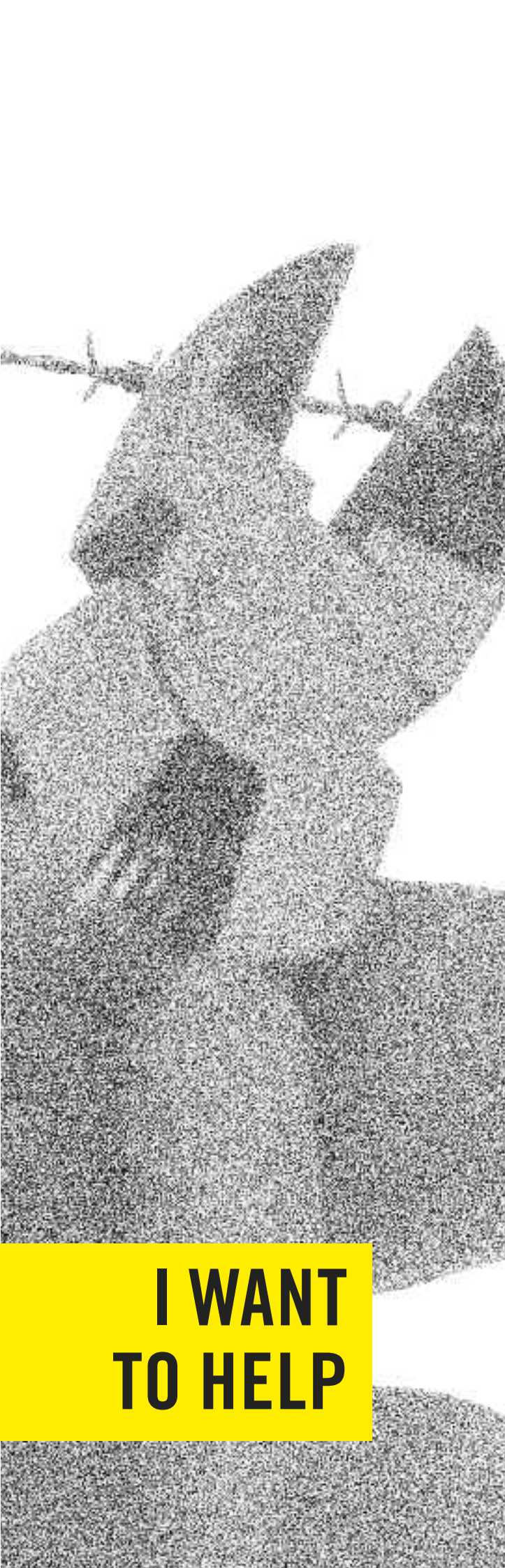
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90 Human Rights Committee, General Comment No. 29 on States of Emergency, UN Doc. CCPR/C/21/Rev.1/Add.11 (2001), para 14.

91 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly resolution 60/147 of 16 December 2005 (hereinafter UN Basic Principles on the Right to a Remedy), principles 11-24.

92 UN Basic Principles on the Right to a Remedy, principles 18-23.

93 See Parliamentary Assembly of the Council of Europe, Resolution 1562 (2007) and Recommendation 1801 (2007); Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism, Martin Scheinin, Human Rights Council, UN Doc A/HRC/10/3 (4 February 2009), paras. 58-63,75; Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights, *Assessing Damage, Urging Action* (International Commission of Jurists, Geneva, 2009), p. 90; Amnesty International, "Nine Steps States Must Take against Secret Detention Worldwide", (Index: IOR 41/015/2010), 1 June 2010.



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UNLOCK THE TRUTH IN LITHUANIA **INVESTIGATE SECRET PRISONS NOW**

The Lithuanian government has admitted its involvement in the US-led rendition and secret detention programmes. An investigation opened into two secret CIA detention sites that had already been acknowledged was abruptly terminated in January 2011 on highly dubious grounds. No one has ever been held accountable.

There is an absence of any meaningful accountability for these operations in the USA, and increasingly disturbing signs that the same may happen in Europe. The Lithuanian government has an opportunity to reinstate its investigation into both its own involvement in these operations, and that of the USA and its agents on Lithuanian territory, and finally to reveal the full truth about the secret prisons. It should conduct an independent and effective investigation that will serve as a model for accountability across the region and provide full redress for any victims of these practices.

Information gleaned from numerous public sources, coupled with additional information secured by Amnesty International and other organizations make it abundantly clear that the investigation can and should continue. In this report, Amnesty International suggests critical lines of inquiry that have not been pursued, and calls on the authorities to re-open the investigation.

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Index: EUR 53/002/2011
September 2011

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