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INTRODUCTION

Amnesty International submits this briefing to the United Nations (UN) Human Rights Committee (the Committee) ahead of its consideration of Lithuania's third periodic report under the International Covenant on Civil and Political Rights (the Covenant) at the Committee's 105th session in July 2012.

The document highlights Amnesty International's concerns about the failure of the Lithuanian authorities to comply with its obligations under the Covenant with respect to two areas the Committee raised in its list of issues to be taken up in connection with the review of the state report at its forthcoming session¹:

- First, the organization remains concerned at discriminatory legislation and restrictions to freedom of expression, which violate the rights of lesbian, gay, bisexual and transgender (LGBT) individuals under the Covenant (question 6 on the list of issues).
- Second, the organization remains concerned about the lack of accountability for Lithuania's alleged complicity in the United States-led rendition and secret detention programmes (question 8 on the list of issues).

The document provides recent updates in relation to these concerns and in light of the government's written replies to the list of issues.²

NON-DISCRIMINATION AND FREEDOM OF EXPRESSION OF LGBT INDIVIDUALS (ARTS. 2 AND 26, ART. 19)

Discriminatory legislation and restrictions to freedom of expression (Question 6 on the List of Issues)

Amnesty International is concerned about provisions in Lithuanian legislation which in themselves are discriminatory or which in their implementation could be used to justify discrimination against lesbian, gay, bisexual and transgender individuals (LGBT). We are also concerned about proposals to amend existing legislation, introducing further discriminatory provisions against LGBT individuals.

¹ See Human Rights Committee, *List of issues to be taken up in connection with the consideration of the third periodic report of Lithuania (CCPR/C/LTU/3)*, 5 December 2011, (CCPR/C/LTU/Q/3), http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.LTU.Q.3_en.pdf. Lithuania's periodic report is available at: <http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/CCPR-C-LTU-3.doc>.

² See *Replies from the Government of the Republic of Lithuania to the list of issues (CCPR/C/LTU/Q/3) to be taken up in connection with the consideration of its third periodic report (CCPR/C/LTU/3)*, 13 April 2012 (CCPR/C/LTU/Q/3/Add.1), http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.LTU.Q.3.Add.1_en.doc.

The Law on the Protection of Minors against the Detrimental Effect of Public Information

Article 4 of this law, in the amended version in force since 1 March 2010, entitled Public Information Having a Detrimental Effect on the Development of Minors, states:

“1. Public information having a detrimental effect on the mental health, physical, intellectual or moral development of minors shall be considered the information: ...14) whereby homosexual, bisexual or polygamous relations are promoted; 15) whereby family relations are distorted, its values are scorned; ...

2. Dissemination of information conforming to at least one of the subparagraphs of paragraph 1 of this Article shall be prohibited or restricted in accordance with the procedure set forth by this Law.”

Article 7, entitled Restriction to Disseminate Information Having a Detrimental Effect on the Development of Minors, reads:

“1. It shall be prohibited to directly disseminate to minors: offer to them, transfer or otherwise permit personal use of the information as defined in subparagraphs 1-19 of paragraph 1 of Article 4 of this Law. Such public information must be disseminated only in places which are inaccessible to minors and/or during such times when minors would not be able to access it, or when, by employing technical measures, the dissemination of such information to minors is limited or conditions are created for the persons responsible for the upbringing and care of the children to ensure the possibility to limit the dissemination of such public information to minors.”³

Replying to questions about this law during the Universal Periodic Review of Lithuania in October 2011, the government stated that it “... was adopted in order to implement the requirement of the Convention on the Rights of the Child that appropriate guidelines be developed for the protection of the child from information and material injurious to his or her well-being. As the original wording of the law evoked misgivings about its possible interpretation in a manner discriminatory against sexual minorities, the law was amended. Its current version did not classify information on homosexuality as detrimental to minors and actually protected sexual minorities by classifying as detrimental information which humiliates a person because of their sexual orientation.”⁴

However, Amnesty International remains concerned at Article 4(1) subparagraphs 14) and 15) because it considers that these provisions could be used to restrict freedom of expression

³ Translation from Lithuanian available at: <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/319-1.pdf>.

⁴ United Nations (UN) Human Rights Council, 19th Session, *Report of the Working Group on the Universal Periodic Review: Lithuania*, 19 December 2011 (A/HRC/19/15), http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-15_en.pdf, paragraph 35.

and assembly of LGBT individuals and those who advocate for their rights. Amnesty International does not agree that recommendations 90.10 and 90.11 of the Universal Periodic Review of Lithuania held in October 2011, regarding the review of this law to protect the human rights of LGBT individuals, have been fully implemented, as the government claims.⁵

Amendments to the Code of Administrative Offences

Amnesty International is concerned at the recent attempts made to amend the Code of Administrative Offences and other laws with the aim of prohibiting the promotion of homosexual relations in public places, and thus potentially violating the right to freedom of expression and assembly of LGBT individuals and those who advocate for their rights. Although the latest such attempt was voted down in the Lithuanian parliament in June 2012, it is unlikely to be the last attempt, as the information below indicates.

On 23 September 2010, the Lithuanian parliament adopted its agenda for the autumn session, including the consideration of legislative amendments to the Penal Code and to the Code of Administrative Offences which would criminalize the “public propagation of homosexual relations”.⁶ In October 2010, the amendment to the Penal Code was withdrawn; however, the parliament decided to continue the consideration of the amendment to Article 214 of the Code of Administrative Offences,⁷ introducing administrative liability for “public propagation of homosexual relations” and stating that “public promotion of homosexual relations is to be punished by a fine from 2,000 to 10,000 Litas” (approximately €580-2,900).

According to information provided in April 2012 by the Lithuanian government in its replies to the Committee’s list of issues, “on 19 October 2010, Member of the Seimas [Lithuanian parliament] Petras Gražulis tabled a legislative proposal amending Articles 224 and 259(1) of the Code on Administrative Offences and Article 214(30) of the Civil Code. The proposal was returned to the originator, and an improved version was subsequently filed on 22 April 2011. On 28 April 2011, the Seimas approved the proposal and appointed a key Committee of Legal Affairs. The Committee requested government’s opinion on the matter, which turned out to be negative. The Committee on Legal Affairs rejected the proposal on 15 December 2011. The Seimas will have to deliberate on the Committee’s recommendation regarding the

⁵ Human Rights Council, Report of the Working Group on the Universal Periodic Review, Lithuania, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/19/15/Add.1, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-15-Add1_en.pdf, paragraph 10.

⁶ See also Amnesty International, European Institutions Office, *Lithuania: parliament moves to criminalize homosexuality* (update on homophobic legislation in Lithuania), September 2009, <http://www.amnesty.org/en/news-and-updates/news/lithuanian-parliament-moves-criminalize-homosexuality-20090909>.

⁷ Project of law n. XIP-2595 introducing Article 214(30) in the Code of Administrative Offences.

rejection of the proposal in question.”⁸

Following a parliamentary vote against the proposal on 26 April 2012, the amendment to the Code of Administrative Offences aimed at introducing the new Article 214(30) entitled Protection of Constitutional and Moral Values, was again put to the vote in the Seimas on 5 June.⁹ In its most recent formulation the amendment stated that the public denigration of constitutional moral values and the principles of family enshrined in the constitution and the organization of events contradicting social morality should be subjected to a fine from 1,000 to 3,000 litas (\$380 to 1,149, €290 to 870). If the proposed offences were committed repeatedly, the fine would be from 3,000 to 6,000 litas (\$1,149 to 4,450, €870 to 1,740). On 5 June 2012, the proposed amendment was again voted against.

Although this latest attempt at introducing further legislation with the potential to discriminate against LGBT persons was defeated, Amnesty International remains concerned that similar initiatives, which are discriminatory and would unlawfully restrict the rights to freedom of expression and non-discrimination of LGBT individuals in violation of Lithuania’s obligations under international human rights law, may be resumed in the near future. Should sanctions of this kind pass, any public expression or portrayal of, or information about, homosexuality would be banned, including, for example, campaigning on human rights issues relating to sexual orientation and gender identity, providing sexual health information to LGBT individuals and organizing events such as gay film festivals and Pride marches (one of which was held in Vilnius in May 2010).

Amendments to the Law on Provision of Information

Following amendments which entered into force on 18 October 2010, Article 39 of the Law on Provision of Information stated that advertising and audiovisual communication “must not contain any manifestation or promotion of sexual orientation” and hence prohibited any reference to the issue of sexual orientation in this domain. Furthermore, the law did not include “sexual orientation” among the prohibited grounds of discrimination. It also stated that advertising and audiovisual communication should not “be offensive to religious or political beliefs”. This provision was incompatible with the prohibition of discrimination based on sexual orientation and the right to freedom of expression.

In June 2011, the Lithuanian Parliament amended Article 39 by deleting the ban on manifestation or promotion of sexual orientation and adding sexual orientation as one of the prohibited grounds of discrimination to the law. However, the prohibition of advertising and audiovisual communication that could be “offensive to religious or political beliefs” was maintained in the article.

Under international human rights law, the right to freedom of expression may only be subject to restrictions which meet all elements of a stringent three-part test: they must be prescribed by law; address a specific legitimate purpose permitted by international law, that is, ensuring

⁸ *Replies from the Government of the Republic of Lithuania to the list of issues*, paragraph 32.

⁹ Project of law n. XIP-2595 introducing Article 214(30) in the Code of Administrative Offences.

respect for the rights of others or protecting certain public interests (national security, public safety, public order or health); and be demonstrably necessary and proportionate for that purpose. According to the case-law of the European Court of Human Rights (ECtHR), the permissible legitimate purposes must be narrowly interpreted and must not be used to impose restrictions on forms of expression because other people find them objectionable or offensive. The Human Rights Committee has repeatedly noted that the right to freedom of expression includes the right to express sentiments that may be offensive to others. In addition, international standards stipulate that restrictions must not be discriminatory.

In light of the above, Amnesty International considers that the broad prohibition of advertising and audiovisual communication that is “offensive to religious or political beliefs” contained in Article 39, violates the right to freedom of expression and should be repealed.

Amendment to Article 38 of the Constitution of Lithuania

A constitutional amendment has been proposed and is being examined by parliament aimed at restricting the definition of family in the Constitution of Lithuania. The proposed formulation of Article 38 of the Constitution states that “... family shall be created by marriage. Marriage shall be concluded upon the free mutual consent of man and woman. Family also arises from fatherhood and motherhood ...”. Amnesty International is concerned that the explicit articulation of family as between a married man and woman may lead to discrimination on grounds of marital status and sexual orientation, and would be in breach of Article 2 of the International Covenant on Civil and Political Rights, which stipulates that states shall not discriminate on any of the rights enshrined in the Covenant, including the right to marry and the right to found a family. This could result in the discrimination not only of LGBT individuals wishing to form a family, and unmarried opposite-sex couples, but also of groups of people related by close biological ties, who would generally be described as families, such as siblings whose parents have died, or children in the care of grandparents or other relatives following their parents’ death. Potential discrimination would include arbitrary exclusion or reduction in access to social benefits.

Moreover, in 2010 the ECtHR stated that the right to marry laid down in Article 12 of the European Convention on Human Rights is no longer “limited to marriage between two persons of the opposite sex” and that “it is artificial to maintain the view that, in contrast to a different-sex couple, a same-sex couple cannot enjoy ‘family life’ for the purposes of Article 8”¹⁰. The same position has also been upheld in a judgment of the Constitutional Court of the Republic of Lithuania dated 28 September 2011, which ruled that the “Family Policy Concept” adopted in June 2011 by the Seimas – restricting the definition of family to the wedlock between a man and a woman – is unconstitutional, and stressed that the concept of family cannot be based solely on the institution of marriage.¹¹

¹⁰ Judgment of the European Court of Human Rights in *Schalk and Kopf v Austria*, adopted on 24 June 2010, <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=870457&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

¹¹ Ruling on the compliance of the provisions of the State Family Policy concept as approved by

Amnesty International is concerned that this proposed amendment may result, if passed as it currently stands, in discrimination on grounds of marital status and sexual orientation and thus be in violation of international and European human rights law and standards.

Amendment to the Civil Code

Amnesty International is concerned about the proposed amendment to the Civil Code (Article 2.27) prohibiting gender reassignment surgery, registered at the Seimas on 9 March 2012, which is at odds with the ECtHR judgment against Lithuania on the subject.¹² In 2007, the Court ordered Lithuania to regulate the procedures to undergo gender reassignment, as already provided for under the Civil Code. The proposed amendment is directly discriminatory against individuals on account of their gender identity.

COUNTER-TERRORISM MEASURES AND RESPECT FOR COVENANT GUARANTEES

Failure to adequately investigate alleged complicity in the US-led rendition and secret detention programmes (Question 8 on the List of Issues)

Amnesty International is deeply concerned that the government of Lithuania has failed to conduct an independent, impartial, full and effective investigation into alleged Lithuanian complicity in the US Central Intelligence Agency's (CIA) rendition and secret detention programmes, which operated in the aftermath of the attacks in the USA on 11 September 2001.¹³

Revelations about Lithuanian complicity in the CIA's rendition and secret detention programmes originated in media reports. 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

Resolution no. X-156 of 03/06/2008 of the Seimas with the Constitution of the Republic Lithuania, Case n. 21/2008.

¹² European Court of Human Rights, Case of *L. v. Lithuania*, Judgement of 11 September 2007 (application no.27527/03), <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=823071&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

¹³ For a more detailed explanation of Amnesty International's concerns please see: Amnesty International, *Europe: Open secret: Mounting evidence of Europe's complicity in rendition and secret detention*, 15 November 2010 (AI Index: EUR 01/023/2010), <http://www.amnesty.org/en/library/info/EUR01/023/2010/en>.

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".¹⁴

The day after the media revelations, Swiss Senator Dick Marty, Rapporteur on secret detentions for the Parliamentary Assembly of the Council of Europe's Committee on Legal Affairs and Human Rights, publicly stated that his own confidential sources appeared to confirm the report of a secret prison in Lithuania.¹⁵

As a result of the media reports, the Lithuanian parliament mandated in November 2009 that the Seimas (Lithuanian Parliament) Committee on National Security and Defence conduct an inquiry and present findings to the full parliament. The inquiry's final report, released on 22 December 2009, concluded that two secret detention centres had been established by the CIA in Lithuania in 2002 and 2004, respectively; it concluded that one was not used (Project No. 1), and that it could not establish on the information available to it whether another, at Antaviliai, outside Vilnius, had ever actually held prisoners (Project No. 2). The report stated that, although it could not be determined that persons were held in Project No. 2, "the layout of the building, its enclosed nature and protection of the perimeter as well as fragmented presence of the State Security Department (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".¹⁶ The report, however, also 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".¹⁷ The parliamentary inquiry report noted that there was an "intensive exchange of data" between the Lithuanian State Security Department (SSD) and State Border Guard Service (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".¹⁸

¹⁴ 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>. See also 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>.

¹⁵ 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.

¹⁶ See *Findings of the parliamentary investigation by the Seimas Committee on National Security and Defence concerning the alleged transportation and confinement of persons detained by the Central Intelligence Agency of the United States of America in the territory of the Republic of Lithuania*, 22 December 2009, http://www3.lrs.lt/pls/inter/w5_show?p_r=6143&p_k=2.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

The February 2010 UN Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism that was prepared by four Special Procedure mandate-holders, however, appeared to confirm rendition aircraft landings in Lithuania in September 2004 and July 2005:

“Research for the present study, including data strings relating to Lithuania, appears to confirm that Lithuania was integrated into the secret detention programme in 2004. 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”.¹⁹

The key recommendation in the Lithuanian parliament inquiry’s final report was a proposal that the Prosecutor General’s Office investigate whether the acts of three former senior SSD officials amounted to the criminal “abuse of authority” under Lithuanian law. In January 2010, the Lithuanian Prosecutor General’s Office opened a criminal investigation into state actors’ alleged involvement in the establishment and potential operation of the two secret sites.

The two secret sites were subsequently visited in June 2010 by a delegation from the European Committee for the Prevention of Torture (CPT). In its report on the visit to Lithuania carried out on 14-18 June 2010, published with the agreement of the Lithuanian authorities on 19 May 2011²⁰, the CPT provided an initial evaluation of the then on-going criminal investigation, expressing concerns as to the promptness of the investigation, the

¹⁹ Human Rights Council, *Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Martin Scheinin; the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Novak; the Working Group on Arbitrary Detention Represented by its Vice-Chair, Shaheen Sardar Ali; and the Working Group on Enforced or Involuntary Disappearances Represented by its Chair, Jeremy Sarkin* [hereinafter “UN Joint Study on Secret Detention”], 19 February 2010 (A/HRC/13/42), pp. 54-55, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-42.pdf>. A November 2009 press report quoted an unnamed former CIA official saying that pilots flying into Lithuania had submitted flight plans for landings in neighbouring countries (so-called “dummy” flight plans) and that Finland and Poland were used most frequently. Former UN Special Rapporteur on Counter-Terrorism and Human Rights Martin Scheinin, a co-author of the UN joint study on secret detention, stated in the Finnish press on 4 November 2011 that it had been known that Helsinki was used as a “planned destination” for suspicious flights to Lithuania.

²⁰ See <http://www.cpt.coe.int/documents/ltu/2011-17-inf-eng.htm>. The CPT’s landmark visit signified the first time that an independent monitoring body had visited a secret prison established by the CIA in Europe in the context of the US government’s global counterterrorism operations post-11 September 2001, and made that visit known to the public.

comprehensiveness of its scope and its thoroughness. In particular, the CPT pointed out that the Lithuanian Prosecutor General, invoking state secrets, had declined to send the CPT specific information the Committee had requested.

On 21 September 2010, 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. 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. He was held at Szymany for almost 10 months, the letter alleged, and then transferred in September 2003 to Guantánamo Bay, from where he was subsequently transferred to Morocco in 2004. The letter further 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 Guantánamo Bay in September 2006. Amnesty International cannot confirm this allegation, but urged the Prosecutor General to diligently pursue all relevant lines of inquiry before the investigation was suddenly closed in January 2011.

In a surprise announcement on 14 January 2011, the Lithuanian Prosecutor General announced that the pre-trial investigation of the three SSD officials for “abuse of authority” had come to a close. Amnesty International deplored the closure of the investigation as premature, wrote to the Prosecutor General indicating several lines of inquiry that had not yet been pursued, and formally requested that the criminal investigation continue until all relevant information and evidence were collected and assessed.²¹ The Prosecutor General’s written justification for the termination of the investigation stated the following:

- No information had been obtained indicating that the aircraft had been used to illegally transport any persons to or from Lithuania. Therefore, the SSD officials did not abuse their office or exceed the limits of their authority and there was consequently no basis for initiating criminal charges.
- The statute of limitations on the offence of “abuse of authority” under the Lithuanian Penal Code is five years and would have run from the beginning of 2003, when the construction of the sites was completed. Thus, the statute of limitations had expired by 2008.
- No data was received to suggest that one of the secret facilities, Project No. 2, was used for holding detainees and therefore no offence was committed. The decision further stated that “[t]he real purpose of the building cannot be revealed as it constitutes a state secret”.
- The Lithuanian Law on Intelligence does not require issues related to international cooperation to be “cleared” at any political level. Although SSD officials did not inform high-level state officials of the objectives and logistics of these projects, the Prosecutor General found no evidence of a criminal offence or abuse of authority on their part.
- The actions of the former SSD officials could possibly have given rise to disciplinary

²¹ Amnesty International, *Lithuania must reopen CIA Secret Prison Investigation* (Public Statement), 18 January 2011, <http://www.amnesty.org/en/news-and-updates/lithuania-must-reopen-cia-secret-prison-investigation-2011-01-18>.

offences; however, as they were no longer SSD employees, no disciplinary sanctions could be applied to them. Moreover, under the SSD's statute, disciplinary sanctions can only be applied within a year of the commission of the offence.

- Some of the materials examined in the course of the investigation constitute a state secret and an official secret.

Amnesty International considers that the Prosecutor General's justification for terminating the investigation is inconsistent with evidence secured and analyzed by the Special Procedures of the UN Human Rights Council as reported in their Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism, issued in February 2010.

Moreover, the investigation by the Prosecutor General commenced in January 2010, well after the statutes of limitation had expired on the alleged "abuse of authority" charges and on the provision for disciplinary charges under the SSD statute. Amnesty International notes that, while the Prosecutor General must have been aware of this, staff from the Prosecutor General's office, in a March 2010 letter to Amnesty International and again during a November 2010 meeting in Vilnius, assured the organization that the investigation would examine all relevant lines of inquiry, including with respect to human rights violations that may have occurred as a result of the establishment and alleged operation of the secret sites. Amnesty International is not in a position to assess whether in fact domestic statutes of limitations on some charges, criminal or disciplinary, may have expired as a matter of Lithuanian national law, though it would be surprising if the active concealment of the activities in question would not have had any possibility of extending or postponing the limitation period under national law. In any event, no statute of limitations should be applicable to serious human rights violations, such as enforced disappearance and torture and other ill-treatment, under Lithuania's obligations under customary international law, the Covenant, UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the European Convention on Human Rights and Fundamental Freedoms. Having acknowledged the existence of secret detention facilities in Lithuania, it is incumbent on the government of Lithuania to ensure that a full, independent, impartial and effective investigation is conducted. The investigation by the Prosecutor General's office from January 2010 to January 2011 cannot be considered to fulfil these requirements.

It is also critical to note that the Lithuanian Prosecutor General appears never to have fully investigated links between the planes alleged to have landed in Lithuania, and their landings or overflights in Finland and Denmark, including evidence of such links secured and analyzed by the Special Procedures of the UN Human Rights Council as reported in their Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism.

In January 2011, Amnesty International wrote to the Lithuanian Prosecutor General to inquire as to whether the Prosecutor's office had contacted the authors of the UN joint study on secret detention to request information regarding the study's allegations about landings in Lithuania of aircraft operating in the context of the US rendition programme, specifically N88ZL on 20 September 2004 and N63MU on 28 July 2005. Amnesty International stated that it was aware that *ABC News* had refused to communicate to the Prosecutor General's office any information regarding its confidential sources. It is Amnesty International's understanding that the Lithuanian Prosecutor General has never contacted the authors of the

report about this information.

Moreover, no direct communication appeared to have been pursued by the Prosecutor General's office with the government of Finland regarding an aircraft operating in the context of the CIA rendition programme that was spotted in Helsinki on the same day that the UN Joint Study alleged the plane had landed in Lithuania.²²

In late February 2011, Amnesty International received a response from the Prosecutor General, stating that the organization had no standing in the investigation and therefore no right to information secured by his office and that the information gathered in the course of the investigation could not be made public under Lithuanian law as much of it was subject to national security classification.

Amnesty International wrote again in May 2011 to the Prosecutor General, noting that, in order for the Prosecutor General to conclude that no persons had been held at the two sites, an independent, impartial, full, and effective investigation would have had to have been conducted, including outreach and communication with a variety of relevant actors, including many beyond Lithuania's borders. The Lithuanian authorities have clearly failed to conduct such an investigation. Moreover, state secrecy should never be invoked to shield the state and its agents from accountability for fundamental human rights violations, including torture and enforced disappearance.

Furthermore, as detailed in Amnesty International's report *Unlock the Truth in Lithuania: Investigate Secret Prisons Now*²³, published in September 2011, critical, previously undisclosed information was uncovered by UK-based NGO Reprieve, and confirmed independently by Amnesty International, regarding an aircraft operating in the context of the rendition programme that landed in Vilnius in 2005. This significant new information about aircraft landings in Lithuania does not appear to have been investigated by the Prosecutor General.

Amnesty International has continued to call on the Lithuanian authorities to investigate, in particular:

- The allegations that Abu Zubaydah had been held in Lithuania, including a February 2005 flight from Morocco to Vilnius uncovered by London-based NGO Reprieve.
- Aircraft landings in Lithuania in September 2004 and July 2005 which may have been part of the US-led rendition and secret detention programmes.
- Links between aircraft landings in Lithuania and a number of other European countries, including Poland.

These possible leads would have easily come to the notice of the Lithuanian prosecutors had they conducted a rigorous and comprehensive investigation. Whether the Prosecutor General

²² See above, n. 21.

²³ Index Number: EUR 53/002/2011, 29 September 2011, <http://www.amnesty.org/en/library/info/EUR53/002/2011/en>.

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.

In its written replies to the Committee's list of issues the Lithuanian government stated that "the possibilities of renewing the investigation were considered after October 2011, when the public organisations Amnesty International, Reprieve and the Human Rights Monitoring Institute supplied information on the flights of CIA-related aircraft over the territory of the Republic of Lithuania. This information was evaluated together with the circumstances established during the terminated pre-trial investigation and it was found to be *non-essential* and *irrelevant* for the decision in the case. The terminated pre-trial investigation concluded that there was no evidence of illegal incarceration in Lithuania of any foreign citizens, while the information supplied by the public organisations did not shed any doubt on that decision. If any new data arrive or new circumstances come to light concerning this issue that would justify the reopening of the investigation, information on further implementation of this recommendation will be presented in another report".²⁴

A delegation from the European Parliament (EP) visited Lithuania in April 2012 to evaluate Lithuania's efforts to investigate its role in the CIA programmes. (The trip was made in the context of the EP's follow-up to a 2007 special committee report on European Union member states' complicity in the CIA's rendition programme.) The delegation has since reported that it was not satisfied that Lithuania had discharged its obligation to conduct an independent, impartial, thorough and effective investigation into its involvement in the rendition and secret detention programmes. The EP will table its report for adoption in September 2012.

Amnesty International continues to call on the Lithuanian government to re-open the investigation into alleged Lithuanian complicity in the US-led rendition and secret detention programmes and to hold accountable any individuals responsible for human rights violations – including torture and enforced disappearance – that may have occurred on Lithuanian territory.

²⁴ See above, n.2, paragraph 37.

RECOMMENDATIONS FOR ACTION BY THE STATE PARTY

Amnesty International calls on Lithuania:

On discriminatory legislation and restrictions on freedom of expression of LGBT individuals

- To revise the Law on the Protection of Minors against the Detrimental Effect of Public Information to remove all possibilities of it being applied in a manner that stigmatises or discriminates against LGBT people or violates their rights to freedom of assembly and expression;
- To refrain from legislative initiatives which would criminalize homosexual relations or otherwise infringe the rights of LGBT people to freedom of expression and assembly;
- To review the Law on Provision of Information to ensure its compliance with the right to freedom of expression, and in particular to repeal the broad prohibition of advertising and audiovisual communication that is “offensive to religious or political beliefs” contained in Article 39;
- To reject the proposed constitutional amendment which would result in discriminatory treatment against unmarried heterosexual couples, same-sex couples and other groups;
- To reject the proposal to prohibit gender reassignment and urgently introduce adequate legislation to establish conditions and procedures for gender reassignment, as required by the ECtHR.

On accountability for complicity in the US-led rendition and secret detention programmes

- To reopen the investigation into the presence of secret detention sites on Lithuanian territory and to pursue all relevant lines of inquiry in relation to the sites, including whether and when detainees were transported to or from Lithuania, under what procedures and conditions they were transported, and their treatment in detention;
- To ensure that the terms of reference of the investigation explicitly include investigation of the direct commission by state actors or their complicity in possible human rights violations according to Lithuania’s international human rights obligations;
- To respond fully to the allegations of Lithuanian complicity in the CIA rendition programme contained in the February 2010 UN Joint Study on Secret Detention and to open a direct line of communication with the Special Procedures involved in the study to pursue any available information regarding evidence of such collusion;
- To ensure that where there is credible evidence that serious human rights violations may have occurred, no domestic statute of limitations prevents investigation and, if warranted, prosecution of certain violations, including torture and other ill-treatment, and enforced disappearance;
- To cooperate in full with the EP follow-up on EU member states’ complicity in the CIA rendition and secret detention programmes.

ANNEX

– AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE –

What is new on the alleged CIA illegal detention and transfers of prisoners in Europe?, Presentation by Julia Hall to the European Parliament, Committee on Civil Liberties, Justice and Home Affairs, 27 March 2012, AI Index: EUR 01/006/2012, <http://www.amnesty.org/en/library/info/EUR01/006/2012/en>.

Lithuania: Amnesty International urges the reopening of the criminal investigation into Lithuania's involvement in the US-led rendition and secret detention program (Public Statement), 16 March 2012, AI Index: EUR 53/001/2012, <http://www.amnesty.org/en/library/info/EUR53/001/2012/en>.

Unlock the Truth in Lithuania: Investigate Secret Prisons Now, September 2011, AI Index: EUR 53/002/2011, <http://www.amnesty.org/en/library/info/EUR53/002/2011/en>.

103th Session of the Human Rights Committee – Pre-sessional meeting on Lithuania, Letter to Zonke Zanele Majodina, Chairperson of the HRCtee, 3 August 2011, AI Index: TIGO IOR 40/2011.135, http://www2.ohchr.org/english/bodies/hrc/docs/ngos/AI_Lithuania_HRC103.pdf.

Homophobic legislation and accountability for complicity in US-led rendition and secret detention programmes, Submission to the UN Universal Period Review held in October 2011, March 2011, AI Index: EUR 53/001/2011, <http://www.amnesty.org/en/library/info/EUR53/001/2011/en>.

Current Evidence: European Complicity in the CIA Rendition and Secret Detention Programmes, 25 January 2011, AI Index: EUR 01/001/2011, <http://www.amnesty.org/en/library/info/EUR01/001/2011/en>.

Lithuania: New move towards penalizing homosexuality, 26 November 2010, AI Index: EUR 53/008/2010, <http://www.amnesty.org/en/library/info/EUR53/008/2010/en>.

European complicity in the CIA-led rendition and secret detention programmes: An update on progress toward accountability, 15 November 2010, AI Index: EUR 01/027/2010, <http://www.amnesty.org/en/library/info/EUR01/027/2010/en>.

Europe: Open secret: Mounting evidence of Europe's complicity in rendition and secret detention, 15 November 2010, AI Index: EUR 01/023/2010, <http://www.amnesty.org/en/library/info/EUR01/023/2010/en>.

Lithuania: Investigation of allegations of CIA secret prison must be effective and impartial, 28 August 2009, AI Index: EUR 53/007/2009, <http://www.amnesty.org/en/library/info/EUR53/007/2009/en>.

Lithuania admits existence of secret prison, 22 December 2009 (Web News Story: <http://www.amnesty.org/en/news-and-updates/news/lithuania-admits-existence-secret-prison-20091222>).

Lithuania: Parliament moves to criminalize homosexuality, 9 September 2009 (Web News Story: <http://www.amnesty.org/en/news-and-updates/news/lithuanian-parliament-moves-criminalize-homosexuality-20090909>).

Lithuanian parliament passes homophobic law, 14 July 2009 (Web News Story: <http://www.amnesty.org/en/news-and-updates/news/lithuanian-parliament-passes-homophobic-law-20090714>).

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