

**OPEN SOCIETY JUSTICE INITIATIVE AND
HUMAN RIGHTS MONITORING INSTITUTE**

Human Rights Committee: List of Issues for Lithuania

103RD SESSION (17TH OCT. – 4 NOV. 2011), GENEVA

**JOINT SUBMISSION TO COUNTRY REPORT TASK
FORCE BY THE HUMAN RIGHTS MONITORING
INSTITUTE AND THE OPEN SOCIETY JUSTICE
INITIATIVE**

I. INTRODUCTION

1. The Human Rights Monitoring Institute (HRMI) and the Open Society Justice Initiative (Justice Initiative) tender this submission to the Human Rights Committee at its 103rd Session, in which the Country Report Task Force will examine and adopt a list of issues addressing Lithuania's compliance with its obligations under the International Covenant on Civil and Political Rights (ICCPR). The submission highlights Lithuania's violations of Articles 7, 9 and 10 of the ICCPR arising through its complicity in the United States' Central Intelligence Agency (CIA) rendition program.
2. HRMI is a Lithuania-based non-governmental organization which aims to promote an open democratic society through implementation of human rights and freedoms. HRMI focuses its efforts on civil and political rights. It carries out research, prepares conclusions and recommendations, introduces the results of research and recommendations to the general public and State institutions, initiates strategic litigation, presents alternative reports to international human rights bodies, and implements awareness-raising and educational campaigns. HRMI has been engaged in extensive domestic and international advocacy on the subject of Lithuania's participation in the CIA rendition program. HRMI has also served as a major source of information and commentaries for the national and international media, as well as for international NGOs.
3. The Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. It fosters accountability for international crimes, combats racial discrimination and statelessness, supports criminal justice reform, addresses abuses related to national security and counter terrorism, expands freedom of information and expression, and stems corruption linked to the exploitation of natural resources. The Justice Initiative has engaged in extensive litigation and advocacy relating to European government complicity in the CIA rendition program. It represents rendition victim Khaled el-Masri in proceedings against Macedonia and Abd al-Rahim al-Nashiri in proceedings against Poland before the European Court of Human Rights. The Justice Initiative has supported local partners in filing and litigating Freedom of Information requests in Macedonia, Albania, Poland and Romania, seeking the public disclosure of information relating to government complicity in CIA renditions.
4. HRMI and the Justice Initiative urge the Human Rights Committee to adopt the issue of Lithuania's complicity in CIA renditions, including through its hosting of a secret CIA prison in 2005, where prisoners were secretly detained and possibly tortured. This complicity gave rise to violations of Articles 7, 9 and 10 of the ICCPR.

II. FACTUAL BACKGROUND

Revelations relating to a CIA secret prison in Lithuania

5. In August 2009, ABC News reported that Lithuania had hosted a secret CIA prison or “black site,” where as many as eight suspects were held for more than a year, until late 2005 when they were moved because of public disclosures about the program.¹ The secret prison was part of the U.S. government’s post-September 11, 2001 “rendition” program, under the auspices of which the CIA, in cooperation with the governments of other countries, secretly detained, interrogated and abused suspected terrorists in detention facilities outside the United States. President Bush himself publically acknowledged the rendition program on September 6, 2006, when he announced that the CIA had detained and interrogated suspected terrorists in secret locations outside the United States before transferring them to Guantánamo Bay.²
6. The day after the ABC news story broke, Swiss Senator Dick Marty, special rapporteur on secret detentions for the Legal Affairs and Human Rights Committee of the Council of Europe’s Parliamentary Assembly (PACE), publicly stated that his own confidential sources appeared to confirm the report of a secret prison in Lithuania, and called for a full, independent and credible investigation of the issue.³ In February 2010, a United Nations joint study on secret detention confirmed, on the basis of “data string” analysis that planes associated with the CIA rendition program had landed in Lithuania under cover of “dummy” flight plans.⁴
7. In September 2010, British NGO Reprieve wrote to the Prosecutor General of the Republic of Lithuania, seeking investigation of credible allegations that Zayn al-Abidin Muhammad Husayn (Abu Zubaydah) had been secretly detained at a CIA prison in Lithuania sometime between Spring 2004 and September 2006, before he was transferred to Guantánamo Bay.⁵

¹ Matthew Cole, Officials: Lithuania Hosted Secret CIA Prison To Get “Our Ear,” ABC news, August 20, 2009. Available at: <http://abcnews.go.com/Blotter/story?id=8373807>.

² President George W. Bush, “Transcript of President Bush’s Remarks, “Speech from the East Room of the White House,” 6 September 2006. Available at: <http://georgewbush-whitehouse.archives.gov/news/releases/2006/09/20060906-3.html>.

³ Dick Marty, Time for Europe to Come Clean Once and for All over Secret Detentions, August 21, 2009. Available at: http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=4859&L=2.

⁴ Human Rights Council, United Nations General Assembly, 13th Session, Agenda Item 3, “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” A/HRC/13/42, at para 120, 19 February 2010. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-42.pdf>;

⁵ Letter from Clive Stafford Smith, Director, Reprieve, to Darius Valys, Prosecutor General of the Republic of Lithuania. September 20, 2010. Available at: http://www.reprieve.org.uk/static/downloads/2010_09_20_CSS_Letter_Darius_Valys_Lithuania_investigation.pdf

8. More recently, Council of Europe Human Rights Commissioner Thomas Hammarberg observed that Lithuania, among other countries, had hosted a secret CIA prison, and “extended quite extraordinary permissions and protections to [her] American partners – while respecting conditions of total secrecy.”⁶ The Commissioner observed, “[t]oday, years later, darkness still enshrouds those who authorised and ran the Black Sites on European territories. The full truth must now be established and guarantees given that such forms of co-operation will never be repeated. Effective investigations are imperative and long overdue.”⁷

Torture and abuse of prisoners at secret CIA prisons

9. It is a well-established fact, confirmed by official U.S. government documents, that the CIA subjected its prisoners to torture and abuse under the rendition program.⁸ During rendition, the United States flew “high value detainees” (HVDs) to a secret overseas detention facility known as a “black site”; while in flight, the detainees were “shackled and deprived of sight and sound through the use of blindfolds, ear muffs and hoods.”⁹ Once detainees arrived at the black site, U.S. officials strip-searched them, photographed them, and performed medical exams. The prisoners were then subjected to detention conditions that included “white noise/loud sounds . . . and constant light during portions of the interrogation process”¹⁰ and interrogations aimed at “creat[ing] a state of learned helplessness and dependence conducive to the collection of intelligence in a predictable, reliable, and sustainable manner.”¹¹
10. According to official U.S government documents, during interrogation at black sites, the prisoners were subjected to “conditioning techniques,”— including nudity, dietary manipulation, and prolonged sleep deprivation via vertical shackling to walls (with or without the use of a diaper for bowel movements)—designed to “reduce . . . [them] to a baseline dependent state.”¹² The prisoners were also subjected to “corrective techniques” designed to correct behavior or startle detainees, which included slapping suspects across the face and abdomen, holding a suspect’s face in an intimidating manner, and the use of “attention grasps,” in which interviewers physically restrained suspects in an attempt to demand their attention.¹³ In addition, prisoners held at black sites were subjected to “coercive techniques” in order to “persuade a resistant HVD to participate with CIA interrogators.”¹⁴ These techniques included shoving prisoners against a wall (“walling”) twenty to thirty times, dousing them with water, placing

⁶ Europeans must account for their complicity in CIA secret detention and torture, Sep. 5, 2011. Available at: http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=175

⁷ *Ibid.*

⁸ See Central Intelligence Agency, “Memo to DOJ Command Center – Background Paper on CIA’s Combined Use of Interrogation Techniques,” 30 December 2004. Available at:

<http://www.aclu.org/torturefoia/released/082409/olcremand/2004olc97.pdf>.

⁹ *Ibid.* at 2.

¹⁰ *Ibid.* at 4.

¹¹ *Ibid.* at 1.

¹² *Ibid.* at 4-5.

¹³ *Ibid.* at 5.

¹⁴ *Ibid.* at 7.

them in stress positions, and holding them in “cramped confinement” in a large box up to 18 hours a day, or in a small box for two hours. Interrogators were expressly permitted to use multiple interrogation techniques during a single interrogation session, and techniques such as walling could be used several times without interruption.¹⁵

11. According to the International Committee for the Red Cross (ICRC), which interviewed Abu Zubaydah and 13 other high-value prisoners in September 2006, after they were transferred to Guantánamo Bay, the CIA subjected these prisoners to solitary confinement, incommunicado detention and abusive interrogation methods in secret overseas locations:

“[t]he fourteen [men] . . . described being subjected, in particular during the early stages of their detention, lasting from some days up to several months, to a harsh regime employing a combination of physical and psychological ill-treatment with the aim of obtaining compliance and extracting information. This regime began soon after arrest, and included transfers of detainees to multiple locations, maintenance of the detainees in continuous solitary confinement and incommunicado detention throughout the entire period of their undisclosed detention, and the infliction of further ill-treatment through the use of various methods either individually or in combination, in addition to the deprivation of other basic material requirements.”¹⁶

12. According to the ICRC,

“throughout the period during which they were held in the CIA detention programme—the detainees were kept in continuous solitary confinement and incommunicado detention. They had no knowledge of where they were being held, no contact with persons other than their interrogators or guards. . . . None of the fourteen had any contact with their families, either in written form or through family visits or telephone calls. They were therefore unable to inform their families of their fate. As such, the fourteen had become missing persons. In any context, such a situation, given its prolonged duration is clearly a cause of extreme distress for both the detainees and families concerned and itself constitutes a form of ill-treatment. . . . In addition, the detainees were denied access to an independent third party.”¹⁷

13. The ICRC further noted that the fourteen men were subjected to various forms of ill-treatment during their detention in secret locations, including suffocation by water poured over a cloth placed over the nose and mouth; prolonged stress positions such

¹⁵ *Ibid.* at 7-8.

¹⁶ ICRC Report on the Treatment of Fourteen “High Value Detainees” in CIA Custody, 14 February 2007, (ICRC Report) at 4. Available at: www.nybooks.com/icrc-report.pdf.

¹⁷ *Ibid.* at 7-8.

as standing naked with arms held extended and chained above the head; beatings by use of a collar; beating and kicking; confinement in a box; prolonged nudity; sleep deprivation; exposure to cold temperature; prolonged shackling; threats of ill-treatment; forced shaving; and deprivation/restricted provision of solid food from three days to one month.¹⁸

Lithuania's failure to conduct an effective investigation

14. In November 2009, the Lithuanian Parliament opened an inquiry on the subject of a secret CIA prison in Lithuania. The barely two-month long inquiry concluded on December 22, 2009 that there may have been two secret CIA prisons in Lithuania, but stopped short of concluding that detainees were held there. The inquiry also recommended that State Security Department officials should be investigated for the “abuse of power” under Lithuanian law.
15. In January 2010, the Lithuanian Prosecutor General assigned an investigating prosecutor to open a criminal investigation into state actors’ alleged involvement in the establishment and potential operation of the sites. However, in January 2011, the investigating prosecutor prematurely closed this investigation citing both (1) a lack of factual evidence, and (2) a statute of limitations argument which would preclude disciplinary actions against Lithuanian state officials even if factual data existed to support the allegations. The prospects for holding Lithuanian government officials accountable for complicity in secret detention and possible torture in the CIA prison were thus significantly reduced.¹⁹

III. LITHUANIA’S VIOLATION OF THE ICCPR

16. Article 2, paragraph 1 of the ICCPR provides that “[e]ach State Party to the . . . Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” The Human Rights Committee has clarified in its general comment No. 31 that “[t]he legal obligation under article 2, paragraph 1, is both negative and positive in nature, “and that “[s]tates parties are required to respect and to ensure the Covenant to all persons who may be within their territory and to all persons subject to their jurisdiction. This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party.”²⁰ Article 2 paragraph 3 further requires States to ensure that persons whose rights are violated have recourse to an “effective remedy”

¹⁸ *Ibid.* at 8-9.

¹⁹ See Amnesty International, Lithuania must reopen CIA secret prison investigation, Jan. 18, 2011. Available at <http://www.amnesty.org/en/news-and-updates/lithuania-must-reopen-cia-secret-prison-investigation-2011-01-18>

²⁰ UNHRC, General Comment 31, Nature of the General Legal Obligation Imposed on State Parties to the Covenant, 2004, CCPR/C/21/Rev.1/Add.13, paras 6& 10.

by “competent judicial, administrative or legislative authorities” which shall also enforce such a remedy when it is granted. Lithuania is therefore responsible for the violation of rights of CIA prisoners held in on Lithuanian territory and, as described below, for failing to provide an effective remedy for violations of Articles 7, 9 and 10.

Article 7: Torture and Cruel Inhuman and Degrading Treatment

17. Article 7 of the ICCPR provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.” The Human Rights Committee has made clear that complaints of torture “must be investigated promptly and impartially by competent authorities so as to make the remedy effective.”²¹ The obligation to provide an effective remedy for violations of the rights in the ICCPR “is central to the efficacy of article 2, paragraph 3,”²² and “a failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the [ICCPR].”²³ This “obligation to investigate allegations of violations ... thoroughly and effectively through independent and impartial bodies.”²⁴ Moreover, the Human Rights Committee has found that prolonged secret detention in conjunction with additional aggravating circumstances can amount to a violation of Article 7.²⁵
18. As set forth above, it is well-established—including through official U.S. government documents—that CIA prisoners were subjected to torture and abuse in secret prisons. Such torture and abuse likely occurred in the secret prison in Lithuania, in violation of Article 7. Despite being on notice of the possible abuse and torture of prisoners in Lithuania, the Lithuanian prosecutor general prematurely closed the investigation into the secret CIA prison. Lithuania is therefore in violation of Article 7 of the ICCPR.

Articles 9 and 10: Secret Detention

19. Article 9, paragraph 1 of the ICCPR provides that “[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” Furthermore, article 9, paragraph 4 stipulates that anyone deprived of their liberty by arrest or detention should be entitled to take proceedings before a court, so that the court may decide, without delay, on the lawfulness of their detention and order their release if the detention is

²¹ UNHRC, *General Comment 20*, Article 7, 1992, HRI/GEN/1/Rev.1 at 30 (1994), para. 14.

²² UNHRC, *General Comment 31, Nature of the General Legal Obligation Imposed on State Parties to the Covenant*, 2004, para. 16.

²³ *Ibid.* para. 15.

²⁴ UNHRC, *General Comment 31, Nature of the General Legal Obligation Imposed on State Parties to the Covenant*, 2004, para. 15.

²⁵ See *Steve Shaw v. Jamaica*, Communication No. 704/1996 (CCPR/C/62/D/704/1996); *El-Megreisi v. Libyan Arab Jamahiriya*, Communication No. 440/1990 (CCPR/C/50/D/440/1990), para. 5.4.

not lawful. The Human Rights Committee, in its General Comment No. 8, highlighted that paragraphs 1 and 4 of Article 9 apply to all deprivations of liberty.”²⁶

20. Article 10, paragraph 1 of the ICCPR provides that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” According to the Human Rights Committee, even comparably short periods of incommunicado detention may violate article 10. The Committee confirmed that “prisoners should be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, by correspondence as well as by receiving mail.”²⁷
21. As noted above, as many as eight prisoners were reportedly held in a secret prison in Lithuania. Moreover, there are credible allegations that Zayn al-Abidin Muhammad Husayn (Abu Zubaydah) was secretly detained at a CIA prison in Lithuania sometime between Spring 2004 and September 2006, after which he was transferred to Guantánamo Bay.
22. By permitting the CIA to subject prisoners to secret detention, Lithuania violated Articles 9 and 10 of the ICCPR.

IV. CONCLUSION

23. As set forth above, Lithuania violated Article 7 of the ICCPR by failing effectively to investigate possible torture on in secret CIA prisons on Lithuanian territory. It also violated Articles 9 and 10 of the ICCPR by permitting the CIA to subject prisoners to secret detention on Lithuanian soil. Accordingly, HRMI and the Justice Initiative respectfully submit that the Human Rights Committee’s Country Report Task Force should adopt Lithuania’s complicity in CIA rendition as an issue to consider while reviewing Lithuania’s compliance with its obligations under the ICCPR.

²⁶ UNHRC, *General Comment No.8*, Article 9 (Right to liberty and security of persons), 1982, HRI/GEN/1/Rev.9, para.1.

²⁷ See *Miguel Angel Estrella v. Uruguay*, communication No. 74/1980 (CCPR/C/OP/2); see also *Lucía Arzuaga Gilboa v. Uruguay*, communication No. 147/1983 (CCPR/C/OP/2), para. 14.