

**Inter-American Commission on Human Rights
Written Submission in Support of the Thematic Hearing on**

**Human Rights Situation of People
Affected by the United States’
Rendition, Detention, and
Interrogation Program**

156th Ordinary Period of Sessions

October 23, 2015

Written Submission Prepared by

American Civil Liberties Union
Global Justice Clinic, New York University School of Law

Inter-American Commission on Human Rights
Thematic Hearing on the
Human Rights Situation of People Affected by the United States’
Rendition, Detention, and Interrogation Program

156th Ordinary Period of Sessions

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Introduction

The American Civil Liberties Union (ACLU) and the Global Justice Clinic at New York University School of Law (Global Justice Clinic) (collectively, the Petitioners), thank the Inter-American Commission for Human Rights for granting Petitioners’ request for a hearing to address the **Human Rights Situation of People Affected by the United States’ Rendition, Detention, and Interrogation Program** (CIA’s torture program). In December 2014, the Senate Select Committee on Intelligence released its report on the Central Intelligence Agency’s Rendition, Detention and Interrogation Program (SSCI Report). This report confirmed what many already knew: following the September 11 terrorist attacks, the CIA secretly detained and tortured individuals it deemed to be suspect, violating international human rights standards, domestic law and American values; values that are admired and emulated across the globe.¹ Between 2002 and 2007, in collaboration with an expansive global network of at least fifty-four countries, the CIA forcibly disappeared, detained, interrogated, and tortured dozens of men.²

While in CIA custody, detainees were subject to interrogations that were “brutal and far worse than the CIA represented to policymakers and others.”³ In futile attempts to coerce individuals to supply information, U.S. agents utilized slaps and “wallings” (slamming detainees against a wall), in combination with sleep deprivation and nudity.⁴ Sometimes detainees were waterboarded. Internal CIA documents suggest the technique evolved into a “series of near

¹ Senator Dianne Feinstein, Foreword to SENATE SELECT COMMITTEE ON INTELLIGENCE, 113TH CONG., COMMITTEE STUDY OF THE CENTRAL INTELLIGENCE AGENCY’S DETENTION AND INTERROGATION PROGRAM 2 (Comm. Print 2014) (Declassification Revisions December 3, 2014).

² The C.I.A. detained individuals in its RDI Program from 2002 to 2008. The Agency’s use of its most coercive interrogation methods (so-called “enhanced interrogation techniques”) was ended in 2007. *See generally* SENATE SELECT COMMITTEE ON INTELLIGENCE, 113TH CONG., COMMITTEE STUDY OF THE CENTRAL INTELLIGENCE AGENCY’S DETENTION AND INTERROGATION PROGRAM 166, 168 (Comm. Print 2014) (Declassification Revisions December 3, 2014) [hereinafter SSCI Report]; AMRIT SINGH, OPEN SOCIETY JUSTICE INITIATIVE GLOBALIZING TORTURE CIA SECRET DETENTION AND EXTRAORDINARY RENDITION 61-118 (David Berry ed., Open Society Foundations 2013) [hereinafter *Globalizing Torture*].

³ *See* SSCI Report, *supra* note 2, at 3.

⁴ *Id.*

drownings.”⁵ At least five detainees were subjected to “rectal feedings” or “rectal hydration.”⁶ These interrogation techniques amounted to torture or to cruel, inhuman or degrading treatment.⁷

Though the SSCI Report shed light on the CIA’s torture program, those responsible, the human rights violations perpetrated, and the torture and cruel, inhuman, and degrading treatment of at least 119 victims and survivors of the program, there has been no accountability in the United States for these violations, and no remedies and reparations for the victims and survivors. Moreover, the report fails to capture the full scope of the CIA torture program’s impact, as it excludes individuals who the CIA did not detain, but rendered instead to foreign governments for detention and interrogation, often under torture.⁸ It also excludes the period of time detainees spent in proxy detention at the behest of the United States. The actual number of detainees held pursuant to the CIA’s torture program is therefore likely to be significantly higher, as is the length of detainee detention.⁹

In contrast to this U.S. impunity, many States and government officials that participated in the CIA’s torture program have been held accountable by administrative tribunals, the courts, and regional human rights mechanisms. For example, in Canada, following a three year-long public inquiry, the government acknowledged its role in the extraordinary rendition by the United States of a Canadian citizen, Maher Arar, awarded him compensation, and issued a public apology for its participation. This year, Canada also initiated a prosecution of Mr. Arar’s torturer. The European Court of Human Rights has also held States accountable for their collusion in the CIA’s torture program. Complicit States, including Macedonia and Poland have been compelled to provide reparations to survivors, Khaled El-Masri, Abd Al Rahim Hussayn Muhammad Al-Nashiri, and Zayn Al-Abidin Muhammad Husayn. In its rulings the Court recognized the CIA’s torture program and the United States’ central role in these human rights violations, most recently in *Al-Nashiri v. Poland*.¹⁰ In *Al-Nashiri*, after establishing beyond reasonable doubt the existence of the CIA detention facilities on European soil, the European Court stated that Poland “enabled the U.S. authorities to subject the applicant to torture and ill-treatment on its territory and to transfer the applicant from its territory despite the existence of a real risk that he would be subjected to treatment contrary to Article 3 [prohibition on torture and inhumane, or degrading treatment or punishment].”¹¹

Meanwhile in the United States, recognition of the CIA’s torture program has not led to remedy, though it has created some transparency with respect to the program’s creation and operation and the torture, cruel, inhuman and degrading treatment suffered by detainees. This is contrary to its legal and moral obligations to provide reparation to victims and survivors of forced disappearance, torture and ill-treatment, and secret detention. Part II of the submission includes the witness statements presented at the hearing on Human Rights Situation of People

⁵ *Id.*

⁶ *Id.* at 4.

⁷ *Id.* at 101.

⁸ *Id.* at 9 n.5.

⁹ See, e.g., *Globalizing Torture*, *supra* note 2, at 29-30.

¹⁰ See, e.g., *Al Nashiri v. Poland*, Eur. Ct. H.R. 404 (2015) (Judgment) (Fourth Section) available at [http://hudoc.echr.coe.int/eng?i=001-146044#{%22itemid%22:\[%22001-146044%22\]}](http://hudoc.echr.coe.int/eng?i=001-146044#{%22itemid%22:[%22001-146044%22]}).

¹¹ *Al-Nashiri v. Poland*. Eur. Ct. H.R. 6 (2015).

Affected by the United States' Rendition, Detention, and Interrogation Program. Part III of the submission examines reparations efforts within and outside of the extraordinary rendition context, demonstrating the different avenues of redress available to the United States to fulfill its obligations. The Annex provides a supplemental submission from Advocates for U.S. Torture Prosecutions on Denial of Justice: The United States' Failure to Prosecute Senior Officials for Torture.

As the overall submission will show, the United States has a moral and legal obligation to provide reparations to survivors of the CIA's torture program, and has established strong precedents for providing reparations to survivors of unlawful detention and torture. Moreover, it continues to support impunity by not providing accountability for the harms it caused, or reparations to victims, whereas other states that colluded with the United States have. Despite these precedents, the United States refuses to provide redress to survivors of its cruel and unjustifiable secret detention program. The Petitioners commend the Commission for its attention to this critical human rights issue, and echo the Commission's call on the United States to carry out a full investigation into the secret detention program; to prosecute and punish those responsible; and—in keeping with the Commission's influential, longstanding tradition—to recommend that the State provide integral reparations¹² to victims, including restitution, compensation, rehabilitation, satisfaction, and measures of non-repetition.¹³

¹² See, e.g., Velasquez Rodriguez, Inter-Am. Ct. H.R. (ser. C) No. 4 ¶ 150 (stating that “the phenomenon of disappearances is a complex form of human rights violation that must be understood and confronted in an integral fashion”); Press Release, Inter-American Commission on Human Rights, IACHR Calls on the United States to Investigate and Punish Acts of Torture Established in the Senate Intelligence Committee Report (Dec. 12, 2014), http://www.oas.org/en/iachr/media_center/PReleases/2014/152.asp (calling for the provision of integral reparation)..

¹³ See Press Release, Inter-American Commission on Human Rights, IACHR Calls on the United States to Investigate and Punish Acts of Torture Established in the Senate Intelligence Committee Report (Dec. 12, 2014), http://www.oas.org/en/iachr/media_center/PReleases/2014/152.asp.

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Oral Submission: Introduction
Margaret Satterthwaite

Good morning. My name is Margaret Satterthwaite. I am a Professor of Clinical Law at NYU School of Law, and it is my honor to begin our presentation today.

The American Civil Liberties Union (ACLU) and the Global Justice Clinic at New York University School of Law (Global Justice Clinic), thank the Inter-American Commission for Human Rights for granting Petitioners’ request for a hearing to address the **Human Rights Situation of People Affected by the United States’ Rendition, Detention, and Interrogation Program**.

In December 2014, the Senate Select Committee on Intelligence released the summary, findings and conclusions of its four-year investigation into the Central Intelligence Agency’s Rendition, Detention and Interrogation Program (SSCI Report). This report confirmed what many already knew: following the September 11 terrorist attacks, the CIA secretly detained and tortured individuals it deemed suspect, violating international legal obligations, human rights standards, domestic law, and American values; values that are admired and emulated across the globe.¹ Between 2002 and 2007, in collaboration with an expansive global network of at least fifty-four countries, the CIA forcibly disappeared, detained, interrogated, and tortured dozens of men.²

Though the SSCI Report sheds light on the RDI Program, including those responsible, the human rights violations perpetrated, and the torture and cruel, inhuman and degrading treatment of at

¹ SENATE SELECT COMMITTEE ON INTELLIGENCE, 113TH CONG., COMMITTEE STUDY OF THE CENTRAL INTELLIGENCE AGENCY’S DETENTION AND INTERROGATION PROGRAM 8, app. 2 (Comm. Print 2014) (Declassification Revisions December 3, 2014) [hereinafter SSCI Report]; Senator Dianne Feinstein’s Forward, at 2.

² The C.I.A. detained individuals in its Torture Program from 2002 to 2008. The Agency’s use of its most coercive interrogation methods (so-called “enhanced interrogation techniques”) was ended in 2007. *See* SSCI Report, Executive Summary, at 166, 168; OPEN SOCIETY JUSTICE INITIATIVE, GLOBALIZING TORTURE: CIA SECRET DETENTION AND EXTRAORDINARY RENDITION 61-118 ((David Berry ed., Open Society Foundations 2013) (listing participating countries and setting forth evidence of their participation) [hereinafter Globalizing Torture].

least 119 victims and survivors of the Program, there has been no accountability in the United States for these violations, and no remedies and reparations for the victims and survivors. Moreover, the report fails to capture the full scope of the Torture Program's impact, as it excludes individuals who the CIA did not detain, but rendered instead to foreign governments for detention and interrogation, often under torture.³ The actual number of victims and survivors of the Program is therefore significantly higher.⁴

In contrast to this U.S. impunity, many foreign States and government officials who participated in the CIA's Torture Program have been held accountable by administrative tribunals, the courts, and regional human rights mechanisms. For example, in Canada, following a three year-long public inquiry, the government acknowledged its role in the extraordinary rendition by the United States of Canadian citizen Maher Arar, awarded him compensation, and issued a public apology for its participation. Last month, Canada also initiated a criminal prosecution of Mr. Arar's Syrian torturer.⁵

The European Court of Human Rights has also held states accountable for their collusion in the CIA's Torture Program. Complicit states, including Macedonia and Poland, have been compelled to provide reparations to survivors.⁶ In its rulings, the Court recognized the CIA's Torture Program and the United States' central role in these human rights violations.⁷ In its most recent decisions, the Court found that Poland enabled U.S. authorities to subject the victims to torture and ill-treatment on its territory and to transfer the victims from its territory despite the existence of a real risk that they would be subjected to torture or to cruel, inhumane or degrading treatment or punishment.⁸

Honorable Commissioners, the United States is aware of its legal and moral obligations to provide reparations, and has a long history of providing reparations for survivors of torture and unlawful detention, including during time of war. Examples of good practices by the U.S. and other governments are detailed in our written submission. Despite this record, to date, the United States has failed to provide any remedies or reparations to victims and survivors of its Torture Program.

We commend the Commission for its long-standing and historic role in advancing truth and accountability for grave violations in the OAS Region. We echo the Commission's calls on the United States to carry out a full investigation into the Torture Program; to prosecute and punish

³ SSCI Report at 9, n.5.

⁴ See, e.g., Globalizing Torture at 29-30.

⁵ On September 1, 2015, Canada's national police force laid criminal charges against Colonel George Salloum, a Syrian military intelligence officer who stands accused of carrying out and overseeing the torture of Maher Arar while he was illegally imprisoned in a Syrian jail cell between October 2002 and October 2003.

⁶ El-Masri v. The former Yugoslav Republic of Macedonia, Eur. Ct. H.R. 2 (2012), *available at* <http://hudoc.echr.coe.int/eng?i=003-4196815-4975517>; Al Nashiri v. Poland, Eur. Ct. H.R. (2014), *available at* <http://hudoc.echr.coe.int/eng?i=001-146044>; Husayn (Abu Zubaydah) v. Poland Eur. Ct. H.R. (2014), *available at* <http://hudoc.echr.coe.int/eng?i=001-146047>.

⁷ El-Masri v. Macedonia at para. 270; Al-Nashiri v. Poland at para. 595; Husayn v. Poland at para. 567.

⁸ Al Nashiri v. Poland, Eur. Ct. H.R. (2014), *available at* <http://hudoc.echr.coe.int/eng?i=001-146044>, Husayn (Abu Zubaydah) v. Poland Eur. Ct. H.R. (2014), *available at* <http://hudoc.echr.coe.int/eng?i=001-146047>.

those responsible; and—in keeping with the Commission’s influential, longstanding tradition—to recommend that the State provide integral reparations to victims, including restitution, compensation, rehabilitation, satisfaction, and measures of non-repetition.⁹

President Obama was not responsible for the creation and operation of the Torture Program; in fact, he ended it. However, his legacy will be marked by how he responded to its existence and to the men whose lives it destroyed. Will President Obama’s Administration be known for impunity, or will it ensure accountability and prevent the repetition of these grave abuses?

Today, we will provide the Commission with an overview of the United States’ legal obligations to provide remedies and reparations to victims and survivors of the Torture Program. Providing such redress is not only a legal requirement but a moral imperative.

Honorable Commissioners, our presentation will proceed as follows:

- The Commission will next hear from Steven Watt of the ACLU, who will address the lack of accountability, remedies, and reparations in the United States.
- Following this, Professor Juan Mendez, UN Special Rapporteur on Torture, will speak about the right to redress with an emphasis on the importance of apology, official acknowledgment, and truth and reparations.
- Next, Mohamed al Shuraeyia bin Saud, will provide testimony by audio recording on his experience while detained and tortured within the CIA Program, and his desire for justice, accountability, and reparation.
- Finally, Jamil Dakwar of the ACLU will present our recommendations to the Commission.

In closing, I call your attention to our written submission, which provides more detail on each issue we address here today.

Thank you.

⁹ See Press Release, Inter-American Commission on Human Rights, IACHR Calls on the United States to Investigate and Punish Acts of Torture Established in the Senate Intelligence Committee Report (Dec. 12, 2014), http://www.oas.org/en/iachr/media_center/PReleases/2014/152.asp.

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Oral Submission: Criminal and Civil Accountability for Victims and
Survivors of the CIA Torture Program
Steven Watt

Introduction

Between 2001 and 2008, the United States Central Intelligence Agency (“CIA”) and its contractors designed and implemented an experimental program of forced disappearances, secret detention, torture and cruel, inhuman and degrading treatment. That program, the so-called Rendition, Detention and Interrogation program (“CIA torture program”), was sanctioned and authorized at the highest level of the Bush administration. Within days of taking office, President Obama effectively brought an end to the CIA torture program in Executive Order 13491- Ensuring Lawful Interrogations¹, but, to date, has failed to hold anyone to account or to provide remedies or any form of reparation to victims and survivors.

The creation and development of the CIA torture program, those government officials and contractors responsible, the nature and scope of the human rights violations perpetrated, and the names of at least 119 victims and survivors of these abuses and the physical and psychological harms caused to them are detailed in the Executive Summary of the Senate Select Committee on Intelligence (“SSCI”) *Study of the CIA’s Detention and Interrogation Program* (“SSCI Report”), which was publicly released on December 9, 2014. Other official government documents confirm and elaborate on the SSCI Report’s findings.²

Despite this public record of egregious human rights violations, to date, no government official or government contractor has been held criminally or civilly accountable for their role in the CIA torture program and no victim or survivor has been provided with redress, including apologies or compensation for their rehabilitation. Although the U.S. Department of Justice initiated a

¹ See Exec. Order No. 13,491, 3 C.F.R. (2009)

² See e.g., The CIA’s June 2013 Response to the Senate Select Committee on Intelligence’s Study on the Former Detention and Interrogation Program (June 27, 2013) (“CIA June 2013 Response”); CIA Office of Inspector General Special Review of Counterterrorism Detention and Interrogation Activities (Sept. 2001 – Oct. 2003) (May 7, 2004) (“CIA OIG Report”); the Senate Committee on Armed Services Inquiry into the Treatment of Detainees in U.S. Custody (Nov. 20, 2008) (“SASC Report”); and the report of the Department of Justice’s Office of Professional Responsibility Investigation into the Office of Legal Counsel’s Memoranda Concerning Issues Relating to the Central Intelligence Agency’s Use of “Enhanced Interrogation Techniques” on Suspected Terrorists (July 2009).

criminal investigation in 2009, that investigation failed to comport with international standards and was formally closed three years later. Efforts by victims and survivors of the RDI program to obtain redress in civil courts have been repeatedly blocked or limited by the Bush and Obama administrations and the U.S. Congress.

1. Inadequate and Ineffective Criminal Investigation into the CIA Torture Program

In 2009, shortly after President Obama assumed office, the U.S. Department of Justice began a very limited criminal investigation into specific abuses committed against specific detainees held in the CIA torture program.³ Assistant U.S. Attorney John Durham of the District of Connecticut was tasked with conducting an investigation into whether any federal laws were violated in connection with the program.⁴ The investigation was later limited to the deaths of two terrorism suspects in CIA custody and whether the methods used against them—their torture—had been authorized.⁵

This investigation failed to comport with international human rights standards in numerous ways. For example, at the outset, Attorney General Holder placed significant limitations on the scope of the investigation. Excluded from the inquiry was the use of any method sanctioned for the CIA torture program by the Office of Legal Counsel, including the most coercive methods (the so-called “enhanced interrogation techniques”), provided their application complied with that authorization.⁶ Attorney General Holder also shielded those who, “acted in good faith and within the scope of the legal guidance given by the Office of Legal Counsel regarding the interrogation of detainees.” Senior governmental officials were also excluded from the investigation and not a single survivor was interviewed.

In August 2012, the investigation was closed because, according to Attorney General Holder, “the admissible evidence would not be sufficient to obtain and sustain a conviction beyond a reasonable doubt.” The Department of Justice declined to prosecute. No one has been held accountable for the deaths.⁷

The family of one of the deceased, Gul Rahman, was never informed of the investigation. Indeed, the family has never even been officially notified of his death, and his body was never returned to them for a dignified burial.⁸

Following the publication of the SSCI Report, the ACLU, Human Rights Watch and Amnesty International renewed their earlier calls for the appointment of a special prosecutor, setting out

³ See Attorney General Eric Holder Regarding a Preliminary Review into the Interrogation of Certain Detainees, DEP’T JUST. NEWS (Aug. 24, 2009), <http://www.justice.gov/opa/speech/attorney-general-eric-holder-regarding-preliminary-review-interrogation-certain-detainees>.

⁴ See D.O.J. Office of Public Affairs, ‘Statement of the Attorney General Regarding Investigation into the Interrogation of Certain Detainees’ (June 30, 2011).

⁵ *Id.*

⁶ *Id.*

⁷ See D.O.J. Office of Public Affairs, ‘Statement of Attorney General Eric Holder on Closure of Investigation into the Interrogation of Certain Detainees’ (Aug. 30, 2012).

⁸ See Complaint, *Salim v. Mitchell*, No. 1500286-JLQ (EDWA October 13, 2015), ECF No. 1 at 72-73

the reasons why a criminal investigation is both appropriate in light of the SSCI Report, and necessary.⁹ Those calls have gone unanswered.

2. United States' Efforts to Prevent Civil Redress for Victims and Survivors of the CIA Torture Program

Some victims and survivors of the CIA torture program and their family members have sought redress in civil courts. Their attempts, however, have been repeatedly blocked by both the Bush and Obama administrations and the U.S. Congress.

The Department of Justice under both administrations has repeatedly invoked “state secrets” and immunity doctrines to shield government officials and government contractors from civil liability for their claims of forced disappearances, torture and cruel, inhuman or degrading treatment. Lower U.S. courts have largely acceded to these arguments and the U.S. Supreme Court has declined to review these rulings.¹⁰ As a result, victims, survivors and their families have been unable to secure redress, including apologies, restitution, and compensation for their rehabilitation in civil courts. Indeed, Department of Justice legal arguments, sanctioned by U.S. courts, have prevented any consideration of the merits of their claims.

The U.S. Congress has also sought to limit the scope of civil liability for forced disappearances, torture and other cruel, inhuman or degrading treatment of government officials and their agents in the Military Commissions Act, 2006 (“MCA”)¹¹. The MCA, section 7, prevents any U.S. court from considering any civil claims brought “against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States” as an “enemy combatant or is awaiting such determination.” The Department of Justice has successfully raised this statutory defense to successfully defeat claims brought by torture victims and survivors.¹²

The United States has also prevented victims’ and survivors’ attempts to secure redress at the international level, including before this Commission. For example, after the U.S. Supreme Court declined to review a U.S. appellate court’s decision dismissing his case on state secrets grounds, Khaled El-Masri, a victim and survivor of the RDI program, filed a petition with this Commission, *El Masri v. United States*. The Commission transmitted the petition to the

⁹ See ACLU & HRW, Letter to The Honorable Eric Holder, *Request for Appointment of a Special Prosecutor for Torture* (Dec. 22, 2014) available at <https://www.aclu.org/aclu-and-hrw-letter-doj-calling-appointment-special-prosecutor-torture>; ACLU, HRW & AI, Letter to The Honorable Loretta Lynch, *Request for the Appointment of a Special Prosecutor for Torture* (June 23, 2015) available at <https://www.aclu.org/letter/letter-attorney-general-lynch-requesting-special-prosecutor-torture>.

¹⁰ See e.g., *El Masri v. United States*, 479 F. 3d 296 (4th Cir. 2007) (dismissing claims of arbitrary detention, torture and other cruel, inhuman or degrading treatment because litigation of the case would be harmful to U.S. national security interests); *Arar v. Ashcroft*, 585 F. 3d 559 (2d Cir. 2009) declining to recognize a remedy under the U.S. Constitution for plaintiff’s unlawful rendition from the United States to torture in Syria because of the impact of doing so on U.S. relations with other nations and other national security interests.); Dorothy Samuels, *Certiorari Denied: Remembering the Roberts Court’s Shameful Abandonment of Torture Victims*, available at <https://www.brennancenter.org/blog/certiorari-denied-remembering-roberts-courts-shameful-abandonment-torture-victims>

¹¹ Military Commissions Act of 2006, 10 U.S.C. § 948-949 (2014)

¹² See e.g., *Janko v. Gates*, 741 F. 3d. 136 (D.C. Cir. 2014).

government for its consideration over seven years ago. The United States is yet to respond, despite repeated calls by the Commission to do so, and despite both the Senate and the CIA confirming his “wrongful detention” and U.S. involvement in Mr. El Masri’s forced disappearance, torture and cruel, inhuman or degrading treatment.¹³

Conclusion

While the United States’ public confirmation of its role in the CIA’s torture program is a welcome first step in accounting for the egregious violations of victims’ and survivors’ fundamental human rights, transparency alone is not accountability. Without holding torturers accountable and providing remedies and reparations, victims and survivors of the program, and society as a whole, cannot heal and move forward. Impunity for torture further compounds the harm caused to victims and survivors and damages the integrity of the U.S. and international justice systems and U.S. credibility in the international community. It also sends a dangerous message that the CIA and its contractors are exempt from the rule of law, and that there will be no consequences for abusive conduct in the future. As this Commission has long recognized, without accountability for the CIA torture program today, history will repeat itself.

¹³ See SSCI Report, Executive Summary, at 128-129; CIA Response to SSCI Report, at 45, 52.

Mr. Emilio Álvarez Icaza
Executive Secretary
Inter-American Commission on Human Rights
Organization of American States
1889 F Street, NW Washington, DC 20006

23 October 2015

**Re: Hearing on the Human Rights Situation of Persons Affected by the U.S.
Rendition, Detention, and Interrogation Program**

Dear Mr. Emilio Álvarez Icaza:

Introduction

I would like to thank the honorable Inter-American Commission Human Rights and the American Civil Liberties Union (ACLU) and the New York University School of Law Center for Human Rights and Global Justice for inviting me to testify in this hearing to address matters related to the situation of human rights of persons affected by the United States rendition, detention, and interrogation program, during the Commission's 156th ordinary session.

The CIA Secret Detention and Extraordinary Rendition Programs

The recently released excerpts of the Senate Select Committee on Intelligence on the Central Intelligence Agency (CIA) Detention and Interrogation Program Report ("the Report") establishes that between 2002 and 2007, the CIA forcibly disappeared, detained, interrogated and subjected more than 100 persons to torture and other forms of ill-treatment as part of the Rendition, Detention, and Interrogation Program, in collaboration with a global network of more than 50 other States. The use of overseas detention facilities ("black-sites") in locations around the world, including Afghanistan, Eastern Europe, Thailand, and Guantánamo Bay, is well documented. In addition, the CIA rendered other individuals to third countries for detention and interrogation. Despite the fact that these practices were approved and coordinated by high-level Government officials and carried out by State agents, criminal and civil accountability for the abuses committed is lacking.

The acts of torture and other ill-treatment perpetrated as part of the programs were designed to take place extraterritorially and clandestinely, leading directly to the present lack of accountability and extant impunity for the violations committed. In this context, the Report and its findings have significant potential for compiling evidence that may be used by the State to fulfill its fundamental international legal obligations to investigate, prosecute, and punish those responsible for committing, ordering, or tolerating acts of torture and other ill-treatment. The so-called "enhanced interrogations techniques," such as water boarding, stress positions, sleep deprivation, forced nudity, insults, and violence, and dietary manipulation, among others, that have been documented in the Report amount to torture or cruel, inhuman and degrading treatment or punishment ("other ill-treatment")—if not on their own, when used in combination and, specially, when coupled with arbitrary detention, lack of due process, and incommunicado

and secret detention.

The release of the Report contributes to the United States fulfilling its obligations with respect to telling the truth. However, truth-telling does not simply entail revealing facts; there needs to be an official acknowledgement and acceptance of responsibility. Additionally, it is only a first step in the direction of fulfilling other US obligations under international law and specifically under the [Convention Against Torture](#) (“the Convention”), namely to combat impunity and ensure accountability by investigating and prosecuting those responsible. The Report unequivocally concludes that US high officials have promoted, encouraged and allowed the use of torture after September 11, 2001. The serious abuses detailed in the report constitute basic violations of international human rights law.

The United States Government has a responsibility under international law to let the American people know what happened during the years when extraordinary rendition, secret detention, and so-called enhanced interrogation techniques were practiced, and to ensure accountability and transparency to the fullest extent possible. The Government’s reluctance to work with international authorities on the issue of accountability for human rights violations has made it easier for other nations to shirk their responsibilities. In my work around the world I have regrettably found that the example set by the United States on the use of torture has been a big draw-back in the fight against such practice elsewhere. As a party to the Convention the Government has an obligation to thoroughly and promptly investigate credible reports of torture, ensure accountability, and provide adequate remedies to victims.

The International Legal Prohibition of Torture and Other Ill-Treatment—Including Extraterritorially

In my interim report to the General Assembly dated 7 August 2015 ([A/70/303](#)), I elaborated on the extraterritorial application of the prohibition of torture and other ill-treatment and attendant obligations under international law. In this report I reminded States that the *jus cogens* non-derogable prohibition against torture and other ill-treatment in international law, which is applicable to all states, cannot be territorially limited, and that any jurisdictional references found in the Convention cannot be read to restrict or limit States’ obligations to respect all individuals’ rights to be free from torture and ill-treatment, anywhere in the world. This prohibition and attendant obligations—such as the obligation to investigate, prosecute, and punish every act of torture and ill-treatment, to exclude evidence obtained by torture and other ill-treatment from all proceedings, and to refrain from enabling refoulement to torture or other ill-treatment—are norms of customary international law and are also codified in legal instruments like the Convention.

The impetus for my report was my serious concern over States’ growing attempts to undermine the absolute legal prohibition of torture and other ill-treatment by evading or limiting responsibility for extraterritorial acts or effects produced by their agents that contravene their fundamental legal obligations. The legal prohibition against torture would be meaningless if States are in practice able to mistreat victims outside their borders with the complicity of other States. States cannot be allowed to avoid responsibility contravening fundamental norms on technical grounds pertaining to the territorial locus of the violations and other jurisdictional

loopholes. This is particularly relevant to the cases of extraordinary rendition, secret detention, and torture conducted by or with the involvement of the CIA in the aftermath of September 11, 2001 abroad.

In this context, it is clear that the applicability of extant legal standards to torture or other ill-treatment committed, sponsored, aided or effectively controlled or influenced by States outside their territories can create incentives for States to avoid absolute legal obligations and amount to serious breaches of international law. Whenever States bring a person within their jurisdiction by exercising control or authority over an area, place, individual or transaction they are bound by their fundamental obligation not to engage in or contribute to such acts. States moreover have an obligation to protect persons from torture and other ill-treatment and to ensure a broad range of attendant human rights obligations whenever they are in a position to do so by virtue of their control or influence extraterritorially over an area, place, transaction or persons.

The Obligation to Investigate, Prosecute, and Punish All Acts of Torture and Other Ill-Treatment

The prohibition of torture is a customary international norm that admits no exception or derogation. It is a *jus cogens* norm. States cannot recur or tolerate torture under any circumstance, including war, threats to national security, or the fight against terrorism. From this obligation, instruments like Convention and [International Covenant on Civil and Political Rights](#) (“the Covenant”) derive another fundamental obligation, which is the obligation to investigate all allegations of torture and other ill-treatment and to, when appropriate, prosecute, and punish those responsible for the violations. In compliance with this obligation, States have no discretion and are obliged to diligently and effectively investigate all allegations in which there are reasonable grounds to believe that torture may have occurred.

The core purpose of the Convention was the universalization of a regime of criminal punishment for perpetrators of torture, building upon the regime already in existence under international human rights, customary international law, and international humanitarian law. Article 5 (1) obliges States to establish jurisdiction over all acts of torture on the territoriality, flag, active nationality and passive nationality principles. All States have a customary international law obligation to investigate, prosecute and punish all acts of torture and other ill-treatment as codified, inter alia, in the Convention.

Article 12 of the Convention requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 requires State parties to prosecute suspected perpetrators of torture. Paragraph 7b of Human Rights Council Resolution 16/23 ([A/HRC/RES/16/23](#)), urges States “(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in

charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture.”

The United States and all other States involved or that collaborated in the execution of these programs need not only to initiate independent and effective investigations, but also disclose all information related to them, much of which remain kept secret and confidential, reinforcing the clandestine nature of the programs. Under the [Draft Articles on State Responsibility for Internationally Wrongful Acts](#), States may never recognize as lawful a situation created by a serious breach of their obligations under peremptory norms of international law, like the prohibition against torture, and should cooperate to bring the breach to an end rather than provide aid or assistance to its continuation. Under the Convention, States are required to cooperate with criminal and civil legal proceedings involving claims of torture, rather than seek to block, otherwise hinder or ignore those proceedings, for instance in terms of providing evidence and other forms of mutual legal assistance. Competent courts in States parties to the Convention are obligated to exercise jurisdiction over acts of torture and ill-treatment, irrespective of the locus where wrongfulness took place. In this context, States may not employ restrictive doctrines, such as State secrets or political questions in an effort to obstruct investigations or prosecutions and evade responsibility for grave breaches of international law, such as the commission of torture and other ill-treatment.

The Right to Redress for Victims of Torture and Other Ill-Treatment in International Law

The right of redress¹ for victims of torture and ill-treatment has always been a fundamental issue for my mandate, during which I have advocated for a victim-centered perspective that seeks an integrated, long-term approach to adequate redress and reparations, which in particular focuses on compensation, redress, reparations, and rehabilitation for victims of torture and ill-treatment and their families. Denying torture victims access to effective judicial remedies is a violation of State obligations under article 14 of the Convention and undermines the international community’s commitment to the elimination of torture.

In March 2013, the UN Human Rights Council adopted an important resolution on redress for victims of torture ([Resolution A/HRC/22/L.11](#)) that calls upon States to provide equal and effective remedy and reparation to victims of torture and ill-treatment and encourages putting victims and their needs at the center of redress procedures. In its third General Comment ([CAT/C/GC/3](#)), the Committee Against Torture (“the Committee”) states that all States parties are required to “ensure in [their] legal system[s] that the victim of an act of torture obtains

¹ Article 2 (3) of the ICCPR states that “[e]ach State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.”

redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.” The Committee considers that article 14 is applicable to all victims of torture and other ill-treatment without discrimination of any kind, in line with the Committee’s General Comment No. 2. The Committee furthermore identifies the *restoration of the victim’s dignity* as the main objective of the provision of redress. The term “redress” in article 14 encompasses the concepts of “effective remedy” and “reparation.”

The approach to redress needs to be comprehensive. States need to ensure the right of victims to obtain reparation, including redress, fair and adequate compensation, and the means for as full rehabilitation as possible. The comprehensive reparative concept therefore entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, and refers to the full scope of measures required to redress violations under the Convention. General Comment No. 3 additionally highlights that solely monetary compensation is insufficient, and that full rehabilitation should include medical and psychological care, as well as social and legal assistance, including costs associated with bringing claims for redress. States need to ensure access to rehabilitation services either through state healthcare systems or through civil society-based centers, and, fundamentally, rehabilitation needs to be holistic, meaning that it has to be appropriate and tailored to the needs of the victim and the particular experience they went through. Rehabilitation hence may include medical and psychological treatment as well as community and family-based care and social, educational and vocational services.

Access to rehabilitation programs should not be dependent on the victim’s pursuit of judicial remedies. International law imposes on States an obligation to prevent torture. When this obligation is not met, it is the States’ obligation to provide redress by first conducting the necessary investigation and prosecutions, but also by putting into place all the legislative, judicial and administrative measures and institutions that will ensure access to remedies, reparations and rehabilitation, and also by removing all obstacles, legal or otherwise. Failure to comply with these obligations constitutes a violation of article 14 of the Convention because access to redress is not sufficiently assured.

I have consistently called for Article 14 to be interpreted in light of the [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](#) (“the Principles”) The Principles make clear that “*the obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to:*

- (b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;*
- (c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation; and*
- (d) Provide effective remedies to victims, including reparation.”*

In addition, the Principles state that in cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, such as torture, “*States have the duty to investigate and, if there is sufficient evidence, the*

duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him. Moreover, in these cases, States should, in accordance with international law, cooperate with one another and assist international judicial organs competent in the investigation and prosecution of these violations.”

As explained in my report, Article 14 is not geographically limited on its face and will apply no matter where the torture takes place. The Committee authoritatively considers that the application of article 14 is not limited to victims who were harmed in the territory of the State party or by or against nationals of the State party. The understanding submitted by the United States that article 14 was limited to territory under a State's jurisdiction is at odds with its legislation (i.e. Alien Tort Claims Act) and jurisprudence. It has been rejected by subsequent action, such as the enactment of the Torture Victim Protection Act, and in any event indicates the otherwise comprehensive extraterritorial applicability of the article. Under customary international law a State's duty to make reparation for an injury is inseparable from its responsibility for commission of an internationally wrongful act and, as such, the right to an effective remedy is applicable extraterritorially.

The right to a remedy is fundamental under international law and must be accessible to victims irrespective of where the violation occurred. Under article 14, a State party shall ensure that victims of any act of torture or ill-treatment under its jurisdiction access a remedy and obtain redress, the right to which underpins the entire Convention. In this context, and as explained by the Committee, State parties have an obligation to take all necessary and effective measures to ensure that all victims of these acts obtain redress, including to promptly initiate a process to ensure that victims obtain redress, even in the absence of a complaint, when there are reasonable grounds to believe that torture or ill-treatment has taken place. Securing the victim's right to redress requires that a State Party's competent authorities promptly, effectively and impartially investigate and examine the case of any individual who alleges she or he has been subjected to torture or other ill-treatment. Accordingly, The Committee authoritatively states that undue delays in initiating or concluding legal investigations into complaints of torture or ill-treatment compromise victims' rights under article 14.

In addition, State parties to the Convention have an obligation to ensure that the right to redress is effective. According to the Committee, specific obstacles that impede the enjoyment of the right to redress and prevent effective implementation of article 14 include discrimination in accessing complaints and investigation mechanisms and procedures for remedy and redress; inadequate measures to secure the custody of alleged perpetrators; state secrecy laws; evidential burdens and procedural requirements that interfere with the determination of the right to redress; statutes of limitations; amnesties and immunities; the failure to provide sufficient legal aid and protection measures for victims and witnesses; as well associated stigma, and the physical, psychological and other related effects of torture and ill-treatment.

The Committee has further stated that when impunity is allowed by law or exists de facto, it bars victims from seeking full redress as it allows the violators to go unpunished and denies victims the full insurance of their rights under article 14, and has affirmed that under no circumstances may arguments of national security be used to deny redress for victims.

I find that a State's failure to investigate, criminally prosecute, or allow civil proceedings—or efforts to block or hinder such proceedings—relating to allegations of torture or other forms of ill-treatment constitutes de facto denial of an effective remedy. An essential component of the obligation to provide redress under international law is the obligation not to obstruct redress or obstruct access of an individual to an effective remedy by invoking “State secrets” to dismiss lawsuits *in limine litis*. This has regrettably been the case regarding victims of rendition and other extraterritorial acts of torture and ill-treatment seeking redress from the Government.

I thank the honorable Commission for the opportunity to present this testimony.

A handwritten signature in dark ink, appearing to read 'J. Méndez', with a horizontal line underneath the name.

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment

Inter-American Commission on Human Rights
Thematic Hearing on the
“Human Rights Situation of People Affected by the United States’ Rendition, Detention,
and Interrogation Program”

October 23, 2015

Translation of Audio Testimony by Mr. Mohamed al Shuraeyi bin Saud



Distinguished members of the Commission:

I'm Mohamed al Shuraeyi bin Saud from Libya.

On April 3, 2003, my home, where I lived with my family in Pakistan, was raided. I was kidnapped after I was shot and my foot broken. I was moved for two weeks between Pakistani jails in Peshawar and Islamabad. I immediately underwent interrogations by agents of the CIA. The interrogators kept threatening to move me to a special place where I would be subjected to interrogations and violent treatment.

I was indeed moved to a CIA “black site,” I believe, near Bagram. Interrogations and torture started right away. I was confined in a small, freezing cold, pitch black cell. I was kept naked for weeks. I was deprived of hygiene for months, refused a shower or to cut my hair or nails. My hands and feet were shackled to the cell wall by metal shackles. Loud western music blared constantly. I was starved. I didn’t see sunlight for months. I was refused use of the bathroom, instead forced to use a bucket left in the room. They intentionally took the bucket cover. I was forcibly deprived of sleep for days and weeks on end. To keep me awake I was chained in painful stress positions or, after my broken leg was healed, guards would wake me and march me naked around the prison throughout the night into the morning.

My physical and psychological torture went on like this for months.

The teams of interrogators used violence that exceeded any kind of humanitarian and moral limits. This included slamming us against the walls, slapping in the face, punching in the stomach, pouring ice water on our naked bodies, creating the illusion of drowning, and stuffing us inside small boxes. I was hung by my hands to the ceiling of the room for a day and a half. At the same time, I was deprived of food as part of a methodical program where they sometimes prevented us from eating for 30 hours. The meals were of poor quality and very limited quantity, lacking any nutritional value. We were deprived of medicine and any medical care.

The so-called doctors in that place were not practicing medicine. Rather, they were playing a dirty role as part of the torture machine and investigation teams. Their function was to oversee torture practices and a starvation policy, in addition to supervising the shameful, degrading, and humiliating procedures during the transfer of detainees.

It was a difficult and stressful period, during which the CIA agents tried to find a real charge to use against me. When they failed, rumors started to surface that we would be transferred to the hands of the Qaddafi regime. I explained to them more than once that if I was to be transferred, my life would be endangered. I told them that the Qaddafi regime is an oppressive regime, which would subject us to the worst kinds of torture and oppression, and that we would not receive a fair trial there. However, I was transferred by a special flight, and in a humiliating and degrading

manner, to the Libyan regime on August 23, 2004. The transfer was coordinated between the CIA and the Libyan intelligence apparatus.

I spent several years in Libyan jails, where I was subjected to different kinds of psychological and physical torture. After a year and a half, I was tried and sentenced to life imprisonment in a sham trial. The suffering extended to my family, who lived in difficult and harsh conditions. My family was deprived of all civil rights, and my daughter was deprived of education.

I hold the government of the United States fully responsible for the suffering and the terrible tragedy that I and my family endured over these eight years. I especially hold the CIA and its agents responsible for their methodical practice of psychological and physical torture. These practices are the result of an official political decision taken by the American administration.

The recently released U.S Senate Intelligence Committee report confirmed beyond any doubt what I described. The Senate report has pushed the United States government to face ethical and legal responsibility. The ACLU is now representing me in lawsuit against two psychologists who teamed up with the CIA to devise a torture program and experiment on human beings. I very much hope this lawsuit moves forward and gives me a chance to hold those responsible accountable.

I also wish to take this opportunity, to call for the following:

First, reveal the full truth about my case and the CIA torture program.

Second, expose all persons who were involved and hold them accountable.

Third, offer an official apology for the victims of these crimes.

Fourth, pay reparations for mental and physical suffering endured by me and my family.

I thank the Commissioners for this important hearing and for allowing me to present this testimony.

Inter-American Commission on Human Rights
Thematic Hearing on the
Human Rights Situation of People Affected by the United States’
Rendition, Detention, and Interrogation Program

156th Ordinary Period of Sessions

October 23, 2015

Oral Submission: Recommendations
Jamil Dakwar

Good morning. My name is Jamil Dakwar. I am director of ACLU Human Rights Program.

On December 12, 2014, this honorable [Commission](#) reiterated its calls to the United States “to carry out a full investigation in order to clarify the facts, and prosecute and punish all persons within its jurisdiction responsible for acts of torture or other cruel, inhuman or degrading treatment or punishment; and to provide integral reparations to the victims, including restitution, compensation, rehabilitation, satisfaction and measures of non-repetition, pursuant to international standards.”

While we strongly support this call, we are also disappointed that very little progress has been made towards the goal of ending impunity and providing legal redress to victims of torture. We therefore make the following specific recommendations:

Criminal Accountability:

The United States must ensure that all cases of unlawful killing, torture or other ill-treatment, unlawful detention, or enforced disappearance are effectively, independently, and impartially investigated through the appointment of a special prosecutor to conduct a comprehensive criminal investigation including all acts authorizing or ordering unlawful conduct.

Right to Truth and Increased Transparency:

The United States must release documents relating to the enforced disappearance, torture, and mistreatment of detainees. Steps required include:

- a. The declassification and release of the full Senate torture report.
- b. The declassification and release of the memorandum issued by President Bush on September 17, 2001 authorizing the CIA to establish secret overseas interrogation facilities.
- c. The declassification and release of hundreds of CIA cables describing the use of waterboarding and other forms of torture.

d. The amendment of FOIA guidance and policies allowing for the use of the *Glomar* response (“we can neither confirm nor deny”) to requests for documents pertaining to the CIA’s Torture program, especially by detainees concerning their own treatment and detention.

Official Apology and Reparations:

The United States should publicly acknowledge and apologize to the victims of U.S. torture program.

The United States should appoint of an independent body to provide compensation and rehabilitation services to those who suffered torture or other cruel, inhuman, or degrading treatment in the CIA’s Torture Program.

Legislative Reform:

The United States should reform laws that deny victims the right to truth, justice and reparations by specifically passing legislation that limits the circumstances in which the U.S. government can invoke the state secrets doctrine and repeal laws that limit victims’ access to legal redress including under section 7 of the Military Commission Act.

Meanwhile, the U.S. Executive Branch should refrain from invoking “state secrets privilege” as an alternative form of immunity that has been used to shield the government and its agents from accountability for systemic violations of the Constitution and core human rights principles.

Case Processing:

We also call on this honorable Commission to expedite the review and processing of pending petitions filed on behalf of victims of the CIA torture program, which raise critical issues concerning denial of legal remedies and right to effective remedy. By doing so, the Commission will provide survivors an historic opportunity to hold the U.S. accountable, tell their story, and seek appropriate redress consistent with international law.

Finally, we call on the Commission to consider preparing a thematic report on the right to legal remedies and reparations for victims of human rights violations committed in the name of national security.

Victims of the CIA torture program have received no official acknowledgment of their suffering, apology for the wrongs inflicted upon them, compensation for their mistreatment, or assistance in recovering from their physical and psychological injuries. This must be corrected. Respecting their right to truth and legal redress, recognizing, apologizing to, and compensating victims and their families will begin to heal the wounds the U.S. government has inflicted and help ensure that such crimes are not repeated.

Thank you for your attention.

**Inter-American Commission on Human Rights
Thematic Hearing on the**

**Human Rights Situation of People Affected by the United States’
Rendition, Detention, and Interrogation Program**

October 23, 2015

**REPARATION & APOLOGY:
STATE RESPONSES TO SECRET DETENTION AND TORTURE**

**Submission by the Global Justice Clinic
New York University School of Law**

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REPARATION & APOLOGY: STATE RESPONSES TO SECRET DETENTION AND TORTURE

A. Introduction

As recently as October 7, 2015, following the fatal airstrike by the United States on a Médecins Sans Frontières (MSF) field hospital in Afghanistan, White House Press Secretary Josh Earnest stated:

[W]hen we [the United States] make[s] a mistake, we're honest about it. We own up to it. We apologize where necessary... and we implement the kinds of changes that make it less likely that those kinds of mistakes will occur in the future.¹

In the days following the strike, the U.S. military launched an investigation, alongside NATO- and Afghan-led inquiries,² to determine what went wrong. President Barack Obama personally apologized to the head of MSF, admitting the strike was a mistake,³ and the Department of Defense announced it would be offering condolence payments to those affected.⁴ While it remains to be seen how the United States will follow through on its promises to investigate and make amends, this response is remarkable for fulfilling key aspects of the duty to provide reparations for violations of international human rights and humanitarian law. Specifically, the response featured an acknowledgment of the harm that occurred to a group of identifiable individuals, an authorization of an investigation, an apology by the State for failing to protect individuals from the fatal harm, and financial compensation for nonpecuniary damages incurred.

In contrast, the United States has failed to live up to its moral and legal obligation to provide reparation to victims and survivors of the CIA torture, secret detention, and rendition program (CIA's torture program), who were intentionally subject to abuse. The release of the Senate Select Committee on Intelligence's Report on the Central Intelligence Agency's Rendition, Detention and Interrogation Program (SSCI Report) in December 2014 was a step forward toward accountability: it is the most transparent assessment of the CIA torture program by the United States to date. However, most of the work of the Committee remains behind closed doors, what was shared in the SSCI Report was heavily redacted, and there have been no subsequent steps taken by the United States to hold any individual or entity accountable for the

¹ James S. Brady, *Press Briefing by Press Secretary Josh Earnest, 10/7/15*, THE WHITE HOUSE OFFICE OF THE PRESS SECRETARY (Oct. 7, 2015, 1:25 pm), available at <https://www.whitehouse.gov/the-press-office/2015/10/07/press-briefing-press-secretary-josh-earnest-10715>.

² Nick Cumming-Bruce, *Doctors Without Borders Calls for Inquiry Into Kunduz Hospital attack*, <http://www.nytimes.com/2015/10/08/world/europe/kunduz-afghanistan-hospital-doctors-without-borders.html> (noting that Médecins Sans Frontières considers these investigations insufficient and is asking for the activation of the International Humanitarian Fact-Finding Commission).

³ Michael D. Shear and Somini Sengupta, *Obama Issues Rare Apology Over Bombing of Doctors Without Borders Hospital in Afghanistan*, N.Y. TIMES, (Oct. 7, 2015), <http://www.nytimes.com/2015/10/08/world/asia/obama-apologizes-for-bombing-of-afghanistan-hospital.html>

⁴ Denis Balibouse, *U.S. to make payments to families of Kunduz air strike victims: Pentagon*, REUTERS (Oct. 10, 2015), <http://www.reuters.com/article/2015/10/10/us-afghanistan-attack-msf-payments-idUSKCN0S40Y720151010>.

human rights violations described in the report.⁵ While other regional and national courts have found States to have violated international human rights law by participating in the CIA's torture program, the United States has yet to be held accountable in any judicial forum for its failure to provide remedy to those it subjected to secret detention and torture. Most attempts by survivors to bring the United States to court have resulted in dismissal following the government's invocation of the state secrets privilege. In this way, the United States' failure to provide redress stands in stark contrast to the practices of other nations.

This submission highlights some of the state practice regarding provision of reparations to survivors of the CIA's torture program. It also examines comparable contexts in which States, including the United States, have recognized their role in directly committing or allowing human rights violations to occur and acted to provide redress to survivors. First, the submission examines the how the European Court of Human Rights (ECtHR) has adjudicated the collusion of European States with the United States in the CIA's torture program. These cases may be instructive for the Inter-American Commission on Human Rights (IACHR) as they illustrate how regional bodies have addressed the harms of the CIA torture program.

Second, the submission examines how other countries have addressed individuals' allegations that they were subjected to forced disappearance and torture as part of the CIA's torture program. The States that have taken notable action in this regard include Canada, Germany, Italy, Sweden and the United Kingdom. The submission highlights these cases because, as stated in the *Velasquez Rodriguez* case, the Inter-American Court of Human Rights (ICtHR) affirmed that the objective of international human rights law is "to protect the victims and to provide for the reparation of damages resulting from the acts of the States responsible."⁶ This speaks to an effort to place the victim at the center of the reparation effort, a commonality of the examples highlighted here.

Next, the submission turns to cases outside the context of the CIA's torture program which feature comparable harm, where States have undertaken to offer some form of reparation. The first example is the creation of the Iraq Historic Allegations Team (IHAT) by the United Kingdom (UK). IHAT was created to provide individuals arbitrarily detained or tortured in Iraq by UK forces an opportunity to participate in an accountability process that has the potential to result in criminal charges against those responsible. It is paralleled by a process in which survivors of abuse are interviewed and compensated by the UK Ministry of Defense, which has

⁵ There have been other efforts in the United States to investigate the CIA torture program and make public some of those findings. However, there has been very little transparency with respect to the investigations and findings, and what is available to the public is heavily redacted. See, e.g., CENTRAL INTELLIGENCE AGENCY INSPECTOR GENERAL, SPECIAL REVIEW: COUNTERTERRORISM (Office of the Inspector General, Central Intelligence Agency, 2004) (examining the development of the CIA's counterterrorism detention and interrogation activities); RICHARD L. SKINNER, THE REMOVAL OF A CANADIAN CITIZEN TO SYRIA (Dep't of Homeland Security Office of the Inspector General, 2008), available at https://www.oig.dhs.gov/assets/Mgmt/OIGr_08-18_Jun08.pdf (providing a limited review of what happened to Mr. Arar); Press Release, United States Department of Justice, Special Task Force on Interrogations and Transfer Policies Issues Its Recommendations to the President (Aug. 24, 2009) (<http://www.justice.gov/opa/pr/special-task-force-interrogations-and-transfer-policies-issues-its-recommendations-president>) (explaining that the Special Task Force on Interrogations and Transfer Policies examined detention and interrogation policy, but did not disclose its recommendations).

⁶ *Velasquez Rodriguez*, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 134.

on some occasions also issued hand written apologies. The submission next briefly considers the relative inadequacy of the U.S. response to similar allegations of wrongdoing in the same theater of operation, but at the Abu Ghraib prison. In this context, it will also explore the U.S. policy of providing condolence/*solatia* payments to victims of harm incidental to combat. This practice is striking since no form of compensation has been forthcoming for *intentional* harms committed in the context of the CIA's torture program.

The final section of the submission examines reparations programs from U.S. history that involved an acknowledgment of wrongdoing, an investigation of the nature of that wrongdoing, an apology for the harm, and the provision of compensation to victims. The examples in this section demonstrate that because the United States has fulfilled its obligation to provide reparations in the past, it can and should do so for survivors of the CIA secret detention program today.

The United States has acknowledged that it created and implemented a secret detention program with global reach. Individuals were subjected to forced disappearance, secret and arbitrary detention, torture and other forms of cruel, inhuman and degrading treatment as part of this program. U.S. acknowledgement of the material facts concerning these human rights violations, while commendable, is only the first step toward remedies and reparation for victims and survivors. The United States' failure to provide comprehensive reparations for the harms caused by the CIA's torture program violates not only its obligations under international human rights law, but also its stated conviction that apology is morally appropriate. The United States must urgently fulfill its legal obligations to provide reparation to these victims and survivors.

B. The Obligation to Provide Reparations Under Inter-American Human Rights Law

The Inter-American human rights mechanisms have consistently recognized the importance of reparations, mandating their implementation to address the harm done to a particular individual and to ensure that person's dignity is salvaged.⁷ The Inter-American system imposes an affirmative "legal duty" on the State:

... to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.⁸

Thus, while responsibility for human rights violations can often be attributed to an individual, the Inter-American Court has made clear that the State is nonetheless obliged to provide reparation.⁹ Consequently, the Inter-American system's intense focus on protecting "the injured party" has resulted in the enforcement of "integral" reparations, which can broadly said to take the form of: investigation, prosecution and punishment, restitution, compensation, rehabilitation, satisfaction

⁷ Velasquez Rodriguez, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 154.

⁸ *Id.* at ¶ 174.

⁹ *Id.* at ¶¶ 174, 154, 164, 177.

or guarantees of non-repetition.¹⁰ Inter-American jurisprudence provides guidance on how the State can practically implement each element, in order for it to most effectively provide redress to the victim who suffered from the its failure to prevent human rights abuses.

The Inter-American Court has determined that the fulfillment of the obligations to investigate, prosecute and punish are interrelated.¹¹ In *Velasquez* the Court emphasized that the State was required to initiate investigations “to establish responsibility” for the human rights violation.¹² The duty to investigate is triggered at a low threshold in the case of disappearances.¹³ A failure to investigate necessarily leads to a failure to prosecute and punish.¹⁴

To achieve restitution in situations where individuals have been stigmatized by their abuse, the Inter-American Court has required the State to take steps to clear the individual’s name and help them re-assimilate into society.¹⁵ The Court has been meticulous in its attempts to return petitioners to their life prior to the abuse—including through such measures as reinstating employment and re-enrolling the victim in State welfare programs.¹⁶

Compensation is awarded for damages incurred.¹⁷ In the Inter-American system, compensation can have both a pecuniary and nonpecuniary aspect, especially where “[t]he consequences of [the abusive] treatment cannot be fully redressed or compensated.”¹⁸ The IACtHR has required the payment of compensation to victims in every one of its judgments since 2003.¹⁹

¹⁰ See *Lucero v. Chile*, Preliminary Objection, Merits, and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 267, ¶¶ 211 (Aug. 28, 2013). See also G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Mar. 21, 2006). See also Press Release, Inter-American Commission on Human Rights, IACHR Calls on the United States to Investigate and Punish Acts of Torture Established in the Senate Intelligence Committee Report (Dec. 12, 2014), http://www.oas.org/en/iachr/media_center/PReleases/2014/152.asp; Redress, *Articulating Minimum Standards on Reparations Programmes in Response to Mass Violations: Submission to the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence* (July 2014), <http://www.redress.org/downloads/publications/Submission%20to%20Special%20Rapporteur%22on%20Reparation%20Programmes%20-%20public.pdf> (stating that “the 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN Basic Principles)... serve as a key reference point for the determination of duties of states in international, regional and domestic systems in situations of mass violations. The UN Basic Principles are explicitly stated to ‘not entail new international or domestic legal obligations’, but rather to reflect existing obligations under international human rights law and international humanitarian law.”).

¹¹ *Lucero*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 267, ¶¶ 216–19 (discussing the fulfillment of these three elements of reparation together); Statement, Inter-Am. Comm’n H.R., Application and Scope of the Justice and Peace Law in Colombia (2006).

¹² *Velasquez Rodriguez*, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 180.

¹³ *Id.* at ¶ 181.

¹⁴ *Id.* at ¶ 180.

¹⁵ *Godoy v. Argentina*, Merits, Case 12.324, Inter-Am. Comm’n H.R., Report No. 66/12, OEA/Ser.L/V/II.147, doc. 1 ¶ 180 (2012); *Cruz & Silvestre v. Mexico*, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 273, ¶ 1520–24 (Nov. 26, 2013).

¹⁶ *Loayza Tamayo Case*, Reparations, Inter-Am. Ct. H.R. (ser. C) No. 42 ¶ 113–14 (Nov. 27, 1998).

¹⁷ *Velasquez Rodriguez*, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 174.

¹⁸ *Loayza Tamayo Case*, Reparations, Inter-Am. Ct. H.R. (ser. C) No. 42 ¶ 123.

¹⁹ Arturo J. Carrillo, *The Relevance of Inter-American Human Rights Law and Practice to Repairing the Past*, in THE HANDBOOK FOR REPARATIONS 512 (Pablo de Greiff ed., 2008).

Rehabilitation has been achieved through extensive tailored measures. The State has been obligated, for example, to draft an action plan to help survivors receive psychological treatment for resulting trauma²⁰ or to provide “comprehensive” health and education benefits.²¹

The Inter-American understanding of satisfaction requires the State to assume this objective “as its own legal duty,” requiring “an effective search for the truth by the government,” regardless of “what agent is eventually found responsible for the violation.”²² Under Inter-American precedents, satisfaction can be achieved through investigation into the alleged violations, uncovering of the full truth of the events alleged to have occurred, identification of those responsible, imposition of punishment, provision of a public apology to the individual wronged, and publication of a court judgment leading to the reparation.²³

Guarantees of non-repetition are aimed to correct the systemic, institutional failures that enabled the human rights abuse to occur. In the Inter-American system this has included steps such as: the organization of seminars to stimulate debate and inspire public policy reforms, the training of law enforcement officials, and other actions intended to prevent history from repeating itself.²⁴

This overview of the legal obligations enshrined in the Inter-American system highlights that reparations are intended to benefit the survivor. Unlike punishment, which is directed against the perpetrator, reparation makes the victim the focal point. In fact, in its procedural rules, the IACtHR has the jurisdiction to review and approve agreements for reparations made between the State and the victim.²⁵ The State is obliged to recognize its failure to protect the victim from human rights violations and to take action to correct the consequences, thereby bolstering the survivor’s notion that justice has been served. As a result, the comprehensive, robust and holistic nature of reparations mandated by the Inter-American system provides the blueprint for countries like the United States to fulfill their obligations to extend reparations.

C. Reparations by U.S. Allies for Illegal Detention and Torture for Survivors of the CIA’s Torture Program

The United States has a legal obligation to provide reparations for violations of international human rights law. According to Inter-American human rights jurisprudence on reparations, the elements of integral reparation can be categorized as: investigation, prosecution and punishment, restitution, compensation, rehabilitation, satisfaction or guarantees of non-

²⁰ Godoy v. Argentina, Merits, Case 12.324, Inter-Am. Comm’n H.R., Report No. 66/12, OEA/Ser.L/V/II.147, doc. 1 ¶ 180 (2012); Cruz & Silvestre v. Mexico, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 273, ¶ 1520-1524 (Nov. 26, 2013).

²¹ Barrios Altos Case, Judgment, Inter-Am Ct. H.R. (ser. C) No. 87, ¶ 36, 42–43 (2001).

²² Velasquez Rodriguez, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 177.

²³ Cea v. El Salvador, Case 10.480, Inter-Am. Comm’n H.R., Report No. 1/99 OEA/Ser.L/V/II.102 doc. 6 rev. ¶ 155 (1998).

²⁴ *Id.*; Cruz & Silvestre v. Mexico, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 273, ¶ 1520-1524 (Nov. 26, 2013).

²⁵ Inter-Am. Ct. Rules of Procedure (Nov. 16 – 28, 2009) *available at* <https://www.cidh.oas.org/Basicos/English/Basic20.Rules%20of%20Procedure%20of%20the%20Court.htm>.

repetition.²⁶ The Inter-American system's influential jurisprudence on reparations in the enforced disappearances and secret detention context is especially relevant for victims of the CIA's torture program.²⁷

The United States' failure to provide remedies and reparations to survivors of the CIA's torture program stands in stark contrast to steps taken by other nations that colluded with the United States in implementing the program. Remedies and reparations have been provided following litigation before the European Court of Human Rights (ECHR), U.N. mechanisms, independent national and inter-governmental inquiries, and national investigations and prosecutions, resulting in perpetrators being held responsible and reparations to some of the victims and survivors of the CIA's torture program in the form of compensation, satisfaction and apologies.

(1) The European Court of Human Rights

Khaled El Masri v. Macedonia

In December 2012, the ECHR found that Macedonia had abducted, detained and tortured Khaled El-Masri in 2003 and transferred him to CIA custody in Afghanistan, violating Articles 3, 5 and 8 of the European Convention on Human Rights (ECHR).²⁸ Mr. El-Masri is a German²⁹ national of Lebanese origin who was detained by Macedonian authorities in a hotel in the capital, Skopje, for 23 days before he was rendered and detained for at least four months by the CIA in a secret prison in Afghanistan.³⁰ The ECtHR's findings under Article 13 of the ECHR concerning the right to an effective remedy were a crucial element on the path to redress.³¹ Noting that the specific requirements of Article 13 vary according to the type of claim, the ECtHR set out Macedonia's "broader" obligations to investigate claims of torture and detention:

²⁶ See *supra* Part I(B).

²⁷ See Press Release, IACHR Calls on the United States to Investigate and Punish Acts of Torture Established in the Senate Intelligence Committee Project (stating, "On the occasion of the release of the Senate Intelligence Se, the Inter-American Commission reiterates its calls on the United States to carry out a full investigation in order to clarify the facts, and prosecute and punish all persons within its jurisdiction responsible for acts of torture or other cruel, inhuman or degrading treatment or punishment; and to provide integral reparations to the victims, including restitution, compensation, rehabilitation, satisfaction and measures of non-repetition, pursuant to international standards.").

²⁸ *El-Masri v. The Former Yugoslav Republic of Macedonia*, Eur. Ct. H.R. 80 (2012) (Judgment), *available at* <http://hudoc.echr.coe.int/eng?i=003-4196815-4975517> (the court also found that the transfer of Mr. El-Masri to U.S. authorities, where there was a "real risk" that he would be subject to ill-treatment, also constituted a violation of Article 3).

²⁹ Germany conducted a parliamentary inquiry in 2006 into its complicity with the CIA's torture program. The report focused in particular on the alleged German knowledge of or involvement in the renditions of Khaled El-Masri, Murat Kurnaz, and Muhammad Zammar and the transfer of Abdel Halim Khagafy. The final report released in June 2009 did not identify any German State actors as involved in the unlawful treatment of German citizens through the rendition process. It did, however, provide some recommendations on reform with respect to oversight mechanisms for German federal secret services. Amnesty International, *Open Secret: Mounting Evidence of Europe's Complicity in Rendition and Secret Detention* 16 (Amnesty International, 2010), *available at* <https://www.amnesty.org/en/documents/EUR01/023/2010/en/>.

³⁰ *Id.* at 3–8.

³¹ *Id.* at 75.

Where an individual has an arguable claim that he has been ill-treated by agents of the State, the notion of an “effective remedy” entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure.³²

Given the gravity and “irreversible nature” of the violations committed against Mr. El-Masri in violation of Article 3 of the ECHR, the court emphasized that the remedy under Article 13 required “independent and rigorous scrutiny” to “be carried out without regard to what the person may have done to warrant expulsion or to any perceived threat to the national security of the expelling State.”³³ Of concern to the ECtHR, the Macedonian public prosecutor found that Mr. El-Masri’s allegations were unsubstantiated and, after a limited and haphazard inquiry, rejected his criminal complaint.³⁴ Furthermore, when affirming Mr. El-Masri’s right to a meaningful investigation by Macedonia, the ECtHR affirmed that, “in view of the violations found,” namely the occurrence of secret detention and torture, “the applicant undeniably suffered non-pecuniary damage which cannot be made good by the mere finding of a violation.”³⁵ In the Court’s view, acknowledgement was insufficient, and “the extreme seriousness” of the illegal detention and torture required compensation in an award of 60,000 Euros.³⁶

The ECtHR readily and forcefully demonstrated the applicability of remedy and reparation to survivors of the CIA’s torture program. In fact, in its judgment the ECtHR stated unambiguously that abuses committed against Mr. El-Masri, while attributable to Macedonia, were “at the hands of the special CIA rendition team.”³⁷

The ECtHR’s findings concerning the CIA’s involvement in Mr. El-Masri’s forced disappearance, torture and ill-treatment are consistent with those of the SSCI and the CIA’s own Inspector General, which both acknowledge that Mr. El-Masri was mistakenly caught up in the CIA’s torture program.³⁸ These findings are also consistent with allegations in a civil complaint filed by Mr. El-Masri in a U.S. court in 2005, which the United States successfully had dismissed on state secrets grounds before any consideration on the merits.

³² *Id.* at 76.

³³ *Id.* at 76.

³⁴ *Id.* at 21.

³⁵ *Id.* at 79.

³⁶ *Id.* at 11–12, 21.

³⁷ *Id.* at 63.

³⁸ See SENATE SELECT COMMITTEE ON INTELLIGENCE, 113TH CONG., COMMITTEE STUDY OF THE CENTRAL INTELLIGENCE AGENCY’S DETENTION AND INTERROGATION PROGRAM 8128–129, n. 762 (Comm. Print 2014) (Declassification Revisions December 3, 2014) [hereinafter SSCI Report] (*citing and quoting* CIA Office of Inspector General, Report of Investigation, The Rendition and Detention of German Citizen Klialid al-Masri [sic] (2004-7601-IG), July 16, 2007).

Al-Nashiri v. Poland

The ECtHR has also held Poland accountable for its role in the CIA torture program.³⁹ In 2002 Abd Al-Rahim Al Nashiri was apprehended in the United Arab Emirates and transferred to CIA custody.⁴⁰ The CIA detained and tortured him, first in Afghanistan and then in Thailand.⁴¹ Between December 2002 and June 2003, Mr. Al Nashiri was held in a CIA black site in Poland where he was subjected various forms of ill-treatment.⁴² In finding a violation of Article 13's guarantee of an effective remedy, the Court underscored the ongoing delays and extensions plaguing a Polish investigation into the country's role in the CIA torture program. This investigation has failed to result in a prosecution and was intended to continue into February 2013—more than 10 years since Mr. Al Nashiri had originally been detained.⁴³ The Court made a finding under Article 13 identical to its holding in the *El-Masri* case, criticizing Poland's failure to take remedial action despite knowledge of the rendition at a very early stage.⁴⁴ The Court found that in light of the severity of the abuses alleged, the failure of the Polish authorities to investigate promptly and sufficiently constituted a violation of the right to truth, which "does not belong solely to the victim of the crime and his or her family but also to other victims of similar violations and the general public, who have the right to know what has happened."⁴⁵ The court found that, despite the "high secrecy of US rendition operations,"⁴⁶ the right to truth in the context of RDI cases was essential to the rule of law:

An adequate response by the authorities in investigating allegations of serious human rights violations may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of impunity, collusion in or tolerance of unlawful acts.⁴⁷

Giving weight to "the extreme seriousness" of the human rights violations committed against Mr. Al Nashiri, the ECtHR found that Mr. Al Nashiri was owed compensation of 100,000 Euros.⁴⁸

Zayn Al-Abidin Muhammad Husayn (Abu Zubaydah) v. Poland

The Court made similar findings in a companion case concerning Zayn Al-Abidin Muhammad Husayn (Abu Zubaydah), who was apprehended in 2002 in Pakistan by the CIA⁴⁹

³⁹ See *Al Nashiri v. Poland*, Eur. Ct. H.R. (2015) (Judgment) (Fourth Section) *available at* <http://hudoc.echr.coe.int/eng?i=001-146044#%7B%22itemid%22:%5B%22001-146044%22%5D%7D>; *Husayn (Abu Zubaydah) v. Poland* Eur. Ct. H.R. (2015) (Judgment) (Fourth Section) *available at* <http://hudoc.echr.coe.int/eng?i=001-146047>.

⁴⁰ *Al-Nashiri v. Poland*, Eur. Ct. H.R. 32 (2015).

⁴¹ *Id.* at 32.

⁴² *Id.* at 35. Following this abuse in Poland, Mr. al-Nashiri was moved between Morocco, Guantanamo Bay and Romania, until finally being detained in Guantanamo Bay, where he remains today. *Id.* at 39.

⁴³ *Id.* at 52, 53, 55.

⁴⁴ *Id.* at 490.

⁴⁵ *Id.* at 495.

⁴⁶ *Id.* at 52, 53, 146.

⁴⁷ *Id.* at 495.

⁴⁸ *Id.* at 595.

⁴⁹ *Husayn (Abu Zubaydah) v. Poland*, Eur. Ct. H.R. 156 (2015).

before being transferred to the same CIA black site in Thailand as Mr. Al Nashiri. There, he was also subjected to torture⁵⁰ and ultimately flown to the CIA detention facility in Poland.⁵¹ The Court ruled that not only was Mr. Husayn owed compensation (amounting to 130,000 Euros), he and was also entitled to a “thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure.”⁵² To this end, the ECtHR mandated that the State open a “thorough and effective investigation” that would culminate in a “full public account of Polish involvement in the rendition programme.”⁵³ The ECtHR’s decision emphasizes the relevance of sufficient reparations for RDI survivors, alongside the United States’ role in provision of these remedies:

Poland should secure, through diplomatic or other means, the cooperation and assistance of the United States Government in order to establish the full and precise details of the applicant’s treatment at the hands of the CIA, and it should make such representations and interventions, individually or collectively, as are necessary to bring an end to the on-going violations of his rights.⁵⁴

After a failed appeal to the Grand Chamber, the Polish foreign minister publicly stated that Poland would comply with the reparations order from the Court.⁵⁵ Reports indicate that Mr. Husayn’s lawyers will not claim the 30,000 Euros apportioned for legal costs, and that the remaining 100,000 Euros will be donated to survivors of torture.⁵⁶ Full satisfaction by Poland has been stymied by the United States, which has refused four requests for legal assistance by Polish investigators, citing national security concerns.⁵⁷

Nasr and Ghali v. Italy

In 2003 Hassan Mustafa Osama Nasr (Abu Omar), an Egyptian man residing in Milan, Italy, was abducted off the street by CIA agents and, allegedly with the cooperation of the Italian government, ultimately transferred to Egypt, where he was secretly detained and tortured.⁵⁸ In 2007, he was finally released without charge. In 2009, Mr. Nasr and his wife lodged an application with the Court alleging violations of ECHR Article 6 (the right to a fair trial) and

⁵⁰ *Id.* at 158.

⁵¹ *Id.* at 159. Abu Zubaydah was also allegedly detained in Morocco, Lithuania and Guantanamo Bay where he continues to be held today. *Id.* at 43.

⁵² *Id.* at 204, 211.

⁵³ *Id.* at 209.

⁵⁴ *Id.* at 210.

⁵⁵ See Alan Yuhas, *Poland agrees to pay reparations to Guantanamo detainees*, THE GUARDIAN (Feb. 18, 2015 13:42 EST), <http://www.theguardian.com/world/2015/feb/18/poland-agrees-reparations-guantanamo-detainees> (quoting the Polish foreign minister as stating, ““We have to do it, because we are a country that abides laws.””).

⁵⁶ Victoria Parsons, *Poland’s complicity in CIA torture programme confirmed as European Court rejects Warsaw’s appeal*, THE BUREAU OF INVESTIGATIVE JOURNALISM (Feb. 17, 2015), <https://www.thebureauinvestigates.com/2015/02/17/polands-complicity-in-cia-torture-programme-confirmed-as-european-court-rejects-warsaws-appeal/>.

⁵⁷ *US refuses to cooperate with Poland in CIA prisons probe*, RADIO POLAND (Sep. 22, 2015 12:07PM), <http://www.thenews.pl/1/10/Artykul/222004,US-refuses-to-cooperate-with-Poland-in-CIA-prisons-probe>.

⁵⁸ *Nasr and Ghali v. Italy*, Eur. Ct. H.R. (2015), available at <http://hudoc.echr.coe.int/eng-press?i=003-5115374-6308396>.

Article 13 (right to an effective remedy).⁵⁹ In particular, Mr. Nasr has alleged that due to Italian foot-dragging, impunity prevails.⁶⁰ The ECtHR heard arguments in the case in June 2015 and a judgment on whether Italy has sufficiently fulfilled its obligation to provide redress is still pending.⁶¹

Al-Nashiri v. Romania

Mr. Al-Nashiri has submitted a complaint against Romania for torture, ill-treatment, detention and extraordinary rendition by the CIA at a Romania-based black site, where he was transferred following detention in Poland.⁶² He has raised questions under ECHR Article 13 (right to an effective remedy), requiring Romania to explain to the Court “in a detailed manner the course of the investigation, procedural and other decisions taken” in response to the alleged violations.⁶³ The ECtHR has transmitted the application to the Romanian government.⁶⁴

Zayn Al-Abidin Muhammad Husayn (Abu Zubaydah) v. Lithuania

In this case against Lithuania, Mr. Husayn alleges that the State was complicit with the CIA in his detention and ill-treatment in a CIA black site in Lithuania.⁶⁵ Mr. Husayn alleges that he was taken from Morocco to Lithuania in 2005, where he was detained until 2006, when he was ultimately sent to Guantánamo.⁶⁶ Mr. Husayn alleges that Lithuania violated his rights under Article 13 by launching a delayed and cursory investigation that lacked impartiality.⁶⁷ Taken together, Mr. Husayn alleges that Lithuania’s actions to mitigate and correct the consequences of his abuse were insufficient to fulfill Lithuania’s legal obligation to provide reparation. The ECtHR has transmitted the application to the Lithuanian government.

(2) National Governments

While the CIA’s torture program was designed and implemented by the United States, it could never have functioned without an array of complicit States, which hosted black sites and facilitated detainee renditions.⁶⁸ Following intense public scrutiny, numerous national governments have taken steps to investigate their own complicity, to remedy, and to provide reparations for human rights violations committed by their officials who colluded with the United States in the CIA’s torture program.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Al Nashiri v. Romania*, Eur. Ct. H.R. (2012), available at [http://hudoc.echr.coe.int/fre?i=001-113814#{%22itemid%22:\[%22001-113814%22\]}](http://hudoc.echr.coe.int/fre?i=001-113814#{%22itemid%22:[%22001-113814%22]}).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Abu Zubaydah v. Lithuania*, Eur. Ct. H.R. (2011), available at <http://hudoc.echr.coe.int/eng?i=001-115816>.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ See generally Dick Marty, Committee on Legal Affairs and Human Rights: Alleged Secret Detentions and Unlawful Inter-State Transfers Involving Council of Europe Member States, (June 7, 2006).

(a) Canada

Maheer Arar is a Canadian citizen born in Syria who was detained by the U.S. Immigration and Naturalization Service on September 26, 2002 while passing through John F. Kennedy International Airport in New York. He was detained for 12 days and then unlawfully rendered to Syria.⁶⁹ While in Syria, Mr. Arar was arbitrarily detained and “interrogated, tortured and held in degrading and inhumane conditions.”⁷⁰ After having been in detention for more than a year, Mr. Arar was released on October 5, 2003, at which time he returned to Canada.⁷¹

In 2004, following public pressure, the Canadian government set up an official inquiry into its role in Mr. Arar’s rendition and torture.⁷² The “Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar” was headed by Justice Denis O’Connor of the Ontario Court of Appeal.⁷³ The terms of reference empowered Justice O’Connor to investigate and report fully on the actions of Canadian officials in relation to Mr. Arar, including with regard to his detention in the United States, his rendition to Syria via Jordan, his imprisonment and treatment while in Syria, and his return to Canada.⁷⁴ It also asked Justice O’Connor to make recommendations concerning an independent, arm’s-length review mechanism for the Royal Canadian Mounted Police’s activities with respect to national security.⁷⁵ Considered in light of Canada’s obligations to provide reparation, this mandate speaks to its obligation to provide a full investigation into the violations to uncover the full, complete and public truth and to design reform to satisfy the duty to provide guarantees of non-repetition.

The Commission’s report was released on September 18, 2006 and found that the Royal Canadian Mounted Police (RCMP) provided inaccurate information to American authorities about Mr. Arar, which contributed to his detention and rendition; that Mr. Arar was tortured in Syria; and that following Mr. Arar’s return, reports were prepared and leaked by the government

⁶⁹ Dennis R. O’Connor, COMMISSION OF INQUIRY INTO THE ACTIONS OF CANADIAN OFFICIALS IN RELATION TO MAHER ARAR’S REPORT OF THE EVENTS RELATING TO MAHER ARAR: ANALYSIS AND RECOMMENDATION 1 (Her Majesty the Queen in Right of Canada, represented by the Minister of Public Works and Government Services, 2006).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ See Beth Van Schaak, *Not to be Forgotten: The Case of Maher Arar*, JUST SECURITY (Dec. 19, 2014, 9:00 AM), <https://www.justsecurity.org/18526/forgotten-case-maher-arar/>.

⁷⁴ As explained by Justice O’Connor, this involved the following: “Over 70 government officials were called as witnesses, and the government produced approximately 21,500 documents, of which some 6,500 were entered as exhibits. The process was complex because of the need to keep some of the relevant information confidential, to protect national security and international relations interests. I received some of the evidence in closed, or in camera, hearings and am unable to refer to some of the evidence heard in those hearings in the public version of this report. However, I am pleased to say that I am able to make public all of my conclusions and recommendations, including those based on in camera evidence.” Dennis R. O’Connor, COMMISSION OF INQUIRY INTO THE ACTIONS OF CANADIAN OFFICIALS IN RELATION TO MAHER ARAR’S REPORT OF THE EVENTS RELATING TO MAHER ARAR: ANALYSIS AND RECOMMENDATION 10 (Her Majesty the Queen in Right of Canada, represented by the Minister of Public Works and Government Services, 2006).

⁷⁵ Press Release, Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, Deputy Prime Minister Issues Terms of Reference for the Public Inquiry Into the Maher Arar Matter (Feb. 4, 2004) (http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/maher_arar/05-07-09/www.ararcommission.ca/eng/Terms_of_Reference.pdf).

downplaying his experience.⁷⁶ This acknowledgment of wrongdoing is an essential component of reparation. The report concluded with twenty-three recommendations, which focused largely on the RCMP, but also included recommendations related to compensation for Mr. Arar. In describing the recommendation for compensation, Justice O'Connor emphasized the impact of torture and in particular of being branded a terrorist by the U.S. and Canadian government. He encouraged the Canadian Government to think creatively about what compensation could mean with respect to Mr. Arar, and recommended that a compensation agreement could be more than a mere damage award, and could include an apology or an offer of employment or assistance in obtaining employment.⁷⁷

The Canadian government offered an extensive and explicit apology in January 2007 alongside a settlement of Mr. Arar's claim against the Canadian government for \$10.5 million plus legal costs.⁷⁸ Separately, in September 2015, Canada also initiated a prosecution against George Salloum, one of the individuals alleged to have been involved in Mr. Arar's torture in Syria.⁷⁹ Responding to the compensation and apology, Mr. Arar stated "I cannot begin to tell you how important it is today that Prime Minister Harper and his government have followed through. . . In doing so, the government of Canada and the prime minister have acknowledged my innocence. This means the world to me."⁸⁰

The United States refused to cooperate with the Commission of Inquiry,⁸¹ and has not acknowledged its wrongdoing in the case of Mr. Arar. Publicly available information on the U.S. investigations into Mr. Arar's rendition does shed some light on what occurred, but it is hardly comprehensive. In March 2008, the Department of Homeland Security's Office of Inspector General published its investigation entitled "The Removal of a Canadian Citizen to Syria." The Inspector General leading the investigation was Richard L. Skinner. The heavily redacted report offers a review of the administrative proceedings that surround Mr. Arar's transfer to Syria, and

⁷⁶ Dennis R. O'Connor, COMMISSION OF INQUIRY INTO THE ACTIONS OF CANADIAN OFFICIALS IN RELATION TO MAHER ARAR'S REPORT OF THE EVENTS RELATING TO MAHER ARAR: ANALYSIS AND RECOMMENDATION 15-16 (Her Majesty the Queen in Right of Canada, represented by the Minister of Public Works and Government Services, 2006).

⁷⁷ *Id.* at 363.

⁷⁸ The apology letter from Prime Minister Harper to Mr. Arar stated: "On behalf of the Government of Canada, I wish to apologize to you, Monia Mazigh and your family for any role Canadian officials may have played in the terrible ordeal that all of you experienced in 2002 and 2003. . . . I trust that, having arrived at a negotiated settlement, we have ensured that fair compensation will be paid to you and your family. I sincerely hope that these words and actions will assist you and your family in your efforts to begin a new and hopeful chapter in your lives." See Press Release, Prime Minister of Canada Stephen Harper, *Prime Minister Releases Letter of Apology to Maher Arar and His Family and Announces Completion of Mediation Process* (Jan. 26, 2007) (<http://pm.gc.ca/eng/news/2007/01/26/prime-minister-releases-letter-apology-maher-arar-and-his-family-and-announces>).

⁷⁹ Associated Press in Toronto, *Canada charges Syrian officer over torture of engineer mistaken for terrorist*, THE GUARDIAN, Sept. 1, 2015, <http://www.theguardian.com/world/2015/sep/01/canadian-police-charge-syrian-officer-torture-engineer>.

⁸⁰ Doug Struck, *Tortured Man Gets Apology from Canada*, WASHINGTON POST (Jan. 27, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/01/26/AR20070126012601717.html>.

⁸¹ See The Rendition Project, Maher Arar, THE RENDITION PROJECT, <http://www.therenditionproject.org.uk/prisoners/arar.html> (last visited Oct. 22, 2014); Jeff Sallot, *How Canada failed citizen Maher Arar*, GLOBE AND MAIL (Sep. 19, 2006), <http://www.theglobeandmail.com/news/national/how-canada-failed-citizen-maher-arar/article1103562/?page=all>.

offers some recommendations, though denies all wrongdoing for rendering Mr. Arar to Syria. This is the case even though “[t]he INS concluded that Arar was entitled to protection from torture and that returning him to Syria would more likely than not result in his torture. . . . However, the validity of assurances to protect Arar appears not to have been examined.” The recommendations accompanying this section are redacted.⁸² This report was cited in the latest Periodic Report of the United States of America to the United Nations Committee Against Torture as having informed the Special Task Force on Interrogations and Transfer Policies, which was established by E.O. 1349. This was the executive order that revoked E.O. 13440, which had given the CIA leeway in interpreting protections provided by the Geneva Conventions’ Common Article 3 in the CIA’s torture program.⁸³ The Special Task Force found that the U.S. may rely on diplomatic assurance from other countries that individuals will not suffer human rights violations, but that the United States should strengthen U.S. procedures for obtaining and evaluating those assurances and improve the U.S. ability to monitor treatment of individuals transferred to other countries.⁸⁴ The specific recommendations have not been made public.⁸⁵ This lack of transparency and the continued embrace of diplomatic assurances despite their inherent unreliability in this context demonstrates that the United States has failed to provide guarantees of non-repetition in this case.

The United States has also failed to come close to offering reparation and apology⁸⁶ despite a civil society effort to secure such an apology from President Barack Obama,⁸⁷ though

⁸² Richard L. Skinner, *THE REMOVAL OF A CANADIAN CITIZEN TO SYRIA* 22 (Dep’t of Homeland Security Office of the Inspector General, 2008), *available at*: https://www.oig.dhs.gov/assets/Mgmt/OIGr_08-18_Jun08.pdf.

⁸³ United States Department of State, Periodic Report of the United States of America to the United Nations Committee Against Torture (Third, Fourth, and Fifth Reports) ¶¶ 71-74 (Dep’t of State, 2013), *available at*: <http://www.state.gov/j/drl/rls/213055.htm>.

⁸⁴ Press Release, United States Department of Justice, Special Task Force on Interrogations and Transfer Policies Issues Its Recommendations to the President (Aug. 24, 2009) (<http://www.justice.gov/opa/pr/special-task-force-interrogations-and-transfer-policies-issues-its-recommendations-president>).

⁸⁵ Derek Jinks, *An Inauspicious Anniversary: It’s Time to Release the Report of the Special Interagency Task Force on Interrogations and Transfer Policies*, Just Security (Jan. 23, 2014, 3:20 PM), <https://www.justsecurity.org/6157/inauspicious-anniversary-its-time-release-report-special-interagency-task-force-interrogations-transfer-policies/>.

⁸⁶ For example, following the release of the Canadian Commission of Inquiry’s Report, a journalist present at the State Department’s daily press briefing had the following exchange with Tom Casey, Deputy Spokesman: “QUESTION: Is Mr. Arar owed an apology by the U.S. Government? MR. CASEY: Well, again, I think we’ve spoken to this case before and I really don’t have anything to add on it and I’d refer you over to the agencies involved it more directly for any other comment. QUESTION: But haven’t you been saying that the U.S. Government does not deport people to countries where there is a possibility of torture? MR. CASEY: . . . my understanding was that this case was handled in accordance with our international obligations and that would certainly include obligations not to send individuals to countries where we have a reasonable expectation that they’d be subject to torture.” Tom Casey, *Daily Press Briefing Transcript*, U.S. DEP’T OF STATE (Sept. 21, 2006), <http://2001-2009.state.gov/p/wha/rls/dpb/06/q3/72962.htm>.

⁸⁷ For example, on May 12, 2012, Amnesty International USA, the Center for Constitutional Rights, and the National Religious Campaign against Torture delivered a petition to the White House containing more than 60,000 signatures asking President Obama to extend a formal apology to Maher Arar. Press Release, Center for Constitutional Rights, 60,000 People Ask President Obama for Apology to Torture Victim Maher Arar (May 21, 2012) (<https://ccrjustice.org/home/press-center/press-releases/60000-people-ask-president-obama-apology-torture-victim-maher-arar>).

several individual lawmakers have offered an apology to Mr. Arar.⁸⁸ Litigation was attempted in the United States in *Arar v. Ashcroft*, but the case was ultimately dismissed on the grounds that adjudicating Mr. Arar's claims would interfere with national security and foreign policy. The case was denied review by the Supreme Court in June 2010.⁸⁹

(b) Italy

Italy has conducted the most sweeping criminal investigation into the secret detention and torture program to date.⁹⁰ It has convicted scores of CIA agents, other American personnel and Italian nationals for their role in the abduction, transfer and torture of Hassan Mustafa Osama Nasr, discussed above, the only convictions of those responsible for the CIA's torture program anywhere in the world.⁹¹

In February 2003, Mr. Nasr was abducted in a joint U.S.-Italian operation by the CIA and Italian security service SISMI off the street in Milan and transferred to Aviano Air Base where he was tortured.⁹² Mr. Nasr was then transferred to Cairo where he was detained and tortured by the Egyptian security service.⁹³ An Egyptian court deemed his secret detention "unfounded" and ordered his release in February 2007.⁹⁴

⁸⁸ A number of individual lawmakers apologized to Mr. Arar when he testified in October 2007 before the House of Representatives' Subcommittee on International Organizations, Human Rights and Oversight of the Committee on Foreign Affairs and the Subcommittee on the Constitution, Civil Rights, and Civil Liberties of the Committee on the Judiciary, which jointly held hearings on "Rendition to Torture: The Case of Maher Arar." Mr. Arar provided his testimony via video link and individual lawmakers from the Democratic and Republic parties offered him an apology for what he endured. For example, Dana Rohrabacher stated: "I am sorry that you had to go through that and, hopefully, no innocent person will ever have to go through that." Representative Jerry Nadler also apologized: "On behalf of my fellow citizens, I want to apologize to you, Mr. Arar, for the reprehensible conduct of our Government for kidnapping you, for turning you over to Syria, a nation that our own State Department recognizes as routinely practicing torture. . . . It is about time we exposed this conduct to the light of day. This nation deserves to have its government act in a manner that is consistent with our laws and our values and that it is not enough to say that this is a mistake and that we apologize, not as long as the policy underlying it continues and we continue to claim the right to snatch people off the street, kidnap them and send them to another government, where we know they will be tortured. I hope one day to be able to apologize to Mr. Arar in person on American soil." *Rendition to Torture: The Case of Maher Arar: Joint Hearing Before the S. Comm. on Int'l Orgs., Human Rights and Oversight of the Comm. on Foreign Affairs and the S. Comm. on the Constitution, Civil Rights, and Civil Liberties of the Comm. on the Judiciary*, 110th Cong. 51, 20 (2007) (statement of Rep. Dana Rohrabacher, Ranking Member, S. Comm. on Int'l Orgs., Human Rights, and Oversight; statement of Rep. Jerry Nadler, Chair, S. Comm. on the Constitution, Civil Rights, and Civil Liberties).

⁸⁹ The Rendition Project, Maher Arar, THE RENDITION PROJECT, <http://www.therenditionproject.org.uk/prisoners/arar.html> (last visited Oct. 22, 2014).

⁹⁰ *Id.*

⁹¹ *Italy orders CIA kidnapping trial*, THE BBC (February 16, 2007), <http://news.bbc.co.uk/2/hi/europe/6368269.stm>.

⁹² *Italy Jails Ex-Officials for Rendition*, THE NEW YORK TIMES (Feb. 12, 2013), <http://www.nytimes.com/2013/02/13/world/europe/former-italian-military-officials-sentenced-in-abduction-of-abu-omar.html>.

⁹³ *Id.*

⁹⁴ *Abducted Egyptian Cleric Released*, THE WASHINGTON POST (February 12, 2007; 12:27 PM), <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/12/AR2007021200466.html>.

Italian prosecutors subsequently indicted 26 CIA agents.⁹⁵ In November 2009 an Italian judge convicted 22 CIA agents and a U.S. Air Force colonel *in absentia* and two Italian secret agents.⁹⁶ In September 2012 the Italian Court of Cassation confirmed the convictions.⁹⁷ In February 2013, an Italian court vacated acquittals for three other Americans convicted *in absentia*.⁹⁸ The CIA agents remain at large but because of outstanding arrest warrants are subject to travel restrictions in Europe.⁹⁹ One convicted CIA agent, Sabrina De Sousa, was recently detained by Portuguese authorities pending a decision to deliver her to Italy to serve a six year sentence.¹⁰⁰

Not only did the Italian government take steps to satisfy its international obligation to prosecute those responsible for Mr. Nasr's rendition, detention and torture, it also awarded him compensation. In February 2003, the Italian Court of Appeals fined the 23 convicted Americans and awarded Mr. Nasr and his wife 1.5 million Euros.¹⁰¹ Thus, Italy has satisfied numerous elements of reparations as defined by the IACHR, including investigating violations, providing a public account of the facts, identifying those responsible, prosecuting them, handing down a public judgment, and providing compensation.

The United States repeatedly attempted to undermine the Italian judiciary to shield CIA agents and other American personal responsible for Mr. Nasr's secret detention and torture. In May 2006, the U.S. ambassador in Rome wrote that "nothing would damage relations faster or more seriously than a decision by the government of Italy to forward warrants for arrests" for the CIA agents responsible.¹⁰² Secret dispatches show how the U.S. ambassador and U.S. Secretary of Defense Robert Gates also pressured Rome to block the issuance of international arrest warrants¹⁰³ The State Department subsequently expressed dismay at the initial conviction of 23

⁹⁵ Peter Bergen, *I Was Kidnapped by the CIA*, MOTHER JONES (March/April 2008), <http://www.motherjones.com/politics/2008/03/exclusive-i-was-kidnapped-cia?page=2>.

⁹⁶ Rachel Donadio, *Italy Convicts 23 Americans for C.I.A. Renditions*, THE NEW YORK TIMES (Nov. 4, 2009), <http://www.nytimes.com/2009/11/05/world/europe/05italy.html>.

⁹⁷ *Italy upholds verdict on CIA agents in rendition case*, THE BBC, (Sep. 19, 2012), <http://www.bbc.co.uk/news/world-europe-19653566>. However, because of severe diplomatic pressure on the part of the United States, the Justice Minister Roberto Castelli refused to request the extradition of the 23 Americans convicted. John Goetz and Matthias Gebauer, *US Pressured Italy to Influence Judiciary*, DER SPIEGEL (Dec. 17, 2010), <http://www.spiegel.de/international/europe/cia-rendition-case-us-pressured-italy-to-influence-judiciary-a-735268.html>.

⁹⁸ *Italian Court Convicts 3 Americans in Kidnapping Case*, THE NEW YORK TIMES (Feb. 1, 2013), <http://www.nytimes.com/2013/02/02/world/europe/italian-court-convicts-3-americans-in-kidnapping-case.html>.

⁹⁹ *Italy warrants for 22 purported CIA operatives*, CNN (Dec. 23, 2005), <http://www.cnn.com/2005/WORLD/europe/12/23/italy.warrants2/index.html>.

¹⁰⁰ *Former CIA operative detained in Portugal over kidnapping of cleric*, THE GUARDIAN (Oct. 8, 2015), <http://www.theguardian.com/world/2015/oct/08/former-cia-operative-detained-portugal-kidnapping>.

¹⁰¹ *Italian court increases sentences for 23 CIA agents*, ALTERNET, http://www.alternet.org/rss/breaking_news/396631/italian_court_increases_sentences_for_23_cia_agents (last visited Oct. 18, 2015).

¹⁰² John Goetz and Matthias Gebauer, *CIA Rendition Case: US Pressured Italy to Influence Judiciary*, DER SPIEGEL (Dec. 17, 2010), <http://www.spiegel.de/international/europe/cia-rendition-case-us-pressured-italy-to-influence-judiciary-a-735268.html>.

¹⁰³ *Id.*

Americans.¹⁰⁴ It pressured the Italian government not to request their extradition. In response, the Minister of Justice Roberto Castelli refused to forward on requests for their extradition to the United States.¹⁰⁵ The United States also petitioned the judge to move the U.S. Air Force colonel's case to the United States but was refused.¹⁰⁶ An internal investigation into the CIA's field operations as a whole was ordered by the CIA director Porter Goss because of the perceived embarrassment of Mr. Nasr's rendition.¹⁰⁷

(c) Sweden

Sweden has acknowledged its role in the CIA's torture program and provided compensation to two survivors. In 2001, Ahmed Agiza and Muhammad al-Zery, Egyptian asylum-seekers, were subjected to degrading and inhuman treatment in Stockholm by CIA agents who forcibly transferred them to Egypt with the complicity of Swedish police.¹⁰⁸ Egyptian authorities assured the Swedish government that Mr. Agiza and Mr. al-Zery would not be tortured and agreed to a post-transfer monitoring mechanism that allowed Swedish diplomats to conduct periodic visits to Mr. Agiza and Mr. al-Zery.¹⁰⁹ Nonetheless, Mr. Agiza and al-Zery were tortured by Egyptian authorities.¹¹⁰

Sweden's participation in the CIA's torture program was criticized heavily by the United Nations. In 2003, the UN Committee Against Torture found that Sweden had violated the *non-refoulement* norm set out in Article 3 of the Convention Against Torture and that the "[t]he procurement of diplomatic assurances, which, moreover, provided no mechanism for their enforcement, did not suffice to protect against this manifest risk."¹¹¹

Similarly, in 2006, the UN Human Rights Committee (HRC) found that Sweden had violated Mr. al-Zery's rights under Article 7 of the International Covenant on Civil and Political Rights.¹¹² The HRC held that Sweden allowing Mr. al-Zery to be tortured in Stockholm by CIA agents and transferred to Egypt while relying on insufficient diplomatic assurances in the face of a manifest risk of torture. The HRC also found that Sweden had violated Article 7's anti-torture rule in conjunction with Article 2 by not conducting an adequate criminal investigation.¹¹³

¹⁰⁴ *Italy convicts 23 Americans in CIA rendition case*, REUTERS (Nov. 4, 2009), <http://www.reuters.com/article/2009/11/04/us-italy-renditions-verdict-factbox-idUSTRE5A352H20091104?pageNumber=2&virtualBrandChannel=0>.

¹⁰⁵ Peter Kiefer, *Italian Minister Won't Seek Extradition of C.I.A. Agents*, THE NEW YORK TIMES (Apr. 12, 2006), <http://www.nytimes.com/2006/04/12/world/europe/12cnd-cia.html>.

¹⁰⁶ *Id.*

¹⁰⁷ John Crewdson, *CIA's bungled Italy job*, The Chicago Tribune (Dec. 25, 2005), http://articles.chicagotribune.com/2005-12-25/news/0512250380_1_abu-omar-robert-seldon-lady-cia-operatives.

¹⁰⁸ Craig Whitlock, *New Swedish Documents Illuminate CIA Action*, THE WASHINGTON POST (May 21, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/05/20/AR2005052001605.html>.

¹⁰⁹ *Swedish TV4 Kalla Fakta Fakta Program: "The Broken Promise,m* HUMAN RIGHTS WATCH (May 17, 2004), <http://www.hrw.org/legacy/english/docs/2004/05/17/sweden8620.htm>.

¹¹⁰ *Id.*

¹¹¹ *Agiza v. Sweden*, Communication No. 233/2003, at para. 13.4, U.N. Doc. CAT/C/34/D/233/2003 (2005).

¹¹² *Mohammed Alzery CAT/C/34/*, Communication No. 1416/2005, at paras. 11.5-11.7, U.N. Doc. CCPR/C/88/D/1416/2005 (2006).

¹¹³ *Id.* at para. 11.7.

In 2005, Sweden conducted its own parliamentary investigation into its decision to transfer Mr. Agiza and Mr. al-Zery.¹¹⁴ Sweden's parliamentary ombudsman, Mats Melin, concluded that the Swedish police failed to establish adequate control of the airport, voluntarily relinquished the men to the CIA and that their inhumane and unlawful treatment violated Article 3 of the European Convention.¹¹⁵

In 2008, the Swedish government agreed to award Mr. Agiza and Mr. al-Zery \$500,000 each in a settlement with the Ministry of Justice for their rendition, detention and torture.¹¹⁶ Mr. Agiza was later granted permanent residence in Sweden.¹¹⁷ Sweden thus undertook an investigation and provided compensation and elements of reparations.

The United States reportedly coerced the Swedish government to carry out its wishes to ensure that Mr. Agiza and Mr. al-Zery were delivered to CIA custody for rendition to Egypt. Staff of the former foreign minister Anna Lindh report that she was pressured to authorize the rendition of Mr. Agiza and Mr. al-Zery in response to a threat by the United State that it would impose a trade boycott on the European Union otherwise.¹¹⁸

(d) The United Kingdom

The United Kingdom has also acknowledged wrongdoing and awarded compensation for its participation in the CIA's torture program in the case of Binyam Ahmed Mohamed, an Ethiopian national and UK resident.

In 2002, Mr. Mohamed, an electrical engineer who was granted refugee status in the United Kingdom in 1994, was arrested in Pakistan on his way to the United Kingdom on suspicion of links to Al-Qaeda.¹¹⁹ He was forcibly transferred to Morocco, where he was secretly detained and tortured by local authorities¹²⁰ before being secretly detained by the United States in Afghanistan and at Guantánamo.¹²¹

¹¹⁴ The Swedish Parliamentary Ombudsmen, *A review of the enforcement by the Security Police of a Government decision to expel two Egyptian citizens*, Reg. No. 2169-2004, Mar. 22, 2005, available at http://www.jo.se/Page.aspx?MenuId=106&MainMenuId=106&Language=en&ObjectClass=DynamX_SFS_Decision&Id=1662.

¹¹⁵ *Id.* However, the ombudsman declined to call for prosecutions of the Swedish police involved. Human Rights Watch, *Still at Risk: Diplomatic Assurances No Safeguard Against Torture* (2005) at 63.

¹¹⁶ *2008 Human Rights Report: Sweden*, U.S. DEPARTMENT OF STATE (February 25, 2009), <http://www.state.gov/j/drl/rls/hrrpt/2008/eur/119107.htm>.

¹¹⁷ *Egyptian deported by CIA gets residency in Sweden*, FOX NEWS (Jul. 4, 2012), <http://www.foxnews.com/world/2012/07/04/egyptian-deported-by-ciagets-residency-in-sweden/>.

¹¹⁸ *Sweden pressured in 2001 terror case: report*, THE LOCAL (Jan. 19, 2009), <http://www.thelocal.se/17000/20090119/>.

¹¹⁹ *Profile: Binyam Mohamed*, THE BBC (Feb. 23, 2009), http://news.bbc.co.uk/2/hi/uk_news/7870387.stm.

¹²⁰ *Id.*

¹²¹ *Id.*

Mr. Mohamed was charged by the United States before a military commission in 2006 and then again in 2008 with conspiracy to commit and provide material support to terrorism.¹²² All charges were dropped by 2008.¹²³ Throughout, Mr. Mohamed maintained that any evidence against him, including false confessions, were obtained through torture.¹²⁴

After his release in 2009, Mr. Mohamed filed suit in UK court against UK intelligence agencies M15 and M16 for complicity in his ordeal.¹²⁵ Foreign Minister David Miliband moved to suppress evidence of M15 and M16's involvement on national security grounds but lost in the High Court.¹²⁶ The High Court found that the public's interest in justice outweighed any such concern and ordered that a seven-paragraph summary of a CIA intelligence briefing be disclosed.¹²⁷ According to the summary:

The treatment reported, if it had been administered on behalf of the United Kingdom, would clearly have been in breach of the undertakings given by the United Kingdom [in relation to Torture]. Although it is not necessary for us to categorise the treatment reported, it could readily be contended to be at the very least cruel, inhuman and degrading treatment by the United States authorities.¹²⁸

Thus, unlike U.S. courts, the High Court did not dismiss the case on the basis of national security concerns but rather balanced a potential threat to the United Kingdom with the public's interest in justice.

In February 2010, the Court of Appeals found that the Mr. Mohamed had been subjected to cruel, inhuman and degrading treatment by the United States and that the United Kingdom was complicit.¹²⁹ As a result, the Court awarded over \$1.5 million in compensation to Mr. Mohamed in a settlement with the UK government.¹³⁰

Mr. Mohamed filed suit a second time with 11 other U.K. plaintiffs who were also detained in Guantánamo against government agencies including M15 and M16 for complicity in

¹²² *Binyam Ahmed Mohamed*, HUMAN RIGHTS WATCH (Oct. 26, 2012), <https://www.hrw.org/news/2012/10/26/binyam-ahmed-mohamed>.

¹²³ *Id.*

¹²⁴ *Profile: Binyam Mohamed*, THE BBC (Feb. 23, 2009), http://news.bbc.co.uk/2/hi/uk_news/7870387.stm.

¹²⁵ Duncan Gardham and Gordon Rayner, *MI5 'knew Guantanamo detainee Binyam Mohamed was being tortured'*, THE GUARDIAN (Feb. 10, 2010), <http://www.telegraph.co.uk/news/uknews/terrorism-in-the-uk/7204741/MI5-knew-Guantanamo-detainee-Binyam-Mohamed-was-being-tortured.html>.

¹²⁶ *Binyam Mohamed case: David Miliband steps up bid to hide proof of torture*, THE GUARDIAN (Dec. 13, 2009), <http://www.theguardian.com/uk/2009/dec/13/binyam-mohamed-david-miliband-cia-torture-appeal-court>.

¹²⁷ *Id.*

¹²⁸ *Details of British Resident's Brutal Torture by CIA Officers Released*, TRUTHOUT (Feb. 11, 2010), <http://truth-out.org/archive/component/k2/item/88048:details-of-british-residents-brutal-torture-by-cia-officers-released>.

¹²⁹ Duncan Gardham and Gordon Rayner, *MI5 'knew Guantanamo detainee Binyam Mohamed was being tortured'*, THE GUARDIAN (Feb. 10, 2010), <http://www.telegraph.co.uk/news/uknews/terrorism-in-the-uk/7204741/MI5-knew-Guantanamo-detainee-Binyam-Mohamed-was-being-tortured.html>.

¹³⁰ Patrick Wintour, *Guantánamo Bay detainees to be paid compensation by UK government*, THE GUARDIAN (Nov. 15, 2010), <http://www.theguardian.com/world/2010/nov/16/guantanamo-bay-compensation-claim>.

torture.¹³¹ In November 2010, Mr. Mohamed and six other plaintiffs agreed to settle their claims with the U.K. government. The terms of the settlement are confidential but the settlement is said to have been significant.¹³² The Court of Appeal again rejected the government's argument that the case should be dismissed for national security reasons.¹³³

Thus, even a strong U.S. ally like the United Kingdom has agreed to satisfy its international obligations in several ways, including providing judicial redress in the form of compensation. They have also provided reparations creatively so as to placate government concerns, with public and confidential awards. Finally, the United Kingdom has not hidden behind what is the equivalent of the state secrets doctrine. Instead, U.K. courts have used a balancing test between national security interests and the public's interest in justice in determining whether a case involving the CIA's torture program should be dismissed.

D. Remedies and Reparations for Survivors of Arbitrary Detention, Torture & Other Harms Committed in Post 9/11 Military and Secret Intelligence Operations Overseas

The United Kingdom provided remedies and reparations to victims and survivors of human rights violations in comparable situations to those committed within the CIA's torture program, in particular in the context of Iraq.¹³⁴ In the UK, the government's Iraq Historic Allegations Team (IHAT) has taken steps to provide compensation and satisfaction to survivors and to investigate allegations of abuse for eventual prosecution.¹³⁵ In contrast, the United States has provided exceedingly limited reparation in this setting for human rights violations, such as the detainee abuse that occurred at Abu Ghraib. Notably, this stands in stark contrast to the United States' relatively robust practice in both Iraq and Afghanistan of providing condolence/solatia payments, which are sometimes accompanied by an apology, in the case of incidental harm.¹³⁶ This is notable because it demonstrates that the United States acknowledges the importance of making amends for harm to civilians, though it only provides amends to those

¹³¹ *Government to compensate ex-Guantanamo Bay detainees*, BBC (Nov. 16, 2010), <http://www.bbc.com/news/uk-11762636>.

¹³² *Id.* However, Foreign Secretary William Hague insisted that the settlement does not contain nor does it represent an admission of wrongdoing. *Id.*

¹³³ *Id.*

¹³⁴ *Human Rights Watch After September 11*, HUMAN RIGHTS WATCH, <http://www.hrw.org/legacy/campaigns/september11/> (archiving violations of human rights abuses in the context of post-9/11 counterterrorism policies).

¹³⁵ *What is IHAT?*, IRAQ HISTORIC ALLEGATIONS TEAM (IHAT), <https://www.gov.uk/government/groups/iraq-historic-allegations-team-ihat#what-is-ihat>.

¹³⁶ See SHARON L. PICKUP, *MILITARY OPERATIONS: THE DEPARTMENT OF DEFENSE'S USE OF SOLATIA AND CONDOLENCE PAYMENTS IN IRAQ AND AFGHANISTAN 1-2* (U.S. Gov't Accountability Office, 2007), *available at*: <http://www.gao.gov/assets/270/261104.pdf> (noting that the Department of Defense "provides monetary assistance in the form of *solatia* and condolence payments to Iraqi and Afghan nationals who are killed, injured, or incur property damage as a result of U.S. or coalition forces' actions during combat. . . . [and that these] payments are expressions of sympathy or remorse based on local culture and customs, but not an admission of legal liability or fault."); SOPHIE VAN DIJKEN, SUZANNE KNIJNENBURG & RABIA EL MORABET, *MONETARY PAYMENTS FOR CIVILIAN HARM IN INTERNATIONAL AND NATIONAL PRACTICE 13-14* (Amsterdam Int'l Law Clinic & Ctr. for Civilians in Conflict 2013), *available at*: <http://civiliansinconflict.org/resources/pub/valuation-of-life>.

who were accidentally harmed as opposed to intentionally harmed, as was the case in the CIA's torture program.

(1) United Kingdom Iraq Historic Allegations Team

The UK government has taken steps to address allegations of arbitrary detention and torture in Iraq. In the same way that advocates in the United States have repeatedly demanded the government take action to investigate and prosecute abuses committed as part of the CIA's torture program, lawyers representing Iraqi claimants lobbied the British government to respond to allegations that its servicemen stationed in Iraq had illegally detained and tortured civilians.¹³⁷ Where the United States and its ally diverge is in how each government has responded to these legal efforts. In the UK, efforts focused on having the cases heard in UK courts, rather than by courts martial.¹³⁸ In March 2010, the then-Minister of State for the Ministry of Defense, Bill Rammell, stated that the government "owe[s] to [the British servicemen], and to the claimants, that these allegations are properly investigated."¹³⁹

The Iraq Historic Allegations Team (IHAT) was created in November 2010 to investigate an increasing number of allegations that British servicemen had abused Iraqi citizens.¹⁴⁰ It is tasked with determining whether allegations of abuse from March 2003 (the start of military operations in Iraq) until July 2009 warrant criminal investigation.¹⁴¹

To begin the process of identifying claims for IHAT, the UK ministry of Defense first reviewed the allegations of those Iraqis represented by British lawyers. These claims have generally been described as the "Iraqi Civilian Litigation" and is a process entirely separate from IHAT.¹⁴² The UK settled with many of these claimants, providing compensation of up to

¹³⁷ See Written Ministerial Statement from Bill Rammell, Minister of State, Ministry of Def., Iraq Historic Allegations Teams (Mar. 1, 2010), (<http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100301/wmstext/100301m0001.htm>) (where Ministry of Defense Bill Rammell notes, "A number of allegations of abuse by Iraqi citizens by British service personnel have been brought to our attention by public interest lawyers, and more as anticipated."); Mads Adenas, Pablo de Greiff, et al., "Open letter by Special Procedures mandate-holders of the United Nations Human Rights Council to the President of the United States of America," 26 Nov. 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15347&LangID=E#sthash.9HISO3IB.dpuf> (reminding the United States of its legal obligation "to investigate credible allegations of torture, ensure accountability for those responsible, and provide adequate remedies for victims," in the context of the CIA secret detention program).

¹³⁸ Skype Interview with Public Interest Lawyers (Oct. 20, 2015).

¹³⁹ See Written Ministerial Statement from Bill Rammell, Minister of State, Ministry of Def., Iraq Historic Allegations Teams (Mar. 1, 2010), It should be noted that because IHAT's mandate is to investigate allegations, the Minister of Defense emphasized that announcement of establishment was not synonymous with, "an admission of fault; nothing could be further from the truth."

¹⁴⁰ Announcement Iraq Historic Allegations Team starts work, Ministry of Defence and Sir Nick Harvey, UK Government (Nov. 1, 2010) <https://www.gov.uk/government/news/iraq-historic-allegations-team-starts-work>.

¹⁴¹ *Aims and Values*, IRAQ HISTORIC ALLEGATIONS TEAM (IHAT), <https://www.gov.uk/government/groups/iraq-historic-allegations-team-ihat#aims-and-values>; *What is IHAT?*, IRAQ HISTORIC ALLEGATIONS TEAM (IHAT), <https://www.gov.uk/government/groups/iraq-historic-allegations-team-ihat#what-is-ihat>.

¹⁴² See *In the Matter of: Iraqi Civilian Litigation vs. Ministry of Defence*, [2015] EWHC 116 (QB), [3, 5], available at <http://www.bailii.org/ew/cases/EWHC/QB/2015/116.html> (describing the claims brought by Iraqis against the Ministry of Defence for "allegedly unlawful detention and alleged ill-treatment by British armed forces").

£100,000 for their human rights violations.¹⁴³ A few of those compensated have also received written apologies.¹⁴⁴ Although a limited means of reparation, the distribution of damages to hundreds of Iraqis is highly symbolic and, in the words of one lawyer, “The payments provide a long overdue measure of redress.”¹⁴⁵ Many individuals who received compensation were identified as having sufficiently serious and verified claims to warrant further investigation by IHAT; some claimants in the IHAT process are still seeking compensation.¹⁴⁶

IHAT is led by a retired senior civilian police detective and its employees include Royal Navy Police personnel, civilian investigators and civil servants.¹⁴⁷ Investigators, alongside support staff, fly victims, witnesses and sometimes their families, from Iraq to southeastern Europe for questioning.¹⁴⁸ Using the Istanbul Protocol as a basis for interviewing victims, psychologists serve as medical experts in the claimant’s case, assessing whether the victim manifests the mental trauma associated with the harm claimed.¹⁴⁹ In addition to this psychological assessment, claimants are also medically examined for physical evidence.¹⁵⁰ The most common psychological abuses found are: sleep deprivation, solitary confinement, hot cells, threats, and humiliation.¹⁵¹ This is relevant not only because they are consistent with British abuses of the past, but also because these torture techniques were utilized against CIA victims.¹⁵²

Following its investigation, IHAT forwards its findings to the relevant authority to determine whether an allegation warrants criminal charges,¹⁵³ Especially serious criminal acts are referred to the Director of Service Prosecutions, who oversees referrals of cases for prosecution in UK military courts.¹⁵⁴ If charges are not brought, the Ministry of Defense (MoD) reviews the IHAT report for “systemic issues,” and presents findings to an internal group,”

¹⁴³ Skype Interview with Dr. Brock Chisholm, Clinical Psychologist, Iraq Historic Allegations Team (Oct. 14, 2015).

¹⁴⁴ Skype Interview with Public Interest Lawyers (Oct. 20, 2015).

¹⁴⁵ See Ian Cobain, *MoD pays out millions to Iraqi torture victims*, THE GUARDIAN (Dec. 20, 2012, 16:00 EST), <http://www.theguardian.com/law/2012/dec/20/mod-iraqi-torture-victims>.

¹⁴⁶ Skype Interview with Brock Chisholm, Clinical Psychologist, Iraq Historic Allegations Team (Oct. 14, 2015).

¹⁴⁷ *What is IHAT?*, IRAQ HISTORIC ALLEGATIONS TEAM (IHAT), <https://www.gov.uk/government/groups/iraqi-historic-allegations-team-ihat#what-is-ihat>.

¹⁴⁸ See Andrew Williams, *British Soldiers Accused of Torture and Abuse During Iraq Occupation*, NEWSWEEK (Dec. 17, 2014, 7:07 AM EST), <http://www.newsweek.com/2014/12/26/british-soldiers-caught-further-torture-allegations-during-iraqi-occupation-292323.html> (reporting that “Every month, a small group of IHAT staff travels to the safe house with a psychologist and witness supporters for a two-week stay.”).

¹⁴⁹ Skype Interview with Dr. Brock Chisholm, Clinical Psychologist, Iraq Historic Allegations Team (Oct. 14, 2015).

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Fiona de Londras, *Revisiting the Five Techniques in the European Court of Human Rights*, EJIL: TALK!, (Dec. 12, 2014), <http://www.ejiltalk.org/revisiting-the-five-techniques-in-the-european-court-of-human-rights/>; SSCI Report, *supra* note 38, at 8, 63, 80, 101, 145, 149 (identifying the individuals in the CIA’s torture program, as the 119 people known to have been captured, detained and interrogated by the CIA from September 17, 2001 and January 22, 2009 and documenting abusive interrogation methods of varying intensity used against detainees in the CIA’s torture program).

¹⁵³ *What is IHAT?*, IRAQ HISTORIC ALLEGATIONS TEAM (IHAT), <https://www.gov.uk/government/groups/iraqi-historic-allegations-team-ihat#what-is-ihat>; *Service Prosecuting Authority*, MINISTRY OF DEF, (2010), <http://spa.independent.gov.uk/>.

¹⁵⁴ *Id.*

which then determines whether the MoD has taken all appropriate steps to correct the issues raised, and notifies staff of any further institutional reforms.¹⁵⁵ In the process of its investigations, IHAT has identified at least 100 current and former members of the armed forces to be interviewed regarding potential abuses.¹⁵⁶ Furthermore, IHAT's purview has expanded to encompass two earlier UK investigations. At least 500 troops were referred to IHAT for questioning after being asked to provide evidence in a related public inquiry.¹⁵⁷ IHAT is also investigating whether further criminal prosecutions can be brought with regard to the highly publicized death of Baha Mousa, a hotel receptionist who was brutally tortured and killed by British servicemen.¹⁵⁸

The way IHAT was designed and implemented reflects the UK's recognition that international standards for reparation concerning investigation, prosecution, punishment, and compensation are not normative principles beyond achievement, but legal obligations subject to judicial oversight. IHAT was implemented in order to meet the UK's obligations under relevant European Court of Human Rights judgments.¹⁵⁹ Problematically, IHAT has only resulted in one prosecution, and to this end UK courts have reviewed IHAT's procedure, providing judgments aimed at improving its effectiveness.¹⁶⁰

In some ways, IHAT is still a model for providing reparations because it creates an avenue for investigation of individual claims of abuse, which can eventually lead to further

¹⁵⁵ The UK Ministry of Defense has published at least one report to this end. See SYSTEMIC ISSUES IDENTIFIED FROM INVESTIGATIONS INTO MILITARY OPERATIONS OVERSEAS: JULY 2014 (Ministry of Defence, 2014), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/327180/Systemic_Issues_identified_from_investigations_into_military_operations_overseas.pdf.

¹⁵⁶ Ian Cobain, *Iraq abuse inquiry little more than a whitewash, says official*, THE GUARDIAN (Oct. 11, 2014, 16:38 EDT), <http://www.theguardian.com/uk/2012/oct/11/iraq-abuse-inquiry-whitewash-claim> (reporting that IHAT employees have failed to consider relevant evidence that might lead to prosecution).

¹⁵⁷ See Ian Cobain, *Iraq abuse inquiry little more than a whitewash, says official*, THE GUARDIAN (Oct. 11, 2014, 16:38 EDT) <http://www.theguardian.com/uk/2012/oct/11/iraq-abuse-inquiry-whitewash-claim> (reporting that IHAT employees have failed to consider relevant evidence that might lead to prosecution); Al-Sweady Public Inquiry, UK CROWN 11 (2010), <http://webarchive.nationalarchives.gov.uk/20150115114702/http://www.alsweadyinquiry.org/>. (describing that the inquiry arose out of allegations made by Iraqi petitioners in UK Administrative court that British servicemen unlawfully detained and tortured them following the "Battle of Danny Boy" between British soldiers and insurgents in southern Iraq in 2004. The court affirmed its obligation to investigate the allegations under the European Convention of Human Rights, but stayed a judgment in light of the UK's creation of a public prosecution.).

¹⁵⁸ Skype Interview with Brock Chisholm, Clinical Psychologist, Iraq Historic Allegations Team (Oct. 14, 2015).

¹⁵⁹ See *Iraq abuse claims: 'Inadequate response' by UK government*, BBC NEWS (May. 24, 2013), <http://www.bbc.com/news/uk-22655384>. These prosecutions would supplement reparations work accomplished in 2007 when, prior to the establishment of IHAT, the UK convicted the first British soldier ever for a war crime under the International Criminal Court Act. Corporal Donald Payne was sentenced to a year in prison, and dismissed from the army, after pleading guilty for his role in the detention and inhumane treatment of seven Iraqis in 2003, which resulted in Baha Mousa's death. See *British soldier admits war crime*, BBC NEWS (Sep. 19, 2006 16:12 PM), http://news.bbc.co.uk/2/hi/uk_news/5360432.stm.

¹⁶⁰ *Al-Skeini and Others v. The United Kingdom*, Eur. Ct. H.R. (2011).

¹⁶⁰ See e.g., *R (Ali Zaki Mousa and others) vs. Secretary of State for Defense*, [2013] EWHC 1412 (Admin), [196], available at https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Judgments/AZM+_No+2+_v+SOS+for+Defence+FINAL.pdf (considering whether IHAT was sufficiently independent and holding that the British Secretary of State needed to do more to adequately fulfill its duty to investigate allegations of abuse);

remedies. For instance, the compensations provided to claimants, while not strictly a part of the IHAT process, are still relevant to the UK's obligations to provide a remedy, especially given the context of the abuses. When the UK government decides to issue compensation for secret detention or torture it is the start of restitution. As one lawyer put it:

Arabic culture financial compensation is extremely important, it is a way they settle tribal disputes within Iraq. For our clients to receive financial compensation it is a way to show others that their arrest or detention was unlawful and that they were innocent... For many of our clients financial compensation in their view is the UK Government confirming they were wrong in detaining them. It allows many of our clients to move on with their lives and move on from a traumatic period of their life. Many of their homes were destroyed during the arrest process so financial compensation allows them to rebuild their family homes. Many are unable to work due to the stigma of being detained. Again this helps with their day to day life.¹⁶¹

Also especially relevant to the fulfillment of the elements of reparation is how claimants' mere access to an investigatory body like IHAT constitutes a means of remedy in and of itself, in the form of rehabilitation. As one psychologist involved in the process explained:

When people suffer from traumatic stress, a lot of the psychological treatments for that is to describe the event itself in an ordered way adding context to their description. The reason for that is that traumatic memories are often lacking context, such as time or how big the room is. When this happens the events come back as a sensory memory, so they come back as sights and sounds and smells and experienced as involuntary flashbacks. By providing a description the brain is able to process the event in a more normal manner and ascribe some info that was lacking when those memories are recalled. So if someone is having flashbacks but also providing contextual information, that is the kind of treatment we would provide people if they were patients.

Emerging research is indicating that the IHAT process is in its self therapeutic since potential victims are being listened to in a respectful and therapeutic setting. Their allegations appear to the victims to be taken seriously. This helps to restore dignity and justice and therefore mental well-being. The research in the Iraqi communities seen is also indicating a restoration of the belief that the UK is fair and law abiding country, which is respectful to other cultures. Iraqis who regarded the UK as their enemy no longer do so as a result. This perception may change depending on what happens further along the justice process.¹⁶²

This assessment must be considered alongside the fact that after five years, IHAT has resulted in just one prosecution, and that many Iraqis with credible claims of arbitrary

¹⁶¹ Skype Interview with Public Interest Lawyers (Oct. 20, 2015).

¹⁶² Compare Skype Interview with Dr. Brock Chisholm, Clinical Psychologist, Iraq Historic Allegations Team (Oct. 14, 2015) (praising the rehabilitative process of IHAT) with Skype Interview with Public Interest Lawyers (Oct. 20, 2015) (noting that there have been instances where the investigators' questions, coupled with cultural differences, have actually re-traumatized claimants during the interview process).

detention and torture have not yet had their day in court.¹⁶³ The merits of IHAT as a means for reparation may not be that it serves a prosecutorial function, but rather that it has a rehabilitative impact.¹⁶⁴ Notwithstanding the criticisms of IHAT, the UK government's creation of a mechanism to investigate and hear claims, demonstrates the possibility for reparation for those subject to comparable abuses in the CIA's torture program.

Unlike the United Kingdom, the United States has failed to use either non-judicial or judicial means to hold those responsible for abuses committed in Iraq to account, and to provide reparations. For instance, following the revelation of the detainee abuse at the Abu Ghraib prison, President George W. Bush offered a general public apology in which he stated:

I was sorry for the humiliation suffered by the Iraqi prisoners and the humiliation suffered by their families. . . . I was as equally sorry that people seeing those pictures didn't understand the true nature and heart of America. . . . It's a stain on our country's honor and our country's reputation. I am sickened by what I saw and sickened that people got the wrong impression.¹⁶⁵

Considering the four parts to the structure of an effective apology (i.e., acknowledgment of the offense; explanation; expressions of remorse, shame, and humility; and reparation),¹⁶⁶ the apology clearly falls short. President Bush did not accept responsibility or acknowledge the systematic nature of the abuse that detainees at Abu Ghraib suffered, instead insinuating that a few "bad apples" were responsible. Also, the apology did not address any individual Iraqi prisoners and their experiences of abuse, nor was it made to any Iraqi leaders. No reparation was offered. This is emblematic of the U.S. response to allegations of detainee abuse, as further evidenced by the dismissal of claims brought by former detainees in U.S. courts and the denial of remedy via the Foreign Claims Act.¹⁶⁷

In the United States, IHAT deserves attention because it is the UK's response to public pressure calling for reparations to be provided to individuals detained and tortured by British soldiers. This is the essence of reparation: State action to remedy a past a failure to protect individuals from human rights violation. IHAT is a government-led body that has taken steps to investigate allegations of arbitrary detention and torture, and eventual prosecution, elements of

¹⁶³ Skype Interview with Public Interest Lawyers (Oct. 20, 2015).

¹⁶⁴ Compare Skype Interview with Public Interest Lawyers (Oct. 20, 2015) with Skype Interview with Dr. Brock Chisholm, Clinical Psychologist, Iraq Historic Allegations Team (Oct. 14, 2015) (describing the many lawyers working "tirelessly" on behalf of Iraqi claimants to secure criminal prosecutions).

¹⁶⁵ See CNN, *Bush 'sorry' for abuse of Iraqi prisoners*, CNN.COM (May 7, 2004, 12:24 pm EDT), <http://www.cnn.com/2004/ALLPOLITICS/05/07/bush.apology/index.html?iref=mpstoryview>; Elisabeth Bumiller and Eric Schmitt, *The Struggle for Iraq: Prison Scandal*, N.Y. Times, May 7, 2004, at A12, available at: <http://www.nytimes.com/2004/05/07/world/struggle-for-iraq-prison-scandal-president-sorry-for-iraq-abuse-backs-rumsfeld.html?pagewanted=1>.

¹⁶⁶ Aaron Lazare, *Making Peace Through Apology*, THE GREATER GOOD: THE SCIENCE OF A MEANINGFUL LIFE (Sept. 1, 2004), http://greatergood.berkeley.edu/article/item/making_peace_through_apology.

¹⁶⁷ See e.g., *Al Shimari v. CACI Premier Technology*, No. 08-cv-00827-GBL-JFA (E.D. Va. June 18, 2015) (order dismissing case); Fox News, *Abu Ghraib Prisoners Seek Damage Claims from U.S. Military Contractors*, FOX NEWS (Sept. 26, 2010), <http://www.foxnews.com/politics/2010/09/26/abu-ghraib-prisoners-seek-damage-claims-military-contractors/>.

reparation as understood by the Inter-American system.¹⁶⁸ In fact, at least two IHAT claimants were subject to extraordinary rendition by the CIA following their detention and torture by British forces in Iraq.¹⁶⁹ The creation of IHAT shows that it is possible for governments to operationalize a reparations program that can investigate and respond to relatively large-scale set of abuses. Today, IHAT is processing well over 1,000 allegations and counting.¹⁷⁰ In comparison, the known victims of the CIA's torture program are thought to number between 119 and 136 individuals.¹⁷¹

In comparison to the United Kingdom, the United States has affirmatively distanced itself from its obligation to initiate a process to evaluate similar complaints made by RDI survivors, which could result in reparations. IHAT's very existence and highly meaningful (but limited) work thus far indicates, even in the context of counterterrorism, reparations for victims and survivors of human rights abuse are achievable standards capable of being enforced. The United States has failed to provide any analogous mechanism for redress on behalf of individuals illegally detained and tortured in the CIA's torture program.

(2) How the United States Has Made Amends for Harm Incidental to Combat Operations: Condolence and Solatia Payments

The United States has implemented a policy of making amends for accidental harm caused by U.S. armed forces in Iraq and Afghanistan that could be drawn from when implementing a reparations program for CIA torture survivors that complies with U.S. legal obligations to provide reparation. One of the ways in which the armed forces makes amends for accidental killing, injury, or property damage is by offering condolence and *solatia* payments,¹⁷² which are at times accompanied by an apology.¹⁷³ The United States has used monetary

¹⁶⁸ *What is IHAT?*, IRAQ HISTORIC ALLEGATIONS TEAM (IHAT), <https://www.gov.uk/government/groups/iraq-historic-allegations-team-ihat#what-is-ihat>.

¹⁶⁹ Press Release, British Iraq abuse inquiry refuses to consider CIA torture report, Reprieve (Mar. 17, 2015), <http://www.reprieve.org/uk-iraq-abuse-inquiry-refuses-to-consider-cia-torture-report.html>. Available information suggests that despite allegations that some claimants were rendered by the CIA, IHAT has decided against requesting the full report for evidence in their investigations.

¹⁷⁰ *What is IHAT?*, IRAQ HISTORIC ALLEGATIONS TEAM (IHAT), <https://www.gov.uk/government/groups/iraq-historic-allegations-team-ihat#what-is-ihat>. *Al-Saadoon and Others v. Secretary of State for Defense*, [2015] EWHC 715 (Admin), [2]-[3] (Eng.), *available at* <http://www.11kbw.com/uploads/Judgments/Al-Saadoon%20Final%20Judgment%20KS.SA.pdf> (suggesting that the number of claims before IHAT would continue to increase in 2015).

¹⁷¹ Given the covert nature of the program, the exact number of individuals in the secret detention program is difficult to confirm, with most estimates falling within this range. *See e.g.*, SSCI, *supra* note 38, at 8, app. 2 (identifying the individuals in the CIA's torture program, as the 119 people known to have been captured, detained and interrogated by the CIA from September 17, 2001 and January 22, 2009); AMRIT SINGH, OPEN SOCIETY JUSTICE INITIATIVE GLOBALIZING TORTURE CIA SECRET DETENTION AND EXTRAORDINARY RENDITION 30 (David Berry ed., Open Society Foundations 2013) (listing 136 individuals known "to have been subjected to secret detention and extraordinary rendition at some point in time", subject to enforced disappearance, secret detention and torture, while also noting that there may still be individuals unaccounted for).

¹⁷² SHARON L. PICKUP, MILITARY OPERATIONS: THE DEPARTMENT OF DEFENSE'S USE OF SOLATIA AND CONDOLENCE PAYMENTS IN IRAQ AND AFGHANISTAN 1-2 (U.S. Gov't Accountability Office, 2007), *available at*: <http://www.gao.gov/assets/270/261104.pdf>.

¹⁷³ *See e.g.*, JONATHAN TRACY, COMPENSATING CIVILIAN CASUALTIES: "I AM SORRY FOR YOUR LOSS, AND I WISH YOU WELL IN A FREE IRAQ," 3 (Center for Civilians in Conflict, 2008), *available at*:

payments to foreign civilians harmed by U.S. military operations since the Korean War (1950-1953). These condolence and *solatia* payments are not viewed by the U.S. government as a legal obligation to provide reparation, but are instead authorized as a policy decision to make amends for harm.¹⁷⁴ According to a 2007 Government Accountability Office report, condolence payments have been used in Iraq since March 2004 and in Afghanistan since November 2005. *Solatia* payments were used in Iraq from June 2003 to January 2004, and in Afghanistan from October 2005 to the present.¹⁷⁵ For example:

- On November 12, 2004, U.S. soldiers killed an Iraqi civilian as a result of a firefight with anti-Iraqi forces and offered a condolence payment of \$500 and an apology for the loss.¹⁷⁶
- Following the shootings along a civilian thoroughfare that killed nineteen Afghan civilians in March 2007, the U.S. armed forces provided *solatia* payments of approximately \$2,000 to the families as well as a number of apologies, including one by Col. John Nicholson who said he apologized to a group of affected Afghans while delivering the payments and one by Maj. Cliff W. Gilmore, a spokesman for the command, in which he stated, “We regret the March 4 ambush of the Marine Special Operations Company in Afghanistan and offer our deepest sympathy to all of those involved.”¹⁷⁷
- In January 2009 U.S. officers returned to Inzeri, Afghanistan following a raid that killed fifteen Afghans to distribute \$2,500 to the families for each member who was killed, \$500 to two wounded men for their injuries, \$1,500 to the village to make repairs, and an apology from military spokesman Col. Greg Julian, who

<http://civiliansinconflict.org/resources/pub/compensating-civilian-casualties-i-am-sorry-for-your-loss-and-i-wish-you-we>; Una Moore, *Making Amends for Civilian Casualties in Afghanistan*, UN DISPATCH (Feb. 5. 2013), <http://www.undispatch.com/afghanistan-civilian-casualties/>; Josh White, *69 Afghans’ Families Get a U.S. Apology*, WASH. POST, May 9, 2007, available at: <http://www.washingtonpost.com/wp-dyn/content/article/2007/05/08/AR2007050801360.html>; Liam Stack, *After Airstrike on Afghan Hospital, a Look at U.S. ‘Condolence Payments*, N.Y. TIMES (Oct. 11, 2005), <http://www.nytimes.com/interactive/2015/10/11/world/us-condolence-payments.html>.

¹⁷⁴ SOPHIE VAN DIJKEN, SUZANNE KNIJNENBURG & RABIA EL MORABET, MONETARY PAYMENTS FOR CIVILIAN HARM IN INTERNATIONAL AND NATIONAL PRACTICE 13-14 (Amsterdam Int’l Law Clinic & Ctr. for Civilians in Conflict 2013), available at: <http://civiliansinconflict.org/resources/pub/valuation-of-life>.

¹⁷⁵ SHARON L. PICKUP, MILITARY OPERATIONS: THE DEPARTMENT OF DEFENSE’S USE OF SOLATIA AND CONDOLENCE PAYMENTS IN IRAQ AND AFGHANISTAN 13 (U.S. Gov’t Accountability Office, 2007), available at: <http://www.gao.gov/assets/270/261104.pdf>. The Center for Civilians in Conflict has found that there are major problems with the functioning of condolence payments by the United States, including ad hoc application and the low and seemingly arbitrary valuations of life. Marla B. Keenan & Jonathan Tracy, US MILITARY CLAIMS SYSTEM FOR CIVILIAN 1 (Ctr. for Civilians in Conflict, 2008), available at: http://civiliansinconflict.org/uploads/files/publications/2008_Civilian_Casualties_White_Paper.pdf.

¹⁷⁶ JONATHAN TRACY, COMPENSATING CIVILIAN CASUALTIES: “I AM SORRY FOR YOUR LOSS, AND I WISH YOU WELL IN A FREE IRAQ,” 3 (Center for Civilians in Conflict, 2008), available at: <http://civiliansinconflict.org/resources/pub/compensating-civilian-casualties-i-am-sorry-for-your-loss-and-i-wish-you-we>.

¹⁷⁷ Josh White, *69 Afghans’ Families Get a U.S. Apology*, WASH. POST, May 9, 2007, available at: <http://www.washingtonpost.com/wp-dyn/content/article/2007/05/08/AR2007050801360.html>.

explained that U.S. soldiers had been fired upon and that “if there was collateral damage, I’m very sorry about that.”¹⁷⁸

- Following the accidental killing of a 23 year-old Afghan election monitor in a motor vehicle accident on September 18, 2010, U.S. Army officers visited his parents and wife to explain in detail what happened, offer condolences, and make a *solatia* payment.¹⁷⁹

These payments are designed to serve as an “expression of sympathy for death, injury, or property damage,” in the case of condolence payments, and as “an expression of remorse or sympathy toward a victim or his/her family” that is culturally appropriate in the case of *solatia* payments.¹⁸⁰ To give a sense of scope of these payments, in Afghanistan, “the U.S. military committed \$5,927,275, obligated \$5,929,994, and disbursed \$4,865,851 in condolence payments to Afghan nationals between October 1, 2005 and September 30, 2014.”¹⁸¹ In Iraq, which had a limited use of *solatia* payments, the Marine Corps “reported that units in Iraq made \$1,732,002 in *solatia* payments between fiscal years 2003 and 2005.”¹⁸² Under the law of armed conflict, such amends for incidental harm are not legally mandated for warring parties. In this sense, making amends is a distinct policy choice from providing reparations, which is a legally required obligation in the event of violations of international human rights, humanitarian, and criminal law.¹⁸³ Given this practice, it is striking that when the U.S. government is legally obligated to provide reparations for intentional violations of international humanitarian and human rights law, it does not do so.

E. Reparation for Illegal Detention & Torture Survivors in the United States

There are two key examples¹⁸⁴ from U.S. practice that illustrate possible dimensions of reparation and apology for victims of the CIA’s torture program—reparations made to victims of unjust Japanese American internment carried out by the federal government during World War

¹⁷⁸ Liam Stack, After Airstrike on Afghan Hospital, a Look at U.S. ‘Condolence Payments, N.Y. TIMES (Oct. 11, 2005), <http://www.nytimes.com/interactive/2015/10/11/world/us-condolence-payments.html>.

¹⁷⁹ Una Moore, Making Amends for Civilian Casualties in Afghanistan, UN DISPATCH (Feb. 5. 2013), <http://www.undispatch.com/afghanistan-civilian-casulties/>.

¹⁸⁰ SHARON L. PICKUP, MILITARY OPERATIONS: THE DEPARTMENT OF DEFENSE’S USE OF SOLATIA AND CONDOLENCE PAYMENTS IN IRAQ AND AFGHANISTAN 13 (U.S. Gov’t Accountability Office, 2007), *available at*: <http://www.gao.gov/assets/270/261104.pdf>.

¹⁸¹ Marla B. Keenan, EX-GRATIA PAYMENTS IN AFGHANISTAN: A CASE FOR STANDING POLICY FOR THE US MILITARY 1 (Ctr. for Civilians in Conflict, 2015), *available at*: http://civiliansinconflict.org/uploads/files/publications/CIVIC_Exgratia_payments_2015_Brief.pdf.

¹⁸² SHARON L. PICKUP, MILITARY OPERATIONS: THE DEPARTMENT OF DEFENSE’S USE OF SOLATIA AND CONDOLENCE PAYMENTS IN IRAQ AND AFGHANISTAN 42 (U.S. Gov’t Accountability Office, 2007), *available at*: <http://www.gao.gov/assets/270/261104.pdf>.

¹⁸³ Sahr Muhammedally, *Making Amends*, in ACKNOWLEDGE, AMEND, ASSIST: ADDRESSING CIVILIAN HARM CAUSED BY ARMED CONFLICT AND ARMED VIOLENCE, 11, 12 (Bonnie Docherty, 2015), *available at*: http://civiliansinconflict.org/uploads/files/publications/4.30.15_AOAV_Acknowledge_Amend_Assist.pdf.

¹⁸⁴ Note there are a number of other examples of U.S. reparations for historic wrongs. “Nationally, President Clinton apologized to indigenous Hawaiians for the illegal U.S.-aided overthrow of the sovereign nation and the near decimation of Hawaiian life that followed; . . . the Florida legislature awarded reparations to survivors of mayhem at Rosewood; and the federal government offered reparations to the African American victims of the Tuskegee syphilis experiment.” Eric K. Yamamoto, *Racial Reparations: Japanese American Redress and African American Claims*, 40 BOSTON COLLEGE LAW REVIEW 483.

II¹⁸⁵ and of racist torture committed by the Chicago police between 1973 and 1991.¹⁸⁶ These two cases are particularly helpful to consider because in each, agents of the U.S. government committed human rights violations akin to the ones committed in the CIA torture program: unlawful detention and torture. Though neither example contains all of the elements of effective reparation, both efforts demonstrate possible avenues the United States could take to fulfill its obligations under international law to provide reparations to victims of human rights violations.¹⁸⁷

(1) Reparation for Japanese Internment

Following the attack on Pearl Harbor in 1941, 120,000 individuals of Japanese ancestry were forced to close businesses, abandon farms and homes, and leave their communities to move into remote internment camps, where they were detained for up to four years.¹⁸⁸ Reparation for this wrongful internment of persons of Japanese ancestry came decades after the violations ended and was achieved only after extensive advocacy efforts by Japanese Americans. The reparations included an official inquiry via the Commission on Wartime Relocation and Internment of Civilians, which issued findings of fact on internment and recommendations to the U.S. government on how to address these wrongs,¹⁸⁹ official acknowledgment that internment was wrong and the revocation of the executive order that made it possible, judicial orders vacating internment-related criminal sentences, an official apology,¹⁹⁰ and individual compensation administered through the Office of Redress Administration created for this purpose.¹⁹¹ This robust response to the large scale human rights violations entailed in Japanese internment is instructive for the situation of RDI survivors. Specifically, this example demonstrates that: the United States has apologized for the consequences of national security policies that resulted in human rights violations; a precedent of administering far-reaching reparations exists and could be adapted to the RDI context; and not delaying the provision of reparations is crucial.

Redress began in 1976, when President Gerald Ford repealed Executive Order 9066, which initiated the Japanese internment process. President Ford stated that internment had been wrong and that “[a]n honest reckoning . . . must include a recognition of our national

¹⁸⁵ LISA MAGARRELL & LORNA PETERSON, *AFTER TORTURE: U.S. ACCOUNTABILITY AND THE RIGHT TO REDRESS* 16 (Int’l Ctr. for Transitional Justice, 2010).

¹⁸⁶ Marty Wisniewski, *Chicago Mayor Emanuel apologizes for torture*, REUTERS (Sept. 11, 2013), <http://www.reuters.com/article/2013/09/12/us-usa-chicago-torture-idUSBRE98B00V20130912>.

¹⁸⁷ Eric K. Yamamoto, *Racial Reparations: Japanese American Redress and African American Claims*, 40 BOSTON COLLEGE LAW REVIEW 483.

¹⁸⁸ See Alan Taylor, *World War II: Internment of Japanese Americans*, THE ATLANTIC (Aug. 21, 2011), <http://www.theatlantic.com/photo/2011/08/world-war-ii-internment-of-japanese-americans/100132/>; Satsuki Ina, *Children of the Camps: Internment History*, PBS (1999), <http://www.pbs.org/childofcamp/history/>.

¹⁸⁹ See COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, *PERSONAL JUSTICE DENIED: SUMMARY* (1982), <http://www.archives.gov/research/japanese-americans/justice-denied/summary.pdf>.

¹⁹⁰ LISA MAGARRELL & LORNA PETERSON, *AFTER TORTURE: U.S. ACCOUNTABILITY AND THE RIGHT TO REDRESS* 17 (Int’l Ctr. for Transitional Justice, 2010).

¹⁹¹ THE NATIONAL ARCHIVES: JAPANESE AMERICANS: CHECK FOR COMPENSATION AND REPARATIONS FOR THE EVACUATION, RELOCATION, AND INTERNMENT (Oct. 6, 2015), <http://www.archives.gov/research/japanese-americans/redress.html#ora>.

mistakes.”¹⁹² At the same time, several individuals successfully petitioned to vacate their internment-related criminal sentences. Moreover, in 1979 the Commission on Wartime Relocation and Internment of Civilians investigated the facts and circumstances of internment, and concluded by issuing a report and recommendations.¹⁹³ These recommendations included issuing an official government apology and redress payments to survivors, which was acted upon via the enactment of Civil Liberties Act of 1988.¹⁹⁴ This Act offered a formal apology¹⁹⁵ and mandated ORA to administer a 10-year redress program that identified, located, and authorized a “tax-free restitution payment of \$20,000 to eligible individuals of Japanese ancestry.”¹⁹⁶ ORA has provided over \$1.6 billion in compensation, consisting of \$20,000 in compensation to more than 82,219 eligible claimants, which notably included Japanese Americans as well as Japanese Latin Americans who were deported from their homes in Latin America and forced to live in internment camps in the United States.¹⁹⁷ These compensation checks were accompanied by a Presidential letter of apology.¹⁹⁸

¹⁹² Gerald R. Ford, President, Proclamation 4417, Confirming the Termination of the Executive Order Authorizing Japanese-American Internment During World War II (Feb. 19, 1976), *available at* <http://www.fordlibrarymuseum.gov/library/speeches/760111p.htm>.

¹⁹³ LISA MAGARRELL & LORNA PETERSON, *AFTER TORTURE: U.S. ACCOUNTABILITY AND THE RIGHT TO REDRESS* 17 (Int’l Ctr. for Transitional Justice, 2010).

¹⁹⁴ An Act: To implement recommendations of the Commission on Wartime Internment of Civilians, Pub. L. No. 100-383, preamble (1988), *available at* http://www.internmentarchives.com/showdoc.php?docid=00172&search_id=44801.

¹⁹⁵ Bilal Qureshi, *From Wrong to Right: A U.S. Apology for Japanese Internment*, NPR CODE SWITCH (Aug. 9, 2013), <http://www.npr.org/sections/codeswitch/2013/08/09/210138278/japanese-internment-redress>.

¹⁹⁶ THE NATIONAL ARCHIVES: JAPANESE AMERICANS: CHECK FOR COMPENSATION AND REPARATIONS FOR THE EVACUATION, RELOCATION, AND INTERNMENT (Oct. 6, 2015), <http://www.archives.gov/research/japanese-americans/redress.html#ora>.

¹⁹⁷ THE NATIONAL ARCHIVES: JAPANESE AMERICANS: CHECK FOR COMPENSATION AND REPARATIONS FOR THE EVACUATION, RELOCATION, AND INTERNMENT (Oct. 6, 2015), <http://www.archives.gov/research/japanese-americans/redress.html#ora>. “Among the estimated 82,219 individuals paid, 189 were Japanese Latin American claimants eligible for the full \$20,000 in redress compensation under the Act because they had the required permanent residency status or U.S. citizenship during the defined war period. In addition, ORA paid \$5,000 to 145 Japanese Latin Americans who were deported from their homes in Latin America during WWII and held in internment camps in the U.S. These payments stem from an agreement resolving a 1996 civil suit filed by four Japanese Latin Americans. The agreement, which settles the so-called Mochizuki case, calls for all qualified class members to receive a presidential apology letter and \$5,000 in compensation, to the extent that funds were remaining under the Act.” Moreover, under the law, benefits from the compensation program can go to “a surviving spouse, be divided among children if there is no spouse or, if there are no children, revert to parents.” Warren Weaver, *U.S. Is Seeking Its Prisoners of a War’s Panic*, N.Y. TIMES (December 18, 1988), <http://www.nytimes.com/1988/12/18/us/us-is-seeking-its-prisoners-of-a-war-s-panic.html>.

¹⁹⁸ See e.g., Letter Accompanying Reparations Checks from Bill Clinton, President of the United States, (Oct. 1, 1993) (<http://www.pbs.org/childofcamp/history/clinton.html>). The content of the letter reads as follows: “Over fifty years ago, the United States Government unjustly interned, evacuated, or relocated you and many other Japanese Americans. Today, on behalf of your fellow Americans, I offer a sincere apology to you for the actions that unfairly denied Japanese Americans and their families’ fundamental liberties during World War II. In passing the Civil Liberties of 1988, we acknowledge the wrongs of the past and offered redress to those who endured such grave injustice. In retrospect, we understand that the nation’s actions were rooted deeply in racial prejudice, wartime hysteria, and a lack of political leadership. We must learn from the past and dedicate ourselves as a nation to renewing the spirit of equality and our love of freedom. Together, we can guarantee a future with liberty and justice for all. You and your family have my best wishes for the future.”

Though research on the impact of reparations for Japanese internment is limited, the available evidence suggests that the redress program was meaningful to survivors and their families. In a 1999 study of survivors who received compensation, “[o]ne of the most common reactions to the payments was the feeling that the US government had at last recogni[z]ed that an injustice had been committed.”¹⁹⁹ Significantly, a large portion of these survivors placed an emphasis on apology. When answering whether or not an apology alone would have been sufficient, “32% felt that an apology without monetary payment would have been meaningless, but another 27% stated that an apology on its own would have sufficed.”²⁰⁰ The program left a meaningful legacy. In the words of survivor and organizer John Tateishi, “[i]t’s the legacy we’re handing down to [our children] and to the nation to say that, ‘You can make this mistake, but you also have to correct it – and by correcting it, hopefully not repeat it again.’”²⁰¹

The United States’ response to Japanese internment stands out as an example of comprehensive federal administration of reparations. Elements of the reparations program for survivors of Japanese internment could provide helpful guidance as to how reparations for the CIA torture program could be implemented, especially because parallels can be drawn between the national security discourse surrounding internment and RDI. For example, the evacuation, relocation, and internment of individuals of Japanese ancestry was publicly justified on the grounds of national security.²⁰² In the Statement of the Congress accompanying the Civil Liberties Act of 1988, however, the U.S. government acknowledged that “these actions were carried out without adequate security reasons.”²⁰³ In the apology letter that accompanied the compensation checks under President Bill Clinton’s administration, President Clinton wrote: “In retrospect, we understand that the nation’s actions were rooted deeply in racial prejudice, wartime hysteria, and a lack of political leadership.”²⁰⁴ In the context of the CIA’s torture program, misguided national security policies also led to human rights violations: the enforced disappearance and torture of numerous individuals, many of whom were ultimately deemed ineligible for detention as they were not threats to U.S. national security.²⁰⁵

In addition, the reparation program for Japanese internment also provides insight into the capabilities of the U.S. to reach large numbers of victims. The number of survivors of Japanese internment was much greater than the estimated number of survivors of the CIA’s torture program. If the United States was able to marshal the resources to provide reparations to more than 82,219 survivors of Japanese internment or their families, a program to provide reparations

¹⁹⁹ SARAH CULLINAN, TORTURE SURVIVORS’ PERCEPTIONS OF REPARATION: PRELIMINARY SURVEY 42 (Redress, 2001).

²⁰⁰ *Id.*

²⁰¹ Bilal Qureshi, *From Wrong to Right: A U.S. Apology for Japanese Internment*, NPR CODE SWITCH (Aug. 9, 2013), <http://www.npr.org/sections/codeswitch/2013/08/09/210138278/japanese-internment-redress>.

²⁰² COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, PERSONAL JUSTICE DENIED: SUMMARY 6 (1982), available at <http://www.archives.gov/research/japanese-americans/justice-denied/summary.pdf>.

²⁰³ Civil Liberties Act of 1988, 50 App. U.S.C.A. § 1989b (Aug. 10, 1988).

²⁰⁴ Letter Accompanying Reparations Checks from Bill Clinton, President of the United States, (Oct. 1, 1993) (<http://www.pbs.org/childofcamp/history/clinton.html>).

²⁰⁵ “Of the 119 known detainees, at least 26 were wrongfully held and did not meet the detention standard in the September 2001 Memorandum of Notification (MON).” See SSCI Report, *supra* note 38, at 12.

to the estimated 136 survivors of the CIA's torture program, and those that have yet to be identified, should be comparably simpler and less costly.²⁰⁶

Finally, this example emphasizes the importance of providing reparations promptly. By the time the Civil Liberties Act of 1988 established the Office of Redress Administration, only about 60,000 of the 120,000 people interned were estimated to still be alive.²⁰⁷ Many survivors of the CIA's torture program have expressed concern over having the United States acknowledge and apologize for the harms committed against them as soon as possible. This includes the concerns of Mr. Mohammed al-Asad, who was kidnapped from his family home in 2003, secretly detained in a foreign country, and abused for over one year.²⁰⁸ In his words: "Justice has not been achieved in my case . . . and when I talk about my case I feel like it will take forever to recover my rights. The United States, which I believe is a great country, should listen to me, acknowledge what it has done, and apologize. It should not take this long. It is unfair. It is unfair."²⁰⁹

(2) Reparations for Racially Discriminatory Torture by the Chicago Police

From 1972 through 1991, the Chicago police, under the direction of Commander Jon Burge, tortured more than 100 African Americans held in police custody.²¹⁰ "Men in custody were subjected to electric shocks, burns and mock executions, among other brutal acts, predominantly in order to extract confessions."²¹¹ These confessions resulted in false convictions and lengthy prison sentences for a number of these individuals. The City and Mayor Rahm Emanuel have taken unprecedented steps toward providing reparation to the victims of police torture, starting with apology and compensation resulting from individually brought litigation to the approval of a comprehensive reparations package in May 2015.²¹² This example is significant for the RDI context since it demonstrates that even a municipality in the United States can successfully craft a reparations strategy for survivors of police torture, taking significant steps to

²⁰⁶ AMRIT SINGH, OPEN SOCIETY JUSTICE INITIATIVE GLOBALIZING TORTURE CIA SECRET DETENTION AND EXTRAORDINARY RENDITION 6 (David Berry ed., Open Society Foundations 2013).

²⁰⁷ Irvin Molotsky, *Senate Votes to Compensate Japanese-American Internees*, N.Y. TIMES (Apr. 21, 1988), <http://www.nytimes.com/1988/04/21/us/senate-votes-to-compensate-japanese-american-internees.html>.

²⁰⁸ Center for Human Rights and Global Justice, *Mohammed Al-Asad v. Djibouti: Seeking Justice For A Victim Of Extraordinary Rendition* (last visited October 14, 2015), <http://chrgj.org/mohammed-al-asad-v-djibouti-seeking-justice-for-a-victim-of-extraordinary-rendition/>.

²⁰⁹ Skype Interview by Global Justice Clinic with Mohammed Al-Asad (Oct. 5, 2015).

²¹⁰ Zach Stafford, Spencer Ackerman, and Joanna Walters, *Chicago agrees to pay \$5.5m to victims of police torture in the 1970s and 80s*, THE GUARDIAN (May 6, 2015), <http://www.theguardian.com/us-news/2015/may/06/chicago-police-torture-victims-deal>.

²¹¹ Zach Stafford, Spencer Ackerman, and Joanna Walters, *Chicago agrees to pay \$5.5m to victims of police torture in the 1970s and 80s*, THE GUARDIAN (May 6, 2015), <http://www.theguardian.com/us-news/2015/may/06/chicago-police-torture-victims-deal>.

²¹² See Flint Taylor, *Rahm Emanuel Apologizes for Police Torture. Now What?*, THE NATION (Sept. 18, 2013), <http://www.thenation.com/article/rahm-emanuel-apologizes-police-torture-now-what/>; Press Release, City of Chicago, City Council Approves Package of Measures to Bring Closure to Dark Chapter of City's History (May 6, 2015), available at <http://www.cityofchicago.org/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2015/May/05.06.15DarkChapter.pdf>.

bring itself in line with the international legal obligation to provide reparations to victims of human rights violations.

Following several high profile lawsuits brought against the City of Chicago by African American victims of Burge-related torture, which resulted in approximately \$65 million in settlements to 18 individuals,²¹³ decades of advocacy by survivors and advocates,²¹⁴ and growing community pressure, on September 11, 2013, Chicago Mayor Rahm Emanuel issued a public apology for decades of police torture of black suspects. Emanuel called the events a “dark chapter in the history of the city of Chicago,” and stated that “[a]ll of us . . . are sorry for what happened.”²¹⁵ By this time, the City of Chicago is estimated to have expended \$100 million in settlements and legal costs related to the Burge-era torture²¹⁶, including via the \$12.3 million settlement in early September in the cases of Ronald Kitchen and Martin Reeves, both tortured by Burge and his officers, wrongfully convicted, and exonerated and released after spending twenty-one years in prison.²¹⁷

In May 2015, the City of Chicago went further and authorized a reparations package “for the individuals Burge abused and tortured prior to being fired from the police department in 1993.”²¹⁸ The package pledged public recognition of torture committed by Jon Burge, financial reparations for his victims out of a \$5.5 million reparations fund to be capped at \$100,000 per person, and the provision of services to support victims and their families, including psychological counseling and free tuition at some community colleges.²¹⁹ The City expects the number of recipients to be approximately 55, though plaintiffs’ attorneys have said it could be

²¹³ Flint Taylor, *Rahm Emanuel Apologizes for Police Torture. Now What?*, THE NATION (Sept. 18, 2013), <http://www.thenation.com/article/rahm-emanuel-apologizes-police-torture-now-what/>.

²¹⁴ *All Things Considered: Chicago Offers Reparations Package to Police Torture Victims*, NATIONAL PUBLIC RADIO (April 14, 2015) <http://www.npr.org/2015/04/14/399574357/chicago-offers-reparations-package-to-police-torture-victims>.

²¹⁵ Flint Taylor, *Rahm Emanuel Apologizes for Police Torture. Now What?*, THE NATION (Sept. 18, 2013), <http://www.thenation.com/article/rahm-emanuel-apologizes-police-torture-now-what/>.

²¹⁶ Dean Reynolds, *Chicago votes to pay millions over police torture*, CBS NEWS (May 6, 2015), <http://www.cbsnews.com/news/chicago-police-torture-vote-victims-thousands-reparations/>.

²¹⁷ Flint Taylor, *Rahm Emanuel Apologizes for Police Torture. Now What?*, THE NATION (Sept. 18, 2013), <http://www.thenation.com/article/rahm-emanuel-apologizes-police-torture-now-what/>.

²¹⁸ Press Release, City of Chicago, City Council Approves Package of Measures to Bring Closure to Dark Chapter of City’s History (May 6, 2015), <http://www.cityofchicago.org/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2015/May/05.06.15DarkChapter.pdf>.

²¹⁹ Fran Spielman, *Analysis: Emanuel closes the book on Burge era in a way defensive Daley couldn’t*, THE CHICAGO SUN TIMES (April 14, 2015), <http://chicago.suntimes.com/news/7/71/518178/analysis-emanuel-closes-book-on-burge-era-way-defensive-daley-couldn-t>; Press Release, City of Chicago, City Council Approves Package of Measures to Bring Closure to Dark Chapter of City’s History (May 6, 2015), <http://www.cityofchicago.org/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2015/May/05.06.15DarkChapter.pdf>. These services include: the following: “City College tuition and job training will be provided for free to Burge victims, their immediate family members and their grandchildren. The City will fund psychological, family, substance abuse, and other counseling services to Burge victims and their immediate family members. The City will work with sister agencies to create new opportunities for Burge victims in reentry or transitional job programs. The City will also prioritize Burge victims and their families for re-entry support and social services, senior care services, health services and small business assistance.”

closer to 65.²²⁰ Moreover, the City has promised to publicly acknowledge harm and educate the public via a “formal City Council apology, the creation of a permanent memorial recognizing the victims of torture, and curricula about the Burge case and its legacy in eighth and tenth grade CPS history classes.”²²¹ The City Council will also provide a formal apology to Burge torture victims when creating a permanent memorial to them.²²² In addition, Mayor Emmanuel has also pledged to continue supporting police reform.²²³

Despite these unprecedented steps, a number of concerns remain. These include the lack of prosecution of Jon Burge for torture;²²⁴ statements from Stephen Patton, Chicago’s corporation counsel, claiming that the reparations package was not a legally required duty, but simply “the right thing to do;”²²⁵ concerns from activists that structural reform of policing will not be forthcoming;²²⁶ and the continued incarceration of victims of police torture in Chicago.²²⁷ Nevertheless, this is an essential step toward reparation and a groundbreaking victim-centric effort.

There are a number of ways in which the example of reparations in Chicago may apply to the RDI context. First, this example shows that agencies within the United States are capable of providing meaningful reparations for torture committed within its jurisdiction under its laws.

²²⁰ Fran Spielman, *Analysis: Emanuel closes the book on Burge era in a way defensive Daley couldn’t*, THE CHICAGO SUN TIMES (Apr. 14, 2015), <http://chicago.suntimes.com/news/7/71/518178/analysis-emanuel-closes-book-on-burge-era-way-defensive-daley-couldn’t>.

²²¹ Press Release, City of Chicago, City Council Approves Package of Measures to Bring Closure to Dark Chapter of City’s History (May 6, 2015), <http://www.cityofchicago.org/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2015/May/05.06.15DarkChapter.pdf>.

²²² Fran Spielman, *Analysis: Emanuel closes the book on Burge era in a way defensive Daley couldn’t*, THE CHICAGO SUN TIMES (Apr. 14, 2015), <http://chicago.suntimes.com/news/7/71/518178/analysis-emanuel-closes-book-on-burge-era-way-defensive-daley-couldn’t>.

²²³ “Mayor Emanuel believes that building trust between officers and residents is an essential component to continue improving public safety, which is why he has instituted a series of initiatives and reforms to ensure past incidents of police misconduct are never repeated, and ensure that any incidents of police misconduct are responded to swiftly, consistently and with transparency. Additionally, over the past four years, Chicago has seen a return to community policing, and a renewed commitment to partnering with residents and local leaders to ensure every community enjoys the same sense of safety. The Police Department’s CAPS program [Chicago Alternative Policing Strategy] opened offices in each police district to help strengthen partnerships with community leaders, foot patrols and bike patrols were added to help officers better interact with residents, officers were trained on community organizing, and a new Deputy Chief of Community Policing position was created to tie all these efforts together.” Press Release, City of Chicago, City Council Approves Package of Measures to Bring Closure to Dark Chapter of City’s History (May 6, 2015) (<http://www.cityofchicago.org/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2015/May/05.06.15DarkChapter.pdf>).

²²⁴ Dean Reynolds, *Chicago votes to pay millions over police torture*, CBS NEWS (May 6, 2015), <http://www.cbsnews.com/news/chicago-police-torture-vote-victims-thousands-reparations/>.

²²⁵ Steve Mills, *Burge reparations deal a product of long negotiations*, THE CHICAGO TRIBUNE (May 6, 2015), <http://www.chicagotribune.com/news/ct-burge-torture-reparations-lawyer-met-20150505-story.html>.

²²⁶ Zach Stafford, Spencer Ackerman, and Joanna Walters, *Chicago agrees to pay \$5.5m to victims of police torture in the 1970s and 80s*, THE GUARDIAN (May 6, 2015), <http://www.theguardian.com/us-news/2015/may/06/chicago-police-torture-victims-deal>.

²²⁷ Democracy Now!, *As Torture Victims Win \$5.5M in Reparations, Could Chicago Be a Model for Police Abuses Nationwide*, Interview Transcript with Amy Goodman, Flint Taylor, and Darrell Cannon, DEMOCRACY NOW! (May 15, 2015), http://www.democracynow.org/2015/5/15/as_torture_victims_win_55m_in_reparations.

This is significant for survivors of CIA torture. Moreover, it demonstrates that the United States has devised reparations programs consistent with its international obligations to provide reparations to victims of torture. The distillation of this international legal obligation may be found in the United Nations' *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*.²²⁸ Drawing from these standards²²⁹, it is encouraging to find that the Chicago reparations program provides rehabilitation by way of psychological care and social services²³⁰ and also included a public apology from Mayor Rahm Emmanuel, which acknowledged the facts and indicated the government accepted responsibility.²³¹

F. Conclusion

The United States has acknowledged that it created and implemented a global secret detention program. Individuals were subjected to forced disappearance, secret and arbitrary detention, torture and other forms of cruel, inhuman and degrading treatment as part of this Program. While commendable, U.S. acknowledgement of the program's existence is only the first step toward remedies and reparation for victims and survivors. In the words of President Obama:

In the immediate aftermath of 9/11 we [the United States] did some things that were wrong. . . . we tortured some folks. We did some things that were contrary to our values. . . . my hope is, is that this report reminds us once again that the character of our country has to be measured in part not by what we do when

²²⁸ See G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Mar. 21, 2006). See also Redress, *Articulating Minimum Standards on Reparations Programmes in Response to Mass Violations: Submission to the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence* (July 2014), <http://www.redress.org/downloads/publications/Submission%20to%20Special%20Rapporteur%22on%20Reparation%20Programmes%20-%20public.pdf> (stating that “the 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (the “UN Basic Principles”), which serve as a key reference point for the determination of duties of States in international, regional and domestic systems in situations of mass violations. The UN Basic Principles are explicitly stated to ‘not entail new international or domestic legal obligations’, but rather to reflect existing obligations under international human rights law and international humanitarian law.”)

²²⁹ G.A. Res. 60/147, ¶¶ 21, 22(e), U.N. Doc. A/RES/60/147 (Mar. 21, 2006)..

²³⁰ Fran Spielman, *Analysis: Emanuel closes the book on Burge era in a way defensive Daley couldn't*, THE CHICAGO SUN TIMES (Apr. 14, 2015), <http://chicago.suntimes.com/news/7/71/518178/analysis-emanuel-closes-book-on-burge-era-way-defensive-daley-couldn't>. These services include the following: “City College tuition and job training will be provided for free to Burge victims, their immediate family members and their grandchildren. The City will fund psychological, family, substance abuse, and other counseling services to Burge victims and their immediate family members. The City will work with sister agencies to create new opportunities for Burge victims in reentry or transitional job programs. The City will also prioritize Burge victims and their families for re-entry support and social services, senior care services, health services and small business assistance.” Press Release, City of Chicago, City Council Approves Package of Measures to Bring Closure to Dark Chapter of City's History (May 6, 2015) (<http://www.cityofchicago.org/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2015/May/05.06.15DarkChapter.pdf>).

²³¹ Flint Taylor, *Rahm Emanuel Apologizes for Police Torture. Now What?*, THE NATION (Sept. 18, 2013), <http://www.thenation.com/article/rahm-emanuel-apologizes-police-torture-now-what/>.

things are easy, but what we do when things are hard. And when we engaged in some of these enhanced interrogation techniques, techniques that I believe and I think any fair-minded person would believe were torture, we crossed a line. . . . [W]e have to, as a country, take responsibility for that so that, hopefully, we don't do it again in the future.²³²

Following the release of the SSCI Report, however, there has been little effort to take responsibility for the harms committed as part of the CIA's torture program. Transparency, to the limited extent it has existed, does not alone fulfill the U.S. legal obligation to provide reparation to survivors of secret detention and torture.

The U.S. government's failure to extend reparations is even more shocking considering that other countries complicit in the CIA's torture program have participated in adjudications of survivors' claims, provided compensation, investigated violations, and apologized to victims for their role in this program. Moreover, the United States can look to its own history for examples of reparations programs that addressed individuals and groups who suffered sometimes wide-scale human rights violations. There are many models that are available to inspire the United States to fulfill its legal obligation to provide reparations to torture survivors.

When recounting their experiences, survivors of the CIA's torture program return to a common theme of disappointment over the absolute lack of apology and reparation from the United States for the detention, torture and irrevocable harm they experienced, and the lasting detrimental impacts this has had on their lives. The United States must urgently fulfill its legal and moral obligations to provide reparation to these victims.

²³² President Barack Obama, Press Conference by the President (Aug. 1, 2014) (<https://www.whitehouse.gov/the-press-office/2014/08/01/press-conference-president>).