



July 27, 2015

Mr. Emilio Álvarez Icaza Longoria
Executive Secretary
Inter-American Commission on Human Rights
Organization of American States
1889 F Street N.W.
Washington, D.C. 20006

Re: Request for a thematic hearing on the right to remedies and reparations for victims and survivors of the United States' Rendition, Detention, and Interrogation program

Dear Secretary Icaza,

Pursuant to Article 66 of the Rules of Procedure of the Inter-American Commission on Human Rights, the undersigned groups request a thematic hearing on the issue of remedies and reparations for victims and survivors of the U.S. Rendition, Detention, and Interrogation Program ("RDI Program").

In December 2014, the U.S. Senate Select Committee on Intelligence released redacted Findings and Conclusions and the Executive Summary of its 6,000 page, still classified, Study of the Central Intelligence Agency's Detention and Interrogation Program"¹ ("SSCI Report"). On the day of the report's release the CIA issued a redacted version of its response to the SSCI Report.² Even in their redacted form, these two documents provide official acknowledgement of what has been widely reported since December, 2002: U.S. use of forced disappearances, arbitrary detention, torture and other ill-treatment in furtherance of its Rendition, Detention and Interrogation program operated by the CIA and its agents and contractors.³

¹ SENATE SELECT COMMITTEE ON INTELLIGENCE, 113TH CONG., COMMITTEE STUDY OF THE CENTRAL INTELLIGENCE AGENCY'S DETENTION AND INTERROGATION PROGRAM (Comm. Print 2014) (Declassification Revisions December 3, 2014) [hereinafter SSCI Report].

² CIA Comments on the Senate Select Committee on Intelligence's Study of the Central Intelligence Agency's Former Detention and Interrogation Program (June 27, 2013).

³ SSCI Report, Findings and Conclusions, at 3. The documents also substantiate allegations of forced disappearance, torture and ill-treatment made in three petitions pending before this Commission: *El Masri v. United States*, *Mohamed et al. v. United States*, and *Padilla v. United States*. All three are brought against the United States by survivors of U.S. torture and ill-treatment, including persons detained as part of the RDI program. The *El Masri* petition was filed with the Commission in April, 2008, and was transmitted to the United States over six years ago. The United States is yet to respond. The other two petitions have yet to be processed by the Commission and transmitted to the United States.

Within days of the SSCI Report's release, the Inter-American Commission called upon the United States to "comply with its obligation to investigate, prosecute and punish any instances 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."⁴

Despite these official, high-level acknowledgements of egregious human rights abuses, and the Commission's subsequent request, to date, the United States has neither mounted an effective and comprehensive criminal investigation into the abuses acknowledged in the SSCI Report nor provided remedies and reparations to victims and survivors of the RDI program. A thematic hearing on the RDI program and, in particular, on the United States' obligations to effectively investigate the "overwhelming and incontrovertible"⁵ evidence of human rights violations revealed in the SSCI Report and to provide remedies and reparations to victims and survivors of those violations is both appropriate and critically timely.⁶

Over the years, the Inter-American human rights system has developed a rich body of jurisprudence addressing the components of the rights to an effective investigation, remedies and reparations that can act as a guide to the United States. A thematic hearing before the Commission would help distill and systematize this jurisprudence so that it can be meaningfully applied in the specific context of abuses perpetrated against victims and survivors of the RDI program.

I. The CIA's RDI Program and the SSCI Report

The CIA's RDI Program was authorized by President George W. Bush shortly after the September 11 terrorist attacks against the United States.⁷ The program was closed in 2009 when, by Executive Order, President Obama formally ended the use of torture and cruel, inhuman or degrading treatment by any government agency and prohibited the CIA from operating any overseas detention facilities, so-called "black sites."⁸ During the years of the program's operation, the CIA established numerous "black sites," located in Thailand, Afghanistan, Eastern Europe and Guantánamo Bay, Cuba. The facilities are identified by codename throughout the SSCI Report, but their actual locations have been well-documented. For the duration of their time in the program, certain detainees were transferred among these different facilities, and some were ultimately transferred to the custody of the U.S. military at Guantánamo Bay.⁹

⁴ Inter-Am. Comm'n H.R., IACHR Calls on the United States to Investigate and Punish Acts of Torture Established in the Senate Intelligence Committee Report, Press Release (Dec. 12, 2014).

⁵ Senator Dianne Feinstein, "Foreword," SSCI Report, Executive Summary at 4.

⁶ Although the human rights violations to be addressed in the hearing were perpetrated outside U.S. territory, the U.S. unquestionably exercised effective jurisdiction and control over the victims and survivors. Moreover, U.S. responsibility for its extraterritorial human rights violations is not the primary issue of concern; rather requesters seek a hearing on U.S. responsibilities to provide remedies and reparations for victims and survivors of forced disappearance, torture and ill-treatment in U.S. courts, or other U.S.-based administrative mechanisms.

⁷ See SSCI Report, Executive Summary, at 11; *see also*, NAT'L COMM'N ON TERRORIST ATTACKS UPON THE U.S., THE 9/11 COMMISSION REPORT ch. 10 (2004), *available at* <http://govinfo.library.unt.edu/911/report/index.htm>.

⁸ Exec. Order No. 1349, 3 C.F.R. 199 (2009-2010).

⁹ *See, e.g.*, SSCI Report, Executive Summary at 80, 93-94, 114, 140-41, 379; *see also* Transcript of President Speech on Terrorism (Sept. 6, 2006), *available at* http://www.nytimes.com/2006/09/06/washington/06bush_transcript.html?pagewanted=all&_r=0.

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.¹⁰ The SSCI Report establishes that the CIA detained and interrogated at least 119 men as part of the RDI Program.¹¹ This number, however, explicitly excludes individuals who the CIA did not detain, but rendered instead to third countries for detention and interrogation.¹² The actual number of detainees held pursuant to the RDI program is therefore likely significantly higher.¹³

According to the SSCI Report, all 119 men were detained and interrogated using a variety of techniques in combination, repeatedly and over prolonged periods.¹⁴ Publicly available CIA documents categorize those techniques as “conditioning,” “standard” or “enhanced” interrogation techniques, depending on the degree of severity.¹⁵ The most coercive methods, so-called “enhanced interrogation techniques,” included the following 10 techniques: “attention grasp,” “walling,” “facial hold,” “facial or insult slap,” “cramped confinement,” “insects in a confinement box,” “wall standing,” “stress positions,” “sleep deprivation” (for up to 11 days), and “waterboarding.”¹⁶ These techniques were authorized for use on the first detainee in the RDI program, Zayn al-Abidin Muhammad Husayn (Abu Zubaydah), by the U.S. Office of Legal Council (“OLC”) in August, 2002.¹⁷ This authorization formed the basis for subsequent use of “enhanced interrogation techniques” on other detainees held in the RDI program.¹⁸ The SSCI Report identifies thirty-nine men who were subjected to “enhanced interrogation techniques,” but does not list those subject to the other two categories.¹⁹ These other, arguably less coercive techniques and the egregious conditions in which detainees were confined were never authorized for use by OLC, but according to CIA documents their use required the prior approval by the Director of the CIA.²⁰ These “conditioning” and “standard” interrogation techniques included the

¹⁰ 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* SSCI Report, Executive Summary, at 166, 168; Open Society Justice Initiative, *Globalizing Torture: CIA Secret Detention and Extraordinary Rendition 61-118* (2013) (listing participating countries and setting forth evidence of their participation) [hereinafter *Globalizing Torture*].

¹¹ SSCI Report, Executive Summary, at 14.

¹² *Id.* at 9 n.5.

¹³ *See, e.g.*, *Globalizing Torture* 29-30.

¹⁴ SSCI Report, Executive Summary, at 8.

¹⁵ Fax from C.I.A. to DOJ Command Center, Background Paper on CIA’s Combined Use of Interrogation Techniques 4 (Dec. 30, 2004), *available at* <https://www.aclu.org/sites/default/files/torturefoia/released/082409/olcremand/2004olc97.pdf>; *see also* SSCI Report, Executive Summary at 63, 80, 145, 149.

¹⁶ CIA Inspector General, Special Review, Counterterrorism Detention and Interrogation Activities (Sept. 2001-Oct. 2003), May 7, 2004.

¹⁷ OLC, U.S. Dept. of Justice, Memorandum for John Rizzo, Acting General Counsel of the CIA, Interrogation of al Qaeda Operative, (Aug., 1, 2002) *available at* <https://www.aclu.org/files/projects/foiasearch/pdf/DOJOLC000780.pdf>.

¹⁸ SSCI Report, Executive Summary, at 101.

¹⁹ SSCI Report, Executive Summary, at 101.

²⁰ *See* CIA Guidelines on Conditions of Confinement, *available at* <https://www.aclu.org/files/torturefoia/released/082409/olcremand/2004olc11.pdf>; CIA Guidelines on Interrogations Conducted Pursuant to the [Redacted] (Jan. 28, 2003), *available at* <https://www.aclu.org/files/torturefoia/released/082409/olcremand/2004olc12.pdf>; CIA, OMS Guidelines on Medical and Psychological Support to Detainee Rendition, Interrogation, and Detention (May 17, 2004), (“OMS Guidelines”) *available at* <https://www.aclu.org/sites/default/files/torturefoia/released/103009/cia-olc/2.pdf>.

following: “Shaving,” “Stripping,” “Diapering,” “Hooding,” “Isolation,” “White noise or loud music,” “Continuous light or darkness,” “Uncomfortably cool environment,” “Dietary manipulation,” “Shackling in upright, sitting or horizontal positions,” “Sleep deprivation (up to 48 hours).”²¹ In addition, the SSCI Report revealed the use of previously unknown techniques, including use of so-called “rectal rehydration and feeding” on at least five detainees in the RDI program.²² While the details concerning which detainees were subject to which techniques have not been fully revealed, every individual in the RDI program experienced forced disappearance, arbitrary detention, and torture, which were inherent in the program itself.

Ineffective Criminal and Civil Accountability Measures

To date, there has been no criminal or civil accountability for the forced disappearances, torture and ill-treatment perpetrated by U.S. officials against any detainee subjected to the RDI program – even though the nature and scope of these abuses have now been publicly acknowledged in the SSCI Report.

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 pursuant to the program.²³ A special prosecutor was tasked with conducting an investigation into whether any federal laws were violated in connection with the program.²⁴ The investigation was later limited to the deaths of two terrorism suspects in C.I.A. custody²⁵ and whether the interrogation techniques employed against them were authorized or not. Thus the investigation excluded from its scope any methods that had been approved by the Office of Legal Counsel, including the most coercive technique, waterboarding.²⁶ The inadequacy of the investigation that was conducted was compounded by the fact that none of the alleged victims and survivors of the abusive conduct were interviewed as part of the process.²⁷ In August 2012, the investigation was closed, with no one being held accountable for the deaths.²⁸

Civil suits seeking accountability on behalf of a number of survivors have met a similar fate. In both cases, the CIA has intervened to seek immediate dismissal because in the Agency’s view any consideration of the merits of the plaintiffs’ allegations in federal court would be harmful to U.S. national security interests, as it would reveal means and methods of intelligence gathering or U.S. relations with other foreign powers. In both cases, U.S. courts have acceded to

²¹ See e.g., OMS Guidelines, *id.* at 7.

²² See, SSCI Report, Findings and Conclusions, at 4.

²³ 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>.

²⁴ D.O.J. Office of Public Affairs, ‘Statement of the Attorney General Regarding Investigation into the Interrogation of Certain Detainees’ (June 30, 2011).

²⁵ *Id.*

²⁶ *Id.*

²⁷ See, Letter from Amnesty International, American Civil Liberties Union and Human Rights Watch to Attorney General Lynch Requesting Special Prosecutor for Torture (Jun. 23, 2015) available at <https://www.aclu.org/letter/letter-attorney-general-lynch-requesting-special-prosecutor-torture?redirect=letter/letter-ag-lynch-requesting-special-prosecutor-torture>

²⁸ 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).

government claims of “state secrets,” and the U.S. Supreme Court has declined to review the lower courts’ determinations.

Following the dismissal of their cases by domestic courts, victims and survivors of the RDI program have filed petitions with this Commission seeking accountability under international law. Only one of these three petitions, *El Masri v. United States*, has been processed by the Commission. This petition was transmitted to the U.S. government for its consideration over six years ago. The United States has yet to respond, despite repeated calls by the Commission to do so, and despite both the SSCI Report and the CIA Response confirming U.S. involvement in Mr. El Masri’s forced disappearance, torture and ill-treatment.²⁹

Given the complete lack of accountability at the domestic level, a thematic hearing on governing international laws and principles on remedies and reparations for victims and survivors of the RDI program is a necessary first next step towards greater accountability on the part of the United States.

II. Victims and Survivors of the U.S. RDI Program have a Right to Remedies, Including Reparations, for Their Forced Disappearance, Torture and Ill-Treatment

Norms prohibiting forced disappearances, torture and other forms of ill-treatment have long been recognized within the Inter-American System. Indeed, these three norms are now so well established that they are recognized as *jus cogens*.³⁰ In addition, they impose affirmative obligations on member states of the OAS to guarantee them, through investigations, prosecution, and punishment,³¹ and provision of remedies, including reparations, to victims and survivors when violations occur.³² Of particular significance to this request, the Commission has repeatedly and forcefully elaborated on the nature and scope of effective remedies (both procedural and substantive elements) and reparations for victims and survivors of forced

²⁹ See SSCI Report, Executive Summary, at 128-129; CIA Response to SSCI Report, at 45, 52.

³⁰ See American Declaration on the Rights and Duties of Man arts. I, XXV, XXVI, May 2, 1948 (reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82, doc.6 rev.1 at 17 (1992)); Organization of American States, American Convention on Human Rights art. 3–5, 25, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123; Organization of American States, Inter-American Convention on Forced Disappearance of Persons arts. I–IV, *adopted* June 9, 1994, O.A.S.T.S. No. 68, 33 I.L.M. 1429; Organization of American States, Inter-American Convention to Prevent and Punish Torture arts. 1–3, 5, *concluded on* Dec. 9, 1985, O.A.S.T.S. No. 67 (reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/I.4 Rev. 9 (2003)). See generally Inter-Am. Comm’n H.R., *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116, doc. 5 rev. 1 corr. ¶ 154 (2002).

³¹ *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 ¶ 82 (2012); *Cruz & Silvestre v. Mexico*, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 273, ¶¶ 70-71 (Nov. 26, 2013); Organization of American States, Inter-American Convention to Prevent and Punish Torture art. 6, *concluded on* Dec. 9, 1985, O.A.S.T.S. No. 67 (reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/I.4 Rev. 9 (2003)).

³² *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 ¶ 82 (2012); *Cruz & Silvestre v. Mexico*, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 273, ¶¶ 63, 65 (Nov. 26, 2013); Principle Guidelines for a Comprehensive Reparations Policy, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II.131, doc. 1 ¶ 2 (Feb. 19, 2008); Organization of American States, Inter-American Convention to Prevent and Punish Torture art. 9, *concluded on* Dec. 9, 1985, O.A.S.T.S. No. 67 (reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/I.4 Rev. 9 (2003)).

disappearances, torture and ill-treatment - including the foundational right to an effective investigation into allegations of violations of these rights, as well as victims and survivors' rights to compensation, rehabilitation, satisfaction, restitution, and guarantees of non-repetition.³³

A thematic hearing on remedies and reparations for victims and survivors of the U.S. RDI program will address and expand upon this jurisprudence, applying laws and principles established by treaties and other instruments adopted within the Inter-American system as interpreted by the Commission, the Inter-American Court on Human Rights, and other international and regional human rights courts and bodies.

a. The Right to Remedies and Reparations Within the Inter-American System

1. Investigation

A fundamental prerequisite of the right to a remedy and effective reparations for violations of the prohibitions of forced disappearances, torture and ill-treatment is an effective investigation into the alleged acts.³⁴ Indeed, the right to an effective investigation into these violations has risen to the level of a *jus cogens* norm.³⁵ As a *jus cogens* norm, the State cannot circumvent its investigative obligations by resorting to restrictions pursuant to domestic law or national security interests.³⁶ The investigative authorities must be impartial and independent of the state and the investigation conducted in such a manner as to uncover the whole truth of the matters at issue.³⁷ The survivor and victim's next-of-kin should be invited to be involved in a meaningful way with the investigation and be afforded full access to the process.³⁸

2. Prosecution and Punishment

The investigation should also be tailored towards identifying the direct perpetrators as well as their supervisors (if any). In appropriate cases, both perpetrators and their supervisors should be held accountable.³⁹ Amnesty or immunity laws may not be invoked to block the investigation and any subsequent prosecution of those found responsible for forced disappearances, torture and

³³ Pérez v. Mexico, Merits, Case 11.656, Inter-Am. Comm'n H.R., Report No. 53/01, OEA/Ser.L/V/II.111 doc. 20, rev. 1097 ¶¶ 84, 86-87(2000); 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); Cruz & Silvestre v. Mexico, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 273, ¶ 65 (Nov. 26, 2013).

³⁴ 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 ¶¶ 6, 81-84, 160(2) (2012); Lund v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 219, ¶¶ 108, 141, 256 (Nov. 24, 2010); Organization of American States, Inter-American Convention to Prevent and Punish Torture art. 6, *concluded on* Dec. 9, 1985, O.A.S.T.S. No. 67 (reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/I.4 Rev. 9 (2003)).

³⁵ Lund v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 219, ¶ 137 (Nov. 24, 2010).

³⁶ *Id.* ¶ 202.

³⁷ *Id.* ¶ 256.

³⁸ *Id.* ¶¶ 257, 201.

³⁹ Cruz & Silvestre v. Mexico, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 273, ¶ 71 (Nov. 26, 2013); 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 ¶¶ 81-82 (2012); Organization of American States, Inter-American Convention to Prevent and Punish Torture art. 6, *concluded on* Dec. 9, 1985, O.A.S.T.S. No. 67 (reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/I.4 Rev. 9 (2003)); Organization of American States, Inter-American Convention on Forced Disappearance of Persons art. I, *adopted* June 9, 1994, O.A.S.T.S. No. 68, 33 I.L.M. 1429.

ill-treatment.⁴⁰

3. Compensation

Compensation must be made to the victim, survivor,⁴¹ or—if the direct victim died as result of State action—persons close to the victim.⁴² Close family members also have a separate right to compensation for the harm they suffer as a consequence of the victim's or survivor's pain and suffering.⁴³ Compensation should be made for both pecuniary and non-pecuniary damages, and include payment for patrimonial damage, loss of earnings, lost opportunities, punitive damages, medical expenses incurred, future medical expenses (psychological and physical treatment), and costs and expenses associated with litigating the case.⁴⁴

4. Rehabilitation

Rehabilitation by the State is also required, including provision of physical and psychological care for the survivors, free of charge, and at the convenience of the survivor.⁴⁵ If the State has acknowledged responsibility, victims and survivors are not required to produce further evidence to substantiate the extent of damage to be rehabilitated.⁴⁶

5. Satisfaction

Public acknowledgement of wrongdoing by the State is an important measure of satisfaction.⁴⁷ The State must also publicize the results of investigations that take place and acknowledge and publish official determinations of rights violations.⁴⁸ A judgement of a court may satisfy this requirement.⁴⁹

6. Restitution

⁴⁰ Lucero v. Chile, Preliminary Objection, Merits, and Reparations, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 267, ¶¶ 142, 150 (Aug. 28, 2013)

⁴¹ Lucero v. Chile, Preliminary Objection, Merits, and Reparations, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 267, ¶ 233 (Aug. 28, 2013); 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 ¶ 160(4) (2012); see Organization of American States, Inter-American Convention to Prevent and Punish Torture art. 9, *concluded on* Dec. 9, 1985, O.A.S.T.S. No. 67 (reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/I.4 Rev. 9 (2003)).

⁴² Velasquez Rodriguez v. Honduras, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 194(5) (July 29, 1988).

⁴³ Lund v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 219, ¶ 235 (Nov. 24, 2010).

⁴⁴ Bayarri v. Argentina, Preliminary Objection, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 183, ¶ 128 (Oct. 30, 2008); Millacura v. Argentina, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 229, ¶ 193 (Aug. 26, 2011).

⁴⁵ Lund v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 219, ¶¶ 267-68 (Nov. 24, 2010).

⁴⁶ Bulacio v. Argentina, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 100, ¶ 96 (Sep. 18, 2003).

⁴⁷ Lund v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 219, ¶¶ 277 (Nov. 24, 2010).

⁴⁸ Lucero v. Chile, Preliminary Objection, Merits, and Reparations, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 267, ¶ 226 (Aug. 28, 2013).

⁴⁹ *Id.* ¶ 224.

Restitution requires that upon a determination of wrong-doing and resultant harm, the State must make every effort to restore the victim or survivor to the situation they were in prior to the violation by the State.⁵⁰

7. Guarantees of Non-Repetition

The State must ensure non-repetition of the acts, especially if restitution to the victim or survivor is not possible.⁵¹ This may require that a State provide training for government officials, including members of the military, in effective measures for the protection of human rights.⁵² The non-repetition requirement may also impose obligations on the State to codify into its domestic law the crime of forced disappearance and torture as recognized under international law and standards.⁵³ The guarantee may also encompass an obligation on the State to establish a truth commission or some other mechanism that formally establishes the truth of the violations at issue, such as publication of investigative reports.⁵⁴

b. European and U.N. Human Rights Law on Remedies and Reparations

The jurisprudence that has developed within the Inter-American System on remedies and reparation for victims and survivors of forced disappearance, torture and ill-treatment is broadly consistent with that body of law that has been developed by the European and U.N. human rights systems. Indeed, Inter-American law has heavily influenced the development of the laws and standards in those other systems.⁵⁵ However, unlike the Inter-American system, the European Court on Human Rights (“ECHR”) and the U.N. human rights treaty bodies have begun to apply their jurisprudence on remedies and reparations to hold other States involved in the U.S. RDI program accountable, including through the provision of reparations to victims and survivors. The U.N. Committee against Torture (“CAT”) has also recently reiterated its call to the U.S. to provide reparations to victims and survivors of the RDI program, consistent with U.S. obligations on remedies and reparations under the Convention Against Torture (“UNCAT”). A thematic hearing examining Inter-American human rights law on remedies and reparations will prove an invaluable resource, therefore, not only to the Commission, but to other international human rights bodies that are currently considering this same set of issues.

⁵⁰ Cruz & Silvestre v. Mexico, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 273, ¶ 65 (Nov. 26, 2013); Bayarri v. Argentina, Preliminary Objection, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 183, ¶ 180 (Oct. 30, 2008) (expungement of a criminal record as a form of restitution).

⁵¹ Cruz & Silvestre v. Mexico, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 273, ¶ 65 (Nov. 26, 2013).

⁵² Millacura v. Argentina, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 229, ¶ 173 (Aug. 26, 2011); see Organization of American States, Inter-American Convention to Prevent and Punish Torture art. 7, concluded on Dec. 9, 1985, O.A.S.T.S. No. 67 (reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/I.4 Rev. 9 (2003)).

⁵³ Lund v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 219, ¶ 287 (Nov. 24, 2010).

⁵⁴ *Id.* ¶¶ 292, 297.

⁵⁵ See 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, G.A. Res. 60/147, prml., arts I-XII, U.N. Doc. A/RES/60/147 (Mar. 21, 2006); Human Rights Comm., General Comment No. 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (Mar. 29, 2004); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46 (Dec. 10, 1984); Comm. against Torture, General Comment No. 3, U.N. Doc. CAT/C/GC/3 (Nov. 19, 2012).

1. The European Court of Human Rights

In *El-Masri v. the Former Yugoslav Republic of Macedonia*, Application no. 39630/09 (13 December 2012), the ECHR held Macedonia responsible for Mr. El-Masri's forced disappearance, torture, and inhumane treatment. The Court ordered Macedonia to pay Mr. El-Masri compensation of €60,000. Based on the exact same set of facts alleged in Mr. El-Masri's petition to this Commission, the European Court also found that, while in the CIA's custody, Mr. El-Masri was subjected to numerous abuses including sodomy, forced nudity, total sensory deprivation, solitary confinement, force feeding, physical assault, sleep deprivation, inadequate food and water, and denial of medical care. The European Court ruled "beyond reasonable doubt" that Mr. El-Masri's treatment at Skopje Airport, Macedonia, by U.S. and Macedonian officials "amounted to torture" in violation of Article 3 of the European Convention. The Court also held that Mr. El-Masri's entire period of detention in Macedonia and Afghanistan constituted a case of "forced disappearance" in violation of Article 5 of the European Convention as well as Articles 1 through 4 of the International Convention for the Protection of All Persons from Enforced Disappearance, and the Parliamentary Assembly of the Council of Europe Resolution 1463 on enforced disappearances of October 3, 2005.

In December, 2014 in *Abu Zubaydah v. Poland* and *Abd Al Rahim Al-Nashiri v. Poland* the ECHR held Poland responsible for violations of Abu Zubaydah's and Al-Nashiri's rights.⁵⁶ Examining Poland's acts of collaboration with the CIA, the ECHR found that Poland had enabled the CIA to detain and mistreat the two men, violating their right to be free from torture, ill-treatment, and enforced disappearance as well as violating their right to a fair trial.⁵⁷ The Court ordered Poland to pay €130,000 to Abu Zubaydah,⁵⁸ and €100,000 to Al-Nashiri as reparations for these violations.⁵⁹ Most recently, on June 23, 2015 the Court heard the case of *Nasr and Ghali v. Italy*,⁶⁰ concerning Italy's collaboration with the CIA in the abduction of Hassan Mustafa Osama Nasr (Abu Omar), from the streets of Milan in 2003 and his subsequent "extraordinary rendition" to Egypt, where he was detained and tortured by Egyptian authorities.

2. The United Nations Human Rights Treaty Bodies

In November 2014, the Committee against Torture ("CAT") reviewed the U.S. implementation of UNCAT. At the conclusion of this review, CAT expressed its "grave concern" about the RDI Program, "which involved numerous human rights violations, including torture, ill-treatment, and enforced disappearance of persons...."⁶¹ CAT recalled the absolute prohibition of torture under Article 2(2) of the UNCAT, and expressed concern over the "ongoing failure to fully investigate allegations of torture and ill-treatment of suspects held in U.S. custody abroad."⁶²

⁵⁶ *Abu Zubaydah v. Poland*, Eur. Ct. H.R. (2014) (Judgment) (Fourth Section); *Al-Nashiri v. Poland*, Eur. Ct. H.R. (2014) (Judgment) (Fourth Section).

⁵⁷ *Al-Nashiri v. Poland*, Eur. Ct. H.R. (2014) (Judgment) (Fourth Section).

⁵⁸ The amount awarded to Mr. Zubaydah includes €100,000 in respect of non-pecuniary damage and €30,000 in respect of Mr. Zubaydah's costs and expenses.

⁵⁹ Vanessa Gera, 'Poland Makes \$250K Payout to Two CIA 'Black Site' Captives now at Guantánamo,' MIAMI HERALD, May 15, 2015.

⁶⁰ Request No. 44883/09.

⁶¹ Comm. against Torture, Concluding Observations on the Third to Fifth Periodic Reports of the United States of America at 11, U.N. Doc. CAT/C/USA/CO/3-5 (Nov. 20, 2014).

⁶² *Id.*

CAT also highlighted the UNCAT article 14(1) obligation imposed on state parties to “ensure in [such party’s] legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation,” and called upon the United States to provide “effective remedies and redress to victims, including fair and adequate compensation, and as full rehabilitation as possible” to victims and survivors of U.S. torture.⁶³

Earlier that same year, in March, 2014, the Human Rights Committee (“HRC”) in its Concluding Observations on U.S. compliance with the International Covenant on Civil and Political Rights also expressed concern at the complete lack of accountability for past human rights violations committed by U.S. officials, their agents and contractors, highlighting abuses perpetrated pursuant to the RDI program:

[T]he Committee notes with concern that all reported investigations into enforced disappearances, torture and other cruel, inhuman or degrading treatment that had been committed in the context of the CIA secret rendition, interrogation and detention programmes were closed in 2012 leading only to a meagre number of criminal charges brought against low-level operatives.⁶⁴

Like CAT the HRC recommended specific measures that the United States should employ to ensure that effective investigations are carried out. To date, none of the HRC’s recommendations have been adopted.⁶⁵

Similar calls for accountability were made by numerous U.N. member states, including Germany, Mexico, Costa Rica, China, Denmark, the Czech Republic, and Slovenia, during the Universal Periodic Review of the United States.⁶⁶

On June 24, 2015, more than one hundred national and international organizations from around the world delivered a statement to the U.N. Human Rights Council calling on member states to hold accountable those responsible for human rights violations perpetrated pursuant to the RDI program and to provide remedies and reparations for victims and survivors.⁶⁷

Request Under Article 66 of the Commission’s Rules of Procedure for a Thematic Hearing on Right to Remedies and Reparations for Victims and Survivors of the U.S. RDI Program

⁶³ *Id.* at 12(c).

⁶⁴ *See*, Human Rights Committee, Concluding Observations on the Fourth Report of the United States of America, at 5, U.N. Doc. CCPR/C/USA/CO/4 (Mar. 26, 2014).

⁶⁵ *Id.* at 5

⁶⁶ Human Rights Council, Universal Periodic Review, Advanced Questions to the United States of America, at 3, 4, 8, 13, 15 (May 11, 2015),

http://www.ushrnetwork.org/sites/ushrnetwork.org/files/advanced_questions_to_united_states_of_america_upr_2015_1.pdf#overlay-context=resources-media/upr22-advanced-question-states-us-2015.

⁶⁷ *See*, Coalition Statement to U.N. Human Rights Council Demanding Accountability on CIA Torture Program (June, 24, 2015) *available at* <https://www.aclu.org/letter/coalition-statement-un-human-rights-council-demanding-accountability-cia-torture-program?redirect=letter/coalition-letter-un-human-rights-council-demanding-accountability-cia-torture-program>.

In light of the release of the SSCI Report and the United States' now officially acknowledged role in forced disappearances, torture and ill-treatment, requesters respectfully propose a thematic hearing during the next period of sessions on U.S. obligations to provide remedies and reparations to victims and survivors of the U.S. RDI program, consistent with the United States' international human rights obligations.

If this request is granted, during the hearing requesters will supplement the information provided herein with additional written submissions relevant to the request. In addition requesters will provide expert testimony of U.N. Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, and U.N. Special Rapporteur on Torture, Juan Mendez.

In addition to the American Civil Liberties Union and Global Justice Clinic of New York University School of Law, this request is supported and endorsed by the following non-governmental organizations:

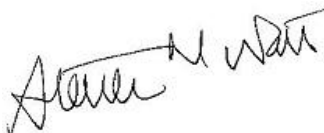
- Center for Justice and International Law (CEJIL) (Argentina, Brazil, Costa Rica and United States of America)
- Center for Legal and Social Studies (CELS) (Argentina)
- CONECTAS (Brazil)
- Washington Office on Latin America (WOLA) (United States of America)

Thank you for your consideration of this request.

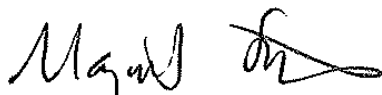
Respectfully submitted,



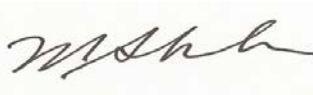
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⁶⁸ Communications from NYU Clinics do not purport to present the school's institutional views, if any.