

**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**

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

**Submission by the Global Justice Clinic
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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

Maher. 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/AR2007012601717.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 Republican 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 Program: "The Broken Promise"*, 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, *M15 '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/M15-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://truthout.org/archive/component/k2/item/88048:details-of-british-residents-brutal-torture-by-cia-officers-released>.

¹²⁹ Duncan Gardham and Gordon Rayner, *M15 '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/M15-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 argued 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.9HISO31B.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).

¹⁵⁸ 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.

¹⁵⁹ *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%20Reparations%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>).