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Italy/USA: Italian Appeals Court convicts three former CIA officials in Abu Omar kidnapping case

On 1 February 2013, Milan Appeals Court convicted three former US Central Intelligence Agency (CIA) officials for the unlawful abduction in Milan in February 2003 of Usama Mostafa Hassan Nasr (known as Abu Omar), who was subsequently transferred to Egypt, secretly detained for more than a year, and allegedly tortured.

Jeff Castelli, former Rome CIA station chief, and two other intelligence agents were convicted on charges of “kidnapping” under Italian law and sentenced to 7 and 6 years respectively. In the lower court, charges against all three had been dismissed on grounds of diplomatic immunity. The Appeals Court overturned the lower court ruling, holding that the men were not entitled to immunity. The men never appeared in the Italian courts and were convicted in their absence, which is permitted under Italian law. Under international law, however, trials in absentia are allowed only in very limited circumstances, which did not appear to apply in this case. To date, a total of 26 US nationals and three Italians have been convicted by Italian courts, in separate trials, for their involvement in the Abu Omar case. Five other Italian intelligence officials will stand re-trial in 2013 for their roles in the abduction after the Supreme Court ruled in September 2012 that the government’s broad invocation of “state secrets” must be reconsidered and not used to shield itself from accountability for human rights violations.

The abduction of Abu Omar in Milan marked the beginning of his enforced disappearance, which continued during his transfer to and secret detention in Egypt, where he was allegedly tortured. Diplomatic immunity should never be invoked to shield individuals from criminal investigation or prosecution for acts amounting to enforced disappearance or torture. To do so would violate the state’s obligations under international law in relation to such crimes.

The US government has not cooperated in the Abu Omar case and has refused to respond to requests for information from the Italian prosecutors. The Italian government has also been uncooperative, not only by invoking state secrecy in a manner that interfered with the investigation and prosecution, but also by refusing to forward relevant extradition requests to the USA. In the case of the 23 US nationals whose convictions became final following the Supreme Court judgement in September 2012, the Italian Minister of Justice, Paola Severino, refused to forward extradition requests for all but one. This was due to the application of an amnesty reducing imposed penalties below the threshold established by Italian legislation for an extradition request to be forwarded. The amnesty, a general measure approved by parliament in 2006, is expected to apply also to the three US officials convicted on 1 February. Under international law, Italy is nevertheless obliged to remove impediments and move forward with the extradition requests.

Amnesty International welcomes the continuing efforts of the Italian prosecutors to pursue criminal investigations and prosecutions in relation to the unlawful abduction of Abu Omar, despite the obstacles put in the way by the US and Italian governments. The Italian authorities should now seek the extraditions of all the US nationals with a view to conducting trials in person. Trials in absentia are generally incompatible with the human rights of those accused. When the US nationals come within the jurisdiction of the Italian justice system, they should receive a new trial before a different court.

Moreover, the Italian government should commence as a matter of urgency an independent, impartial, thorough and effective investigation into all aspects of Italy's involvement in these CIA operations. A September 2012 European Parliament report urges all implicated EU member states to commence such a process in line with their absolute international legal obligation to carry out effective investigations into allegations of torture and other ill-treatment.

Amnesty International remains gravely concerned at the failure of the USA to ensure accountability and access to remedy for victims of the US-led rendition and secret detention programmes. As such, the USA remains in serious breach of its international legal obligations.

Background

Abu Omar, an Egyptian national who was residing in Italy, was abducted from a street in Milan in February 2003 and subsequently unlawfully transferred by the CIA from Italy to Egypt, where he was held in secret and allegedly tortured. His abduction in Italy was the beginning of an enforced disappearance.

In a related trial, on 19 September 2012 the Italian Supreme Court (Court of Cassation) confirmed the convictions of 22 CIA agents, a US military official, and two Italian secret services operatives for the kidnapping of Abu Omar. The Court also ordered the re-trial of five Italian intelligence officials.

The UN Human Rights Committee has held, in relation to legal obligations of states under the International Covenant on Civil and Political Rights (ICCPR) as regards both enforced disappearance and torture or other similar ill-treatment of detainees: "failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant"; states "may not relieve perpetrators from personal responsibility" through "amnesties and prior legal immunities and indemnities"; "no official status justifies persons who may be accused of responsibility for such violations being held immune from legal responsibility"; "other impediments to the establishment of legal responsibility should also be removed, such as the defence of obedience to superior orders or unreasonably short periods of statutory limitation in cases where such limitations are applicable"; and that states "should also assist each other to bring to justice persons suspected of having committed acts in violation of the Covenant that are punishable under domestic or international law." Similar obligations arise under the UN Convention against Torture. Both Italy and the United States of America are parties to both the ICCPR and the Convention against Torture.

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