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Italian pardon of US military officer sets stage for impunity

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The recent pardon of a US national convicted in absentia in the 2003 kidnapping case of Abu Omar is a major setback for human rights protection that shows Italian President Giorgio Napolitano's shameful pandering to US government influence.

Joseph Romano, a US Air Force officer, was the head of security at the Aviano air base in northern Italy in February 2003 when Abu Omar was abducted some 350 km away in Milan by Italian and US operatives. Abu Omar was taken first to Aviano, and then transferred via Germany to Cairo, where he reported that he was tortured in Egyptian custody. In September 2012, Italy's highest court upheld convictions of Romano and 22 CIA agents for their involvement in the abduction.

The pardon appears to have been a political favour to US President Barack Obama. In an official statement on 6 April the Italian President claimed that the Obama White House had "changed" the policies of the former Bush administration, which Italy and the EU had considered "incompatible with the basic principles of the rule of law".

This is an obvious reference to the US-led rendition and secret detention programmes –people were abducted and transferred without due process to countries where they were at risk of torture; sent to secret CIA detention facilities, including in Europe; subjected to interrogation techniques amounting to torture and other ill-treatment; and in some cases, subjected to enforced disappearance.

Torture and enforced disappearance are crimes under international law and all states are obliged to investigate and, if there is sufficient admissible evidence, prosecute those suspected of responsibility for such crimes. In cases where a fair trial results in a conviction, states must take into account the grave nature of such crimes when imposing punishment.

Napolitano's statement also appears to excuse Romano for having followed the "superior orders" of US authorities, but over the past six decades, the law on that "defence" has been refined and clarified: every single international tribunal and court has developed detailed jurisprudence that categorically rejects the claim that a person who was "only following orders" is completely free of criminal responsibility for his crimes.

Moreover, Napolitano's statement referred to the dramatic events of 11 September 2001 as justification for the "drastic" measures taken by the USA in the aftermath of the attacks on US soil. Such a justification wrongly implies that fundamental rights like the absolute ban on torture and enforced disappearances may be suspended in exceptional circumstances.

Under international law, no exceptions to these prohibitions are permitted – not even the invocation of a threat to national security or a public emergency. No government may hatch covert programmes of systematic torture and disappearance as a response to an actual or perceived security threat.

The Italian President's statement also questions his national courts' international legal obligation to exercise jurisdiction over crimes committed by a member of one NATO country on the territory of another. According to NATO's "status of forces" agreement, the USA should have assumed jurisdiction over the Romano case and all crimes committed by US military personnel in the context of the Abu Omar abduction, not to mention the many other renditions and secret detentions that may have involved US military operating under NATO.

But this ignores the reality on the ground.

It has been well-documented how the Obama administration has consistently and vigorously frustrated any and all attempts by US and foreign courts or tribunals to hold accountable anyone allegedly directly involved or complicit in the CIA rendition and secret detention programmes. Had Italy ceded jurisdiction to the USA in Romano's case, it would have resulted in impunity for any potential crimes he committed against Abu Omar.

There is a vacuum of political and judicial will in the USA to hold anyone accountable for the human rights violations incurred in the network of renditions and secret detentions. Punting the Romano case over to US jurisdiction would have handed him a "get out of jail free" card.

A major critique of the Italian judicial process has been that Romano and the other US nationals convicted for involvement in Abu Omar's kidnapping were not present at their trials – something which is permitted under Italian law. Such trials in absentia are virtually prohibited under international law, as they deprive the accused of confronting his accuser and rebutting the evidence.

Fresh criminal trials could be on the cards for the other convicted US nationals if they come within the jurisdiction of the Italian courts again – due to an EU-wide arrest warrant, this could potentially restrict their future travel anywhere in the EU.

By pardoning Romano, the Italian government has snuffed out any possibility of bringing him to justice for his alleged crimes. It is highly unlikely that the USA would ever subject Romano – or any other US national – to criminal investigation and prosecution for their roles in the rendition and secret detention operations.

The Italian President's pardon flies in the face of decades of work by governments, NGOs, activists, lawyers, and victims to fashion a system of accountability for human rights violations. It is itself "incompatible with the basic principles of the rule of law" and represents a shocking setback in rights protection for which Italian President Giorgio Napolitano should be utterly ashamed.

Read more:

[Italian Appeals Court convicts three former CIA officials in Abu Omar kidnapping case](#) (Public statement, 6 February 2013)