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Italy: The Abu Omar case

Introduction

On the afternoon of 17 February 2003, Usama Mostafa Hassan Nasr (known as Abu Omar), an Egyptian national with Italian residency, was on his way to a local mosque when he was abducted from a street in Milan. Abu Omar has alleged that a police officer (*Carabinieri*) stopped him on the street and asked him for his identity papers. He was then forced into a white vehicle, taken to the NATO military base at Aviano in northern Italy, flown to the NATO military base in Ramstein, Germany, and then transferred to a CIA-leased plane and flown to Cairo, Egypt.

Detained in secret in Egypt for fourteen months, Abu Omar has said that he was beaten, subjected to electric shocks, hung upside down, prohibited from making contact with his family or lawyer, and held in a rat-infested cell with inadequate food. He was neither charged with a crime nor brought before a court.

On 20 April 2004, Abu Omar was released from prison in Cairo and warned by the State Security Investigations Services not to tell anyone about what happened to him. He was re-arrested by the Egyptian authorities on 12 May 2004, after having called his wife and friends in Milan to tell them about his torture. He was then taken to the State Security Investigations Services office in Nasr City and from there on to Istiqbal Tora Prison before being transferred to Damanhur Prison where he was held in administrative detention by order of the Minister of the Interior under emergency legislation. In February 2005 he was transferred back to Istiqbal Tora Prison and has reported that he was kept in solitary confinement.

Although he received at least 16 court orders for his release, his detention order was repeatedly renewed by the Egyptian Minister of Interior under emergency legislation. Abu Omar was released in February 2007. He is currently living in Alexandria. He said that he received instructions from the State Security Investigations officers not to leave the city but he has on several occasions travelled to Cairo to expose what happened to him to the media and to human rights organizations.

The Abduction

At around 12:30 p.m. on 17 February 2003, Abu Omar, who has Italian residency, was abducted from a street in Milan as he was on his way to a local mosque. An eyewitness to the abduction testified that Abu Omar struggled and cried out before being forced into a waiting van.¹

In a letter written by Abu Omar, smuggled out of his prison cell, he described his abduction:

I tried to resist but I was severely beaten in my stomach and the rest of my body and was forced down onto the floor of the car and my face was then masked and the van was dark inside after the door was shut and my hands and feet were then tied and the car sped away while I was in pain from the severity of the beating and as the car drove on, my physical power began to collapse and sounds came out of my mouth that resembled the death gurgle and liquid came out of my mouth (white foam) and my body began to stretch out and both my legs began to stretch out strongly and unawares a few drops of urine fell from me without my will and then I heard the screams of one of these two persons who kidnapped me and they both began to tear at my clothes quickly and one of them began to compress on my heart (massage) and the other removed the mask on my face and pointed a small light onto my eyes and then after he was reassured that my eyes were following the light he covered my face again and spoke with his partner and they both left me.²

The Italian investigation into the abduction confirmed that Abu Omar was taken to the NATO airbase at Aviano in northern Italy, and then flown to the Ramstein NATO airbase in Germany where he was transferred to a CIA-leased plane and flown to Cairo, Egypt.

In his letter, Abu Omar described how he was blindfolded, beaten and bound. He reported that they bound his "whole head and face with wide adhesive tape...and they left an opening for my nose and one for my mouth." He explained how he felt that he was near death during the flight: "I experienced on the plane extreme difficulty breathing but nobody cared except after they were certain of my impending death then I felt a respirator invade my nose and they hit me several times on the face."

Alleged Torture in Egypt

On arrival in Cairo, Abu Omar was taken by Egyptian security officers to a location in the city, which he later found out was the national intelligence headquarters, and detained in secret. In his letter, he described being subjected to seven months of torture for up to 12 hours a day:

I was hung like slaughtered cattle, head down, feet up, hands tied behind my back, feet also tied together, and I was exposed to electric shocks all over my body and especially the head area to weaken the brain and paralyze it and in the nipples and my genitals and my penis and I was beaten in my genitals with a stick and they were squeezed if I refused to answer or lied to the interrogator...

I was exposed to all forms of crucifixion. They crucified me on a metal door, and on a wooden apparatus which they call "El Arousa" or "the bride" hands up high, behind my back, to the sides as well as the feet tightly together and spread apart and torture during crucifixion by means of electric shocks and by being kicked and beaten with electric cables, water hoses and whipped...They beat me severely on both ears until I lost hearing in one ear..

Abu Omar also described how he was kept in a tiny, underground cell with little ventilation that reached 50°C in summer and 5°C in winter. His cell was infested with rats and cockroaches, he had one blanket on which to sleep and was fed a diet of hard, stale bread that had to be softened with water to make it edible.

For the next seven months, he was detained in secret by the State Security Investigations Service.

During the first 14 months of his detention, he was not allowed any contact with the outside world and his family, friends, and lawyer did not know where he was.

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Evidence of US and Italian Involvement

Nabila Ghali, Abu Omar's wife, reported her husband missing soon after his abduction in February 2003. The investigation into his disappearance, however, only gained momentum after Abu Omar called his wife and friends in Milan in April 2004 to tell them about his kidnapping, rendition to Egypt, secret detention, and torture.

Italian investigators, led by Milan prosecutors Armando Spataro and Ferdinando Pomarici, gathered evidence of mobile phone records, wiretap transcripts, and closed-circuit television footage that led back

to Robert Seldon Lady, an official in the US consulate and thought to be the highest ranking CIA officer in Milan. Investigators found a computer in Robert Lady's house in Milan with photos of Abu Omar, a map showing the best route to Aviano airbase, airline tickets in Lady's name for a trip to Cairo, and damaging emails. The evidence also implicated 25 other CIA operatives and US officials.

In a June 2009 interview with the Italian newspaper *Il Giornale*, Robert Seldon Lady appeared to acknowledge his involvement in the Abu Omar rendition. When asked if he participated in the abduction and transfer to Cairo, Lady responded, "I'm not guilty. I'm only responsible for carrying out orders that I received from my superiors...I console myself by reminding myself that I was a soldier, that I was in a war against terrorism, that I couldn't discuss orders given to me." He also questioned the professionalism of the CIA agents involved, particularly the trail of evidence left behind including mobile phone records, wiretap transcripts, and a confession by an Italian police officer who was involved: "How could we have been so unprofessional? The answer I've given is that there were too many people involved...There is no excuse, there were too many mistakes."³

The Italian *Carabinieri* officer who confessed, Luciano Pironi, cooperated with the Italian investigators and admitted in April 2006 to being involved in Abu Omar's abduction. He received a suspended sentence of one year and nine months.

In a conversation between Gustavo Pignero, the former director of the anti-terrorism division of Italy's military intelligence service (then called the Servizio per le Informazioni e la Sicurezza Militare or SISMI)⁴ and also charged in the Abu Omar abduction, and Marco Mancini, then head of SISMI's anti-terrorism division, which was recorded on 2 June 2006, Pignero allegedly admitted that SISMI had received, via the head of SISMI Nicolò Pollari, a hand-written request from the CIA to assist in the abductions of four suspected terrorists. Abu Omar's name was the first name on the list.⁵ According to press reports, Gustavo Pignero later destroyed the note, before his death from cancer in September 2006.⁶ Nicolò Pollari has denied any involvement in the Abu Omar abduction.⁷

Renato Farina, a journalist associated with SISMI, was charged as an accessory to SISMI's attempts to cover-up Abu Omar's abduction. He also took a plea deal and was given a six-month suspended sentence, which was converted to a monetary fine.⁸

The Legal Process

The Milan Public Prosecutor's Office sought the extradition of the CIA agents and US officials in question in 2005 and again in 2006. Successive Italian Justice Ministers refused to forward the requests for extradition. The US government took the position that even if the extradition warrants were transmitted, it would not comply with them.⁹

In February 2007, a judge in Milan ruled that 33 people should face trial for Abu Omar's kidnapping: 26 US nationals, most of them CIA agents or officials, and seven Italians, including Nicolò Pollari and Marco Mancini.

Amnesty International on 14 March 2007 called on Italian Minister of Justice Clemente Mastella to forward the extradition requests to the US authorities (AI Index: EUR 30/002/2007). Those requests have never been forwarded to the US Government, which, as noted above, made clear to the Italian authorities that it would not honour the requests if they were to be transmitted. As a result, the US nationals were tried in their absence (*in absentia* or *in contumacia* in Italian). Italian law allows for trials *in absentia*; however, international law requires that a person be present at his trial to hear the full prosecution case, put forward a defence, challenge the evidence, and examine witnesses. If an accused is apprehended following a trial in which he or she has been convicted *in absentia*, any verdict rendered *in absentia* should be quashed and a completely new trial held before a different trial court.

In the run-up to the trial, in February and March 2007, the Italian government lodged a case before the Constitutional Court on the basis that the Italian judiciary had exceeded its powers by using classified documents and seeking authorization to wiretap intelligence agents. The then President of the Council of Ministers, Romano Prodi, also declared that documents relating to national security, including relations between Italy and its allies, constituted "state secrets." The trial, which was slated to begin on 8 June 2007, was suspended on 18 June, pending the Constitutional Court hearing.

The Italian Constitutional Court ruled on 11 March 2009 that some evidence could not be disclosed because it dealt with issues of Italian national security. The excluded evidence included SISMI documents and testimonies that contained information about the relationship between SISMI and the CIA. Moreover, key witnesses could no longer appear in court to give testimony as that evidence also dealt with SISMI's relationship with the CIA. Amnesty International believes that governments must not invoke state secrecy in a manner that would deprive a victim of human rights violations of an effective remedy or prevent authorities or courts from bringing perpetrators of human rights violations to justice. On 19 March 2008, the trial re-opened.

As a result of the Constitutional Court ruling, defense counsel immediately moved to have all the defendants acquitted or the indictments annulled. The proceedings were adjourned again until 20 May when Judge Oscar Magi ruled that the trial could proceed.

In June 2008, Amnesty International issued a report titled *State of Denial: Europe's Role in Rendition and Secret Detention* (AI Index: EUR 01/003/2008). The Abu Omar case was highlighted in the report and Amnesty International called on the Italian government to 1) demand that the US government extradite the CIA agents in question; 2) give the CIA and SISMI agents alleged to have been involved in the Abu Omar abduction a prompt and fair trial; 3) decline to invoke "state secrecy" as a means to deprive Abu Omar of a remedy or to prevent his abusers from being held accountable; 4) provide reparation to Abu Omar and his family for any abuse they suffered at the hands of Italian agents or state actors; and 5) press the Egyptian authorities to investigate Abu Omar's allegations of torture and other ill-treatment while in detention in Egypt.

The Milan trial ended in October 2009. Abu Omar and his wife, Nabila Ghali, have asked the Court to award them compensation for their suffering. A judgment is expected in early November 2009.

No Accountability in the USA

The US government continues to fail to meet its legal obligation to investigate and bring to account those responsible for the human rights violations – including the crimes under international law of torture and enforced disappearance – committed as part of the CIA programmes of rendition and secret detention in what the Bush administration called the "war on terror." The victims of these programs have systematically been denied their right to a remedy and reparations for the human rights violations committed against them.

Allegations of torture in Egypt

The use of torture is a systemic problem in detention centres throughout Egypt. Among the detainees particularly at risk are convicted and alleged members of armed Islamist groups, including people who have been forcibly returned from abroad.

Allegations of torture are rarely investigated. Hundreds of complaints of torture and other ill-treatment in recent years have been brought to the attention of the authorities by victims, their lawyers or local and international human rights groups. Despite this, the Office of the Public Prosecutor, which has a legal responsibility to investigate such complaints, has repeatedly failed to mount any effective investigations. State officials are therefore able to commit torture with impunity.

In May 2005, while visiting the USA, Egyptian Prime Minister Ahmed Nazif stated that 60 or 70 people had been transferred to Egypt by US intelligence services since September 2001. When questioned about this statement during his visit to London in March 2006, he stated that "[t]hat number would vary over time, so it is very difficult to pin it down." Neither statement clarified which authorities were responsible for the arrests and detention; where the detainees were being held; and whether or not they had access to the outside world.

People arrested as terrorist suspects who are not charged or who are acquitted are often kept in administrative detention by the Interior Minister under emergency legislation. Under Article 3 of the Emergency Law, the Minister of Interior may "arrest and detain suspected persons or those who endanger public order or security". Anyone detained under this provision is entitled to lodge a complaint against their detention 30 days after the detention order was issued. Such complaints are referred to an emergency court, which must give a reasoned decision within 15 days.

However, if the court determines that the detainee should be released, the Interior Minister has 15 days to challenge the decision, during which the detainee continues to be held. In such circumstances, the case is then referred to a second, equivalent court which also has 15 days to decide on the Minister's objection. If the second court confirms the order to release, the detainee must then be freed. If not, the detainee continues to be held and is entitled to submit a new complaint to an emergency court and begin the whole process again once a further 30 days has elapsed.

In practice, however, the detaining authorities often circumvent this procedure and do not release detainees in accordance with the decision of the second court. Instead, they secretly move detainees to new places of detention, such as local police stations or SSI (State Security Intelligence)¹⁰ premises in Cairo or elsewhere, and hold them until new detention orders are issued against them by the Minister of Interior on the false grounds that the detainee was released but immediately returned to criminal or terrorist activities and was then rearrested.

¹ Arrest Warrant of 20 July 2005, Tribunale Ordinario di Milano, Section XI Criminal Court as Review Judge, N° 1413/2005 RG TRD (3).

² See also, Amnesty International, Video: Abu Omar, Victim of Rendition and Secret Detention, 24 June 2008, <http://www.amnesty.org/en/news-and-updates/video-and-audio/video-abu-omar-victim-rendition-secret-detention-20080624>

³ Phil Stewart, "US Spy Says Just Followed Orders in Italy Kidnap," *Reuters*, 30 June 2009, <http://www.reuters.com/article/domesticNews/idUSTRE55T3H420090630>

⁴ SISMI's name was changed in 2007 to Agenzia informazioni e sicurezza esterna (AISE).

⁵ "Secret Agents Spilling Secrets," [Excerpts from the June 2006 conversation between Pignero and Mancini taken from Italian court documents], *Washington Post*, 8 December 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/12/08/AR2006120800932.html>

⁶ Ibid.

⁷ Gina Doggett, "Ex-Italian Spy Denies Involvement in CIA Kidnapping," *Agence France Presse*, 27 May 2009, <http://www.google.com/hostednews/afp/article/ALeqM5hWzOh7PKvyJe0c4l08ZSYyIEDqkA>

⁸ Renato Farina is now a member of the Parliamentary Assembly of the Council of Europe (PACE) serving on the Committee on Legal Affairs and Human rights and the Subcommittee on Human Rights, see http://assembly.coe.int/ASP/AssemblyList/AL_MemberDetails.asp?MemberID=6394

⁹ Craig Whitlock, "U.S. Won't Send CIA Defendants to Italy," *Washington Post*, 1 March 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/28/AR2007022802050.html>

¹⁰ The SSI is one of the three main security agencies in Egypt; the SSI is the main body responsible for investigating matters of domestic security. It also has responsibility for enforcing the state of emergency.