HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND

Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Independent Expert on the promotion of a democratic and equitable international order; and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

REFERENCE: OL
ITA 2/2015:

2 June 2015

Excellency,

We have the honour to address you in our capacities as Chair-Rapporteur of the Working Group on Arbitrary Detention; Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence pursuant to Human Rights Council resolutions 24/7, 27/1, 24/6, 26/7, 22/8, 25/13, 27/9, and 27/3.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged detention and torture of an Italian citizen of Moroccan origin, in the context of the secret detention, rendition and torture programme operated by the U.S. Central Intelligence Agency after 11 September 2001.

According to the information received:

In March 2002, Mr. **Abou Elkassim Britel**, an Italian citizen of Moroccan origin (born in Casablanca, Morocco, in 1967) was arrested in Lahore, Pakistan, while traveling for business purposes. He had traveled from Italy to Iran, and subsequently to Pakistan, in search of funding support for a website business called "Islamiqra", created by him and his wife in 2000, which planned to translate Islamic texts from Arabic into Italian.

When in Pakistan, he was accused of traveling on a fake Italian passport and was subsequently placed in detention, on immigration charges, for approximately two months, from March to May 2002.

During the detention, he was repeatedly beaten with a cricket bat, suspended from the walls of his cell for extensive periods of time, deprived of sleep while tied to a gate, and denied access to a toilet. He was called a terrorist, threatened to death and told that female members of his family would be raped.

Mr. Britel frequently asserted his Italian citizenship. He specifically requested legal representation and help from the Italian Embassy. His requests were all ignored.

In April 2002, Mr. Britel was forced into a false confession and brought before individuals, reportedly nationals of the United States of America, who interrogated him on at least four occasions. One of these U.S. individuals identified himself as [redacted].

Mr. Britel again asked to speak to someone from the Italian Embassy. He was told that the Italian Ambassador did not want to meet with him because he was a terrorist.

On 24 May 2002, Mr. Britel was forcibly transferred from Pakistan to Morocco on a plane operated by Aero Contractors Inc. ("Aero"), number N379P, which had reportedly left from Johnston County in North Carolina, United States of America.

On the plane, Mr. Britel was blindfolded and forced to wear a diaper. He was not allowed to use the bathroom, move or shift position. His mouth was taped shut and he was beaten whenever he moved.

On 25 May 2002, the plane landed in Rabat, Morocco. Mr. Britel was then transferred to Témara prison. Later that day, flight N379P departed from Rabat to Porto, Portugal, where it remained overnight, before being sighted in Washington, D.C. on 26 May 2002, and then back to home base in Johnston County in the late afternoon of the same day.

Mr. Britel was held in Témara prison for eight and a half months, until February 2003. He was kept in isolation. He was reportedly blindfolded, handcuffed, and severely beaten while interrogated. He was deprived of sleep and adequate food. He was continuously threatened with castration, sodomy with a bottle, and death. Despite his repeated requests, he was denied access to the Italian consulate.

On 7 June 2002, Mr. Britel's brother received a telephone call from someone who claimed to have known Mr. Britel while in prison in Pakistan, and warned that Mr. Britel's life was in danger.

In January 2003, almost a year after his disappearance, Mr. Britel's family learned that he could be in Morocco.

On 11 February 2003, Mr. Britel was released from Témara prison and driven to his family's home in Kenitra, Morocco. He could then see his wife for the first time in 20 months.

Out of prison, Moroccan intelligence agents visited Mr. Britel at least once a week, pressuring him to work as an informant upon his return to Italy. At that time, Mr. Britel was unable to return to Italy because his passport had been confiscated in Pakistan and never returned. Eventually, in May 2003, he received the necessary travel documents.

On 16 May 2003, Mr. Britel started to travel to Italy, together with his wife, by bus at 1.30 p.m. He was again arrested and detained in Bab Melilla, where he was held for six hours without explanation. Mr. Britel and his wife had both petitioned the Italian Embassy for an escort to accompany them to the airport, to make sure they would be able to depart. The embassy had denied their requests.

Mr. Britel was eventually taken by car back to Témara prison. He was accused of engaging in subversive activities. He was again threatened and subjected to torture and forced to sign a confession that he was never permitted to read.

On 16 September 2003, Mr. Britel was transferred from Témara prison to Salé prison (Zaki). In total, Mr. Britel remained detained for nearly five months.

On 3 October 2003, based on the confession made while under duress during the second period of detention at Témara prison, he was brought to trial on charges of "establishment of an armed gang to prepare and commit terrorist acts in the framework of a joint project with the purpose of subverting the system, holding meetings without authorization and pursuit of activities in an unauthorized association". He was sentenced to 15 years in prison, reduced, on appeal, to nine years.

An observer from the Italian Embassy reported that the trial failed to comply with due process and fair trial standards and that the procedures followed were fundamentally flawed.

Mr. Britel was sent back to Salé prison (Zaki). During the following nine years, in addition to Salé prison (September 2003 to April 2006), he was also held in Ain Borja (May 2006 to December 2007), Oukasha (December 2007 to August 2010), and Kenitra Central prison (September 2010 to April 2011). His family would often be unaware that he had been transferred to another prison. He was denied access to a lawyer on several occasions and continually subjected to violence and humiliation. Guards would often enter his cell, tear up his bed, take his property, and taunt him by telling him that a member of his family had been mistreated. On one occasion, he was stripped of his clothes and left naked.

While imprisoned, Mr. Britel was visited by Italian diplomatic and consular officials, including the Italian Consul General in Morocco. During these visits, he made the conditions of his captivity clear and showed the visiting officials physical evidence of the abuse he suffered.

In September 2006, an investigation conducted in Italy on Mr. Britel was closed due to lack of evidence of any wrongdoing on his part or any evidence of his association with terrorist activities or terrorists. Mr. Britel's wife repeatedly petitioned the Italian Government to secure his release from prison in Morocco. Reportedly, no such effort was ever made by the Italian authorities.

On 30 January 2007, the European Union Temporary Committee on the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners (the "Committee"), set up by the European Parliament to collect and analyse information on the alleged use of the European Union territory by the CIA for the transportation and illegal detention of prisoners, released its final report.

The report of the Committee condemned the extraordinary rendition of Mr. Britel; emphasized that the criminal investigations in Italy against Mr. Britel were closed without any charges being brought; regretted that the Italian Ministry of Internal Affairs had been in constant cooperation with foreign secret services concerning the case of Mr. Britel following his arrest in Pakistan; and urged the Italian Government to take concrete steps in order to obtain the immediate release of Mr. Britel.

Also in 2007, Mr. Britel sought judicial redress before the U.S. District Court for Northern California. With the assistance of the American Civil Liberties Union, Mr. Britel and four other survivors of extraordinary rendition and torture sued Jeppesen Dataplan Inc., a private corporation, alleging Jeppesen's participation in Mr. Britel's and the other plaintiffs' renditions by providing flight planning and logistical support in fulfillment of CIA contracts.

The case was never heard in court after the U.S. Government intervened and asserted the state secrets privilege.

On 14 April 2011, Mr. Britel was released from prison after having been pardoned by the King of Morocco.

It is further reported that as a result of the torture inflicted, Mr. Britel suffers from chronic diarrhea, dizziness, and has permanent damage to his left eye and ear. He continues to suffer from skin discoloration, bruises, and permanent hair loss on areas of his body where he was repeatedly beaten. Medical records also report that Mr. Britel suffers from loss of visual acuity, difficulty with concentration, retrograde and anterograde amnesia, and a strong aversion to social situations and social contacts. In addition, Mr. Britel suffers from post-traumatic stress disorder,

anxiety, and depression resulting in instability, restlessness, agitation, panic, a sense of inadequacy, and an inability to concentrate. He feels completely unfocused, preoccupied, and forgets things easily. He also cannot hold onto objects and frequently drops them. He has serious sleeping and eating disorders. He feels as if he were still in prison and "the sensation is that of no longer having a life."

Without prejudging the accuracy of the information received, concern is expressed at the above allegations, particularly in connection with the reported lack of investigation, prosecution and criminal accountability of the alleged perpetrators, including Government's officials who may have devised, planned and authorised such events.

Concern is further expressed at the physical and psychological integrity of Mr. Britel, also in light of the reported absence of any form of redress, including a public apology and the acknowledgment of the harm and the damages caused to him and his family members as a result of the mentioned allegations, as well as adequate compensation and reparation, such as access to post-traumatic and appropriate social, psychological and medical rehabilitative services.

In connection with the above allegations, please see the attached **Reference to international law Annex**, outlining applicable international human rights instruments and standards.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any information and/or comments you may have on the above-mentioned allegations.

2. Please provide any information on whether any effective independent judicial or quasi-judicial inquiry has been established or, where applicable, re-opened into the above allegations with a view: a) to identify any public officials who may have been involved either in authorizing or in collaborating, in the perpetration of the alleged violations; b) to publish the findings of such inquiries; and 3) to hold the relevant officials publicly accountable for their actions.

3. Please provide any information on what steps have been or are being taken to ensure victims' access to adequate, effective and prompt reparation, proportionate to the gravity of the violations occurred and the harm suffered, as well as rehabilitation and compensation.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the

investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

We would like to inform your Excellency's Government that we have addressed a communication with similar content to the Governments of Morocco, Pakistan, Portugal and the United States of America.

Please accept, Excellency, the assurances of our highest consideration.

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Chair-Rapporteur of the Working Group on Arbitrary Detention

Ariel Dulitzky
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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Alfred De Zayas
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Pablo De Greiff
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Annex
Reference to international human rights law

In connection with the above allegations and concerns, we would like to refer your Excellency's Government to Articles 2, paragraph 3, lett. a), 5, 7, 9, 10, 14, 16 and 17 of the International Covenant on Civil and Political Rights, which your Excellency's Government ratified on 15 September 1978.

Furthermore, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Italy ratified on 12 January 1989.

Moreover, article 15 of the CAT provides that, "[e]ach State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made".

With regards to the alleged isolation, we would like to refer your Excellency's Government to paragraph 6 of General Comment No. 20 of the Human Rights Committee, which states that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 of the ICCPR (adopted at the 44th session of the Human Rights Committee, 1992); and to the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/66/268), in which it is stated that the use of prolonged solitary confinement in itself runs afoul of this absolute prohibition and may give rise to other acts of torture or ill-treatment.

In 2010, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances presented a Joint study on global practices in relation to secret detention in the context of countering terrorism (UN Joint Study on Secret Detention, A/HRC/13/42). The joint study describes the international legal framework applicable to secret detention and concludes with concrete recommendations regarding this practice, aimed at curbing the use of secret detention and the unlawful treatment or punishment of detainees in the context of counter-terrorism.

In his report to the Human Rights Council (A/HRC/22/52) of March 2013, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism sets out a series of framework principles for securing the right to truth and the principle of accountability for gross or systematic human rights violations committed by public officials while countering terrorism.

In the report, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism considers that the principles of international law that govern accountability for such violations have two complimentary dimensions.

On the one hand, international law protects the legal right of the victim and of the public to know the truth, which entitles the victim, his or her relatives, and the public at large, to seek and to obtain all relevant information concerning the commission of the alleged violation, including the identity of the perpetrator, the fate and whereabouts of the victim and, where appropriate, the process by which the alleged violation was officially authorized. It also includes the right of the victim to adequate reparation (of which the establishment of the truth is an indispensable part), the payment of monetary compensation, without full public exposure of the truth, not being sufficient to discharge this obligation. Full and effective reparation should include, as appropriate, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Reparation schemes should make provision for financial compensation and a considered programme of medical and social rehabilitation.

On the substantive level, reparation should be proportional to the gravity of the violations and harm suffered.

Human Rights Council Resolution 16/23, adopted in April 2011, urges States, in paragraph 7 (e), "to ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social, psychological, medical and other relevant specialized rehabilitation"; and "to establish, maintain, facilitate or support rehabilitation centres or facilities where victims of torture can receive such treatment and where effective measures for ensuring the safety of their staff and patients are taken".

What victims perceive as fair and adequate reparation for the ordeals they endured may differ from case to case. In his report to the Human Rights Council (A/HRC/13/39/Add.5) of February 2010, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, considers that "victims of torture may not primarily be interested in monetary compensation, but in those means of reparation that are best suited to restore their dignity and humanity. (...) The public acknowledgment of the harm and humiliation suffered and the establishment of the truth through a comprehensive and impartial investigation, together with a public apology may often provide greater satisfaction to the victim than monetary compensation".

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism recalls that the victim's right to truth has been expressly recognized in a number of international instruments. In particular, Article 24(2) of the UN Convention on the Protection of All Persons from Enforced Disappearances provides that each victim "has the right to know the truth regarding the circumstances of the disappearance, the progress and results of the investigation and the fate of the disappeared person". The UN 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, adopted by the General Assembly on 16 December 2005, provide at paragraph 24 that victims should be entitled to "seek and obtain information" on the "causes and conditions pertaining to gross violations of international human rights law" and to "learn the truth in regard to these violations". The Human Rights Council has similarly recognized "the importance of respecting and ensuring the right to truth so as to contribute to ending impunity" (Human Rights Council Resolutions 12/122 of 12 October 2009, para. 1, and 9/11 of 18 September 2007, para. 1). The right to truth was also recognized in regional human rights jurisprudence. Most recently and, for present purposes, most relevantly, the right to truth was expressly recognized by the European Court of Human Rights in the judgment of its Grand Chamber in the case of El-Masri vs Macedonia (European Court of Human Rights, El- Masri vs Macedonia, Application No. 39630/09, Judgment 13 December 2012).

On the other hand, international law also imposes specific duties on all branches of the Government to secure the realization of the right to truth and the principle of accountability.

Where a plausible allegation is made that public officials have committed (or been complicit in the commission of) gross or systemic human rights violations, the executive authorities of the State(s) concerned are obliged to carry out *proprio motu* an effective official investigation which is begun promptly, secures all relevant evidence, and is capable of leading to the identification and, where appropriate, the punishment of the perpetrator(s) and those on whose authority the violations were committed.

The investigating authorities are obliged to allow victims, or (if deceased) their relatives, effective access to the investigative process, respecting their right to be informed and to participate; to disclose all relevant evidence and findings to the victims, their relatives and the public (subject only to legitimate national security limitations that are adjudged to be strictly necessary by an independent and impartial judicial or quasi-judicial tribunal); and to protect the physical and moral integrity of victims and witnesses against reprisals and threats.

To meet the requirements of international law, such an investigative body must be genuinely independent of the officials implicated in the violations. In addition, there must be a sufficient element of public scrutiny of the investigation and its results, so as to secure public accountability in both theory and practice. This implies that the findings of the investigation must be made public, subject to redactions authorized by an independent tribunal, or other quasi-judicial body, where this is found strictly necessary on grounds of national security.

The Human Rights Council has repeatedly recognized that the right to truth and the principle of accountability are inextricably bound up with the expressed commitment of the international community to end impunity for gross or systematic human rights violations. The guiding axiom of the UN Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity is the obligation on States "to ensure the inalienable right to know the truth about violations".

Such a commitment is reflected in specific treaty obligations. The Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Convention for the Protection of All Persons from Enforced Disappearance each require that the signatory State(s) enact domestic criminal law offences prohibiting the commission of acts amounting to torture and enforced disappearance; to assume jurisdiction over such crimes when perpetrated by its own nationals abroad, or on territory that falls within its jurisdiction, including any detention facility that is under the de facto control of its public officials (even if it is physically located on the territory of another State); to conduct effective investigations into allegations that such crimes have been committed; and, where the evidence justifies it, to prosecute the offender or extradite him or her to another State to face prosecution.

If the right to truth and the principle of accountability are to be secure in domestic law, the national judiciary must also play its part. Judges of national courts and tribunals are equally bound by the State's international law obligations, and are under a duty to ensure the unfettered right of access to court for the vindication of any cause of action arguably recognized under domestic law. Given the importance of the right to truth and the principle of accountability, the domestic judiciary are bound to subject executive claims of non-justiciability on national security grounds to the most penetrating scrutiny. Similar scrutiny must be directed to executive claims to exemption from normal rules of disclosure in legal proceedings.

As the Council of Europe Guidelines on Eradicating Impunity for Serious Human Rights violations point out, the need for public accountability follows from the fact that the eradication of impunity is not only a matter of justice for the victims, but also operates "as a deterrent to prevent new violations, and to uphold the rule of law and public trust in the justice system" (The Council of Europe Committee of Ministers Guidelines on Eradicating Impunity for serious human rights violations, 30 March 2011).

Legitimate national security considerations do not include governmental interests and activities that constitute grave crimes under international human rights law. The European Court of Human Rights in the El-Masri case noted that an unjustifiably broad interpretation of State secret privilege had been asserted by the US Government in proceedings before US courts in that case. In the context of the secret detention, rendition and torture programme, the Court concluded that the concept of State secrets "has often been invoked to obstruct the search for the truth". (ECtHR, El- Masri vs Macedonia, Application No. 39630/09, Judgment 13 December 2012).

Any claim to withhold publication of evidence on national security grounds must be determined by a body that is independent of the executive, following an adversarial procedure with such adaptations as may be strictly necessary to ensure effective independent oversight without unjustifiably imperiling legitimate national security interests. Where such claims are advanced there should be a strong presumption in favour of disclosure, and any procedure adopted must, as a minimum, ensure that the essential gist of the classified information is disclosed to the victim or his family, and made public.

Finally, the Independent Expert on the promotion of a democratic and equitable international order recalls that according to Article 28 of the Universal Declaration for Human Rights, "everyone is entitled to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights can be fully realized". He further refers to Human Rights Council's resolution 25/15, which reaffirms the "aspirations of all peoples for an international order based on the principles enshrined in the Charter, including promoting and encouraging respect for human rights and fundamental freedoms for all and respect for the principle of equal rights and self-determination of peoples... justice [and] the rule of law" and further "urges all actors on the international scene to build an international order based on inclusion, justice, equality and equity, human dignity, mutual understanding and promotion of and respect for cultural diversity and universal human rights".