

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Ref.: AL ITA 5/2024
(Please use this reference in your reply)

19 June 2024

Excellency,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 54/14, 53/4 and 54/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **annulment of the extradition order of the priest Mr. [REDACTED], accused of crimes against humanity during the military dictatorship in Argentina in 1976.**

According to the information received:

Mr. [REDACTED], a double Italian and Argentinian national, served as auxiliary chaplain of the VIII Mountain Exploration Squadron of San Rafael (Mendoza, Argentina) during the Argentinian civil-military dictatorship, from 1976 to 1983.

In 2010, the first of a series of trials against 24 religious figures and former members of the military were held in Mendoza, Argentina, regarding human rights violations committed against 73 persons between 1976 and 1983. During the trials, testimonies were made recounting alleged acts of cruel, inhuman or degrading treatment, torture, enforced disappearances and extrajudicial killings. Four victims testified that they had seen Mr. [REDACTED] in the dungeons of "La Casa Departamental", also known as "La Departamental", a clandestine detention center that operated in the headquarters of the provincial courts of Mendoza. The testimonies stated that he was present while human rights violations were carried out in the period between 1975 and 1976. As a result, he was summoned to testify as a witness.

On 24 September 2010, the Public Prosecutor's Office requested the indictment of Mr. [REDACTED] based on testimonies that he had participated in acts of torture. Mr. [REDACTED] function in "La Departamental" was allegedly to counsel captives to "collaborate" with the armed forces so that they could receive "holy salvation". This included encouraging confessions under duress regarding their political affiliations and information on other members of dissident political groups.

In May 2011, prior to the commencement of his trial, Mr. [REDACTED] fled from Argentina to Italy. Subsequent to his failure to appear in court a domestic warrant for his arrest was issued in Argentina. Following this, INTERPOL issued an international arrest warrant for Mr. [REDACTED] and later located him

serving as a priest in the church of Saints Faustino and Giovita, in Sorbolo, Parma, Italy.

Against this finding, in 2013, Argentina requested Italy to extradite Mr. ██████████ to face the charges against him. The same year, victims who were party to the criminal case addressed His Holiness Pope Francis to mediate, in order to expedite the extradition request. On 28 August 2013, Monsignor Emil Paul Tscherrig, a high-level Vatican official, responded that Mr. ██████████ had “voluntarily presented himself before the justice system of his country [Italy] and has been placed at its disposal”¹.

In its judgment of 10 July 2014, the Supreme Court of Cassation of Bologna rejected Mr. ██████████ extradition, stating that torture was not criminalized in Italy, and thus acts amounting to torture must be qualified as other (lesser) criminal offences, which would be subject to a statute of limitations. Therefore, given the era in which the allegations against Mr. ██████████ occurred, he could no longer be extradited as too much time had passed.

In July 2017, the Italian Chamber of Deputies approved the introduction of the crime of torture in the Italian Criminal Code, explicitly criminalizing it as a distinct offence under its art. 613-bis.

In 2021, during a subsequent trial for the murder of a political activist in 1976, it was established that Mr. ██████████ was seen in “La Departamental” when a murder was committed. As a result, he was charged with aggravated homicide, in addition to the charges he already faced from 2014.² Based on these new charges, on 6 April 2021, a new extradition request for Mr. ██████████ was issued by Argentina based on the Extradition Convention between the Republic of Argentina and the Republic of Italy, signed in Rome on 9 December 1987. The legal grounds for the extradition request were, among others, torture, which, by that stage, had been codified as a crime in Italy.

On 2 August 2023, the Court of Appeals of Bologna, based on the new information and extradition request before it, approved Mr. ██████████ extradition, and the Court of Cassation upheld this decision.

On 12 January 2024, the Italian Minister for Justice denied this extradition, without explaining the reasons. Four days later, the Minister of Justice explained that his decision to refuse the extradition of Mr. ██████████ was based on reasons related to his health. There have allegedly been no previous concerns related to the state of health of Mr. ██████████

To date, no information has been received regarding plans to prosecute or extradite Mr. ██████████

Through this letter, we wish to express serious concern at the decision of the Italian Minister of Justice to deny the extradition of Mr. ██████████ to Argentina, which hampers the investigation, prosecution and adjudication of interrelated criminal cases brought against him for crimes against humanity and gross human rights violations. Concern is expressed at the alleged violation of the rights to

¹ Note from the Apostolic Nunciature in Buenos Aires, 28 August 2013, Prot. N. 4.347/13

² Resolución Juez Federal de San Rafael (FMZ 42017518), 10 March 2021, p. 43.

access to justice, to an effective remedy, to the truth, and to reparation of the victims and their relatives. We express further concern that the decision of the Minister of Justice seems to be incompatible with international human rights standards which impede the use of statutes of limitations and amnesties for crimes against humanity and serious human rights violations - including torture, killings and enforced disappearance.

We would like to recall that under the *aut dedere aut judicare* (**extradite or prosecute**) rule, a State may not provide a safe haven for a person suspected of certain categories of crimes. Instead, it must either exercise jurisdiction over and prosecute the person suspected of committing serious crimes in full compliance with international standards or extradite the person to a State able and willing to do so (or surrender the person to an international criminal court with jurisdiction over the suspect and the crime). The *aut dedere aut judicare* obligation is contained in numerous international instruments relating to crimes under international law including the Principles of International Co-operation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity; the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, and the International Convention on the protection of all Persons from Enforced Disappearances. The latter stipulates that States must submit cases of enforced disappearances to its competent authorities for the purpose of prosecution should it not extradite that person (article 7) and that States Parties shall afford one another the greatest measure of mutual legal assistance in connection with criminal proceedings brought in respect of an offence of enforced disappearance, including the supply of all evidence at their disposal that is necessary for the proceedings (article 14).

In addition, principle 18 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, provides that Governments shall either bring persons found to have participated in any infringements on the right to life to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed. We would further like to recall that according to article 4 of general comment 31 of the Human Rights Committee, the obligations contained in the Covenant are binding on every State as a whole and that all branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local - are in a position to engage the responsibility of the State Party.

In connection with the above alleged facts and concerns, please refer to the Annex on **Reference to international human rights law and standards** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As 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 be grateful for your observations on the following matters:

1. Please indicate how the Italian Minister for Justice's decision to reject the extradition of Mr. ██████████ to face criminal charges in Argentina for crimes against humanity and gross human rights violations committed in that country between 1975 and 1976 follows international human rights standards.
2. Please provide information on which measures have been undertaken to ensure that Mr. ██████████ is brought to justice and held accountable, including any measures related to the obligation to *aut dedere aut judicare*.
3. Please provide information on any measure taken to ensure the right to victims to truth, justice and reparation.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communication reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to ensure that Mr. ██████████ is brought to justice, prosecuted and, if appropriate, sanctioned.

Please be informed that a copy of this letter has been sent to the Government of Argentina. A joint allegation letter concerning the same has also been sent to the Holy See.

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

Aua Baldé

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

Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions

Bernard Duhaime

Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Annex

Reference to international human rights law

We would like to refer to the International Covenant on Civil and Political Rights (ICCPR), ratified by Italy on 15 September 1978, especially in relation to articles 6, 7, 9 and 16 by themselves, alone and in conjunction with 2.3, which guarantee the right to remedy, the right to life, the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, the right to liberty and security of person, and the right to recognition as a person before the law, respectively.

We would also like to draw the attention of your Excellency's Government to articles 2, 7, 9 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Italy on 12 January 1989 and which establish that each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction, that the State Party in the territory under whose jurisdiction a person alleged to have committed any offence shall if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution (*aut dedere aut judicare*), that States parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of torture and ill-treatment, and that each State party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

We would also like to remind your Excellency's Government of the 1992 Declaration on the Protection of All persons against Enforced Disappearance which is absolute in affirming that investigations related to enforced disappearance must be carried out until the fate of the disappeared person has been clarified. According to article 14, the alleged perpetrators of acts of enforced disappearance in a state, when the findings of an official investigation so warrant and unless they have been extradited to another state exercising its jurisdiction in accordance with the provisions of article 14 of the Declaration, shall be extradited or prosecuted for the offence of enforced disappearance. In addition, according to article 15, the fact that there are grounds to believe that a person has participated in acts of an extremely serious nature such as those referred to in article 4, paragraph 1, above, regardless of the motives, shall be taken into account when the competent authorities of the State decide whether or not to grant asylum.

Moreover, article 17 of the Declaration provides that, where statutes of limitations exist relating to acts of enforced disappearance, they should be proportionate to the extreme seriousness of the crime. If applicable, the statute of limitation must only begin once the act of enforced disappearance has ceased. Article 18 of the Declaration prohibits amnesties and other similar measures that could benefit the perpetrators or alleged perpetrators of acts of enforced disappearance. The same article limits the right to pardons, considering the extreme seriousness of acts of enforced disappearance.

We would like to recall that as established by the Human Rights Committee in its general comment No. 31, pursuant to article 2 of the ICCPR States have an

obligation to investigate and punish serious human rights violations, such as torture, extrajudicial killings and enforced disappearances. Failure to investigate and prosecute such violations is in itself a breach of the norms of human rights treaties (paragraph 18). Impunity for such violations can be an important element contributing to the recurrence of violations. The Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity,³ reaffirms the obligation of States to take appropriate measures in respect of perpetrators of human rights violations (principle 1), to undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law, and to ensure that those responsible for serious crimes under international law are prosecuted, tried and duly punished (principle 19). Furthermore, the instrument establishes that prescription shall not apply to crimes under international law that are by their nature imprescriptible (principle 23). The Updated Set of Principles also reaffirms the inalienable right to know the truth about gross human rights violations. The full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations (principle 5) and sets out restrictions on amnesties and clemency measures (principle 24).

In its General Comment on Enforced Disappearance as a continuous crime, the Working Group on Enforced or Involuntary Disappearances established that the act of enforced disappearance begins at the time of the abduction and extends for the whole period of time until the State acknowledges the detention or releases information pertaining to the fate or whereabouts of the individual.

The Working Group on Enforced or Involuntary Disappearances has emphasized on multiple occasions that disappeared persons whose fate and whereabouts are not determined cannot be declared dead. In its General Comment on the right to recognition as a person before the law in the context of enforced disappearances, the Working Group stipulated that the act of enforced disappearance denies the disappeared person's legal existence and, as a consequence, prevent him or her from enjoying all other human rights and freedoms, in a situation of total defenselessness. In addition, the Working Group has also established that placing a person outside the protection of the law means that all protections, including those intended to secure economic, social and cultural rights, cease to exist.

We would also like to refer to Principle 1 of the Guiding Principles for the search for disappeared persons, which stipulates that the search should be conducted under the presumption that the disappeared person is alive, regardless of the circumstances of the disappearance, the date on which the disappearance began and when the search is launched.

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 establish the right of victims to receive adequate, effective, and prompt reparation for harm suffered, and to have access to relevant information on reparation mechanisms. Reparation must be proportional to the gravity of the violations and the harm suffered. Victims should receive full and effective reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition (paragraphs 10, 11, 15 and 18).

³ [E/CN.4/2005/102/ADD.1](https://www.unhcr.org/refugees/article/43e69314)

Finally, as noted by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, from a human rights perspective, the obligation to investigate and prosecute arises from the right to an effective remedy. It is also part of the right of the victim, his or her immediate family members and, in certain cases, society as a whole to know the truth. The administration of justice in the face of serious human rights violations is a central element in preventing the recurrence of such violations. Promoting a culture of impunity contributes to vicious cycles of violence.