



Ending Torture. Seeking Justice for Survivors

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REDRESS' STATEMENT ON THE INTERNATIONAL COURT OF JUSTICE'S RULING THAT SHIELDS GERMANY FROM CLAIMS BY VICTIMS OF NAZI ATROCITIES

3 February 2012 - The International Court of Justice today delivered a blow to victims of human rights violations by finding Italy in breach of international law for allowing claims for reparation against Germany to proceed. In a decision which ignores the rights of victims to reparation and adopts an absolutist approach to state immunity, the UN's highest court found that states are immune from proceedings in foreign courts, even where they concern serious violations of international human rights law or the international law of armed conflict.

Italian courts had provided hope to victims of Nazi atrocities committed during World War II by allowing a number of lawsuits to proceed for crimes including forced deportation, forced labour and massacres of civilians, and by enforcing judgments of the Greek courts in similar cases. In the first of these cases, in 2008, Italy's Supreme Court judged that an Italian civilian, Luigi Ferrini, was entitled to reparations for his deportation to Germany in 1944 to work as a slave labourer.

Germany argued that it was immune from jurisdiction in Italian courts, and that the proceedings therefore breached international law. Italy argued that such immunity was not absolute, and did not apply where serious violations of human rights law and international humanitarian law were involved - particularly where victims had no alternative means of redress.

The Court, in a 12-3 ruling, rejected Italy's arguments. It considered that customary international law has not developed an exception to the immunity of states based on the gravity of the violation, even when they amount to breaches of the highest principles of international law.

The Court maintains that there is no conflict between the rules prohibiting serious violations of international human rights law and international humanitarian law and what it casts as 'procedural' rules about which courts may exercise jurisdiction over such violations. This formalistic argument allows the Court to affirm its commitment to the rules of international law outlawing such violations, while in reality making immunity the trump where there is no prospect of those violations being remedied. There is, indeed, a conflict.

As in many other cases, the inability to bring a claim in a court outside the country responsible for the violations means that victims are left with nothing. The Court recognises in this case that *"it is a matter of surprise – and regret – that Germany decided to deny compensation to a group of victims"* and that its decision may leave victims without a remedy. Despite confirming that Germany may have international responsibility to provide reparations, the Court's view is that this can only be resolved if the two states

decide to negotiate – a process in which victims might have no involvement. The wrongdoing state is left above the law.

The approach of the majority means that states may be sued in other states for traffic accidents or commercial contracts, but not for grave international crimes. As Judge Cançado Trindade recognized in his lengthy and closely reasoned dissent:

“In effect, to admit the removal of State immunity in the realm of trade relations, or in respect of local personal tort (e.g., in traffic accidents), and at the same time to insist on shielding States with immunity, in cases of international crimes – marked by grave violations of human rights and of international humanitarian law – in pursuance of State (criminal) policies, amounts to a juridical absurdity”.

If States are serious about their commitments to the principles of human rights and international humanitarian law they must ensure that victims of violations receive redress – whether through the courts of the state concerned or elsewhere. The international law of state immunity has been evolving to recognise that states’ commitments to these principles are hollow without the ability to hold them to account.

The International Court of Justice’s decision reflects a restrictive and outdated approach incompatible with the fundamental prohibition of international crimes and states’ obligations to provide a remedy to victims, but it is not the last word on the way that states should behave. The development of international law is in the hands of states themselves – through their parliaments and their courts.

REDRESS will continue to fight for the rights of victims to seek reparation, regardless of where those crimes were committed.

For further information, please contact:

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Note: REDRESS was founded by a British torture survivor in 1992. Since then, it has consistently fought for the rights of torture survivors and their families in the UK and abroad. It takes legal challenges on behalf of survivors, works to ensure that torturers are punished and that survivors and their families obtain remedies for their suffering. REDRESS cooperates with civil society groups around the world to eradicate the practice of torture once and for all and to ensure that survivors can move forward with their lives in dignity. It has intervened in a range of leading torture cases. More information on our work is available on our website: www.redress.org.