



# SWEDEN

## SUBMISSION TO THE UNITED NATIONS COMMITTEE AGAINST TORTURE

53<sup>RD</sup> SESSION, 3-28 NOVEMBER 2014

## INTRODUCTION

The United Nations (UN) Committee against Torture (the Committee) will consider Sweden's combined sixth and seventh periodic report on the implementation of the Convention against Torture and Other Cruel, inhuman or Degrading Treatment or Punishment (the Convention) in November 2014. The present submission summarizes Amnesty International's main concerns about Sweden's failure to comply with some of its obligations under the Convention, in relation to:

- failure to incorporate the crime of torture in the criminal code (articles 1 and 4 of the Convention)
- the case of Mohammed Alzery and Ahmed Agiza (articles 3, 12, 13 and 14 of the Convention)

In addition, the Committee has in previous concluding observations expressed concern regarding the high number of remand prisoners who are subjected to restrictions, who although they have access to lawyer and medical personnel, face long term restrictions.<sup>1</sup> Restrictions in remand prisons come in the form of isolation from other prisoners and restrictions on communication with the outside world through media, electronic communication and receiving visitors and mail. Prisoners subject to restrictions have the right to spend one hour a day outside, however, the prisoner is alone during this time, leading to isolation.<sup>2</sup> The Prosecutor General has initiated work on how to reduce the use of restrictions as well as how to avoid long times of detention and make an end of the use of isolation.<sup>3</sup>

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<sup>1</sup> CAT/C/SWE/CO/5 para. 16

<sup>2</sup> Act on Remand Prison 2010:611 CH 2 S 7 and CH 6 S 2.

<sup>3</sup> Häktningstider och restriktioner, rapport January 2014, Åklagarmyndigheten. See also in Swedish, <http://www.dn.se/ledare/huvudledare/bryt-isoleringen/>, <http://www.dn.se/nyheter/sverige/fyra-ar-i-svenskt-hakete/>, and <http://www.dn.se/ledare/signerat/orimlig-vantan-pa-rattegang/>

# CRIMINALIZATION OF TORTURE (ARTS. 1 AND 4)

Sweden ratified the Convention in 1985 and was one of the leading States behind the drafting and adoption of the Convention. Yet the Swedish government has not incorporated torture as a specific offence under domestic criminal law.

This Committee has repeatedly criticized Sweden for this failure and has urged Sweden to adopt a definition of torture that covers all the elements contained in article 1 of the Convention. It has stated that "by naming and defining the offence of torture in accordance with the Convention as distinct from other crimes, the Committee considers that State parties will directly advance the Convention's overarching aim of preventing torture"<sup>4</sup>. It has also criticized the fact that as a consequence of having the offence of torture being punishable under various provisions of the criminal code, it is subject to the statute of limitations. The Committee has recommended that Sweden reviews its rules and provisions on statutes of limitations and ensures that they correspond with the Convention, so that acts of torture, as well as attempts and complicity or participation in such acts can be investigated, prosecuted and punished without limitations in time.<sup>5</sup>

The Swedish government has replied to the recommendation of the Committee on a number of occasions, claiming that Sweden was fulfilling its obligations under the Convention and that there was no need to incorporate torture as a specific offence under domestic law. The government further stated that the Convention does not require state parties to incorporate such a specific offence under their domestic legislation.<sup>6</sup>

Despite the stated opposition of the Swedish government to incorporate the crime of torture as a separate offence, it appointed a commissioner in June 2014 to assess the need for a specific provision on torture in Swedish criminal law. The directives instruct the commissioner to consider that Sweden has been the object of repeated recommendations by the Committee on this issue, and that some other Nordic countries (Norway and Finland) have adopted a specific provision on torture. The government also instructs the commissioner – regardless of the conclusions made in the enquiry – to make suggestions for the elements necessary to properly incorporate a specific provision on torture. If needed, the commissioner is also required to consult public authorities and organizations, including NGOs.<sup>7</sup>

## The need for a specific crime of torture in the criminal code

Along with the reasons already mentioned by the Committee against Torture at its last review, the incorporation of the crime of torture would facilitate the effective implementation of the various obligations under the Convention. Amnesty International believes that "ordinary" crimes differ from the crime of torture in that they do not carry the same gravity or symbolic meaning. Also, they do not carry the special stigma assigned to torture.

The Convention calls for each state party to ensure that all acts of torture, including attempt to commit torture, and complicity and participation in acts of torture are offences under its criminal law. These offences should also be punishable by appropriate penalties which take into account their grave nature. Under Swedish law, there is no offence called torture. Thus a person who has committed acts of torture cannot be sentenced accordingly in a Swedish court of law. The Swedish government considers that offences such as gross assault, kidnapping, unlawful coercion, unlawful threat, rape etc. together fulfill the requirements of criminalization under the Convention.

## Gaps identified in domestic criminal law

Not all acts of torture appear to be covered by existing Swedish criminal law. For instance, an act leading to severe mental suffering or pain, and which would constitute torture under the Convention may be seen as falling outside the scope of the existing provision criminalizing assault in Swedish law and instead be prosecuted under less serious offences such as molestation or unlawful coercion. Such acts may however, especially when repeated and committed under certain circumstances, constitute torture in the meaning of the Convention, and should therefore be covered in domestic legislation as such. Examples of such acts include prolonged exposure to loud noise and sleep deprivation.

The situation might also occur when a person is subjected to torture by being forced to watch relatives being subjected to grave assault or rape. According to Swedish law, the crime of assault or rape would apply to the person subjected to the

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<sup>4</sup> CAT/C/SWE/CO/5 para. 9.

<sup>5</sup> CAT/C/SWE/CO/5 para. 10.

<sup>6</sup> CAT/C/SWE/5 paras. 16-20.

<sup>7</sup> Promemoria, Ju2014/4194/P, Justitiedepartementet, available in Swedish at: <http://www.regeringen.se/content/1/c6/24/29/30/478do4fd.pdf>

acts, however, it is unclear which provision would apply to the treatment that an individual forced to witness the act may have experienced.

Furthermore, it is doubtful whether all acts of torture are criminalized in cases of attempt to commit torture, complicity or participation in torture, including acts by officials who have sanctioned or tolerated acts of torture. Swedish scholars of international law have argued that the definition of complicity in the Convention is wider than the one applied in Swedish criminal law.<sup>8</sup> This can result in certain acts of complicity to torture not being punishable under Swedish law.

One argument put forward by the Swedish government against the incorporation of the crime of torture is that it is a complicated matter, as international law includes several different definitions of torture. It has also been said that there will be difficulties in presenting evidence in cases of mental torture. "Difficulty" or "complicatedness" ought not to be used as excuses to abdicate responsibility for or circumvent compliance with Convention obligations. It should also be noted that Sweden has recently adopted provisions on the crime of genocide, on crimes against humanity and war crimes, which include acts of torture that occur in such situations, without real or perceived complications, deriving from Sweden's obligations under the Rome Statute.

Another argument put forward by the Swedish government is that a specific criminalization of torture will lead to an overlapping with other offences under domestic law. Similar arguments have however not hindered the introduction of new offences such as of trafficking, terrorism and gross violation of a woman's integrity (*grov kvinnofridskränkning*).

### **Problems of identification and classification**

Because of the lack of a specific provision on torture under Swedish criminal law, there is currently no means of gathering data on how many of the reports made to Swedish police could involve acts of torture. Thus, there is a risk that crimes that could be classified as torture are not currently being investigated adequately. According to information received by Amnesty International, the War Crimes Commission<sup>9</sup> under the Swedish national police force, allegedly chooses to prioritize cases where there is a possibility of prosecuting under an internationally accepted definition of a crime. Consequently, the Commission will drop cases concerning a crime lacking an international definition, as prosecution of an "ordinary" crime is often less meaningful.

### **Statute of limitations**

Under Swedish law, prosecution of an offence is restricted in time depending on the gravity of the crime. Following recent changes in domestic criminal law, murder, manslaughter, genocide, crimes against humanity, grave breaches of the Geneva Conventions and acts of terrorism that result in murder or manslaughter, as well as attempts to undertake such crimes, are exempt from statutes of limitations.<sup>10</sup>

As Sweden lacks torture as a specific offence under domestic law, prosecution of acts of torture will be barred in the same manner as "ordinary" crimes.

### **Redress and rehabilitation**

The Convention requires that member states ensure that victims of torture obtain reparations. Appropriate prosecution for perpetrators of torture are an integral part of the right to reparations. As a direct consequence of the lack of the crime of torture in Swedish criminal law, the charging and prosecution of perpetrators of torture under an offence of lesser gravity undermines the victims right to justice and truth. Alerting perpetrators, victims and society as a whole to the grave nature of the crime can help contribute to the prevention of future acts of torture. Experts at the Centre for Torture Victims of the Swedish Red Cross as well as the Research Centre for Torture Victims maintain that correct designation of the offence is important to victims of torture.

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<sup>8</sup> Lars Hjerper, Ove Bring, Said Mahmoudi, "Pinochet-målet – folkrätten och svensk rätt", Svensk juristtidning, no. 4, 2000 p. 325.

<sup>9</sup> The Swedish War Crimes Commission is responsible for investigating genocide and crimes against international law, and if not restricted to war crimes only.

<http://polisen.se/Om-The-polisen/Organisation/Specialkompetenser/Krigsbrottskommissionen/>

<sup>10</sup> Penal Code 1962:700 CH 35 S 2, available in Swedish at: <http://www.notisum.se/rnp/sls/lag/19620700.htm>

# THE CASE OF MOHAMMED ALZERY AND AHMED AGIZA (ARTS. 3, 12, 13 AND 14)

Amnesty International welcomes the fact that Mohammed Alzery has now been granted a permanent residence permit in Sweden. However the Swedish government has still failed to fully satisfy its obligation to investigate the men's unlawful transfers and torture and other ill-treatment, and to bring those responsible to account, in compliance with its international obligations.

In July 2008, the Swedish Chancellor of Justice ordered that 3.160.000 Swedish kronor should be paid to Mohammed Alzery as compensation for grave human rights violations and in September 2008 it was ordered that a similar amount should be paid to Ahmed Agiza.

Ahmed Agiza was granted a permanent residence permit on July 4 2012 and was reunited with his family in Sweden later the same year.

As presented in Amnesty International's briefing to the Committee in 2010, despite investigations by the Parliamentary Ombudsman, prosecutorial authorities, and a memorandum of understanding regarding the case from the Security Police to the Ministry of Justice, as well as findings by this Committee and the UN Human Rights Committee, a full and independent investigation into all aspects of the role played by Swedish authorities in the men's transfer and ill-treatment has not yet taken place, and no individuals have to date been held responsible in relation to the violations committed in the course of the operation that led to Ahmed Agiza and Mohammed Alzery being subjected to serious physical assault on Swedish territory and being returned to face torture in Egypt.

## NON-REFOULEMENT (ART.3)

A state party should investigate and take full consideration for the purpose of determining whether there are substantial grounds to believe that there would be a real risk for a person to be in danger of being subjected to torture or other ill-treatment in another state before expelling, deporting or otherwise transferring a person to that state. Amnesty International has for a long time been concerned about the lack of clear routines for when and how relevant authorities instigate an investigation and documentation of torture in asylum cases concerning torture victims.

In the judgment of the European Court of Human Rights (the Court) in the case *R.C. vs. Sweden* (41827/07, March 2010), the court concluded that there were substantial grounds for believing that the applicant would be exposed to a real risk of being detained and subjected to a treatment contrary to Article 3 of the European Convention on Human Rights if deported to Iran. The Court found that an implementation of the deportation order against the applicant would give rise to a violation of Article 3.

Following this judgment, the Swedish Migration Board issued a legal position seeking to change the guidelines in for the identification and documentation of torture, in line with the judgment of the European Court of Human Rights. Unfortunately it remains unclear how these guidelines are to be implemented, including how cases will be identified and who will be tasked with the documentation of torture.

Amnesty International therefore strongly supports the establishment of clear guidelines and related training for when and how investigation and documentation of torture shall be carried out.

## RECOMMENDATIONS:

Amnesty International recommends that the Swedish authorities:

- incorporate into domestic law the crime of torture, and adopt a definition of torture that covers all the elements contained in article 1 of the Convention
- ensure that statutes of limitations are not applicable to acts of torture, attempts to commit torture, and acts by any person which constitute complicity or participation in torture

- establish a full, effective, independent investigation into its role and the role of foreign officials, in the transfer of Mohammed Alzery and Ahmed Agiza and where responsibility for crimes under international or national law is identified, criminal prosecutions should be initiated.
- adopt measures to ensure full judicial review of all decisions to expel, deport or otherwise transfer persons, including where the authorities allege these persons to be threats to national security. Such measures should include a clear undertaking by the Swedish government not to seek or rely on diplomatic assurances against torture or other ill-treatment as a basis for removals of individuals to countries where there is a real risk that the individual would be exposed to such treatment.