



## **International Commission of Jurists**

### **Submission to the Committee against Torture on the Fifth Periodic Report of Sweden**

The International Commission of Jurists (ICJ) appreciates this opportunity to provide its views to the Committee against Torture, in advance of the Committee's consideration of the Fifth Periodic Report of Sweden. The ICJ wishes to draw the attention of the Committee to a number of related matters of concern in Swedish law and practice. The ICJ considers that the absence of a definition of torture, as stipulated in Article 1 of the Convention Against Torture ("the Convention"), and the lack of specific criminalisation of torture or other cruel, inhuman or degrading treatment, fail to meet Sweden's obligations under Articles 2 and 4 of the Convention. Furthermore, the failure to institute criminal investigations in respect of a documented case of rendition involving treatment contrary to the Convention raises issues under Articles 5, 7 and 12 of the Convention.

#### **Definition of Torture and crimes of torture in Swedish law**

No definition of torture is established in Swedish law, although torture is prohibited under the Instrument of Government<sup>1</sup> as well as under the European Convention on Human Rights, as incorporated in Swedish law.<sup>2</sup> Furthermore, the criminal law contains no specific crime of torture, although acts of torture are likely to be criminalised as assault, gross assault, coercion, unlawful threat or rape.<sup>3</sup> The Swedish Government considers that both torture, and attempt to commit or complicity in torture, would clearly and in all cases amount to offences under these existing provisions of the Swedish criminal code.<sup>4</sup>

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<sup>1</sup> Fifth Periodic report of Sweden, CAT/C/SWE/5 paras.14-15.

<sup>2</sup> *ibid.* The European Convention on Human Rights (ECHR) and in particular the prohibition of torture or inhuman and degrading treatment under Article 3 ECHR does not in itself contain any definition of torture or inhuman and degrading treatment, although the meaning of these terms has been elaborated by the European Court of Human Rights: *Ireland v UK*, (1979-1980) 2 EHRR 25; *Akkoc v Turkey*, App No 22947/94; *Selmouni v France* App No 25803/94.

<sup>3</sup> Periodic Report, *op cit*, para.16. Where torture amounts to a crime against humanity, under the Statute of the International Criminal Court, the *Co-operation with the International Criminal Court Act 2002* provides for the arrest and surrender of suspects to the ICC.

<sup>4</sup> *ibid* para.17

In its concluding observations on the Fourth Swedish Periodic Report the Committee against Torture noted the absence of definitions of torture in Swedish law and the fact that neither torture nor cruel, inhuman and degrading treatment were identified as specific crimes and offences in domestic criminal law.<sup>5</sup> It recommended that Sweden should “incorporate in its domestic law the definition of torture set out in Article 1 of the Convention, and should characterise acts of torture and cruel, inhuman and degrading treatment as specific crimes, punishable by appropriate sanctions”.<sup>6</sup>

This recommendation has not led to any changes to Swedish law: a 2002 a Government Commission recommended that no crime of torture should be introduced, as it would overlap with existing offences, as well as with proposed legislation on international crime, and lead to uncertainty.<sup>7</sup>

The ICJ considers it important that, in this review, the Committee reiterate its 2002 recommendation that a definition of torture in accordance with Article 1 of the Convention should be stipulated in Swedish law, and that specific crimes of torture and of cruel, inhuman and degrading treatment should be established. As the Committee has recently noted in its General Comment on Article 2,<sup>8</sup> clear and comprehensive domestic law definitions of torture, allied with specific criminal law offences, have a significant impact in preventing and deterring torture, as well as preventing impunity for torture, and are therefore necessary for compliance with Article 2, as well as with Articles 1 and 4 of the Convention.

The need for a domestic law definition of torture should be seen in the context of attempts to erode the definition and the absolute nature of the prohibition on torture and other cruel inhuman and degrading treatment, notably in the US in the context of the “war on terror”. European states, including Sweden, have co-operated in US operations carried out as part of the “war on terror”, which have involved treatment amounting to torture as defined under CAT, but justified by the US on the basis of a more restricted definition. This was in particular the case regarding the removal of Mohammed Alzery and Ahmed Agiza from Sweden to Egypt, by CIA agents with the co-operation of Swedish officials, found by this Committee as well as the Human Rights Committee to violate the prohibition on torture and inhuman or degrading treatment.<sup>9</sup> In light of these developments, it is of particular importance that Swedish national law should leave no room for ambiguity as to the scope of conduct prohibited by the ban on torture and other cruel, inhuman and degrading treatment, and the absolute nature of this prohibition.

Specific crimes of torture, or cruel, inhuman or degrading treatment in Swedish criminal law are necessary for a number of reasons: to provide clarity in the law and thereby help to ensure prosecutions for torture in appropriate cases; to reflect the particular gravity of acts of torture and cruel, inhuman or degrading treatment which are not at present sufficiently distinguished

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<sup>5</sup> *ibid* para.5

<sup>6</sup> *ibid* para.7(a)

<sup>7</sup> *ibid* para.20

<sup>8</sup> Committee Against Torture, General Comment No.2, Implementation of Article 2 by States Parties, CAT/C/GC/2/CRP.1/Rev.4, paras.9-10.

<sup>9</sup> *Agiza v Sweden*, CAT/C.34/D.233/2003 (2005); *Alzery v Sweden* CCPR/C/88/D/1416/2005; See also the Report of the Parliamentary Ombudsman, Mats Melin, Reg. No.2169-2004, *A review of the enforcement by the Security Police of a Government Decision to expel two Egyptian citizens*.

from less serious crimes such as assault; to ensure minimum penalties of appropriate severity; and to establish effective international cooperation to combat torture as stipulated in Article 8 (extradition).

Since the last periodic report, the rendition of Mohammed Alzery and Ahmed Agiza, in a procedure which involved treatment amounting to at least cruel, inhuman and degrading treatment on Swedish territory,<sup>10</sup> has shown the need for effective prevention and prosecution of acts which violate the Convention. No prosecution, either of Swedish or foreign officials, has been instituted in respect of these renditions, a situation which the Human Rights Committee has held to be in violation of Article 7 ICCPR, read in conjunction with Article 2 ICCPR. Although the Committee considered that Swedish law was, in principle, capable of grounding prosecutions of Swedish or foreign officials, in practice it found it had been ineffective.<sup>11</sup> Specific offences of torture and cruel inhuman or degrading treatment, punishable whether carried out by state agents or private persons, would be more conducive to more effective criminal accountability in such cases, than the current law.

**The ICJ urges the Committee, consistent with its recent General Comment on Article 2, to recommend:**

- **that Sweden introduce a legal definition of torture equivalent to that in the Convention;**
- **that it create a specific criminal offence of torture related to that definition;**
- **that it create a criminal offence of cruel, inhuman or degrading treatment or punishment;**
- **that attempt and complicity in these offences should also be the subject of specific crimes;**
- **that all of the above offences be subject to penalties appropriate to the gravity of the offences.**

### **Renditions: Investigation, Accountability and Prevention**

As noted above, no criminal investigation or prosecutions have been instituted concerning the rendition from Sweden to Egypt of Mohamed Alzery and Ahmed Agiza, despite authoritative conclusions that the rendition involved and led to treatment in breach of the Convention. Following a private criminal complaint, of May 2004, the Stockholm district prosecutor decided not to initiate a preliminary investigation as to whether a criminal offence had been committed in connection with the enforcement of the decision to expel the two men; the Parliamentary Standing Committee on the Constitution similarly decided that no criminal investigation should be instituted against members of the government. The decision of the

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<sup>10</sup> *Agiza v Sweden*, CAT/C.34/D.233/2003 (2005) para.13.4: “immediately preceding expulsion, the complainant was subjected on the State party’s territory to treatment in breach of , at least, article 16 of the Convention by foreign agents but with the acquiescence of the State Party’s police”; *Alzery v Sweden* CCPR/C/88/D/1416/2005: “it is evident that the use of force was excessive and amounted to a breach of Article 7 of the Covenant. It follows that the State party violated Article 7 of the Covenant as a result of the treatment suffered by the author at Bromma airport.” Para.11.6

<sup>11</sup> *Alzery v Sweden op cit* para.11.7.

district prosecutor was confirmed by the Prosecutor Director in April 2004,<sup>12</sup> and the Prosecutor General declined to reopen the investigation in April 2005.<sup>13</sup> Reasons for the failure to prosecute appear to have included the junior status of the officials involved, the fact that they were acting pursuant to a political decision, and the importance of the Security Police's national security and counter-terrorism role.<sup>14</sup>

The Parliamentary Ombudsman, who investigated the actions of Swedish Security Police involved in the rendition, decided not to conduct a criminal investigation, but rather an "informational" inquiry in which he could compel testimony from officials. The Ombudsman's investigation did not examine the issue of the command responsibilities of senior officials, or hear from any foreign agents, as this was beyond his mandate.<sup>15</sup>

The Human Rights Committee in *Alzery v Sweden* found that the failure to institute criminal prosecutions in respect of the conduct of either Swedish or foreign officials involved in the rendition of Mr Alzery violated Article 7 ICCPR read in conjunction with Article 2 ICCPR, noting that "as a result of the combined investigations of the Parliamentary Ombudsman and the prosecutorial authorities, neither Swedish officials nor foreign agents were the subject of a full criminal investigation, much less the initiation of formal charges ....".<sup>16</sup>

The rendition of Mohammed Alzery and Ahmed Agiza from Sweden involved acts by both Swedish and foreign officials which engage Swedish obligations under Articles 5, 7 and 12 of the Convention to investigate and to institute criminal proceedings against those involved. **The ICJ urges the Committee to recommend to the Government of Sweden that the prosecuting authorities institute criminal investigations in this case, in respect of both Swedish and foreign officials involved in the renditions, and that the capacity of the criminal justice system to ensure prosecutions for crimes of torture in appropriate cases be reviewed.**

The disclosure of Swedish involvement in the rendition of Mohammed Alzery and Ahmed Agiza, apparently at both political and operational levels, also places an obligation on the Swedish authorities to take preventative measures to guard against future involvement in operations which involve treatment in breach of the Convention, or which lead to *refoulement* to face torture in violation of Article 3 of the Convention. These preventive measures should include effective, independent and impartial judicial review of all decisions on removal.<sup>17</sup> **The ICJ urges the Committee to ask the Swedish delegation what additional safeguards have been put in place to protect against similar violations of the Convention in the future; and what guidelines are available to government, immigration and law enforcement officials, including intelligence services, regarding involvement in security or intelligence operations by intelligence services of other states.**

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<sup>12</sup> *ibid*, para.3.22

<sup>13</sup> *ibid*, para.3.27

<sup>14</sup> *ibid* para.3.22, 3.253.27

<sup>15</sup> *ibid*, Para.4.15; Report of the Ombudsman, *op cit*.

<sup>16</sup> *Alzery v Sweden, op cit*, para.11.7

<sup>17</sup> *Agiza v Sweden, op cit*. para.13.8