

**Alternative Report to
The Committee Against Torture**

Regarding

**Sweden's combined Sixth and
Seventh Periodic Report**

1. INTRODUCTION

The Swedish Red Cross welcomes the opportunity to present our Alternative Report to the Sixth and Seventh Periodical Report of Sweden on the Convention against Torture. We wish to thank the Committee for its willingness to accept alternative reports and hope this report will be useful in the examination of Sweden's combined sixth and seventh Periodic Report.

This is the third time the Swedish Red Cross chooses to report to the Committee Against Torture (CAT) regarding Sweden's implementation of and compliance with of the United Nations Convention for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment. We regret that we still find it necessary to report to an international mechanism in order to push the Swedish government to take further steps to achieve the objectives as set out in the Convention and to comply fully with its letter and spirit.

The Swedish Red Cross primarily base this alternative report on our 25 years of experience from working with victims of torture. Annually we meet hundreds of victims in our rehabilitation services and other activities for refugees and asylum seekers. Based on this experience it is our firm belief that Sweden could do more to work for a sound implementation of the Convention in good faith.

In this alternative report aspects of the implementation of article 1, 2, 3, 4 and 14 will be examined.

2. ARTICLE 1 AND 4 – A SPECIFIC PROVISION OF TORTURE IN THE SWEDISH PENAL LAW

2.1 Incorporate the crime of torture in Swedish law

Under article 4 every State Party has an obligation to ensure that all acts of torture are offences according to criminal law. Attempts to commit torture, complicity and participation in torture acts shall also be punishable.

As pointed out in our last alternative report in 2008, since Sweden's initial report in 1988, there has been an on-going discussion with the Committee about implementing the crime of torture, as defined in article 1 of the Convention, in the Swedish penal law. The issue was raised in the Alternative Report to the Committee Against Torture regarding Sweden's fourth periodic report, and criticised by the Committee. No material changes in the Swedish legislation have been introduced as a result of the Committee's criticism.

The Governments Offices has recently presented a law proposal implementing the Rome Statute in Sweden. When the proposed law is in force torture, as defined in the Rome Statute, will be punishable as part of 'War Crimes' or 'Crimes Against Humanity'. This is very much welcomed by the Swedish Red Cross.

However, it is a fact that torture under article 1 of the Convention, outside of the scope of the Rome Statute, will not be defined in Swedish legislation even with the proposed changes. There is still not a specific provision on torture, with the minimum elements set out in Article 1 of the Convention, in Swedish penal law.

The Swedish Government has repeatedly expressed the opinion that all acts that could be defined as "torture" under the Convention are punishable under Swedish law. The same would apply to attempt, complicity and participation in torture. Regardless of this, the Swedish Red Cross finds convincing reasons for including the definition of torture in the national law. A specific provision on torture in Swedish law would demonstrate the seriousness of the acts in relation to the other punishable acts. We can only regret that the Swedish Government still does not acknowledge the severity of acts of torture or the importance of adding torture as a crime in the penal law.

As noted earlier by the Committee the lack of a specific provision on torture raises questions on time limitations under the statute of limitation applicable on the provisions criminalizing acts under the Convention today. It is also regrettable that all acts of torture under the Convention are not subject to universal jurisdiction under national law. By not explicitly criminalising, nor defining, torture in Swedish legislation one can get the impression that torture, or victims of torture, does not exist in Sweden. As long as there is no specific penal provision on torture under Swedish law there will be no convictions and no statistics available on victims of torture, or on if, or how often, it really occurs.

By implementing a specific provision on torture in Swedish law the Swedish Government would admit the importance of acting as a role model, in the global cooperation to abolish torture. A definition of torture in the national law would also be of help in the preventive work both national and international, as well as it would facilitate other international cooperation. International judicial cooperation including extradition for criminal offences is facilitated by a common legal definition of the crime of torture.

The Swedish Red Cross remains convinced that an effective implementation of the definition and a criminalisation in line with article 1 and 4 of the Convention also have significant value to achieve redress for victims of torture. To many victims indicting and punishing the perpetrators of torture is essential for their rehabilitation. Calling the acts

they have been subject to by its proper name, torture, is a formal and universal recognition of the severity of the violations committed against them.

The Swedish Government has recently announced that it will instigate an inquiry that will analyse the issue of a specific crime of torture in national legislation. This is a positive development which is very much appreciated by the Swedish Red Cross.

2.2 Recommendation

We recommend that a specific provision on torture, in accordance with Article 1 and Article 4 of the Convention, is incorporated in the Swedish penal law.

3. ARTICLE 2 – ISSUES OF DETENTION AS LAST RESORT AND TRUSTEES FOR UNACCOMPANIED CHILDREN

3.1 Detention of foreign nationals

The State party should take effective measures to ensure that detention of foreign nationals is used only in exceptional circumstances or as a measure of last resort, and then only for the shortest possible time. (CAT/C/SWE/CO/5, para. 12.)

In May 2012 The Swedish Red Cross published a study where a total of 953 decisions regarding e.g. detention and supervision by the Swedish Migration Board, the Swedish Police and the three migration courts as well as the Migration Court of Appeal were analysed. The purpose of the study was to analyse decisions concerning detention and placement, focusing on the justification of the grounds for the decisions.

This has enabled investigating whether the current regulations are applied in accordance with the intention of the legislator, i.e. that the authorities observe restrictiveness in assessing detention matters, and that aliens only should be placed in a correctional institution, remand centre or police arrest facility in exceptional cases. (See "*Detention under Scrunity*")

http://www.redcross.se/PageFiles/5738/Forvar_under_lupp_enligshFINAL%5B1%5D.pdf and "*Flawed assessment process leads to under-use of alternatives in Sweden*" <http://www.fmreview.org/detention/zamacona%20>)

Lack of application of the principle of proportionality

The lack of application of the principle of proportionality is a running theme throughout the findings of the study. This is expressed in the decisions regarding detention, in the assessments of whether there are particular grounds for extending the detention period, and

in decisions regarding transfer to a correctional institution, remand centre or police arrest facility. It is not possible to discern from the decisions and rulings whether the principle was in fact given individual consideration in each separate case. In any case, if such interests were balanced, this is not documented in the decisions or rulings. In other words, the decisions do not explicitly take the proportionality of a chosen measure into account in the meaning that they do not discuss the interest of maintaining order and safety within the Migration Board facilities in relation to the interest of not limiting the freedom of the individual more than is necessary.

The study shows that detention is not always only used as a measure of last resort, and not always only for the shortest possible time. Statistics show that the use of detention is much more common than the alternative provided by the Swedish legislation, supervision. Supervision is, in other words, not used as an alternative to detention to the extent intended by the legislator. The findings show that, in the absolute majority of the decisions, no individual assessment is made concerning whether a less coercive measure for the individual could be used. The decisions and rulings from Swedish Migration Board and the Migration Court of Appeal, examined in the study, seldom express why supervision is not a sufficient measure. The decisions of the Swedish Police in the study do not refer to the provisions on supervision at all.

The Swedish Migration Board is not equipped to deal with individuals with e.g. self-harm behaviour

The Swedish Migration Board shall assess if it is possible to separate individuals, who are considered to be a danger to themselves or other persons, in the migration detention facilities of the Migration Board. According to the study, this provision is not used independently, but only as a condition or prerequisite for a decision regarding placement in a remand prison.

In the study we have identified decisions in which persons have been placed in remand prisons solely due to the fact that they pose a serious danger to themselves. The main reason for placing these persons in a correctional institution, remand prison or police arrest facility for security reasons is that the Swedish Migration Board's premises and staff are not equipped to deal with individuals who display threatening behaviour, or with persons with self-harm behaviour.

This shows that even if the principle of proportionality was applied as intended, it would nevertheless be ineffective in practice since a placement within the Swedish Migration Board's premises is not possible if they do not have the capacity to deal with people who demonstrate threatening or self-harm behaviour.

Recommendations

- The Swedish Red Cross recommends that the State party should take effective measures to ensure that detention of foreign nationals is used only in exceptional

circumstances or as a measure of last resort, and then only for the shortest possible time.

- The Swedish Red Cross recommends that supervision shall be used instead of detention whenever possible. A detention order shall be imposed only if other, less coercive, measures cannot be applied. The Swedish Red Cross recommends considering whether further revisions to the wording of the act are needed to avoid interpretation problems.
- The Swedish Red Cross recommends detention solely ought to take place in the migration detention facilities of the Swedish Migration Board. Therefore, the Migration Board detention premises must improve their capacity to deal with people who demonstrate threatening behavior or psychological ill health within their premises.

3.2. Trusteeship (legal guardians) for unaccompanied asylum-seeking children

The Committee has, in relation to article 2 (para. 9), asked Sweden to provide information about the on-going work with trustees for unaccompanied asylum-seeking children.

The Swedish Red Cross is approached on a daily basis by legal guardians, foster homes, social service officers and other actors involved in the reception and care of unaccompanied minors with questions concerning e.g. the legal and administrative framework in the asylum, tracing and family reunification rights and procedures and dealing with migration-related stress and traumas.

All needs are not met

Important steps have been taken in the right direction, such as development of training material for trustees (legal guardians of unaccompanied minors) involving different actors. The municipalities are independent and it is crucial to follow up on their use of the training material. However there are more actors involved in the reception – such as accommodation staff, social services etc. – in need of increased knowledge and training to identify risks and victims of trafficking, special needs, traumas and other vulnerabilities.

There are also other concerns related to this group. Family reunification is e.g. complicated for this group, they lack assistance and it takes a very long time, according to a study published by Red Cross and others in November 2013.

Recommendations

We *strongly support* national guidelines and clear directives for appointment of and scope of mission for the trustees (legal guardians) to ensure protection of children's rights and that the best interest of the child is taken into account at all times.

4. ARTICLE 3 – NON-REFOULEMENT AND PROPER INVESTIGATION

4.1 Non-refoulement

Under article 3 of the Convention states shall not return a person to another state where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

4.2 Proper investigation

For the purpose of determining whether there are grounds for believing that a person would be in danger of being subjected to torture in another state, the competent authorities in a State Party shall according to Article 3, take all relevant considerations into account, before returning him or her to the country of origin.

Swedish Red Cross advocates strongly for due procedures for asylum seekers in general and torture victims in particular. We have over the years highlighted the lack of investigation in cases concerning torture victims. In our opinion the mere indication that a person has been subjected to torture requires a thorough investigation covered by the state authorities.

Thus we took note of the Judgement of the European Court of Human Rights in the case *R.C. vs. Sweden*, 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 treatment contrary to Article 3 of the European Convention on Human Rights if deported to Iran in the current circumstances. Accordingly, the Court found that the implementation of the deportation order against the applicant would give rise to a violation of Article 3 of the European Convention on Human Rights.

The case touched upon the significance of identification and documentation of torture and discussed at what point the applicant's burden of proof is fulfilled. In July 2012, following the criticism from the Court, a legal position was issued by the Migration Board changing the routines in line with the decision of the European Court of Human Rights. However, to this date it is unclear how the routines will be implemented in practice by the Board.

4.2 Recommendations

- We *support* the establishment of clear routines supporting thorough investigation by relevant authorities in asylum cases concerning torture victims.

5. ARTICLE 14 – REHABILITATION

5.1 Fulfillment of the right to rehabilitation for torture survivors in Sweden

Each State Party shall according to Article 14 ensure that the victim of an act of torture obtains redress including the means to rehabilitation.

Providing holistic rehabilitation and full redress to survivors of torture can help healing the severe effects of torture and help in rebuilding broken individuals, families and societies. A qualitative rehabilitation is a prerequisite to a successful establishment and integration in society. The purpose of rehabilitation is to empower, to the greatest extent possible, the victims of torture in resuming a qualitative life and in restoring mental, physical and social capacities.

Rebuilding the lives of survivors of torture takes considerable time. Hence long-term and holistic treatment is needed. Since 1985 Swedish Red Cross runs rehabilitation services for survivors of torture at five centers in Sweden. From this extensive experience the following observations can be made:

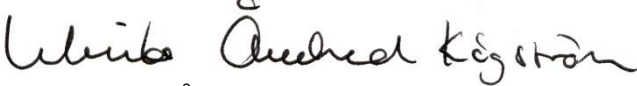
- The government must assume full responsibility for establishing the conditions necessary to ensure access to qualitative treatment for all victims, including adequate funding.
- Knowledge about how to conduct investigation and documentation of torture and other cruel, inhuman or degrading treatment and punishment e.g. according to the Istanbul Protocol must be disseminated in the health care system in order for such documentation to take place countrywide.
- Authorities need to acquire knowledge about how to identify survivors of torture at an early stage.

5.2 Recommendation

We recommend that better conditions are established to address the victim's right to redress, including rehabilitation. The points raised above are all important. Key is institutional capacity building within the health system and Migration Board, as well as adequate funding for rehabilitation and treatment.

Stockholm, 19 August 2014

SWEDISH RED CROSS

A handwritten signature in black ink, reading "Ulrika Årehed Kågström". The signature is written in a cursive style with a distinct loop at the end of the last name.

Ulrika Årehed Kågström

Secretary General