

REDRESS

Seeking Reparation for Torture Survivors

COMMENTS TO THE COMMITTEE AGAINST TORTURE

IN CONSIDERATION OF

SWEDEN'S FIFTH PERIODIC REPORT

APRIL 2008

THE REDRESS TRUST

3rd Floor, 87 Vauxhall Walk, London SE11 5HJ

Tel: +44 (0)20 7793 1777 Fax: +44 (0)20 7793 1719

Registered Charity Number 1015787, A Limited Company in England Number 2274071

info@redress.org (general correspondence)

URL: www.redress.org

I. INTRODUCTION

1. **The Redress Trust (“REDRESS”)** is an international human rights non-governmental organization based in London with a mandate to assist torture survivors to prevent their further torture and to seek justice and other forms of reparation. It has accumulated a wide expertise on the rights of victims of torture to gain both access to the courts and redress for their suffering and has advocated on behalf of victims from all regions of the world. Over the past 15 years, REDRESS has regularly taken up cases on behalf of individual torture survivors at the national and international level and provides assistance to representatives of torture survivors. REDRESS has extensive experience in interventions before national and international courts and tribunals, including the United Nations’ Committee against Torture and Human Rights Committee, the European Court of Human Rights, the Inter-American Commission on Human Rights, the International Criminal Court, the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia.
2. Within the context of REDRESS’ work on counterterrorism and torture, the cases of Ahmed Hussein Mustafa Kamil Agiza and Mohammed Alzery, who were removed from Sweden to Egypt by the United States’ Central Intelligence Agency in cooperation with the Swedish authorities and outside of any legal process, have been of particular concern to us.¹
3. In this respect, we welcomed the respective Views of the Committee against Torture² and the Human Rights Committee³ which found that Sweden had violated Articles 3, 16 and 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”); Articles 2 and 7 of the International Covenant on Civil and Political Rights (“ICCPR”) and Article 1 of the Optional Protocol to the ICCPR.
4. However, we are gravely concerned at Sweden’s continuing failure to implement the decisions of the Committee against Torture and Human Rights Committee. This failure reflects a significant departure from Sweden’s notable history of positive engagement with both the Committee against Torture and the Human Rights Committee.⁴ It also signals to other states that it is politically permissible to derogate from the absolute prohibition of torture and cruel, inhuman or degrading

¹ See the submission by the Swedish Helsinki Committee for Human Rights to the Committee against Torture in consideration of Sweden’s Fifth Periodic Report for a detailed discussion of the facts of this case.

² Committee against Torture, *Agiza v. Sweden*, U.N. Doc. CAT/C/34/D/233/2003 (2005).

³ Human Rights Committee, *Alzery v. Sweden*, U.N. Doc. CCPR/C/88/D/1416/2005 (2006).

⁴ Committee against Torture, “Conclusions and recommendations of the Committee against Torture: Sweden” U.N. Doc. CAT/C/CR/28/6 (2002) (commending Sweden for “positive responses to the Committee’s earlier recommendations”) at para. 4; See also Human Rights Committee, “Concluding Observations of the Human Rights Committee: Sweden” U.N. Doc. CCPR/CO/74/SWE (2002) at para. 2.

treatment and the principle of *non-refoulement* enshrined in Article 3 of the CAT in the context of counterterrorism.

5. Sweden's inaction continues to have a detrimental impact on both Mr. Agiza and Mr. Alzery who remain exposed – and potentially subject - to torture and cruel, inhuman or degrading treatment or punishment (“ill-treatment”). Following his retrial in 2004 which reportedly failed to meet international fair trial standards,⁵ Mr. Agiza now faces a fifteen-year prison sentence for conduct which is not recognised as a crime in Sweden and without the possibility of appeal. Although Mr. Alzery was eventually released without charge, he continues to suffer physically and psychologically as a result of his torture and ill-treatment and lives in the constant fear that he will be arbitrarily detained again since he is unable to leave Egypt. Without urgent action by Sweden, these two individuals will remain vulnerable to further breaches of international law.
6. On 12 December 2007, we wrote to the Swedish Prime Minister, Fredrik Reinfeldt, to express our concerns at Sweden's continuing failure to implement the decisions of the Committee against Torture and the Human Rights Committee by providing Mr. Agiza and Mr. Alzery with a satisfactory remedy and adequate and effective reparation. The letter was copied to the Minister for Justice, Beatrice Ask; the Minister for Migration and Asylum Policy, Tobias Billström; and the Minister for Foreign Affairs, Carl Bildt. To date, we have not received any response to our letter.
7. In line with paragraph 11 of the List of Issues to be considered by the Committee against Torture during its examination of the Fifth Periodic Report of Sweden, this submission sets out the ways in which Sweden has failed to implement the decisions of the Committee against Torture and the Human Rights Committee and the necessary steps it must take in order to do so.

II. SWEDEN'S DUTY TO INVESTIGATE WHAT TOOK PLACE AT BROMMA AIRPORT

8. While three investigations have been initiated in Sweden, only one has been criminal in nature. Even then, the investigation appears to have been more of a formality than a genuine attempt to determine the nature and circumstances surrounding the events at Bromma airport from where Mr. Agiza and Mr. Alzery were rendered to Egypt.⁶ As noted by the Human Rights Committee,

“neither Swedish officials nor foreign agents were the subject of a full criminal investigation, much less the initiation of formal charges under

⁵ Human Rights Watch, “Sweden Implicated in Egypt's Abuse of Suspected Militant” (2004).

⁶ See for example, Committee against Torture, *Radivoje v. Yugoslavia*, U.N. Doc. CAT/C/26/D/113/1998 (2001) at paras. 9.6 – 9.9; Human Rights Committee, *Jose Vicente and Amado Torres v. Colombia*, U.N. Doc. CCPR/C/60/D/612/1995 (1994) at para. 8.8.

Swedish law whose scope was more than capable of addressing the substance of the offences.”⁷

This has led the Council of Europe to state that:

“in my opinion it is for Sweden to clarify further the reasons and responsibilities: how was it that the Swedish officers present on the scene allowed their American counterparts to do as they wished, letting them take control of this operation while still on Swedish soil?”⁸

9. The use of Sweden’s territory to improperly render two individuals to a state where they faced the risk of torture reflects a serious affront to Swedish sovereignty, particularly given its strong human rights record. An investigation which identifies and punishes those responsible, including foreign officials,⁹ would not only fulfil Sweden’s duty to investigate what took place at Bromma airport, but would also clearly signal to other states the consequences of attempting to use Swedish territory to commit crimes under international law.
10. To take no action or to conduct superficial investigations, however, sustains a culture of impunity which, as the European Court of Human Rights has repeatedly emphasised, would render the absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment “ineffective in practice.”¹⁰

III. THE DUTY TO COMPENSATE MR. AGIZA AND MR. ALZERY¹¹

11. Mr. Agiza and Mr. Alzery have filed an action for damages which the Swedish Chancellor of Justice is currently considering. The European Parliament has underscored the importance of compensating victims of “extraordinary rendition” in addition to providing victims with “access to rehabilitation programmes” and guaranteeing “that there will be no repetition of what happened.”¹² Unlike other states, such as Canada, which has played a leading role in ensuring that victims of rendition receive full and effective reparation for its involvement in their treatment, European states have been relatively inactive in this respect. As a like-minded

⁷ Human Rights Committee, *supra* note 3 at para. 11.7.

⁸ Council of Europe, “Alleged Secret Detentions and Unlawful Inter-State Transfers Involving Council of Europe Member States,” (2006) at para. 161.

⁹ The positive duty to investigate is inherent in Article 3 of the CAT, Article 7 of the ICCPR and Article 16 of the CAT (*see* Committee against Torture, *Hajrizi Dzemajl et al. v. Yugoslavia*, U.N. Doc.

CAT/C/29/D/161/2000 (2002)). The duty to investigate is both a freestanding obligation and part of the duty to provide a remedy and reparation: *Menesheva v. Russia*, App. No. 59261/00 European Court of Human Rights (2006) at paras. 61 – 74.

¹⁰ *Assenov v. Bulgaria*, App. No. 24670/94, European Court of Human Rights, (1998) at para. 102; *See also, Aksoy v. Turkey*, App. No. 100/1995/606/694 European Court of Human Rights (1997) at para. 98.

¹¹ Notably, the Committee against Torture has found that Article 14 applies to both Article 1 and Article 16. *See Hajrizi Dzemajl et al. v. Yugoslavia, supra* note 9 at para. 9.6.

¹² European Parliament, “Report on the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners,” (2007) at para. 190.

nation to Canada, it would be significant and timely for Sweden to play a leadership role within Europe by setting an example for others to follow.

12. The Committee against Torture has previously found that the duty to provide compensation “should cover all the damages suffered by the victim”¹³ including material and moral damages. Under international law, compensation must be proportionate to the gravity of the violation and the circumstances of the case. Indeed, in the similar case of Maher Arar who was rendered from the United States to Syria, Canada settled the case for approximately 10.5 million Canadian dollars.

IV. THE DUTY TO PROVIDE RESTITUTION TO MR. AGIZA AND MR. ALZERY¹⁴

13. As noted above, the retrial of Mr. Agiza in 2004 reportedly failed to conform to international fair trial standards. Indeed, REDRESS understands that Mr. Agiza was unable to meet with his lawyer until the first day of his trial and even then, his counsel was unable to access copies of the allegations against him. We recognise the attempts made by the Swedish Government to persuade Egypt to provide Mr. Agiza with his right to a fair trial. However, in light of Mr. Agiza’s deteriorating health and the high risk that he continues to be exposed to torture and ill-treatment, REDRESS submits that Sweden must continue to use its diplomatic offices to call for his fair trial before a civilian court rather than a military tribunal which Human Rights Watch has argued – and indeed, the Swedish Government has recognised – does not meet international fair trial standards.
14. REDRESS commends the decision of the Swedish government to repeal the expulsion orders of Mr. Agiza and Mr. Alzery, including the ten-year travel bans. However, these measures do not go far enough to restore the two individuals to their original situation before Sweden breached the relevant provisions of the CAT and the ICCPR, particularly Article 3 and Article 7 respectively. In this respect, it is of urgent importance that both Mr. Agiza and Mr. Alzery are enabled to return to Sweden, should they so wish. While the Swedish security services submit that Mr. Agiza and Mr. Alzery pose a security threat and therefore should not be granted a residence permit, for the purposes of Article 3 of the CAT and Article 7 of the ICCPR, such considerations are irrelevant where an expulsion would expose an individual to the risk of torture. Since Mr. Agiza and Mr. Alzery have already been improperly rendered to Egypt, the only possible way in which to remedy this situation is to enable them to return to Sweden.
15. In the case of Mr. Agiza, his wife and five children were granted permanent resident status in Sweden on 15 June 2004 by the Alien Appeals Board. His family

¹³ Committee against Torture, *Kepa Urra Guridi v. Spain*, U.N. Doc. CAT/C/34/D/212/2002 (2005) at para. 6.8. *See also*, 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, GA/RES/60/147 (2006) at Principle 20.

¹⁴ *Id* at Principle 19.

is unable to travel to visit him in prison in Egypt given the potential risk that they too would be detained and possibly subjected to torture and ill-treatment. Additionally, they are unlikely to have the means available to travel back and forth to Egypt to visit him on a regular basis.

16. Accordingly, Sweden should make a formal request to Egypt to allow Mr. Agiza to serve his prison sentence in Sweden in order to uphold his right to family life. This would be in accordance with Principle 10 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment¹⁵ which sets out the right of an imprisoned person to “be visited by and to correspond with, in particular, members of his family” and Principle 20 which recognises that an imprisoned person, “shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence.” Again, this request would directly flow from Sweden’s obligations to restore Mr. Agiza to his original position prior to the rendition and therefore the lack of a general bilateral arrangement between the two states should not prevent Sweden from formally requesting his transfer.

V. THE DUTY TO PROVIDE SATISFACTION AND GUARANTEES OF NON-REPETITION

17. As part of its duty to provide reparation, Sweden should make an official and public apology to Mr. Agiza and Mr. Alzery and their families for the denial of their right to due process in the expulsion; their treatment at Bromma airport and their subsequent exposure to torture and ill-treatment as a result of Sweden’s breaches of the CAT and the ICCPR.¹⁶ As in the case of Maher Arar who was rendered from the United States to Syria, the apology should be made at the highest level of government.¹⁷
18. In order to ensure that this does not happen again, Sweden should publicly denounce the use of diplomatic assurances in the expulsion, extradition, transfer, removal or rendition of an individual from Sweden’s jurisdiction. In addition, Sweden should reform the laws and procedures that enabled the expulsion to take place without judicial review and for foreign agents to ill-treat and render individuals from Swedish territory. In this respect, the Swedish Government should establish an independent committee with expertise in Swedish law and procedure as well as international human rights law to examine the compatibility of national law and procedure with the absolute prohibition of torture and ill-treatment under international law and to make recommendations for law reform which the Swedish Parliament should then undertake.

¹⁵ UN. Doc. A/RES/43/173 (1988).

¹⁶ Principle 21(e) of the Basic Principles *supra* note 13 provides that, “Public apology: including the acknowledgment of the facts and acceptance of responsibility.”

¹⁷ Office of the Prime Minister, “Prime Minister Releases Letter of Apology to Maher Arar and His Family and Announces Completion of the Mediation Process,” (26 January 2007) available at: <<http://pm.gc.ca/eng/media.asp?id=1509>>

VI. ONGOING DUTY TO PREVENT TORTURE IN EGYPT

19. Finally, it necessarily follows that but for Sweden's breach of Article 3 of CAT and Article 7 of ICCPR, Mr. Agiza and Mr. Alzery would never have been exposed to the risk of torture and ill-treatment in Egypt, and indeed that risk would not have turned into an eventuality. As a consequence of this direct connection, Sweden is under a continuing duty to take positive steps to prevent any further subjection to torture and ill-treatment in Egypt and in the event that they have been tortured or ill-treated to provide adequate reparation for such treatment, independently of Egypt's international responsibilities in this respect. In *Mansour Ahani v. Canada*, the Human Rights Committee found that:

“In the light of the circumstances of the case, the State party, having failed to determine appropriately whether a substantial risk of torture existed such as to foreclose the author's deportation, is under an obligation (a) to make reparation to the author if it comes to light that torture was in fact suffered subsequent to deportation, and (b) to take such steps as may be appropriate to ensure that the author is not, in the future, subjected to torture as a result of the events of his presence in, and removal from, the State party.”¹⁸

20. To date, it is clear that Sweden has not taken adequate or appropriate steps to prevent Mr. Agiza and Mr. Alzery from being subjected to torture or ill-treatment in Egypt. As the Human Rights Committee pointed out, the visits by the Swedish ambassador only began five weeks after Mr. Alzery was returned to Egypt. Even then the Swedish ambassador did not request that the meetings take place in private and was not accompanied by a medical practitioner or forensic expert capable of determining whether Mr. Alzery and Mr. Agiza had been subjected to torture or ill-treatment. As such, the Committee found that Sweden's visits had failed to conform to “international good practice.”¹⁹
21. This gives rise to an additional duty to provide reparation to Mr. Agiza and Mr. Alzery for its failure to exercise due diligence in assessing the treatment of Mr. Agiza and Mr. Alzery, particularly in the first few weeks of their return to Egypt when they were at most risk to torture and ill-treatment.
22. Furthermore, future visits to Mr. Agiza should take place in private and - subject to consultations with Mr. Agiza's lawyers regarding his safety and wellbeing - the Swedish Ambassador could be accompanied by independent experts who can make a forensic report and psychological assessment into his treatment since returning to Egypt. The Parker Institute in Denmark is an example of an organisation with

¹⁸ Human Rights Committee, *Mansour Ahani v. Canada*, UN Doc. CCPR/C/80/D/1051/2002 (2004) at para 12.

¹⁹ *Id.* at para. 11.5

expertise in this area. A similar assessment should be made of Mr. Alzery, subject to his consent and that of his lawyers in Sweden.²⁰

CONCLUDING COMMENTS

23. Mr. Agiza and Mr. Alzery remain at a real risk of torture and ill-treatment as a result of Sweden's violations of the CAT. Moreover, these cases epitomise the recent attempts by states to circumvent the absolute principle of *non-refoulement* enshrined in the CAT in the name of counterterrorism. It is therefore imperative that Sweden enables Mr. Agiza and Alzery to return to Sweden, should they so wish, and takes urgent steps to use its diplomatic offices to ensure Mr. Agiza receives a fair trial and serves any remaining prison sentence in Sweden. As discussed above, Sweden must take such steps in addition to meeting its obligations to conduct an independent investigation into the events at Bromma airport and provide full, adequate and effective reparation to Mr. Agiza and Mr. Alzery for what they have and continue to undergo.

²⁰ See, Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, "Report of the Events Relating to Maher Arar: Analysis and Recommendations" (2006), Recommendation 22 at 361 (recommending that the Canadian Government "register a formal objection with the Government of the United States and Syria concerning the treatment of Mr. Arar and Canadian officials involved with his case.")