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Indirect Refoulement by Sweden

To be inserted in the submission at the Swedish Supreme Court

The Supreme Court of Sweden must examine the foreseeable consequences of bringing Julian Assange to Sweden in order to evaluate the grounds that sustain Julian Assange's reasonable fear and the real risk of his refoulement. Those grounds are based on Sweden's record on refoulement despite risks of torture or IDTP (A), on Sweden's attitude towards political opponents (B) and journalists (C). All these elements must be added to Julian Assange's fear of the high probability of being extradited (D) considering the Swedish Policy towards extradition with the USA (E). The Republic of Ecuador has assessed these risks and made a positive finding that the risk of refoulement, inhuman and degrading treatment, and of persecution on grounds of Mr. Assange's political beliefs exist and has granted him asylum on this basis.

A) Swedish Record of Refoulement: general

1. Condemnations by the EctHR [1]

a) In the case *Bader and Kanbor v. Sweden* (8 November 2005), the ECtHR recalls its principle established by the Grand Chamber in *Öcalan v. Turkey* that implies that "to impose a death sentence on a person after an unfair trial would generate, in circumstances where there exists a real possibility that the sentence will be enforced, a significant degree of human anguish and fear, bringing the treatment within the scope of Article 3 of the Convention"[2]. The Court found that the deportation by Sweden of the applicants to Syria would give rise to violations of Articles 2 and 3 of the Convention if it was implemented[3].

1 http://www.echr.coe.int/Pages/home.aspx?p=press/factsheets&c=#n1347951547702_pointer

2 ECtHR, 08/11/2005, Bader and Kanbor v. Sweden, No. 13284/04, para. 42.

3 Ibidem, paras. 43-48.

b) In the *N. v. Sweden* case (20 July 2010), an Afghan woman applied for asylum because of her fear of gender-based persecution. Sweden rejected her application and found that the applicant had not demonstrated that she had a well-founded fear of persecution because of her previous work as a women's teacher since the previous Taliban ban on education for women had been removed[4]. The Court, unlike Sweden, found "that there are substantial grounds for believing that if deported to Afghanistan, the applicant faces various cumulative risks of reprisals which fall under Article 3 of the Convention from her husband X, his family, her own family and from the Afghan society"[5].

c) In the case of *I v. Sweden* (5 September 2013), the Court said that "in principle it is for the person to be expelled to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he or she would be exposed to a real risk of being subjected to treatment contrary to Article 3. Where such evidence is adduced, it is for the Government to dispel any doubts about it."[6]

2. *Committee Against Torture (CAT)*

In *A.S. v. Sweden*[7] (15 February 2001), the claimant, an Iranian national, has seen her asylum request refused because she "has not fulfilled her obligation to submit the verifiable information that would enable her to enjoy the benefit of the doubt"[8]. However, the Committee was "of the view that the author has submitted sufficient details regarding her *sighe* or *mutah* marriage and alleged arrest, such as names of persons, their positions, dates, addresses, name of police station, etc., that could have, and to a certain extent have been, verified by the Swedish immigration authorities, to shift the burden of proof. In this context, the Committee is of the view that the State party has not made

4 ECtHR, 20/07/2010, N. v. Sweden, No. 23505/09, para. 12.

5 Ibidem, para. 62.

6 ECtHR, 05/09/2013, I v. Sweden, No. 61204/09, para 62.

7 A.S. v. Sweden, CAT/C/25/D/149/1999, UN Committee Against Torture (CAT), 15 February 2001, available at: http://www.refworld.org/docid/3f588ecc7.html [accessed 20 February 2015]

8 Ibidem, para 8.6.

sufficient efforts to determine whether there are substantial grounds for believing that the author would be in danger of being subjected to torture". The Committee concluded by reminding Sweden about its "obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the author to Iran or to any other country where she runs a risk of being expelled or returned to Iran"[9].

Those cases demonstrate that Sweden had imposed an austere evidentiary burden of proof when it comes to assess a well-founded fear of torture or IDTP that its "interpretation on several aspects relating to the standard of proof is inconsistent with the international regulation"[10].

B) Swedish Record of Refoulement: political opponents

Julian Assange is a political refugee, and as such, he has a legitimate fear of political persecution in any form whatsoever. By a general review of Sweden's attitude regarding the particular category of political opponents, it appears most of the time that Sweden has a very restrictive point of view in its protection of this category of refugees compared with other institutions and countries:

1. Condemnations at the ECtHR:

a) In *R.C. v. Sweden* (9 March 2010) at the ECtHR the applicant was a Shia Muslim involved in activities critical of the governing political regime[11]. The Court decided that "having regard to its finding that the applicant has discharged the burden of proving that he has already been tortured, the Court considers that the onus rests with the State to dispel any doubts about the risk of his being subjected again to treatment contrary to Article 3 in the event that his expulsion proceeds"[12]. The Court found that there were substantial grounds for believing that he would be exposed to a real

9 Ibidem, para 9.

10 Ida Järvegren, The Principle of Non-Refoulement in Swedish Migration Law - Master thesis (Supervisor: Gregor Noll), Lund University, 2011, p.57.

11 ECtHR, 09/03/2010, R.C. v. Sweden, No. 41827/07, para 9.

12 ECtHR, 09/03/2010, R.C. v. Sweden, No. 41827/07, para 55.

risk of being subjected to treatment contrary to article 3. However, the Swedish judge Fura of the ECtHR stated a dissenting opinion by which he considers that: *"The fact that the applicant has in all probability been tortured in Iran is not enough in itself to substantiate that he runs a real risk of being tortured again if returned. Here my views differ from the majority (see paragraph 55). The majority's opinion that the onus rests with the State to dispel any doubts about the risk of the applicant's being subjected again to treatment contrary to Article 3 in the event that his expulsion proceeds does not follow the established case-law of the Court (see Saadi, among other authorities). Furthermore, I have difficulties to see how, in practice, a State should proceed in order to achieve this aim."*[13]

This opinion reflects the restrictive Swedish approach towards the question of the burden of proof when it comes to a risk of violation of article 3 related to a political persecution.

b) In the case of *S.F. and others v. Sweden* (15 May 2012), the ECtHR had to decide whether the decision of Sweden to deport an Iranian family was in violation of article 3 of the ECHR. The family was composed of a political singer (singing political music for the Kurdish cause in Iran) who has been sentenced to 12 months' imprisonment for political activity and his wife, who was a journalist working for Newroz TV, a Kurdish TV channel which was banned in Iran, and their son born in Sweden in 2009. Sweden considered that "it was not probable that the Iranian authorities would show an interest in someone at such a low level as the first applicant. Furthermore, the political activities in Sweden had been limited in scope and the applicants had not been able to show that these activities were of any interest to the authorities."[14]

c) In the case of *F.N. v. Sweden* (18 December 2012), Sweden had been contradicted by the Court stating that the applicants, four Uzbek nationals,

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13 Dissenting Opinion Of Judge Fura in R.C. v. Sweden, para 13. http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"docname":["\"CASE OF R.C. v. SWEDEN\""],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-97625"]}

14 ECtHR, 15/05/2012, S.F. and others v. Sweden, No. 52077/10, para 22.

would face a real and personal risk of being detained and subjected to ill-treatment contrary to article 3 of the Convention if returned to Uzbekistan[15].

2. *Condemnations by the Committee Against Torture (CAT)*

a) *Karoui v. Sweden* (25 May 2002). During the time before the Arab Spring occurred in Tunisia, Sweden rejected the application for asylum of a political opponent to the dictatorial regime, M. Karoui, because it questioned his credibility and that "the complainant's political activities were of minor character and at a low level within the organization"[16]. The Committee concluded instead that Mr. Karoui "has provided sufficient reliable information for the burden of proof to shift" and that his removal to Tunisia would have constituted a breach of article 3 of the Convention[17].

b) *T.A. and S.T. v. Sweden* (27 May 2005). Ms. T.A. was an active member of the Jatiya Party in Bangladesh. Although Sweden "did not dispute that she had been tortured and raped (...) (It) concluded that these acts could not be considered to be attributable to the State of Bangladesh but had to be regarded as the result of the actions of individual policemen"[18]. Sweden

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15 ECtHR, 18/12/2012, F.N. and others v. Sweden, No. 28774/09, par 79.

16 UN Committee Against Torture (CAT), 25 May 2002, Chedli Ben Ahmed Karoui v. Sweden, CAT/C/28/D/185/2001, para. 2.12, available at: http://www.refworld.org/docid/3f588ec03.html [accessed 18 February 2015].

17 UN Committee Against Torture (CAT), 25 May 2002, Chedli Ben Ahmed Karoui v. Sweden, CAT/C/28/D/185/2001, para 10, available at: http://www.refworld.org/docid/3f588ec03.html [accessed 18 February 2015].

18 UN Committee Against Torture (CAT), T.A. and S.T. v. Sweden, U.N.Doc. CAT/C/34/D/226/2003 (2005), Communication No. 226/2003, U.N. Doc., para 2.6.

added that "because of the political change in Bangladesh there were no reasonable grounds for believing that she would be subjected to arrest and torture by the police if returned to her country"[19], even though the Committee considered "that substantial grounds exist for believing that Ms T. A. may risk being subjected to torture if returned to Bangladesh".

c) *C.T. and K.M. v. Sweden*[20] (22 January 2007): Two Rwandan nationals, C.T. and her son K.M., complained about a violation of article 3 if deported to Rwanda because of her involvement in the PDRUbuyanja Party and because she attended political meetings, after which she has been tortured. Sweden refused her application for asylum due to lack of credibility and the political developments in Rwanda[21]. The Committee considered that substantial grounds existed for believing that the complainants would be in danger of being subjected to torture if expelled to Rwanda[22].

d) *Njamba and Balikosa v. Sweden*[23] (3 June 2010) is a case involving two Congolese nationals, a mother and her daughter. Ms. Njamba's husband and three of her children disappeared after having been threatened due to their political involvement on behalf of the rebels. While Sweden

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19 Ibidem., para 2.8

20 CAT, 22 January 2007, C.T. and K.M. v. Sweden, U.N. Doc. CAT/C/37/D/279/2005 (2007), Comm. No. 279/2005, available at: http://www1.umn.edu/humanrts/cat/decisions/279-2005.html

21 Ibidem, paras 1.1 and 2.1-2.2.

22 Ibidem, paras 7.6-7.7. "The Committee recalls its jurisprudence that complete accuracy is seldom to be expected by victims of torture and that such inconsistencies as may exist in the complainant's presentation of the facts are not material and do not raise doubts about the general veracity of her claims, especially since it has been demonstrated that she was repeatedly subjected to rape in detention".

23 Eveline Njamba and Kathy Balikosa v. Sweden, CAT/C/44/D/322/2007, UN Committee Against Torture (CAT), 3 June 2010, available at: http://www.refworld.org/docid/4eeb34202.html [accessed 21 February 2015]

considered that the risk of torture had not been substantiated, the Committee reminded that "the risk need not be highly probable, but it must be foreseeable, real and personal, and present"[24] and found that "substantial grounds exist for believing that the complainants are in danger of being subjected to torture if returned to the Democratic Republic of the Congo"[25].

e) *Aytulun and Güclü v. Sweden*[26] (3 December 2010). The claimants were active members in the Kurdish Worker's Party (the PKK) in Turkey. Sweden questioned "whether there is a risk of the first-named complainant being of interest to the PKK now, considering the time that had elapsed since he left Turkey. It submits that if such risk exists he would most certainly be able to obtain protection from the Turkish authorities"[27]. The Committee noted "that the complainant was a member of the PKK for 14 years; and that there are strong indications that he is wanted in Turkey, to be tried under anti-terrorist laws and thus is likely to be arrested upon arrival and subjected to enforced confessions. In light of the foregoing, the Committee considers that the complainants have provided sufficient evidence to show that the first-named complainant personally runs a real and foreseeable risk of being subjected to torture were he to be returned to his country of origin"[28].

This case-law justifies a well-founded fear of a real risk of ill-treatment related to the reluctance of Swedish authorities to extent its protection to political opponents.

C) Prosecution of journalists for espionage: a bad example from the past and the Press Act

24 Ibidem, 9.4.

25 Ibidem, 9.6.

26 Munir Aytulun and Lilav Guclu v. Sweden, CAT/C/45/D/373/2009, UN Committee Against Torture (CAT), 3 December 2010, available at: http://www.refworld.org/docid/5034ec0b2.html [accessed 21 February 2015]

27 Ibidem, 4.13.

28 Ibidem, 7.7

In 1973 Sweden faced an important scandal in the popularly known "IB Affair". The journalists involved, Peter Bratt and Jan Guillou, who revealed the existence and the activities of a secret Swedish intelligence agency and its cooperation with the American Central Intelligence Agency, proceeded to publication of the information after they "considered what legal risks they might incur[29] (...) assured in general by the Freedom of the Press Act, and in particular by the advice of a penal law expert"[30]. Despite these precautions, the Swedish courts found them guilty of espionage. These decisions "effectively deprived the journalists of the array of press protections they expected would be available to them as Press Act defendants" while "it was clear that they might have been charged under the Press Act"[31].

A long time has passed since those embarrassing events occurred and, beside the fact that Julian Assange is not prosecuted for his journalistic activities in Sweden but likely will be in the United States, it is still a troubling precedent that raise legitimate concerns about the uncommonly aggressive prosecution that can be led towards journalists and the hostility that can emerge from Swedish officials.

Moreover, the Freedom of the Press Act appears to be of no help to stem Julian Assange's fear when it provides a list of circumstances in which official documents may be restricted from public dissemination that include situations involving "the security of

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29 Campbell, Dennis, "Free Press in Sweden and America: Who's the Fairest of Them All?", Southwestern University Law Review, Vol. 8, Issue 1 (1976), p.79 (pp. 61-108), citing Stockholms Tingsratt, B 653/73 at 8-23; Svea Hovratt, DB37, B 195/74 at 4-9.

30 Id., "The journalists consulted Professor Gbran Elwin, identified by the trial court as an expert on Swedish penal law. See Stockholms Tingsratt, B 653/73 at 8."

31 Campbell, Dennis, op.cit., p. 80 "By charging Bratt and Guillou under the Penal Code, the prosecution circumvented certain protections that would have attended a Press Act prosecution, such as a jury trial. The prosecution also limited the application of other protections, such as the right of anonymity and the system of designated responsibility that the journalists might have claimed. By characterizing Guillou's criminality in terms only of his information-gathering role, the court of appeal, notwithstanding that Guillou was a staff member of the magazine which published the articles, cast him as an informant, not an author, subjecting him to a Press Act exception by which informants in espionage cases may be prosecuted under the Penal Code."

the Realm or its relations with another state or an international organization"[32].

More concerningly yet, the Press Act contains a number of offences against the freedom of the press including espionage, trafficking, distribution, conspiracy and carelessness in relation to secret information, including "unauthorised trafficking in secret information, whereby a person, without due authority but with no intent to assist a foreign power, conveys, consigns or discloses information concerning any circumstance of a secret nature ... regardless of whether the information is correct; any attempt or preparation aimed at such unauthorised trafficking in secret information; conspiracy to commit such an offence" and "carelessness with secret information, whereby through gross negligence a person commits an act referred to".[33] These statements leave much room for interpretation and open up the possibility of satisfying the dual criminality requirement in a US extradition. It is possible that extraditing Mr Assange could be justified as maintaining relations with the United States[34].

D) Expedited Rendition Record

1. Swedish non-suspensive proceeding in asylum

It is important for the individual and the general assessment of Julian Assange's well-founded fear to understand that it is the prospect of an unfair trial in the United States for his political and journalistic activity, and the torture and persecution that would

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32 See TRYCKFRIHETSFORORDNINGEN [TF] [CONSTITUTION] 2:2 (Swed.). "The Freedom of the Press Act allows the restriction of official documents in situations involving: (1) the security of the Realm or its relations with a foreign state or an international organization; (2) the central finance policy, monetary policy, or foreign exchange policy of the Realm; (3) the inspection, control or other supervisory activities of a public authority; (4) the interest of preventing or prosecuting crime; (5) the public economic interest; (6) the protection of the personal integrity or economic conditions of private subjects: or (7) the preservation of animal or plant species." Cited by, "The Prospect of Extraditing Julian Assange", North Carolina Journal of International Law and Commercial Regulation, Vol.37, 2011-2012, p. 902

33 Chapter 4(3) and 7.4(4) of the Press Act.

34Molly Thebes, ibidem. "Regardless, it is unclear whether Sweden's security interest could be extended to include the interests of allies, such as coalition forces in Iraq and Afghanistan" she adds.

follow.

Julian Assange's fear of expedited rendition is based on the fact that the Swedish judicial system does not provide for safeguard against it because of the accelerated procedures and the non-suspensive effect of appeals, which impacts upon the substantive examination of asylum claims[35]. Indeed, "in Sweden, accelerated procedures (even though this term is not used as such in Sweden) impacts upon the substantive examination of asylum claims, as no legal assistance is available for applicants in such procedures and there is no suspensive effect for appeals, in cases considered to be manifestly unfounded or related to the application of the Dublin II Regulation. When subsequent asylum applications are submitted because of new circumstances, there is a fast process in which the applicant has no right to legal assistance and there is no suspensive effect for appeals."[36]
The procedure of refoulement in security cases raises some concern since there is no possibility of review by a legal entity under a inquisitorial proceeding and a government "can give preference to national interest at the expense of individual human rights"[37] as has been revealed by the *Alzery and Agiza* case.

Indeed in the Alzery case, the applicant had been transferred from Sweden to Egypt "**on the same day** that their asylum applications were rejected by the Swedish government on security grounds"[38], where they were detained and subjected to extremely harsh prison conditions, beatings and electric shocks[39] in direct contravention of diplomatic assurances Egypt had provided to Sweden[40]. Sweden would also have assisted the CIA in the kidnapping of Agiza.

2. Disturbing behaviour of Swedish authorities revealed by the Alzery and

35 ECRE/ELENA, Research on ECHR Rule 39 Interim Measures, April 2012, p. 59-60.

36 ECRE/ELENA, Research on ECHR Rule 39 Interim Measures, April 2012, p. 60, available at http://www.ecre.org/component/content/article/56-ecre-actions/272-ecre-research-on-rule-39-interim-measures.html [consulted on 21/02/2015].

37 Ida Järvegren, The Principle of Non-Refoulement in Swedish Migration Law - Master thesis (Supervisor: Gregor Noll), Lund University, 2011, p.57.

38 Alzery, Communication No. 1416/2005, 3.10-3.11; Agiza, Communication No. 233/2003, 2.5

39 Alzery, Communication No. 1416/2005, 3.15; Agiza, Communication No. 233/2003, 2.5-2.8

40 Alzery, Communication No. 1416/2005, 3.6-3.7; Agiza, Communication No. 233/2003, 4.12.

Agiza cases

a) **Politicians shirking their responsibility and the use of diplomatic assurances**

In the midst of the controversy over Agiza and Alzery, "the Swedish government continues to claim that if there were any breaches of the assurances, responsibility lies solely with Egypt."[41]

Human Right Watch reported that "in a telling interview on March 4, 2005, Hans Dahlgren, Sweden's State Secretary for Foreign Affairs stated: "Actually, we don't really know whether these guarantees have been adhered to by the Egyptian government. As you know, there have been accusations that they were broken. First of all, that both men have been subject to maltreatment, of the kind that would not be permissible under the guarantees that were given. However, the government of Egypt itself denies these allegations quite strongly."[42]

Though the nature of diplomatic assurances is controversial[43], they are 'unenforceable promises': a country that breaches them is unlikely to experience any serious consequences if the assurances are violated"[44]. They are, thus, unable to guarantee

41 Human Rights Watch meeting with MFA officials, J2 June 2004, noted on file with Human Rights Watch, cited in Human Rights Watch, Still at Risk: Diplomatic Assurances No Safeguard Against Torture, April 2005, Vol. 17, No. 4(D), p. 62.

42 BBC Radio 4, Today Programme, [What would it mean for terrorist suspects if the government did get its Prevention of Terrorism Bill through parliament?], 4 March 2005, at 8:30 [online] http://www.bbc.co.uk/radio4/today/listenagain/zfriday_20050304.shtml (retrieved March 18, 2005).

43 Christopher Michaelsen, "The Renaissance Of Non-Refoulement? The Othman (Abu Qatada) Decision Of The European Court Of Human Rights", International and Comparative Law Quarterly, 61, pp 750-765

44 Amnesty International, 'Diplomatic Assurances: No Protection against Torture and Ill-Treatment', 2005, AI Index: ACT 40/021/2005 (1 December 2005) <http://www.amnesty.org/en/library/info/ACT40/021/2005>; Human Rights Watch, '"Empty Promises": Diplomatic Assurances No Safeguard Against Torture', 2004, HRW 16(4) (D) <http://www.hrw.org/sites/default/files/reports/diplomatic0404.pdf>; Human Rights Watch,

Julian Assange's safety.

In *Agiza v. Sweden,* the Committee Against Torture found that, due to Egypt's reputation for torturing detainees held for political and security reasons, Sweden knew or should have known at the time of Agiza's removal that he would be at a real risk of torture in Egypt; thus, Sweden had violated Article 3 of the CAT by allowing his removal."[45]
The Swedish Chief Parliamentary Ombudsman, Mats Melin, who investigated those cases, concluded that the Swedish security service and airport police "**were remarkably submissive to the American officials**" and "lost control of the enforcement", resulting in the ill-treatment of Ahmed Agiza and Mohammed El-Zari, including physical abuse and other humiliation, at the airport immediately before they were transported to Cairo."[46]

The former Commissioner for Human Rights, Swedish diplomat and human rights advocate Thomas Hammarberg, took a more hard-line position, opposing reliance on diplomatic assurances under any circumstances: "Diplomatic assurances (...) are not credible and have also turned out to be ineffective in well-documented cases. The governments concerned have already violated binding international norms and it is plain wrong to subject anyone to the risk of torture on the basis of an even less solemn undertaking to make an exception in an individual case. In short, the principle of non-refoulement should not be undermined by convenient, non-binding promises of such kinds."[47]

'Still At Risk: Diplomatic Assurances No Safeguard Against Torture', 2005, HRW 17(4) (D) http://www.hrw.org/sites/default/files/reports/eca0405.pdf, cited by C. Michaelsen, p.752.

45 Agiza, Communication No. 233/2003, 13.4.

46 Transportation and illegal detention of prisoners: European Parliament resolution on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (2006/2200(INI)), Eur. Parl. Doc. P6_TA(2007) 0032, (Feb. 14, 2007), pt. 99-103.

47 Thomas Hammarberg, Council of Europe Commissioner for Human Rights, "Viewpoints: Torture Can Never, Ever Be Accepted," 27 June 2006, cited in Alice Izumo, "Diplomatic Assurances Against Torture And Ill-Treatment: European Court Of Human Rights Jurisprudence", Columbia Human Rights Law Review, vol.42, 2010-2011, p. 245 .http://www.coe.int/newssearch/Default.asp?p=nwz&id=8064&lmLangue=2.

b) Withholding of information

There are several situations in which Swedish authorities did not share crucial information or delayed the disclosure. The Committee against Torture found Sweden in violation of Article 22 of the CAT for initially failing to disclose to the Committee that Agiza had complained of ill-treatment to Swedish diplomatic personnel during their first monitoring visit with Agiza in prison."[48]

The European Parliament "acknowledges that the Swedish Government hindered the men from exercising their rights in accordance with the provisions of the ECHR, by not informing their lawyers until they had arrived in Cairo; deplores the fact that the Swedish authorities accepted a US offer to place at their disposal an aircraft that benefited from special overflight authorisation in order to transport the two men to Egypt;[49]

"The Swedish government has revealed little about why it suddenly decided to expel them, three months after the September 11, 2001, attacks in the United States. It has said only that the decision was made on the basis of secret intelligence information, some of it from foreign services, indicating that the men posed a security threat. Swedish officials have refused to disclose any of the evidence or reveal where the information came from[50]. Actually, without the first revelation of the case by the Swedish television programme *Kalla Fakta* (Cold Facts)[51] we may never have heard of the fate of Alzery and Agiza. Indeed, *Kalla Fakta* cited anonymous sources who claimed to have been present at Stockholm-Bromma Airport while masked US agents stripped,

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48 Agiza, Communication No. 233/2003 1 13.10.

49 Transportation and illegal detention of prisoners: European Parliament resolution on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (2006/2200(INI)), Eur. Parl. Doc. P6_TA(2007) 0032, (14 Feb 2007), para 99.

50 Craig Whitlock, "New Swedish Documents Illuminate CIA Action", Washington Post, 21 May 2005,

http://www.washingtonpost.com/wp-dyn/content/article/2005/05/20/AR2005052001605.html

51 US Helped Deport Egyptians to Face Alleged Abused [sic]: Swedish TV, Agence France Presse, 17 May2004; Implication Directe des Etats-Unis dans l'Expulsion de Suède de deux Egyptiens (TV), Agence France Presse, 17 May 2004.

restrained, hooded, drugged, and removed the individuals in a small plane[52]."

c) Impunity

In the Alzery case, Muhammed Alzery, who was abused at Bromma airport in Sweden prior to being extraordinarily rendered to Egypt by the Swedish government (acting in concert with the United States), the Human Rights Committee observed that "the State party is under an obligation to ensure that its investigative apparatus is organized in a manner which preserves the capacity to investigate, as far as possible, the criminal responsibility of all relevant officials, domestic and foreign, for conduct in breach of article 7 committed within its jurisdiction and to bring appropriate charges in consequence." The committee found that Sweden's failure to conduct an effective investigation in this case violated its obligations under Article 7 of the ICCPR, read in conjunction with Article 2 of the covenant. The European Court of Human Rights has similarly found, with respect to breaches of Article 3 of the European Convention on Human Rights, that contracting states are required to conduct effective investigations capable of '"eading to the identification and punishment of those responsible."[53]

Within Sweden, Parliamentary members initiated investigations into the government's handling of Agiza and Alzery's transfer, although criminal prosecutions did not go forward at that time.[54]
Despite the findings of illegal criminal activity, the Ombudsman has not called for the

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52 See Swedish TV4 Kalla Fakta Programme, http://www.hrw.org/legacy/english/docs/2004/05/17/sweden8620.htm (English-language transcript of first part of series, broadcast on Swedish television network TV4 on 17 May 2004). Kalla Fakta's account of the transfer was later verified by a Swedish parliamentary investigation, which further uncovered that the masked agents at Bromma included not only US but also Egyptian authorities. Alzery, Communication No. 1416/2005, 3.10.

53 Open Society Justice Initiative, "Globalizing Torture CIA Secret Detention And Extraordinary Rendition", Open Society Foundations, 2013, p.24. http://media.tcm.ie/media/documents/o/openSocietyJusticeInitiativeGlobalizingTortureReport.pdf

54 Alzery, Communication No. 1416/2005 1 3.20-3.32; Agiza, Communication No. 233/2003 12.10

prosecutions of the Swedish security service and police personnel involved in the illegal operation or possible violations of the ban on cruel, inhuman or degrading treatment or punishment.[55]

However, the US Senate report released in December 2014 "reveals new facts that reinforce allegations that a number of EU Member States, their authorities and officials and agents of their security and intelligence services were complicit in the CIA's secret detention and extraordinary rendition programme, sometimes through corrupt means based on substantial amounts of money provided by the CIA in exchange for their cooperation"[56]. MEPs (Members of the European Parliament) add that "the climate of impunity surrounding the CIA programme has 'enabled the continuation of fundamental rights violations', as further revealed by the mass surveillance programmes of the US National Security Agency (NSA) and secret services of various EU Member States", stressing that "there can be no impunity" for these violations. (...) On the EU side, MEPs express their concerns about the obstacles encountered by national parliamentary and judicial investigations, the abuse of state secrecy, and the undue classification of documents resulting in the termination of criminal proceedings. They again ask Member States to investigate the allegations that there were secret prisons on their territory and to prosecute those involved in the CIA-led operations."[57]

The fact that no prosecution were made despite the UN condemnations brings legitimate distrust when it comes to handling an extraordinary rendition that Mr. Assange may face.

3. Sweden's participation in CIA rendition since 2001

Documents disclosed by WikiLeaks exposed that Sweden's arrangements with the CIA renditions programme had in fact continued until 2006. Although the programme was reportedly suspended in 2006, some elements raise serious doubts about whether this

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55 Human Rights Watch, "Still At Risk: Diplomatic Assurances No Safeguard Against Torture", April 2005, Vol. 17, No. 4(D), p.63, http://www.hrw.org/sites/default/files/reports/eca0405.pdf

56 Senate Select Committee on Intelligence, Committee Study of the Central Intelligence Agency 's Detention and Interrogation Program, Approved December 13, 2012, Updated for Release April 3, 2014 Declassification Revisions December 3, MI4 http://www.intelligence.senate.gov/study2014/sscistudy1.pdf

57 "Parliament to resume investigations into CIA:-led operations in EU countries Plenary sessions", Press release 11-02-2015, http://www.europarl.europa.eu/news/en/news-room/content/20150206IPR21212/html/Parliament-to-resume-investigations-into-CIA-led-operations-in-EU-countries

is, in fact, the case (see recent cases below). A WikiLeaks cable from 2006, prior to the suspension of the agreement revealed the attitude of the American Embassy in Stockholm about Swedish authorities trying to put a stop to CIA rendition flights. The ambassador, Steven V. Noble, seems to take this decision lightly: "What is not yet clear is whether the new requirements are simply an indication of a government sensitive to the renditions/prisoner transfer issue in the run-up to general elections in September, or if Sweden wants to make the clearance process so difficult that we will seek other refueling venues".

Mr. Assange shares the same concern of the US ambassador, who adds in the cable that "what is clear is that if we wish to continue using Sweden as a refueling point, we will have to become accustomed to these and perhaps more questions."[58]

4. Close police cooperation between SAPO and US police authorities

a) Kassir case (2005)

Oussama Kassir was a Swedish national who successfully challenged an extradition request by the United States. Apart from the fact that the Swedish extradition treaty excludes Swedish nationals from extradition to the United States, the Swedish prosecutor reportedly found that there was insufficient evidence presented by the extraditing authorities and then he was freed from prison.

However, Kassir was also a Lebanese national. He was arrested in Prague airport while in transit to Lebanon on 11 December 2005, on a warrant filed by United States federal prosecutors. Subsequently, he was extradited to the United States on 25 September

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58 "Sweden: The New Post-"CIA Planes" Reality -- Politicizing A Deportation Flight Clearance" http://wikileaks.org/plusd/cables/06STOCKHOLM527_a.html; Johan Nylander, "CIA rendition flights stopped by Swedish military", The Swedish Wire, 5 December 2010, available at http://www.swedishwire.com/politics/7497-cia-rendition-flights-stopped-by-swedish-military; See also "Svenskt motstånd stoppade CIAplanen- Fångtransporter stoppades", Svenska Dagbladets, 5 December 2010 (updated on 07/02/2014), http://www.svd.se/nyheter/inrikes/svenskt-motstand-stoppade-cia-planen_5778299.svd (consulted on 23/02/2015)

2007 from Prague to the United States to face trial[59].
Some raised questions about the participation of SAPO in his conviction in witness testimony at the US trial[60].

On 15 September 2009, Mr. Kassir was found guilty and sentenced to a term of life imprisonment despite the fact that several of the charges had been investigated and dropped in Sweden. The terrorism expert Magnus Ranstorp explained that: "There is a difference in respect to what kind of evidence is required for someone to be sentenced in European and American courts in cases like this."[61]

b) Djibouti case (2013)

The case concerns the rendition of two Swedish-Somalis, Ali Yasin Ahmed, 27, and Mohamed Yusuf, 29, who were captured in the East African country of Djibouti in August 2012 and placed under FBI custody there in secret prisons. They were subsequently renditioned to the United States in late 2012 to face terrorism charges in a New York court.

The USA turned to Sweden, requesting legal assistance, in the autumn of 2012. The chief prosecutor for security affairs, Hilding Qvarnström, said that: "there has to be serious reasons to not agree to provide legal assistance. The law is quite square and it says we should provide legal assistance if we can". By that, she considers that there is no problem with helping the United States to prosecute Swedes who have not been able to be prosecuted in Sweden, despite several years of surveillance and interception. "That's how the world works. It is not unusual."[62]

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59 AFP/The Local, "Swedish terror suspect extradited to United States", The Local, 25 Sep 2007, http://www.thelocal.se/20070925/8598, (consulted on 23/02/2015)

60 United States District Court, S.D. New York, U.S. v. KASSIR, (S.D.N.Y. Apr 09, 2009), https://casetext.com/case/us-v-kassir-6 (consulted on 23/02/2015)

61 TT, "Skillnad mellan europeiska och amerikanska domstolar", Dagens Nyheter, 12 May 2009, http://www.dn.se/nyheter/sverige/skillnad-mellan-europeiska-och-amerikanska-domstolar/ (consulted on 23/02/2015)

62 TT, "Säpo hjälpte USA åtala svenskar", Svenska Dagbladets, 24 May 2013, http://www.svd.se/nyheter/utrikes/sapo-hjalpte-usa-atala-svenskar_8205708.svd (consulted on 23/02/2015)

The two Swedish-Somali prisoners were taken to the United States after they had been indicted in secret and in their absence. The Swedish Foreign Ministry had previously claimed that the case was "a matter for Djibouti and the US, which Sweden had no way of influencing"[63].

It is said that "for some weeks before the rendition, there were secret negotiations between Djibouti and Stockholm for the return of the two Swedish nationals. Thomas Olsson, lawyer for the families, said that talks were well-advanced. *But then suddenly we got the information that they were sitting on a plane somewhere over the Atlantic on their way to the United States*,' he said"[64].

It appears that the men were interrogated for months in Djibouti with no charges pending against them because that would have been prohibited in the United States; "The Djiboutians were only interested in them because the United States of America was interested in them," said Yusuf's attorney. "The sequence described by the lawyers matches a pattern from other rendition cases in which US intelligence agents have secretly interrogated suspects for months without legal oversight before handing over the prisoners to the FBI for prosecution."[65]

On this case, the UN Working Group on Arbitrary Detention noted that "the Government of Sweden has not directly addressed the issues relating to cooperation between intelligence services and the provision of information, in particular where there is a danger of secret detention, torture, rendition or violations of the conditions necessary for a fair trial. The source has not addressed those elements in such detail that the Working Group can make any findings, but the Working Group will point out

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63 Ibidem.

64 Alice K Ross and Chris Woods, "European terrorism suspects secretly held in New York under false names", The Bureau Of Investigative Journalism, 11 January 2013, http://www.thebureauinvestigates.com/2013/01/11/european-terrorism-suspects-secretly-held-in-new-york-under-false-names/

65 Craig Whitlock, "Renditions continue under Obama, despite due-process concerns", The Washington Post, 2 January 2013, http://www.washingtonpost.com/world/national-security/renditions-continue-under-obama-despite-due-process-concerns/2013/01/01/4e593aa0-5102-11e2-984e-f1de82a7c98a_print.html

that such cooperation may provide grounds for responsibility in a case involving arrests abroad, such as the present case"[66].

c) Fikre case (2015)

This very recent case concerns the asylum seeker and American citizen Yonas Fikre who was transferred from Sweden to the United States on 13 February 2015. The "deportation" was executed by the Swedish security police (Säpo), on a chartered private jet. He claimed that he had been tortured in the United Arab Emirates on instruction of the FBI, after refusing to become an FBI informant. Charges in the United States have since been dropped[67].

The case began in 2010 when, he claims, he was approached by two FBI agents in Sudan. They pressured him to become an informant on the mosque and told him he'd face repercussions if he refused, he said. After he refused, a year later, secret police in United Arab Emirates picked him up, holding him for 106 days. He was tortured, made to sleep almost naked on a cold floor, beaten on the soles of his feet and forced into stress positions. "The FBI was behind it", Fikre said his interrogator told him. Fikre was released without charges and sought asylum in Sweden. Because he was on the no-fly list, he was barred from returning to the US on a commercial flight. Sweden rejected the request three years later, but chartered a private jet to return him to the United States, his attorney Thomas Nelson said"[68].

"Documents from the FBI, which SVT (Swedish National Television) has accessed, appear to confirm the torture in the United Arab Emirates a year later. His lawyer Hans Bredberg now claims that he never received a fair trial in Sweden - and thinks it is

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66 Mr. Mohamed Yusuf and Mr. Ali Yasin Ahmed v. Djibouti, Sweden and the United States of America, Working Group on Arbitrary Detention, Opinion No. 57/2013, U.N. Doc. A/HRC/WGAD/2013/57 (2014), para 68. http://www1.umn.edu/humanrts/wgad/57-2013.html

67 Fedor Zarkhin, "Portlander who claims he was tortured at FBI's behest and put on no-fly list back after 5 years", The Oregonian, 14 February 2015, http://www.oregonlive.com/portland/index.ssf/2015/02/portlander_allegedly_tortured.html

68 Ibidem. Fikre is suing the FBI, the National Security Agency and the federal government, among others, for putting him on the no-fly list and for the torture and other abuse he claims he suffered in United Arab Emirates.

wrong that his client was deported to the very country he had claimed had torture him.

"Nor is such that Sweden may be a country where one can contribute to support for terrorism, says Fredrik Milder, press secretary at the Swedish Security Police (Säpo).

"He would not disclose how much the case has cost or on what grounds Yonas Fikre was deemed a security risk in Sweden.

"International cooperation between countries is based on mutual trust, when a person is transferred between countries it occurs based on mutual trust. Obviously Swedish authorities have contacts with US authorities when it comes to stuff like this, says Fredrik Milder[69].

Importantly, the security police Säpo reportedly contacted Australian intelligence services after Julian Assange's residence application, which the Swedish Migration Board subsequently rejected.[70]

E) Swedish Policy towards extradition with US

Last but not least, Sweden, including courts and the executives, would have agreed to every extradition request that has been issued by the United States to Sweden since the year 2000.

Nils Rekke, senior prosecutor in Sweden, explained that authorities hold informal talks with the US regarding whether an extradition is possible prior to the extradition order being issued. Only if Swedish authorities think that there is no obstacle does the US formally file an extradition request[7172].

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69 Victor Stenquist, "Hävdade att han torterats av FBI – utvisad av Säpo", Aftonbladet, 13 February 2015, https://www.aftonbladet.se/nyheter/article20314783.ab

70 Assange affidavit, 2 December 2013, paragraph 98

71 KARIN THURFJELL, "Assange: Sverige har inte motsatt sig USA under 00-talet", 22 December 2011, Svenska Dagbladet, available on http://www.svd.se/nyheter/inrikes/assange-sverige-har-inte-motsatt-sig-usa_6715051.svd (consulted on 21/02/2015)

Consideration should also be given to the fact that "informal discussions have already taken place between US and Swedish officials over the possibility of the WikiLeaks founder Julian Assange being delivered into American custody, according to diplomatic sources"[73].

Also to be considered is the fact that the Pentagon has welcomed the arrest of Julian Assange and that the US Defence Secretary, Robert Gates, said on a visit to Afghanistan that it was "good news".[74]

In 2010, the US State Department spokesman PJ Crowley said it was possible the United States would make an extradition request for Mr. Assange but he said it was premature as the criminal investigation into WikiLeaks was still ongoing[75]. On 28 January 2015, a spokesperson for the Eastern District of Virginia confirmed that the criminal investigation into WikiLeaks is into its fifth year and is ongoing. (see Legal note 8, Fear of Inhuman and Degrading Treatment USA).

According to Eva Joly, "the case of Chelsea Manning, and now Edward Snowden's exile in Russia, are proof that Julian Assange has credible reason to fear extradition to the US if he goes back to Sweden. If, as we have seen, countries like France and Germany are unable or unwilling to withstand pressure from the United States," she asks "why

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72 Neither criminal procedure law nor the Freedom of the Press Act can protect Julian Assange from extradition to the United States since the latest [ ] "provides a list of circumstances in which official documents may be restricted from public dissemination, including situations involving "the security of the Realm or its relations with another state or an international organisation". This statement leaves much room for interpretation, and therefore it is possible that extraditing Assange could be justified as maintaining relations with the United States. Regardless, it is unclear whether Sweden's security interest could be extended to include the interests of allies, such as coalition forces in Iraq and Afghanistan": Molly Thebes, "The Prospect of Extraditing Julian Assange", N.C.J.Int'l L. & COM. REG., Vol.37, 2011-2012, p. 902.

73 Kim Sengupta (Diplomatic Correspondent), 8 December 2010, "Assange could face espionage trial in US", http://www.independent.co.uk/news/uk/crime/assange-could-face-espionage-trial-in-us-2154107.html# (last consulted 13/02/2015)

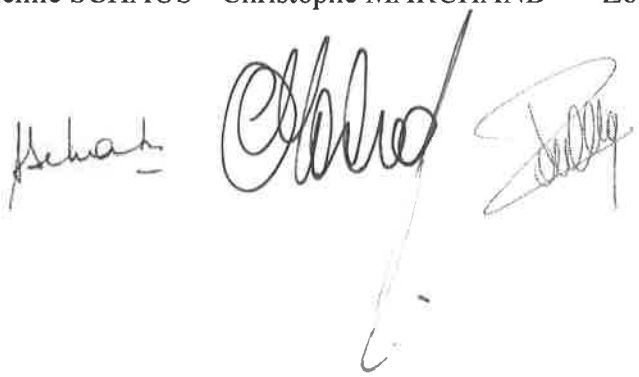
74 "Wikileaks founder Julian Assange refused bail", 8 December 2010, http://www.bbc.co.uk/news/uk-11937110

75 "Wikileaks founder Julian Assange refused bail", 8 December 2010, http://www.bbc.co.uk/news/uk-11937110

should we expect that a much smaller country like Sweden would be able to do so — or that its government would even want to?"[76]

Considering the points made above (A to E), it is more than reasonable to fear that Julian Assange will be extradited from Sweden to the United States..

Annemie SCHAUS Christophe MARCHAND Zouhaier CHIHAOUI[77]



76 Al Burke, "Solution to Assange case? Not interested - Swedish authorities decline to meet with distinguished visitor offering way out of legal impasse", Nordic News Network, 31 March 2014, http://www.nnn.se/nordic/assange/joly.pdf, (consulted on 21/02/2015)

77 Member of the Law firm "Just Rights".