Information from Sweden to the Special Rapporteur on Torture

The Special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has invited the Swedish Government to contribute to the report for the 52nd Session of the Human Rights Council in March 2023 on the topic “the duty to investigate crimes of torture in national law and practice”. The Swedish Government is grateful for this opportunity and hereby submits its information in accordance with the attached questionnaire.

***(i) Challenges, impediments and obstacles to effective national investigations and prosecutions of acts of torture:*** *What are the main impediments preventing full and prompt investigations into allegations of torture – consider matters such as gaps in legal and regulatory frameworks, political-cultural-leadership, institutional, practical and other challenges?*

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***(ii) Regulatory frameworks:*** *How is torture (and other forms of cruel, inhuman or degrading treatment or punishment, as applicable) criminalized in your national legislation? Please provide examples (and copies) of national laws that criminalize torture (and other forms of cruel, inhuman or degrading treatment or punishment, as applicable), and approaches to questions such as immunities, amnesties, statues of limitations, defences of superior orders, and sentencing.*

**Answer (please also see examples of national regulation in attached document):**

Torture can be defined under several categories under Swedish law, including, but not limited to, a number of criminal provisions in the Swedish Criminal Code. The following examples can be given.

* A person who inflicts bodily injury, illness or pain on another person or renders them helpless or in some other similar state is guilty of assault and is sentenced to imprisonment for at most two years (Chapter 3 Section 5 of the Swedish Criminal Code). If such an offence is considered gross, the person is guilty of gross assault and is sentenced to imprisonment for at least one year and six months and at most six years. When assessing whether the offence is gross, particular consideration is given to whether the act was life-threatening or whether the perpetrator inflicted severe bodily injury or serious illness or otherwise displayed particular ruthlessness or brutality. If the offence is considered exceptionally gross, the person is guilty of exceptionally gross assault and is sentenced to imprisonment for at least five and at most ten years. When assessing whether the offence is exceptionally gross, particular consideration is given to whether the bodily injury is permanent, or whether the act caused exceptional suffering, or whether the perpetrator displayed exceptional ruthlessness (Chapter 3 Section 6 of the Swedish Criminal Code).

The statute of limitations for assault is five years, for gross assault it is ten years and for exceptionally gross assault the statute of limitations is fifteen years (Chapter 35 Section 1 of the Swedish Criminal Code).

A person who performs sexual intercourse, or some other sexual act that in view of the seriousness of the violation is comparable to sexual intercourse, with a person who is not participating voluntarily is guilty of rape and is sentenced to imprisonment for at least three and at most six years. If such an offence is considered gross, the person is guilty of gross rape and is sentenced to imprisonment for at least five and at most ten years. When assessing whether the offence is gross, particular consideration is given to whether the perpetrator used violence or a threat of a particularly serious nature, or whether more than one person assaulted the victim or took part in the assault in some other way, or whether, in view of the method used or the young age of the victim or otherwise, the perpetrator exhibited particular ruthlessness or brutality (Chapter 6 Section 1 of the Swedish Criminal Code).

The statute of limitations for rape is ten years and for gross rape it is fifteen years (Chapter 35 Section 1 of the Swedish Criminal Code).

* A person who seizes and carries off or confines a child or some other person with intent to injure them physically or harm their health, or to coerce them into service, or to practise extortion is guilty of kidnapping and is sentenced to imprisonment for a fixed term of at least four and at most eighteen years, or for life (Chapter 4 Section 1 of the Swedish Criminal Code). A person who, in other cases than those referred to before, carries off or confines a person or deprives them of their liberty in some other way is guilty of unlawful deprivation of liberty and is sentenced to imprisonment for at least one year and at most ten years (Chapter 4 Section 2 of the Swedish Criminal Code).

The statute of limitations for kidnapping is twenty-five years, and for unlawful deprivation of liberty it is fifteen years (Chapter 35 Section 1 of the Swedish Criminal Code).

Besides the examples given above, torture could, e.g., also constitute the following offences:

* gross unlawful coercion punishable by imprisonment for at least nine months and at most six years (Chapter 4 Section 4 of the Swedish Criminal Code). The statute of limitations for this offence is ten years (Chapter 35 Section 1 of the Swedish Criminal Code);
* making a gross unlawful threat punishable by imprisonment for at least nine months and at most four years (Chapter 4 Section 5 of the Swedish Criminal Code). The statute of limitations for this offence is ten years (Chapter 35 Section 1 of the Swedish Criminal Code);
* crimes against humanity punishable by imprisonment for at least four and at most eighteen years, or for life (Section 2 of the Act on criminal responsibility for certain international crimes [2014:406]). The statute of limitations for this offence is abolished (Chapter 35 Section 2 of the Swedish Criminal Code); and
* gross war crimes punishable by imprisonment for at least four and at most eighteen years, or for life (Section 11 of the Act on criminal responsibility for certain international crimes [2014:406]). The statute of limitations for this offence is abolished (Chapter 35 Section 1 of the Swedish Criminal Code).

Furthermore, Swedish courts have universal jurisdiction with respect to all acts covered by the term torture under Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to attempts to commit these offences (Chapter 2 Section 3 of the Swedish Criminal Code).

***(iii)******Elements of human rights-compliant investigations and prosecutions:*** *Please provide concrete examples of laws, regulations or practices that ensure that torture investigations and prosecutions are: Independent and impartial,*

1. *Prompt,*
2. *Adequate and effective,*
3. *Accessible and safe,*
4. *Open to public scrutiny and transparent, and*
5. *Secure rights and remedies for victims and survivors.*

See joint answer to question (iii) and (iv) below under (iv).

***(iv) Mechanisms/institutions/entities involved in complaints, investigations and prosecution:*** *What are the institutional arrangements in place to secure independent and effective investigations and prosecutions of allegations of torture (and other forms of cruel, inhuman or degrading treatment or punishment, as applicable)? How are complaints initiated? Please elaborate on competence, composition and expertise, working methods, legal and regulatory framework etc.*

**Answer to question (iii) and (iv):**

Complaints made by detained persons or inmates

Anyone who is detained or serving a sentence in a prison shall undergo an initial health exam by a nurse. All healthcare personnel at the Swedish Prison and Probation Service (SPPS) operate under strict patient confidentiality. Inmates are asked about their healthcare needs and can report allegations of ill-treatment. The Swedish Prison and Probation Service’s (SPPS) Directions for Health and Medical Care (2019:13) state that a nurse shall inspect the inmate’s skin for any injuries (new or old) and for needle marks. Any injuries are described and documented in the medical file. There is an option of taking photos (which requires the inmate’s consent) and/or marking injuries on a body chart. The nurse assesses if a doctor needs to be consulted and/or if the injuries are such that the inmate should be admitted to a hospital. Injuries are treated according to the doctor’s recommendation, which are documented in the medical files. The inmate has the right to take part of his or her medical files. If an inmate reports that the injuries arose in connection with the treatment or handling by the authorities during arrest or in custody, an incident report is written (based on a suspected violation against the inmate) and filed in the SPPS’s official incident reporting system (ISAP). This report is assessed by the chief manager and based on the content of the report, necessary actions are taken. The inmate has the possibility of filing a formal complaint to the police. If the incident report provides an indication of a crime having been committed on the SPPS’s premises (such as a serious violation against the inmate), a police report is filed.

A regulation (*Förordning (2022:302) om anmälningsskyldighet för Kriminalvården i vissa fall*) entered into force on 1 July 2022 which stipulates that if an inmate or any other person covered by the activities of the Swedish Prison and Probation Service is caused bodily injury that can be assumed to be due to the actions or omission of the agency´s employees, contractors or hired personnel, the SPPS must make a report to the Police authority.

Investigations and prosecutions

The Swedish Police Authority investigates reported crimes and works continuously with the development of the investigative methodology, with the aim of ensuring an efficient and legally secure handling of both crime suspects and crime victims.

Actions that could constitute torture can come to the attention of the Police Authority by means of a complaint from a private person or organization or through the police's own operations or investigations. The Police Authority also has internal structures to illustrate misconduct within the authority and to be brought to attention of any crimes committed by police employees.

In principle, a Swedish prosecutor has an obligatory duty to prosecute. From this principle follows a duty to undertake preliminary investigations (see e.g. Govt Bill 2011/12:10, p. 11). A preliminary investigation must, as a main rule, be opened as soon as there is reason, due to an accusation or on other grounds, to assume that an offence that is subject to public prosecution has been committed (Chapter 23, Section 1, first paragraph of the Code of Judicial Procedure).

A preliminary investigation has two main aims. The first is to investigate who may be reasonably suspected of the offence and whether there are sufficient grounds to prosecute them. The second is to prepare the case so that evidence can be presented at a main court hearing. (Chapter 23, Section 2 of the Swedish Code of Judicial Procedure).

A preliminary investigation must be conducted objectively. In a preliminary investigation, the investigation leader and anyone assisting them seeks out, preserves and considers circumstances and evidence that are both favourable to the suspect and unfavourable to the suspect (Chapter 23, Section 4, first paragraph of the Code of Judicial Procedure).

The preliminary investigation shall be conducted as expeditiously as possible (Chapter 23, Section 4, second paragraph of the Code of Judicial Procedure).

The decision to open a preliminary investigation is taken by the Police Authority, the Security Service or the prosecutor (for certain offences, other government agencies may also lead the preliminary investigation). If the preliminary investigation was initiated by someone other than a prosecutor, a prosecutor must, under certain circumstances, take over leadership of the preliminary investigation (Chapter 23, Section 3, first paragraph of the Code of Judicial Procedure). A prosecutor leading a preliminary investigation may enlist the assistance of, for example, the Police Authority (Chapter 23, Section 3, second paragraph of the Code of Judicial Procedure).

The responsibilities of the preliminary investigation leader are stated in Section 1a, second paragraph of the Preliminary Investigations Ordinance (*Förundersökningskungörelsen*). The provision states that the investigation leader is responsible for the preliminary investigation as a whole, and that they must ensure that the investigation is conducted effectively and in a way that satisfies the individual’s interest in due process. The preliminary investigation leader must also give those assisting them any instructions necessary for their work. As well as the duties stated in the provision, the investigation leader’s primary duties are to decide any coercive measures, conclude the investigation as soon as there is reason to do so, and monitor and control the running of the investigation. (Govt Bill 2015/16:58, p. 36–37.)

When the preliminary investigation is complete, a prosecutor must determine whether a prosecution will be brought (Chapter 23, Section 10 of the Code of Judicial Procedure). As mentioned above, there is in principle an obligatory duty to prosecute. This duty is regulated in Chapter 20, Section 6 of the Code of Judicial Procedure, which states that unless otherwise prescribed, prosecutors must bring prosecutions for offences that are subject to public prosecution. The basic premise is that the prosecutor is obliged to bring a prosecution if, in an objective assessment, the evidence is such that a conviction can be expected in court (e.g. Govt Bill 2011/12, p. 10).

Prosecutors also have a responsibility to, under certain conditions prepare and conduct the victim’s claim for damages in a trial, which is often the case when the victim is not entitled to a counsel for an injured party (Chapter 22, Section 2 of the Code of Judicial Procedure).

Composition of the Swedish Prosecution Authority

The Swedish Prosecution Authority is led by the Prosecutor-General, and consists of the Head Office, three prosecution development centres, seven Public Prosecution Areas, a National Public Prosecutor Department and the Separate Public Prosecution Office.

The Separate Public Prosecution Office differs from the public prosecution offices in that it is the only one that targets specific professional categories. It processes suspected offences involving police officers, prosecutors, judges and members of the Parliament (Riksdag). It investigates all kinds of offences, whether committed on duty or outside of work.

The Separate Public Prosecution Office is the only public prosecution office that answers directly to the Prosecutor-General. The reason for this is that the Separate Public Prosecution Office conducts activities that demand particular integrity. The Prosecutor-General and the Deputy Prosecutor-General are appointed with special security of tenure, by decision of the Government (Chapter 7, Section 3 of the Code of Judicial Procedure, *Rättegångsbalken*).

For reasons of legal certainty, all the activities of the Separate Public Prosecution Office are conducted separately from regular police and prosecutor activities. All prosecutors working at the Separate Public Prosecution Office are chief public prosecutors with long experience of the profession (Section 11 of the Public Prosecutors Ordinance, *Åklagarförordningen*).

The Swedish prosecutors are independent and separate from the Government. This principle of independence is fundamental to the Swedish form of government. The Government is constitutionally prevented from commenting on or influencing the independent decisions of the prosecutor. According to the Swedish Instrument of Government “no public authority, including the Riksdag, or decision-making body of any local authority, may determine how an administrative authority shall decide in a particular case relating to the exercise of public authority vis-à-vis an individual or a local authority, or relating to the application of law” (Chapter 12, Article 2). This applies to every decision made by a prosecutor. Each prosecutor is solely responsible for their decisions and these decisions cannot be changed by a prosecutor’s superior. An individual affected by a prosecutor’s decision, such as an injured party, may request that it be reviewed by another prosecutor at a higher judicial level. Hence, only the Prosecutor-General, the Deputy Prosecutor-General, directors of public prosecution and deputy directors of public prosecution can review a decision made by a public prosecutor.

***(v) Victim participation and protection:*** *What measures are in place to secure victim participation in proceedings involving allegations of torture, and how are their rights and safety secured? Are there special arrangements and protections available for victims of sexual and gender based violence? Please give consideration also to witness protection schemes, as well as whistleblower legislation and protection and other measures taken to ensure protection of complainants against reprisals.*

**Answer:**

Protection, legal aid, victim participation and other support activities

The Police Authority has a responsibility to protect people who are threatened. The work is adapted to be able to help people with different needs for protection. In order to determine a victim’s need for protective measures during the preliminary investigation and court proceedings, the police conducts an individual protection assessment as soon as possible. In the assessment, special consideration is given to the seriousness of the crime and the victim's personal circumstances. A claimant who is under the age of 18 is always considered to have a special need for protection.

When other protective measures are not deemed sufficient, special personal security work may be needed. The purpose of the special personal security work is to secure the legal process and to be part of the work to fight serious or organised crime. The special personal security program is the most intrusive protection measure. It is used in exceptional cases and is sometimes called the witness protection program. For special personal security work, it is required that the person has significance for the outcome of a legalprocess relating to serious or organised crime. Regulation (2006:519) on special personal safety work, etc. specifies which criteria must be met in order for special personal safety work to be carried out. In the first place, special personal security work is carried out for witnesses, informants, employees of the judiciary or their close relatives.

The court may, under certain circumstances, appoint a legal counsel for a victim (counsel for an injured party) when a preliminary investigation has been initiated. The counsel assists the victim during the preliminary investigation and during the court proceedings. The legal counsel takes care of the victim’s legal interests and claims compensation when the case is prosecuted. The legal aid is free of charge for the victim.

The victim may also be accompanied by a support person during the preliminary investigation and the court proceedings.

During the judicial proceeding the court may decide that a party or an audience may not be present in the courtroom during a testimony of a party (for example the victim) or a witness. The party may then follow the meeting through audio transmission or audio and video transmission (Chapter 36 section 18 and chapter 37 section 3 Code of Judicial Procedure).

A victim may follow the hearing through audio and video transmission in a separate room, except during his or her testimony.

If there are reasons for it, the court may decide that the person who is to participate in a meeting may participate by audio transmission or audio and video transmission from another place.

The social services within the municipalities also have an overall responsibility for support of victims of crime. Help is also offered from the health care within the regions, especially in psychiatry. In addition, civil society organisations cover a wide range of support needs for victims of crime. For example, the organisation Victim Support Sweden offer information, advice and support services to all victims and witnesses in over 25 different languages and is also available by phone through the European Victim Support Number (116006) seven days a week.

Whistleblowing protection in Sweden

A new Act on reporting of wrongdoings entered into force the 17 of December 2021 (the WhistleblowingAct). The new act implements the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (the Directive).

The Whistleblowing Act supplement other already existing legal protection for whistleblowers. It applies to reporting persons (a whistleblower) who, in a work-related context, report information concerning irregularities in the public interest. This may be the case if, in a work-related context, a person witnesses or becomes aware of crimes that could constitute torture. Such acts are always considered a matter of public interest.

A reporting person should not be liable for breaches of restrictions on disclosure of information. A reporting person should neither be made liable for the acquisition of or access to information. Furthermore, reporting persons must be entitled to remedies and compensation for damage from the person who exposes the reporting person to retaliation because of the reporting or has hindered or has tried to prevent reporting. The protection also applies when a person considers reporting and for that reason consults his or her trade union.

The scope of persons to be protected is wide and includes for example workers, self-employed persons, volunteers and trainees, persons belonging to the administrative, management or supervisory body of an undertaking, including non-executive members, and shareholders who are active in the undertaking.

***(vi) Complex investigations:*** *Please share concrete examples of handling complex investigations and prosecutions, including those where the crime was committed outside the territory of the prosecuting state (extradite or prosecute), during ongoing armed conflict or occupation or ongoing public emergency. Do you have experience of mutual legal assistance in torture cases, or universal jurisdiction? Also please share information about handling situations where both domestic and international investigations and prosecutions are occurring simultaneously.*

**Answer:**

As previously stated, Swedish courts have universal jurisdiction with respect to all acts covered by the term torture under Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to attempts to commit these offences.

According to information from the The Swedish Prosecution Authority Sweden exercises universal jurisdiction for core international crimes and has conducted several large-scale investigations relating, for example, to the genocide in Rwanda 1994 and one trial relating to mass-executions committed in a prison in Iran in 1988.

In these cases the investigations and the following court proceedings have, followed by requests of mutual legal assistance, partly been conducted in other state’s territories, for example in Rwanda and recently in Albania.

In early 2022 Sweden extradited one individual to Rwanda. During the preceding extradition process a national criminal investigation was launched in order to secure accountability for the offence under the principle of *aut judicare aut detere*. Once it was decided that the individual would be extradited the national investigation was closed.

Moreover, one case related to war crime of torture and seriously aggravated assault (according to domestic law) committed in 2012 in Syria led to the first judgment universally on war crimes committed in the Syrian armed conflict. The judgement was rendered in 2016. In this case mutual legal assistance was used to locate the victim in a third state.

***(vii) Evidence collections and innovation:*** *Please provide examples of innovative practices to secure evidence collection and any associated challenges around use of new technologies, open source documentation, application of the Istanbul Protocol[[1]](#footnote-1), or other innovative practices and developments.*

**Answer:**

According to information from the The Swedish Prosecution Authority, the core evidence in the Syrian case mentioned above was a video recording of the offence and digital forensic analysis played an important part of the case. This has been the case in several core crimes investigations in Sweden and is of particular value, seeing that there often are impediments to execute investigative measures in the territory of the state where the actual crime scene is located.

In Swedish investigations relating to offences committed by ISIL/Daesh in Syria and Iraq, Sweden cooperates with IIIM and UNITAD to identify evidence linked to Swedish investigations. Both UNITAD and IIIM have advanced technology to assist forensic analysis and identify evidence.

1. The Manual on the Effective investigation and Documentation of Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (Istanbul Protocol) [↑](#footnote-ref-1)