

Human Rights Watch

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Egypt Violated Diplomatic Promises of Fair Trial and No Torture for Terrorism Suspect

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The Egyptian military court conviction of accused terrorism suspect Ahmed Agiza, who was convicted on April 27, violated fair trial standards and failed to address his allegations that he was tortured, Human Rights Watch said today. Sweden expelled Agiza in 2001 after the Egyptian government promised that he would not be subject to torture or an unfair trial upon return.

The Swedish government expelled Agiza, an asylum seeker residing in Sweden with his wife and five children, in December 2001 following diplomatic assurances of fair treatment from the Egyptian authorities. Under international law, however, the absolute prohibition against torture includes the obligation not to send a person to a country where he or she is at risk of torture or ill-treatment.

The Egyptian authorities failed to honor their diplomatic promises and their own human rights obligations under international law, said Rachel Denber, acting executive director of Human Rights Watch's Europe and Central Asia Division. The Swedish government never should have returned Agiza to a country where torture is routine and where suspected militants simply don't get fair trials. Sweden must now answer for its own complicity in these abuses.

Although Agiza testified in the military court proceedings that he had been tortured in prison, the court permitted Agiza to be examined only by a prison doctor. Despite the fact that the prison doctors report indicated that Agiza had sustained physical injuries while in prison, the court denied the defense's request for a forensic examination to establish how such injuries occurred and failed to commence an investigation into the torture allegations.

Agiza's family members and Egyptian human rights organizations also alleged that he had been tortured and ill-treated.

Agiza also testified in court that after having filed a formal complaint about the torture he suffered in Mazra'at Tora prison, he was transferred to another prison, Abu Zabal, where he was put in punitive isolation. He spent a total of 46 days in Abu Zabal before being transferred back to Mazra'at Tora. At the April 20 military court hearing Agiza told his defense lawyers that an officer of the Egyptian security forces (mabahith) warned him after his hearing on April 13 not to mention his torture or ill-treatment again in court.

Agiza's retrial in April he had been convicted in absentia in 1999 was conducted after a delay of more than two years following his forcible return to Egypt in December 2001. Moreover, the retrial was conducted not in an ordinary criminal court, but in a military court in which the proceedings do not meet international fair trial standards.

A Human Rights Watch representative attended all four sessions of Agiza's trial and documented a catalogue of fair trial violations, including the rights to a speedy trial and to a trial by a competent, independent and impartial tribunal. The trial also violated Agiza's right to defend himself, including by adequate access to counsel and with adequate time and facilities to prepare the defense, his right to call and examine witnesses, and his right to appeal the verdict to an independent tribunal.

Egyptian authorities relied upon secret evidence, which was not made available to Agiza's lawyers. Defense lawyers were not permitted adequate access to the case file, nor were they granted sufficient time to obtain documents and prepare materials critical to the defense. The defendant was not permitted sufficient time to consult with his lawyers, and was sometimes granted consultations of only 10 to 15 minutes immediately before commencement of a hearing. The court also refused the defense's request to allow witnesses to give testimony to counter the government's charges.

Agiza was sentenced to 25 years in prison with hard labor for membership in an organization whose aim is to overthrow the Egyptian government by violent means. He was convicted on the same charge in absentia in 1999 while in exile in Sweden. This was the first-ever retrial in Egypt of a person convicted in absentia by a military court. Agiza does not have the right to challenge the decision, and only Egypt's President Hosni Mubarak can overturn the military court verdict.

Egypt has been under emergency rule for most of the past 35 years, and continuously since October 1981. Law enforcement officials routinely invoke their authority under the emergency law to arrest individuals at will and detain them without trial for prolonged periods. Officials also invoke their powers under emergency law to refer civilians to military or exceptional state security courts, and to prohibit strikes, demonstrations and public meetings.

The United Nations including the Committee against Torture and the Special Rapporteur on Torture as well as Egyptian and international human rights organizations have criticized Egypt for its continuing state of emergency, fair trial violations in military and state security courts, and widespread torture and ill-treatment of detainees.

Given this environment and the well-documented evidence of the routine use of torture in Egypt, the Swedish government has repeatedly stated that it expelled Agiza based on diplomatic assurances from the Egyptian authorities that he would not be subject to torture and would receive a fair trial. The Swedish government also agreed on a post-return arrangement with the Egyptian authorities in order to monitor Egypt's compliance with those guarantees.

The Swedish government's monitoring, however, has been severely deficient and fell far short of international prison-monitoring standards, including those employed by the U.N. Special Rapporteur on Torture and the International Committee of the Red Cross. Agiza was not visited by Swedish diplomats until five weeks after his return, despite the fact that torture and ill-treatment are most likely to occur within the first days of detention.

Swedish officials gave Egyptian prison authorities several days advance notice of the visits. Not a single visit with Agiza was conducted in private. Indeed, during some visits there were up to 10 other people in the room at the time, including the prison warden and the guards responsible for supervising Agiza. Swedish embassy staff members in Cairo were not trained to detect physical or psychological signs of torture.

With regard to the military court trial, Swedish diplomats were denied access to the first two hearings and were thus at a severe disadvantage in determining whether or not Egypt's fair trial guarantees were respected and whether the court adequately addressed Agiza's claims of torture. Moreover, the delay in their attendance limited the Swedish government's ability to address Agiza's torture allegations, and the numerous fair trial violations with its Egyptian counterparts as a function of the post-return monitoring arrangement meant to ensure that Egypt honored its diplomatic assurances.

Agiza's case highlights the inherent problem of relying on assurances from countries where torture and other human rights abuses are routine, said Denber. The Swedish authorities wanted to get rid of someone alleged to be involved in political violence and wrongly decided to accept Egypt's promises. Egypt's blatant failure to address its torture epidemic should have ruled out this route from the start.

In the cases of Agiza and Mohammed al-Zari, who was expelled with Agiza from Sweden to Egypt in 2001, the U.N. Human Rights Committee as well as international and national human rights organizations have criticized Sweden for violating the prohibition against returning a person to a country where he or she is at risk of torture. Agiza has submitted an individual communication to the U.N. Committee against Torture, and al-Zari has submitted an application to the European Court of Human Rights in Strasbourg. Both men are seeking remedies for the violation of being forcibly returned despite the clear risk of torture.

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