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POLICY BRIEF SERIES

Universal Jurisdiction Under Threat of Hostage-Taking: Sweden's Release of Iranian War Criminal Nouri

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On 15 June 2024, Sweden released Hamid Nouri, a convicted war criminal, in exchange for two Swedish citizens held hostage by Iran. The case is noteworthy in several respects, beyond the release of Nouri. It is the first case in which an Iranian official has been convicted for atrocity crimes committed in Iran by the regime post-1979. Moreover, Nouri was arrested on 9 November 2019 at Stockholm's Arlanda Airport while travelling there as a tourist. Victims and persons acting on the victims' behalf allegedly lured him to Sweden while informing the Swedish police of his arrival. Finally, Nouri was convicted under the principle of universal jurisdiction. Such cases normally concern defendants who have committed crimes in a foreign country and subsequently migrate to (with the intention to reside in) a country where their crimes are ultimately discovered and tried before a court. Universal jurisdiction cases where the defendant is just passing by for a brief period are rarer, as they require more proactive measures by law enforcement.

This policy brief is divided into three parts. First, an explanation of the case, the gravity of the crimes, the outcome of the trial, and reactions to the conviction. Second, a discussion of how universal-jurisdiction prosecution is under threat from countries that engage in hostage-taking. Finally, suggestions are made on how to counter authoritarian states that are willing to engage in hostage-taking in the context of universal jurisdiction cases.

The author of this policy brief has been involved in the Nouri case in two capacities. Two days before Nouri's arrival in Sweden, I was contacted in my capacity as an international law professor by lawyers acting on behalf of the victims, who told me that the Swedish police thought that the crimes were subject to statute of limitation. It appeared that the police had overlooked a legislative amendment of 2010 which – in relation to murder, crimes against international law (war crimes), genocide and terrorism – provides that there is no statute of limitation. I wrote, on a *pro bono* basis, an opinion pointing out the 2010 amendment and explaining why Swedish courts still have jurisdiction.[1] Moreover, at the request of the prosecution in the case, I wrote an opinion[2] and was heard during the trial before a district court in Sweden on the legal classification of the alleged conduct and the requisite elements of the alleged war crime to reach a conviction.

1. The 1988 Mass Executions and the Conviction of Nouri

Nouri was convicted on 14 July 2022 by the Stockholm District Court, upheld by the Svea Court of Appeal on 19 December 2023, for involvement in show-trials and mass executions in 1988 of persons belonging to two groups, members of the People's Mojahedin Organization of Iran ('PMOI') and members of left-wing groups.[3] The Supreme Court denied leave to appeal on 6 March 2024, which rendered the Court of Appeal judgment final and made it enter into force.[4] Among several important legal issues dealt with during the trial, the following may be noted.

The prosecutor's indictment contained two charges, one relating to each group of victims, as explained below. The mass executions happened in the context of the end of the Iran–Iraq war, where the PMOI had, jointly with Iraqi armed forces, fought against Iran. The executed prisoners had been captured several years earlier and had not themselves been involved in the war. The Stockholm District Court still found a nexus between the Iran–Iraq war and the execution of the PMOI members. As a result, Nouri was convicted under the first charge for having committed a crime against international law (a war crime). In contrast, since the left-wing groups were not involved in the Iran-Iraq war, Nouri was prosecuted and convicted under the second charge for murder.

The acts rather appear to be execution as a crime against humanity. However, Swedish law did not have crimes against humanity in the books before 1 July 2014, and it cannot be applied to events retroactively. That is why the prosecution (and the court) relied on other legal classifications to convict.

Quite late in the district court trial, the defense challenged the jurisdiction of Swedish courts. The reliance on universal jurisdiction – that is, for acts committed outside Sweden, without any connection to Sweden – had not really been tested in any of the previous war crimes trials in Sweden. The Nouri defense was obviously inspired by the argument made in parallel war-crimes proceedings in Stockholm relating to alleged crimes in then southern Sudan (the 'Lundin Oil' case). Part of their argument was that Nouri was just

[1] Mark Klamberg, "Kan folkmord, folkrättsbrott (grovt brott) och mord begångna juli-augusti 1988 åtalas idag i Sverige?" ["Can genocide, crimes against international law (gross crime) and murder committed in July-August 1988 be prosecuted today in Sweden?"], Stockholm, 7 November 2019 (Swedish: https://www.legal-tools.org/doc/1lu4sjxa/; English: https://www.legal-tools.org/doc/vgb607kb/).

[2] Mark Klamberg, "Underlag författat av Mark Klamberg, professor i folkrätt vid Stockholms Universitet", Stockholm, 24 March 2020 (https://www.legal-tools.org/doc/007itrcc/).

[3] District Court of Stockholm, Case of Nouri, Judgment, 7 July 2022, No. B 151255-19 (https://www.legal-tools.org/doc/nsrtbz/); Svea Court of Appeal, Case of Nouri, Judgment, 19 December 2023, No. B 9704-22 (https://www.legal-tools.org/doc/5k2hidtl/). For a previous comment, see Mark Klamberg, "A Swedish court just upheld the conviction of a former Iranian official. It's a warning to all perpetrators of atrocity crimes", *New Atlanticist*, 20 December 2023.

[4] Supreme Court of Sweden, Case of HN, Decision, 6 March 2024, No. B 204-24 (https://www.legal-tools.org/doc/smi3sy5d/).

passing through, making the connection to Sweden too thin. Ultimately, the Supreme Court of Sweden ruled in the Lundin Oil case that Swedish courts could exercise universal jurisdiction, a ruling which the court in the Nouri case followed.[5]

The Stockholm District Court, as upheld by the Svea Court of Appeal, determined Nouri's sentence to life imprisonment. It is not entirely accurate that Nouri remains unpunished because of his release. There is no possibility of release on bail in Sweden when awaiting trial, which means that for serious crimes such in this case, the defendant is held in a detention centre with limited or, depending on the circumstances, no access to the outside world. The conditions are harsher than in prisons. This is perceived as acceptable as such detention normally only lasts a few months, not years. Pursuant to Swedish law, the time spent in detention awaiting and during trial is to be regarded as served prison time in case of conviction. This essentially means that Nouri served prison time from 9 November 2019 until 15 June 2024, when he was released, that is, 4.5 years. In case of life imprisonment, the convicted person may ask for commutation to a time-limited prison sentence, but not below 18 years. The commutation of all prison sentences in Sweden is determined by a specific district court (in Örebro). However, Nouri only served one quarter of the minimum prison term available under normal circumstances, although not all lifetime sentences are commuted. Nouri may be free now, but he has also served prison time.

2. Reactions to the Case

The victims and their families along with non-governmental organizations ('NGOs') such as Trial International welcomed the arrest, the trial and the conviction. It was special in several regards. Most importantly, it was the first trial in the world in which someone in the Iranian regime was held criminally accountable for acts committed by the current Iranian regime, and more specifically the 1988 mass executions. It was also perceived as a major step for universal-jurisdiction prosecution in general, for the manner in which Nouri was arrested upon arrival in Sweden, the police and prosecution acting on short notice compared with other cases where the perpetrator lives in a new country for a long period and the police and prosecution take their time to act. Furthermore, although not a global power, Iran is still perceived as a regional heavyweight, and thus the prosecution involved a risk for Sweden as a state, partly because it has among its population a large Iranian diaspora, including some who travel to their country of origin. It should be noted in this context that the authorization procedure, required for prosecution on extraterritorial basis, took the Swedish government some three months,[6] quite a long period which indicates hesitation on the part of the government.

The Iranian regime protested against the arrest, trial and conviction of Nouri. The process implicated the regime and some of its most senior leaders, including the late Ebrahim Raisi, member of Tehran's 'death commission' during the 1988 mass executions, later president of the Islamic Republic (2021–2024). Although there were few official statements during the trial on negotiations between Sweden and Iran, it was clear that the Iranian regime was seeking the release of Nouri.

3. Swedish Hostages in Iran and the Release of Nouri

At the time of Nouri's conviction in Stockholm, Iran held three Swedish citizens as prisoner-hostages. Their fates vary dramatically in the sense that two of them – Floderus and Azizi – were freed and could return to Sweden as a result of the release of Nouri, while the third person – Djalali – is still a prisoner in Iran.

Before Nouri's release, there was a discussion in Swedish media on whether there was a need to change Swedish law to permit such an exchange or if existing legislation was sufficient. Two options were entertained on how existing legislation would permit his release, either through the Swedish government granting clemency (pardon), which would have released Nouri immediately, or an agreement between Sweden and Iran that Nouri would serve the remainder of his conviction in Iran.[7] In the end, the release was based on clemency,[8] a power at the discretion of the cabinet (pursuant to Chapter 12, Section 9 of the Instrument of Government which forms part of the Swedish Constitution).[9]

Already before the arrest of Nouri, Iran detained Ahmadreza Djalali in 2016 and convicted him in 2017 (confirmed in 2018) to death for espionage. Djalali is an Iranian-Swedish disaster-medicine doctor, lecturer and researcher. He was in Iran prior to his arrest following an invitation from the University of Tehran and Shiraz University. At the time of his arrest, Djalali had permanent residency in Sweden, and he was granted Swedish citizenship in 2018 as part of an effort of the Swedish government to strengthen their bargaining position *vis-à-vis* the Iranian government. There have been broad calls for his release, including from his family, employer, NGOs such as Amnesty International, the Working Group on Arbitrary Detention, Swedish parliamentarians, and newspapers.

Johan Floderus is a Swedish diplomat and European Union ('EU') official who was detained in Tehran during a private visit (as a tourist) to a friend, on 17 April 2022, that is, at the end of the Nouri trial before Stockholm District Court. Floderus speaks Persian following his Swedish military service in a unit at the 'Interpretation School' where he learned the Persian dialect Dárí and a semester in Tehran before he commenced studies at Oxford University.[10] The detention of Floderus was kept confidential by the Swedish government – news about it first became public in September 2023. Similar to the Djalali situation, there were broad calls for his release, including from EU officials. What later proved to be of some importance for the handling by the Swedish government is that, at the time, there was no travel advice of the Swedish Ministry of Foreign Affairs to Swedish residents or citizens against going to Iran. It was only introduced on 28 April 2022, 11 days after Floderus was detained. The advice explicitly stated that there was a risk for non-Iranians to be arbitrarily detained. It was reinforced on 23 June 2022, advising against travelling to Iran regardless of purpose.

The third person to be detained was Saeed Azizi, an Iranian-Swedish dual national, who travelled to Iran on 12 November 2023. Until his release, there was very little information about his case in Swedish media.

The Swedish government's position differed slightly in relation to the three Swedes. While the government has consistently

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5 Supreme Court of Sweden, Case of AS, Decision, 10 November 2022, No. Ö 1314-22 (https://www.legal-tools.org/doc/shjt4fmi/).

6 Request from the Prosecutor-General to the Government for Authorization to Prosecute, 28 September 2020, Ministry of Justice Dnr. Ju/BC 2020/00799 (https://www.legal-tools.org/doc/7jn7pdwo/); Decision by the Government, 22 December 2020, Ministry of Justice Dnr. Ju/BC 2020/00799 (https://www.legal-tools.org/doc/oluboxim/).

7 Erik Ohlsson and Ali Lorestani, "Livstidsfånge kan gå fri – i utbyte mot Iranfängslade svenskarna", *Dagens Nyhether*, 12 December 2024; Jan Sundstedt, "Iransk-svensk fångväxling tänkbar", *Nya Dagbladet*, 19 December 2023.

8 Government of Sweden, in "Johan Floderus och Saeed Azizi har kommit hem till Sverige", AV-recording of press conference, 16 June 2024, at the 09:00 minute-mark.

9 Instrument of the Government, 6 March 1974, No. 1974:152 (https://www.legal-tools.org/doc/gv3fsawb/).

10 Gabriel Gavin and Charlie Duxbury, "'We just want Johan back'", *Politico*, 17 April 2024; Simon Uggla, "Floderus: Insåg att jag inte kunde leva på hoppet", *Svenska Dagbladet*, 3 July 2024.

described Floderus and Azizi as innocent hostages, and called for their release, the calls relating to Djalali have primarily focused on procedural deficits during his trial in Iran, seeking to persuade Iran not to implement the death sentence.

Sweden released Nouri on 15 June 2024 and, in exchange, Floderus and Azizi were set free and returned to Sweden the next day.[11] Amnesty International described it as a "Staggering blow to justice"[12] and Trial International stated that the release was "wrong and will only embolden Teheran to kidnap more foreigners in the future".[13]

The main argument in favour of Nouri's release was obviously that two hostages were set free. In addition, it could be argued that trials for atrocity crimes serve several purposes beyond punishing the perpetrator, including creating a historical record and recognizing the damage caused to victims. Even though Nouri was released, the historical record of his crimes has been established by Stockholm District Court, respecting all the rights of Nouri as the defendant, the same that he had previously denied to his victims. Some might argue that the creation of this historical record was the most important contribution of the Nouri trial in Stockholm, a record that will prevail.

While the anger and outrage outside Sweden were focused on Nouri being set free, the debate in Sweden had at least two additional country-specific components. First, by releasing Nouri, the Swedish government lost its strongest card to set Djalali free, which caused outrage from Djalali's family and other persons and organizations supporting his cause. The family has described this in terms of "discrimination",[14] hinting at the ethnic background of Floderus compared to Djalali's. The Swedish government explained that their Iranian counterpart would not budge since they viewed him as an Iranian national. Djalali was not a Swedish citizen when he was arrested and his detention happened before the arrest of Nouri, which made the situation different compared to that of Floderus and Azizi.[15] Floderus' social and professional background should probably not be downplayed. He had served in a prestigious military unit, was educated at Oxford University, and worked in the immediate staff of the Swedish EU commissioner in Brussels. Although early in his career, Floderus arguably belongs to the Swedish and EU foreign policy and security establishment. From the perspective of the Iranian regime, Floderus was an excellent bargaining chip to obtain the release of Nouri.

Second, one has to consider the domestic Swedish political discourse. Following the 2004 Indian Ocean earthquake and tsunami where 543 Swedes died, the evacuation of Swedish citizens from Lebanon in the context of the Israel–Hezbollah war of 2006, and attempts of Swedish *jihádís* to return to Sweden from Syria after the fall of the Islámic State or Daesh in 2019, there has been a debate in Sweden on the extent to which the Swedish government should help Swedish nationals abroad who travel to places of manifest risk of natural disasters, armed conflict or authoritarian oppression. A national consensus has gradually emerged that the key factor in such situations is whether the Swedish Foreign Ministry has advised against travel. The relevance of such travel recommendations was originally limited to whether an individual would be covered by a private insurance in case of a disaster, but in the Swedish public and political discourse the travel recommendations have attracted additional significance, determining whether an individual can obtain assistance from the Swedish state.[16] This has, to some degree, been codified in law 2010:813 on consular disaster assistance. The law provides that it is the cabinet that decides when such assistance is to be granted taking into account various factors,[17] highlighting the personal responsibility of individuals.[18] This is something that the current Swedish government (conservative) used as a justification for exchanging Nouri for Floderus, stressing that there was no recommendation against travelling at the time he visited Iran. Moreover, the current Swedish Foreign Minister argued that the previous government of Sweden (centre-left) had failed to issue an advisory against travel to Iran, something it should have done at the same time as it authorized the prosecution against Nouri[19] (on 22 December 2020). After the release of Nouri and the return of Floderus and Azizi, the Swedish government has, in the context of renewed tensions between Israel and Hezbollah, continued to stress the same policy on travel recommendations and consular assistance,[20] which could be interpreted as an indirect *ex post facto* justification of its decision to release Nouri.

To summarize, the Swedish debate on the release of Nouri has been quite different from the debate outside of Sweden, mainly due to the concern for Swedish hostages and ongoing political discourse on Swedish consular assistance for Swedish citizens abroad.

4. The Future of Universal Jurisdiction and the Threat of Hostage-Taking

Other countries have also given in to Iranian hostage-taking. Asadollah Assadi, an Iranian diplomat convicted of terrorism by an Antwerp court in 2021, was swapped by Belgium in 2023 for one of its nationals and three other European citizens held by the Iranian regime.[21] The United States ('US') and Iran finalized a prisoner swap the same year involving the release of five Americans held in Tehran in exchange for granting access to frozen funds in the amount of USD 6 billion.[22] There are also examples of prisoner

11 Government of Sweden, "Johan Floderus och Saeed Azizi har kommit hem till Sverige", press release, 16 June 2024.

12 Amnesty International, "Iran/Sweden: Staggering blow to justice for 1988 prison massacres in Iran amid long overdue release of Swedish nationals", 18 June 2024.

13 Philip Grant, X-post at @PhilipGrant40, 21 June 2024.

14 Sophie Tanha, "Fängslade svenska forskarens fru: Diskriminering", *Aftonbladet*, 15 June 2024.

15 Oscar Schau, "Floderus och Azizi i Sverige – regeringen höll pressträff", *SVT Nyheter*, 16 June 2024.

16 Hanne Kjöller, "Varför tog det så lång tid för UD att avråda från resor till Iran?", *Dagens Nyheter*, 13 September 2023.

17 Lag (2010:813) om konsulära katastrofinsatser [Law on consular disaster assistance], 17 June 2010, No. 2010:813, Section 1 (https://www.legal-tools.org/doc/dgmexhqv/).

18 Government of Sweden, Proposition 2009/10:98, Lag om konsulära katastrofinsatser, 18 February 2010, No. 2009/10:98, p. 56 (https://www.legal-tools.org/doc/l04w3c8o/).

19 Foreign Minister Tobias Billström, X-post @TobiasBillstrom, 16 June 2024:

> Det förkommer olika missuppfattningar utifrån gamla uppgifter på nätet om vilken avrådan som gällde för Iran när Johan Floderus reste dit. I samband med Covid-19 infördes en avrådan från icke nödvändiga resor till alla världens länder, inklusive Iran. Efter pandemin infördes den avrådan som fanns före pandemin, dvs avrådan från icke nödvändiga resor till regionen Sistan-Baluchistan och gränsområdena till Irak och Afghanistan. Det fanns således ingen avrådan för resor till Iran, förutom till regionen Sistan- Baluchistan och gränsregionerna till Irak och Afghanistan, när Johan Floderus reste till Iran. Givet åtalsförförandet mot Hamid Noury hade en förebyggande åtgärd varit att parallellt med beslutet om att bevilja åtalsförfarande även skärpa reseavrådan till Iran.
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> Sofia Lindbom, chief of staff of Prime Minister Ulf Kristersson, X-post @sofialindbom, 16 June 2024, as a response to my tweet on the matter: "Exakt så".

20 Oscar Hansson, "Billström om resor till Libanon: Oerhört allvarligt att trotsa avrådan", *SVT Nyheter*, 20 June 2024.

21 Ana Fota, "Can Europe fight Iran's hostage diplomacy?", *The Parliament*, 26 June 2023.

22 Henry Rome, "The Iran Hostage Deal: Clarifying the $6 Billion Trans-

exchanges of convicted war criminals during armed conflict, for example in the context of the Russia–Ukraine war.[23]

What makes the release of Nouri different? It is true that states have a legal obligation to prosecute genocide, war crimes and crimes against humanity, but that also applies to terrorism. Why was there an international outcry when Nouri was released after having been convicted for war crimes, but nothing similar when convicted Russians have been released by Ukraine? Some might argue that all these exchanges were bad, still the negative reaction to Nouri's release has been stronger. While it is difficult to pinpoint an explanation for this difference in reactions, the following is an attempt. The idea of universal jurisdiction is that states without any connection to an atrocity crime can try it before its courts: in a sense they are acting altruistically. In contrast, the threat of terrorism is generally perceived as a threat that goes beyond the targeted state (in the Assadi case, France) to also include other like-minded states (Belgium). If one buys into the idea of a 'war of civilizations', Western and like-minded states are all in it together against a common threat when it comes to *jihádí*-inspired terrorism. It is also clearly in Ukraine's interest to prosecute Russian war criminals. In contrast, Sweden did not really have an interest in prosecuting Nouri, it was an *erga omnes* obligation, or some might describe it in terms of altruism. When hostage-taking is used as a method to counter convictions based on universal jurisdiction, this altruism is challenged and the general resolve of states to continue with this practice may weaken. Are states such as Sweden really committed to universal jurisdiction, if it means that parts of the world become off-limits for travelling? The same is not true for states that are subjected to threat of terrorism or engaged in an armed conflict with an opposing state. Even though supporters of universal jurisdiction have not articulated it in the same way as I am doing in this policy brief, they understand that this kind of prosecutions is under threat, hence the reaction.

What is an appropriate counter-strategy to safeguard universal jurisdiction in the context of authoritarian states willing to engage in hostage-taking? There are at least five measures which may alleviate this threat.

First, following the Swedish government's statements post-Nouri, when universal jurisdiction cases take significant steps forward, the forum state for the trial should issue recommendations for its citizens to avoid travel to states for whom the suspect is alleged to have committed crimes. Closing all travel to a country for several years entails an obvious cost. If this strategy had been adopted from the outset, the 86,838 persons residing in Sweden who were born in Iran would have been subjected to a travel ban from the start of the Nouri prosecution, preventing them from visiting family and friends for an unknown time, and all tourism by Swedes to Iran would equally have been prevented.[24] Some would argue that this is an acceptable price, but it is still a high price.

Second, complementary to the strategy of travel bans, more states need to exercise universal jurisdiction, as this would relieve pressure on the few states that are doing it now and thus introduce a system of burden-sharing.

Third, strategic human rights litigation should be considered to test whether the Swedish government complied with international treaties when it released Nouri. If institutions such as the European Court of Human Rights ('ECtHR'), the Human Rights Committee ('HRC') or the United Nations Committee against Torture ('CAT') rule that Sweden violated its international obligations, it would legally close the door to similar deals in the future and ideally decrease the incentive for engaging in hostage-taking. However, strategic human rights litigation carries risks and may backfire: if the ECtHR, HRC or CAT rule that Sweden was entitled to act as it did in the Nouri case, authoritarian states would be even more emboldened.

Fourth, states have several bargaining chips. The above-mentioned example of how the US attained the freedom for five of its citizens did not involve the release of any Iranian from US custody. Instead, the US used money. Floderus was a Swedish diplomat and an EU official: if the EU had acted forcefully as a collective, it would arguably have been in a better position to exert pressure and offer Iran compensation for the release of Floderus without Sweden releasing Nouri. This would not prevent hostage-taking, but it would safeguard the exercise of universal jurisdiction.

Finally, in relation to authoritarian states that engage in hostage-taking, prosecution should ideally take place at international rather than domestic courts. It is arguably more difficult to engage in hostage-taking against an international court, which may direct its staff on where not to travel, compared to barring travel for the population of an entire country. The obvious problem is that the authoritarian states which we associate with hostage-taking have all decided to stay outside of the International Criminal Court's jurisdiction.

Faced with authoritarian states willing to engage in hostage-taking, there are in fact no good strategies, only different degrees of bad alternatives. The least bad alternatives all include some element of collective action, an appropriate starting point for discussing and handling the aftermath of Nouri's release.

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fer", The Washington Institute for Near East Policy, 18 September 2023, Policy Watch No. 3784.

23 Maria Koroleva, "Russian soldiers exchanged with Ukraine: What happens after", *Justice Info*, 31 October 2023.

24 Statistics Authority of Sweden [Statistikmyndigheten], "Population by country of birth and country of origin, 31 December 2023, total", datasheet, 31 December 2023.

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