

# REDRESS

Ending Torture, Seeking Justice for Survivors

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Minister of Foreign Affairs  
Mr. A.G. Koenders  
PO Box 20061  
2500 EB The Hague

11 December 2014

Re: Letter in support of Mr. Ashraf Ahmed El-Hagoug's right to reparation for torture

Dear Minister Koenders,

REDRESS is an international human rights organisation seeking justice for torture survivors worldwide. We are writing in relation to the case of Mr. El-Hagoug, a torture survivor residing in the Netherlands, and to urge the Government of the Netherlands to use its best efforts to support Mr. El-Hagoug with his efforts to enforce his right to reparation for the serious violations that he endured.

Mr. El-Hagoug, who is of Palestinian origin, was subjected to multiple incidents of torture, including severe sexual violence, and other violations in Libya from 1999-2007, as set out in detail in a 2012 decision by the UN Human Rights Committee (see Annex). He was the doctor involved in what came to be known as the "Bulgarian nurses case" and had been sentenced to death by Libyan courts for allegedly spreading HIV/AIDS and causing the deaths of hundreds of children. At the time, the Dutch government, together with other governments and the European Union, played a pivotal role in helping to prevent the (further) torture of Mr. El-Hagoug and the five Bulgarian nurses and their punishment following a flagrantly unfair trial, and helping to secure the release of Mr. El-Hagoug, as well as that of five Bulgarian nurses. The Netherlands also provided a safe haven to Mr. El-Hagoug's family, which had been subjected to death threats and aggression in Libya.

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Mr. El-Hagoug was transferred to Bulgaria in 2007, largely because he had been tried together with the Bulgarian nurses and because Libya and Bulgaria signed a prisoner transfer protocol in 1984. He received a Bulgarian passport as a part of the deal to secure his release. However, he left Bulgaria and moved permanently to the Netherlands in October 2008 because he did not have close family ties in the Netherlands. He would probably have been granted refugee status in The Netherlands (and subsequent nationality), like his parents, had he asked for it at the time. Mr. El-Hagoug has since resided in the Netherlands. While he has been entitled to apply for Dutch nationality since 1 October 2013, he has been unable to do so because he cannot obtain his birth certificate, which is still in Libya. Further, he cannot travel to Egypt, where he was born, because Egypt and Libya have signed a protocol that allows for the arrest and exchange of wanted persons, which places him at continuing risk of being extradited to Libya.

In March 2012, Mr. El-Hagoug was awarded €1,000 000 plus interest from a Dutch court following his successful claim against 12 named Libyan defendants, all of whom were former Libyan state agents. The UN Human Rights Committee, also in 2012, found the state of Libya responsible for multiple violations of the International Covenant on Civil and Political Rights and obliged it to provide reparation to Mr. El-Hagoug.

Neither Libya, nor the named defendants in the Dutch civil claim, have paid any compensation to date despite these rulings and repeated requests to this effect by Mr. El-Hagoug's lawyer and United Nations organs. Furthermore, there are no effective remedies in Libya that Mr. El-Hagoug can avail himself of.

Both the UN Human Rights Committee and The Hague district court recognised that Mr. El-Hagoug suffered severe damage as a result of the torture he was subjected to by Libyan officials in 1999. However, 15 years after the beginning of his ordeal and a time-consuming struggle to obtain justice, Mr. El-Hagoug has not received any reparation to date. We understand that he continues to suffer the debilitating consequences of torture and the verdict resulting from the unfair trial. The lack of reparation has deprived him of the means to rebuild his life and has adverse consequences, as non-implementation reinforces his powerlessness vis-à-vis those responsible for his ordeal.

The only avenue remaining to end the continued denial of justice is for the Dutch Government to raise Mr. El-Hagoug's claim with the Government of Libya and insist that compensation be paid. Such representations could appropriately be based on the nature of the violation and the close ties of Mr. El-Hagoug with the Netherlands, and the unenforced judgment of a Dutch court (as set out further in the annex). Such an approach, which could ideally also involve the European Union, is called for giving the unique circumstances of the case. A successful outcome would provide partial reparation to Mr. El-Hagoug, strengthen Libyan initiatives to enshrine the rule of law and respect for human rights, and advance European-wide goals of effectively combating torture and other cruel treatment worldwide.

The right to reparation for torture is firmly established under international law, both as a matter of treaty law, particularly article 14 of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UN Convention against Torture), and customary international law. The importance of the right to reparation for serious human rights violations has been recognised by the UN General Assembly in 2005 by their adoption of the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (UN Basic Principles),<sup>1</sup> which are based on the pioneering work of Professor Theo van Boven. Enforcing the right to

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<sup>1</sup> UN General Assembly resolution 60/147 of 16 December 2005.

reparation for torture is a fundamental component of the absolute prohibition of torture. It contributes both to securing justice in individual cases and to preventing further torture.

The UN Committee against Torture recently clarified the universal scope of the right to reparation in its General Comment 3 on article 14 of the UN Convention against Torture:<sup>2</sup>

The Committee considers that the application of article 14 is not limited to victims who were harmed in the territory of the State party or by or against nationals of the State party. The Committee has commended the efforts of States parties for providing civil remedies for victims who were subjected to torture or ill-treatment outside their territory. This is particularly important when a victim is unable to exercise the rights guaranteed under article 14 in the territory where the violation took place. Indeed, article 14 requires States parties to ensure that all victims of torture and ill-treatment are able to access remedy and obtain redress.<sup>3</sup>

The objective of making remedies effective is also reflected in Principle 17 of the UN Basic Principles:

States shall, with respect to claims by victims, enforce domestic judgements for reparation against individuals or entities liable for the harm suffered and endeavour to enforce valid foreign legal judgements for reparation in accordance with domestic law and international legal obligations. To that end, States should provide under their domestic laws effective mechanisms for the enforcement of reparation judgments.

In Mr. El-Hagoug's case, it has proved impossible to enforce the order of the Dutch court without the co-operation of the Libyan government. Further steps are therefore needed to give substance to Principle 17 by insisting that the Libyan Government takes action to effectively implement the court order made.

As a matter of international law, and as recognised by the UN Human Rights Committee, Libya is responsible to provide reparation for the torture suffered by Mr. El-Hagoug. It would therefore be appropriate for the Dutch government to raise this case with the Libyan government, requesting it to ensure that the amount of compensation awarded by the Dutch court is paid to Mr. El-Hagoug.

Making such representations on behalf of Mr. El-Hagoug is justified on the basis of the erga omnes nature of the prohibition of torture recognised under international law. As set out in the commentary on the International Law Commission's Draft Articles on State Responsibility:

A State which is entitled to invoke responsibility under article 48 [of the Draft Articles] is acting not in its individual capacity by reason of having suffered injury but in its capacity as a member of a group of States to which the obligation is owed, or indeed as a member of the international community as a whole.<sup>4</sup>

Furthermore, the Dutch government has a special interest in invoking Libya's responsibility because of the case history and Mr. El-Hagoug's close links to the Netherlands. The Rechtbank 'S-Gravenhage

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<sup>2</sup> Article 14 reads: "(1) Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation. (2) Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law."

<sup>3</sup> Committee against Torture, *General Comment No.3: Implementation of article 14 by States parties*, UN Doc. CAT/C/GC/3, 13 December 2012, para.22.

<sup>4</sup> United Nations, *Report of the International Law Commission on the work of its fifty-third session: Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, 2001, p.126, article 48 (1).

recognised that Dutch courts are an appropriate forum to hear Mr. El-Hagoug's case and awarded him compensation, throwing the weight of the Dutch justice system behind the case. Furthermore, Mr. El-Hagoug's parents' status as Dutch citizens, his own status as permanent resident (who is prevented from applying for Dutch nationality solely by the particular circumstances of his case closely related to his ordeal), and his successful pursuit of remedies in the country, provide strong grounds for the Government of the Netherlands to take up his claim with a view to ensuring that a long-term resident who has suffered egregious violations will receive reparation.

By supporting Mr. El-Hagoug's claim, the Government of the Netherlands would act in accordance with article 90 of the Constitution of the Netherlands according to which "[t]he Government shall promote the development of the international legal order", and in furtherance of its human rights policy, particularly that of combating serious human rights violations such as torture.<sup>5</sup> It would equally advance the objectives of the UN Convention against Torture, to which The Netherlands is a party, as set out in the Convention's preamble, "[t]o make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world." Furthermore, it would contribute towards making effective the *Guidelines to EU Policy Towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. These Guidelines include urging third countries to "provide reparation for the victims of torture and ill-treatment and their dependants, including fair and adequate financial compensation as well as appropriate medical care and social and medical rehabilitation."<sup>6</sup>

For all of the reasons, we hope that The Netherlands can take up this matter formally with Libya which would be consistent with The Netherlands' approach to torture case and would undoubtedly provide much needed support to Mr. El-Hagoug.

We remain at your disposal for any queries you may have regarding this case, and look forward to hearing from you.

Yours sincerely,

Carla Ferstman  
Director

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<sup>5</sup> As set out in *Human Rights in Dutch Foreign Policy*, <http://www.government.nl/issues/human-rights/human-rights-in-dutch-foreign-policy>.

<sup>6</sup> *Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment*, (An up-date of the Guidelines), General Affairs Council of 18 April 2008, <http://www.consilium.europa.eu/uedocs/cmsUpload/8590.en08.pdf>

## Background: Facts, remedies pursued and current status

Mr. El-Hagoug, represented by Professor Liesbeth Zegveld, brought a case against Libya to the UN Human Rights Committee (“the Committee”) in January 2008.<sup>7</sup> As set out in the complaint to the Committee, Mr. El-Hagoug is a Bulgarian national of Palestinian origin. He was stateless when, in 1998, he started a two months internship in the El-Fatah pediatric hospital in Benghazi, Libya. In January 1999, he was arrested (which he described as a kidnapping) and accused of premeditated murder and causing an epidemic by injecting 393 children with HIV in the Al-Fatah pediatric hospital. During the following interrogations, throughout the year 1999, Mr. El-Hagoug was subjected to various forms of torture, including electric shocks and anal rape, to make him confess to the alleged offences.<sup>8</sup> Five Bulgarian nurses suspected of being involved in the alleged offences were also tortured into making confessions. In the subsequent trial, which violated basic due process guarantees, Mr. El-Hagoug and the Bulgarian nurses, his co-defendants, were sentenced to death for having caused the death of 46 children and contaminating 380 others. The sentence was later commuted to life imprisonment. Following political negotiations, Mr. El-Hagoug and the five Bulgarian nurses were released and returned to Bulgaria in 2007. This was done in accordance with the bilateral Prisoner Transfer Protocol to serve their sentence in Bulgaria. They were subsequently amnestied by Bulgaria’s president upon their arrival.

In its views dated 19 March 2012, the Committee found that Mr. El-Hagoug had suffered violations of his rights, particularly the right to be free from torture as well as his right to liberty and security and to a fair trial.<sup>9</sup> The Committee held that Libya had breached its obligations under the International Covenant on Civil and Political Rights and was “under an obligation to provide the author with an effective remedy, including conducting a new full and thorough investigation into allegations of torture and ill-treatment and initiating proper criminal proceedings against those responsible for the treatment to which the author was subjected; and providing the author with appropriate reparation, including compensation...”<sup>10</sup>

To date, more than two and a half years after the adoption of the views, Libya has not taken any steps to give effect to the Committee’s views, notwithstanding repeated efforts made to this end by Mr. El-Hagoug’s lawyer and the Committee’s Special Rapporteur for Follow-Up on Views.

On 21 March 2012, The Hague district court, sector Civil Law, in the case of *Ashraf Ahmed El-Hojouj v. Harb Amer Derbal* and others, ordered the 12 defendants, all of whom were Libyan state agents, to pay €1,000,000 in damages, plus interest, finding them jointly and severally liable.<sup>11</sup> The case, which was heard in absentia, was based on the principle of universal civil jurisdiction. Subsequent efforts to enforce the Court’s order have proved unsuccessful. Further such efforts are unlikely to succeed because the whereabouts of the defendants are now unknown. In addition, it is unclear whether they would have the means to pay the compensation awarded.

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<sup>7</sup> *Ashraf Ahmad El Hagog Jumaa v. Libya*, UN Doc. CCPR/C/104/D/1755/2008, 25 April 2012.

<sup>8</sup> The allegations of torture, which the Committee found to have been corroborated, included: “extensive use of electric shocks on legs, feet, hands and chest while stretched naked on a steel bed; beatings on the soles of the feet; being hung by the hands; creation of a sensation of suffocation and strangulation; being suspended from a height by the arms; being threatened of attack by dogs while blindfolded; beatings on the body; injection of drugs; sleep deprivation; sensory isolation; very hot or ice-cold showers; being held in overcrowded cells; being blinded by bright lights. The author was allegedly subjected to anal rape”, *ibid.*, para. 2.3.

<sup>9</sup> *Ibid.*, para. 9.

<sup>10</sup> *Ibid.*, para.10.

<sup>11</sup> *Ashraf Ahmed El-Jojouj v. Harb Amer Derbal and others*, Rechtbank’s-Gravenhage, Sector civiel recht, Case number 400882/HA ZA 11-2252, 21 March 2012.