

## **WORKING DOCUMENT ON ARTICLE 14 FOR COMMENTS**

### **Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**

#### **The obligation of States parties to implement article 14**

1. This general comment explains and clarifies the obligations of States parties under article 14 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. All States parties are required to “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.” Article 14 is applicable to all victims of torture and acts of cruel, inhuman or degrading treatment or punishment without discrimination of any kind.
2. The Committee considers that the term “redress” in article 14 encompasses the concepts of “reparation” and “effective remedy”. The comprehensive reparative concept therefore entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and refers to the full scope of measures required to redress violations under the Convention.
3. Victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention. A person should be considered a victim regardless whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted. The term ‘victim’ also includes the immediate family or dependants of the victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. The term “survivors” may, in some cases, be preferred by persons who have suffered harm. The Committee uses the legal term “victims” without prejudice to other terms which may be preferable in specific contexts.
4. The Committee emphasises the importance of victim participation in the reparation process, and that the restoration of dignity of the victim is the overarching objective in the provision of redress.
5. The obligations of States parties to provide redress under article 14 are two-fold: procedural and substantive. At the procedural level, States parties must enact legislation and establish complaints mechanisms, investigation bodies and institutions capable of determining the right to and awarding redress for a victim of torture and ill-treatment, and ensure that such mechanisms and bodies are effective and accessible to all victims. At the substantive level, States parties must ensure that a victim of torture or ill-treatment obtains full and effective redress and reparative measures, including compensation and the means for as full rehabilitation as possible.

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## Substantive Obligations: The Scope of the Right to Redress

6. In line with its own jurisprudence, the Committee considers that redress includes the following five forms of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The Committee recognises the elements of full redress under international law and practice as outlined in 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.<sup>1</sup> States are reminded that in the determination of redress and reparative measures provided or awarded to a victim of torture, the specificities and circumstances of each case must be taken into consideration and redress should be tailored to the particular needs of the victim and the gravity of the violations committed against them.

### *Restitution*

7. Restitution as a form of redress refers to the process whereby a victim is provided with the services and care necessary to re-establish his or her situation before the violation of the Convention was committed, taking into consideration the specificities of each case. The preventive obligations under the Convention require States to ensure that the victim receiving such restitution is not placed in a position where he or she is at risk of repetition of torture or ill-treatment. The Committee notes that due to the nature of the violations, the victim may not consider restitution to be possible.

### *Compensation*

8. The Committee emphasises that monetary compensation alone is not sufficient redress for a victim of torture and ill-treatment. The jurisprudence of the Committee affirms that the provision of only monetary compensation is inadequate for a State party to comply with its obligations under article 14.

9. The right to fair and adequate compensation for torture or ill-treatment under article 14 is multi-layered and compensation awarded to a victim should be sufficient to compensate for any economically assessable damage resulting from torture or ill-treatment, such as: reimbursement of medical expenses paid and provision of funds to cover future medical or rehabilitative services needed by the victim to ensure as full rehabilitation as possible; material and moral damage resulting from the physical and mental harm caused; loss of earnings and earning potential due to disabilities caused by the torture or ill-treatment; and lost opportunities such as employment and education. In addition, adequate compensation awarded by States to the victim of torture or ill-treatment should provide for legal or specialised assistance, and other costs associated with bringing a claim for redress.

### *Rehabilitation*

10. The Committee affirms that the provision of means for as full rehabilitation as possible for anyone who has suffered harm as a result of a violation of the Convention “should include medical and psychological care as well as legal and social services.” Rehabilitation, for the purposes of this general comment, refers to the restoration of function or the acquisition of new skills required by the changed circumstances of a victim in the aftermath of torture or ill-treatment. It seeks to enable the maximum possible self-sufficiency and function for the individual concerned, and may involve adjustments to the person’s physical and social environment.

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

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11. The Committee emphasises that the obligation of States to provide the means for “as full rehabilitation as possible” refers to the need to restore and repair the harm suffered by the victim whose life situation, including dignity, health and self-sufficiency may never be fully recovered as a result of the pervasive effect of torture, and does not refer to the available resources of States.

12. In order to fulfil its obligations to provide a victim of torture or ill-treatment with the means for as full rehabilitation as possible, each State party should ensure that specialised services for the victim or survivor of torture is available at multiple levels. These should include: a procedure for the assessment and evaluation of an individual’s therapeutic and other needs, based on, among others, the Istanbul Protocol; and may include a wide range of measures, such as medical, physical and psychological rehabilitative services; re-integrative and social services; family-oriented assistance and services; vocational training, education etc. A holistic approach to rehabilitation which also takes into consideration the strength and resilience of a victim is of utmost importance. Furthermore, victims and survivors may be at risk of re-traumatisation and have a valid fear of acts which remind them of the torture or ill-treatment they endured. Consequently, should be a high priority placed on the need to create a context of confidence and trust in which assistance can be provided.

13. The Convention’s requirement to provide these forms of rehabilitative services does not extinguish the need to provide medical and psychosocial services for victims in the direct aftermath of torture, nor does such initial care represent the fulfilment of the obligation to provide means for as full a rehabilitation as possible.

14. States parties must ensure that effective rehabilitation services and programmes are established in the State and are accessible to all victims. States parties’ legislation should establish concrete mechanisms and programmes for providing rehabilitation to a victim or survivor of torture or ill-treatment. It should also be noted that the obligation in article 14 to provide for the means for as full rehabilitation as possible can be fulfilled through the direct provision of rehabilitative services by the State, or through the funding of private medical, legal and other facilities, including those administered by NGOs. States parties are encouraged to establish methods for assessing the effectiveness of rehabilitation programs and services, including by developing relevant indicators and benchmarks.

#### *Satisfaction and the right to truth*

15. Satisfaction should include, by way of and in addition to the obligations of investigation and criminal prosecution under articles 12 and 13 of the Convention, any or all of the following remedies: “effective measures aimed at the cessation of continuing violations; verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim’s relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations; the search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities; an official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; public apology, including acknowledgement of the facts and acceptance of responsibility; judicial and administrative sanctions against persons liable for the violations; commemorations and tributes to the victims; inclusion of an accurate account of the

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violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.”<sup>2</sup>

### *Guarantees of non-repetition*

16. To guarantee non-repetition of torture or ill-treatment, States parties should undertake measures such as the following aimed at generally “ensuring effective civilian control of military and security forces; ensuring that all judicial proceedings abide by international standards of due process, fairness and impartiality; strengthening the independence of the judiciary; protecting human rights defenders; providing, on a priority and continued basis, training for law enforcement officials as well as military and security forces on human rights law and providing specific training on the Istanbul Protocol for health and legal professionals and law enforcement officials; promoting the observance of international standards and codes of conduct by public servants, including law enforcement, correctional, medical, psychological, social service and military personnel; reviewing and reforming laws contributing to or allowing torture and acts of cruel, inhuman or degrading treatment or punishment. The Committee notes that by taking measures such as those listed herein, States parties may also be fulfilling their obligations to prevent acts of torture under article 2 of the Convention.

## **Procedural Obligations: Implementation of the Right to Redress**

### *Legislation*

17. Under article 2 of the Convention, States parties must enact “effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.” As clarified by the Committee in General Comment 2, “States parties must make the offence of torture punishable as an offence under its criminal law, in accordance, at a minimum, with the elements of torture as defined in article 1 of the Convention, and the requirements of article 4....” The failure to enact legislation which clearly defines and criminalizes torture and ill-treatment, and the resulting absences of torture and ill-treatment as criminal offences, inhibits the victim’s capacity to access and enjoy his or her rights guaranteed under article 14.

18. To give effect to article 14, States parties are obligated to enact legislation specifically providing a victim of torture with an effective remedy and the right to obtain redress, including compensation and as full rehabilitation as possible. Such legislation must allow for individuals to exercise this right. While collective reparation and administrative reparation programmes may be acceptable as a form of redress, such programmes may not render ineffective the individual right to a remedy and to obtain redress.

19. States parties should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.

20. Under the Convention, States parties are required to prosecute or extradite alleged perpetrators of torture when they are found in any territory under its jurisdiction, and to adopt the necessary legislation to make this possible. The Committee considers that obligations of States parties under article 14 are 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 praised the efforts of States parties for providing civil remedies for victims who were

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<sup>2</sup> *Id.* para. 22.

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subjected to torture or ill-treatment outside their territory. This is particularly important when a victim is unable to exercise his or her rights guaranteed under article 14 in the territory where the violation took place. Indeed, article 14 requires States to ensure that all victims of torture are able to access remedy and obtain redress.

### *Effective Mechanisms for Complaints and Investigations*

21. The Committee has, in its concluding observations, identified other State obligations that must be met in order to ensure that the article 14 rights of a victim are fully respected. In this regard, the Committee underscores the important relationship between States parties' fulfilment of their obligations under article 12 and 13, and their obligation under article 14. According to article 12, States parties are required to undertake prompt and impartial investigations, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction and, as set out in article 13 and affirmed by the Committee in General Comment 2, ensure that impartial and effective complaints mechanisms are established. Full redress cannot be obtained if the obligations under articles 12 and 13 are not guaranteed. Complaints mechanisms must be made known and accessible to the public, including to persons in detention and psychiatric facilities, and members of marginalized and vulnerable groups, via for example, telephones hotlines or confidential complaints boxes in detention facilities.

22. At the procedural level, States parties must ensure the existence of institutions competent to render decisions through a procedure established by law to enable victims of torture or ill-treatment to secure redress, including adequate compensation and rehabilitation. Such institutions may include, among others, constitutional courts, human rights courts, civil and criminal courts, national human rights commissions and ombudsman institutions and special reparation bodies.

23. Securing the victim's right to redress requires that a State party's competent authorities promptly and impartially investigate and examine the case of any individual who alleges she/he has been subjected to torture or ill-treatment. Substantial delays in initiating or failure to conclude legal investigations into complaints of torture or ill-treatment compromise victims' rights under article 14 to obtain redress, including fair and adequate compensation and the means for as full rehabilitation as possible.

24. Notwithstanding the evidentiary benefits to victims afforded by a criminal investigation, a civil proceeding and the victim's claim for reparations should not be dependent on the conclusion of a criminal proceeding. The Committee considers that compensation should not be delayed until criminal liability has been established. A civil proceeding should be available independently of the criminal proceeding and necessary legislation and institutions for such civil procedures should be in place. If criminal proceedings are required by domestic legislation to take place before civil compensation can be sought, then the absence or delay of those criminal proceedings constitute a failure on behalf of the State party to fulfill its obligations under the Convention.

25. Under article 14, States are obligated to provide an "enforceable right" to redress, as well as to ensure that the victim of torture or ill-treatment obtains redress. In this regard, States therefore have an ex officio obligation to take necessary and effective measures to ensure that all victims of torture obtain redress. The Committee considers that where there are reasonable grounds for its competent authorities to believe that torture or ill-treatment has taken place, the State should promptly begin the process to ensure the victim obtains redress.

### *Access to Mechanisms for Obtaining Redress*

26. The Committee highlights the importance of the State party affirmatively ensuring that victims and their families are adequately informed of their right to pursue

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compensation. In this regard, the procedures for seeking compensation should be transparent. The State party should moreover provide assistance and support to minimise the hardship to complainants and their representatives.

27. Judicial proceedings regarding remedies for victims should comply with fair trial guarantees to ensure effective access to justice. States parties should provide adequate legal aid to those victims of torture or ill-treatment lacking the necessary resources to bring complaints and to make claims for redress. States parties shall also make readily available to the victims all evidence concerning acts of torture or ill-treatment upon the request of victims, their legal counsel, or a judge. A State party's failure to provide evidence, such as records of medical evaluations or treatment, can unduly impair victims' ability to lodge complaints and to seek redress, compensation, and rehabilitation. States parties should ensure that judicial bodies refrain from applying doctrines that impede or preclude them from considering the merits of claims for redress made by victims of torture or ill-treatment.

28. The State party should also take measures to prevent interference with victims' privacy and to protect victims, their families and witnesses against intimidation and retaliation at all times before, during and after judicial, administrative or other proceedings that affect the interests of victims. Failure to provide witness protection stands in the way of witnesses and victims filing complaints, and thereby violates the right to seek and obtain redress and remedy.

29. The principle of non-discrimination is a basic and general principle in the protection of human rights and fundamental to the interpretation and application of the Convention. States parties must ensure that, access to justice and to mechanisms for seeking and obtaining address are readily available and that positive measures ensure that redress is equally accessible to all persons, regardless of race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, transgender identity, mental or other disability, health status, economic or indigenous status, reason for which the person is detained, including persons accused of political offences or terrorist acts, asylum-seekers, refugees or others under international protection, or any other status or adverse distinction.

30. The Committee underlines the importance that judicial and non-judicial proceedings apply gender sensitive procedures which avoid re-victimisation and stigmatisation. With respect to sexual violence and access to due process and an impartial judiciary, the Committee emphasizes that in any proceedings, civil or criminal, to determine the victim's right to redress, including compensation, rules of evidence and procedure in relation to sexual and gender violence must afford equal weight to the testimony of women and prevent the introduction of discriminatory evidence and harassment of victims and witnesses. The Committee considers that complaints mechanisms and investigations require specific positive measures which take into account gender aspects in order to ensure that victims of abuses such as sexual violence and abuse, rape, marital rape, domestic violence, female genital mutilation, and trafficking are able to come forward and seek redress.

31. The Committee considers the training of police, prison staff and medical personnel, including training on the Istanbul Protocol, to be fundamental to ensuring effective investigations. Furthermore, officials and personnel involved in efforts to obtain redress should receive methodological training that is gender-sensitive in order to prevent re-traumatisation of victims of sexual torture and other abuses. This training should include, for health and medical personnel, the need to inform victims of sexual violence of the availability of emergency medical procedures, physical as well as psychological. The Committee also urges States parties to establish human rights offices within police forces and units of officers specifically trained to handle cases of sexual and gender violence, domestic violence, and/or violence against ethnic, religious, national or other minorities

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## Obstacles to the Right to Redress

32. A crucial component of the right to redress is the clear acknowledgement by the responsible State party that the reparative measures provided or awarded to a victim are for violations, by action or omission, for which the State party assumes responsibility. The Committee is therefore of the view that a State party may not implement development measures or provide humanitarian assistance as a substitute for redress for victims of torture or ill-treatment. The failure of a State party to provide the individual victim of torture with redress may not be justified by invoking a State's level of development.

33. States parties to the Convention have an obligation to ensure that the right to redress is effective. Specific obstacles that impede the enjoyment of the right to redress and prevent effective implementation of article 14 include: inadequate national legislation, discrimination in accessing complaints and investigation mechanisms and procedures for remedy and redress; state secrecy laws, legal doctrines and procedural requirements that interfere with the determination of the right to redress; statutes of limitations, amnesties and immunities; as well as the failure to provide sufficient legal aid and protection measures for victims and witnesses. In addition, the failure of a State party to execute judgments providing reparative measures for a victim of torture, handed down by either national, international or regional courts, constitute a significant impediment to the right to redress.

34. As the Committee has emphasized in its General Comment No. 2, "gender is a key factor. Being female intersects with other identifying characteristics or status of the person...to determine the ways that women and girls are subject to or at risk of torture or ill-treatment" With regard to the obligations in article 14, States must avoid measures that impede the ability of women and girls to seek and obtain redress and must effectively address such obstacles. Women and girls must be treated fairly and equally and obtain fair and adequate compensation, rehabilitation and other reparative measures which respond to their specific needs.

35. Statutes of limitations should not be applicable in cases of claims of torture or ill-treatment as these deprive victims of the redress, compensation, and rehabilitation due to them. For many victims, passage of time does not attenuate the harm and in some cases the harm may increase as a result of post-traumatic stress that requires medical, psychological and social support, which is often inaccessible to those whom have not received redress. States must ensure that all victims of torture or ill-treatment, regardless of when the violation occurred or whether it was carried out by or with the acquiescence of a former regime, are able to access their rights to remedy and to obtain redress.

36. The Committee has consistently held that amnesties for the crime of torture are incompatible with the obligations of States under the Convention, including under article 14. As was pointed out in General Comment 2, "amnesties preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability." The Committee considers that amnesties for torture and ill-treatment pose impermissible obstacles to a victim in his or her efforts to obtain redress and contributes to a climate of impunity. The Committee therefore calls on States parties to remove any amnesties for torture or ill-treatment.

37. Similarly, providing immunity to the State party and its agents for acts of torture or ill-treatment is in direct conflict with the obligation of providing redress, compensation, and as full rehabilitation as possible. When impunity is sanctioned by law or exists de facto, it bars victims from seeking redress as it allows the violators to go unpunished and denies victims their rights under article 14.

38. The Committee considers that reservations to article 14 may be incompatible with the object and purpose of the Convention. States are therefore encouraged to consider

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withdrawing any reservations to article 14 so as to ensure that all victims of torture or ill-treatment have access to redress and remedy.

## **Monitoring and Reporting**

39. Article 14 requires States not only to recognise the victim of torture or ill-treatment's right to redress, including fair and adequate compensation and as full rehabilitation as possible among other forms of redress, but also imposes on States the duty to guarantee such measures are provided for the victim of an act of torture or ill-treatment. As the Committee has articulated in General Comment 2, "continual evaluation is... a crucial component of effective measures." As part of this requirement, States should establish a system to oversee and ensure the provision of necessary rehabilitation services in practice. Accordingly, States parties should include in their reports to the Committee data disaggregated by age, gender and other key factors regarding redress measures afforded to victims of torture and ill-treatment.

40. The Committee has observed that States parties frequently fail to provide adequate information on the implementation of article 14 in States parties' reports. Therefore, the Committee wishes to underscore that specific information should be provided on the following;

- (a) The number of victims of torture or ill-treatment that have sought compensation through legal, administrative and other means and the nature of the violations alleged; the number of victims that have been awarded compensation; and in what amounts;
- (b) The measures taken to assist victims in the direct aftermath of torture;
- (c) The rehabilitation facilities available to victims of torture or ill-treatment and their accessibility, as well as the budget allocation for rehabilitation programmes and the number of victims that have received torture-specific rehabilitative services;
- (d) The methods available for assessing the effectiveness of rehabilitation programs and services, including by developing relevant indicators and benchmarks;
- (e) The measures taken to ensure satisfaction and guarantees of non-repetition in their periodic reports;
- (f) The domestic legislation which provides victims of torture or ill-treatment with the right to remedy and redress and relevant implementation measures. Where such legislation is lacking, reports should include information on the measures taken by the State party to adopt and implement such legislation.
- (g) The measures taken to ensure that all victims of torture are able to exercise and enjoy their rights under article 14.
- (h) The complaints mechanisms available for victims of torture or ill-treatment, including how such mechanisms are made known and accessible to all victims. States should also include in their reports data disaggregated by age, gender, location, and alleged violation, on the number of complaints received through such mechanisms.
- (i) The measures taken by States parties to ensure that all allegations of torture and ill-treatment are effectively investigated should be included in periodic reports to the Committee.
- (j) The available avenues for a victim of torture or ill-treatment to obtain redress, including all criminal, civil, administrative, and non-judicial procedures, as well as



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information on the number of victims who have accessed such mechanisms, how many obtained redress and reparative measures, and in what forms and/or amounts.

(k) The legal aid and witness protection available to victims and witnesses of torture or ill-treatment, including how such protection is made known and how it is made available in practice; the number of victims who have been granted legal aid; the number of persons who have been protected by State witness protection; and the State party's evaluation of the effectiveness of such protection.

(l) The steps taken to implement judgments by national, regional or international courts, including the amount of time lapsed from the date of the judgment and the actual provision of compensation or other forms of redress. States parties should also include disaggregated data on the number of victims designated to receive reparative measures in court judgments and the number that actually received redress, and for what violations

(m) The safeguards available for the special protection of women and girls seeking to exercise the rights guaranteed under article 14 of the Convention.

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