

### THE SCOPE OF REDRESS

Under Article 14 of the UNCAT, victims<sup>1</sup> of torture and other cruel, inhuman or degrading treatment or punishment are have a right to obtain redress, procedurally and substantively, in the forms of fair and adequate **compensation** and full **rehabilitation** (and so are their dependents in the case of their death).<sup>2</sup>

States need to provide every victim with redress whether or not the ill-treatment was perpetrated by the state, on its jurisdiction or by its national.<sup>3</sup> The breadth of this right has been interpreted by the Committee against Torture (CAT) to also include **restitution, satisfaction and guarantees of non-repetition**.<sup>4</sup> Naturally, given that the restoration of the dignity of the victim is the ultimate objective, victim participation is of paramount importance.<sup>5</sup>

#### SUBSTANTIVELY SPEAKING

Reparation, namely the 'process and result of remedying the damage or harm caused by an unlawful act',<sup>6</sup> needs to be **accessible, adequate, effective and comprehensive**, tailored and proportionate towards circumstances of the case. The forms of reparation are defined as follows:

**Restitution:** means to re-establish victim to the fullest extent possible back in position enjoyed before violation. Structural efforts are also envisaged.<sup>7</sup>

**Compensation:** includes economic compensation (medical expenses, loss of earnings), costs of bringing a claim for compensation (legal and special assistance) and damages for harm suffered.<sup>8</sup>

**Satisfaction and Right to Truth:** include investigation and criminal prosecution, or public acceptance, disclosure, and apology. A failure to investigate may constitute de jure or de facto violation of the UNCAT.

**Guarantees of non-repetition:** include combating impunity for violations of the UNCAT. Prevention is also included here-in: oversight and training of security forces and law enforcement officials, adherence to international due process standards, protection of human rights defenders, independent monitoring of places of detention, training of health professionals.

#### PROCEDURALLY SPEAKING

To realise the substantive rights noted above, States are obliged to enact legislation, and establish effective complaint and investigation mechanisms. These can be explained as follows:

**Legislation** needs to provide effective remedy and right to obtain adequate and appropriate redress (including access to judicial remedy),<sup>9</sup> and ensure adequate care and protection throughout process to avoid re-traumatisation, intimidation or retaliation.<sup>10</sup> Failure to criminalise, investigate or complain against torture obstructs the victim's capacity to access and enjoy their rights.<sup>11</sup> Decisions on redress need also be enforced.<sup>12</sup>

**Investigative and Complaint Mechanisms:** to be communicated and made accessible to public and individuals in detention.<sup>13</sup> In the absence of a complaint, States need to take the initiative to provide redress.<sup>14</sup>

#### REHABILITATION SPECIFICALLY

Rehabilitation: is defined as the restoration of function or the acquisition of new skills required, enabling the maximum possible self-sufficiency and function (socially and vocationally). It is to be as full as possible (not referring to State resources but to victim recovery),<sup>15</sup> holistic (medical, psychological care, legal and social services). Long-term and integrated and specialized services that are **available, appropriate and promptly accessible**.<sup>16</sup>

Needs are to be assessed on, inter alia, the Istanbul Protocol, consider victim's strength and resilience (to avoid re-traumatisation etc.) and victim's culture, personality, history and background, and provided promptly and without discrimination.<sup>17</sup>

#### MOREOVER

- Article 12 of the *International Covenant on Economic, Social and Cultural Rights* recognizes the right of everyone to enjoy the highest attainable standard of physical and mental health. This is not to be understood as a right to be healthy.<sup>18</sup> The obligation correlates with availability of state resources.<sup>19</sup>
- States are prohibited from deporting individuals in need of rehabilitation services to where such services are not available or guaranteed.<sup>20</sup>
- A broader right to access rehabilitation is provided under the *United Nations Convention for the Rights of Persons with Disabilities*.<sup>21</sup> The Convention also contains a broad description of disability which covers physical, sensory, intellectual, psychiatric and multiple disabilities that can be permanent, temporary, episodic or perceived.<sup>22</sup>

## REFERENCES

<sup>1</sup> It is important to note that the term “survivor” may be preferred by victims of torture. Whilst appreciating this, as this document is legally-oriented, it will refer to the relevant individuals as “victims”.

<sup>2</sup> CAT, General Comment No. 3, para. 3: ‘The term “victim” also includes affected immediate family or dependants of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization.’ See also M. Nowak and E. McArthur, *The United Nations Convention Against Torture: A Commentary* (2008), pp. 452-502.

<sup>3</sup> CAT, General Comment No. 3, para. 22.

<sup>4</sup> See also 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 New York, 16 December 2005 (‘Van Boven Principles’).

<sup>5</sup> CAT, General Comment No. 3, para. 4.

<sup>6</sup> Carla Ferstman, *Reparations*, Oxford Bibliographies, 13 June 2017

<sup>7</sup> CAT, General Comment No. 3, para. 8.

<sup>8</sup> CAT, General Comment No. 3, paras. 9-10.

<sup>9</sup> CAT, General Comment No. 3, para. 20.

<sup>10</sup> CAT, General Comment No. 3, paras. 21 and 31.

<sup>11</sup> CAT, General Comment No. 3, para. 19.

<sup>12</sup> CAT, General Comment No. 3, para. 24.

<sup>13</sup> CAT, General Comment No. 3, para. 23.

<sup>14</sup> CAT, General Comment No. 3, para. 27.

<sup>15</sup> CAT, General Comment No. 3, para. 12.

<sup>16</sup> CAT, General Comment No. 3, para. 13.

<sup>17</sup> CAT, General Comment No. 3, para. 13.

<sup>18</sup> CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), 11 August 2000, E/C.12/2000/4, para. 30.

<sup>19</sup> CESCR General Comment No. 14, para. 8.

<sup>20</sup> CAT, General Comment No. 4, para. 22.

<sup>21</sup> *Convention for the Rights of Persons with Disabilities* (UNCRPD), article 26.

<sup>22</sup> UNCRPD, article 2.