

25TH ANNIVERSARY OF THE COMMITTEE AGAINST TORTURE

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Panel: Reflecting on State party's obligations with regard to redress for victims of torture, in light of General Comment No. 3 on Article 14

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Madam Chair, distinguished members of the Committee, Excellencies, colleagues and friends,

It is an honour to be part of this anniversary event and to be discussing this theme, which is so close to the mission, and heart, of REDRESS. I would like to start by thanking and congratulating the Committee for the extremely important work that it has done over the past 25 years to understand and promote the interests and rights of victims recognised in the Convention. Not only is it the guardian of the Convention, but a source of hope to survivors.

Twenty years ago, when the Committee was still in its early days, a torture survivor named Keith Carmichael drew strength from the Convention Against Torture, and Article 14 in particular, to found the organisation I now work for – REDRESS. Keith was held in prison in Saudi Arabia for 857 days and was subjected to sustained torture. When he was released, Keith was suffering – and continues to suffer – from serious physical and psychological injuries. He returned to his home in the UK determined to seek justice. But while there was a treaty signed by many States which recognised his right to redress, he found that the practical difficulties in obtaining it proved almost impossible to overcome.¹ He started REDRESS with the conviction that “*there must be a way in which we can help victims of torture obtain justice and reparation for what has happened to them*” – the core of the mission was based on Article 14 of the Convention and has not changed since it was established.

We have come a long way since that time, and through the individual complaints procedure, its detailed work on Article 14, and its consistent attention to State parties' actions to implement it,² the Committee has been critical in that process. Its work under the Convention has created synergies with other developments in international humanitarian, criminal and human rights law; including in particular the Basic Principles and Guidelines on the Right to Remedy and Reparation adopted by the General Assembly in 2005,³ and the recognition of victims' rights before the International Criminal Court.⁴ The Committee has also provided momentum for similar elaborations of the right to a remedy and reparation by other treaty bodies. The Committee on the Elimination of Discrimination Against Women, for example, is currently considering the issue of access to justice.⁵ General Comment No. 3 has resonated with and fed into work in other spheres by UN special procedures mandate holders, including

¹ For more information on Keith's case see <http://www.redress.org/downloads/survivors-stories/KEITH%20CARMICHAEL%20Statement.pdf>.

² Most notably through General Comment No. 3 (2012), but also consistently through periodic reviews and through its jurisprudence – see, for example, *O.R., H.M. and M.S. v. Argentina* (1989), Communication Nos. 1/1988, 2/1988, 3/1988, (CAT/C/WG/3/DR/1, 2 and 3/1988); *Guridi v. Spain* (2005), Communication No. 212/2002, (CAT/A/60/44).

³ 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 (Basic Principles on Remedy and Reparation), Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005, Article 2.

⁴ The Rome Statute of the ICC recognises significant rights of victims in the proceedings: see, eg. Art 68 (protection of the victims and witnesses and their participation in the proceedings) and Art. 75 (reparations to victims).

⁵ The Committee is currently elaborating a "General Recommendation on access to justice". For further information see: <http://www2.ohchr.org/english/bodies/cedaw/accesstojustice.htm>.

the Special Rapporteur on Violence Against Women,⁶ the Special Rapporteur on Trafficking,⁷ and the Working Group on Enforced and Involuntary Disappearances,⁸ as well as the work of Special Rapporteurs on Torture.⁹ This detailed focus on remedy and reparation has also been met with the support of States – most recently in the annual Torture Resolution at the Human Rights Council, sponsored by Denmark, which for the first time puts the issue of redress and rehabilitation for victims of torture at the centre.¹⁰

This has been paralleled by real changes on the ground. When REDRESS started, there were only a very few other NGOs and lawyers focused on this issue. Today, there are many NGOs in all the regions where we work that are trying to make the rights recognised in Article 14 a reality. The right to redress for torture has been upheld in domestic judicial decisions,¹¹ enacted through domestic legislation,¹² and recognised as a vital part of transitional justice processes.¹³ And where domestic remedies have not proved up to the task, perpetrators have been prosecuted in third countries,¹⁴ and States have in some – though certainly not all – cases implemented decisions of international and regional bodies recognising victims’ rights to redress. All of these developments are to be encouraged – there is a growing amount of good practice that states should share with each other, and General Comment No. 3 provides an extremely helpful framework within which States can do so.

And yet, despite all of these positive changes, the reality for the vast majority of victims is that redress seems almost impossible to achieve, and that torture and ill-treatment continue. It is a strange position to be in as a lawyer, who believes in the rule of law, to be saying over and over again to different clients who have been through horrifying experiences, or to organisations who work with them – ‘well the law is crystal clear, but it is very difficult to enforce it, although we’ll do everything we can to try’. It cannot be right that a woman who was raped by a soldier during conflict cannot bring a complaint because she did not file it formally within 35 days of the rape. It is hard to keep telling a client who was found 10 years ago by the Human Rights Committee to have been a victim of torture, that court proceedings are still going on to try to have those views implemented, while he has received nothing. It cannot be right that a person who was arbitrarily detained and tortured is expected to trust the very same prosecutors who prosecuted him with evidence obtained by torture to investigate his complaints. Even for Keith Carmichael, 30 years after he was released, 25 years into the work of the Committee Against Torture, and 20 years after he started REDRESS, he has still not had any remedy or reparation. This is often a very painful and re-traumatising experience for victims.

Achieving redress for victims of torture can be complex. But it is in States’ interests to do all they can to empower victims to do so. As the Committee has made clear in General Comment No. 3 the restoration of the dignity of the victim is the ultimate objective in the provision of redress.¹⁵ That itself should be reason enough. But as the Committee also stresses, the provision of redress to victims has wider aims and benefits – allowing society as a whole to understand what happened, restoring public confidence in institutions, helping citizens to live in a society where they feel secure, and putting in place measures to stop the same violations

⁶ Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, 19 April 2008 (A/HRC/14/22).

⁷ Report of the Special Rapporteur on Trafficking in persons, especially women and children, 11 August 2011 (A/66/283).

⁸ Report of the Working Group on Enforced or Involuntary Disappearances, 28 January 2013 (A/HRC/22/45).

⁹ See, eg. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 18 January 2012 (A/HRC/19/61).

¹⁰ Human Rights Council Resolution 22/21, (A/HRC/RES/22/21), adopted without a vote on 22 March 2013.

¹¹ See, eg. *Nilabati Behera v State of Orissa* (1993) 2 SCC 746 (Indian Sup Ct).

¹² See, eg. Torture Victim Protection Act 1991 (USA); 35 (1) Law No. 26 of 2000, art. 35(1) and Law No. 13 of 2006, art. 7 (Indonesia); Anti-Torture Act 2009 (Philippines), ss. 18 and 19; Prevention and Prohibition of Torture Act 2012 (Uganda), s. 6; Law against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2008 (Madagascar), s. 21; Penal Code (Greece), Art. 137D(4)

¹³ See Lorna McGregor (2013), ‘Transitional Justice and the Prevention of Torture’, 7(1) *IJTJ*: 29-51.

¹⁴ For a survey of practice in Europe in this respect see REDRESS, ‘Extraterritorial Jurisdiction in the 27 Member States of the EU’, December 2010, available at: <http://www.redress.org/reports/reports>.

¹⁵ CAT, General Comment No. 3 (2012), para. 4.

happening again and again.¹⁶ In this way, the provision of redress is key to the whole purpose of the Convention – to make more effective the struggle against torture and other cruel, inhuman and degrading treatment or punishment throughout the world.¹⁷

This is where General Comment 3 is so crucial – it sets out a blueprint for States to address the issues that really stand in the way of redress for victims, and provides detailed guidance on providing the positive support that victims need.

In that effort, I just wanted to highlight four points addressed in the General Comment that, on the basis of our experience, are absolutely vital:

First, is the need to respond seriously and with urgency to the impact of trauma, poverty, discrimination and protection issues faced by victims if they are even to be in a position to be able to pursue and achieve redress, including rehabilitation. Torture survivors have immediate medical and psychological needs, which must be met before any further action can be contemplated.¹⁸ Likewise poverty, discrimination and security threats are major barriers both to rehabilitation and to accessing justice. It is hard to recover while you are struggling to eat or find somewhere to sleep, or are stigmatised because of the form your torture took, cannot complain to the police in your own language, or remain in constant fear of your life because you reported what happened.¹⁹ Victims of torture need specialised, targeted, coordinated and holistic support if Article 14 is ever to mean anything in reality.

Second, is ensuring that the right legislative structure is in place to enable victims of torture to seek redress.²⁰ That means first recognising and then removing the legal and procedural barriers in place in many countries to pursuing judicial remedies – such as limitation periods or the immunities given to police and military in many jurisdictions. It also means putting in place laws that are embedded as part of the normal justice system which recognise victims' rights to redress and provide independent and easily accessible mechanisms by which they can be decided.²¹ Those mechanisms should have access to independent and impartial medical expertise.

Third is the role that all states have to play in empowering victims to obtain redress.²² At the core of the Convention is the recognition that states responsible for torture will often have power structures in place that promote impunity – that is why it provides for universal jurisdiction. There are many steps that States can take to help victims obtain redress for torture committed in third states – providing rehabilitation, giving timely and appropriate consular assistance, pursuing a comprehensive strategy for investigation and prosecution of suspected perpetrators on the state's territory, making contributions to the UN Voluntary Fund for Victims of Torture, espousing the claims of their own nationals and residents, providing for civil jurisdiction over torture committed abroad, and ensuring that victims of torture are not returned to states where they are at risk of further torture or where rehabilitation services do not exist.

Finally is ensuring that redress procedures are informed by individual victims' needs and that the reparation measures that are provided are adequate, effective, comprehensive, and commensurate with the gravity of the harm suffered.²³ It is not enough for states to simply settle claims by handing out money to victims – while not recognising that torture happened,

¹⁶ CAT, General Comment No. 3, para. 6. See also Human Rights Council Resolution 22/21, preamble.

¹⁷ Convention Against Torture, preamble.

¹⁸ General Comment No. 3, para. 14. See also Human Rights Council Resolution 22/21, paras. 6 and 20.

¹⁹ General Comment No. 3, paras. 29, 31-33, 39.

²⁰ General Comment No. 3, paras. 19-20.

²¹ As the Committee makes clear at paragraph 30 of the General Comment, a judicial remedy is always required, but other institutions may also be available and may be attractive alternatives (para. 24).

²² General Comment No. 3, para. 22.

²³ General Comment No. 3, paras. 4 and 6. See also See also Human Rights Council Resolution 22/21, para. 9. This is a point also stressed by the Special Rapporteur on Torture to the Human Rights Council: “[e]fforts to provide assistance to victims must seek to recognize and validate the traumatising experience of torture they have suffered, prevent further isolation by reintegrating them into society, and address the fundamental aim of torture which is, often, to isolate and engender fear in victims in order to break their will” (Statement to the 16th session of the Human Rights Council, 7 March 2010, available at:

http://www.ohchr.org/Documents/Issues/SRTorture/StatementHRC16SRTORTURE_March2011.pdf).

making attempts to understand why it happened, prosecuting the perpetrators and putting in place measures to stop it happening again.

In conclusion, if we had one hope for today, it would be that States and civil society will really take General Comment No. 3 and what it stands for seriously – that they will teach it in universities and police and judicial academies, talk about it, debate it in parliaments, collect the data it requires, and have someone in government responsible to coordinate plans to address each of the issues it raises. It would be reassuring to be able to say to somebody who has been tortured: ‘you’ve got a good case, and we can win it’. But more than that, it is a crucial step towards ending torture and ill-treatment throughout the world.