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**25<sup>th</sup> anniversary of the UN Committee against Torture and the recent adoption of  
General Comment 3 on redress for victims of torture and other ill-treatment**

**American University, Washington College of Law  
9 April 2013**

Thank you, Dean Grossman, for the invitation to participate on this panel and to offer a “non-governmental organization’s view” on the Committee’s third General Comment. It is my pleasure to provide Amnesty International’s perspective on this important authoritative interpretation, including:

- some insights as to why Amnesty International came to support this initiative ,
- Amnesty International’s assessment of the General Comment, and
- our recommendations for how the General Comment can be and promoted now.

I was fortunate enough to be here in 2010, three years ago when Amnesty International jointly hosted a conference with the College of Law on how the Committee could strengthen the prohibition against torture.<sup>1</sup> This included a focus on the work undertaken by the Committee to ensure reparations for victims of torture. The NGO contributors to those panels (which included a colleague from Amnesty) highlighted the importance of the Committee taking a consistent approach in its examination of states parties’ implementation of Article 14, and the usefulness of the Committee’s detailed and nuanced approach in doing so. The fact that the Committee went on to elaborate a General Comment on this Article, and one that is so progressive and comprehensive, is a highly significant and very welcome development.

**AI support for this initiative**

As an organization that documents torture and other ill-treatment and advocates for the implementation of laws to prevent torture and ensure justice for victims, we are acutely aware of the experience of victims of torture that demonstrates far too frequently the failure of states to

ensure meaningful reparation for victims of torture and other ill-treatment. The impact of this is devastating for victims, exacerbating the impact of the horrific treatment or punishment they have suffered and prolonging the consequences. Victims experience chronic and debilitating pain, sometimes resulting in death, when they do not receive prompt and effective rehabilitation for physical injuries. The trauma they experience can have lasting psychological consequences without psychological support. Victims find it harder to re-engage with society and continue to experience discrimination that contributed to the crime when the wrongfulness of the treatment or punishment that they have endured goes unrecognized. Victims may live in constant fear without guarantees that they will never again be subjected to such treatment or punishment. Reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition can play an important role in addressing this suffering and helping victims to rebuild their lives.

From an advocacy perspective, the lack of clarity and understanding about reparations had frustrated our work on universal jurisdiction, including in some key cases. In 2006, for example, Amnesty International, REDRESS, Interights and Justice intervened in a House of Lords case called *Jones v Ministry of Interior of Saudi Arabia* involving four UK nationals suing Saudi Arabia and its officials who allegedly tortured them. The year before, the Committee against Torture had reviewed the periodic report of Canada and had expressed its concern about Canada's inability to provide compensation to victims of torture in all cases, including territories abroad. We argued that, in doing so, the Committee had provided an authoritative interpretation of the Convention and that the United Kingdom therefore had an obligation to ensure that the four victims could recover. However, our arguments did not prevail and the House of Lords dismissed the legal authority of the Committee's recommendation as "slight". This highlighted the importance of the Committee adopting a consistent approach in its review of states parties reports and through its consideration of individual communications. It also focused our attention on the potential value of having a General Comment on reparations.

As a result, in 2007 we wrote a letter to the former Chairperson, Mr Mavrommatis, which was circulated to the Committee members, to encourage the Committee to use a checklist of 8 questions that could be asked of each state party about the procedural right to remedy and the substantive right to adequate reparation.<sup>ii</sup> For the Committee to use the checklist was important, not only because of the use we could make of the Committee's findings and recommendations in our litigation work, but also because it would start to build a solid body of work upon which the Committee could develop a new General Comment. We continued to monitor closely the Committee's approach to Article 14, which was still lacking consistency although there was much greater scrutiny of reparations. Two years later, we wrote to Chairperson Grossman to

encourage the elaboration of a General Comment, providing preliminary suggestions as to what could be covered.

Amnesty International's interest in encouraging the articulation of a new General Comment was therefore a key element of an overall strategic approach to strengthening the international legal framework and increasing implementation of international standards at the national level, and as a part of our global campaign for international justice. Together with other NGOs, we actively engaged in the consultation process set up by the Committee while it elaborated the General Comment.

### **Assessment of the General Comment**

In Amnesty International's view, General Comment no. 3 provides excellent guidance to states parties when implementing the Convention. There are too many positive aspects of the Comment to review in detail today – I refer you to copies of our public statement being circulated - but let me focus on three issues:

Firstly, the Committee affirms that Article 14 requires states parties to ensure that all victims of torture and other ill-treatment are able to access remedy and reparation. It confirms that the obligations extend to all victims, including victims of ill-treatment and immediate family members or dependents. Furthermore, reparation is not limited to compensation, but to other vital measures that victims of this very serious crime require, such as rehabilitation, truth and guarantees of non-repetition. Importantly, it sets out state responsibility to provide redress for victims where the state failed to exercise due diligence to prevent, investigate, prosecute and punish acts of torture and other ill-treatment by non-state actors

Secondly, the Committee highlights that states parties to the Convention have an obligation to ensure that the right to redress is effective. This includes an obligation on states parties to enact legislation to prevent torture, for putting in place effective complaints and investigation mechanisms and legislation and mechanisms for providing the victim with the right to obtain full reparations, while respecting the principles of non-discrimination. It defines a number of obstacles that prevent the implementation of Article 14, including discrimination, statutes of limitations, amnesties and immunities. In particular, it recognizes the impact that discrimination on any ground, including gender, can have on a victim's ability to seek and obtain appropriate and full reparation for the harm caused by torture or other ill-treatment. The Committee highlights the connection between discriminatory attributes and inequalities as structural causes for violations under the Convention that states parties must address in order to comply with Article 14.

Thirdly, the General Comment recognizes the importance of universal civil jurisdiction by stating that it “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” and commends “the efforts of states parties for providing civil remedies for victims who were subjected to torture or ill-treatment outside their territory.” Indeed, in many situations, victims will face such serious barriers to reparation at the national level, that seeking a remedy before other national courts may be their only option. Such cases may also prompt national authorities to fulfil their obligations.

**Recommendations for how General Comment No.3 can be used and promoted now:**

States have a key role in reviewing their legislation, ensure that victims of torture and other ill-treatment have access to courts or other systems to seek reparations, and when obtained, that such measures are implemented promptly.

States that have made limiting reservations to article 14 should review and withdraw these when they are in conflict with the Committee’s authoritative interpretation of the obligations under that article.

Together with their national human rights institutions, states could establish and carry out necessary training of relevant officials, such as but not limited to judges, lawyers, parliamentarians and government officials on the right to effective remedy and reparations and the full scope of the obligations under article 14. States parties could also make use of the Office of the High Commissioner for Human Rights’ technical assistance mandate for the promotion of international standards on reparations.

Clearly the Committee will have a key role in ensuring that states parties take effective measures in law, policy and practice to implement Article 14 through its recommendations in individual complaints and concluding observations, information gathered according to paragraph 46, and through detailed and consistent questioning at all stages of the review process (reporting guidelines, list of issues including prior to reporting, examination of periodic reports, follow up procedures).

Civil society organizations, victims’ representatives and victims themselves should be informed of the content of General Comment 3 so that they can use it to realise their rights nationally or to highlight their government’s failures, including in procedures before the Committee and through other mechanisms such as the Special Rapporteur on torture and the universal periodic review mechanism. The Committee has a role in raising awareness in this regard, as do organizations like my own, there is the occasion of 26 June – the international day for victims of torture – to

focus on the new General Comment. OHCHR's civil society unit could also promote the General Comment through integrating information about it in tools and workshops for civil society organizations and victims' representatives. Civil society will thereby also have better guidance as to relevant information when preparing submissions in advance of an examination of a state report by the Committee.

Thank you for your attention.

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<sup>i</sup> "Human Rights Brief: Strengthening the Prohibition against Torture: the evolution of the UN Committee against Torture, Proceedings of a Conference presented by American University Washington College of Law and Amnesty International", 2 March 2010

<sup>ii</sup> Suggested checklist on article 14

1. What legislation exists guaranteeing the right of victims of torture and other ill-treatment to reparations and how has it been interpreted by the courts? Please provide a copy of the legislation and any court decisions.

2. Which forms of reparation (restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition) for torture and ill-treatment are guaranteed and can be awarded by national courts?

3. Is this right to reparations restricted to victims who are nationals of the state party?

4. Is this right to reparations restricted to torture and ill-treatment committed by nationals of the state party?

5. Is this right to reparations restricted to torture and ill-treatment committed in territory under the jurisdiction of a state party? If so, does this include occupied territory? Does it include areas of operations of members of a peacekeeping operation from the state party?

6. What legal procedures are available to victims to obtain reparations for torture and ill-treatment? Do these procedures include civil claims in criminal proceedings? Please provide a copy of the legislation and any court decisions applying or interpreting these procedures.

7. What administrative procedures are available to obtain reparations for torture and ill-treatment? Please provide a copy of the administrative regulations and any administrative or judicial decisions applying or interpreting those regulations.

8. Is the right to reparations for torture and ill-treatment limited or barred in any way, for example, by state or official immunities, statutes of limitation, *ne bis in idem* applicable to foreign court decisions, prohibitions of retroactive criminal or civil legislation?