

AMNESTY INTERNATIONAL

PUBLIC STATEMENT

AI Index: IOR 51/005/2012

26 November 2012

United Nations Committee against Torture adopts landmark general comment on the right to reparation

On 19 November 2012, the Committee against Torture (the Committee) published General Comment No.3 examining the obligations of states parties to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) to provide “redress” including an effective remedy and reparation to victims, in accordance with Article 14.

Amnesty International strongly welcomes the adoption of this benchmark authoritative interpretation of Article 14, which will provide excellent guidance to states when implementing the Convention. It encourages states, intergovernmental organizations, non-governmental organizations and victims and their representatives to use this general comment as an important tool in their work to ensure full reparation to victims of torture.

As evidenced in the Committee’s country reports and consideration of individual complaints, state parties consistently fail to ensure reparation for victims of torture and ill-treatment. The impact of this failure to implement their obligations under the Convention is devastating for victims, exacerbating the impact of the horrific treatment or punishment they have suffered and prolonging the consequences.

Without prompt and effective rehabilitation for physical injuries, victims may experience chronic and debilitating pain and poor health, sometimes resulting in death. Without psychological support, the trauma they experience can result in lasting psychological problems, including secondary trauma in their children and other family members. Without measures recognizing the wrongfulness of the treatment or punishment they endured, victims may find it harder to re-engage with society and/or continue to experience discrimination that contributed to the crime. Without guarantees that they will never again be subjected to such treatment or punishment, victims may live in constant fear. The general comment is an important step towards ending these disturbing trends.

The general comment also acknowledges that reparation can have an important transformative impact on “social relations that may be the underlying causes” of the violation, if they are, for example, gender-sensitive and take into account any adverse impact the violations may have had on women or men because of their gender, and in the manner of their implementation. It is particularly welcome that the general comment recognized that sexual orientation is one of the prohibited grounds for discrimination.

It can be used as a tool to press states to fully implement their obligations and sets out clearly the standards that the Committee will hold states parties to in reviewing their country reports and in considering individual communications.

The general comment includes a number of important principles that all states parties should apply in implementing their obligations under Article 14. In particular, the Committee:

- confirms that Article 14 requires states parties to ensure that all victims of torture and ill-treatment are equally able to have access to remedies and obtain redress, without discrimination on any ground;

- emphasises the importance of victim participation in the reparation process;
- affirms that “the term ‘victim’ 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”; and
- recognizes that reparation must be adequate, effective and comprehensive and includes the following elements: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Importantly, it also

- recognises the impact that discrimination on any ground, including gender and sexual orientation, can have on a victim’s ability to seek and obtain appropriate and full reparation for the harm caused by torture or ill-treatment;
- highlights the connection between structural causes for violations, such as discriminatory attitudes and inequalities, that states parties must address to comply with Article 14;
- 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;
- states 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 notes that it “has commended the efforts of States parties for providing civil remedies for victims who were subjected to torture or ill-treatment outside their territory”;

provides that states parties “should also take measures to prevent interference with victims’ privacy and to protect victims, their families and witnesses and others who have intervened on their behalf”;

- sets out the procedural obligations states parties have in enacting legislation to prevent torture, for effective complaints and investigation mechanisms and legislation and mechanisms for providing the victim with the right to obtain full reparation, respecting the principle of non-discrimination. The Committee also points out that states parties should respect the principle of non-discrimination and that they should apply gender sensitive procedures to avoid re-victimization and stigmatisation of victims of torture and other ill-treatment;
- highlights that states parties to the Convention have an obligation to ensure that the right to reparation is effective;
- explains that, “[o]n account of the continuous nature of the effects of torture, statutes of limitations should not be applicable as these deprive victims of the redress, compensation, and rehabilitation due to them”;
- declares 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” and, therefore, “calls on States parties to remove any amnesties for torture and ill-treatment”;
- states that “granting immunity in violation of international law, to any State or its agents or to non-state actors for torture or ill-treatment, is in direct conflict with the obligation of providing redress to victims”;

- “affirms that under no circumstance may arguments of national security be used to deny redress for victims”;
- calls upon states to give full effect to their obligations under Article 14 by recognising the Committee’s competence to consider individual complaints under Article 22 to allow victims to submit communications and seek the views of the Committee and to ratify or accede to the Optional Protocol to the Convention against Torture; and
- sets out detailed information that states should include in their reports to the Committee.

Amnesty International calls on all states parties to the Convention to fully implement the measures set out this general comment.

Background:

The Committee started to discuss a general comment on the implementation of Article 14 three years ago. In June 2011, the Committee set up an online consultation process through which it received comments from states parties and non-governmental organizations, including Amnesty International. The Committee also held a discussion with interested stakeholders at its November 2011 session.

http://www.unog.ch/unog/website/news_media.nsf/%28httpNewsByYear_en%29/ED76122AF3238AC7C12579500044CABD?OpenDocument

The full text of the General Comment No.3 is available at

<http://www2.ohchr.org/english/bodies/cat/GC3.htm>

Article 14 of the Convention states:

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.

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