

## **WORKSTREAM II**

### **ENSURING ACCOUNTABILITY AND REDRESS**

#### **General Overview**

Despite being accorded high priority by the international community, the fight against impunity remains a challenge, especially in light of recent negative dynamics in the human rights sphere, such as the shrinking space for civil society and pressure on human rights defenders. While impunity often reaches appalling levels, fighting it requires a multidimensional approach. Indeed, civil society organisations (CSOs) operate within a framework of international, regional and domestic legislation and standards that promote a holistic approach to the fight against torture. Action by civil society organisations ranges from prevention to rehabilitation through to response. In their day-to-day activities, CSOs develop and implement prevention strategies, monitor and respond to cases of torture, and work to support victims and hold perpetrators to account. These processes immediately impact the quality of life of the individual, but also have a broader, often under-estimated social impact. Healing wounds and bringing justice can produce significant positive changes within the community and prevent re-emergence of unresolved areas of conflict. The persistent increase in migration to Europe, in particular the influx of refugees from conflict zones, requires effective early identification mechanisms in Member States to recognise potential torture victims among the migrants and refugees, since there is a high probability that primary and secondary torture victims will be present. Yet an early identification mechanism will only be effective if it is linked to proper referral mechanisms that ensure the provision of holistic rehabilitation for the torture victims and the pursuit of justice and accountability, including through gathering evidence from witnesses and applying extraterritorial jurisdiction.

The Committee against Torture (CAT) has explained that the term “redress” encompasses the concepts of “effective remedy” and “reparation”. Redress thus refers to the full scope of measures required to redress violations of the prohibition of torture and other ill-treatment, and includes the procedural right to a remedy and the substantive right to reparation, which entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>1</sup>

This workstream will look at a number of elements related to prevention, documentation, redress and rehabilitation. In order to better understand and address these issues, this working group aims to:

- ☐ Discuss positive examples and challenges in making sure that state policies and practices are transparent;
- ☐ Identify and define practical measures and legislative and/or policy changes to guarantee accountability;
- ☐ Address specific issues related to securing redress and rehabilitation for victims.

As the EU has committed to support these processes, the working group will refer to a number of points in the Action Plan on Human Rights and Democracy, in particular Action 13 on “Combatting torture, ill-treatment and the death penalty” as well as to the EU Guidelines on torture.

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<sup>1</sup> CAT GC No. 3, para 2.

**Thursday, 1 December 2016**

**A – INTRODUCTION AND IDENTIFICATION OF THE ISSUES (11:00-11:30)**

In this session, the moderator will set out the flow and objectives of the workshop and identify the problems that participants face in different regions. While some areas will be discussed in more detail subsequently, this session will focus on international and regional trends and developments.

**B – SHEDDING LIGHT ON SYSTEMIC RISKS AND DEALING WITH INDIVIDUAL CASES: DETENTION MONITORING AND DOCUMENTATION (11:30-13:00)**

Accountable authorities need to be fully open to external, independent oversight. Detention monitoring helps hold authorities to account, which in turn allows for systems based on the rule of law to be established and reinforced. It sheds light on areas of deprivation of liberty, where torture and ill-treatment can take place behind closed doors, and it allows for independent scrutiny of the policies and practices of detaining authorities and other stakeholders. Specific methodologies and techniques in preventive monitoring can be used with a view to assessing systemic flaws and advising on how to mitigate the risk that torture and ill-treatment could occur within specific systems or places.

The other area of focus will be documenting cases of torture and ill-treatment, both where deprivation of liberty does and doesn't occur. The documentation of torture cases is a complex exercise that requires specific knowledge and professional expertise. It is key for subsequently achieving successful redress, for providing the victim with much-needed support – including rehabilitation – and for seeking justice. Compiling records of medical and psychological evidence, backed up with legal support, is an effective way of dealing with impunity, especially when advanced, multidisciplinary tools are used, such as the Istanbul Protocol that applies a scientific approach to the field.

In order to better understand and address these issues, this session aims to:

- ☐ Share best practice, challenges, and models of cooperation among CSOs involved in detention monitoring, civil society monitoring bodies and National Preventive Mechanisms (NPMs), to improve monitoring and documentation;
- ☐ Discuss the cooperation between national authorities and CSOs and what support the EU could provide to improve the reporting of cases of torture and ill-treatment;
- ☐ Discuss the practical aspects of implementing the Istanbul Protocol as a tool for documenting torture cases as well as issues related to building civil society's capacity to use this tool.

**C – ENSURING ACCOUNTABILITY THROUGH JUSTICE MECHANISMS (14:30-16:00)**

International human rights law explicitly requires that perpetrators of torture and cruel, inhuman and degrading treatment or punishment are held accountable. Moreover, justice mechanisms are a useful and proven tool for promoting reconciliation between communities or groups. However, despite clear obligations to investigate and prosecute allegations of torture and concerted efforts to achieve implementation, torture remains pervasive around the globe, and impunity of perpetrators is widespread, which contributes to a vicious cycle of violence.

This session aims to:

- Identify the required elements for effective anti-torture legislative frameworks, which can be used to prohibit, prevent, investigate and prosecute torture and ill-treatment, and provide for redress for victims.
- Analyse the lack of compliance with obligations to prosecute allegations of torture pursuant to the Convention against torture, including through the use of extraterritorial jurisdiction.
- Discuss the effectiveness of the EU Guidelines on Torture for combatting impunity, and how their implementation can be guaranteed and possibly strengthened.
- Evaluate whether the EU's founding principles, including its commitment to human rights, are adequately reflected in its actions, for example the coherence between internal and external policies, **including whether Member States exercise** extraterritorial jurisdiction to prosecute perpetrators of torture, **regardless of whether the crimes took place within the European Union or not.**
- Discuss ways in which the EU and its Member States can more effectively engage with states and international bodies to encourage compliance with decisions of international and regional human rights mechanisms – including the ICC, the ECtHR and UN Human Rights Treaty bodies.
- The role of civil society and how the EU and Member States can work together with civil society to fight impunity and ensure that evidence obtained under torture is systematically excluded by courts.

**Friday, 2 December 2016**

#### **D – ESTABLISHING VICTIM-CENTRED APPROACHES THROUGH REHABILITATION AND REDRESS (09:00-10:30)**

Despite the state obligation to provide victims of torture and ill-treatment with redress, including access to effective remedy and full reparation, there is a lack of awareness of victims' rights, and how they can be meaningfully and effectively upheld. This includes victims' rights to access justice, to participate and to obtain reparation – including rehabilitation – and to be protected from reprisal. Victims often do not receive information about the progress of cases that concern them and at times are not permitted to engage in the process.

As a part of redress, the right to rehabilitation is a state obligation under international law. The UN CAT General Comment No. 3 clearly states that the provision of rehabilitation shall not depend on contextual aspects such as the availability of funds or the country in which the victim was tortured. Rehabilitation should be accessible, affordable, and available, of good quality and provided according to need, which still represents a challenge in most countries.

Furthermore, depending on the prevailing situation in the given country, rehabilitation centres may even face major threats from governments, as they are often able to collect important data which is potentially dangerous for perpetrators. This data often contains patterns of violations in a given location, and even names of perpetrators that may reoccur in several victim stories.

This workshop aims to:

- ☐ Discuss the victim-centred approach and holistic rehabilitation concepts and assess the implementation of the right to redress and rehabilitation as outlined in CAT General Comment No. 3, including for victims of torture in Europe – regardless of whether they were subjected to torture in the EU or before their arrival here.
- ☐ Evaluate how the practical work of rehabilitation centres, including data collection and record keeping, can contribute to the fight against impunity.
- ☐ Discuss the adequacy of protection provided for victims of torture and ill-treatment and the impact that failures in this regard have on access to justice and redress and accountability for perpetrators (and to general public trust in the judiciary system and society at large).
- ☐ Explore different methods that allow victims to participate in legal processes, and discuss potential improvements to ensure victims' right to participation is effectively protected.

#### **E – SUMMARY AND WAYS FORWARD (11:00 - 13:00)**

This session will be an opportunity to reflect on the discussions as a whole and how they build on each other. The moderator will present a summary of the responses and facilitate a deeper reflection on the issues and the ways forward. Key questions will include:

- ☐ What has been effective?
- ☐ What could be done differently?
- ☐ How could civil society support institutional responses and vice versa?