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**Head Office**  
First Floor  
60-62 Commercial Street  
London E1 6LT  
United Kingdom

Tel: +44 (0) 20 7247 6515  
Fax: +44 (0) 20 7377 8711  
E-mail: [headofsecretariat@penalreform.org](mailto:headofsecretariat@penalreform.org)  
[www.penalreform.org](http://www.penalreform.org)

## **Comments on redress for victims of torture - Working Document on Article 14 of the Convention Against Torture**

PRI appreciates the opportunity to comment on the draft document regarding access to redress for victims of torture and other ill-treatment, enshrined in Article 14 of the Committee Against Torture and would like to submit the following observations:

### **Compensation**

#### **§§ 9 and 24.**

Most states entirely rely on criminal and civil proceedings to settle the right to compensation, partly as a means to avoid any implicit confession of abuse by state agents.

However, in criminal proceedings victims are still largely seen as a means to serve the prosecution needs rather than as rights-holders. As a consequence, even in jurisdictions which enable the victim to accede to criminal proceedings as a *partie civile* judges are reluctant to determine the amount of adequate compensation and refer victims to civil courts, resulting in financial risks for them in pursuing their right to compensation.

In many jurisdictions, the amount of compensation has to be set by the claimant, indirectly determining legal charges and lawyer's fees. However, the entitlement to compensation for damages is difficult to predict at the outset of proceedings, in particular as for mental harm, moral damage and medical services. As a consequence, victims face significant difficulties to quantify their claim and find themselves in a pitfall. Either they underestimate their claim and forfeit their right to compensation in excess of their lawsuit, or risk to partially lose their case, consequently being obliged to cover the percentage of the opponent's legal expenses to the degree their lawsuit has been unsuccessful.

Given the primary obligation of compensation for victims of torture rests with the state party, authorities should be encouraged to offer negotiations out-of-court rather than to solely refer victims to either expensive, protracted and risky civil proceedings or the outcome of criminal proceedings which are rather designed to determine individual liability beyond reasonable doubt.

A proactive approach would be advisable at least in cases where the commission of an act of torture or other ill-treatment by state agents has been established, while the perpetrators cannot be identified, are unable to afford to pay compensation, or where (criminal or disciplinary) proceedings drag on to establish individual criminal liability. Having discharged of their obligation to provide compensation to victims of torture, state authorities are in a much better position to reclaim any compensation afforded to victims from those individual state officials who are ultimately found to be responsible.

In conclusion, PRI is of the opinion that the area of conflict between the state obligation to ensure compensation and procedures at national level being based on individual liability of state agents for acts of torture constitutes a considerable obstacle to the right to compensation.

The establishment of a national fund for the reparation of victims of torture and other ill-treatment would be an option to enhance access to the right to compensation.

In this context, the lack of a definition who is to be considered a "victim of torture" also seems to weaken the position of claimants.<sup>1</sup> In practice, authorities do not consider persons as a victim unless and until the commission of this offense has explicitly been established in a criminal, civil or disciplinary procedure. As a consequence, victims depend even more on torture being defined as an explicit offense in national law and in line with Article 1 CAT, and family members and dependants of the direct victim may be excluded from entitlement even in lethal cases of torture.

## **Rehabilitation**

### **§ 10.**

PRI suggests introducing the concept of holistic rehabilitation, aimed at multi-disciplinary and coordinated support and counselling that covers medical, psychological, social and legal aspects in an interconnected way and strives for the participation of the victim rather than perceiving them as the mere recipients of a treatment plan.

PRI would also like to highlight the interconnectedness of various forms of support and counselling. For example, psychological care will often be required for the victim to even be in a state that allows him/ her to pursue compensation and other legal proceedings.

However, many countries lack services of psychological and medical assistance for victims of torture, or offload this obligation on to privately funded non-governmental organisations. Such services, whether provided by state entities or NGOs, are often accumulated in the capital, but not provided across the country. Victims, however, may not be in a position, in terms of physical condition and/or financial means, to travel to places where such services are available. It should therefore be stressed that states parties need to ensure the availability, accessibility and affordability of medical and psychological services to victims of torture.

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<sup>1</sup> Compare to Article 18 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power: "Victims' means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights."

## **Non-repetition**

### **§ 16.**

PRI would like to note that it would be beneficial to mention safeguards against *refoulement* pursuant to Article 3 CAT as another aspect of guarantees of non-repetition in that non-nationals may be exposed to the risk of repeated torture or ill-treatment if expelled and deported despite a real risk of this abuse.

The establishment of an effective inspection and/ or monitoring body for places of detention should also be mentioned as a measure to guarantee non-repetition within the state's positive obligations.

## **Complaints and investigations**

### **§ 21.**

The organisation believes that this paragraph should reiterate that the obligation to investigate does not depend on the issuing of a complaint, i. e. that investigations need to be initiated *ex officio*, whatever the origin of suspicion.

In the context of complaints mechanisms, PRI would also like to highlight that in many cases the lack of (written) language skills prevents victims from raising a complaint. This problem arises, in particular, for foreign nationals since in many jurisdictions the respective remedy has to be issued in writing and in the official language of the respective country.

The organisation considers that a complaints system *de facto* inaccessible for persons without quite advanced language skills in the official language also raises concerns with regard to the principle of non-discrimination.

Where legislation provides for the possibility to apply for legal aid, often it is not considered "required in the interests of justice" in the given context. On occasion legal aid is limited to remedies against the deprivation of liberty per se, not extending to conditions of detention or allegations of abuse. Furthermore, legal aid mechanisms rarely cover interpretation between the victim and their lawyer.

### **§ 22.**

PRI would like to suggest the following clarification is included with regard to the obligation of States parties "to ensure the existence of institutions competent to render enforceable decisions (...)".

### **§ 25.**

While in most countries legislation is in place with regard to (civil) claims of compensation, procedures with regard to other elements of redress are mostly absent, and enforceability of certain forms of reparation such as rehabilitation or an apology is disputed.

## **Access to Mechanisms for Obtaining Redress**

### **§§ 30, 34 and 40 (m).**

PRI appreciates the explicit reference to the importance of gender sensitive procedures, and would like to note age-appropriateness as a comparable requirement to be amended. For both, female victims of torture and child victims, a specific approach is required, in particular with regard to legal representation,

sensitive summoning, confidentiality and means of rehabilitation. Procedures should take into account that lessened access to education and financial dependence from (male/ adult) relatives adversely affects these victims' awareness of their rights and access to redress.

### **Obstacles to the Right to Redress**

#### **§§ 32 et sqq.**

Transition of governments and related rejection of responsibility could be added as another common obstacle to the right to redress. In this context, PRI recommends to clarify the responsibility of the successor state to provide redress to victims of torture or other ill-treatment.<sup>2</sup>

In the context of irregular foreign nationals, who have become victims of torture or other ill-treatment in the host state, it seems worth mentioning that often expulsion and deportation either prevents them from issuing a complaint altogether, or from effectively pursuing compensation claims from abroad.

### **Monitoring and reporting**

#### **§§ 39 and 40.**

Monitoring systems, where available, rarely keep track of the compliance with and enforcement of reparation orders in order to account for the extent to which victims of torture have in fact been awarded with restitution, compensation, rehabilitation and satisfaction, and which measures have been taken to ensure non-repetition.

London, 23 August 2011

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<sup>2</sup> see Article 11 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power: "Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims."