



United Nations Fund for Victims of Torture

UN VOLUNTARY FUND FOR VICTIMS OF TORTURE

WRITTEN SUBMISSION TO THE COMMITTEE AGAINST TORTURE (CAT) ON THE

Draft revised General Comment No. 1 (2017) on the implementation of article 3 of the Convention in the context of article 22

Introduction

The UN Voluntary Fund for Victims of Torture (UNVFVT) is honoured to submit to the Committee against Torture (CAT) its comments to the draft revised General Comment on the implementation of article 3 of the Convention in the context of article 22.

The written submission is based on both the rich experience of the Fund's grantees, as well as on the expertise of the UNVFVT Board of Trustees and Secretariat. The main focus of the written submission is **Section V. Redress and compensation** of the draft revised General Comment No. 1, which corresponds to the scope of the Fund's mandate to provide direct assistance to victims of torture and their families.

The Fund considers that the CAT draft revised GC No.1 provides an opportunity to contribute to the clarification on the treaty implementation requirements and on the continuous development and dissemination of the norms and standards on the right to redress and rehabilitation of victims of torture under CAT General Comment No. 3 (2012) and the UN 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 (2005). In order to reinforce these principles, the UNVFVT therefore respectfully suggests referencing these documents and taking them into account throughout the draft revised General Comment No. 1.

UNVFVT comments:

Section II. General Principles

*17. The Committee considers that severe pain or suffering cannot objectively be measured.
[...]*

The UNVFVT suggests that this consideration is verified on the basis of two aspects:

- **in terms of its accuracy and general acceptance within the expert and academic community (for instance in light of the “Istanbul Protocol” Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) and;**

- in terms of whether and why this can or should constitute *per se* a “general principle”.

Section III. Preventive measures to guarantee the principle of “non refoulement”

18. [...] (d) *The referral of the person alleging previous torture to an independent medical examination free of charge;*

The UNVFVT considers that this examination should be comprehensive, including also a psychological component. We therefore propose that the text be amended as follows:

18. [...] (d) *The referral of the person alleging previous torture to independent medical and psychological examinations free of charge;*

Section V. Redress and compensation

21. *States parties should take into account that victims of torture and other cruel, inhuman or degrading treatment or punishment suffer physical and psychological traumas which may require sustained specialized rehabilitation treatment. Once their health fragility and need for treatment has been medically certified, they should not be removed to a State where adequate medical services for their rehabilitation linked to their torture-related trauma are not available or not guaranteed.*

22. *States parties should envisage mechanisms of financial and legal assistance to persons deported where they have subsequently faced a substantial risk of being tortured or they have been tortured in the receiving State in order to enable them to get access to judicial procedures empowered to put an end to that risk or that offence. Alternatively, they should request independent international experts or organizations or national experts and institutions to carry out monitoring and follow-up visits to the persons concerned and facilitate their access to judicial remedies. When necessary, the sending State should undertake legal and administrative or other (diplomatic) procedures for the return of the persons concerned to its territory.*

The UNVFVT would like the Committee to consider changing the title of Section V. to “Redress and rehabilitation” instead of “Redress and compensation”. This amendment would be in consonance with the standards and language set forth in article 14 of the Convention and CAT General Comment No. 3.

We would also suggest including a brief introductory paragraph to Section V., specifically affirming that the right to redress for victims of torture who have been unduly or wrongly deported entails the whole range of modalities and measures of reparation granted to victims of torture and to victims of other gross violations of human rights law and serious violations of international humanitarian law, as contained in CAT General Comment No. 3 (2012) and the abovementioned UN Basic Principles

and Guidelines on the Right to a Remedy and Reparation (2005). In this way, all the paragraphs contained in Section V. would -in principle- be interpreted in the context of the abovementioned instruments.

As an alternative, should the inclusion of an introductory paragraph to Section V. not seem suitable for the CAT, adding a footnote to the title with reference to the two abovementioned instruments (in particular, CAT General Comment No. 3, paras. 6 and 11, in which the scope of the right to redress is described) would be advisable.

Regarding paragraph 21, the UNVFVT would like to suggest the following amendments, in line with the standards already developed by the CAT in particular and the UN generally regarding the redress and rehabilitation of victims of torture:

21. States parties should take into account that victims of torture and other cruel, inhuman or degrading treatment or punishment suffer physical and psychological harm which may require sustained specialized rehabilitation services (medical, psychological, legal, social and financial). Once their physical and/or mental health fragility and need for treatment has been established, they should not be removed to a State where adequate rehabilitation services [DELETE - linked to their torture-related trauma] are not available or not guaranteed.

Regarding paragraph 22, the UNVFVT considers that further clarification would be required along the following lines:

- The first sentence of paragraph 22 seems to refer to both the sender and the receiving States' duty to facilitate the access of victims who have been deported to legal remedies (judicial effective procedures) by making mechanisms for financial and legal assistance available. If this is the case, the specific duties and measures of both sender and receiving States should be distinguished more clearly. Furthermore, the two dimensions of the right to redress: access to effective remedy and all modalities of reparation, as outlined in CAT General Comment No. 3, should be deployed for these persons. Should an introductory paragraph stating that all modalities of reparation apply to this category of victims not be introduced, the UNVFVT considers that it would be important to mention such modalities here.
- The second sentence of paragraph 22 begins with "Alternatively..." which appears to refer more clearly to guarantees that the States deporting victims or potential victims of torture should adopt, in addition to their legal obligations under the right to redress. In that sense, the independent monitoring and follow-up visits, and other related measures, should not be an alternative to these obligations, but rather complementary.

Finally, the UNVFVT wishes to recommend harmonizing and cross-referencing Section V. with Section X.C., in particular paragraphs 42 and 43.

Section X. Specific requirements for the submission of individual communications under Article 22 of the Convention and interim measures of protection

C. Merits

43. *[...] In particular, a medical examination requested by a complainant to prove the torture that he/she has suffered should always be ensured, regardless of the authorities' assessment on the credibility of the allegation, so that the authorities deciding on a given case of deportation are able to complete the assessment of the risk of torture on the basis of the result of that medical examination, without any reasonable doubt.*

In line with the above-mentioned comment to paragraph 18, the UNVFVT proposes the following amendments:

43. *[...] In particular, medical and psychological examinations requested by a complainant to prove the torture that he/she has suffered should always be ensured, regardless of the authorities' assessment on the credibility of the allegation, so that the authorities deciding on a given case of deportation are able to complete the assessment of the risk of torture on the basis of the result of the medical and psychological examinations, without any reasonable doubt.*
