

# Rehabilitation in Article 14 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

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## I. Introduction

Persons exposed to torture have suffered serious attacks on their lives, relationships, health, and sense of dignity. The torture they experienced will remain a part of them even if they manage to move ahead and work through the pain. The destructive power of torture affects life on so many levels: mind and body, values and relationships, and the capacity for work and leisure. Providing opportunities to reconstruct lives after torture should be a priority in the international effort to prevent and prohibit torture.

International recognition of the right to redress, including rehabilitation for all victims of torture and other cruel, inhuman, or degrading treatment, as provided in Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),<sup>1</sup> is an important step in countering the negative effects of torture. Recognition of this right will shed light on the many aspects of rehabilitation and the different initiatives that States must undertake to comply with their obligation under Article 14. As such, the Committee Against Torture (Committee) developed General Comment 3 (GC 3) on Article 14, which “clarifies that the right to redress under [CAT] extends both to victims of torture and victims of . . . ‘ill-treatment.’”<sup>2</sup> This “reflects long-standing

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1. United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 14, Dec. 10, 1984, 1465 U.N.T.S. 85, *available at* <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx> [hereinafter CAT].

2. Felice Gaer, *The Treatment of Torture Victims: What Are a Government's Obligations?* 8, CHATHAM HOUSE (Jan. 21, 2013), <https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/International%20Law/210113summary.pdf>; Comm. Against Torture, Gen. Comment No. 3: Implementation of Article 14 by States Parties, U.N. Doc. CAT/C/GC/3, at ¶ 1, (2012), *available at* [http://www2.ohchr.org/english/bodies/cat/docs/GC/CAT-C-GC-3\\_en.pdf](http://www2.ohchr.org/english/bodies/cat/docs/GC/CAT-C-GC-3_en.pdf) [hereinafter GC 3].

committee jurisprudence, which argues, *inter alia*, that ill-treatment as outlined in [A]rticle 16 also violates [CAT] and requires redress.<sup>3</sup> In adopting the General Comment, the Committee constantly referenced the United Nations 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 (Basic Principles), which “identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law . . .”<sup>4</sup> The Basic Principles establish five forms of redress for such violations: “restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.”<sup>5</sup> Rehabilitation is defined in the Basic Principles as including “medical and psychological care as well as legal and social services.”<sup>6</sup> This definition of rehabilitation may sound like a medical term with a narrow scope, but the Committee has interpreted it to include the many aspects involved in the reconstruction of the lives of victims of torture and not exclusively as a medical undertaking.

Studies show that there is a wide range of reactions following torture, and not all victims of torture need rehabilitation in the form of special care or treatment.<sup>7</sup> This underpins the importance of identifying individual victim’s needs and claims. Furthermore, rehabilitation is not an action that is “done” or “given to” someone but a series of measures that must be based on close collaboration and planning between the person who is in need of such care and the service provider. Giving voice to and respecting the decisions and agency of torture survivors are vital components of a process of recovering life and dignity. Failure to take victim participation into account in this process not only violates important ethical principles but also risks continued humiliation of victims of torture. The lack of specificity with regard to rehabilitation and the lack of State engagement as to planning, implementing, and evaluating rehabilitation programs has called for a more in-depth approach to the obligation of States.

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3. Gaer, *supra* note 2; see also *Sonko v. Spain*, Comm. Against Torture, U.N. Doc. CAT/C/47/D/368/2008, ¶¶ 10.4, 10.8 (Feb. 20, 2012), available at [http://www.worldcourts.com/cat/eng/decisions/2011.11.25\\_Sonko\\_v\\_Spain.pdf](http://www.worldcourts.com/cat/eng/decisions/2011.11.25_Sonko_v_Spain.pdf); *Keremedchiev v. Bulgaria*, Comm. Against Torture, U.N. Doc. CAT/C/41/D/257/2004 ¶¶ 3, 9.2, 9.3 (Nov. 21, 2008), available at [http://www.bayefsky.com/pdf/bulgaria\\_t5\\_cat\\_257\\_2004.pdf](http://www.bayefsky.com/pdf/bulgaria_t5_cat_257_2004.pdf); *Dzemajl v. Serbia & Montenegro*, Comm. Against Torture, U.N. Doc. CAT/C/29/D/161/2000 ¶ 9.6 (Nov. 21, 2002), available at [http://www.univie.ac.at/bimtor/dateien/cat\\_2002\\_dzemajl\\_vs\\_serbia.pdf](http://www.univie.ac.at/bimtor/dateien/cat_2002_dzemajl_vs_serbia.pdf).

4. G.A. Res. 60/147, pmbl., ¶ 7 (Dec. 16, 2005), available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.

5. *Id.* ¶ 18.

6. *Id.* ¶ 21.

7. Metin Basoglu, *Prevention of Torture and Rehabilitation of Survivors – Review of the UN Committee Against Torture Working Document on Article 14: Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, MASS TRAUMA, MENTAL HEALTH & HUMAN RIGHTS (July 29, 2011), <https://metinbasoglu.wordpress.com/2011/07/29/200/>.

In the following pages, the scope of the obligation to provide rehabilitation as a form of reparation for victims of torture in accordance with the requirements of Article 14 of CAT will be outlined and discussed using GC 3 as a framework or reference. The right to rehabilitation, as defined in other international human rights documents and treaties, will also be addressed as applicable. The right to redress under Article 14 of CAT specifies:

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 dependents shall be entitled to compensation.<sup>8</sup>

Article 14 requires States to establish a legal provision ensuring redress for victims of torture that includes compensation for the victims. Rehabilitation or rehabilitative services must be provided to victims in need. Article 14 states that the means for “as full rehabilitation as possible” must be ensured. “As full as possible” refers to possible limitations in restoring the person after torture, not to limitations of the State party’s capacity to provide redress.<sup>9</sup> Redress, according to Article 14, refers to legal redress and compensation, which may include rehabilitation of both mental and physical health, rehabilitation in relation to training and social integration, and economic compensation to victims.<sup>10</sup> GC 3 emphasizes that the term “redress” covers all five forms of reparation as outlined in the Basic Principles.<sup>11</sup> All such forms of redress provided by the State “must be adequate, effective and comprehensive.”<sup>12</sup> GC 3 further specifies that all victims of torture have a right to obtain redress, not only to seek it.<sup>13</sup>

## II. The Right to Rehabilitation Under International Law

An overview of how the right to rehabilitation has been dealt with in other international law contexts is presented in this section. The right to rehabilitation has been established in human rights treaties,<sup>14</sup> General

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8. CAT, *supra* note 1, art. 14, ¶ 1.

9. See GC 3, *supra* note 2, ¶ 12.

10. See *id.* ¶ 10.

11. See *id.* ¶ 6.

12. *Id.*

13. See *id.* ¶ 20.

14. United Nations International Convention for the Protection of All Persons from Enforced Disappearance art. 24, ¶ 5, Dec. 20, 2006, 2716 U.N.T.S. 3, available at <http://www.ohchr.org/Documents/ProfessionalInterest/disappearance-convention.pdf>; United Nations Convention on the Rights of Persons with Disabilities art. 16, ¶ 4, art. 22, ¶ 2, art. 25, art. 26, ¶¶ 1-3, Dec. 13, 2006, 2515 U.N.T.S. 3, available at <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html>; United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, art. 17, ¶ 4, art. 18, ¶ 4, Dec. 18,

Comments, and reports of United Nations special procedures, but references to rehabilitation are not always presented in the context of the right to reparation.

According to the treaties recognizing a right to rehabilitation, States have a duty to provide defined groups or persons with certain characteristics or experiences with some form of rehabilitation, such as: the right to social rehabilitation in the penitentiary system, particularly for juvenile offenders, as stated in the International Covenant on Civil and Political Rights (ICCPR);<sup>15</sup> the right to rehabilitation for disabled children and the right to health for children generally, as stated in the Convention on the Rights of the Child (CRC);<sup>16</sup> and the right to habilitation and rehabilitation for persons with disabilities, as stated in the Convention on the Rights of Persons with Disabilities (CRPD).<sup>17</sup>

The right to rehabilitation after torture exists as a component of the right to redress for victims of torture.<sup>18</sup>

The right to rehabilitation after torture could in principle be regarded as a right to all persons subjected to torture, that is, without reference to the right to reparation. Being a torture victim or survivor would, in itself bestow the person with a right to rehabilitation. This would be considered a free-standing right to those exposed to torture *and* in need of rehabilitation services.<sup>19</sup>

It may be argued that whether the right to rehabilitation after torture exists as a free-standing right to all victims of torture regardless of claims of reparation is unsettled, such as under the CRPD,<sup>20</sup> or whether it is primarily linked to a reparation scheme.<sup>21</sup>

The question of whether victims of torture and ill-treatment should be entitled to rehabilitation, regardless of where they are and who tortured

1990, 2220 U.N.T.S. 3, *available at* <http://www.ohchr.org/Documents/ProfessionalInterest/cmw.pdf>; United Nations Convention on the Rights of the Child art. 23, ¶ 3, art. 24, ¶ 1, Nov. 20, 1989, 1577 U.N.T.S. 3, *available at* <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>; United Nations International Covenant on Civil and Political Rights art. 10, ¶ 3, art. 14, ¶ 4, Dec. 16, 1966, 999 U.N.T.S. 171, *available at* <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>.

15. *See* United Nations International Covenant on Civil and Political Rights, *supra* note 14.

16. *See* United Nations Convention on the Rights of the Child, *supra* note 14.

17. *See* United Nations Convention on the Rights of Persons with Disabilities, *supra* note 14, art. 26, ¶¶ 1-3.

18. *See* GC 3, *supra* note 2, ¶ 6.

19. Nora Sveaass, *Gross Human Rights Violations and Reparation Under International Law: Approaching Rehabilitation as a Form of Reparation*, 4 EUR. J. OF PSYCHOTRAUMATOLOGY 5 (2013), *available at* <http://www.tandfonline.com/doi/full/10.3402/ejpt.v4i0.17191>.

20. *See* Heidi K. Togle, *Seeking a Free Standing Right to Rehabilitation for Torture Survivors*, DIGNITY: DANISH INST. AGAINST TORTURE (May 26, 2010), <https://dignityinstitute.org/news-and-events/news/2010/seeking-a-free-standing-right-to-rehabilitation-for-torture-survivors/>.

21. *See* United Nations Convention on the Rights of Persons with Disabilities, *supra* note 14, art. 26.

them, has been frequently raised.<sup>22</sup> GC 3 establishes that it should be a universal duty to provide torture victims with health care and re-integrative services, without consideration as to whether formal complaints or court decisions have been made or to the question of who was responsible for the torture or where it happened.<sup>23</sup> This obligation to provide services regardless of location underlies the argument that rehabilitation facilities for torture victims should be established in all countries.<sup>24</sup> In practice, “this would mean that an Iraqi refugee [tortured in his or her home country] coming to Switzerland should be entitled not only to general health care, but also be given the option of a fuller rehabilitation directly related to the health damage suffered,” including medical, psychological, social, and legal services.<sup>25</sup> In most scenarios, “this would imply something beyond what would usually be considered basic and necessary health care” and may include, for example, “complicated dental treatment, long-term physiotherapy and/or psychotherapy, [o]r surgery.”<sup>26</sup>

Some argue that “in order to strengthen this free-standing right to rehabilitation for victims of torture and other gross human rights violations one could directly invoke the rights entailed in the [CRPD].”<sup>27</sup> The basis for this argument is that “[m]any victims of torture may in fact be considered as persons with disabilities, given the serious psychological and physical problems they encounter.”<sup>28</sup> The focus in the CRPD on measures to “enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life” and the obligation of State parties to “organize, strengthen and extend comprehensive habilitation and rehabilitation services and programs, particularly in the areas of health, employment, education and social services” are highly relevant for victims of torture and cruel, inhuman or degrading treatment or punishment.<sup>29</sup>

Unfortunately, there is a significant gap between the establishment of rights and their implementation. Moreover, defining the rights of victims does not mean that victims will necessarily have access to, be able to seek, or be able to realize these rights. This is true for most of the disabled people in the world, including those in countries that have ratified the CRPD, and it is certainly true for most of those who have been exposed to torture.

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22. See CLARA SANDOVAL VILLALBA, REHABILITATION AS A FORM OF REPARATION UNDER INTERNATIONAL LAW 58-63 (2009), available at <http://www.redress.org/downloads/publications/The%20right%20to%20rehabilitation.pdf>.

23. GC 3, *supra* note 2, ¶¶ 3, 23, 27.

24. See Rep. of Juan E. Méndez (Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), ¶ 33, U.N. Doc. A/HRC/16/52 (Feb. 3, 2011), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.52.pdf>.

25. See Sveaass, *supra* note 19.

26. *Id.*

27. *Id.*

28. *Id.*

29. United Nations Convention on the Rights of Persons with Disabilities, *supra* note 14, art. 26, ¶ 1.

### III. Defining the Scope and Obligation of the Right to Redress Under Article 14

The importance of defining and clarifying the content and scope of the obligations under Article 14 of CAT has long been a concern raised in the Committee. The need for full implementation of the obligation to ensure redress for persons who have been subjected to torture, who often live in situations of prolonged injustice, denial, insecurity, and lack of assistance, make the need for clarifications even more pressing. As previously stated, GC 3 was an important step in this direction. General Comments are a useful tool for interpreting and implementing treaties and can:

- (1) focus each state party on the inadequacies and lacunae and recurring violations of the treaty as found in the reports submitted by each of the state's parties or through the interactive dialogue between representatives of the state party and members of the committee;
- (2) inform states parties on the experiences gained by the members of the treaty body which can assist them in implementing the treaty;
- (3) guide states parties in their general implementation of the treaty and possible improved reporting procedures to the committee;
- (4) identify future preventive measures that states parties can take to realize the rights in the relevant treaties; and
- (5) provide victims with information of their rights under the Convention.<sup>30</sup>

State parties must also provide victims with information of their rights under CAT.<sup>31</sup>

In November 2009, the Committee began the process of drafting a General Comment on Article 14 after the Former Chair of the Committee (and co-author of this article), Professor Claudio Grossman, presented a draft. Based on discussion of this draft, the Committee created a working group consisting of four Committee members: Claudio Grossman, Felice Gaer (Vice-chairperson), Abdul Gaye (member), and Nora Sveaass (Rapporteur).<sup>32</sup> The working group emphasized that the draft should adequately reflect the Committee's own jurisprudence, and therefore, it postponed further discussion until May 2011 so that the Committee's jurisprudence and practice on this issue could be summarized and studied. Committee members were also encouraged to submit alternative draft language for discussion. Another draft was submitted by two of the working group members (Gaer and Sveaass), and the working group sought to merge these two drafts into one.

During the May 2011 session, the working group presented a merged draft, which the Committee discussed, and in June, decided to post on the Committee website. The Committee invited State parties, civil society

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30. Gaer, *supra* note 2.

31. See GC 3, *supra* note 2, ¶ 29.

32. The authors of this article were involved in the drafting process of GC 3. As such, some of what is said in this section is based on their recount of how GC 3 came about.

members, stakeholders, experts, and academics to submit their comments and feedback by September 15, 2011. This represented the first round of consultations on GC 3. The feedback was generally very positive and the General Comment was widely supported. At the same time, observers offered substantial comments and suggestions, including some criticism. A large number of civil society organizations presented valuable comments, and a number of U.N. bodies submitted constructive observations. Although few States commented in the first round, more States engaged when the draft was presented a second time for further discussion. Two open meetings were held during the CAT sessions in May and November 2012—one invited NGOs and one invited States. Both meetings were well attended and generated helpful feedback evidencing strong agreement on the need for the General Comment. GC 3 was adopted by the Committee in November 2012.<sup>33</sup>

In its more than twenty-five years of work, the Committee has adopted very few General Comments. For the Committee, the workload has always been very heavy and time allocated for the development of General Comments has been limited.<sup>34</sup> For more than a decade, the Committee had only General Comment 1 (GC 1) on the implementation of Article 3 (1997).<sup>35</sup> After extensive efforts, General Comment 2 (GC 2) on Article 2, which discusses State party obligations to prevent torture, was adopted in 2008.<sup>36</sup> GC 3 builds on principles from GC 2 and addresses additional matters not covered by it.

There is a close relationship, both legally and psychologically, between rehabilitation and the other forms of reparation, such as restitution, compensation, satisfaction, and guarantees of non-repetition, which reflect the full scope of measures required to redress violations under CAT.<sup>37</sup> One may ask whether it is possible for rehabilitation to take place if there is still fear that the violence may be repeated, or, in situations where there is no

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33. The adoption of GC 3, referred to as a “key document” regarding States’ obligations under Article 14, was hailed as a “significant development” and “one of the most encouraging highlights of the year.” REDRESS, ANNUAL REPORT 2012-13 3, 24 (2013), available at <http://www.redress.org/downloads/1redressannualreport2012-2013.pdf>. Amnesty International referred to GC 3 as a “landmark general comment” that would “provide excellent guidance to states when implementing the Convention.” AMNESTY INT’L, UNITED NATIONS COMMITTEE AGAINST TORTURE ADOPTS LANDMARK GENERAL COMMENT ON THE RIGHT TO REPARATION 1 (2012), available at <https://www.amnesty.org/en/documents/ior51/005/2012/en/>.

34. See Navanethem Pillay (U.N. High Commissioner for Human Rights), *Rep. on Strengthening the United Nations Human Rights Treaty Body System*, U.N. Doc. A/66/860, at 23 (June 2012), available at <http://www2.ohchr.org/english/bodies/HRTD/docs/HCREportTBStrengthening.pdf>.

35. Comm. Against Torture, Gen. Comment No. 1: Implementation of Article 3 of the Convention in the Context of Article 22, U.N. Doc. A/53/54, annex IX (1997), available at <http://www.refworld.org/docid/453882365.html>.

36. Comm. Against Torture, Gen. Comment No. 2: Implementation of Article 2 by States Parties, U.N. Doc. CAT/C/GC/2 (2008), available at <http://www.refworld.org/docid/47ac78ce2.html> [hereinafter GC 2].

37. See GC 3, *supra* note 2, ¶ 6.

truth or justice, if attempts to provide fair compensation or other measures to ensure satisfaction have not been addressed.

GC 3 takes “an explicitly holistic and victim-oriented approach, remind[ing] states to take into account the specifics of each case and that redress should be proportionate to the ‘gravity of the violations committed.’”<sup>38</sup> It “further emphasizes the ‘inherent preventive and deterrent effect’ of providing reparation to victims.”<sup>39</sup> The following pages provide analysis of the necessary components and contextual conditions that make rehabilitation an adequate form of redress.

#### A. PROCEDURAL AND SUBSTANTIVE OBLIGATIONS ARE ESSENTIAL COMPONENTS OF THE RIGHT TO REDRESS

GC 3 “identifies both procedural and substantive obligations to provide redress.”<sup>40</sup> It extensively outlines procedural elements, such as the enactment of legislation and the establishment of complaints mechanisms, investigative bodies, and other judicial bodies that enable victims of torture or ill-treatment to seek and obtain redress.<sup>41</sup> It also “addresses substantive requirements that provide the victim with ‘full and effective redress’ in response to each claim.”<sup>42</sup> The “establishment of ‘effective’ and ‘accessible’ bodies is central to meeting” these procedural and substantive obligations.<sup>43</sup>

Concerning the substantive aspects of the right, “by identifying the five components of redress outlined above, [GC] 3 clarifies that the concept of redress is substantially broader than compensation and rehabilitation, the two forms of redress mentioned by name in [A]rticle 14.”<sup>44</sup> GC 3, thus, “also offers an important elaboration of the concept of rehabilitation for victims of torture and ill-treatment, emphasizing it must be ‘holistic and include medical and psychological care as well as legal and social services.’”<sup>45</sup> It specifies that rehabilitative services should be provided “as soon as possible following an assessment by qualified independent medical professionals” and should not depend on the victim’s pursuit of judicial remedies.<sup>46</sup> GC 3 “takes a victim-oriented approach with regard to participation and selection of services, in keeping with the approach encouraged by the former U.N. Special Rapporteur on Torture, Juan Mendez.”<sup>47</sup>

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38. Gaer, *supra* note 2, at 7 (quoting GC 3, *supra* note 2, ¶ 6).

39. Gaer, *supra* note 2, at 7.

40. *Id.*; see also GC 3, *supra* note 2, ¶ 5.

41. See GC 3, *supra* note 2, ¶ 5.

42. Gaer, *supra* note 2, at 7 (quoting GC 3, *supra* note 2, ¶ 5).

43. Gaer, *supra* note 2, at 7.

44. *Id.*

45. *Id.* (quoting GC 3, *supra* note 2, ¶ 11).

46. Gaer, *supra* note 2, at 7 (quoting GC 3, *supra* note 2, ¶ 15).

47. Gaer, *supra* note 2, at 7.



## B. DEFINING VICTIMS

GC 3 uses the term “victim” when referring to persons who have suffered and survived torture.<sup>48</sup> The term “survivor” may also be appropriate, as the term “victim” may be construed by some as indicating that the person is victimized, permanently harmed, and/or in lesser charge of his or her own life.<sup>49</sup> This may not necessarily be the case, as many people demonstrate strong resilience even when faced with torture. Nevertheless, their experiences as persons subjected to torture entitle them to redress and compensation or other forms of reparative measures, regardless of whether they seek out rehabilitative services.

Victims of torture entitled to redress have “individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations” of CAT.<sup>50</sup> This concept is flexible and has a wide scope. Victims also include “affected immediate family or dependents of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization.”<sup>51</sup> This definition reflects the Committee’s view that “family members and dependents of disappeared persons are entitled to redress and not merely to compensation.”<sup>52</sup> The Committee has recommended compensation, including in the form of rehabilitation, to family members of persons who have disappeared. In 2008, the Committee made recommendations to Algeria and asked the State to guarantee the right of families of disappeared persons to redress and to pay fair compensation, “including by giving them the necessary psychological, social and financial support . . .”<sup>53</sup> This “tracks definitions developed in such multilateral instruments as the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.”<sup>54</sup> It also follows the 1999 Declaration on the Right to Restitution for Victims of Gross Human Rights Violations, adopted by the U.N. Commission on Human Rights,<sup>55</sup> and the Basic Principles and Guidelines on the Right to a Remedy and Reparation.<sup>56</sup> The Committee’s definition reflects ways to “ensure[] the maximum protection of a person who has suffered harm as a result of torture or ill-treatment.”<sup>57</sup>

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48. See GC 3, *supra* note 2, ¶ 3.

49. See *id.*

50. *Id.*

51. *Id.*

52. Gaer, *supra* note 2, at 6.

53. Comm. Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Concluding Observations: Algeria, ¶ 13, U.N. Doc. CAT/C/DZA/CO/3 (2008), available at [http://www.univie.ac.at/bimtor/dateien/algeria\\_cat\\_2008\\_concob.pdf](http://www.univie.ac.at/bimtor/dateien/algeria_cat_2008_concob.pdf).

54. Gaer, *supra* note 2, at 6.

55. *Id.*

56. See *id.* at 7.

57. *Id.* at 6.

Furthermore, GC 3 provides that “a person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted.”<sup>58</sup>

Torture affects not only the tortured person but also those confronted with the fact that a loved one is being subjected to or threatened with pain. Torture of a family member may alter the lives of relatives when the victim returns or, alternatively, if the victim dies as a result of the torture. Reconstructing family life after torture or death can be a long and hard process, as is the reconstruction of the family following a member’s brutal death. The right of dependents to receive assistance, such as rehabilitation, is, thus, formulated in GC 3 and represents an important step toward positive change from a psychological, social, and legal point of view.

Victims of torture with a right to redress also include those who suffer because of a lack of protection against torture and ill-treatment by non-State actors.<sup>59</sup> Noncompliance by a State with an obligation to exercise due diligence to intervene in, stop, or sanction acts of torture and ill-treatment “enables non-State actors to commit such acts impermissible under the Convention with impunity, [and] the State’s indifference or inaction provides a form of encouragement and/or de facto permission.”<sup>60</sup> Persons who have been victimized by such acts and by a lack of protection or due diligence exercised by the State, whether in homes, institutions, schools, etc., are entitled to redress, including rehabilitation.

### C. RIGHT TO REDRESS AS AN INDIVIDUAL RIGHT

GC 3 “emphasizes that legislation providing a remedy and the right to redress ‘must allow individuals to exercise this right,’” and State parties must “ensure that all victims have access to judicial remedies.”<sup>61</sup> The Committee acknowledges that, “[w]hile collective reparation and administrative reparation programs may be acceptable as a form of redress, such programs may not render ineffective the individual right to a remedy and to obtain redress.”<sup>62</sup> The Committee has addressed this issue. For example, in its concluding observations and recommendations on Cambodia in 2010, the Committee noted that “the Internal Rules of the ECCC only provide for moral and collective reparation, precluding individual financial compensation.”<sup>63</sup> Consequently, the Committee recommended that the ECCC “amend its Internal Rules to permit reparation to victims consistent with [A]rticle 14 of the Convention, including, as appropriate, individual

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58. GC 3, *supra* note 2, ¶ 3.

59. *See id.* ¶ 7 (citing GC 2, *supra* note 37).

60. GC 2, *supra* note 37, ¶ 18.

61. Gaer, *supra* note 2, at 8 (quoting GC 3, *supra* note 2, ¶ 20).

62. GC 3, *supra* note 2, ¶ 20.

63. Comm. Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Concluding Observations: Cambodia, ¶ 27, U.N. Doc. CAT/C/KHM/CO/2 (2011), available at [http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.KHM.CO.2\\_en.pdf](http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.KHM.CO.2_en.pdf).

financial compensation.”<sup>64</sup> GC 3 “also stipulates that development projects and humanitarian aid programs are not a substitute for an individual victim’s right to redress.”<sup>65</sup> It specifies further that “[c]ulturally sensitive collective reparation measures shall be available for groups with shared identity, such as minority groups, indigenous groups, and others” while reiterating that “collective measures do not exclude the individual right to redress.”<sup>66</sup>

#### D. GENDER SENSITIVITY AND NON-DISCRIMINATORY MEASURES

GC 3 emphasizes that effective implementation of the right to redress requires a gender-sensitive approach. In this regard, it states:

The Committee considers that complaints mechanisms and investigations require specific positive measures which take into account gender aspects in order to ensure that victims of abuses such as sexual violence and abuse, rape, marital rape, domestic violence, female genital mutilation, and trafficking are able to come forward and seek and obtain redress.<sup>67</sup>

Furthermore, such measures should apply to any marginalized or vulnerable person.<sup>68</sup> Both in judicial and non-judicial proceedings, as well as in all circumstances where redress—particularly in the form of rehabilitation—is provided, sensitivity and specific training on the impact of torture and ill-treatment on victims from marginalized and vulnerable groups are essential.<sup>69</sup> Such training must include “how to exercise sensitivity towards victims of torture and ill-treatment, including in the form of sexual- or gender-based discrimination, in order to prevent re-victimization and stigmatization.”<sup>70</sup>

### IV. The Right to Rehabilitation Under Article 14

Rehabilitation is explicitly identified as part of the State’s obligation to redress all victims of torture in Article 14 of CAT.<sup>71</sup> State responsibility in relation to rehabilitation is also closely linked to obligations defined in other provisions of CAT, such as Article 10 (on training), Article 12 (on investigation), and Article 13 (on the right to complain),<sup>72</sup> which should be

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64. *Id.*

65. Gaer, *supra* note 2, at 8.

66. GC 3, *supra* note 2, ¶ 32.

67. *Id.* ¶ 33.

68. *Id.* ¶ 34.

69. *Id.*; *see also*, Sveaass, N., The UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: the absolute prohibition and the obligation to prevent. In M. Başoğlu (Ed.), *Torture and Its Definition in International Law: An Interdisciplinary Approach*, 247 – 271 (New York: Oxford University Press 2017).

70. *Supra* note 68.

71. *See* CAT, *supra* note 1.

72. *See id.* arts. 10, 12, 13.

read together with Article 14. In practice, a prerequisite for rehabilitation is good and thorough training of professionals in different capacities in society. Such training includes training on CAT with a special reference to “law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.”<sup>73</sup>

This obligation to educate and provide information on the prohibition of torture also implies that the State must ensure that medical and other relevant personnel have the necessary professional knowledge and capacity to detect, investigate, refer, and treat the consequences of torture. Thus, in the reporting process under CAT, States are frequently asked about available programs to train medical personnel, not only to identify and document torture, but also to provide rehabilitation services.<sup>74</sup> Article 10 specifies the obligation to include information about the prohibition of torture in education and training programs.<sup>75</sup> In its recommendations, the Committee has frequently referred to the need, not only to provide information about prohibition to a wide range of relevant personnel, but also to develop education programs related to identification of torture and ill-treatment and to provision of rehabilitation services.<sup>76</sup> The importance of training as a condition for ensuring the right to rehabilitation is illustrated in the Committee’s recommendations to Serbia and Spain.<sup>77</sup> Finally, complaints mechanisms and investigations must be in place, as required under Articles 12 and 13 of CAT.<sup>78</sup>

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73. *Id.* art. 10, ¶ 1.

74. See Committee against Torture, List of Issues to be Considered During the Examination of the Initial Report of Montenegro, U.N. Doc CAT/C/MNE/1 (Sept. 9, 2008), <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhslVpw9qedE6H7W4xUzcOd4f%2B1mPPyvGFpSl4iXkiTESxriZuxZgsV%2BQuDcwbktwHFqLPZbnsUm3nrj54eEhAxAV4wBX12UY4PiTYupK8tBz>; Committee Against Torture, List of Issues to be Taken up in Connection With the Consideration of the Second Periodic Report of Belgium, U.N. Doc. CAT/C/BEL/2 (Sept. 9, 2008), <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsy8iEI7EhsMb0if1UiLCxLiY7tbX2d2o9KIqnsVqTLlvKNdCdmsX2Fqm7mp1f5%2BqYzs6nmX8LpYfNjclI%2BKuGNRC6zQbMwGsyUx4VXwY4K>; Committee against Torture, List of Issues to be Considered During the Examination of the Fourth Periodic Report of Hong Kong, U.N. Doc. CAT/C/HKG/4 (Aug. 4, 2008), [www2.ohchr.org/English/bodies/cat/docs/AdvanceVersions/CAT.C.HKG.Q.4.doc](http://www2.ohchr.org/English/bodies/cat/docs/AdvanceVersions/CAT.C.HKG.Q.4.doc).

75. CAT, *supra* note 1, art. 10, ¶ 1.

76. See, e.g., Concluding Observations: Cambodia, *supra* note 63, ¶ 25.

77. See Comm. Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Concluding Observations: Serbia, ¶ 14, U.N. Doc. CAT/C/SRB/CO/1 (2009), available at [www.univie.ac.at/bimtor/dateien/serbia\\_cat\\_2009\\_concob.pdf](http://www.univie.ac.at/bimtor/dateien/serbia_cat_2009_concob.pdf) (“However, it is concerned that the training is not targeted at education and information regarding the prohibition of torture and that training programs for medical personnel for the identification and documentation of cases of torture in accordance with the Istanbul Protocol, is insufficient, as is the rehabilitation of victims.”); Comm. Against Torture, Concluding Observations on the Sixth Periodic Report of Spain, ¶ 23, U.N. Doc. CAT/C/ESP/CO/6 (2015), available at <http://www.refworld.org/docid/564595214.html>.

78. See CAT, *supra* note 1, arts. 12, 13.

The right to rehabilitation is defined as part of the right to redress and compensation.<sup>79</sup> CAT was the first human rights treaty to refer to rehabilitation in the context of redress and to specify that the right to be provided was defined within a framework of redress or compensation for harm done.<sup>80</sup> The right holders are those who have been subjected to torture or ill-treatment (mental and/or physical) and those dependent on the victim.<sup>81</sup>

Based on Article 14, many questions are raised by members of the Committee to representatives of States concerning the monitoring of State compliance with their obligations under CAT. Most States include information as to legal measures taken, outlining the established laws, and, sometimes, the mechanisms relating to the right to redress.<sup>82</sup> The Committee also inquires about monetary compensation provided, including information on how much was paid, to whom, and for what reasons.<sup>83</sup> Some States also report on procedural aspects regarding how individuals can obtain redress.<sup>84</sup> Less information has been provided to the Committee about rehabilitative measures, including how such measures are implemented, to whom rehabilitation is provided, who provides it, and where it takes place; information about existing services provided in a context of rehabilitation to torture victims has been scant.<sup>85</sup> States sometimes provide limited information on the monitoring and evaluation of

79. See *id.* art. 14, ¶ 1.

80. See Oxford Handbook of Int'l Human Rights Law 930 n.41 (Dinah Shelton ed., 2013).

81. See CAT, *supra* note 1, art. 14, ¶ 1.

82. See *e.g.*, Comm. Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Concluding Observations: Azerbaijan, ¶¶ 4-6, U.N. Doc. CAT/C/AZE/CO/3 (2009), available at [www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.AZE.CO.3.doc](http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.AZE.CO.3.doc); Comm. Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention Pursuant to the Optional Reporting Procedure: United States, ¶ 147, U.N. Doc. CAT/C/USA/3-5 (2013).

83. See *e.g.*, Comm. Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Concluding Observations: Slovakia, ¶ 16, U.N. Doc. CAT/C/SVK/CO/2 (2009), available at [www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.SVK.CO.2.doc](http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.SVK.CO.2.doc) (The State "should [ ] collect data on the number of victims who have received compensation and other forms of assistance."); Comm. Against Torture, List of Issues to be Taken Up During the Consideration of the Fourth Periodic Report of Cameroon, art. 14, ¶ 27, U.N. Doc. CAT/C/CMR/Q/4 (2010), available at <http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.CMR.Q.4.pdf> ("Please indicate whether there have been cases where persons have received compensation following cases of torture or ill-treatment. If so, please indicate the amount that they received and the number of such cases and describe the type of violence to which the persons in question were subjected.").

84. See, *e.g.*, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention Pursuant to the Optional Reporting Procedure: United States, *supra* note 82.

85. See ELLIE SMITH ET AL., A REMEDY FOR TORTURE SURVIVORS IN INTERNATIONAL LAW: INTERPRETING REHABILITATION 18 (2010), available at <https://www.freedomfromtorture.org/sites/default/files/documents/MF%20Rehabilitation%202010%20Final.pdf> (explaining that "the assessment of whether a [ ] State fulfils its obligation to provide as full rehabilitation as possible is . . . extremely difficult due to the paucity of available information relating to clinical provision for torture survivors.").

the training programs for personnel in charge of such services.<sup>86</sup> As a result, there has been little available statistical data on existing rehabilitation services and beneficiaries and little information on any assessment or evaluation as to the outcome or effectiveness of rehabilitation-related services. The absence of this information, which is both unfortunate and unacceptable, shows a prima facie lack of compliance with CAT's mandate to comply fully with Article 14. When services exist but information is not provided, the Committee cannot assess the situation and/or provide proper guidance to the State on the full satisfaction of its obligations under CAT.

GC 3 elaborates on rehabilitation as part of the right to redress under Article 14.<sup>87</sup> In the following section, this article presents the main aspects of rehabilitation as a wide-ranging service provided to victims of torture and ill-treatment.

#### A. REHABILITATION ENTAILS HOLISTIC AND MULTIDISCIPLINARY SERVICES

GC 3 affirms the importance of rehabilitation, which is holistic and multidisciplinary in nature and includes medical and psychological care as well as legal and social services. According to GC 3, rehabilitation refers to:

[T]he restoration of function or the acquisition of new skills required by the changed circumstances of a victim in the aftermath of torture or ill-treatment. It seeks to enable the maximum possible self-sufficiency and function for the individual concerned, and may involve adjustments to the person's physical and social environment. Rehabilitation for victims should aim to restore, as far as possible, their independence, physical, mental, social and vocational ability; and full inclusion and participation in society.<sup>88</sup>

Given the short-term and long-term emotional, social, and cognitive effects of torture, "a holistic and integrative concept of rehabilitation is vital."<sup>89</sup>

Torture aims to break down the body and mind and may result in "disintegration of the personality."<sup>90</sup> Systematic humiliation, lack of control, and a sense of helplessness resulting from torture can be serious impediments to any form of regular social, vocational, or personal life, which underscores the importance of a broad concept of rehabilitation.<sup>91</sup> But rehabilitation may often be insufficient for restitution, as the effects of torture may be too pervasive to allow full recovery to take place. Thus, the

86. See, e.g., Concluding Observations: Azerbaijan, *supra* note 82, ¶ 23.

87. See GC 3, *supra* note 2, ¶ 2.

88. *Id.* ¶ 11.

89. Nilantha Ilangamuwa, *Why Torture is Wrong*, COUNTER PUNCH (Oct. 11, 2013), <https://www.counterpunch.org/2013/10/11/why-torture-is-wrong/>.

90. Manfred Nowak (Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), *Interim Rep.*, ¶ 63, U.N. Doc. A/65/273 (Aug. 10, 2010), available at <http://www2.ohchr.org/english/issues/torture/rapporteur/docs/A.65.273.pdf>.

91. See *id.*

term “as full rehabilitation as possible” refers to “the need to restore and repair the harm suffered by a victim whose life situation, including dignity, health, and self-sufficiency may never be fully recovered as a result of the pervasive effect of torture.”<sup>92</sup> A lack of resources, including limited available professionals to deal with these issues, does not eliminate the requirement to fulfill these obligations.

## B. REHABILITATION SERVICES SHOULD BE APPROPRIATE, AVAILABLE, AND ACCESSIBLE

Under GC 3, States should develop and adopt a “long-term, integrated approach and ensure that specialized services for the victim of torture or ill-treatment are available, appropriate and promptly accessible.”<sup>93</sup> Rehabilitation services should be professional, effective, and accessible.<sup>94</sup> This means that those in need of rehabilitative services and their dependents or others supporting them should know where services are, how to contact providers of services, how to obtain information, and how to access such services. Rehabilitation services must be appropriate, accessible, safe, and stable.<sup>95</sup> Services should be offered that, in practice, take care of the multi-professional and multi-dimensional aspects of rehabilitation after torture, and it is important that these services are accessible and available to those who need them. This also means that they must be free of charge for those who need the care. The “[m]ere availability of general healthcare” does not necessarily mean that the services are appropriate.<sup>96</sup> A victim’s possibility to receive good care depends on the circumstances in which this occurs. For assistance to be beneficial, it is vital to offer a context where safety, confidence, and trust can be established. Also, given the experiences of torture victims, the risk of re-traumatization is always present, especially in situations that may remind them of the torture or ill-treatment they experienced.<sup>97</sup>

For rehabilitation to be effective, it must be based on professionally-sound assessments of a victim’s needs and the mental and physical sequelae caused by the torture.<sup>98</sup> “Procedure[s] for assessment and evaluation” must be established, including procedures for the documentation of torture, “based on, among others, the Manual on the Effective Investigation and

92. GC 3, *supra* note 2, ¶ 12.

93. *Id.* ¶ 13.

94. See NIMISHA PATEL & AMANDA C DE C WILLIAMS, MONITORING AND EVALUATION OF REHABILITATION SERVICES FOR TORTURE SURVIVORS 17-24 (2014), available at <http://nebrastunisie.org/pdf/ICHHR+Handbook+for+Service+Providers+MandE+of+Torture+Rehabilitation+Services+2014+Final.pdf>; see also SMITH ET AL., *supra* note 85, at 28-29.

95. SMITH ET AL., *supra* note 85, at 28-29.

96. *Id.* at 28.

97. GC 3, *supra* note 2, ¶ 13.

98. See Claudio Grossman, *The Normative Value of the Istanbul Protocol, in* SHEDDING LIGHT ON A DARK PRACTICE: USING THE ISTANBUL PROTOCOL TO DOCUMENT TORTURE 11-12 (Susanne Kjær & Asger Kjær, eds., 2009).

Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol).”<sup>99</sup> Furthermore, an individual’s therapeutic needs must be assessed, as well as needs related to areas such as social functioning, work, economy, and training. This encompasses “a wide range of inter-disciplinary measures, such as medical, physical and psychological rehabilitative services; re-integrative and social services; community and family-oriented assistance and services; vocational training; [and] education.”<sup>100</sup>

Victims of torture have been exposed to severe human rights violations, and their rehabilitation must provide, in practice, a wide range of assistance depending on their actual needs. All therapy and assistance, particularly for survivors of gross human rights violations, must emphasize the strength and resilience of those affected.<sup>101</sup> Active victim participation is one way in which victims’ own self-awareness about their needs and reactions can be utilized for the good of the individual and as a way to reengage with life and the world. Because torture often means destruction of a victim’s personality, agency, and meaning in life, the victim must play an active role in the subsequent process of care and support in order to enable the process to be one of re-empowerment and of bringing back a sense of life, meaning, and dignity.<sup>102</sup>

### C. REHABILITATION AND LEGAL REMEDIES

GC 3 addressed the important issue of whether rehabilitation depends on the victim first pressing legal charges against those responsible for torture and ill-treatment or if this can be provided without such charges. Two aspects merit consideration: first, whether there is a demand for judicial remedies, and/or second, whether the perpetrator is identified. GC 3 is very clear with regard to these two points: “[a]ccess to rehabilitation programs should not depend on the victim pursuing judicial remedies,” and “a person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and regardless of any familial or other relationship between the perpetrator and the victim.”<sup>103</sup>

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99. GC 3, *supra* note 2, ¶ 13; OFFICE OF THE U.N. HIGH COMM’R FOR HUMAN RIGHTS, *ISTANBUL PROTOCOL: MANUAL ON THE EFFECTIVE INVESTIGATION AND DOCUMENTATION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT*, U.N. Doc. HR/P/PT/8/Rev.1, U.N. Sales No. E.04.XIV.3 (2004) [hereinafter *ISTANBUL PROTOCOL*].

100. GC 3, *supra* note 2, ¶ 13.

101. See Basoglu, *supra* note 7.

102. GC 3, *supra* note 2, ¶ 4 (emphasizing the importance of the victim’s participation in the redress process).

103. *Id.* ¶¶ 3, 15.



#### D. STATES ARE RESPONSIBLE FOR PROVIDING REHABILITATION TO VICTIMS OF TORTURE OR ILL-TREATMENT

GC 3 explains that State parties to CAT are required to ensure that all victims of torture and ill-treatment are able to access remedies and obtain redress.<sup>104</sup> The Committee “considers that the application of [A]rticle 14 is not limited to victims harmed on the territory of the State party” or by or against its nationals.<sup>105</sup> The Committee explicitly notes and values when State parties “provide[] civil remedies to victims tortured or ill-treated outside the territory of the state party,” such as in the case of the United States Alien Tort Claims Act.<sup>106</sup>

GC 3 reflects the Committee’s view that refugees, asylum-seekers, stateless persons, and other victims of torture are entitled to protection and rights under CAT once they enter a State party.<sup>107</sup>

An analysis of the *travaux préparatoires* of [CAT], which explicitly dropped all reference to the nationality of the perpetrator of torture for which the victim is seeking redress, shows that the state party’s obligations under [CAT] are not limited by nationality or the territory where the abusive act took place.<sup>108</sup>

The fact that the United States lodged a reservation arguing that Article 14 should be limited to acts on its territory further supports the view that Article 14, as adopted, was not intended to be limited to violations within the territory of the State party.<sup>109</sup>

In practice, States can be asked about services available for refugees and asylum-seekers who have suffered torture elsewhere and the Committee has called for redress, including compensation and rehabilitation, to be ensured for all victims including refugees.<sup>110</sup> Indeed, Article 14 requires State parties to ensure that all victims of torture and ill-treatment are able to access remedies and obtain redress.<sup>111</sup> GC 3 further underscores that rehabilitation services shall be accessible to all victims “without discrimination and regardless of a victim’s identity or status within a marginalized or vulnerable group . . . including asylum seekers and refugees.”<sup>112</sup>

In instances where rehabilitation is provided—not by those responsible for the torture but by others—one question that may arise is whether it is regarded as redress or rather as necessary health care provided to victims after extreme violence. Rehabilitation provided by States unrelated to

104. See *id.* ¶ 1 (citing CAT, *supra* note 1, art. 14, ¶ 1).

105. GC 3, *supra* note 2, ¶ 22.

106. Gaer, *supra* note 2, at 10.

107. GC 3, *supra* note 2, ¶ 32.

108. Gaer, *supra* note 2, at 10.

109. See S. Res. of Ratification, 100th Cong. (1990), available at <https://www.congress.gov/treaty-document/100th-congress/20/resolution-text>.

110. See Sveaass, *supra* note 19, at 7; GC 3, *supra* note 2, ¶ 15.

111. See CAT, *supra* note 1, art. 14, ¶ 1.

112. GC 3, *supra* note 2, ¶ 15.

torture violations, such as in refugee-receiving countries, may be understood as ways of complying with refugee law through protection or as part of the humanitarian support provided to victims of torture and ill-treatment who have sought protection in the country. It may also be understood as complying with the obligation to provide international cooperation and assistance to fulfil economic, social, and cultural rights.

## V. Rehabilitation in Practice

Providing as full rehabilitation as possible requires States to set up a system of effective rehabilitation services and programs able to meet the individual needs of persons with different backgrounds and requirements regarding rehabilitation.<sup>113</sup> These services must be provided under circumstances that are as safe and stable as possible for the person involved. When rehabilitation is offered in the country or region where torture has occurred, special considerations must be taken, and those responsible for the redress may need to ensure rehabilitation by services other than the public health services. In this regard, GC 3 indicates:

[T]he obligation in [A]rticle 14 to provide for the means for as full rehabilitation as possible can be fulfilled through the direct provision of rehabilitative services by the State, or through the funding of private medical, legal and other facilities, including those administered by NGOs in which case the State shall ensure that no reprisals or intimidation are directed to them.<sup>114</sup>

This means that rehabilitation can be offered and organized by civil society organizations or groups of professionals not directly affiliated with the public system with services funded by the State.<sup>115</sup> Again, it is important to emphasize the importance of victim participation when deciding upon service providers.<sup>116</sup>

An important part of developing rehabilitation services is the inclusion of “systems for assessing the effective implementation of rehabilitation programs and services” as well as the outcomes of such services.<sup>117</sup> These components should be firmly based on relevant research in the area and on “appropriate indicators and benchmarks” developed for such purposes.<sup>118</sup> GC 3 requires State parties to carry out assessments and evaluations of the effectiveness of rehabilitation services as part of their reporting obligations.<sup>119</sup>

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113. *Id.*

114. *Id.*

115. See Sveaass, *supra* note 19, at 9.

116. See GC 3, *supra* note 2, ¶ 15.

117. GC 3, *supra* note 2, ¶ 15; see also PATEL & WILLIAMS, *supra* note 94, at 86-103, 105-29.

118. GC 3, *supra* note 2, ¶ 15.

119. See *id.* ¶ 13.

GC 3 further emphasizes the importance of “ensuring that victims and their families are adequately informed of their right to pursue redress.”<sup>120</sup> Such instruction must cover information about rights and ways in which those rights can be enjoyed. This means that there must be available, professional, and confidential procedures and mechanisms to allow redress and rehabilitation to occur without imposing economic burdens on those subjected to torture.<sup>121</sup> Both judicial procedures should be available for those whose rights have been abused, but rehabilitation must neither rest upon nor be contingent upon legal decisions.<sup>122</sup> GC 3 reiterates and expands upon a list of impermissible discriminatory elements first identified in GC 2, including:

race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, transgender identity, mental or other disability, health status, economic or indigenous status, reason for which the person is detained, including persons accused of political offences or terrorist acts, asylum-seekers, refugees or others under international protection, or any other status or adverse distinction.<sup>123</sup>

GC 3 further emphasizes that complaints mechanisms should “avoid re-victimization and stigmatization” of “person[s] marginalized or made vulnerable on the basis of identities and [membership of] groups,” such as those noted above, and it requires that States support victims who are members of these or other marginalized groups in seeking and obtaining redress.<sup>124</sup>

Seeking redress and rehabilitation may entail a number of social and emotional hardships on the part of the exposed persons. Many will avoid entering into such processes out of fear of threats and reprisals, further shaming, and risk to the security of family, friends, and those who have provided assistance to the victims.<sup>125</sup> For these reasons, some will attempt to obtain their rights in secrecy. While some who attempt to obtain their rights will have support from those in their surroundings, others may encounter resistance from their social networks. Regardless of the social support available, there should be sufficient support in the system providing redress and rehabilitation to allow victims to feel protected and that their needs are being respected and taken seriously. For many victims, the process may bring back very painful memories, and in some cases, it can be an active re-traumatizing event.<sup>126</sup> In rehabilitation, assessment and mapping will be vital, and they will require going back, referring, and talking

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120. *Id.* ¶ 29.

121. *See id.*

122. *See id.* ¶¶ 15, 30.

123. *Id.* ¶ 32.

124. *See id.* ¶¶ 15, 33, 34.

125. *See SMITH ET AL., supra* note 85, at 29.

126. *See ISTANBUL PROTOCOL, supra* note 99, ¶¶ 94, 147, 149.

to strangers about painful events. When redress also entails legal processes—which many will feel is both right and necessary—it may mean confronting the perpetrator, listening to the defenses of persons who have committed atrocities, and possibly having to live with legal decisions that do not seem fair or just.<sup>127</sup> As a result, there is a psychological and social necessity to provide victims and witnesses with support and assistance as part of the individual right to redress, or possibly even as a prerequisite for redress.<sup>128</sup>

GC 3 refers to assessment and evaluation of needs as important parts of what States should provide.<sup>129</sup> Nevertheless, in many cases there may not be a need for lengthy assessment and documentation in order to determine that a person is a torture victim and, as such, entitled to rehabilitation. A person's ability to document having been present or held in places where torture has been known to take place in a systematic manner (e.g., concentration camps, prisons during authoritarian rule, etc.) can be regarded as sufficient evidence of torture without requiring detailed evidence of how many times electric shock, beating, immersion in water, etc. occurred. For example, documentation showing that an individual was held in one of the detention centers run by General Pinochet during the military dictatorship in Chile, such as Tejas Verdes or Tres Alamos, should be sufficient in itself to prove that individual's status as a victim of torture and no further documentation or assessment should be required. This approach, in contrast to presenting claims and making determinations on an individual basis, will facilitate broader realization of the right to reparation and rehabilitation. This approach is significant not only from a human rights perspective but also from a psychological perspective—it represents an acknowledgement of suffering and survival after atrocities. This may amount to a powerful public statement and recognition of the broad injustice that has been done, in contrast to requiring detailed and re-traumatizing individual findings and determinations as to whether the individuals detained were victimized in a particular way.

A final issue to be raised regarding rehabilitation is identification of the models, best practices, and existing empirical research in the field of rehabilitation of torture survivors. This article outlines the guidelines and specifications regarding rehabilitation contained in CAT and GC 3. With regard to monitoring and reporting, GC 3 refers to the need to employ "methods available for assessing the effectiveness of rehabilitation programs and services, including the application of appropriate indicators and benchmarks, and the result of such assessment."<sup>130</sup> Furthermore, States shall report on the "rehabilitation facilities available to victims of torture or ill-

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127. See Sveaass, *supra* note 19, at 3.

128. See *id.*; see also ISTANBUL PROTOCOL, *supra* note 99, ¶ 94.

129. See GC 3, *supra* note 2, ¶ 13.

130. *Id.* ¶ 46(d).

treatment and their accessibility as well as the budget allocation for rehabilitation programs.”<sup>131</sup>

There is a need for further systematization and research on rehabilitation services in a broader sense on medical, social, psychological, legal, and training measures, among others.<sup>132</sup> *Monitoring and Evaluation of Rehabilitation for Torture Victims*, a recently published handbook for service providers, suggests relevant standards and benchmarks in relation to rehabilitation from both clinical health and human rights perspectives, and it may be a valuable tool in this process.<sup>133</sup> Because of the specialized nature of these matters, professionals and practitioners in the fields of health, education, social integration, and law have a critical role to play. They are faced with the important challenge of developing strategies and best practices. In addition, they are tasked with systematizing knowledge aiming to provide the most effective form of rehabilitative care and services based on research and outcome studies of interventions made “to ensure . . . access to the highest quality of care and rehabilitation to torture survivors, which is their right, not a privilege.”<sup>134</sup> Professionals involved in this work must continually monitor, adapt, and update their approaches, and they should also “examine the usefulness of various components of their rehabilitation program” in order to develop the best possible program.<sup>135</sup> This work will benefit the individuals who it strives to assist.

## VI. Obstacles to Rehabilitation

There are numerous obstacles to enforcing the right to redress and, in particular, to providing effective rehabilitation.<sup>136</sup> Some of these obstacles relate to situations where torture and ill-treatment have rendered a person unable to stand up for him or herself. Others relate to the fear of being re-traumatized and re-encountering the pain suffered. The best way to address this is to create ways of dealing with the system-related obstacles frequently encountered, thereby heightening the State’s obligation to ensure that people obtain redress.

GC 3 “presents a lengthy list of measures that constitute obstacles to the realization of the right to redress, as set forth in [CAT].”<sup>137</sup> The list begins with the need for “clear acknowledgement” that the redress is awarded for

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131. *Id.* ¶ 46(c).

132. See, e.g., Edith Montgomery & Nimisha Patel, *Torture Rehabilitation: Reflections on Treatment Outcome Studies*, 21 TORTURE 141, 142 (2011), available at [http://irct.org/assets/uploads/1018-8185\\_2011-2\\_141-145.pdf](http://irct.org/assets/uploads/1018-8185_2011-2_141-145.pdf) (explaining that evidence is limited because “whilst outcome research is valued and recognised as crucial to the delivery of quality services, it is not seen as a priority”).

133. See PATEL & WILLIAMS, *supra* note 94, at 17-24.

134. Montgomery & Patel, *supra* note 132, at 145.

135. Basoglu, *supra* note 7.

136. See GC 3, *supra* note 2, ¶¶ 37-43.

137. Gaer, *supra* note 2, at 9 (citing GC 3, *supra* note 2, ¶¶ 37-43).

violations of CAT “by action or omission.”<sup>138</sup> The Committee is concerned about a lack of due diligence by State parties in many circumstances, which may give rise to State responsibility, hence the reference to “omission.”<sup>139</sup>

Among the many other items cited as obstacles are ineffective mechanisms and courts; “discrimination in accessing complaints and investigation mechanisms;” State secrecy laws; and “evidential burdens and procedural requirements” that may unduly delay access to the right to redress.<sup>140</sup> Failure to ensure protection of victims and witnesses from reprisals for bringing claims is also cited as an obstacle to the right to redress.<sup>141</sup>

Noting the “continuous nature” of the effects of torture, GC 3 proscribes statutes of limitations for torture or ill-treatment, pointing out, for example, that post-traumatic stress may actually increase over time, requiring “medical, psychological and social support.”<sup>142</sup> Similarly, GC 3 recalls its consistent position that “amnesties for torture and ill-treatment pose impermissible obstacles to a victim in his or her efforts to obtain redress,” and it calls on State parties to remove these.<sup>143</sup> GC 3 further notes that “granting immunity in violation of international law . . . is in direct conflict with the obligation of providing redress to victims,” identifying *de facto* impunity as yet another obstacle.<sup>144</sup>

## VII. Conclusions

Rehabilitation after torture is a complex and potentially long-term process. It may include support and assistance on many different levels, including social, medical, and psychological care, work-training, and often economic and judicial assistance.<sup>145</sup> Special attention must be given to interventions dealing with traumatic stress-related problems, as these may frequently be the main source of disruption of normal life activities and may debilitate effective reintegration into society after torture.<sup>146</sup> For rehabilitation to fulfill any of its objectives, the person to whom services are being offered should be a close collaborator in the process. The victim should experience the care, interventions, and assistance as something that engages and revitalizes victims and also as something that provides a tool with respect to dealing with trauma-related stress reactions. Accordingly, rehabilitation must take place in a secure, reliable, trustworthy, and predictable context.

Rehabilitation should be provided by professionals, in special training or rehabilitation centers, if possible. Providers should include personnel

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138. GC 3, *supra* note 2, ¶ 37.

139. *Id.* ¶ 37.

140. *Id.* ¶ 38.

141. *See id.*

142. *Id.* ¶ 40.

143. *Id.* ¶ 41.

144. *Id.* ¶ 42.

145. *See id.* ¶ 11; Basoglu, *supra* note 7.

146. *See* Basoglu, *supra* note 7 (maintaining that “the greatest obstacle to a survivor’s meaningful re-integration into society is the debilitating problems of traumatic stress”).

specially prepared to deal with all aspects of sequelae after torture and the complexities involved in this work, particularly in relation to ways of dealing with traumatic memories, avoidance reactions, painful triggers, etc. Rehabilitation must be accessible and available to the person seeking assistance. The care system providing rehabilitation needs to be able to convey professionalism, a high level of competency with regard to listening, and the capacity to adapt to the variety of needs involved. Furthermore, the process and the care providers should establish trust, stability, confidentiality, and a sense of safety. The capacity to assess needs and develop plans for rehabilitation, together with a system for ongoing monitoring and evaluation during the process, all aiming to improve rehabilitation services, is required.<sup>147</sup> To be as effective as possible, the rehabilitation programs and services must build upon systematic clinical knowledge, taking into account the complex social and cultural situations in which services are provided.<sup>148</sup> The need for more outcome studies on rehabilitation programs is highlighted in overview studies by Jaranson and Quiroga.<sup>149</sup> In particular, Jaranson and Quiroga emphasize that in order to improve the quality of care, studies on “[t]reatment efficacy (or clinical impact) . . . [t]reatment effectiveness (or economic impact) . . . [and] [e]fficiency (or cost/benefit analysis of the program)” must be undertaken.<sup>150</sup> Additionally, there is a need to focus on studies that include a variety of different approaches to rehabilitation as well as studies that cover work done with children and adolescents.<sup>151</sup>

Confidentiality and trust are vital to the process of providing and receiving rehabilitation. There may be serious issues related to lack of trust for many victims of torture, especially with regard to those who will provide services and assistance.<sup>152</sup> Health professionals in countries where torture has taken place may have been involved or complicit in torture and ill-treatment and those governing the health services may have engaged in or been part of the oppressing system. Even if time has passed and the system has changed, the person in need of rehabilitation may feel unsafe and vulnerable in such systems. This problem reinforces the importance of involving non-state actors in the rehabilitation process. Such non-state actors include different organizations involved in human rights monitoring and assistance, many of which are affiliated with qualified professionals whose competency and experience should be used in post-conflict rehabilitation. As indicated in GC 3:

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147. See PATEL & WILLIAMS, *supra* note 94, at 89.

148. See *id.* at 79.

149. See *id.* at 106.

150. James M. Jaranson & José Quiroga, *Evaluating the Services of Torture Rehabilitation Programmes: History and Recommendations*, 21 TORTURE 98, 105 (2011), available at [http://irct.org/assets/uploads/1018-8185\\_2011-2\\_98-140.pdf](http://irct.org/assets/uploads/1018-8185_2011-2_98-140.pdf).

151. See Montgomery & Patel, *supra* note 132, at 143.

152. See ISTANBUL PROTOCOL, *supra* note 99, ¶ 142(c).

The obligation in [A]rticle 14 to provide for the means for as full rehabilitation as possible can be fulfilled through the direct provision of rehabilitative services by the State, or through the funding of private medical, legal and other facilities, including those administered by non-governmental organizations (NGOs), in which case the State shall ensure that no reprisals or intimidation are directed at them.<sup>153</sup>

The requirements (or obligations) listed in GC 3 may seem complex to some, but GC 3 sets forth, in its richness, what is required to provide full redress and rehabilitation when possible in accordance with the legal requirements of CAT. It is extremely important that any system of redress avoid the doubling of efforts and repeated and protracted processes in order for victims to obtain necessary assistance. This is true in all stages of the rehabilitation process, including the initial determination as to whether one is entitled to redress and determinations related to health care and other measures.

All of these aspects must be considered when human beings have been subjected to torture or ill-treatment. Such considerations also provide useful guidance for the process of developing and adopting programs of redress and rehabilitation, including situations where groups of individuals have been affected and knowledge of violations has been established.

By elaborating on the concepts of redress, rehabilitation, and the enforceable right to rehabilitation after torture, the Committee, through GC 3, has taken a long-needed and important step forward. The obligations under CAT have been specified and clarified, and ways in which redress, including rehabilitation, can be ensured and realized, have been explicitly outlined. But the contribution has not been only in relation to the meaning of Article 14 of CAT. Indeed, GC 3 has also contributed to our understanding of the right to redress and rehabilitation under international law. Realizing what GC 3 has outlined helps to ensure that care is given to, and new options in life are, in fact, made possible for victims of torture through prompt, adequate, and effective reparation and rehabilitation for harm suffered.

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153. GC 3, *supra* note 2, ¶ 15.