Freedom from Torture response to the Committee against Torture’s working document on Article 14 of the UN Convention against Torture

Freedom from Torture is a UK-based human rights organisation and one of the world’s largest torture treatment centres. We are the only organisation in the UK dedicated solely to the care and treatment of survivors of torture and organised violence. Since our foundation 25 years ago, more than 50,000 people have been referred to us for rehabilitation and other forms of care and practical assistance. We have centres in London, Manchester covering the North West of England, Newcastle covering the North East of England, Birmingham covering the West Midlands and Glasgow covering the whole of Scotland.

We strongly welcome the decision of the Committee to develop a general comment on Article 14 of the UN Convention against Torture and are delighted to have this opportunity to respond to the Committee’s working document.

As a specialist torture rehabilitation centre, we have long been interested in the interpretation and application of Article 14, including the right to rehabilitation, and have sought to contribute to debate on these matters, including during discussions within the International Rehabilitation Council for Torture Victims (of which we are a member), at conferences held by the European Network of Rehabilitation Centres for Survivors of Torture, and via publication last year of our own discussion paper entitled ‘A Remedy for Torture Survivors in International Law: Interpreting Rehabilitation’. ¹

Our response below has been developed by a multidisciplinary working group comprising Jocelyn Avigad (consultant systemic family psychotherapist and Manager of our Children, Young People and Families Team), Lourdes Berdasco (Senior Family Therapist with a clinical psychology background), Jude Boyles (psychological therapist and Manager of our North West Centre), Dr Brian Fine (medical doctor), Andy Keefe (psychodynamic psychotherapist and Manager of our London and South East Clinical Services), Piya Muqit (Children’s Law and Policy Officer), Sonya Sceats (Senior Policy and Advocacy Officer), and Dr Abigail Seltzer (consultant psychiatrist).

Drawing on our clinical expertise, we have focused our comments on the right to rehabilitation as a component of the right to redress set out in Article 14. However, there are

a number of other particular elements of the working document which we would like to welcome:

- Acknowledgment that Article 14 is applicable to all victims of torture and acts of cruel, inhuman or degrading treatment or punishment (paragraph 1) and that a person should be considered a victim regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted (paragraph 3);

- Emphasis on the importance of victim participation in the reparative process and recognition that the restoration of the dignity of the victim is the overarching objective in the provision of redress (paragraph 4);

- Endorsement given by the Committee to the 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 (paragraph 6);

- Recognition that survivors of violence or trauma should benefit from special consideration and care to avoid retraumatisation in the course of legal and administrative procedures designed to provide justice and reparation (paragraph 19);

- Praise for efforts by some States parties to provide civil remedies for victims who were tortured or subjected to ill-treatment in other jurisdictions (paragraph 20);

- Recognition of the Istanbul Protocol (paragraph 31); and

- The request for States parties, when reporting on their compliance with the Convention, to provide information on: rehabilitation services available to victims of torture or ill-treatment and their accessibility, as well as the budget allocation for rehabilitation programmes and the number of victims that have received torture-specific rehabilitation services; and the methods available for assessing the effectiveness of rehabilitation programs and services, including by developing relevant indicators and benchmarks (paragraph 40). As indicated further below, we consider that the appropriateness of rehabilitation services as well as the safety and security of the rehabilitative context (in relation to objective factors) are other criteria which states should be required to report against.

**The right to rehabilitation**

Freedom from Torture strongly welcomes the Committee’s decision to provide authoritative elucidation of the concept of rehabilitation in the context of the right to redress for victims of torture and other acts of cruel, inhuman or degrading treatment.

**Definition of rehabilitation**

The Committee has long recognised that rehabilitation encompasses ‘medical and psychological care as well as legal and social services’. Freedom from Torture endorses this because it mirrors the holistic approach promoted by 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 and practised by most specialist torture rehabilitation centres around the world. For example, our own rehabilitation services cover clinical care (including medical, psychiatric and psychological consultation, assessment and treatment as well as short and long term social care, casework and counselling, psychotherapy, physiotherapy, complementary therapies, group and family work), practical assistance with accommodation and welfare agencies and advice on legal matters including protection claims, other immigration matters including family reunion and detention, child and family law matters and entitlement to accommodation and welfare benefits. We also document physical and psychological evidence of torture via our medico-legal report service for use in the determination of asylum claims by torture survivors.

We welcome the Committee's definition of rehabilitation in paragraph 10 and in particular the focus on functioning. The Committee's proposed definition is very close to a definition we have used in our own work, according to which ‘... rehabilitation is conceptualised as an outcome, referring to the restoration of function or the acquisition of new skills in the aftermath of injury, illness, surgery or disease. It seeks to enable the maximum possible self-sufficiency and function for the individual concerned, and may involve adjustments to the patient’s physical and social environment’. On this basis we do not propose any changes to the definition of rehabilitation suggested by the Committee.

State resources

We are pleased that the Committee is not seeking to limit the obligation to provide 'as full rehabilitation as possible' by reference to the available resources of a State. We agree that the qualification 'as full... as possible' refers not to the resources of a State but rather to the capacity of the victim to rehabilitate following his or her experience of torture.

Moreover, as an aspect of the right to a remedy, the right to rehabilitation is not a socio-economic right and therefore it is not subject to the principle of progressive realisation. We recommend that the following sentence be added to the end of paragraph 11 to make this clear: ‘As an aspect of the right to a remedy, the right to rehabilitation is not subject to the principle of progressive realisation’.

Content of States Parties' obligations with respect to rehabilitation

(i) Adequacy of rehabilitation services

We welcome the Committee's recognition that specialised rehabilitation services must be made available. In our view, 'specialised' in this context requires the service to be delivered by those with expertise concerning torture and its physical and psychological consequences for survivors and their family members. In order to reflect this, we recommend that the beginning of paragraph 12 be revised as follows: 'In order to fulfil its obligations to provide a victim of torture or ill-treatment with the means for as full rehabilitation as possible, each

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2 See Principle 21.

State party should ensure that specialised services for the victim or survivor of torture are available at multiple levels and are delivered by clinicians and other professionals who have had appropriate training in how to work with highly traumatised individuals and families including survivors of torture. These specialised services should include...

We also welcome the Committee's emphasis on the need for rehabilitation services to be determined according to an assessment of the survivor's therapeutic and related needs followed by delivery of a range of rehabilitative measures (spanning medical, physical and psychological services, re-integrative and social services, family-oriented assistance, vocational training, education etc.) and the need for a holistic approach that seeks to build upon a survivor's strength and resilience.

We strongly agree with the Committee's recognition that there should be a 'high priority' placed on creating a context of confidence and trust for rehabilitation services but consider that this point could be strengthened by adding a further sentence as follows: 'This context relates both to the attitude and approach of clinicians and to the physical environment of care. That environment should be structured to minimise features that are likely to remind survivors of the torture or ill-treatment they have endured.'

We believe that there are other requirements for adequate rehabilitation services which the Committee should also expressly recognise. Freedom from Torture has previously proposed three inter-related minimum criteria for assessing the adequacy of rehabilitation services in the context of Article 14 obligations which have been favourably received in the torture rehabilitation world and which we would encourage the Committee to build into the sections on 'Rehabilitation' and 'Monitoring and Reporting':

**Criterion 1 – rehabilitation services must be appropriate for torture survivors**

Appropriateness refers to the standard of rehabilitation services available to torture survivors and, where relevant, their families. In addition to the quality features already set out by the Committee in paragraph 12 (and referred to above), we would encourage the Committee to recognise:

- that a holistic approach usually requires services delivered by a multi-disciplinary team;
- that long-term therapy and support must be available for those requiring it (this is important because the consequences of torture are often pervasive and enduring);
- gender sensitivity – survivors of torture should be able to specify whether they would prefer rehabilitation services to be provided by women or men and such requests should be met (this is very important in the context of torture rehabilitation because of the high proportion of survivors – both female and male – subjected to rape and other forms of sexual violence); and

That **children and young people** (both those who have been separated from their families and those who remain with their families, whether in exile or not) have

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specialist rehabilitation needs requiring specialist multi-disciplinary service development and provision. (This should be specified regardless of separate obligations set out in Article 39 of the UN Convention on the Rights of the Child which, of course, only apply to States parties to that treaty and which, in any case, are not explicitly framed as an aspect of the right to a remedy).

There is now much evidence to suggest that experiences of torture and organised violence are likely to affect the physical, emotional and neuro-biological development of children and young people by delaying development or rendering it uneven. Thus chronological age may not be consistent with developmental age and this needs to be taken into account when assessing young torture survivors and designing and delivering rehabilitation services for them.

Rehabilitation work with child soldiers is also particularly complex because of their dual status as both victims and enforced perpetrators.

That in some circumstances it is necessary in therapeutic terms to view the family, as a whole, as a ‘victim of torture’. Frequently, multiple members of a family have experienced torture either directly or indirectly (for example where children are present during the rape of a parent). It may be very difficult for some members of a family to disclose their experiences (for example a father who feels unable to disclose that he was raped) and disclosure, particularly for young girls and boys, may take a very long time especially if there is a strong sense (including for children) that there is a need to protect other members of the family. In these complex cases a holistic assessment should address the needs of the family as a whole with careful consideration given to each individual family member as well as to subgroups including the parents as a couple and children as siblings, with services delivered accordingly.

Criterion 2 – rehabilitation services must be accessible to torture survivors

As the Committee recognises in paragraph 14, rehabilitation services must be accessible to torture survivors and it should be added that these services must be made accessible ‘in practice’. We encourage the Committee to recognise that accessibility in practice means that services must be:

- accessible geographically;
- accessible linguistically through the provision of quality interpreting services as required;
- sufficiently resourced and staffed for early assessments to take place and for treatment to commence within a reasonable timeframe so that further deterioration of a survivor's psychological and physical health is avoided (our service standards require rehabilitation to commence within 2 months of referral);
- available without discrimination on grounds including race, colour, ethnicity, sex, age, religious belief or affiliation, sexual orientation, transgender identity, language, religion, political or other opinion, national or social origin, property, birth, mental or other disability, health status, economic or indigenous status or other status.
(paragraph 29 should also be amended to make clear that the principle of non-discrimination applies to the obligation to provide ‘as full rehabilitation as possible’);

- capable of quickly identifying those torture survivors whose clinical needs are urgent or who are particularly vulnerable, including children and young people, the elderly, those with severe mental or psychological health problems and those with physical disabilities, illness and acute injuries requiring prioritisation;

- capable of working with and accepting referrals from other agencies to identify torture survivors who would not otherwise come to the attention of the service including because of cultural denial and other social and cultural norms. This is particularly the case with women or children who may be seen as the possession of their husbands or fathers and therefore beyond the remit of state or voluntary intervention. In these contexts, it is often the case that family honour takes precedence over safety, protection and rehabilitation following torture and this is a powerful barrier to accessing rehabilitation services.

Criterion 3 – the environmental context in which rehabilitative services are offered must be safe and stable

Environmental factors and lack of security or stability that impede or prevent access will render available services inadequate. In this context, the concept of safety has both objective and subjective dimensions which we urge the Committee to recognise explicitly.

Objectively, it may not be safe for torture survivors to approach and access rehabilitation services. For example, where conflict or political instability is ongoing, torture survivors may not be able to access rehabilitation services due to the location of the service in an unsafe area (or because the route of access to this area is unsafe) or because there is a risk of discrimination, further reprisals or breach of confidentiality by service providers. In these situations, the independence of rehabilitation service providers from torturing elements within the state or otherwise is of critical importance.

Moreover, the accessibility criterion cannot be considered to have been met if torture survivors are not able to reliably access regular appointments with service providers for other reasons beyond their control during the period of the rehabilitation programme. Such reasons might include the geographical situation and resource limitations of the service provider or constraints arising from the social welfare circumstances of the torture survivor, including inadequate financial and housing provision sufficient to render the survivor’s recovery environment unstable.

Subjectively, the effectiveness of the rehabilitative process is dependent on the extent to which the torture survivor feels safe disclosing torture and is assured of the safe and stable context of rehabilitation. This also means that in a context where societal attitudes to torture survivors entail hostility, disbelief, blame, stigma or shaming (for example, with rape victims, or those with severe mental health problems), rehabilitation services cannot be deemed to be meaningfully accessible or adequate if torture survivors are unable to integrate and their experiences of injustice are not acknowledged officially nor their dignity publicly validated, such that they are hindered or feel unsafe to approach rehabilitation services. Child soldiers
are a particular group who may be too fearful to seek access to torture rehabilitation services owing to their involvement in torture and other crimes.

(ii) Identity of service providers

Freedom from Torture agrees with the Committee’s view that States parties may fulfil their obligation to provide ‘as full rehabilitation as possible’ either directly, through provision of state services, or indirectly, through support to independent providers or non-governmental organisations (NGOs). In addition to providing direct funding to non-state rehabilitation services, States parties should be encouraged to provide indirect funding to these services by contributing generously to the UN Voluntary Fund for Victims of Torture. In addition, EU Member States should be urged to support European Commission programmes and budget lines used to fund torture rehabilitation centres both within EU states and beyond (many torture rehabilitation centres in Europe are struggling to survive currently because of increased difficulties accessing EU funding). Indirect funding could be provided in other ways, for example via direct payments and personal budgets allocated to torture survivors who may then choose which services to purchase.5

Freedom from Torture has a policy against accepting direct funding from the UK government (with some limited exceptions relating to our capacity-building work) because of a need to maintain our independence from government in the eyes of our clients, many of whom distrust the UK government because of poor experiences of the UK’s asylum system, and for the purposes of our advocacy work. In our experience, many torture treatment centres in other European states have similar policies. The need to maintain independence from government is even more acute in states where torture is widespread and for this reason we believe it is very important that States parties be encouraged to provide funding to rehabilitation centres indirectly.

Whilst it is clearly not sufficient for States parties to point to the availability of mainstream health services when seeking to demonstrate that they have discharged their obligations to provide ‘as full rehabilitation as possible’ to torture survivors, it is important to recognise that the complexity of torture survivors’ needs is such that multiple specialist and mainstream agencies are often required if the totality of a survivor’s health needs are to be met. For example, Freedom from Torture does not provide hospital or full primary care services, however by working with public healthcare providers we can help ensure that survivors' health problems are correctly diagnosed and appropriate services are delivered. It is our experience that the lack of experience working with torture survivors within mainstream services can lead to misdiagnosis and inappropriate procedures such as expensive scans and repeated referrals made to the wrong types of specialist. Provision of support to specialist services, in the ways described above, may therefore be efficient and cost-saving in the long term.

(iii) Obligations on ‘host’ states

5 Direct payments and personal budgets are used in the social care sector in parts of the UK. Further information is available at http://www.communitycare.co.uk/Articles/2011/08/19/102669/direct-payments-personal-budgets-and-individual-budgets.htm
Freedom from Torture strongly endorses the Committee’s view that obligations of States parties under Article 14 are not limited to victims who were harmed in the territory of the State party or by or against nationals of the State party. This is not only consistent with the drafting history for the Convention (a proposal to limit obligations under Article 14 to torture committed in any territory under the jurisdiction of the State party was dropped during the drafting process), it also makes good sense from both practical and clinical perspectives.

From a practical perspective, the Committee's view is sensible because otherwise many survivors of torture would be placed in the perverse situation of having to return to a risk of further torture in order to exercise their right to rehabilitation.

From a clinical perspective, the Committee's view must be supported because (a) survivors of torture require rehabilitation services in whichever state they are living, including 'host' states of asylum; and (b) for many survivors of torture, the process of rehabilitation will be impossible in their country of origin, even if appropriate services are otherwise available.

Point (a) is self-evident. It is worth stressing, however, that uncertainty for a torture survivor about whether he or she will be returned to the state where torture was experienced can cause or exacerbate pre-existing psychological health problems and this means that access to rehabilitation services in a 'host' state whilst the outcome of an asylum claim is awaited is imperative. During this period, survivors frequently experience intrusive memories and distress, symptoms may increase and coping mechanisms such as avoidance may be impaired leading to a deterioration of mental health. For many torture survivors, so long as there is a risk of return to further torture, the traumatic experience is not over. For this reason, dealings with government officials including asylum interviews requiring the survivor to give a detailed account of his or her torture experience and mandatory regular reporting may cause unacceptably high levels of subjective distress or even trigger flashbacks, during which past and present collide and the survivor re-experiences the torture. Survivors for whom the fear of return is overwhelming may be at risk of self-harm including attempted suicide, as a means of avoiding further persecution, torture or being put to death. Survivors living in exile, and their families, are therefore often at their most vulnerable during the periods in which their asylum claim is pending or refused.

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6 The importance of ensuring that asylum seeking torture survivors have access to rehabilitation services is recognised in Article 20 of the EC Reception Conditions Directive which provides that EU Member States ‘shall ensure that, if necessary, persons who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment of damages caused by the aforementioned acts’. Article 18 (2) provides that Member States ‘shall ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is developed and qualified counselling is provided when needed’. See Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

7 Flashbacks are defined in World Health Organisation; International Statistical Classification of Diseases and Related Health problems, 10th revision (ICD-10) Chapter V; Mental and Behavioural Disorders; Neurotic, stress related and somatoform disorders; post traumatic stress disorder, as: 'episodes of repeated reliving of the trauma in intrusive memories.'
It is also our experience that survivors who are granted protection or some other form of protection to remain in a 'host' state may experience profound disappointment that their psychological difficulties persist despite this positive change to their legal status. Often the grant of protection is accompanied by grief and the challenge of re-building both their psychological and physical health and a new life in exile. Some survivors actually experience a worsening of symptoms and a deterioration in mental health during this transitional phase requiring additional clinical and non-clinical care and support. Once this transitional phase is passed, rehabilitation enters a new phase in which the underlying causes of trauma may be addressed.

For these reasons we recommend that paragraph 14 be amended to read as follows: ‘States parties must ensure that effective rehabilitation services and programmes are established in the State and are accessible to all victims regardless of nationality or immigration status or where in the world the torture took place.’

In relation to point (b), as criterion 3 above recognises, effective rehabilitation requires an environmental context that is safe, both objectively and subjectively, and stable. As indicated above, objective factors that may make the rehabilitation environment in a torture survivor’s country of origin unsafe include a risk of further harm on return, owing to persecution, ongoing conflict or instability or a failure of protection mechanisms, or a risk of discrimination, retaliation or breach of confidentiality. Subjective factors include the survivor’s belief (whether well-founded or not) that he or she is vulnerable either to further attacks or other forms of harm including ostracisation. For example, it is well known that many women survivors of rape as a form of torture will not access rehabilitation services in their countries of origin for fear this will mean the end of their marriage, rejection by their families and communities and in some cases forced removal of their children. In these situations, even if adequate rehabilitation services are otherwise available and accessible in the country of origin, the right to rehabilitation will be illusory.

When assessing whether psychological health problems are sufficiently serious to render rehabilitation impossible upon return, it is important to distinguish between, on the one hand, torture survivors who do not wish to return to their country of origin and who may well experience significant distress if returned, and, on the other hand, torture survivors for whom return will cause harm owing to psychological health problems. This is an issue which Freedom from Torture addresses when preparing medico-legal reports for torture survivors in the context of their protection claims. UK case law has confirmed that high levels of trauma rendering a survivor incapable of seeking the necessary therapeutic care may mean that forced return would violate the protection obligations under Article 3 (the prohibition of torture and inhuman or degrading treatment or punishment) of the European Convention on Human Rights.8 We would argue that the same basic principle (though not the same threshold) applies when assessing whether forced removal would violate the right to rehabilitation.

Moreover, the UK government has accepted that it is not in the best interests of unaccompanied children and young people to be returned to the country where they were

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8 See for example Y & Anor (Sri Lanka) v Secretary of State for the Home Department [2009] EWCA Civ 362.
tortured, even if there is no future risk of torture or ill-treatment, unless there are adequate reception and care arrangements in place.

For these and other reasons, Freedom from Torture is of the view that the obligation to provide ‘as full rehabilitation as possible’ as an aspect of the right to a remedy under Article 14, means that ‘host’ states must (a) deliver rehabilitation services to torture survivors in their territory regardless of where in the world the torture was committed or the nationality of the torture survivor or the perpetrator; and (b) ensure torture survivors are not forcibly returned to any state where adequate rehabilitation is not available or accessible or where the rehabilitation environment is not safe or stable, irrespective of whether there is a future risk of torture or persecution on return.

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