

# TORTURE VICTIMS IN THE CONTEXT OF MIGRATION: IDENTIFICATION, REDRESS AND REHABILITATION

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Report on the Third Annual Expert Workshop



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Migration is part of who we are as a human species. Since the dawn of time, people have migrated – leaving their places of birth, moving across distances great and small in search of new worlds and a new life. In reality many, if not most, of us are either migrants ourselves or are the offspring of those who migrated.

Today, there are more people on the move than ever before. Many flee their homes because they have no other choice. They are in flight from extreme poverty, economic or political instability, generalized violence, gender inequality or other forms of discrimination. There is often a perilous and precarious migration journey ahead. Many run the risk of losing their own lives and those of their loved ones in the hope of finding safety and security.

Some of those on the move are also fleeing the degradations of torture. And the threat of further cruel and inhuman treatment exists along every step of their migration route. Yet, the rights of these individuals are not left behind with their abandoned household goods or once they cross a border. Rights do not somehow fade or fall away under the force of migration. Rights travel with us. Regardless of their legal status, people are always rights holders, even when they are on the move, and are entitled to protection.

Rape is no less heinous because the victim is a migrant. The arbitrary detention of a person on the move does not become somehow more acceptable. Nor does torture become any less egregious. The framework of international law is clear: within the context of migration flows, States shall identify torture victims as early as possible. States shall also take measures to prevent people from being returned to countries where they risk torture and to avoid their re-traumatization. States must provide them with protection, redress and rehabilitation.

Human rights protection is urgently needed for survivors of torture within the current context of migration. Policies and practices of States, however, are increasingly preoccupied with deterring, containing and preventing movements and stepping up returns. The actions that are needed to identify and support torture survivors and enable them to claim their rights are too often ignored or purposely excluded. The responsibility to ensure that no further damage is done to the mental and physical health of torture survivors is not being upheld.

The Expert Workshop on “Torture Victims in the Context of Migration: Identification, Redress and Rehabilitation” called for upholding the rights of people on the move. Frontline human rights defenders, working with the financial support of the United Nations Voluntary Fund for Victims of Torture, highlighted better policy standards and pointed to the techniques and good practices that can support rights-based early identification, redress and rehabilitation for torture survivors in the context of migration. Their wisdom is invaluable and their call must be heeded for a robust demonstration of rights-based compassion in the context of migration.

The UN Human Rights Office is deeply grateful to these practitioners for their leadership and their courageous advocacy and to the UN Fund for convening this rich exchange. We are inspired by the life-changing work of these experts and the hope that they are generating for migrants who have survived torture.



**Kate Gilmore,**  
Deputy High Commissioner for Human Rights,  
Geneva, May 2017

## A. Context

### 1. People on the move

According to United Nations estimates, there were approximately 244 million international migrants around the world in 2015.<sup>1</sup> Although there is no universal legal definition, the United Nations Office of the High Commissioner for Human Rights (OHCHR) defines an “international migrant” as “any person who is outside a State of which she or he is a citizen or national, or, in the case of a stateless person, her or his State of birth or habitual residence.”<sup>2</sup>

Moreover, the United Nations High Commissioner for Refugees (UNHCR) indicates that in 2015, an unprecedented 65.3 million people were forcibly displaced as a result of persecution, conflict, generalized violence or human rights violations.<sup>3</sup> In addition, although many other people migrate due to complex or cumulative factors that make life intolerable in their home countries, they may not qualify for international protection. These factors include extreme poverty, gender inequality, a lack of access to education, health, decent work, food and water, separation from family, natural disasters, climate change and environmental degradation. For the purposes of the present report, the term migrant refers to asylum-seekers and refugees, as well as persons who migrate for other reasons.<sup>4</sup>

### 2. Torture and migration

Many migrants have been subjected to torture in their countries of origin. Yet, the risk of being tortured remains present for the duration of a migration journey, including once a person has arrived in a country of destination. Indeed, torture can take many forms, such as beatings and starvation, sexual violence, arbitrary and violent detention of migrants, including solitary confinement, without any hope of release. Migration policies in a large number of countries frequently exacerbate abuse and ill-treatment and inhibit the full and effective enjoyment of the rights of migrants who have arrived at their borders.

There is no accurate statistical information about the total number of torture survivors within the world’s migrant population, however, UNHCR has estimated that among refugees alone, between 5 and 35 percent are torture survivors.<sup>5</sup> The United Nations Voluntary Fund for Victims of Torture (UNVFVT or the Torture Fund) reports that two-

<sup>1</sup> United Nations Department of Economic and Social Affairs/Population Division, *International Migration Report 2015*, ST/ESA/SER.A/384 (September 2016).

<sup>2</sup> OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders* (2014), p. 4.

<sup>3</sup> UNHCR, *Global Trends: Forced Displacement in 2015* (20 June 2016). This figure includes 21.3 million refugees, 40.8 million internally displaced persons and 3.2 million asylum-seekers.

<sup>4</sup> The definition/concept of migrant used in this report is intended to be inclusive and without prejudice to the specific rights of particular groups (i.e., refugees, migrant workers, stateless persons, trafficked persons, persons with disabilities and others) who are part of such movements.

<sup>5</sup> Jaranson, James M., Somali and Oromo refugees: Correlates of torture and trauma history. *American Journal of Public Health* (2004); 94(4): pp. 591-598; Kinzie, J. D., Prospective one-year treatment outcomes of tortured refugees: a psychiatric approach. *Torture* (2012); 22 (1): pp. 1-10.

thirds of the victims of torture that are being supported by the Fund in 2017 are migrants and refugees.

This snapshot represents only the tip of the iceberg. The precarious situation faced by torture survivors in migration is frequently exacerbated by other intersecting vulnerabilities. Specific aspects of a person's identity or circumstance, such as their age, gender, ethnicity, religion, language, sexual orientation, health status and migration status<sup>6</sup> may further compound that vulnerability. Moreover, migrants are being confronted with an increasing surge of xenophobia and discrimination that is often manifested in violence.

## B. Content and scope of the expert workshop

### 1. Towards a specialized response for torture victims in migration

Every year, the Torture Fund supports nearly 50,000 victims of torture through funded projects that are based in over 80 countries worldwide. As noted above, the majority of these victims are migrants, including asylum-seekers, refugees and undocumented migrants, who have suffered torture in their countries of origin, in transit or in their host countries. Given the high proportion of torture survivors in current migration flows, prompt and specialized responses are urgently required to ensure the realization of their rights to protection, redress and rehabilitation.

*“Not only have they suffered from torture, they face the additional difficulties of being in an unfamiliar place, away from home. They may not speak the language, they often face xenophobia and discrimination and they may lack legal documents and security of status.”*

(Gaby Oré Aguilar, Chairperson, UNVFVT Board of Trustees)

Although a significant amount of work has been dedicated to the issues of torture and migration, further reflection is needed to identify and better understand their interconnections. With this objective in mind, the Torture Fund convened the third annual expert workshop on “Torture Victims in the Context of Migration: Identification, Redress and Rehabilitation,” which was held in Geneva from 26 to 27 April 2017. The expert workshop brought together practitioners who provide direct legal, social, medical and psychological assistance to migrant torture survivors with financial support from the Torture Fund.

The workshop was part of a series of annual events organized by the Torture Fund to enable the sharing of good practices and facilitate a greater understanding of the most pressing issues confronting torture survivors today with a view to developing more effective responses. The workshop was followed by a public event entitled “A Victim's Journey: Redress and Rehabilitation for Torture Victims in Migration,” held on 28 April

<sup>6</sup> Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the promotion and protection of the human rights of migrants in the context of large movements*, A/HRC/33/67 (13 September 2016).

2017 in Palais des Nations in Geneva. Both events took place within the framework of the session of the Board of Trustees of the UNVFVT.<sup>7</sup>

## 2. Participants and objectives

The expert workshop was opened with a statement from the Deputy High Commissioner for Human Rights, Ms. Kate Gilmore, followed by the testimony of Mr. Kolbassia Haoussou, a torture survivor who co-founded a survivor-led activist network in the United Kingdom. Other participants, including medical doctors, psychologists, jurists, social workers and other expert practitioners from UNVFVT-supported organizations and rehabilitation centres, shared their experiences and engaged in substantive discussions. Also in attendance were members of UN human rights mechanisms and staff members from OHCHR, UN agencies and international organizations (See Annex 1: List of participants). The public event was attended by many of the workshop participants as well as representatives of Member States, international organizations, civil society and the media.

The participants sought to address the rights and unique needs of victims of torture in migration and discussed possible prompt and specialized responses with the objective of:

- Contributing to an ongoing analysis about the links between torture and migration, with a focus on the rights and needs of victims;
- Facilitating the sharing of good practices and lessons learned regarding techniques for the early identification, redress and rehabilitation of victims of torture in migration, including large-scale migration flows; and
- Strategizing about successful approaches and key developments in the delivery of assistance to migrant victims of torture in order to establish more effective programmes and responses.

## 3. Report

This report summarizes the findings of the expert workshop and the public event and reflects the written contributions submitted by the workshop participants. These findings will also be incorporated in the Report of the Secretary-General on the activities of the Fund that will be submitted to the United Nations General Assembly at its seventy-second session.

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<sup>7</sup> The current members of the UNVFVT Board of Trustees are Ms. Gaby Oré Aguilar (Chairperson and human rights lawyer), Ms. Maria Cristina Nunes de Mendonça (forensic doctor), Ms. Anastasia Pinto (expert in gender issues, child rights and indigenous rights) and Mr. Mikołaj Pietrzak (criminal law and human rights lawyer).

“ Torture victims in migration have needs that are not only about medical care or humanitarian assistance. Justice is also critical. ”

*Eva Abu Halaweh,  
Mizan Law Group for Human Rights,  
Jordan*





## A. The rights of torture victims in migration under international law

### 1. International legal framework

Workshop participants reflected on the existing international legal framework which outlines the rights of torture victims in migration and the corresponding obligations of States. There was an implicit recognition among the participants that migrant torture victims must be legally protected during every phase of their journey: as victims of torture, as migrants (regardless of their legal status)<sup>8</sup> and as human beings.<sup>9</sup>

The following human rights principles that are applicable to torture victims in migration were highlighted:

- Torture is absolutely prohibited<sup>10</sup> and must be prevented at all stages of the migration process, including while in transit, at borders, in detention, on reception and in the context of returns;
- Torture victims have the right to protection, as well as to rapid access to assistance, rehabilitation and redress;<sup>11</sup> and

<sup>8</sup> The International Bill of Human Rights (comprised of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) only makes exceptions between nationals and non-nationals with regard to two rights, and only then in limited circumstances. See OHCHR, *Migration and human rights: Improving human rights-based governance of international migration* (2012), p. 14, footnote 11, available at [http://www.ohchr.org/Documents/Issues/Migration/MigrationHR\\_improvingHR\\_Report.pdf](http://www.ohchr.org/Documents/Issues/Migration/MigrationHR_improvingHR_Report.pdf).

The Committee on Economic, Social and Cultural Rights has indicated that all migrants within the jurisdiction of a State Party are entitled to their rights under the Covenant and noted that these protections apply regardless of the nationality or migration status of the migrant. Any distinction, exclusion, restriction or preference, or other differential treatment on the grounds of nationality or legal status should be in accordance with the law, pursue a legitimate aim and remain legitimate to the aim pursued. See CESCR Statement, *Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights*, E/C.12/2017/1, 13 March 2017. Moreover, various international instruments provide specialized protection for some categories of migrants and under certain circumstances. See the 1951 Convention relating to the Status of Refugees, the 1963 Vienna Convention on Consular Relations and the 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

<sup>9</sup> Fundamental rights and guarantees that are inherent and inviolable to all human beings, such as human dignity, equality, freedom from torture or cruel, inhuman, or degrading treatment or punishment. The Universal Declaration of Human Rights recognizes the *inherent dignity* of all members of the *human family* and that we are all *born free and equal* in dignity and rights (Preamble and article 1).

<sup>10</sup> The Convention against Torture provides that no exceptional circumstances may be invoked as a justification of torture, including a state of war or a threat of war, internal political instability or any other public emergency (art. 2, para. 2).

<sup>11</sup> States have an obligation to undertake effective legislative, administrative, judicial and other measures to prevent and protect against gross human rights violations, including torture, and to offer appropriate remedies to victims. See *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*, General Assembly resolution 60/147, 16 December 2005.

- Torture victims must not be returned when there is a risk of torture and cruel, inhuman or degrading treatment or punishment (principle of *non-refoulement*).<sup>12</sup>

Throughout the discussions, participants emphasized the rights to protection, redress and rehabilitation for torture victims in migration. They underlined that the provision of assistance to victims is not a matter of charity, but is rather a legal obligation of States under international law. Article 14 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment stipulates that States Parties must ensure that a victim of torture under its jurisdiction obtains redress and has access to the multi-sectoral services and support needed to achieve as full rehabilitation as possible. More specifically, under their right to redress, victims of torture have the right to access and enjoy medical and psychological care as well as legal and social services. It was stressed that in order to ensure that torture victims are able to exercise their rights, they must be identified as victims as early as possible.

“ According to the General Comment No. 3 of the Committee against Torture, if an asylum-seeker, migrant or refugee is unable to exercise the right to rehabilitation in the territory where the torture took place (which is typically the country of origin for refugees), the receiving country should honour that obligation. ”

(Jens Modvig, Chairperson, United Nations Committee against Torture)

In addition to the provisions found in international human rights law, participants highlighted applicable complementary bodies of law, such as refugee law, international criminal law and international humanitarian law. Participants also addressed the right to a judicial remedy under international law and discussed the various avenues that are available to migrant victims of torture to access justice, seek accountability and end impunity.

At the domestic level, it was noted that victims of torture generally have two legal options, namely, the criminal prosecution of perpetrators and/or the initiation of civil proceedings for monetary compensation for the harm suffered. Further, participants recalled the international human rights mechanisms<sup>13</sup> and regional human rights

<sup>12</sup> The Convention against Torture provides that no State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that s/he would be in danger of being subjected to torture (art. 3). The 1951 Refugee Convention stipulates that States are prohibited from expelling or returning a refugee to the frontiers of territories where there are substantial grounds for believing that the individual life or freedom would be threatened on account of her/his race, religion, nationality, membership of a particular social group or political opinion (art. 33). For a discussion on the interconnections between the articles of both Conventions see the *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the Human Rights Council*, A/HRC/34/54, 14 February 2017, para. 38.

<sup>13</sup> See in particular articles 5, 6 and 7 of the Convention against Torture for information on the obligations of States Parties. OHCHR has compiled comprehensive, practical information on the individual complaints procedures under each of the international human rights treaties that is available at <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx#individualcomm>.

mechanisms<sup>14</sup> that enable victims to file complaints against the State(s) concerned regarding their obligation to prevent torture, i.e., assure that everyone under their jurisdiction can fully enjoy her/his right to be free from torture.

The principle of universal jurisdiction was discussed as a final option that is available to victims to ensure the accountability of their perpetrator(s). Serious crimes of concern to the international community, including torture, provide for this alternative avenue, under which a State or international organization may claim criminal jurisdiction over an accused individual, regardless of the territory where the crime took place, the nationality of the perpetrator or the nationality of the victim.<sup>15</sup>

“There can be no justice without healing and no healing without justice.”

(Christy Fujio, Heartland Alliance International, USA)

## 2. Regional legal frameworks

Regional mechanisms provide additional standards of protection for migrants in situations of vulnerability. Workshop participants referred specifically to the European Union (EU) framework, which requires member states to “take into account the specific situation of vulnerable persons,” including those who have been subjected to torture.<sup>16</sup> The framework further stipulates that in EU member states, victims of torture, rape or other serious acts of violence shall receive necessary treatment for the damage caused by such acts, in particular, access to appropriate medical and psychological treatment or care.<sup>17</sup>

Participants also recalled article 5 of the African Charter on Human and Peoples’ Rights and General Comment No. 4 issued by the African Commission on Human and Peoples’ Rights on the Right to Redress for Victims of Torture and Cruel, Inhuman or Degrading Punishment or Treatment.<sup>18</sup> Both documents call on States Parties to ensure adherence to a non-discriminatory approach and provide that victims shall obtain redress regardless of their status, taking into account the special circumstances of vulnerable groups.

Although anti-torture instruments of the Inter-American Human Rights System were not specifically discussed by participants, the 1985 Inter-American Convention to Prevent and Punish Torture outlines that States have an obligation to guarantee compensation for victims of torture (art. 9). The 1984 Cartagena Declaration is the primary regional instrument for the protection of refugees.

<sup>14</sup> Individual complaints can be submitted to the European Court of Human Rights, the Inter-American Commission and Court on Human Rights and the African Commission on Human and Peoples’ Rights. The availability of these kinds of complaints, however, will depend on the State(s) concerned and the ratification of the relevant international instruments or articles that allow for individual complaints.

<sup>15</sup> The principle of universal jurisdiction is defined in the Preamble of the Statute of the International Criminal Court (para. 4).

<sup>16</sup> Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 (Article 21), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0033&from=EN>

<sup>17</sup> *Ibid* (art. 25).

<sup>18</sup> See <http://www.achpr.org/instruments/general-comment-right-to-redress/>.

## B. From rights to reality: Challenges to fulfilling the rights and needs of torture victims in migration

The workshop participants were a geographically diverse and interdisciplinary group composed of lawyers, medical doctors, social workers and psychologists. They spent the first panel session sharing their daily experiences with using legal frameworks and tools to protect the rights of their beneficiaries. Despite the existence of an international human rights legal framework, the participants noted that numerous practical obstacles prevent migrant victims from exercising their rights and having their needs met.

### 1. *Is the international legal framework sufficient?*

In light of their day-to-day experiences in working with victims of torture, the workshop participants considered the sufficiency of the existing international legal framework. A number of participants indicated that they had found it insufficient to protect specific categories of migrants. Even with a right to seek and enjoy asylum from persecution,<sup>19</sup> various participants noted that some torture victims effectively fall outside of the international protection framework, including those fleeing poverty, the adverse effects of climate change and environmental degradation, individuals with restricted access to fundamental rights, such as education and decent work, and internally displaced and stateless persons. They further observed that these “unprotected” groups may have suffered torture and/or may be at risk of being tortured and therefore require additional protection.

Other participants, however, argued that the international legal framework is sufficient and that protection gaps are due to non-compliance at the national level. They noted that States often fail to fully respect and utilize the international legal framework due to an absence of political will, resources and expertise and a complete understanding about their legal obligations. Moreover, workshop participants reported shortcomings in national legal frameworks. Some countries have not yet ratified relevant international treaties and/or do not have a clear or comprehensive domestic legal framework that recognizes migrants or torture victims. In such contexts, migrant torture survivors are unable to claim their rights, including before domestic courts.

In cooperation with the Global Migration Group,<sup>20</sup> OHCHR is developing a draft set of principles and guidelines on the protection of the human rights of migrants in vulnerable situations.<sup>21</sup> The guidelines are based on the existing legal framework (international human rights law and related standards). They seek to give States practical guidance about the fulfilment of their existing obligations under international law in relation to migrants who do not fall under the refugee definition but are nonetheless in a

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<sup>19</sup> Article 14, Universal Declaration of Human Rights.

<sup>20</sup> The Global Migration Group is an inter-agency group that brings together heads of agencies to promote the wider application of all relevant international and regional instruments and norms relating to migration and to encourage the adoption of more coherent, comprehensive and better coordinated approaches to address the multifaceted issue of international migration.

<sup>21</sup> See the Global Migration Group *Draft principles and guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations* (February 2017) available at <http://www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf>.

vulnerable situation and in need of protection intervention. All of the provisions of the draft principles and guidelines are relevant to the protection of torture survivors and touch on individual screening and assessment, assistance, detention, returns, access to justice, monitoring and accountability.<sup>22</sup> Participants affirmed the need for proper guidelines that can help States determine and establish relevant priorities and ensure that certain vulnerable groups are not unduly marginalized.

## 2. Challenges in seeking justice and legal status

Participants discussed the multiple challenges related to seeking justice for migrant victims of torture and regularizing their legal status in the host country, primarily due to the complexity and length of legal and/or administrative procedures. They noted that language and cultural barriers often exacerbate these challenges.

The majority of migrant victims of torture seek refugee status in host countries. Participants stressed that sometimes these asylum and/or refugee determination procedures can result in “anti-therapeutic” consequences for survivors of torture. The simultaneous provision of rehabilitation services is therefore vital to enabling victims to proactively and efficiently participate in these processes. A “therapeutic jurisprudential approach” was proposed as a solution for legal practitioners. This entails prioritizing clients as human beings, addressing the tensions of their role and calling on other actors in the system to practice law in a therapeutic, less harmful and more beneficial way.

““The preparation of an application for refugee status is stressful for all asylum-seekers and is particularly difficult for people who have experienced torture.””

(Bernice Carrick, The Humanitarian Group, Australia)

Another issue that was discussed was the violation of the principle of *non-refoulement*. According to workshop participants, many migrants who are deemed not to qualify for international protection are at risk of being returned to bordering countries or their country of origin where they may be subjected to torture. Returns often take place before a migrant is individually assessed, without consideration given to the principle of *non-refoulement* or the prohibition of collective expulsion. Participants also indicated that destination countries may make arrangements with transit countries to detain or prevent individuals from reaching their final destination, which may result in the migrant experiencing inhumane conditions of detention and torture.

Access to justice, on the other hand, was recognized to have a positive therapeutic impact on victims of torture, as well as a preventive and deterrent effect on future violations. Participants noted, however, that seeking justice for torture may be less of a priority for some migrants than having their immediate needs met.

Participants also identified different obstacles within their respective domestic systems. For instance, information is not always available or provided to victims and their families regarding the legal options that could be pursued to seek justice. Migrant victims of torture who are arriving in a new country find it extremely difficult to learn

<sup>22</sup> See Principles 3-8, 17 and the related *Guidelines*.

about initiating a legal complaint regarding the torture they have suffered. In the course of criminal proceedings, they may also be unaware of or unable to exercise their rights to information, to review decisions not to prosecute or to access victim support.<sup>23</sup>

Participants underlined that the legal system in the country where they suffered torture may be unable or unwilling to prosecute those responsible and alternative mechanisms, such as ad-hoc tribunals or the International Criminal Court, may not exist or have prosecutorial jurisdiction. This raises questions about accessibility to justice for migrant victims of torture, what efforts are being undertaken to assist these victims and how their rights under international and domestic law can be meaningfully implemented in practice.

It was also pointed out that the physical and psychological consequences of torture, including post-traumatic stress disorder (PTSD), anxiety, depression and suicidal tendencies, tend to diminish the ability of migrant torture survivors to reclaim their rights and seek legal assistance. Migrants, in particular those in transit or in an irregular situation, are often reluctant to complain about abuse suffered or to seek legal assistance, particularly from authorities due to a fear of being detained or deported.

**“ The stigma and the shame of the experience of torture prevent many victims from revealing the details or even the facts. ”**

(Hamsa Vijayraghavan, The Ara Trust, India)

In addition, participants explained that victims are often inhibited from revealing their traumatic experiences due to feelings of shame and a fear of being stigmatized. This reluctance to reveal details about the circumstances of their flight may be misunderstood as a refusal to cooperate, an attempt to withhold information or to mislead authorities by lying. These misunderstandings can in turn undermine their credibility, which is particularly detrimental when claiming refugee status. A fear of reprisals against themselves or their families who remained in the country of origin may also explain a person’s reluctance to initiate legal and administrative proceedings.

### 3. Challenges as a result of current migration policies

Participants then discussed some of the challenges resulting from migration policies. They reported that within the current context of increasing expressions of xenophobia, States are shifting from policies of protection to policies of deterrence. Many are adopting immigration policies that seek to deter migrants from reaching their territory or shift the burden of asylum to other States. As a result, early identification tools are either absent or inadequate for the identification of torture survivors within migration flows, which consequently curtails the development and implementation of appropriate responses (see Chapter 2). Participants expressed their concerns that more focus is being placed on screening for migrant status rather than on their vulnerabilities (see Chapter 3). These policies not only prevent torture survivors from being identified and

<sup>23</sup> This is directly in line with the standards outlined in the Committee against Torture’s General Comment No. 3 and the 2005 *United Nations Basic Principles and Guidelines*, which recommend that States enact legislation to provide victims of torture and ill-treatment with an effective remedy and the right to obtain adequate and appropriate redress.

claiming their rights, but they also aggravate their trauma, thereby causing further damage to their mental and physical health.

**“ Law can certainly be used to deter asylum-seeking, but it will do so at the expense of protecting victims of torture. ”**

(Bernice Carrick, The Humanitarian Group, Australia)

In many countries around the world, the length of migrant detention is being significantly extended. The workshop participants extensively discussed this issue. Migrants are often arrested and placed in detention, irrespective of their status and/or the fact that immigration detention violates a range of human rights. In particular, the detention settings and conditions may cause torture survivors to relive the trauma of abuse.

Participants emphasized the need to limit immigration detention, end the detention of children and ensure that national laws do not criminalize the crossing of borders by migrants. Although States may argue that immigration detention is lawful, participants confirmed that this is frequently not the case. Detention must be the exception and not the rule. It should only be used as last resort, when less restrictive alternatives have been considered and found inadequate to meet a legitimate purpose. When detention is used, it should be for a limited period and under appropriate and humane material conditions, take into account the status and needs of the detainee, respect procedural safeguards and provide protection from torture or ill-treatment.<sup>24</sup> Otherwise, the detention is unlawful.<sup>25</sup>

**“ This rise in the number of forced displacements is paralleled by a growing and worrying tendency around the world to criminalize irregular migration, deter applications for asylum and detain people on the move. In this context, refugees, asylum-seekers and other irregular migrants have become more vulnerable to human rights violations, including torture and other cruel, inhuman or degrading treatment or punishment. ”**

(Nils Melzer, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment)<sup>26</sup>

<sup>24</sup> See, for instance, article 10 of the International Covenant for Civil and Political Rights and article 37 of the Convention on the Rights of the Child. In particular, the UN Human Rights Committee noted in its General Comment No. 15 that “if lawfully deprived of their liberty, [aliens] shall be treated with humanity and with respect for the inherent dignity of their person.”

<sup>25</sup> See Guideline 8 of the OHCHR Recommended Principles and Guidelines on Human Rights at International Borders (2014) available at <http://www.ohchr.org/EN/Issues/Migration/Pages/InternationalBorders.aspx>. See also the OHCHR amicus brief filed by the UN High Commissioner for Human Rights in the case of *Raoufi and others v. Greece* before the European Court of Human Rights, available at [http://www.ohchr.org/Documents/Issues/Migration/Raoufi\\_v\\_Greece.pdf](http://www.ohchr.org/Documents/Issues/Migration/Raoufi_v_Greece.pdf); and the Global Migration Group Draft principles and guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations (February 2017, Principle 8), available at <http://www.ohchr.org/EN/Issues/Migration/Pages/Draftsforcomments.aspx>.

<sup>26</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the Human Rights Council, A/HRC/34/54, 14 February 2017, para. 34.

#### 4. *Insufficient and inadequate access to economic, social and cultural rights*

Inadequate services are a common problem that is encountered in all contexts and is closely connected with policy challenges. All participants agreed that access to basic needs is both crucial and extremely difficult for torture survivors in migration. Migrants in transit, or those in an irregular situation, are often unable to work legally, rent accommodation or access other basic services, such as food, clothing and health care. Language and cultural barriers further inhibit accessibility. This can be particularly problematic for victims of torture whose ability to function in daily life is restricted due to ongoing consequences of their trauma. Moreover, torture survivors usually require more specialized medical and psychological treatment and care.

*“In such instances where refugees and migrants are forced to work in the informal economy, they expose themselves to much greater risks of abuse and exploitation which can further exacerbate physical and psychiatric problems and make working to survive an even more remote possibility.”*

(Chris Eades, Human Rights Lawyer, UK)

While it is widely recognized that meeting a person’s basic necessities is a prerequisite to recovery, participants observed that access to rehabilitation services, including psychological care, can also equip survivors to better meet their immediate needs. Participants pointed out, however, that rehabilitation services for victims of torture or traumatized migrants do not exist in many countries or are limited to initial consultations with psychologists or referrals to psychiatric hospitals. The participants lamented the lack of funding for specialized rehabilitation services, which affects not only the quality of the services, but also their very existence. In addition, some specialized organizations have ceased to function, others have had to limit their activities and the remaining organizations are overwhelmed.

#### 5. *Marginalization, racism and xenophobia*

As noted, migrants are being confronted with an increase in the expression of anti-migrant sentiments, discrimination and open hostility and violence while in transit or in destination countries. The mounting xenophobia expressed by the general public is influencing the development of anti-immigrant and anti-immigration policies. The danger and conditions faced along the migration route aggravates the feelings of abandonment and helplessness experienced by the survivors in addition to other symptoms of their trauma. This unquestionably undermines efforts to rebuild their lives in host countries.

Marginalization and isolation are widely shared consequences of torture, making it more difficult for survivors to function and make connections with social networks. Similarly, migrants tend to feel marginalized and isolated in unknown foreign environments, particularly when they are in irregular situations. Additional obstacles are then created for the integrating host communities, which may in turn exacerbate a person’s sense of isolation and lead to a worsening of their symptoms. This cycle often affects entire families and as torture might have an inter-generational impact, there may be integration challenges for several generations.



“ Torture rehabilitation is not just about therapy. Before people can process the experience, they need to be protected. ”

*Kolbassia Haoussou,*  
*Survivors Speak Out – Freedom from Torture,*  
*UK*



“ The main problem is that among migrants, the survivors of torture are generally not identified, and hence not offered, or seen to be entitled to redress and rehabilitation. ”

(Jens Modvig, Chairperson, United Nations Committee against Torture)

Participants agreed on the critical importance of the early identification of migrant torture victims and the documentation of their cases, which is often key to the enjoyment of their rights. As previously stated, the early identification of torture victims is frequently inadequate or non-existent. Suggested reasons include a lack of political will and knowledge and conflicting priorities. For migrant torture victims arriving in a host country, there are rarely sufficient resources for basic humanitarian aid. Participants again stressed that screening processes tend to focus on the determination of a person’s legal status instead of an evaluation of their needs and vulnerabilities. Many highly traumatized individuals, including torture survivors, are consequently overlooked.

### A. The key to accessing protection, redress and rehabilitation

Participants underlined that the early identification of torture victims within migration flows should be linked to accessing protection mechanisms and services. Awareness that a person has survived torture is essential to determining the most appropriate services for that individual. Screening therefore goes hand-in-hand with the direct provision of assistance and/or the establishment of an effective referral system. Thorough documentation of the torture suffered is particularly important for certain types of responses, such as asylum proceedings and redress. Participants explained that it is difficult for migrant torture survivors to have recourse to an effective legal remedy in countries that do not have a formal legal policy framework or specific procedure for the identification of victims of torture. On the other hand, while identification mechanisms may exist in some countries, the standards and criteria may not be clearly defined.

The identification of an individual as a torture survivor should activate specific protection and assistance mechanisms. The urgency of identification is linked to the need to prevent a person from being returned to a country where they are at risk of being tortured, in accordance with the principle of *non-refoulement*. Identified torture survivors should have immediate access to the asylum determination process to decide on their eligibility for refugee status. Torture survivors are more likely to be entitled to other protection mechanisms, such as temporary protection status and resettlement.

“ Early identification becomes the pathway to wellness. ”

(Eva Barnewitz, Vivo International, Germany)

Migrants who are identified as torture survivors may also be provided with certain services in transit or host countries. This can include social assistance for basic needs, which tend to be more pressing for torture survivors in the migration context since they are unlikely to have a local support network. Accessing services, therefore, is often an issue of survival. Participants agreed that torture survivors should be identified as soon as possible in order to ensure that their needs can be effectively assessed and addressed.

In addition, rehabilitation services can be offered to torture survivors. Experience shows that early rehabilitative treatment can help to prevent more long-term consequences of torture, both physical and psychological. At later stages, it is more difficult for victims to overcome the consequences of torture since the trauma can become deeply rooted. Conversely, long delays in accessing services can lead to further traumatization.

Finally, the documentation of torture is crucial to enabling victims to claim reparation and hold perpetrators accountable. To this end, it is best to document the physical consequences of torture as close to the event as possible.

“Where efforts are being undertaken by authorities to document torture in accordance with the Istanbul Protocol, and where information is sought from asylum-seekers/refugees about crimes in a sensitive way, such documentation can be vital for future accountability efforts, as well as efforts to obtain reparations.”

(Jurgen Schurr, REDRESS, UK)

## B. Different stages and settings along the migration route

Participants discussed the stages and settings of the migration route where the early identification of torture victims and the documentation of torture can take place. They generally agreed that it can take place anywhere along the migration route, provided that precautions are in place to prevent re-traumatization. It was also noted that identification should then be recognized at subsequent stages of the migration journey, since it is counterproductive to oblige migrants to continually repeat their story. Migrants should be provided with a copy of any written documentation produced about their case.

### 1. Transit countries

Although the screening of migrant torture victims can take place in transit settings, participants considered that this context is often the most challenging. The continuing and sometimes heightened risk of torture and other human rights abuses is frequently faced in transit settings. For that reason, migrants may not feel safe enough to reveal that they had been tortured. They are also unlikely to be aware of the compelling reasons to acknowledge that they had been tortured. Given the transitory nature of their stay, they may be less inclined to divulge this information because they are more focused on moving on to their destination country.

### 2. Boats or other modes of transport

Participants noted that early identification can and should take place as soon as migrants cross the border, however, an initial screening can take place in transport vehicles carrying migrants. One participant explained that for migrants arriving by sea, screening can take place in boats or rescue vessels. This preliminary intake can facilitate the more in-depth process onshore. The same process may be applicable to other modes of transport, such as trains.

### 3. Open settings – hotspots, borders and docks

Participants indicated that early identification can take place in open settings, including in hotspots where migrants gather, which may be along the border and on docks. In such settings, relevant personnel may collect data about their journey, determine specific needs and detect early warning signs of trauma. Organizations working in these settings may deploy mobile units to spots where refugees are gathered. At this stage it may be possible to offer assistance and/or referrals to other services.

### 4. Closed settings – refugee camps, reception centres, detention facilities

The early identification of victims and the documentation of torture may take place in closed settings. Participants warned, however, that migrant detention facilities do not tend to be suitable settings for early identification and documentation. Migrants held in detention are likely to feel particularly vulnerable when they are under the control of an authority and may hesitate to come forth. Early identification and documentation can also take place in refugee camps.

## C. Challenges of early identification and intervention

Participants identified numerous challenges related to the early identification of migrant torture survivors and the provision of appropriate intervention.

### 1. Large movements

**“ How can torture survivors be identified in a camp holding thousands of migrants? ”**

(Pieter Ventevogel, UNHCR)

Participants emphasized that the early identification of torture survivors in large migration settings is particularly challenging due to the sheer number of individuals involved. The challenge is akin to finding a needle in a haystack. This difficulty is compounded by the precarious living conditions in which torture victims who are part of mass migration movements often find themselves.

### 2. Preventing re-traumatization

**“ Since they have been dehumanized during torture, and probably again along the migration route, any humane contact, even for a short period, returns a basic sense of humanity and trust in people. ”**

(Bojana Trivuncic, International Aid Network, Serbia)

Participants cautioned that early identification can be like opening a Pandora’s box of trauma. For the migrant torture survivor, narrating her/his story outside of a rehabilitation setting may lead to further traumatization. When screening tools are used to determine appropriate protection and services, without proper mental health considerations, it is likely that the trauma will resurface. This risk can be reduced

through certain techniques. Victims must be treated with care, dignity and respect throughout the intake process. Establishing a sense of trust and safety is essential. Migrant torture survivors should always be informed of the purpose of the screening process and the reason why it is important to reveal whether they had been tortured. Their corresponding rights, including the legal protection framework and available services, should be explained to them.

### 3. Deterrents for self-identification

As mentioned above, there are numerous factors that can discourage survivors from indicating that they had been tortured which are often compounded in a migration setting. Migrants, particularly in transit and migration settings, may not feel it is safe to disclose this information. Another deterrent may be related to the perceived stigma that is associated with torture and mental disorders. Moreover, many torture survivors may be unaware that simply telling their story, which had only negative connotations until that point, could actually be the key to their enjoyment of certain rights, and also therapeutically positive for their rehabilitation. Finally, language and cultural barriers frequently prevent survivors from speaking about what has happened to them.

## D. Tools and techniques for early identification and documentation

Participants described different types of techniques and tools used in their organizations for the early identification of torture victims in migration. Challenges associated with the documentation of torture were also discussed. Participants differentiated simple screening tools from more thorough diagnostic tools and clarified that such early identification screening tools can provide an indication of which individuals are at risk, rather than a reliable diagnosis. Many of the screening tools to detect early warning signs are designed by the organizations themselves and include questionnaires and tables, which are generally translated into different languages.

### 1. Advantages of standardized tools for early identification

*“Thanks to the proper identification and documentation process run by NGOs, victims of torture were released from detention, granted protection or granted compensation for unlawful detention.”*

(Daniel Witko, Helsinki Foundation for Human Rights, Poland)

Participants dedicated a considerable amount of time discussing the advantages and disadvantages of standardized screening tools. A number of the participants noted that they use standardized tools to identify torture survivors in migrant populations and consider that these are helpful for identifying torture victims in migrant populations, including at the first point of contact in transit or in host countries. One of the advantages of such tools is that they can be employed by non-specialists. In certain cases, they can also be self-administered by the migrants themselves.

## 2. Limitations of standardized tools for early identification

Despite these advantages, various organizations have decided not to introduce standardized tools, questioning both their inherent value and their design. During the workshop, some participants were critical of their efficacy and questioned whether they were able to accurately identify victims of torture, particularly within large migration flows. Early identification tools are also associated with Western mental health models. Participants noted the limitations of such rehabilitation models, pointing to alternative models that may be more suited to the particularities of the migration context. They also questioned whether such tools helped migrants or if they were instead a means for organizations to measure their impact and thereby justify their funding. Participants noted that most existing screening tools were not designed with the identification of torture victims in mind and therefore need to be adapted.

## 3. The Istanbul Protocol (torture documentation)

Workshop participants agreed that systematic efforts are rarely undertaken at the national level by law enforcement, prosecutors or other authorities to comprehensively document the harm suffered by victims of torture.

Participants stressed that States have an obligation to provide redress and full rehabilitation to victims. In practical terms, this means that they must ensure the operation of procedures for the screening, documentation and assessment of an individual's therapeutic and other needs that is based on the Istanbul Protocol (manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment), as well as other relevant instruments.<sup>27</sup>

According to the UN Committee against Torture's General Comment No. 3, "securing the victim's right to redress requires that a State Party's competent authorities promptly, effectively and impartially investigate and examine the case of any individual who alleges she or he has been subjected to torture or ill-treatment. Such an investigation should include as a standard measure an independent physical and psychological forensic examination as provided for in the [...] Istanbul Protocol. Undue delays in initiating or concluding legal investigations into complaints of torture or ill-treatment compromise victims' rights under article 14 to obtain redress, including fair and adequate compensation and the means for as full rehabilitation as possible."<sup>28</sup>

Even though States are primarily responsible for the adequate assessment and documentation of torture cases, participants underlined the importance of documenting torture cases and of using the Istanbul Protocol within the practitioners' community and disseminating it to personnel in all relevant disciplines.

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<sup>27</sup> General Comment No. 3 on the implementation of article 14 by States Parties, Committee against Torture, 13 December 2012, para. 13.

<sup>28</sup> *Ibid*, para. 25.

## E. Roles and actors in early identification

Participants noted that different actors have a key role to play in the early identification of torture survivors.

### 1. Self-identification and enabling environments

Participants agreed that encouraging survivors to come forth is one of the keys to early identification, particularly in the context of large movements, and noted that creating the conditions to enable a torture survivor to disclose her/his experience is more important than the tool itself. To encourage self-identification, migrants need to understand that it is crucial to reveal if they had been tortured in order to qualify for asylum procedures and receive appropriate assistance. Torture survivors need to be reassured that they are having a normal response to an abnormal situation, while also enabling them to identify symptoms that they are experiencing as a consequence of torture.

“*Psychological education does not involve telling them “you have PTSD,” but rather “you have had a number of traumatic experiences and it’s reasonable to have those symptoms.”*”

(Alberto Barbieri, Medici per i Diritti Umani, Italy)

### 2. Communities and service providers

Participants stressed that early identification does not necessarily need to be carried out by professionals. Non-specialists, particularly first responders and others with adequate training, have an essential role in this process. They can be trained to assist individuals by identifying early warning signs and common signs of trauma and can also provide basic orientation information, a safe environment and a human connection. Furthermore, these individuals can refer migrants to interventions with more specialized services. Participants underlined the potential for collaboration with migrant communities in this process.

### 3. Authorities

Border guards or other law enforcement officials tend to be the first and only authorities with whom the migrant comes in contact in the transit or host country, usually at the border itself. These officials have a determining role in the early identification of torture survivors and setting in motion the referral process. Participants observed, however, that they frequently lack knowledge about torture survivors and may concentrate their screening on the determination of legal status with a focus on returns. As a result, the traumatic experiences of many migrants are rarely acknowledged or taken into account and they are therefore at significant risk of being returned. Border and other authorities that come into direct contact with migrants require extensive training about the risk of torture, its consequences and the early warning signs of trauma. On this basis, they must be made aware of the State’s responsibilities with respect to migrant torture victims so that they can make appropriate referrals, including to protection mechanisms. Participants agreed that there is a need to avoid the risk that border guards will be solely responsible for the “pre-determination” of refugee status.

“After torture and while waiting for asylum, people have a sense of no longer having any kind of worth or value. They lost their friends and their communities. Being in a community reconfirms meaning and value.”

Mark Fish,  
Room to Heal,  
UK





Participants discussed good practices for providing redress and rehabilitation to victims of torture in migration, including various means for addressing intersecting vulnerabilities, and highlighted a number of considerations that should be kept in mind by relevant professionals. Participants noted that the provision of redress and rehabilitation is vital to breaking a vicious traumatic cycle and has short- and long-term benefits for both the individual and the community into which they are integrating. As a result, redress and rehabilitation should be a focus before the legal and administrative situation of the migrant torture survivor is resolved.

### **Victim-centred approach**

Participants were in full agreement that, regardless of the type of assistance provided, caregivers and practitioners must always prioritize the perspective of the victim (her/his rights and needs and her/his decisions) during the redress and rehabilitation process. This victim-centred approach is a shared characteristic of the unique and specialized work of the UNVFVT grantees.

“Our motive is simple: Who is better able to speak on behalf of survivors of torture than us? The motto of our organization is simple, too: ‘Nothing about us without us.’ We want to tell our stories the way we want to and we also want to motivate other survivors and victims.”

(Kolbassia Haoussou, Survivors Speak Out – Freedom from Torture, UK)

Workshop participants noted that a basic premise of all redress and rehabilitation responses should be the direct involvement of migrant torture survivors. To that end, they must be consulted throughout the process, be equipped to make fully informed decisions and be treated as active agents in their own redress and rehabilitation. A victim-centred approach should guide all legal, policy and practical decisions concerning migrant torture survivors. More specifically, the voice and participation of victims should be formally recognized in criminal and judicial proceedings. They should also be empowered to lead and participate in the development and implementation of relevant policies and programmes and advocate for the fulfilment of their rights.

“There is a greater need to hear those who we work with. We need to empower the people we are dealing with. When we empower them, they help themselves.”

(Xavier Vincent Pereira, Health Equity Initiatives, Malaysia)

### **A. Rehabilitation along the migration route**

“Much of rehabilitation is about reconnecting through legal, social and psychological measures. Whether torture has taken place on the move or before that, treatment aims to re-establish a sense of protection lost to extreme experiences.”

(Anette Carnemalm, Swedish Red Cross)

Participants generally agreed that transit is one of the most difficult aspects of the migration journey. As a result, assistance should be provided to torture victims at every step of the migration journey. Since each stage has its own unique challenges, the development and delivery of the assistance should be adapted to those circumstantial particularities, always bearing in mind that torture victims face a heightened risk of re-traumatization. Participants acknowledged the complications in determining what this means in practice.

While rehabilitation tends to be provided at the end of a migration journey, participants debated whether it may be appropriate to initiate rehabilitation early in the migration process, particularly in transit countries. Although some organizations do not provide rehabilitation in transit settings, others who are working in these environments argued that it is both possible and desirable to identify and assist torture survivors, provided that certain precautions are in place to avoid their re-traumatization. One of the most compelling arguments for rehabilitation in transit settings that was put forth by participants noted that the migrants may be in a country for an undetermined amount of time, including those who are being held in migration detention and are at greater risk for re-traumatization and human rights violations.

Moreover, it was suggested that early support can help build their resilience to continue their migration journey. Where optimal conditions for rehabilitation are not available, some participants noted that it is still possible to provide some form of rehabilitation support. When provided humanely, even support that may seem insufficient, such as meeting once for a few hours, can help torture survivors to begin to trust other people again.

## B. Approaches to rehabilitation in the migration context

### 1. Beyond the Western medical model

Medical practitioners stressed the importance of diagnosing mental disorders among torture survivors in a migration context. They rely on such diagnoses to inform the type of treatment required. A number of participants noted that they rely on the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), a universally recognized psychiatric diagnostic tool that was developed by the American Psychiatric Association. One of the most common diagnoses among this population is PTSD, which is a mental disorder that can develop after a person has been exposed to a traumatic event. It was suggested that specialized assistance to victims of torture or traumatized asylum-seekers who suffer from PTSD is key for both treatment and asylum (or other) processes. Participants regretted that such assistance is often limited to basic consultations with psychologists.

““ Post-traumatic stress disorder (PTSD) is an empty box. Are we making a mistake by giving Western labels to problems that are different between cultures and to phenomena that are more comprehensive? ””

(Alberto Barbieri, Medici per i Diritti Umani, Italy)

Nevertheless, some participants were critical of the Western medical model for the diagnosis and treatment of migrant torture survivors and asylum-seekers and warned against its use as a result of the associated stigma and long-term impact of the diagnosis of a mental disorder, including PTSD. This inhibits many torture survivors from coming forward. The argument was further nuanced by other participants who explained that there is a risk when using mental health diagnoses in asylum procedures to prove torture as they might rely on the reactions of the person. As victims of torture may not want to be associated with mental disorders, they may deny their experience of torture in order to resist these diagnoses and associated treatment as the basis for their asylum claim.

Some participants argued that is not useful to label people and underlined that Western psychiatric categories are generally too categorical and restrictive and fail to encompass the complexities of torture and migration. Nevertheless, it was noted that although people may experience trauma in vastly different cultural contexts, they tend to experience similar psychological symptoms.

Many participants suggested moving beyond the traditional mental health model and stated that other models may be more flexible and applicable to the experiential specificities of migrant torture survivors. In addition, less traditional models can be more cognizant of cultural differences and the varied impact that torture can have on different generations and the wider community. The social-ecological model, for example, recognizes that a mental disorder is not solely a response to trauma and takes into account a survivor's interaction with their social environment.

**“ We need to motivate migrant voices. It is very important to provide listening spaces and complaint channels, especially virtual ones, through which migrants, wherever they are, can denounce torture and talk with experts. ”**

(Rosa Vieira, Instituto de Estudos da Religião, Brazil)

Participants agreed that creating the necessary conditions that can enable torture survivors to disclose their experiences is more important than the tools that are used to facilitate this process. They also agreed that torture survivors need to be empowered to actively find their own solutions.

## 2. Holistic services to enable individuals to “live” again

**“ We need a model where people who have the strongest dysfunctions can get the services they need. ”**

(Pieter Ventevogel, UNHCR)

Participants emphasized that torture survivors need to learn how to “live” again in their new contexts. Some suggested that rehabilitation services should in fact focus on enabling them to function again. Determining the extent to which migrant torture survivors can function in society is critical to ensuring that they receive appropriate support and that scarce resources are properly allocated.

Participants noted that holistic services are key, regardless of the rehabilitation model that is applied. One person described it as a triangle of basic services, community support and self-help. Another participant outlined a biological, social and spiritual approach. Some organizations noted that they provide integrated services, including basic orientation, social assistance, legal aid and psychological support, through interdisciplinary teams of hired and/or voluntary professionals. Other organizations focus only on the provision of specialized services, such as medical or legal assistance. Participants also promoted reliance on evidence-based models for treatment that target the mental, physical and social elements of a person's life. In this light, it was emphasized that there is a need for close collaboration between the practitioners offering rehabilitation services, such as doctors, psychologists and interpreters.

Participants discussed the importance of rebuilding relationships of trust. It was noted that healing often takes place in the context of a therapeutic relationship and that the creation of a transparent relationship with a caregiver is vital to rebuilding trust. Participants emphasized that interventions do not necessarily need to be provided by mental health professionals and that continuity of contact with a reference operator can contribute to building trust.

*“ Victims experiencing PTSD are stuck in the past. Our role is to build trust between us and ensure that they feel safe. Then we can help them to look at the past in a structured way with the aim that they realize that what happened is part of the past and no longer part of the present. ”*

(Eva Barnewitz, Vivo International, Germany)

### 3. Community and Survivor-Support Groups

Participants discussed the need to strengthen social and community support and underlined that the concept of rehabilitation is not limited to medical and therapeutic care. It is a well-established fact that individuals can also heal through a sense of belonging to a community. For that reason, successful rehabilitation techniques emphasize the re-establishment of links to a community. Various participants described community-based health programmes through which intervention extends beyond individual therapy to include social activities, outings in nature, etc. It was also noted that migrant communities have a key role to play. Migrants who have been in a transit/host country for an extended period of time and have knowledge of the system can be trained to become case managers and facilitate assistance.

*“ Rehabilitated torture victims in camps can be trained to identify and document human rights in order to assist other victims to report violations to law enforcement authorities, make appropriate referrals for the services needed by the victims of torture available in other agencies and offer interpretation services to bridge the language barrier gap. ”*

(Lucy Kiama, HIAS Kenya, Kenya)

Stigmatization is sometimes strongly rooted within particular cultural communities. A number of participants referred to a good practice in which communities are helping people to learn about available services while simultaneously combating the stigma of

seeking assistance. Participants also shared good practices of identifying and training community leaders about their rights and responsibilities and the obligations of the State. They are able to pass this information along to their community, which is in turn communicated to newcomers. Referral to resettlement specialists was also mentioned.

Participants drew attention to the effectiveness of social support groups as a specific rehabilitation technique with an ability to create a long-lasting impact. Healing after torture was described as a relational process and support groups offer victims an avenue for peer support. Survivor communities and their relationships were reported to help torture survivors withstand current challenges and take steps towards letting go of past losses.

Therapeutic activism was recommended as another approach that reminds victims of their sense of agency to effect change. This can help to “normalize” the torture experience and transform it from a source of shame and guilt to an experience that can be used to make a positive difference in the lives of others. Participants described this important shift in rehabilitation as a transition from a service-beneficiary model to a membership model.

Accounting for the local context in the development and delivery of rehabilitation services was emphasized. For instance, while staff should be trained in local cultural sensibilities, steps should also be taken to ensure the non-discrimination of those from particularly vulnerable groups, such as lesbian, gay, bisexual, transgender and intersex (LGBTI) persons.

## C. The challenges of particular vulnerabilities on torture victims in migration

### 1. Women and children

Participants indicated that children and women victims of forced displacement are a sizeable demographic within migratory flows. These victims are often fleeing volatile circumstances in their countries of origin after having experienced various forms of torture, including sexual and gender-based violence and forced recruitment, and find themselves in especially vulnerable situations.

Participants noted that one of the major challenges faced by this demographic relates to detention and deportation. The use of detention-deportation as a systematic policy was argued to violate the right to international protection and can have a devastating impact on the lives of these victims. The nature and form of detention-deportation was described as an accumulative process of extreme violence and therefore a form of torture. Participants stressed that human rights organizations and international organizations must continue to demand the non-detention of children,<sup>29</sup> those in need of international protection and those with specific protection needs, such as pregnant and nursing women, persons with disabilities, older persons, survivors of torture or

<sup>29</sup> The Committee on the Rights of the Child has stated that “regardless of the situation, detention of children on the sole basis of their migration status or that of their parents is a violation of children’s rights, is never in their best interests and is not justifiable.” See the *CRC Report of the 2012 Day of General Discussion on the Rights of All Children in the Context of International Migration*, para. 32.

trauma and stateless persons.<sup>30</sup> Detention was described as a hotbed where many pre-existing vulnerabilities are manifested, highlighted, reinforced and perpetuated. Sexual and gender-based violence was also recognized as a peculiar vulnerability as a result of the shame and stigma that may be experienced as a result of speaking out.

## 2. Persons with disabilities

“Persons with disabilities are often subjected to targeted and systematic torture. Disability could also be as a result of torture.”

(Yusrah Nagujja, Refugee Law Project, Uganda)

Participants highlighted that a significant number of migrant victims of torture have a disability (in accordance with the definition provided by the United Nations Convention on the Rights of Persons with Disabilities).<sup>31</sup> These disabilities might be a direct consequence of the torture experienced in their home countries, during flight and/or in their receiving countries.

Their disabilities range from temporary psychical and/or mental disabilities to permanent disabilities, and can include the loss of body parts. Persons with mental disabilities might find it difficult to articulate their challenges with regard to the torture suffered, and in the absence of relevant support facilities, they tend to fall into a more vulnerable situation.

Participants voiced their concerns regarding the absence of specific statistics about the percentage of persons with disabilities within the migrant torture survivor population. A lack of access to proper redress and rehabilitation was linked to a failure to properly identify and document the nature and severity of disabilities, assess the needs of persons with disabilities and report on those findings. The complexities of mental disabilities further hamper the ability to collect evidence that might lead to appropriate redress and rehabilitation.

Rehabilitation for this particularly vulnerable group was noted to be more costly as a result of the requirement for assistive devices, which often cannot be purchased due to limited resources. As a result, participants recommended that proper intake and assessment processes need to be in place. The use of affirmative quotas for the intake process was stressed to ensure that a certain percentage of victims who receive assistance are persons with disabilities.

## 3. LGBTI Persons

Workshop participants also focused on some of the issues affecting LGBTI persons, especially in the context of the criminalization of homosexuality and discrimination. These individuals, most of whom were subjected to torture in their home countries, also

<sup>30</sup> See the Global Migration Group *Draft principles and guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations* (February 2017, Principle 8.6) available at <http://www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf>.

<sup>31</sup> Article 1 of the Convention on the Rights of Persons with Disabilities provides that: “...persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

face the risk of being denied refugee status and forced to move/return to countries in which they might be persecuted due to their gender or sexual orientation, potentially leading to imprisonment and further torture. It was noted that anti-LGBTI legislation exists in many so-called safe countries and, in some instances, may include the application of the death penalty as punishment.

Some participants suggested that it might be necessary to find 'safe providers' who can address the specific needs and vulnerabilities of this group of victims. The concept of safe providers was explained to refer to professionals who are working from a human rights framework and understand many of the issues faced by LGBTI persons.

#### 4. Language differences

The linguistic challenges faced by migrant victims of torture were also raised. More specifically, the inability to clearly express oneself during a migration journey or in the language of a receiving country was highlighted as a significant intersecting vulnerability. Language abilities were also underlined as central to the effective integration and adaptation of migrants. The absence of interpretation and translation services correspondingly impedes rehabilitation. This means that the communication of a person's rights – if recognized – cannot be understood by an individual, potentially leading to a *Kafkaesque* scenario in which a migrant is processed by the authorities with no understanding of what is happening and no opportunity for the individual to react or claim her/his rights.

Language abilities were also noted to be fundamental to facilitating autonomous decision-making, which is particularly useful in integration processes. Not surprisingly, communication deficiencies caused by linguistic differences have been an obstacle to the effective use of participatory approaches in rehabilitation. Victims find it extremely difficult to participate if they lack the basic communication skills to articulate their needs, expectations and challenges.

## D. Perspectives on addressing intersecting vulnerabilities

### 1. Prioritization of vulnerabilities

**“Priorities in various countries are different with regard to vulnerabilities and rehabilitation. They need to be elevated.”**

(Suzanne Jabbour, RESTART Center for Rehabilitation of Victims of Violence and Torture, Lebanon)

Participants pointed out that States must ensure that vulnerabilities remain a priority when allocating resources for rehabilitation, particularly within the context of large and complex migratory flows. States were recognized as key stakeholders in the rehabilitation process of individuals with intersecting vulnerabilities. Participants underlined the need to advocate for the prioritization of vulnerable groups in migrant populations.

## 2. Systematic monitoring of migration flows

“ The rights of torture victims are not implemented and no systematic effort is being undertaken by law enforcement, prosecution or other authorities to comprehensively document the harm suffered by victims of torture. This is despite the obligation to identify victims of torture so as to adequately address their vulnerability. ”

(Jurgen Schurr, REDRESS, UK)

Participants noted that the use of systematic monitoring for the early identification of groups with intersecting vulnerabilities is crucial, particularly in contexts where States have full control over migrants. This can ensure that specialized and customized rehabilitation is offered as soon as possible. Particular attention was also given to the indiscriminate detention of children, which was recognized as an unacceptable practice that can never be justified. Finally, it was stressed that victims need to be aware of their right to international protection and alternative procedures. In this context, participants recalled the institutional recommendations outlined in General Comment No. 3 of the Committee against Torture.

## 3. Perspectives and approaches to rehabilitation

Participants recommended that intersectional vulnerabilities should be addressed with intersectional responses. Treatment should be participatory and include the full involvement of victims. Some participants added that it is important for large cities to take steps to establish protection structures for migrants from minority racial groups who may have limited or no access to rehabilitation facilities due to racial discrimination. The usefulness of looking at existing resources in the community was also highlighted.

Participants further emphasized that rehabilitation should be based on the specific needs of vulnerable groups and individuals as their needs will vary depending on whether they plan to settle in a country or continue their journeys. Sufficient referral pathways to legal and health services, including mental health services, must therefore be tailored to the particular needs of the migrant. Participants also noted that while responses need to be intersectional, they must also be coherent and coordinated.

## E. Need for more research and data

“ The international community needs to come up with better evidence-based interventions that will provide significant relief to torture survivors on the move until they reach stable locations. ”

(Christy Fujio, Heartland Alliance International, USA)

Participants highlighted the importance of conducting more research and obtaining concrete data on the phenomenon of torture victims in migration in order to better inform policy and practice. They also pointed out the need for a better understanding of post-migratory stress and appropriate healing strategies that can assist migrants to recover in unfamiliar countries where they do not have their families or a support system.



“ In a system rooted in injustice and the exploitation of migrants, it renews my hope in humanity to witness the incredible capacity of those who – out of the deepest pain and struggle – are able to flourish and find strength, love and dignity in life. ”

Ana Elena Barrios,  
Fray Matías de Córdova Human Rights Centre,  
Mexico



# CONCLUSIONS AND RECOMMENDATIONS

The way forward: Response strategies for victims of torture in the context of migration

## CONCLUSIONS

### *Human rights context and framework*

- More people are currently on the move than at any time in recent history. These large movements are increasingly complex and perilous and migrants are increasingly subjected to human rights violations along the way. An alarmingly high proportion of these migrants have been subjected to torture in their country of origin, along the migration route and/or in the host country. **The practice of torture in migration must be acknowledged and requires the urgent design and implementation of tailored responses.**
- Appropriate responses to address the particular needs of migrant torture victims must be guided by international human rights law, international refugee law and international humanitarian law, including the absolute prohibition of torture, the right to *non-refoulement* and the right to redress and rehabilitation. **Torture victims in migration are entitled to their rights as human beings and torture victims, independently of their legal status.** They also require special protection and specialized assistance, which can and should take place anywhere along the migration route.
- **There is a critical protection gap for migrants who have suffered torture, yet may not qualify for international protection.** Those who migrate because of extreme poverty, lack of access to education, health, decent work, food and water, separation from family, gender inequality, natural disasters, climate change and environmental degradation may not fit into an established category, but they may have suffered or are at risk of being tortured, and therefore require protection. The international legal framework provides protection to all persons, including migrants, regardless of the reason for their mobility or legal status.
- While national normative contexts vary widely, **there is an increasing tendency for national migration policies to focus on deterrence rather than human rights protection.** The constant fear of deportation, the uncertainty of prolonged asylum-determination processes and the administrative detention of migrants, among other policies, are particularly detrimental for torture survivors and can lead to re-traumatization. **Torture survivors are protected by the principle of *non-refoulement* and entitled to an individual assessment, including abbreviated asylum-determination processes and other special protection measures. They should never be detained on the basis of their migration status.**
- **The rising xenophobia and discrimination in many contexts is contrary to human rights and aggravates the trauma of torture survivors.** Racism, marginalization and mistrust of migrants must be countered by a narrative of solidarity and the recognition of their rights and their positive contributions to society in order to foster a climate of acceptance, trust and respect. Awareness should be raised about the ordeals that migrants have survived, including torture, with a focus on positive messages about their resilience.

### *Early identification and specialized response*

- **To access appropriate protection and assistance, migrants must first be identified as torture survivors.** The earlier this identification takes place, the more tailored the responses can be, with a view to avoiding the exacerbation of mental health problems in transit settings. Where it is not possible to prevent further traumatization, at times it may be better not to intervene. **Early identification should be linked to gaining access to protection measures, basic services and, where possible, rehabilitation.** The numerous challenges of early identification, particularly in mass migration and transit settings, can be surmounted, including through self-identification and other tools.
- **Migrants should be informed of the importance of sharing accounts on any torture that they may have suffered and should be provided with a safe and humane environment** to tell their story without fear. Appropriate early identification tools and referral mechanisms to specialized services must be put in place. These tools can range from simple questionnaires during preliminary screening to the in-depth documentation of torture in accordance with the Istanbul Protocol. Migrants should always be provided with a copy of any written documentation about their case. **Service-providers, including non-specialists, should be trained** to identify torture survivors within the migrant population by detecting early warning signs of trauma, providing information and a safe environment.

### *Addressing intersecting vulnerabilities*

- **Migrant torture survivors with additional intersecting vulnerabilities face additional challenges requiring specialized responses.** Vulnerable groups include in particular unaccompanied minors and persons with disabilities. Some women may also be particularly vulnerable in the context of migration. Their early identification through systematic monitoring is crucial, particularly in migrant detention facilities (where States have full authority over migrants) in order to ensure that specialized and customized rehabilitation is offered as soon as possible.

### *Redress and rehabilitation while on the move*

- **Torture victims in the context of migration have the right to a remedy, including access to justice, restitution and compensation.** This right tends to be overlooked for migrant torture survivors and, if addressed at all, it is usually only after the legal status of migrants has been determined. Torture victims must be given a central role in the justice process. Clear and binding procedures and standards that separate the criminal justice system and immigration officials should be in place to ensure that migrants, regardless of their status, can access justice without a fear of detention and deportation.
- **The right of torture survivors to rehabilitation is all the more critical and challenging in the migration context, particularly in transit settings.** The symptoms of marginalization and isolation that are common to torture victims are compounded in migration due to unknown, precarious and frequently hostile

contexts. The psychological sequelae of torture survivors can sometimes hinder their social integration into their new environments. This vicious cycle can and must be broken through the provision of appropriate rehabilitation services.

- Rehabilitation of migrant torture survivors should have a holistic approach, targeting the mental, physical and social aspects of their lives. **Rehabilitation models, ranging from individualized attention to alternative community-based models, can be complementary.** Alternative models may be adapted to the specificities of the migration context, including by taking into account different language and cultural barriers, in particular the fact that mental health issues carry a stigma in certain cultures.
- **Rehabilitation models that are specifically tailored to migration settings often focus on functionality,** helping survivors to live their daily lives in a foreign context. Improving functionality also requires the provision of basic services, such as food, housing, health and legal assistance in ways that are participatory and respect dignity and autonomy. In addition to facilitating integration and gaining a sense of belonging, a **community-based response** and access to peer support can help migrant torture survivors to learn about available services and reduce the stigma of seeking assistance. Where **individualized attention** is desirable and possible, secure listening spaces must be established to enable victims to speak with professionals on a confidential basis, even when they are on the move.
- **The rehabilitation strategies required at each stage of the migration journey may vary.** The transit setting is particularly challenging due to the ongoing risk of torture and the additional stressors of life while in transit. Migrants may develop psychological shields to protect themselves which should not be challenged or broken down outside of a safe environment for the victim. In a context where the torture victim has not achieved stabilization, for example, while they are still in transit or due to a protracted insecurity relating to their legal status, **short-term solutions could focus on immediate material support, building resilience, coping strategies and maintaining stability. Long-term solutions may include more in-depth rehabilitation services and community-based responses.**

#### *Promoting further understanding*

- **More research and analysis is required related to victims of torture within the flow of migrants.** There is a need for increased exchanges between States, international organizations and frontline professionals and advocates. First-hand experience, combined with more precise data, should inform the effective provision of redress and rehabilitation for migrant torture survivors, raise awareness and inform legislative and public policy changes.

## RECOMMENDATIONS

### *Recommendations for practitioners and civil society*

- Adopt an adequate early identification method to identify torture victims among migrants and ensure that it leads to their access to relevant protection measures, basic services and rehabilitation;
- Take into account the vulnerabilities of some categories of migrant victims of torture, including unaccompanied children, persons with disabilities and women, as well as the intersecting vulnerabilities that may be based on ethnicity, health status, gender or sexual orientation and ensure that they inform the adoption of appropriate responses and protection services;
- Ensure a victim-centred approach in the provision of redress and rehabilitation services and ensure that victims participate in the process of their development and selection;
- Adopt a holistic approach to providing assistance to torture victims among migrants targeting mental, physical, legal and social aspects. If these services are not available, implement a referral pathways system for other providers or specialists that can provide them;
- In the context of migration, ensure the use of rehabilitation models that focus on functionality and help victims to go about their lives in a new setting. A community-based response aims to achieve integration, facilitate a sense of belonging to community and reduce the stigma of seeking assistance. The individualized attention model ensures secure listening spaces for victims to speak with professionals. The two models can be complementary;
- In the transit setting or due to a protracted insecurity related to a person's legal status, implement a rehabilitation strategy with short-term solutions that focuses on providing immediate material support and coping strategies, building resilience and maintaining stability. Long-term solutions should include more in-depth rehabilitation services and community-based responses;
- Undertake additional research and systematically collect data related to victims of torture within the flows of migration and track the effective provision of redress and rehabilitation for victims in order to raise awareness and inform public policy changes; and
- Train groups of professionals at the domestic level to ensure the application of an early identification tool and increase sustainability of protection, redress and rehabilitation programmes. Capacity-building strategies should aim to develop professional skills to enhance the delivery of direct assistance services.

### *Recommendations for States and the international community*

- Call on States to ensure that human rights are at the centre of laws and policies addressing migration and that migration governance is consistent with State obligations under international human rights law, international refugee law and international law, including the absolute prohibition of torture, the right to *non-refoulement* and the right to redress and rehabilitation;
- Call on States to operationalize the international legal framework that protects vulnerable migrants who have suffered torture and may not qualify for international protection, building on the Global Migration Group's principles and practical guidance on the protection of the human rights of migrants in vulnerable situations;
- Sensitize the international community and donors about the need to provide redress and rehabilitation to victims of torture in the context of migration;
- Dedicate efforts and financial resources to support the protection, redress and rehabilitation of torture victims in the context of migration;
- Support skills-building and training initiatives to enable practitioners to share their experiences and strengthen their capacity to provide assistance to victims of torture within migration flows. Knowledge-sharing platforms, such as those organized by the Torture Fund, are essential to achieving this objective;
- Implement awareness-raising campaigns about the realities facing migrant torture victims, including through the media, to compel public policy responses and encourage solidarity with these migrants. This can help with efforts to integrate torture victims into the recipient community and avoid their re-traumatization; and
- Involve existing capacities and resources at the domestic level, such as civil society organizations, physicians, lawyers and mental health professionals who are often best equipped to provide assistance that takes into account the vulnerability of victims based on identities and characteristics, including gender, ethnicity, sexual orientation, health status and ability.

## List of participants

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**Mr. François Crépeau**, Special Rapporteur on the human rights of migrants

**Mr. Malcolm Evans**, Chairperson of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)

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“ Since 1981, with a distinct victim-focused mandate, the Fund reaches out yearly to 50,000 victims of torture and their family members in over 80 countries averagely, by awarding grants to organizations delivering specialized medical, psychological and legal aid to victims. ”

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