

NGOs Common Paper regarding EIDHR contribution to the fight against torture

The European Initiative for Democracy and Human Rights (EIDHR), as a financial emanation of EU policy in the area of those very human rights which lie at the heart of the Union's stated aims, is a valuable practical but also symbolic tool in the struggle to secure fundamental human rights for all. In this context, the Union's attachment to fundamental rights – including the prohibition of torture and the right to reparation of its victims – can serve as a bulwark against the well-documented erosions of civil liberties (both within and outside the Union) brought about by recent international efforts to curb terrorism. Alarming, the erosion of those liberties traditionally seen as underpinning European societies and therefore the Union is evident in the ever more commonly expressed suggestion that "light" or moderate physical pressure (or rather, torture) can be considered acceptable under certain circumstances. It is in line with the Union's key role on the international level to counteract any such regression with regard to fundamental rights and in particular one of the most egregious violations, torture.

In this context, we, the undersigned organisations, welcome the recent developments in EU policy in combating torture as expressed in the Commission communication of May 2001 establishing the fight against torture as a priority for the EIDHR. The communication rightly emphasises the necessity of preventing torture, alongside the need to support the rehabilitation of its victims. Our concern is that the former activity not be pursued to the detriment of the latter. Indeed, torture prevention relies heavily on the information gathered in treating victims, and to create a watertight policy division between prevention and rehabilitation is to build a false, and potentially counter-productive, dichotomy between two activities that necessarily nourish one another. In a number of countries, rehabilitation of victims of torture empowers them to seek remedies, to talk about the past, allowing for the fight against impunity, establishment of the truth, conflict resolution and reconciliation. In some other countries, supporting asylum seekers and refugees will promote peaceful integration, mutual understanding and security. In any case, even in places where efficient prevention measures will be supported, the victims will remain, with long-term needs and a right to be provided with assistance. To pursue a policy whose unintentional result is a substantial weakening of support to victims could lead to a repudiation of the latter's legal right to assistance as foreseen in the UN Convention against torture as well as to question a common and quite uncomplicated sense of moral justice.

We believe that the European Union should go further in the fight against torture and become the world-leading actor in the field, with an integrated approach including all the aspects of prevention and rehabilitation, and appropriate financial resources to support such an integrated approach. The EU guidelines on torture and their working paper do provide for such a comprehensive approach and the EIDHR should be in line with these important instruments. We would welcome and be willing to participate in a larger inter-institutional discussion in order to assess and further deepen the EU integrated policy for the fight against torture, particularly in terms of its concrete implementation.

In the shorter term and in view of the next EIDHR programming document, we believe that an assessment of the concrete implementation of this policy over the past year is needed, in order to ensure that it remains in line with the comprehensive approach to the fight against torture defined by the EU Guidelines. We would therefore limit the content of this communication to a number of urgent recommendations in this field.

1. Division of activities between prevention and rehabilitation and the case of juridical assistance

1.1 Watertight classification of activities

In point 1.2.1. defining the objectives of the 2002 Call for Proposals, the Guidelines for Applicants ('the Guidelines') make a clear and watertight distinction between activities coming under the prevention dimension and those coming under the rehabilitation dimension¹.

Although we understand the need for such a differentiation between both dimensions on a methodological point of view, in practice the two dimensions are not so strictly separated. The application of such a strict and watertight classification at implementation level might cause some difficulties in the daily work of NGOs:

Indeed this strict division might drive NGOs to cut up their activities into isolated parts, while an efficient action to fight against torture and ill treatments cannot be done without taking into account the reality of the victim. And such practice implies to integrate both prevention and rehabilitation dimension in the NGO approach.

This might also paralyse NGOs having integrated the different dimensions of the fight against torture in their daily work as well as favour a hermetic and artificial division between activities that could have a negative impact on the efficiency of the fight against torture.

For example, in order to draft and set up a coherent and efficient set of judicial tools, it is necessary to know precisely the conditions and occurrence of torture in order to answer victims' needs and to put in place an effective protective judicial system. And this can be known only by integrating the results of rehabilitation activities into the analysis.

Proposal: the classification of activities should not be watertight; the Guidelines should be more flexible and foresee the possibility for many activities to be eligible under both dimensions.

1.2 The case of juridical assistance to victims of torture

In the Guidelines, the juridical assistance that can be provided to a victim of torture is only mentioned as a prevention activity, although it also considers that "legal support should be understood as covering legal action to **prevent** torture or to obtain **redress** for acts of torture rather than support aimed at providing for the welfare of victims of torture (e.g. advice on refugee status, housing, social security benefits, etc...) the provision of the latter type of advice falls within activities in support of rehabilitation of victims of torture"².

The distinction made in the Guidelines seems to us inappropriate and difficult to concretely put into practice for any NGO providing a comprehensive juridical assistance to the victims of torture. Obtaining compensation in favour of a victim of torture fits at the same time in the rehabilitation framework and in a prevention scheme through the acknowledgement of the violation suffered by the victim contributing to the fight against impunity.

Moreover, in the light of the United Nations practice and according to the definitions of the Sub-Commission on the fight against discriminatory measures and on the protection of minorities, based on a report presented by the Special Rapporteur on Torture Mr Theo Van Boven, "the word "reparation" in this study denotes all types of

¹ p.4 to 6 of the 2002 Guidelines on torture

² p.5 of the 2002 Guidelines on torture, footnote 4

redress, material and non-material, for victims of human rights violations. Consequently, the terms "restitution", "compensation" and "rehabilitation" cover particular aspects of reparation"³.

Proposal: we believe that it would be more logical and coherent to consider the juridical assistance as a whole as coming under both dimensions of the fight against torture.

2. Quality of the applicant:

According to point 2.1.1. of the Guidelines, "Eligibility of Applicants: who may apply?", it is indicated that "Applicants must comply with the following conditions in order to be eligible for a grant: be non-profit-making and; be a non-governmental organisation or a higher education institution"⁴. There is no reference to the fact that only centres specialised in the rehabilitation of victims of torture would be eligible for rehabilitation funds, to the detriment of NGOs also active in this field. Nevertheless, on point 1.3.2. referring to the amounts available, only rehabilitation centres are mentioned for activities in support of the rehabilitation of victims of torture, thus implying that other NGOs are not eligible for such activities⁵.

The experience acquired by international networks of NGOs fighting against torture shows that these ones cannot be simply classified between NGOs specialised in prevention activities and others only active in the field of rehabilitation. Moreover, in many cases victims of torture cannot be taken in charge by centres, either because the kind of assistance they need does not justify a displacement to a centre, or because of the impossibility to maintain a centre in the country. The exclusion of NGOs active in this particular field of the rehabilitation of victims of torture has therefore a very negative impact as these victims will not receive anymore the assistance they are benefiting from today, and will not be able to receive other assistance in this new framework.

Proposal: we suggest that in the next programming document and Call for Proposals, applicants should be only described as Non-Governmental Organisations, particularly in the description of activities and available amounts in support of the rehabilitation of victims of torture.

3. A non-exhaustive list of activities including the root causes of torture

3.1 A non-exhaustive list of activities

Points 1.2.1. a) and b) specify that "the following is an exhaustive list of the types of prevention/ rehabilitation activities that may be funded through this Call for Proposals"⁶.

This implies that any other activity, either in the field of prevention or in the rehabilitation one, is not eligible, thus risking leaving aside important aspects/steps of the process of rehabilitation or prevention. This might create "gaps" between activities and render them less efficient to fight torture globally.

³ E/CN.4/Sub.2/1993/8, p. 7

⁴ p.8 of the 2002 Guidelines on torture

⁵ p.6 of the 2002 Guidelines on torture

⁶ p.4 & 5 of the 2002 Guidelines on torture

For example a whole dimension of social assistance is left aside, notably the urgent assistance to victims or potential victims in order to flee from the country/their perpetrators and/or to reach a rehabilitation centre (documents and financial support). Or the financial support to survive in a hidden place or neighbouring country, etc. Or providing basic training to help victims of torture to create a living in their new location, such as language training, vocational training (e.g. basic computer skills) or educational training (e.g. basic political, social and cultural knowledge of the victim's new location). Moreover these activities can be considered either as rehabilitation in the case of known victims or as prevention for threatened persons.

Proposal: we suggest that the list of activities should be a non-exhaustive one, thus leaving space for complementary or interrelated actions to be also eligible. The list of activities should serve only as a reference for the different kinds of possible actions.

3.2 Prevention activities related to the root causes of torture and to the typology of victims

The list of prevention activities that can be financed (point 1.2.1.a) of the Guidelines⁷ include research and publication activities:

- "research and publication into torture practices including the preparation of alternative reports or commentaries on official Reports prepared by states in the context of their international obligations;
- investigation, collation, publication and distribution of information regarding the supply of torture instruments and technology"

Nevertheless, this list does not include research or publication activities focused on the root causes of torture or on the typology of the victims, while such activities are a fundamental element for a comprehensive approach of the fight against torture in general and of torture prevention in particular.

For example, The special Rapporteur on Torture, the UN Independent Expert on Human Rights and Extreme Poverty as well as the Committee against Torture recognise and underline the link between the socio-economic context –characterised by an extreme poverty, a marginalisation of certain groups and a lack of enjoyment of economic social and cultural rights- and the emergence of torture. Their approach underlines that this link operates through two different dynamics: the integration of disadvantaged social groups –in socio-economic terms- in the typology of victims as well as the creation of framework conditions –in socio-economic terms- favourable to the emergence of torture. It also underlines that the prevention of torture cannot be dissociated from the problem of the poor, the marginalised and the vulnerable groups and therefore must take into account this dimension and its evolution.

Proposal: the Guidelines of the next Call for Proposals under priority 2 "prevention against torture/support for the rehabilitation of torture victims" should include a specific reference to activities focusing on the root causes of torture as well as on the typology of victims. We would therefore suggest adding the following point to the list of activities:

- Research, collation, diffusion and publication of information related to the root causes of torture and to the typology of victims

⁷ p.4 of the 2002 Guidelines on torture

Finally, the Guidelines also fails to specify as legitimate and necessary research issues the physical, mental, social and legal consequences of torture.

Proposal: the Guidelines of the next Call for Proposals under priority 2 “prevention against torture/support for the rehabilitation of torture victims” should also include a specific reference to research activities focusing on physical, mental, social and legal consequences of torture. We would therefore suggest adding the following point to the list of activities:

- Research, collation, diffusion and publication of information related to the physical, mental, social and legal consequences of torture

3.3 Inclusion of prevention activities in rehabilitation projects and vice-versa

In point 1.2.1. it is specified that “applications dealing with torture prevention must be exclusively devoted to such activities. In contrast, applications concerning the rehabilitation of torture victims may also include activities aimed at the prevention of torture, provided that these do not exceed 20% of the total cost of activities”⁸.

As explained before, it is not possible to strictly divide neither NGOs nor activities between prevention and rehabilitation, as both dimensions are closely interdependent. Logically, any comprehensive project to fight against torture should be able to include both aspects in one way or another, if the needs for such combined approach justify it and if the political situation of the country allows for it.

Proposal: the Guidelines should also foresee the possibility to include rehabilitation activities within a project mainly related to torture prevention.

4. Support to grass-roots NGOs

Finally, we are concerned by the fact that the current procedures under the EIDHR might not facilitate the access of small or/and local NGOs to available funding. The complexity of procedures and application forms, for instance, requires a level of capacity that these small NGOs might not have to be able to compete with large experienced European or international NGOs.

We are aware that the micro-projects scheme could represent an answer to these concerns; the fact that it only applies to focus countries is however a limitation to this response.

⁸ p.4 of the 2002 Guidelines on torture

CONCLUSION

The European Commission may be concerned about the fact that rehabilitation services for victims of torture do, to a certain extent, depend on continued EU funding. The fact is that there are not many donors in the field, the EU and the United Nations Voluntary Fund for Victims of Torture being the main ones, joined by a number of national development agencies. Obviously, in countries where torture is still practiced or where silence about past repression is the rule, it is very unlikely that a government will ever support assistance programmes for victims. As far as private funding is concerned, there is a psychological reluctance to donate for such type of activities, and, in a current context of fear of terrorism and fear of immigration, no political consensus among public opinion that torture should always be banned, and that victims have a right to receive support.

Amnesty International (AI)
Behandlungszentrum für Folteropfer (BZFO)- Berlin
Centre for Victims of Torture (CVT)- Brussels
Coalition des Centres pour Victimes de Torture (CCVT Europe Latine)
Fédération Internationale des Ligues des Droits de l'Homme (FIDH)
International Rehabilitation Council for Torture Victims (IRCT)
Word Organisation Against Torture (OMCT)