

# Implementation by Germany of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

## Parallel Report of the German Association of Psychosocial Centres for Refugees and Victims of Torture (BAfF e.V.)

**Berlin, March 2019**

The German Association of Psychosocial Centres for Refugees and Victims of Torture (BAfF e.V.) is a national, non-governmental association currently representing 41 psychosocial centres which provide psychosocial support, psychotherapy and rehabilitation services for refugees and victims of torture.

Our goal is to strengthen the social, psychological and medical care of refugees and survivors of organised violence. We aim to promote and stand up for the protection of their human rights, their right to life, physical inviolability, health and well-being. Our main activities include promotion of networking and cooperation between psychosocial and treatment centres on a national and international level, provision of expertise (for symposia and policy-makers etc.), promotion of close collaboration between charities, medical and psychotherapeutic professional bodies, decision-makers in health and social welfare, and politicians.

## **Issue No. 1: Access to rehabilitation measures for asylum seekers**

**Art. of CAT:** Art. 2, Art. 14; General Comment No. 3 (2012)

### **Explanatory Note:**

According to Art. 14 of the Convention and the General Comment No. 3, rehabilitation has to be holistic and include medical and psychological care as well as legal and social services. Rehabilitation, for the purpose of this general comment, refers to the restoration of function or the acquisition of new skills required as a result of the changed circumstances of a victim in the aftermath of torture or ill-treatment.<sup>1</sup>

According to the General Comment, States parties shall ensure that effective rehabilitation services and programs are established and are accessible to all victims without discrimination, including asylum seekers and refugees.<sup>2</sup>

Furthermore, the application of article 14 is not limited to victims who were harmed in the territory of the State party or by nationals of the State party. This is particularly important when a victim is unable to exercise the rights guaranteed under article 14 in the territory where the violation took place. Indeed, article 14 requires State parties to ensure that all victims of torture and ill-treatment are able to obtain redress.<sup>3</sup>

---

<sup>1</sup> General Comment No. 3, para. 11.

<sup>2</sup> General Comment No. 3, para. 15.

<sup>3</sup> General Comment No. 3, para. 22.

In order to give effect to article 14, States parties shall enact legislation specifically providing a victim of torture and ill-treatment with the right to obtain as full rehabilitation as possible.<sup>4</sup>

In Germany, access to rehabilitation measures for asylum seekers and refugees who suffered from torture outside German territory is restricted:

- a) although it is well known that the effects of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment are long lasting<sup>5</sup>, chronic and in need of careful exploration by specialists – provision for asylum-seekers is restricted to acute medical/psychiatric care and treatment through the Asylum Seekers Benefits Act.
- b) Access is restricted because there is no comprehensive and monitored procedure for the assessment and evaluation of an individual's therapeutic or psychosocial and other needs. As a result, there is no provision of services which are appropriate and promptly accessible – especially not in reception centres and in the so- called AnkER-Centres (see more detail below under explanatory note No 2).
- c) Although it is state of the art that treatment should include psychotherapeutic interventions<sup>6</sup>, such treatment for victims of torture suffering from after-effects – (such as posttraumatic stress disorder or depression) is - as a rule - provided by specialised NGO-run rehabilitation centres (Psychosocial and/or Treatment Centres for victims of torture and refugees) that have restricted access to funding from public social or health service providers. Only 6,4% of their psychotherapeutic services are covered by the public social or health service<sup>7</sup>.
- d) States parties are required to ensure that effective rehabilitation services and programmes are established, to guarantee that specialised services for victims of torture or ill-treatment are available, and to offer a long-term, holistic and integrated approach, including a wide range of inter-disciplinary measures, such as medical, physical and psychological rehabilitative services; re-integrative and social services; community and family-oriented assistance and services; vocational training; education<sup>8</sup>. However, the German federal government provides only 12% of the needed financial resources to the specialised rehabilitation centres providing such a holistic approach, leaving a great number of people without provisions.
- e) Access to professional reports documenting the effects of torture and other cruel, inhuman or degrading treatment or punishment is being limited by new legal measures. A draft law from the Interior Ministry on "Orderly Repatriation" will exclude the use of psychological reports<sup>9</sup> even though they are foreseen in the Istanbul protocol.

---

<sup>4</sup> General Comment No. 3, para. 20; article 2 CAT.

<sup>5</sup> General Comment No. 3, para 12: The obligation of States parties to provide the means for "as full rehabilitation as possible" refers to the need to restore and repair the harm suffered by the victim whose life situation, including dignity, health and self-sufficiency, may never be fully recovered as a result of the pervasive effect of torture.

<sup>6</sup> Flatten, G., Gast, U., Hofmann, A., Knaevelsrud, C., Lampe, A., Liebermann, P., ... & Wöllern, W. (2011). S3–LEITLINIE Posttraumatische Belastungsstörung ICD-10: F43. 1. Trauma und Gewalt, 5(3), 202-210.

<sup>7</sup> BAFF, Versorgungsbericht – Zur psychosozialen Versorgung von Flüchtlingen und Folteropfern in Deutschland, 5th Edition, forthcoming 2019 on <http://www.baff-zentren.org/veroeffentlichungen-der-baff/versorgungsberichte-der-baff/>.

<sup>8</sup> General Comment No. 3, para. 13.

<sup>9</sup> Gemeinsame Stellungnahme der Bundespsychotherapeutenkammer (BPtK) und der Bundesweiten Arbeitsgemeinschaft der psychosozialen Zentren für Flüchtlinge und Folteropfer (BAFF): Entwurf eines Zweiten Gesetzes zur besseren Durchsetzung der Ausreisepflicht (Geordnete-Rückkehr-Gesetz), <http://www.baff-zentren.org/stellungnahme-zum-geordnete-rueckkehr-gesetz>

## The right to obtain rehabilitation services for asylum-seekers is limited under the Asylum Seekers Benefits Act

Different surveys show that between 20 and 40 percent of asylum seekers and refugees are suffering from a post-traumatic stress syndrome<sup>10</sup> - many of them as a result of torture and ill-treatment in their home countries, such as Syria, Afghanistan and Iraq. These people are often in urgent need of rehabilitation measures, particularly psychological treatment. But access to psychological treatment in Germany is very difficult and particularly burdensome for asylum seekers.

Within the first 15 months of their stay in Germany asylum seekers have very restricted access to the German health care system, including psychological treatment. Health care is limited to treatment for acute illness and pain.<sup>11</sup> Additionally, health care may be granted in cases of chronic, life-threatening conditions.<sup>12</sup>

In most parts of Germany, the social welfare administration is responsible for deciding applications for psychological or psychotherapeutic treatment. There are no binding time limits for processing applications and it often takes longer than six months<sup>13</sup> to receive a decision – in 45% of the cases the decision will be negative.<sup>14</sup> The rate of rejection is almost 10 times higher than for applications by people covered by the national health insurance system and often show legal deficiencies. Appealing against the negative decision can take another 6 months or even longer. Within this time frame, asylum seekers will probably not receive the treatment they need.

One of the main obstacles is the absence of a law that implements Art. 21, 22 and 19 II of the Reception Conditions Directive (2013/33/EU)<sup>15</sup>. The special reception needs of many asylum-seekers who are victims of torture or ill treatment are not assessed and therefore they do not receive the appropriate mental health care. When deciding upon applications for psychological treatment, authorities often do not take the provision of the Directive into consideration.

Furthermore, even where psychological treatment is granted, the cost of interpreters is not secured. This applies to those seeking asylum<sup>16</sup>, but it also applies after asylum has been granted and the refugee has become a member of a health insurance scheme. Health insurance rejects 100% of applications for interpreters and the social welfare administration usually does so as well.

Because the regular health and social system is not equipped to provide the rather specialised holistic treatment, most asylum-seekers who have been victims of torture or ill-treatment receive treatment in psychosocial centres for refugees and victims of torture.

- The psychosocial centres offer holistic and specialized rehabilitation services, which include a coordinated combination of psychological care, legal, social, community- and family-based vocational and educational services. Treatment is offered irrespective of residence status, health insurance cover, country of origin or German language ability.

---

<sup>10</sup> Alpak et al., 2015; Niklewski, Richter & Lehfeld, 2012.

<sup>11</sup> § 4 Asylum Seekers Benefits Act.

<sup>12</sup> § 6 Asylum Seekers Benefits Act.

<sup>13</sup> § 88 Social Courts Act.

<sup>14</sup> See footnote 7.

<sup>15</sup> OJ L 180, 29.6.2013, p. 96–116

<sup>16</sup> The costs could be covered according to § 6 ASBA, but are often rejected.

- But, as a result of poor funding, the psychosocial centres have limited resources, and have the capacity only to meet a small part of the need. Between 7,000 and 10,000 people seeking help have to be turned away each year.
- Although rehabilitation services should be available at the earliest possible stage<sup>17</sup>, torture victims have to wait on average 7.3 months for therapy in a psychosocial centre. In some 25% of the centres the waiting time is between nine and 24 months.

Funding of the centres is very precarious. On average, the centres can only finance 6,4% of their costs through the social or health care systems and only 12% through funding by the federal government<sup>18</sup>.

### No right to restitution for asylum-seekers under the law of compensation for crime victims

The law on compensation for victims of crime is currently being reformed to include many improvements for victims of crime regarding their right to access to rehabilitation measures<sup>19</sup>:

The reform supports them in accessing speedy, readily available holistic rehabilitation (as foreseen by the Committee in GC3 to Art. 14)<sup>20</sup>. It will provide a legal basis for universal psychotherapeutic provision and quality-controlled counselling.

But according to §14, the law only applies if the crime was committed on German territory or on a German boat or airplane. Refugees and asylum-seekers who suffered torture in their home country are systematically excluded – and there is no other provision which explicitly guarantees their access to rehabilitation.

This is in contradiction to General Comment No. 3, para 22: „The Committee considers that the application of article 14 is not limited to victims who were harmed in the territory of the State party or by or against nationals of the State party. (...) This is particularly important when a victim is unable to exercise the rights guaranteed under article 14 in the territory where the violation took place. Indeed, article 14 requires States parties to ensure that all victims of torture and ill-treatment are able to access remedy and obtain redress“.

The draft does mention the need for some provision to be made for cases in which the country in which the crime was committed is unable to provide proper compensation, but this issue is not considered in the details of the law itself.

### Recommendation:

#### We recommend that the Committee

- Recommends to the German government that proper provision be made in its reform of the law on compensation for victims of crime, for victims of torture and other cruel, inhuman or degrading treatment or punishment included in GC3 to Art. 14 §22 or that other legally binding provisions are made.

---

<sup>17</sup> A/HRC/22/L.11/Rev.1, para 15

<sup>18</sup> See footnote 7.

<sup>19</sup> Referentenentwurf des Bundesministeriums für Arbeit und Soziales, Entwurf eines Gesetzes zur Regelung des Sozialen Entschädigungsrechts, processing status: 20.11.2018.

<sup>20</sup> General Comment No. 3, para. 11.

- request the State Party to grant asylum seekers and refugees who have suffered torture and ill-treatment access to specialised care and treatment covered by state funding or social and health insurance system without restrictions<sup>21</sup>
- encourage the State Party to pass a law to provide for the funding of interpreters<sup>22</sup>
- urge the State Party to ensure sufficient long-term funding of psychosocial centre for refugees and victims of torture
- urge the State Party to include asylum seekers and refugees who have suffered torture and ill-treatment in the law on compensation of victims of crime.

## Issue No. 2: Non refoulement of asylum-seekers who suffered from torture or ill-treatment

**Art. of CAT:** Art. 3

**Explanatory Note:**

The competent authorities are obliged to take all relevant considerations into account in order to ensure that no victim of torture is returned to another State.

Since August 2018 seven so called AnkER-centres have been established in Germany. The acronym “AnkER” stands for the German terms: Ankunft, Entscheidung, Rückführung – arrival, decision and deportation. Asylum-seekers are obliged to stay in these centres for up to 18 months.

Medical treatment is limited in the centres<sup>23</sup> and access by non-governmental organisations including psycho-social centres is usually denied. The expertise of the specialised rehabilitation centres and their holistic approach - for instance including identification of psychosocial needs - is intentionally excluded.

On the other hand, asylum-seekers are obliged to hand in medical reports that prove that they are traumatized.<sup>24</sup> Recently, expert reports drawn up by qualified psychotherapists have been more and more often refused in principle without consideration.

---

<sup>21</sup> See General Comment No. 3, para. 15: “The obligation in article 14 to provide for the means for as full rehabilitation as possible can be fulfilled through the direct provision of rehabilitative services by the State, or through the funding of private medical, legal and other facilities, including those administered by NGOs in which case the State shall ensure that no reprisals or intimidation are directed to them.”

<sup>22</sup> Services should be available in relevant languages (see General Comment No. 3, para. 15).

<sup>23</sup> Bayerischer Flüchtlingsrat (Bavarian Refugee Council) , Die Situation in den Lagern, <https://www.fluechtlingsrat-bayern.de/are-bamberg.html>

<sup>24</sup> According to § 60 (7) of the Residence Act.

## Issue No 3: Access to professional medical and psychological reports documenting the effects of torture and other cruel, inhuman or degrading treatment or punishment according to the IP, Istanbul Protocol

**Art. of CAT:** Art. 3, 10 and 21

### **Explanatory Note:**

Since a reform of the asylum laws in 2016, the hurdle for expert reports justifying exemption from expulsion orders has been raised so that the reports of psychotherapists are usually rejected. It is in fact practically impossible for asylum-seekers, particularly those in AnkER-centres, to get hold of the documents required.

The situation could get worse: a draft law on "Orderly Repatriation" issued by the Interior Ministry includes a provision that reports by psychotherapists will no longer be considered in deportation cases. Such reports must be drawn up by doctors, regardless of whether their specialist skills are relevant to the issue.

The large majority of expert reports on reasons to desist from deportation on psychological grounds have until now been drawn up by psychologists who are additionally qualified as psychotherapists who are trained and approved in respect of diagnosis and prognosis<sup>25</sup>. If their skills are not to be recognised in future, victims of torture and other human rights abuses will no longer have any way to have the psychological effects of the experiences certified for their asylum procedure.

### **Recommendation:**

We recommend that the Committee

- request the State Party to systematically identify victims of torture and other ill-treatment
- urge the State party to include all the available resources and expertise to enable adjustments to the person's physical and social environment – to allow identification of needs and treatment options as soon as possible.
- urge the State Party to ensure that no victims of torture and other ill-treatment is obliged to reside in an AnkER-centre
- encourage the State Party to ensure that access is available to qualified medical staff as well as social workers and psychologists trained to recognize signs of traumatisation and physical and psychological results of torture and other cruel, inhuman or degrading treatment or punishment.
- Encourage the State Party to actively co-operate with civil society - in this case by including the German Association of Psychosocial Centres for Refugees and Victims of Torture (BAff e.V.) and its member centres in the Training of officers of the Federal Office for Migration asylum seekers and refugees.

---

<sup>25</sup> Beside the Istanbul Protocol the Council of Europe published a document specifically on the psychological evaluation on the after-effects of trauma: CPT (2003) 91, Psychological Evidence of torture. How to conduct an interview with a detainee to document mental health consequences of torture or ill-treatment.