REHABILITATION AS A FORM OF REPARATION:
OPPORTUNITIES AND CHALLENGES

WORKSHOP REPORT, SEPTEMBER 2010

On 9 September 2010, the Essex Transitional Justice Network and REDRESS organised a workshop entitled Rehabilitation as a Form of Reparation: Opportunities and Challenges. The purpose of the workshop was to launch the REDRESS Report of the same name,¹ and to bring together a multidisciplinary group of experts to discuss the existing and evolving approaches to the rehabilitation of victims of gross human rights violations. The aim of the workshop was to share information and establish a dialogue between representatives of various professional communities working on the issue of rehabilitation (such as psychiatrists, psychologists, academics and lawyers) domestically and internationally for government; governmental or intergovernmental organisations; courts and other justice processes and nongovernmental organisations and networks. Also, the workshop aimed to identify the work that needs to be done in order to clarify the scope of rehabilitation under international law and ensure its delivery in practice.

Describing their expectations from the workshop, the different experts present identified key issues requiring clarification, including:

- The scope of rehabilitation under international law: who are the beneficiaries of rehabilitation measures, for which duration such measures should apply and how and by whom they should be delivered in practice;
- The dimensions of rehabilitation: rehabilitation as a right under international law and as a form of reparation; its place in the framework of the UN Convention against Torture (CAT), the Convention on the Rights of Persons with Disabilities (CRPD) and within the context of economic, social and cultural rights;
- Individual and collective forms of rehabilitation; the need for rehabilitation for families of victims and communities;

¹ REDRESS, Rehabilitation as a Form of Reparation Under International Law, December 2009. The Report is available in English, French, Spanish and Arabic on REDRESS’ website and in hard-copy through REDRESS. See: www.redress.org/downloads/publications/The%20right%20to%20rehabilitation.pdf.
The workshop was opened with introductory remarks and words of welcome from Dr. Fabian Freyenhagen, Co-Convenor of the Essex Transitional Justice Network and Carla Ferstman, Director of REDRESS. This was followed by an introductory presentation by Dr. Clara Sandoval on the report that she authored for REDRESS on rehabilitation.  

Dr. Sandoval outlined the existing concepts of rehabilitation as well as the development of the term under international law. She spoke about the holistic approach to rehabilitation which includes various kinds of services (physical and mental care, legal, social and economic services) that enable the person to reconstruct his/her life plan and regain independence. While Dr. Sandoval traced the work on rehabilitation of different international bodies and commented on its incorporation in different international treaties, she indicated that the only international Convention to explicitly provide for a right to rehabilitation in a holistic manner is the UN Convention on the Rights of Persons with Disabilities (CRPD). She noted that rehabilitation under the CRPD is not understood as a form of reparation but as a primary right of any disabled person. Nevertheless, the concept introduced in Article 26 of the CRPD is the only existing definition of rehabilitation in a human rights treaty and therefore, provides important guidance on the subject. She suggested that it is important to consider whether and to what extent the provisions of this treaty are applicable in the context of reparations to victims of gross human rights violations and serious breaches of international humanitarian law.

Dr. Sandoval underlined that current international human rights law and State practice are dominated by a more narrow approach to rehabilitation as a form of reparation, which only includes mental and physical care. Concluding her presentation, Dr. Sandoval suggested that there is a need to develop principles and guidelines on rehabilitation and understand what the particular obligations on the States are in this respect and how States can establish legal frameworks that would enable the provision of accessible and effective rehabilitation services. She also suggested that a fund be established at the international level to assist States to deliver rehabilitation services to victims of various human rights violations bearing in mind existing practice of other Funds such as that of the UN Voluntary Fund for Victims of Torture.

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2 Ibid.
Session I: Understanding the needs of victims who require a rehabilitation framework

The first panel was composed of psychologists and psychiatrists with first-hand experience of the needs of individuals traumatised by gross human rights violations.

Dr. Nora Sveaass indicated that the lens of reparations is only one of the possible ways to approach rehabilitation and warned that this lens should not overshadow victims' need for care and assistance. Addressing the needs of torture survivors, Dr. Sveaass underlined the acute need for health services (treatment) which should be put in place as early as possible. However, following the completion of urgent treatment, some torture survivors would not be prepared to go into a wider programme of rehabilitation right away.

Dr. Sveaass also underlined the need to discuss the applicability of the CRPD and added that the level of functioning of a person certainly may change after s/he is subjected to torture.

Speaking as a current member of the UN Committee against Torture, Dr. Sveaass highlighted three problems in relation to rehabilitation that the Committee has noted while assessing compliance of member States with Article 14 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (which requires States to ensure in their legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible):

- The lack or inadequacy of the legal framework for compensation and rehabilitation of torture victims;
- The lack of effective compensation programmes and the inadequacy of implementation of rehabilitation measures in practice; and
- The lack of information on compensation and rehabilitation for torture survivors and/or other constituencies presented by States parties to the Committee.

She also informed the participants about the Committee’s plans to develop a General Comment on Article 14 of CAT and as a member of the working group on this General Comment, invited input from professionals in the legal and rehabilitation world to assist the Committee in defining the content of States' obligation to provide rehabilitation.

In conclusion, Dr. Sveaass raised two issues that require further consideration:

- Should States set up the rehabilitation services themselves or is it appropriate for independent (but State-funded) centres to be established? If rehabilitation is completely a private sector initiative funded by private or external rather than State funds, would States meet their obligations under Article 14 of CAT? She noted that the legal community and the rehabilitation community may have different perspectives on this question.
- She called on the experts at the meeting to look into the possibilities of using the Istanbul Protocol as an active tool in countries where torture is committed, as well as during asylum proceedings.

Dr. Daya Somasundaram, provided an insight into psychological rehabilitation of victims of mass atrocities. He noted at the outset that pursuing remedies and exposing
victims to the legal process may cause secondary victimisation and may in some cases be detrimental to the goal of rehabilitation.

Speaking of ways to deliver rehabilitation Dr. Somasundaram underlined that pre-packaged rehabilitation programmes (social, educational, legal and other services) do not necessarily work. While a variety of services should be available, rehabilitation programmes should be tailored to each person's needs and particular situation and provide for a possibility for active participation of the victims in their own recovery process.

Moreover, it is necessary to consider the effects of torture and other violations on families, communities and society (collective trauma). Rehabilitation programmes should promote individual, family and social healing, recovery and reintegration. This may include restoring cultural practices, leadership and traditions just to name a few. Working only at the individual level may be harmful to families and communities.

Ms. Nomfundo Mogapi summarised the key lessons learned from the South African experience of rehabilitation after the end of apartheid. She indicated that compensation alone is not enough to provide redress; there needs to be rehabilitation that restores people's social function and which includes not only psychical and psychological help, but also economic empowerment (for example, assistance with housing and employment). She agreed with Dr. Somasundaram that working on the collective level is crucial. Disregarding the need to heal collective trauma runs a risk of repetition of mass violence.

Addressing Dr. Sveaass' point, Ms. Mogapi indicated that rehabilitation should be a responsibility of the State and cannot be left solely to the voluntary or private sector. The State, unlike NGOs is better placed to make rehabilitation services accessible to all victims, especially those living in remote areas.

Finally, Ms. Mogapi indicated that it is important to invest in the evaluation of rehabilitation programmes because this could help to make a case for rehabilitation and show which methods actually work.

Session II: International legal framework in relation to rehabilitation

The legal experts shared information regarding the status and scope of rehabilitation as a form of reparation under international law as well as the way international bodies have dealt with rehabilitation.

Professor Theo van Boven, who joined the discussion by teleconference, spoke about the place of rehabilitation in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. He emphasised that the concept of rehabilitation should be interpreted in close connection with other forms of reparation (in particular, compensation and satisfaction). He also indicated that the scope of rehabilitation is wider than what is explicitly set out in the Basic Principles and includes medical and psychological care, legal and social services, education, housing, financing of paralegals,

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restoration of the good name of the victim, restoration of passports/travel documents and other elements. Professor van Boven underlined the importance of access to justice, access to relevant information and the principle of non-discrimination in the implementation of rehabilitation programmes.

Professor Sir Nigel Rodley spoke about the approach of the UN Human Rights Committee (HRC) to rehabilitation. He indicated that there is little practice on the issue partly because the applicants and NGOs rarely raise it before the HRC. He referred to the case of Sankara v. Burkina Faso, the Concluding Observations of the HRC on Japan relating to domestic violence and human trafficking and to General Comment 31 in order to highlight that although the subject has not been properly addressed by the HRC, rehabilitation has been acknowledged by the HRC as a form of reparation and there is room for further legal developments on the subject.

Professor Rodley also raised the issue of the importance of terminology. He indicated that in the fields of social science and medicine the term rehabilitation may denote the measures taken that are sufficient to meet the needs of victims. In legal discourse, however, the term rehabilitation does not necessarily have a similar meaning. He encouraged the experts to begin by identifying what is required to meet the needs of victims, rather than starting with a focus on terminology.

Dr. Clara Sandoval spoke about the jurisprudence of the Inter-American Court of Human Rights and concluded that the Court has not developed a comprehensive approach to the subject. She highlighted, however, that the concept of “life plan” introduced by the Court in the case of Loayza Tamayo v. Peru, and though no longer used by the Court, remains an important tool to consider rehabilitation as a form of reparation. In particular, Dr. Sandoval indicated that the areas where more work and thinking may be needed in relation to the approach of the Inter-American Court, are those of employment, vocational services and pension schemes which are generally neglected in the jurisprudence of the Court. The Court, Dr. Sandoval noted, has awarded other far reaching reparations in the form of satisfaction and guarantees of non-repetition that might well be part of rehabilitation but have not been treated like that by the Court.

During the discussion the following issues were raised, including:

- The importance of ensuring the participation of victims in the process of rehabilitation and taking into account their wishes and feelings. It was suggested that taking a closer look at the provisions of the UN Convention on the Rights of the Child

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7 Inter-American Court of Human Rights, Loayza Tamayo v. Peru, judgment on reparations, 27 November 1998, para. 144-154.
and the Nairobi Declaration on Women’s and Girls’ Right to a Remedy and Reparation\(^8\) could be helpful in this regard;

- The importance of legal aid as a State obligation in enabling access to rehabilitation programmes;
- It was suggested that there may be a need for a document like the Istanbul Protocol to deal specifically with rehabilitation. The experience gained during the drafting process of the Istanbul Protocol (including multidisciplinary dialogue) may be useful for the drafting of such a document;
- The interrelationship between the psychological consequences of torture (the fear of recurrence) and guarantees of non-repetition as a form of reparation;
- Finding a common vocabulary to engage in a cross-disciplinary dialogue is crucial for understanding the interplay between the rights-based and needs-based approaches;
- Lawyers need to become more aware of the frustrations that victims may experience as a result of going through a legal process (especially, for asylum seekers). In other cases, however, the legal process may become an integral part of the process of recovery by enabling the victims to experience justice. Lawyers need to ensure that victims have a clearer understanding of the possibilities and limitations of legal tools;
- The need to consider rehabilitation within the context of transformative reparation. This is especially true of the rehabilitation of refugees who, in addition to their needs regarding the trauma they experienced, also have the added challenge of adapting to a new environment and living conditions.

**Session III: Policies on rehabilitation at the national and international levels**

Ms. Christine Evans introduced the work of the UN Voluntary Fund for Victims of Torture which provides a broad range of assistance to organisations working directly with torture victims. Many projects supported by the Fund combine psychological, medical, legal, social and economic assistance. According to the internal guidelines of the Fund, legal assistance may include seeking reparations and asylum claims; social assistance is a broad concept which may entail elimination of marginalisation, vocational training and support for opportunities and financial assistance includes support for schooling, travel to healthcare facilities. Ms. Evans underscored that the families of victims are considered by the Fund to be beneficiaries. One of the challenges that the Fund is facing is lack of awareness about its work in some parts of the world. This has the result that those who apply for funding mainly tend to be organizations from the same regions each year (though some recipients have projects which focus on victims in under-represented areas), the Fund is taking a number of steps to broaden its impact globally.

Ms. Fiona McKay talked about the development of the reparations policy at the International Criminal Court (ICC). She noted that as the Rome Statute only provides a skeletal legal framework on reparations (explicitly referring to rehabilitation), there is a need

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for the Court to clarify the legal framework. She also made reference to Article 75 of the Rome Statute which provides that the Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. She invited the experts to make a contribution to this and related issues by joining the ICC List of Experts in the field of reparations.9

She also spoke about the ICC Trust Fund for Victims. The Fund has not yet dealt with reparations since the ICC has not decided its first case (and reparations may be ordered by the Court following a conviction). However, the Fund is authorised to use its general resources for the benefit of victims and their families generally (assistance such as psychological rehabilitation and material support), so long as there is adjudged to be no negative impact on an ongoing trial process. The Fund has already started to fund certain projects, many of which have a strong rehabilitation emphasis. Also, the Victims and Witnesses Unit at the ICC is able to provide assistance, but the goal of such assistance is to enable victims and witnesses to participate in the Court’s proceedings, rather than to provide reparations or rehabilitation, more broadly.

Speaking of the challenges that the ICC is facing in relation to reparations she named the following:

- The Court is not in a position to take a comprehensive approach to reparations and address all the needs arising from an entire set of violations because it is limited by the cases that come before it. This may be problematic in awarding reparations as some of the victims of a particular accused would be covered by a reparations award, while others may be left out of its scope if the violations against them did not feature in the case initially brought by the Prosecutor and leading to a conviction by the Court.
- Since the Court is dealing with individual rather than State responsibility, it needs to work out how an individual, who is of course not able to set up a rehabilitation programme in the same way as the State would be, can still contribute to this type of reparation. Would compensation payable by the accused towards the establishment of a rehabilitation programme be sufficient?
- According to its Statute the ICC can award collective reparation (in addition or instead of individual forms of reparation). However, the Court needs to determine the ways in which it would determine and enforce collective awards. For example, should there be a list of beneficiaries? And, how should the particular context of the conflict be taken into account?
- Due to the security situation some beneficiaries of the Trust Fund may prefer not to make their involvement in reparations programmes known. How can this be reconciled with victims' need to know where the funding for reparations programmes comes from? This point also relates to the one mentioned earlier in the workshop about whether rehabilitation that is not financed by the State can

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9 Applications are particularly welcome from those with a particular expertise in relation to the various situations the Court is investigating: Uganda, the Democratic Republic of the Congo, Darfur (Sudan), Kenya and the Central African Republic. For more information about the procedure, please email the following address ListOfExperts@icc-cpi.int.
constitute reparation. It also highlights the need to distinguish between reparation and assistance.

- There remains uncertainty as to how to design rehabilitation projects and how to enable victims' participation in establishing them.

Dr. Brock Chisholm introduced the work of the Traumatic Stress Clinic (a UK National Health Service specialist clinic) in relation to psychological help offered to adult torture survivors with Post Traumatic Stress Disorder (PTSD) accompanied by re-experiencing symptoms. He indicated that most evidence suggests that torture survivors do require special PTSD treatment. However, there is an uncertainty about which therapies are most effective. As regards the length of treatment, the NICE Guidelines\(^\text{10}\) suggest 40 sessions for victims of gross human rights violations. Depending on the severity of trauma, some individuals would require more sessions.

Dr. Chisholm also referred to the problems facing rehabilitation services in the UK public healthcare sector. While early action in regard to PTSD makes treatment easier, GPs and other health professionals are poor at identifying PTSD. Also, the UK health system has referral problems and lacks relevant expertise to treat the problem. This means that waiting lists are long and that there is not enough expert capacity to respond to the demands of the system. Besides lack of relevant expertise, there is also a lack of specialist knowledge on how to work with refugees who are victims of torture and other human rights violations. Finally, Dr. Chisholm underlined that for State-funded clinics it is difficult to challenge State policy. He, therefore, stressed that they need the lawyers to raise the issue of patients not getting proper treatment.

Ms. Miriam Reventlow spoke about the work of the International Rehabilitation Council for Torture Survivors (IRCT), an umbrella organisation of NGOs working with torture survivors and providing medical or psychological help. They work mainly from the health-based perspective and do not focus on reparations per se.

Speaking of the scope of rehabilitation, she echoed Dr. Somasundaram's presentation, indicating that it is not possible and even not desirable to describe the standard content of a rehabilitation service. It should depend on the needs of a particular individual or group, security and political situation in the country as well as the funds available. As regards the latter, she noted that the whole sector of rehabilitation is largely underfunded.

Referring to the role of the States, Ms. Reventlow suggested that there is generally a lack of expertise on rehabilitation in public institutions. She also noted that independence of rehabilitation services from the State is very important as victims whose trust in the State was broken as a result of torture may be more reluctant to accept services from the authorities than from NGOs. Furthermore, in order to set up rehabilitation services, a State would have to admit (albeit indirectly) its responsibility for torture. This may, of course, be problematic in many countries. Thus, some kind of negotiation between rehabilitation centres and the State where they operate has to take place (Ms. Reventlow referred to

\(^{10}\) National Institute for Health and Clinical Excellence (NICE) is an NHS organisation which provides guidance, sets quality standards and manages a national database to improve people's health and prevent and treat ill health. For more information see http://www.nice.org.uk/.
examples of Philippines and Indonesia). The question, however, still remains how can a State meet its international legal obligations in regard to rehabilitation?

The last speaker of the session, Dr. Elizabeth Lira, sent a video with her presentation but due to technical problems it could not be used. Therefore, Dr. Sandoval presented the work that Dr. Lira prepared to the workshop. The focus was on the experience of the administrative reparation programme in Chile, and particularly on the role of rehabilitation in that context. She noted that rehabilitation was not a dominant term during the negotiations of the reparations programme. Nevertheless, it was clear that the system had to respond to different harms and needs of victims and to that effect it designed the PRAIS to provide certain categories of victims with physical and mental care. The PRAIS has achieved full coverage of the country and is currently protected by an important legal framework. However, the lack of coordination and common approach among PRAIS providers, as well as the lack of assessment and quality control remain the problems. Also, and although there is national coverage, the quality of the services at the rural level are lower than those in the urban areas.

Dr. Sandoval also commented that in her personal view one of the biggest gaps of the PRAIS system and of the Chilean reparations programme is the way it excludes refugees and people in exile from its attention. She highlighted the different types of harm that these victims endure and the need to respond to it adequately.

The issue that dominated much of the discussion during the third panel was the challenge to link the legal norms to specific interventions as well as the issues of accountability (evidence based operations). Establishing this link is highly dependent on an interdisciplinary approach and is crucial for determining the scope of rehabilitation. Therefore, taking into account the contextual character of treatment and notwithstanding the fact that the evidence of effectiveness of particular treatments may be controversial, there is still a need to ensure that international law has no gaps.

Session IV: Considering ways forward

The seminar proved to be a fruitful and candid discussion that did not aim to exhaust the subject but to invite reflection, and communication between the different relevant stakeholders. In this sense, it raised a number of issues that need further reflection and underscored the principle that engaging in a multidisciplinary dialogue is of paramount importance to bring forward the changes in the sphere of rehabilitation both as a form of reparation and a means of assistance. Some of the recommendations made during the discussions include:

- Rehabilitation needs to be understood holistically. It should go beyond physical and psychological care and extend to other types of services (education, employment, housing, legal assistance etc.), as well as to political and moral rehabilitation;
- There is a need to consider rehabilitation beyond the individual level and engage in a discussion regarding the scope and effectiveness of the collective dimension of rehabilitation and the place of meaning-making in this process;

• Legally speaking it is necessary to view rehabilitation in different contexts: as a form of reparation, as a responsibility of the State or an individual (in the ICC proceedings), as a right in the context of economic, social and cultural rights and in the context of the rights of people with disabilities;

• The gap between rehabilitation as a legal concept and the evidence-based approach needs to be bridged. While working out the practicalities of delivery of rehabilitation services taking into account individual circumstances of each victim/family/community and the surrounding context is not the task of lawyers, there should be a clear legal framework in which rehabilitation professionals would be able to operate. The key challenge here is to determine the specificity on the normative level. This is precisely why interdisciplinary dialogue is crucial;

• State obligations in relation to rehabilitation need to be determined as well as resolving how their delivery correlates to the work of rehabilitation NGOs and other forms of assistance;

• The accessibility of rehabilitation services should be given more attention. The role of legal aid in making the services accessible should be further explored;

• The effects of pursuing justice and going through other legal processes as part of victims’ rehabilitation should be studied;

• The idea of assessment and evaluation of rehabilitation programmes should be further developed.

As regards future work, the participants may want to consider:

• Contributing to the work of the Committee against Torture on a new General Comment to Article 14 of CAT;

• Applying to be experts of the International Criminal Court on reparations so as to help the ICC to deal with reparations for international crimes;

• Setting up a multidisciplinary network of experts to share experience and discuss issues related to rehabilitation.
### List of Participants

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