

## A Critical Analysis of Remedies for Torture Victims

Kola O. Odeku

*School of Law, Faculty of Management and Law, University of Limpopo, South Africa*

**KEYWORDS** Torture as a Crime. Prohibition of Torture. Torture Victims. Remedial Actions. Compensation and Rehabilitation

**ABSTRACT** Torture constitutes a serious crime with traumatic physical and psychological consequences. The ban on torture and other cruel, inhuman or degrading treatment or punishment is well articulated in national and international instruments. For those who have suffered torture and their families, finding ways to move forward with their lives and forget about the trauma inflicted on them is a lifelong challenge and the only way to find closure is to ensure that perpetrators are brought to justice. The importance of justice and reparation is recognised as a right of victims. Against this backdrop, the article analyses remedial approaches available to the victims that seek for redress against torture and injustice. The article concludes by advocating for total eradication of torture and adequate compensation for the victims of torture.

### INTRODUCTION

Society must question and comment on the choices made in the past, rather than leave it to those who suffered to confront the consequences of those wrongs (Forde-Mazrui K 2004). It is better to prevent torture instead of allowing it to occur. Failure to prevent will make the victim to suffer pain. The only remedial option for the victim is to seek redress and be rewarded with adequate compensation. In this regard, the observation made by Manfred Nowak is worth quoting in full:

*"Each act of torture and ill-treatment, inflicted by one human being upon another, permanently scars all those touched by it and destroys our sense of common humanity. The practice of torture is so fundamentally at odds with the notion of civilized life that its legal prohibition is absolute. There exist no circumstances whatsoever which justify its use. It is one of those few norms under international law that has attained the status of jus cogens. Despite the absolute nature of the prohibition, it is a sad fact that torture and other forms of cruel, inhuman or degrading treatment continue to occur in*

*various places around the world. Sometimes ill-treatment occurs openly, but most often it is deliberately hidden from public scrutiny, and perpetrators are readily able to control and eliminate the evidence of their misdeeds. Indeed, one of the purposes of torture and ill-treatment is to terrorise victims into silence so that the crime never emerges into the open. This implies that all those who struggle to end practices of torture, to ensure the rights to a remedy for victims and to ensure that perpetrators are punished often face especially difficult challenges. Notwithstanding these obstacles, the fight against torture and ill-treatment is fuelled and strengthened by the courage of those who speak out against it. These voices are critical to the struggle against torture and other forms of ill-treatment because they remove acts of torture from the darkness and bring them into the light, exposing them for what they are and seeking to hold those who perpetrate them accountable"* (Nowak 2006).

Effective and enforceable remedies for torture such as criminal sanctions, civil awards for restitution and compensation, administrative sanctions or other guarantees of non-repetition, are an essential precondition to the eradication of the odious ill called torture (Ferstman 2006). Equally, such measures serve to quell survivors' feeling of powerlessness and disenfranchisement and acknowledge that what was done to them was wrong and deserving of punishment. (Ferstman 2006).

The violation of the right not to be subjected to torture continues to be infringed on a daily

---

*Address for correspondence:*  
Prof. Dr. Kola Odeku,  
School of Law,  
Faculty of Management and Law,  
University of Limpopo,  
South Africa  
*Telephone:* +27152682718.,  
*Fax:* +27152672904,  
*E-mail:* kooacademics@gmail.com

basis despite various human rights instruments prohibiting it. The argument is that the culture of impunity regarding torture must be attacked and that this is best done by proscribing and condemning the practice, and by widening the opportunities for bringing torturers to book and strengthen the avenues and mechanisms to seek redress for the victims. The key objectives of this paper is to, rely on and use jurisprudence, national and international human rights instruments against torture to critically examine and analyse the prospects of detecting, arresting and punishing those who commit torture and explore remedies that are available to the victims. In so doing, the likelihood of recidivism will be reduced and potential torturers will be deterred.

### **REDRESS TO VICTIMS OF TORTURE**

Torture is a crime, a serious human rights violation with traumatic physical and psychological consequences (Danneskiold-Samsøe et al. 2007). For those who have suffered torture, and for their families, finding ways to move forward with their lives and forget about the trauma inflicted on them is a life long challenge (Mills 2006). The deliberate abuse of individual's physical and psychological integrity, in a way that is designed specifically to undermine their dignity, is devastating and disorienting to victims particularly when perpetrated by someone with the responsibility to protect rights (Herman 1995).

The process of seeking justice and reparation is, for some survivors, an essential part of their recovery process and a critical means by which they regain their dignity and sense of control (Mills 2006). It may contribute substantially to the re-establishment of the victims' quality of value, power, dignity and esteem, relieve the victims' stigmatisation and separation from society and, ultimately restore confidence and legitimacy in the fairness of the justice system (Echeverria 2006).

Making perpetrators accountable recognises the seriousness of the offence of torture and serves to publicly acknowledge that a wrong has been committed and that it should not be tolerated (Redress 2004). The universal prohibition of torture strengthens the rule of law if the revelation of the practice of torture and the investigation and punishment of perpetrators are done. This will have a deterrent effect against the would-be perpetrators and the more institutionalised forms of torture (Redress 2004).

The importance of justice and reparation is recognised as a right of victims under the 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The multiple individual and societal purposes that reparation serves have also been recognised in the seminal 2003 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 (BPG). These principles and guidelines recognise that reparation can take the form of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition (McBride 1998). They are not limited to pecuniary damages but can also include measures with longer-term restorative objectives, verification of the facts and full and public disclosure of the truth, apology, including public acknowledgement of the facts and acceptance of responsibility, and judicial and administrative sanctions against those responsible (Redress 2004).

### **RIGHTS OF THE COMPLAINANT AND PROTECTION OF THE WITNESSES**

A 'complaint' about torture is an important right for victims because it provides them with the opportunity to express dissatisfaction and disapproval of their treatment (Redress 2004). This may contribute substantially to the re-establishment of their sense of control and dignity. It is also a means to an end, in that it gives notice to the competent authorities of the alleged commission of a crime (Aldana-Pindell 2002). In this respect, the complaint serves as a basis for the competent authorities to begin an investigation as part of criminal or administrative proceedings into the alleged acts with a view to holding the perpetrators accountable (Redress 2004).

Complaint against torture could also serve as a catalyst to obtain reparation (Redress 2003). Consequently, the availability of effective complaint mechanisms will have wide implications for the prevention and punishment of torture as well as for obtaining remedies and reparation (Starr 2008). It has been observed that failure to investigate allegations and complaints of torture has led to a situation of grave impunity which is injurious to the victims, their next of kin and society as a whole, and fosters chronic recidivism of the human rights violations involved" (Starr 2008).

It must be stressed that when victims of torture lodge complaints on torture, it serves as an indicator of the nature and extent of the practice in the country concerned (Giffard 2000). This may assist authorities to identify necessary reforms measures or to counter systemic problems (Redress 2007). Article 13 of CAT (1984) provides that each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his/her case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given. State Parties are obliged to ensure that any individual who claims to have been subjected to torture or treated or punished in a cruel, inhuman, or degrading way has a right to lodge a complaint (Ashenfelder 1991). The individual's right under Article 13 is two-fold: it consists of the right to lodge a complaint to the competent authorities, and of the right to have the complaint investigated by the authorities promptly and impartially (Wendland 2002).

It must be mentioned that the form of the complaint is not important. According to Article 13 of CAT, it does not require either the formal lodging of a complaint of torture under the procedure laid down in national law or an express statement of intent to institute and sustain a criminal action (Wendland 2002). It is enough for the victim simply to bring the facts to the attention of an authority of the State for the latter to be obliged to consider it as an implied, but unequivocal expression of the victim's wish that the facts be promptly and impartially investigated (EA 1995). A person making such a complaint has a right to have the complaint examined thoroughly and seriously, which means undertaking a formal investigation of the facts (Wendland 2002). The investigation must take place irrespective of whether the suspect is known or present (Committee against Torture 2006).

It is possible for somebody to be a victim of a human rights abuse in an act perpetrated upon another (Committee against Torture 2006). In such cases, the former individual might be termed the 'indirect victim' while the latter is the 'direct' victim (Joseph et al. 2006). For example, in the case of *Quinteros v. Uruguay* (1983) the complaint arose out of the kidnap, torture, and continued detention by the Uruguayan security forc-

es. A violation was also found in regard to the woman's mother, who submitted the complaint on behalf of her daughter and herself. Due to the anguish, stress, and uncertainty caused by her daughter's continued disappearance, that mental trauma was found to constitute ill-treatment contrary to Article 7 International Covenant of Civil and Political Rights (1996). In the case of *Schedko v. Belarus* (2003) a similar violation of Article 7 was found in respect of the mother of a man who had been executed by the authorities, as those authorities failed to inform her of the date, hour and place of execution, and site of burial.

### FACTORS HINDERING SUBMISSIONS OF COMPLAINTS

In some circumstances, a victim is simply unable to submit or authorise the submission of a complaint. For example, the victim may be dead or may be incarcerated incommunicado detention and unable to make contact with the outside world. If this is the case, another person has locus standi to bring the complaint if he/she can establish that the victim would likely have consented to the representation before the relevant Committee (Joseph et al. 2006). A close family connection will normally suffice in this regard. It is less likely that the Committees will recognise the standing of people who are not family members in such a situation (Joseph et al. 2006).

In the case of *Mbenge v. Zaire* (1983) for example, the Human rights Committee of the United Nations (HRC) held that the author of the complaint could represent his relatives but he could not represent either his driver or his pharmacist. If circumstances change so that a victim who was unable to authorise a complaint becomes able to authorise it, then that victim must give his or her authorisation for the consideration of the complaint to continue. For example, in the case of *Mpandanjila v. Zaire* (1986) the complaint was originally submitted on behalf of 13 people detained incommunicado. These people were released while the HRC's decision was pending. The complaint continued only in respect of 9 of the 13 people, as four people did not explicitly give any authorization for the complaint to continue on their behalf (Joseph et al. 2006). If a complaint is in the process of being considered by the relevant Committee and the author dies, an heir of the author may proceed

with the complaint. If no heir instructs that Committee, the case will be discontinued (Wendland 2002).

A criminal investigation must seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any persons who might have been involved therein. Although forensic medical reports are important as evidence of acts of torture, they are often insufficient and have to be compared with and supplemented by other information (Wendland 2002).

States Parties should protect the complainant and prevent any victimization and reprisals. Authorities should be made sensitive to the consequences of making a complaint and the vulnerable situation of the complainant. Therefore, States should eliminate the risk of victimisation by ensuring that the complainant is in a safe place, which could include changing the personnel in contact with him/her, moving the individual to a different place, or ensuring the presence of a witness during further interrogations (Joseph et al. 2006). In case the complainant is a detainee, the individual should be moved to a safer place of detention.

States are further required to protect any witnesses that give evidence to the investigation. In the case of *Baraket v. Tunisia* (1996), the Committee against torture considered that the magistrate, by failing to investigate the complaint of torture more thoroughly, committed a breach of the duty of impartiality imposed on him. This required that equal weight be given to both accusation and defence during the investigation (Ingelse 2001). As a consequence, HRC held that the State had breached its obligation under Articles 12 and 14 to proceed to an impartial investigation whenever there is reasonable ground to believe that an act of torture has been committed.

### COMPENSATING TORTURE VICTIMS

If the investigation referred to in Articles 12 and 13 forms the start of possible penal and often also disciplinary measures, Article 14 provides for civil legal recourse for victims of torture. States Parties are obliged to guarantee in their national laws that a victim of an act of torture obtains redress and also has an enforceable right to a fair and adequate compensation, including the means for as full rehabilitation as possible (Echeverria 2006).

In 1989, Theo van Boven was entrusted with a study on the right to restitution, com-

pensation, and rehabilitation for victims of gross human rights violations by the United Nations (Wendland 2002). This resulted in the Draft Basic Principles and Guidelines (1997). He concluded that reparation is the only appropriate response to such victims. The study outlined four main forms of reparation, namely restitution; compensation; rehabilitation; satisfaction and guarantees of non-repetition.

Cherif Bassiouni, continued the work of van Boven and submitted to the UN Commission on Human Rights (2000) a set of Draft Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Violations of International Human Rights and Humanitarian Law. These Guidelines aim to provide guidelines for the concept of redress and reparations for victims of torture.

### COMPENSATION AND REHABILITATION

It is pertinent to mention that redress involves recognition that harm has been done to the person. Compensation generally, but not always, takes the form of payment of an amount of money (Rodley 1989). However, Nigel Rodley, the former Special Rapporteur on Torture, pointed out that financial compensation will not always be the appropriate remedy [for human rights violations], and where it is, its measure will be uncertain (Nagan and Atkins 2001). The obligation of Article 14 involves not only the provisions of material compensation and redress, but also physical, mental, and social rehabilitation (Echeverria 2006).

Any amount paid in compensation must be fair and adequate and therefore not symbolic (Brooks 1999). The State is left to decide what is fair and adequate. Non-material damage must also be compensated. However, the Committee against Torture has called various States to account on inadequate provisions for compensation and rehabilitation of torture victims (Wendland 2002). Article 14 of CAT requires States to ensure that victims of torture are able to obtain redress and fair and adequate compensation, including the means for as full rehabilitation as possible. If the victim should die, the heirs have a right to compensation (Joseph et al.). Spouses and children are normally considered as next of kin. However, the next of kin can also include other relatives, if they can show that they depended upon the financial support of the deceased (Wendland 2002).

A number of cases before the Committee against Torture illustrate how the Committee has approached the issue of compensation and others. In the case of *Urra Guridi v. Spain* (2002), the Committee against Torture found that the light penalties and pardons conferred on civil guards, who had tortured the complainant, along with an absence of disciplinary proceedings against those guards, constituted breaches of Article 14. The victim had in fact received monetary compensation for the relevant acts of torture, but the Committee against Torture found that the lack of punishment for the perpetrators was incompatible with the State's duty to guarantee the non-repetition of the violations. Thus, Article 14 provides not only for civil remedies for torture victims, but, according to this case, a right to restitution, compensation, and rehabilitation of the victim, as well as a guarantee of non-repetition of the relevant violations, and punishment of perpetrators found guilty (Zegveld 2003).

In its concluding observations on Turkey, the Committee against Torture stated that relevant types of compensation for the purposes of Article 14 should include financial indemnification, rehabilitation and medical and psychological treatment (Joseph et al. 2006). States should also consider establishing a compensation fund (Joseph et al. 2006).

In a number of cases against Serbia and Montenegro, Article 14 violations have been entailed in the State party's refusal to conduct a proper criminal investigation into allegations of torture, thus effectively depriving the victim of a realistic chance of launching successful civil proceedings as held in the case of *Dimitrijevic v. Serbia and Montenegro* (2002).

It is pertinent to mention that the rights under Article 14 do not explicitly extend to victims of violations of Article 16. However, in the case of *Dzemajl v. Yugoslavia* (2002), the Committee against Torture found that the positive obligations that flow from the first sentence of Article 16 of the CAT include an obligation to grant redress and compensate the victims of an act in breach of that provision. Thus failure by the State to provide 'fair and adequate' compensation where a person has suffered cruel, inhuman or degrading treatment or punishment is in violation of its obligations under Article 16 (Buti and Parke 1999).

In its concluding observations on the US, the Committee against Torture was concerned

that civil actions against federal prison authorities were only available if there is 'a prior showing of physical injury'. It recommended that legislation be amended to remove any limitation on the right to bring such civil actions (Joseph et al. 2006).

In its concluding observations on Nepal, the Committee against Torture confirmed that there should be no statute of limitations for the registering of complaint regarding torture, and that civil action for compensation should be able to be brought within two years of the publication of the conclusions of relevant inquiries (Joseph et al. 2006).

Existing domestic laws may have a better system of compensation, for example, by awarding larger amounts of compensation than those implied by CAT (Bassiouni 2006). Domestic laws may also entitle a wider range of persons to be considered as victims and thus enabled them to sue for compensation (OHCHR 2002). There is no strict definition of who is considered as victims and thus enabled them to sue for compensation but by reading Article 14 in conjunction with Article 1, a victim should be any person who has suffered physically or mentally as a result of any act of torture (Wendland 2002).

Article 14 is not expressly applicable in cases of cruel, inhuman, or degrading treatment or punishment. This does not mean, however, that States may not be bound under other instruments to offer compensation in the case of a cruel act that is not considered to be torture. The ICCPR provides in Article 7(3) for a comparable, but more generally worded provision on the issue of redress, which is equally applicable to crimes of torture and to crimes of cruel, inhuman, or degrading treatment or punishment. Despite the wording of the provision, the Committee against Torture, it has also considered Article 14 to be applicable in cases of cruel, inhuman, or degrading treatment or punishment, in all situations where reasonable grounds exist to believe that these amounted either to torture or to other forms of cruel, inhuman or degrading treatment, the dependants of the deceased victims should, according to Article 14 of the CAT, be afforded fair and adequate compensation (Amnesty International 1995).

#### INTER-AMERICAN JURISPRUDENCE ON REPARATION

Article 63(1) of the American Convention on Human Rights establishes that if the court finds

a violation of the rights protected by this treaty, the Court must provide, where appropriate, for adequate reparation to the victim (Rodríguez-Pinzón and Martín 2002). The Court ruled that the duty to ensure entails an obligation to make adequate reparations. (Rodríguez-Pinzón and Martín 2002). With regard to torture, Article 9 of the Inter-America Convention on Torture obliges States to incorporate into their domestic laws the duty to provide suitable compensation for torture victims. This provision, however, appears not to include an obligation to make reparations for other cruel, inhuman or degrading treatment or punishment.

The court has consistently stated that it is a principle of international law, and 'even a general concept of law', that every violation of an international obligation that results in damage triggers a duty to make adequate reparation (Soley 1984). Each aspect of this obligation, scope, nature and determination of beneficiaries is regulated by international law and therefore cannot be modified by a State's domestic legislation (Sánchez 2003). The court stated in its initial jurisprudence that compensation was the most common form of redress for human rights violations, (Rodríguez-Pinzón and Martín 2002). However, in recent years, the court has expanded the non-pecuniary measures awarded to victims of human rights violations, typical example is the case of *Yakye Axa Indigenous Community v. Paraguay* (2005).

The court has determined that reparation for violations of international obligations must take the form, if possible, of full restitution which consists in the restoration of the situation prior to the violation, the reparation of the consequences of the violation and monetary compensation for material and non-material damages, including emotional harm (Starr 2008).

Where full restitution is not possible it is for the court to determine a set of measures, in addition to ensuring the rights abridged, to address the consequences of the infractions, as well as ordering payment of compensation for the damage caused (Bulacio 2003). The guiding principle is that reparation must seek to remove the effects of the violation. In the case of *Pueblo Bello v. Colombia* (2006), the court observed that the nature and amount of compensation depend on the damage inflicted and therefore are directly related to the specific violation found by the court.

According to the practice of the court, adequate reparation includes pecuniary and non-pecuniary damages as well as legal costs and expenses. Pecuniary damages include the victim's loss of or reduction in income, lost earnings as well as expenses incurred by the victim or his/her family as a result of the human rights violation and consequential damages (Velásquez 2002). In the case of *Gutiérrez-Soler v. Colombia* (2005) the court has included in its pecuniary damages orders for the restoration of the loss of family assets resulting from the human rights violation.

Generally, the amount of pecuniary damages awarded is based on the victim's particular profession or economic situation, this was the reasoning of the court in the case of *Loayza-Tamayo v. Peru, Reparations* (1998). The court has decided in favour of the victims in the case of *Neira-Alegría v. Peru, Reparations* (1996) even though they had no established profession because they were deprived of their liberty. In the case of *Pueblo Bello v. Colombia* (2006) the court awarded material damages to internally displaced victims who lacked documentation of their assets or earnings. In all these cases, the court assessed pecuniary damages on the basis of equity.

On the other hand, non-pecuniary damages include both the sufferings and affliction caused to the direct victims and their next of kin, the impairment of highly significant personal values and also the changes of a non-pecuniary nature in the lives of the victim or his family. As it is not possible to assign a precise monetary equivalent to non-pecuniary damage, there are only two ways in which it can be compensated (Sánchez 2003). Firstly, by the payment of an amount of money or the delivery of goods or services of a significant financial value, which the court determines by the reasonable application of legal discretion and fairness. Secondly, by the execution of acts or civil works of a public nature or with public impact that have effects such as the recovery of the victims' memory, acknowledgement of their dignity, consolation of their next of kin, or dissemination of a message of official disapproval of the respective human rights violations and of commitment to efforts to ensure that they do not happen again (Velásquez 2002).

In general, with regard to material or pecuniary damages, the court awards monetary payment. In the case of *Cantos v. Argentina* (2002) the court found that the decision recognizing

the violation of the victim's rights constitutes sufficient reparation.

With regard to non-pecuniary damages, the court has developed an innovative approach to the scope of measures of redress ordered from States and ordered States to adopt stricter measures to protect persons deprived of their physical liberty from being subjected to mistreatment. In *Sánchez's* case, the court ordered Honduras to create a national record of detainees in order to monitor the legality of arrests carried out by State agents and also to prevent violations of the right not to be tortured or subjected to other forms of cruel, inhuman or degrading treatment (*Sánchez* 2003). The registry must include the name of the person arrested, the reasons for his/her detention, the authority ordering the detention, the date and time of the detention and release, as well as information regarding the applicable warrant.

Against the above backdrop, the court ordered the State to amend its domestic legislation to ensure respect for these rights in the future. Furthermore, in *Gutiérrez Soler*, the court ordered the State to implement a program to train doctors, judges and prosecutors on the United Nations Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) in order to prevent future acts of torture. The Court also ordered the State to strengthen the existing monitoring mechanisms in its national detention centers. The State must perform a medical examination of the detainee immediately upon detention, periodically assess the mental health of the detention center's personnel and authorize regular access to detention centers for representatives of official human right institutions.

In cases where a violation of the right not to be tortured or subjected to cruel, inhuman or degrading treatment was found, the court has, as a form of reparation, ordered the State to carry out an effective investigation to identify the perpetrators and where warranted, to punish them according to domestic law (*Evans and Morgan* 1998). In this regard, victims and their families must have full access to and participation in criminal proceedings and investigation results must be publicly available and ordered the State to publish the relevant parts of its decision in the State official publication (*Amnesty International* 2007).

With respect to legal costs and expenses, the court has held that it is for the court to assess

the scope of reimbursement, including expenses incurred before the authorities under domestic jurisdiction and those incurred in the course of the proceeding before the inter-American system, bearing in mind the circumstances of the specific case and the nature of international jurisdiction for the protection of human rights. This should be based on the principle of fairness and take into account the expenses stated by the parties, insofar as their quantum is reasonable. Based on its findings of violations to the American Convention, the Inter-American Commission recommends to the responsible State that it make appropriate reparations to redress these violations. However, the Commission does not specify in its public reports the scope or nature of those reparations.

#### **NON-USAGE OF STATEMENTS OBTAINED FROM BREACH OF CONVENTION AGAINST TORTURE**

The non-use of statements obtained through torture or other prohibited treatment in judicial proceedings is guaranteed by Article 15 of CAT. This duty is absolute, and there are no exceptions. This issue has become topical during the 'war on terror', with the question arising as to the extent, if at all, such evidence can be used to prosecute terrorist suspects. Regardless of the dangers posed by terrorism, it is necessary that such statements ought not to be admitted in evidence (*Joseph et al.* 2006).

Article 15 applies to statements made by a tortured person about him/herself, as well as statements made about third parties. In the case of *P.E v. France* (2001), the complainant argued that her proposed extradition from France to Spain was based on statements that had been extracted from a third party under torture. The CAT Committee confirmed that each State party must ascertain whether or not statements constituting part of the evidence of a procedure for which it is competent have been made as a result of torture. However, the claim was found to be unsubstantiated so no violation was found.

In its concluding observations on the UK, the Committee against Torture expressed concern over a lower test of admittance of confessions in terrorism cases in Northern Ireland, as well as the permissibility of derivative evidence. Concluding observations on the UK (1999). It is paramount that those who are responsible for

committing torture and subjecting individuals to forms of ill-treatment are held to account and are properly punished, no matter who they are (Evans 2002).

However, taking action against those who are responsible for such acts, and holding States to account for such actions, when they themselves become responsible, is simply not enough to adequately address the problem. What must be sought is not only to outlaw the practice, but also to prevent the practice. States should live up to their international obligations, both legally, and ethically, by punishing those who commit acts of torture or treat others in an inhuman or degrading fashion. It is often less easy for States to accept that it is necessary to respond to the needs of those who have been the victims of such ill-treatment in an appropriate manner.

### CONCLUSION

The ends of justice would be met if the government accepts responsibility for rehabilitation and compensation for victims of torture where individual responsibility for torture cannot be clearly established. It would be better if victims did not have to go through a judicial procedure, but have an automatic right to compensation, redress and rehabilitation by the authorities. A consequence of impunity was that victims could not make use of their right to an investigation into complaints of torture and of their right to redress. This is usually left to the state controlled investigating apparatus. Improper investigation and sometimes officials destroy relevant evidence in order to cover up for their colleagues or state's criminal acts. This promotes and condones the culture of impunity and sometimes left the victims destitute as they might not obtain redress.

Torture by its very nature can be state sanctioned and is often allowed to thrive in an environment where the rule of law and the independence of the judiciary is markedly absent. This may render illusory national prospects for accountability and redress. The difficulty of survivors to seek redress in location where torture took place coupled with few opportunities to bring a case at the international level, often makes national courts of other states the only other prospects for some measure of justice.

### RECOMMENDATIONS

The Convention against Torture certainly offers the basis as procedure for bringing perpetrators to justice and provides redress for the victims. It will be a welcome idea if those who are fighting torture and other ill-treatments can utilize same to obtain redress for the victims. It is suggested that the HRC and other adjudicating bodies make use of this procedure and ensure that perpetrators are brought to justice.

Readily accessible and fully independent mechanisms should be in place to which all persons, irrespective of whether they are currently in detention or not can bring their allegations of torture. Firstly, an investigation must be initiated whenever a person claims to have been or appear to have been ill-treated so that he/she can appear before judicial authorities. Where prosecutions are brought, it is important that alleged victims, witnesses and those giving evidence are made to feel sufficiently secure so that they may contribute towards the prosecution of the case without fear.

With regard to the principle of universal jurisdiction, it is pertinent to stress that the principle is not limited to criminal prosecution but also civil proceedings to authorize remedies for victims of human rights violations. This is consistent with Convention against Torture which requires states to ensure that their legal systems provide redress and an enforceable right to fair and adequate compensation for torture victims.

### REFERENCES

- Aldana-Pindell R 2002. In vindication of justiciable victims' rights to truth and justice for state-sponsored crimes. *Vanderbilt Journal of Transnational Law*, 35: 1399-1412.
- Amnesty International 1995. The Death Penalty: A Cruel, Inhuman and Degrading Punishment. From <<http://www.unhcr.org/refworld/docid/3ae6a9a21c.html>> (Retrieved on June 20, 2012).
- Amnesty International 2007. Document - Truth, Justice and Reparation: Establishing an Effective Truth Commission. From <<http://amnesty.org/en/library/asset/POL30/009/2007/en/7988f852-d38a-11dd-a329-2f46302a8cc6/pol300092007en.html>> (Retrieved on September 4, 2010).
- Ashenfelter D 1991. Police Brutality a Metro Dispute, Detroit Free Press, April 17, 1991, p. 10. From <<http://www.columbia.edu/itc/journalism/cases/katrina/Human%20Rights%20Watch/usphtml/uspso20.htm>> (Retrieved on November 9, 2008).
- Bassiouni M 2006. International recognition of victims' rights. *Human Rights Law Review* 6(2): 203-227.



- Bederman D 1998. *The Enforcement of Human Rights and Humanitarian Law By Civil Suits in Municipal Courts: The Civil Dimension of Universal Jurisdiction*. Reprinted in *Contemporary International Law Issues: New Forms, New Applications*, P. 156.
- Brooks R 1999. The age of apology. In: Roy Brooks (Ed.): *When Sorry Isn't Enough: The Controversy over Apologies and Reparations for Human Injustice*. New York: New York University Press.
- Bulacio 2003. Bulacio Case, Inter-American Court of Human Rights (Ser. C) No. 100 (2003). From <<http://www1.umn.edu/humanrts/iachr/C/100-ing.html>> (Retrieved on March 9, 2011).
- Buti A, Parke M 1999. International law obligations to provide reparations for human rights abuses. *E LAW Murdoch University Law Journal*, 6(4): 29-44.
- Committee Against Torture 2006. Committee Against Torture, Part II Procedures of Human Rights Against Torture, Report on Treatment but not Torture, Geneva, Switzerland. From <<http://www.bing.com/search?q=Committee+Against+Torture+2006.+Committee+Against+Torture%2C+Part+II+Procedures+of+the+Human+Rights+Committee+and+the+Committee+against+Torture&src=ie9tr&adlt=strict>> (Retrieved on December 31, 2008).
- Danneskiold-Samsøe B, Bartels E, Genefke I 2007. Treatment of torture victims—a longitudinal clinical study. *Torture Journal on Rehabilitation of Torture Victims and Prevention of Torture*, 17(1): 16-22.
- Echeverría 2006. Redressing torture: A genealogy of remedies and enforcement, torture. *Journal on Rehabilitation of Torture Victims and Prevention of Torture*, 16(3): 153-169.
- Evans M 2002. Legal Measures to Prevent Torture and Ill-Treatment, in Preventing Torture in Africa, *Proceedings of a Joint APT-ACHPR Workshop*, August 16-20, 2002 Robben Island, South Africa, pp. 12-14.
- Evans M, Morgan R 1998. *Preventing Torture*. Oxford: Oxford University Press.
- Ferstman C 2006. Torture prevention in practice, torture. *Journal on Rehabilitation of Torture Victims and Prevention of Torture*, 16(3): 182-195.
- Forde-Mazrui K 2004. Talking conservatives seriously: A moral justification for affirmative action and reparations, *California Law Review*, 92: 683-696.
- Giffard C 2000. *The Torture Reporting Handbook, How to Document and Respond to Allegations of Torture within the International System for the Protection of Human Rights*. Human Rights Centre, University of Essex.
- Herman E 1995. *The Romance of American Psychology: Political Culture in the Age of Experiments*. Berkeley: University of California Press.
- Ingelse C 2001. *The UN Committee against Torture: An Assessment*, Martinus Nijhoff Publishers, Leiden, The Netherlands, pp. 8-55.
- McBride J 1987. Access to justice and human rights, *Civil Jurist Journal*, 17: 253-269.
- Mills L 2006. The justice of recovery: How the state can heal the violence of crime. *Hastings College of Law Journal*, 57: 457-464.
- Mohammed S 2004. Taking complaints of torture seriously: rights of victims and responsibilities of authorities. *Redress Torture Journal*, 5: 8-21.
- Nagan W, Atkins L 2001. The International Law of Torture: From Universal Proscription to Effective Application and Enforcement. *Harvard Human Rights Journal*, 4, PP. 88-121. From <<http://www.law.harvard.edu/students/orgs/hrj/iss14/nagan.shtml>> (Retrieved on May 19, 2009).
- Nowak M 2006. United Nations Special Rapporteur on Torture in Sarah Joseph, Katie Mitchell and Linda Gyorki, *Seeking Remedies for Torture Victims: A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies* by Sarah Joseph, Katie Mitchell,
- Linda Gyorki and Carin Benninger-Budel. OMCT Handbook Series Vol. 4 and V From <[http://www.omct.org/files/2006/11/3979/handbook4\\_eng\\_00\\_table\\_contents.pdf](http://www.omct.org/files/2006/11/3979/handbook4_eng_00_table_contents.pdf)> (Retrieved on January 19, 2011).
- OHCHR 2002. Office of the High Commissioner for Human Rights in Cooperation with the International Bar Association, Human Rights in the Administration of Justice:
- A Manual on Human Rights for Judges, Prosecutors and Lawyers Geneva. From <<http://www1.umn.edu/humanrts/monitoring/hradmin.html>> (Retrieved on December 14 2008).
- Redress 2004. Seeking Reparation for Torture Survivors, Taking Complaints of Torture Seriously, Rights of Victims and Responsibilities of Authorities UN, Handbook on Justice for Victims, Office for Drug Control and Crime Prevention. From <<http://www.uncjin.org/Standards/9857854.pdf>> (Retrieved on February 9, 2010).
- Rodley N 1989. The international legal consequences of torture, extra-legal execution, and disappearance. In: Ellen Lutz, Hannum Burke (Eds.): *Directions in Human Rights*. University of Pennsylvania Press, P. 172.
- Rodríguez-Pinzón D, Martín C 2002. The Prohibition of Torture and Ill-treatment in the Inter American Human Rights System, A Handbook for Victims and their Advocates. From <<http://www.trial-ch.org/en/resources/international-law/human-rights-and-impunity/bibliography.html>> (Retrieved on June 1, 2008).
- Sánchez J 2003. Juan Humberto Sánchez Case, Judgment of June 7, 2003, Inter-American Court of Human Rights, (Ser. C) No. 99. From <<http://www1.umn.edu/humanrts/iachr/C/99-ing.html>> (Retrieved on June 1, 2011).
- Soley D 1984. Hunt v. Galtieri: A hypothetical scenario for holding international aggressors civilly liable in American Courts *Emory Law Journal*, 33: 211-224.
- Starr S 2008. Rethinking "Effective Remedies": Remedial deterrence in international courts, *New York University Law Review*, 83: 693-696.
- Vauxhall L 2006. Ending Torture a Handbook for Public Officials. From <<http://www.redress.org/smartweb/reports/reports>> (Retrieved on September 9 2008).
- Velásquez B 2002. Bámaca Velásquez Case, Inter-American Court of Human Rights, (Ser. C) No. 91. From <<http://www1.umn.edu/humanrts/iachr/C/91-ing.html>> (Retrieved on May 30, 2011).
- Zegveld L 2003. Remedies for victims of violations of international humanitarian law. *International Journal of the Red Cross*, 85: 497-498.