

REDRESS

REDRESS

Seeking Reparation for Torture Survivors

TORTURE
SURVIVORS'
PERCEPTIONS
OF
REPARATION

Preliminary Survey

"We, torture survivors who have chosen to follow the path of reparation, face many obstacles; from the beginning our families, friends, doctors, lawyers and politicians encouraged us to let 'bygones be bygones' and get on with our lives. Many torture victims only want to do this.

We listened.

*But **they** did not hear **us**.*

Some of our accounts were too horrifying for most of them to believe. Nor could they fully empathise with the perspective that we had only just established: that we must overcome the rupture - the feeling of victimisation, to survive.

All of us have confronted and have learnt to live with the acts of torture, the meaning of our ordeals and what we wanted to fulfil. We were determined to take action to survive.

For many of us the goal, as a matter of honour, is for the states to admit that we had been tortured. We would like to see the torturers brought to book. We need to prove that they did not succeed in destroying us as human beings. And we need the financial compensation so that we can reclaim our lives and again become contributing members of society."

(Torture Survivor, 19 November 1993)

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PREFACE
by M F Perutz

I am of Jewish origin, but I grew up as a pious little Catholic boy. At school, the torture and crucifixion of Jesus were illustrated by pictures, such as Dürer's vivid illustration of Jesus' submissive suffering and the soldiers' sadistic brutality. In my naivety, I believed that these pictures recalled the barbarism of past ages, a barbarism that was brought to an end by the enlightenment of the eighteenth and the liberal reforms of the nineteenth centuries.

I was wrong. In the twentieth century, torture was revived, first by Lenin and then Hitler, and it is now common practice in two thirds of the member states of the United Nations. Most of these states signed the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, but evidently as no more than a cynical gesture and an opportunistic pretence.

If I had been a victim of torture, my only desire would have been to end my life rather than face more torture. I admire those who kept hope alive and now endeavour to overcome their mental and physical scars so that they can live normal lives again.

The REDRESS Trust tries to support their efforts. But what redress can ever make up for their suffering? In a report just issued, the Trust seeks answers to that question. It appears that the victim's first wish is to be believed. Not only do their torturers deny their torture, but when they come here as refugees, some British officials brand them as liars. In their home countries the fact of torture is generally admitted only after a change of regime and a restoration of democracy, but even then people don't want to listen. Primo Levi recounts how no one in Munich wanted to hear about his horrendous experiences after his return from Auschwitz. At the Medical Foundation for the Care of Victims of Torture, listening to the victims forms part of the therapy. It seems that to the victims acknowledgement of their suffering is even more important than financial compensation.

What kind of redress can they reasonably expect? Germany has paid compensation to former victims of concentration camps, but I have never heard of any compensations either in Russia, nor in the former East European countries, nor in Argentina or Chile. What impact can the Trust make in these countries? For example, will Milosevic be forced to use the vast fortune he and his family have tucked away in foreign accounts to compensate his victims and their families? I understand that this would be legally difficult if not impossible to enforce, but recent legislation has opened other ways. The European Convention on Human Rights has now become part of British law. The most important sanction is the criminal law. Under the Torture Convention states are obliged to make torture a crime, but they need not pay compensation for torture committed outside their own jurisdiction. This means, for example, that someone who has been tortured in Northern Ireland could have the torturer prosecuted and sue the British Government for compensation in a British court. On the other hand, an Albanian refugee from Kosovo who has suffered torture could not sue

the government of the Federal Republic of Yugoslavia in a British court. It is not clear whether he could in future do so at the European Court of Human Rights in Strasbourg. I have not heard of anyone successfully suing Galtieri, the dictator from whom Mrs Thatcher liberated the Argentine, or Pinochet? The democratic regimes that succeeded these dictators might not be held responsible for their crimes, and compensation might have to be ex-gratia payments. If the Trust succeeded in getting these approved, it will be a great achievement.

It is encouraging that the international community has made torture a crime which is punishable wherever the crime was committed. But we still need an effective remedy in the civil courts for its victims. Inroads have been made on the possibility of suing individual torturers, and we could be on the way to making states accountable for the torture committed by their servants and agents. In the United States a statute has made it possible for survivors to sue those states which have been black-listed as supporting terrorism. Here, we are anxiously awaiting the decision of the European Court of Human Rights in the case supported by REDRESS, that of *Al-Adsani v UK*, in which Suleiman Al-Adsani is seeking to sue Kuwait in the UK for the horrific treatment he suffered at the hands of government agents.

How can REDRESS and the Medical Foundation fight the growing, vicious and despicable worldwide practice of torture? Speaking up may be the only way. Speaking up in the media and in books. We need another Primo Levi, a communicator whom people will read and to whom they will listen, to put the perpetrators of torture to shame.

In Germany, the new generation who grew up after the Nazis put to shame their parents, whose silence, they thought, had made them accomplices to the Nazi crimes. If REDRESS could generate similar revulsion elsewhere, it might help to stem the frightening tide of barbarism. I wish Keith Carmichael and his helpers all possible success.

M.F. Perutz

M.F. Perutz

OM CH FRS Nobel Laureate

Medical Research Council
MRC Laboratory of Molecular Biology
Cambridge, June 2001

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Despite careful checking of the information in the Report, errors of fact or law may remain for which the author takes sole responsibility.

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“If we never look at the reactions of victims, how can we discover whether suffering is alleviated, expenses or losses recompensed, moral status restored, or cooperation with the justice system increased?”
(Shapland 1984, p.273)

INTRODUCTION

We at REDRESS believe that if the right to reparation, now an established principle under international law, is to be exercised in a beneficial way, if survivors¹ of torture² and other human rights violations are to be genuinely helped, then a clearer understanding of survivors' perceptions of and reactions to reparation and the processes this involves is essential. Among the various approaches to dealing with the aftermath of atrocities, the issue of reparation from the survivors' point of view has in the past been accorded relatively little discussion. It is an area that is only now beginning to receive widespread attention. The theme of the United Nations International Day in Support of Victims of Torture in 2000 was the question of reparation to torture victims. Furthermore, in developing Draft Principles and Guidelines on the Right to Reparation³, the most recent U.N. documents on the subject begin with the importance of “adopting a victim-oriented point of departure” and assert that this “affirms its human solidarity and compassion with victims...as well as with humanity at large”.

We suggest that without a fuller understanding of survivors' perceptions and without the necessary support structures in place we are in danger of encouraging people whose lives have been traumatised to exercise rights they are unclear about, through processes that they are not actively involved in and do not understand, which then produce outcomes that do not match their expectations.

1. Although it is common to refer to individuals who have suffered torture as “victims”, those to whom it is applied do not always welcome the term (see Mawby & Walkgate (1994) and Espita (2000)). Some feel that it implies vulnerability, passivity or weakness, and therefore prefer the term “survivor”. Most of the relevant literature still uses the term “victim” however.
2. Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment defines torture as follows: “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions” (United Nations, 1984).
3. Final report of the Special Rapporteur, Professor M. Cherif Bassiouni (2000) on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms.

Reparation for human rights violations has, in the words of Theo van Boven, “the purpose of relieving the suffering of and affording justice to victims by removing or redressing to the extent possible the consequences of the wrongful acts...*Reparation should respond to the needs and wishes of the victim*” (1993, para. 137, emphasis added). Although the legal right to reparation for human rights violations is now a firmly established principle in international law, little light has been shed on the nature of the needs and wishes of survivors. It is usually taken for granted that survivors “need” reparation as part of their recovery or rehabilitation. On a psychological level, it is often implicitly and sometimes explicitly assumed that receiving some form of reparation necessarily brings about “closure” for survivors. The relevant literature, however, gives little attention to the experience and opinions of survivors themselves. Do they all desire reparation and compensation? How important is it for them? What is their experience of trying to claim this right? What are their expectations of the effect reparation will have on their lives? Are they satisfied with the outcome? Moreover, which of the many differences between survivors – age, gender, culture, nationality, socio-economic or political circumstances influence these perceptions?

A clear distinction must be drawn between the legal and moral *right* to reparation and the wants and needs of individual survivors.⁴ The legal framework exists and must be upheld, but there are different perceptions as to the nature and scope of the rights and how they might be exercised, it is with the latter area that this paper is concerned.

It is hoped that this research will act as a first step towards a better understanding of what survivors want and expect from reparation. This in turn will help to make the services offered as effective as possible. The survey details what research has already been undertaken in this area and identifies gaps in that research, with a view to determining the needs for additional courses of action.

The present research has taken the form of

- **A Literature Review.** Relevant literature from a number of fields including theoretical work on reparation, theory and empirical work from general victimology, personal memoirs of survivors, and empirical studies on truth commissions and reparation programmes following human rights atrocities.
- **Informal Interviews.** A number of interviews were carried out on an informal basis with “gatekeepers” - those who work directly with torture survivors in medical, legal, or other advisory capacities. The interviews sought to tap their accumulated knowledge concerning torture survivors’ perceptions of reparation.

A list of those interviewed, as well as others who contributed their thoughts on an informal basis can be found in Appendix 1.

4. See p.49 for further discussion of survivors’ ‘needs’.

PART I REPARATION AS A CONCEPT

Definition and Historical Background

The Oxford English Dictionary gives three related meanings for the word reparation: “the action of restoring something to a proper or former state”; “the action of repairing or mending something”; and “the action of making amends for a wrong or loss, compensation”. A narrow definition of reparation stems from its root “to repair”. Wright defines its meaning in a broader sense: “Reparation is what the offender gives back to the victim in the form of money, service or apology. It is not necessarily agreed; it may merely be ordered by the court” (1985, p.642).

In his philosophical analysis of reparation, Thomas (1999) explores the basis for the demand for reparation when one person wrongs another. Reparation, he says, is part of the “rules” of entering into ethical relations with others, and is intended to *mend*. By admitting the offence and accepting responsibility for it, the offender reduces the anger of the victim and also of the onlookers (which is important because morality and its system of rules are shared by the group). According to Cox, “reparation, if properly negotiated, leaves both sides feeling better” (1999, p.24). Reparation draws a line under the offence and allows the parties to face each other again as if the offence had not happened. Although in reality time cannot be reversed, reparation serves an expressive function as “symbolic proof of a fundamental orientation to the ethical that we seek when we demand reparation” (Thomas, 1999, p.133).

Reparation also forms part of a religious vocabulary. It is associated with such terms as atonement, reconciliation, forgiveness and redemption, making amends for the sins of the past. Confession itself can be regarded as a ritual of remorse and reparation where the offender (or “sinner”) comes forward and admits responsibility for wrongs committed, expresses contrition and makes a gesture of repentance. The result is purification. Although, as Cohen (1995) notes, this religious vocabulary does not rest easily with today’s discourse of “rights”, its traces are often evident in discussions of reparation.

The legal principle of reparation has existed for centuries (Schafer, 1960; Weis, 1962) yet its theoretical foundations are rarely discussed. Shelton (1999) traces the foundations for the law of remedies in most legal systems (including international law) to the philosophy of remedial or compensatory justice outlined by Aristotle. She points out that although Aristotle’s compensatory ideal relates to acts between individuals, the same basic approach extends to public law.⁵

Reparation as a goal is grounded in restorative justice theory, a way of thinking about justice that is ancient but that has until recently been out of vogue in criminal justice systems. Unlike retributive justice, argues Wright, this approach is based on “a different principle, repairing (as far as possible) the damage and hurt caused by the crime” (1996, p.59). The moral basis for reparation lies in the fact that the wrongdoer has infringed

5. See Shelton (1999) for an extensive exploration of this area.

the rights of the victim, thereby creating both a moral imbalance between them and a moral claim to redress. Although it may not be possible, the aim is to restore equality between the parties.

Reparation in International Human Rights Law

Under international law, there is a well-established right (laid down in Article 8 of the United Nations Declaration of Human Rights) entitling victims of human rights abuses to compensation for their loss and suffering. Several instruments require States to provide "effective remedies", or to provide for the "right to be compensated" for acts violating fundamental rights⁶. Article 14 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment outlines the detailed right to reparation for torture victims, and provides that:-

- 1. Each State Party shall ensure in its 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. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.*
- 2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.*

Edelstein (1994) reviews the instruments, trends and decisions reflecting an increasing awareness of a state's responsibility to provide redress to those who have suffered such violations.⁷ The right to reparation does not depend on treaties alone, as it is now also widely recognised in customary international law.⁸

6. The right to an effective civil remedy is provided for under Article 2(3) of the International Covenant on Civil and Political Rights. Article 13 of the European Convention provides that "everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority". The right to reparation is also included in the Inter-American Convention on Human Rights.

7. Lillich (1993) reviews decisions by US courts on gross violations of international human rights, beginning with the landmark *Filartiga* case in 1980 (where two Paraguayan plaintiffs brought a case for the torture and death of their son against another Paraguayan citizen and were awarded \$10 million in damages). The whole question of pursuing reparation for torture committed in another country, and the position in international law, are explored in REDRESS' publication (2000) "Challenging Impunity for Torture: A Manual for bringing criminal and civil proceedings in England and Wales for torture committed abroad".

8. See REDRESS publication "Promoting the Right to Reparation for Survivors of Torture: What Role for a Permanent International Criminal Court?", 1997, pp.13-19 for a full examination of the duty to provide reparation under international law as well as national and regional norms and standards.

Formulations of the right to reparation

A number of attempts have been made to produce guidelines or principles on the right to reparation; probably the most well known and comprehensive are those produced by Professor Theo van Boven.

The van Boven principles

In 1989, Professor van Boven was entrusted by the United Nations with a study of the right to restitution, compensation, and rehabilitation for victims of gross violations of human rights and fundamental freedoms. This ultimately resulted in Draft Basic Principles and Guidelines (1997), in which he concluded that the only appropriate response to such victims is one of reparation.

According to the basic principles and guidelines, the victim's right to a remedy encompasses (a) access to justice; (b) reparation for the harm suffered; and (c) access to factual information concerning the violations (Bassiouni, 1999). Reparation, it is stated, should be adequate, effective, prompt, proportional to the gravity of the violation and the harm suffered, and should include various forms.

van Boven's study outlines four main forms of reparation:⁹

- *Restitution* - designed to re-establish the situation which would have existed had the wrongful act not occurred. This may include restoration of liberty, family life, citizenship, return to one's place of residence, and restoration of employment or property.
- *Compensation* - should be provided for any economically assessable damage which results from the act (physical or mental harm, pain, suffering, lost opportunities, loss of earnings, medical and other expenses of rehabilitation, legal fees, etc.).
- *Rehabilitation* - to include medical, psychological and other care and services, as well as measures to restore dignity and reputation.
- *Satisfaction and guarantees of non-repetition* - including verification of facts and full public disclosure of the truth; a declaratory judgment (as to the illegality of the act); apology; judicial or administrative sanctions against the perpetrator(s); commemorations; prevention of recurrence (through legal and administrative measures).

van Boven clearly understands the notion of reparation in a wider sense than in purely pecuniary terms. He includes mention of medical, psychological and social assistance and support; he also discusses the potential for providing satisfaction to survivors by disclosure of the truth after an official and thorough investigation of the facts. His inclusion of the duty to prosecute perpetrators is important. "Reparation for certain gross violations of human rights that amount to crimes under international law includes a duty to prosecute and punish perpetrators. Impunity is in conflict with this principle."¹⁰

9. See Appendix 2 for a full outline of the measures included under each of the four headings.

10. This is number five of van Boven's general principles (1993).

Based on van Boven's findings, REDRESS believes that reparation should include at least some of the following:

- Investigation of the facts, official acknowledgement and apology, receipt of answers, the prosecution of those responsible
- An opportunity for the victim to speak in a public forum about his/her experiences
- Victim's active involvement in the judicial or other reparative process
- Compensation for injuries, pain and suffering (including mental suffering) and loss of earnings, not only for the victim but also for immediate family members
- Physical and psychological rehabilitation
- Restitution of rights such as employment, pensions, services, property and reputation
- Prevention of recurrence

Forms of Reparation

The human rights litigant, according to Shelton (1999), typically seeks two things: to have the conduct of the state declared wrongful and to compel the state to provide a remedy. Although international instruments require that a state should provide an "effective remedy" in cases where torture (or other human rights violations) has occurred, they tend to be rather silent on the appropriate form and extent of such remedies (Rodley, 1989).

This leads to the question of whether the various forms of reparation have distinct meanings for the recipients, or lead to different degrees of "satisfaction". It is difficult to distinguish between the meanings attributed to the different forms of reparation. Hamber & Wilson (1999) insist that psychologically speaking, so-called symbolic acts of reparation (e.g. reburials) and material ones (e.g. payments) serve the same end. It is a mistake, they insist, to regard financial reparation as qualitatively different or more "concrete" when in fact it is merely another form of symbolic reparation.¹¹ It is worth investigating, however, whether different degrees of "satisfaction", for example, are associated with the various form of reparation, or whether disparate groups of survivors rate different forms of reparation. What follows is an overview of the arguments put forward by several authors regarding the significance of different measures of reparation.

Financial reparation/compensation

The question of financial measures is an inherently difficult one. Shelton (1999) quotes a nineteenth century Russian legal scholar who said that "only one seized by a profound disrespect for the human personality would attempt to persuade another human being that money makes good moral afflictions of every sort". In the aftermath of

11. The same point is made by Zedner (1994) who says that sums paid in compensation rarely approach the actual value of the loss suffered and the significance of the payment is thus largely symbolic.

atrocities as grievous as torture, financial measures may be particularly inadequate and may lead survivors and their representatives to seek other forms of reparation.¹² The disagreement over monetary awards for such harms has long been manifest among Holocaust survivors.¹³ Wise (1993) describes the emotional turmoil and demonstrations in Israel against what was perceived as “blood money” in response to the Conference on Material Claims. On the other hand, he points out that this organisation persists in seeking benefits for the tens of thousands who have not received reparation, insisting that memory and commemoration are insufficient. It is to be expected that the same tension will be apparent among other survivors of torture. Having said this, survivors’ pleas for recognition may often be made in the form of monetary requests. It is worth investigating whether this is (even partly) because other forms of redress are not available or are less obvious.

Determining amounts

Shelton (1999) emphasises the difficulty involved in constructing remedies in human rights cases. Although norms establish the illegality of torture, they do not indicate the appropriate measures of reparation. In addition, it may be the case that factors other than the situation and needs of the survivors are taken into account in assessing damages. The US District Court ruling in the case of *Filartiga v. Pena-Irala* provided a Paraguayan a civil remedy for the torture and murder of his son by a Paraguayan police officer. Labelling torturers ‘enemies of all mankind’, the Court lists among its considerations the need to teach the perpetrator not to repeat the offence, to deter others from doing so, and to make clear the international revulsion against torture (see Lillich, 1993).

If monetary compensation is meant to act as a replacement for losses, the main issues with regard to torture, say Arcel et al (2000), are determining the particular losses suffered, and deciding what constitutes a “just” compensation. The problem, they suggest, is that torture survivors may have experienced many “losses” that are invisible to the observer. Torture may indeed be one of the most difficult offences for which to set a monetary figure. Espersen and Genefke (1994) contend that the specific character of torture as a particularly egregious violation means that its survivors should receive greater compensation. They give six reasons, including the deliberate and planned nature of torture, and the rendering helpless of the victim. (In a similar vein, Sveaass & Lavik (2000) assert that the man-made infliction of pain lends a moral dimension to both reactions and the premises for healing). Espersen & Genefke do not address the possibility of differing needs among survivors, or the fact that specific measures of reparation may be found helpful in particular situations.

Basoglu & Paker (1995) explore the myriad of difficulties inherent in establishing the severity of trauma, and find that subjective distress, rather than number of exposures to trauma, better predict psychological problems. Human rights compensation decisions struggle with this problem, says Reisman (1999), by using elastic

12. In Argentina, according to Mignone (1992), many relatives of the “disappeared” showed “little or no interest” in pecuniary compensation, which they considered an insult and an attempt to buy their silence.

13. It is important to note the distinction between situations of politically negotiated reparation which can affect an entire population, and those of individually pursued cases under civil (as opposed to human rights) law.

terms such as “moral damages” or “pain and suffering”, but none provide a recurring and predictable method for assessing compensation. The consequence, he argues, is that when compensation is paid it often seems unsatisfactory and, “ironically, inconsistent with the fundamental notion of the humanity of the victim”.

How then, does the individual recipient judge the adequacy of what is offered? Could it be the case that a survivor perceives an award as so inadequate that he/she feels insulted and more damaged than before the judgment? (Presumably this depends on whether the amount is perceived as a symbolic acknowledgement, or as some sort of appraisal of the need/worthiness/value of the individual.) Do those who pursue cases for reparation have realistic expectations of what they may be awarded if successful?

“Satisfaction and guarantees of non-repetition”

Some might argue that van Boven’s fourth category clearly includes those measures which may have the least obvious or tangible benefits: establishment of the truth, acknowledgement, an apology, a guarantee of non-repetition, etc. Other possible forms which this may take include active involvement for the survivor in the reparative process, and/or an opportunity to speak of his/her experiences in a public forum¹⁴. The meaning to the individual survivor of these measures may be difficult to ascertain. Nevertheless, it is clear that many survivors, attach immense significance to them. For example, in one case before the Inter-American Court of Human Rights, the victims’ families specifically demanded that in addition to financial reparation, they would receive non-pecuniary provisions including a public apology, investigation and punishment of the perpetrators, and some form of public commemoration. Yamamoto (1999) looks at the case of the survivors of the Rosewood massacre who persevered for decades in pursuit of reparation. Ultimately, they were given monetary reparation which, he says, was a tremendous source of release from unresolved grief for some. However, there were others for whom the lack of an official apology (“some ceremonial form of repentance”) meant that the grieving continued. The “comfort women”, for example, irrespective of other forms of reparation, maintained their insistence on an official apology from the Japanese Government.

Restitution

Restitution is of greater significance for certain groups than for others. van Boven, in discussing his encounters with relatives of the “disappeared” in Chile and Argentina, stressed that this form of reparation was particularly important to survivors. Apart from establishing an independent record of what had happened, he found that many relatives also expressed a desire for some “normalisation” of their legal position, so that inheritance rights could come into play, marital positions could be clarified etc.

14. It may be the case that what some survivors are seeking is the dismantling of the conditions that gave rise to the political regime under which they were tortured. It has been argued that torture requires a whole regime, including a particular language, to take hold before the practice is established. For many then, a concrete form of reparation may be the taking of active steps to ensure that this cannot arise again.

Combination of Measures

It is also worth investigating whether or not combinations of measures have different meanings for, or effects on, survivors. Braithwaite (1989) argues that if reparation is not to come “too cheap”, it must be backed up by financial compensation. In a similar argument Cox (1999) insists that sometimes something more tangible than an apology is appropriate. Shelton (1999), on the other hand, contends that establishing the truth of their experiences is more important for some than is receipt of monetary compensation. Similarly she suggests that for some survivors, a financial award alone might be insufficient. And if, indeed, the “best” form of reparation (from the point of view of the recipient) involves some mixture of financial and non-financial measures, there then arises the question of its nature, weight and proportions - or what Zedner has called the “elusive “recipe” for reparation” (1994, p.238).

- How appropriate is each in the particular case of torture? There are those who argue that restitution is impossible in cases of human rights violations. Reisman (1999) argues that human rights compensation decision-makers tackle this problem by using very elastic terms like “moral damages” etc.
- What is perceived by the survivor as “fair and adequate” compensation?

Truth as Reparation

“Remembering and telling the truth about terrible events are prerequisites both for the restoration of the social order and the healing of individual victims.”
(Herman, 1992, p.1)

The importance of uncovering and establishing the “truth” of what happened is a recurrent theme in attempts to deal with past human rights violations. The Chilean national commission, for example, envisaged three aspects to reparation, the first of which was disclosure of the truth and the end to secrecy (Edelstein, 1994). Weschler (1990) notes that often the desire for truth can be stronger than that for justice. Disclosure of the truth, contend Sveaass & Lavik (2000) is one of the psychological premises that must be fulfilled in order to obtain justice and reconciliation.¹⁵ More has been written about this than about any other form of reparation.

Advancing the process of reparation involves publicly establishing the truth of the survivor’s experiences. The TRC Final Report notes that the granting of reparation can add value to the “truth-seeking” phase, and Zalaquett (1995) asserts that “the truth in itself is both reparation and prevention”. The European Court of Human Rights grants two main forms of reparation to individual victims of a violation, one of which is a declaratory judgment (that the violation took place). The Court may hold that a mere finding of a violation suffices as just satisfaction (Pellponpää, 1999), but in other cases may couple this with an award for compensation. Gordon (1994) asserts that one aspect of a compensation lawsuit which has significance for the survivor’s rehabilitation is the necessary disclosure of documents. His/her version of events is thereby strengthened and recorded. José Siderman, on winning his 14-year legal battle against

15. The concepts become blurred in the literature, however, as Parleviet (1998) argues that truth may be seen as a form of justice - one that *does justice to* people who have been victimised, though it does not *administer justice over* the perpetrators.

the Argentine government (for his abduction and torture in 1976) declared: "I am so happy - and do you know why? Because now everyone will know what happened..."

It may be that the "truth" is especially significant for torture survivors because of the covert, hidden nature of their suffering. Very often, torturers may use their expertise to inflict injury with "maximum deniability", and impress upon their victims that their stories will never be heard or believed. Parleviet (1998) says "bringing the truth to light" has come to be seen as a direct response to the nature of such violations. (If truthful answers are what is required by the survivor, it may be the case that pursuit of a claim in an adversarial process may *not* yield them. The accused will almost invariably dispute the story of the survivor.)

There are two distinct, but obviously interlinked, processes involved when one speaks of "truth".

- (a) **"Truth-telling"**. To advance the reparation process, the truth of the victims' experiences must be established (Becker et al, 1990), and so the very process of seeking reparation can include opportunities for truth-telling (Jessup Newton, 1999). It seems that translating experiences into words may help the individual to reorganise his/her thoughts about the trauma and to integrate the memories (Smyth & Pennebaker, 1999). It may also be that the creation of a coherent narrative that "makes sense" of the experience is the link between stressful events and subsequent psychological health. Hayner (1998) recognises the complexity of the issue when she points out that while for some it helps enormously to have the opportunity to tell one's story to an official body, for others, healing requires access to longer-term structures for psychological and emotional support. While recognising the importance of truth-telling, Hamber & Wilson (1999) emphasise that establishment of a truth commission in itself is not enough to meet the psychological needs of individuals. National and individual processes for dealing with the past may proceed along at different rates. Not all survivors react in the same way to these processes. The doctrine of "revealing is healing", they suggest, is an over-simplistic one and "remembering" is but one of many possible routes to symbolic closure for survivors.
- (b) **Creation/Publication of an official report/judgment**. What is important here is Nagel's now famous distinction between "knowledge" and "acknowledgement": the translation of what the survivor has long known into public, official knowledge. Linked to this, says Cohen (1995) is the sentiment that exposing the past in such an official way may prevent its repetition. Whether or not this is the case, it may be a motivation for the individual survivor.

There is a need to examine the relationship (from the point of view of survivors) between truth and justice.¹⁶ Is the fact that the truth is recorded in any decision to award compensation or to assign blame the important fact for the survivor? Does the handing over of compensation or other forms of reparation, strengthen the value of the "truth", symbolise it, concretise it, for the survivor?

16. What survivors regard as part of "truth" may include not only "knowledge" (that the torture occurred) or "acknowledgement" (record of an official recognition that the torture occurred), but also that the government goes further and "vindicates" the survivor.

PART II THEORETICAL STUDIES OF REPARATION

Language of Rights - Language of Wants/Needs

There is a common tendency among authors to slip from the discourse of rights into that of wants/needs,¹⁷ often using the latter to give support to the former, but often without detailed or verifiable indicators of what those wants or needs are. Lutz (1995), in her model compensation guidelines, begins by discussing the legal foundation for the right to redress, but quickly moves to claiming that the basis of her paper is the *need* of the individual. Even the most recent articles, such as that by Arcel et al (2000), display this tendency. Reparation, they insist, is “a fundamental stage in the progressive rehabilitation of the torture victim”, and provides “the tools for mending a victim of torture to a whole and integrated person”.

Others speak of the benefits reparation *may* bring for the individual. Little attention is paid to questions such as “under what circumstances?”, “after what length of time?”, etc. Hamber (1998), for example, says that reparation can (but does not necessarily) play an important role in processes of healing, bereavement and addressing trauma.¹⁸

The tendency to slip between the discourses of rights and wants/needs has already been noted by those concerned with “ordinary” crime. According to Wright (1996), in some jurisdictions (particularly the US), “there are moves to declare victims’ rights, without necessarily knowing what victims want or being able to ensure that they receive it” (p.47). Shapland (1984) cautions that many victim programmes are erected on what official/experts think their clients need, and not necessarily on what victims themselves want or need. The same point is made by Rock, but referring specifically to compensation and reparation, which he says “did not have much of a foundation in the declared or observed requirements of the victims themselves” (1990, p.408).

Recent attempts in various countries to come to terms with the atrocities of former regimes have come under similar scrutiny. Even the final report of the TRC in South Africa moves directly from the legal basis for reparation (various covenants and conventions) to the statement that “without adequate reparation and rehabilitation measures there can be *no healing*” (1998, p.175, emphasis added). One of the most important lessons to be learned from an evaluation of South Africa’s TRC, according to Simpson (1998) is that a grave disservice is done to victims by those who seek to speak on their behalf, whether in the name of justice or reconciliation. By so doing, he insists, they render the victims silent. “Generalised and conveniently summarised victims’ expectations tend to denigrate the complex and inconsistent human identity of such victims and survivors, ignoring the extent to which needs vary from victim to victim and change across time.

17. It has also become common in recent times for the reasoning behind compensation/reparation to become confused with the language of therapy. It should be noted that there are also wants and needs which are *political* as opposed to therapeutic.

18. Neier (in Boraine et al, 1994) is one of the only authors on the subject who plays down the significance of reparation as part of the process of dealing with the past.

REDRESS SURVIVORS' PERCEPTIONS OF REPARATION

Presumptions that victims need or demand punitive justice are no more reliable than are the claims that victims are willing to forgive perpetrators who confess, or that they merely seek acknowledgement and symbolic reparations. One psychiatrist who shared her thoughts on the issue of reparation insisted that it is very important to explore survivors' own perceptions, not to assume what *we* think is in their best interests, even if we have the best intentions. She herself had encouraged an Argentinean survivor to apply for reparation (against her will), assuming that this would be "part of closing a chapter". In fact the process compounded the trauma for this individual.

Needs of Victims/Survivors

On a theoretical level, some attention has been devoted to the *needs* of those who have been victimised. Maguire (1985), however, sounds a note of caution in his review of research into “victims’ needs”, a concept which he says can all too easily be associated with paternalistic notions of “magnanimity to the unfortunate”. Nonetheless, there has been significant discussion of what it is, in a general sense, victims’ need. Stauffer & Hamber (1996) define the core of victimisation as “disconnectedness” and “disempowerment”. They assert, therefore, that for victims justice is about “meaning”. Summarising the work of victimisation experts, the authors list the basic needs of a victim as:

- To be able to speak and be heard in a “safe-space”
- To know what happened to them was “wrong” and that their emotions are legitimate
- To experience both symbolic and real restitution
- To be given a chance to tell the truth (“story-telling”)
- To be empowered, as power has been taken from them by force

There are obvious parallels between the above approach and that of Howard Zehr (1990) who identifies the five main needs of victims as:

- To be awarded compensation/restitution
- To receive “answers”
- To speak the truth about what happened to them
- To receive guarantees of non-repetition
- To be actively involved in the judicial process

There is, then, on a theoretical level a certain consensus that one of the needs experienced by victims is for reparation/compensation, although these authors do not elaborate the form which it should take. It is unlikely that measures of reparation (in the broader sense adopted in this paper, and including establishment of the truth) *could* assist in several if not all of the needs outlined.¹⁹

As mentioned above, there may also be a “need” which is not included in Zehr’s list and which has a more political basis. Survivors may also want it known and recognised that they were arrested and tortured *for their beliefs*. This again relates to the desire for vindication.

19. John McManus (a lawyer with the Crimes Against Humanity and War Crimes Section of the Canadian Department of Justice) interviews survivors of such crimes as part of his work. In his experience, what most of them want (once basic physical needs have been secured) is “an opportunity to tell their story to people in authority, and then to see those people act to bring the perpetrators forward to explain their actions under public scrutiny”. In addition to this, he suggests that survivors generally feel that chaos had taken hold of their lives for a period, and that they wish “to see order imposed on that chaos, by having the perpetrators account for their actions”.

Purposes/Functions of Reparation

Brandon Hamber opens his paper (1998c) with a quote from Chinweizu: "...reparation is not just about money, it is not even mostly about money; in fact, money is not even one percent of what reparation is about". There is a wealth of philosophical literature on what reparation *is* about, but the approach here will concentrate instead on the *meaning* of reparation by considering the purposes it is assumed to serve. In effect, what follows is a series of theories as to the possible functions or effects of reparation.

Reparation is said to serve functions on a number of levels. The possible impact of reparation measures on a socio-economic level will be outlined first.

Socio-political level

Any action a state is required to take in reparation for human rights violations is likely, according to Shelton (1999), to have effects beyond the individual plaintiff. "Remedies for public wrongs must be seen...as serving not only private redress but public policy" (p.52). Just as overcoming personal trauma necessitates elaboration in therapy, according to Martin-Baro²⁰, so do societies require the kind of "socio-politic" therapy achieved only through truthful and just reparation of the violations committed.

Sveaass & Lavik (2000) contend that the destructive psychological effects of violations such as torture occur also on a large-scale socio-political level. Trust, predictability, sense of control, belief systems and norms, they argue, are severely affected or destroyed in societies where such violations occur. Social reparation, according to Agger & Jensen (1996), plays a role in reversing the shifts in meaning and rationality that have taken hold in a society where torture takes place, what Summerfield (1995) terms "mending holes in the social fabric".

The topic of individual reparation claims, says Klein (1999), is one that "goes to the very heart of human rights protection". Recognition of such claims, he says, considerably strengthens the entire concept and represents major progress in enhancing the effective protection of human rights. Among van Boven's (1993) chief conclusions on the issue of reparation is that it should "be viewed in the overall context of the promotion and protection of human rights...and of preventing and correcting human rights abuses". The OMCT²¹ (1990) recognises that its task is frequently regarded not as support for victims but rather as a duty to justice in society. By enacting legislation allowing for the pursuit of redress, a country can show its commitment to the opposition of acts which violate fundamental human rights.²² According to Drinan & Kuo (1993), this was one of the symbolic functions of the United States' Torture Victim Protection Act (TVPA).

As Cohen (1995) points out, a major topic of human rights concern is the issue of impunity. The reason repression occurs and is allowed to continue is because state officials can act

20. from Garcia-Peltoniemi, 1990

21. World Organisation Against Torture

22. Verhoeven (1999) insists that breaches of international human rights law must be compensated even if it is difficult to determine the appropriate form of reparation or to ensure its enforcement. Otherwise the credibility of the law is endangered.

without fear of punishment. Judgments by courts (or other bodies) that reparation is to be paid is one of the ways used to enforce accountability. On a political level, any such acknowledgement symbolises the State taking responsibility for the violations of the past (Parleviet, 1998), and when undertaken after a regime change, it can be seen to be making a statement about the kind of society being created. In particular, where reparation occurs on a large scale in a society, it can represent a societal willingness to deal with and move on from the past [Hamber, (1998c)].

Central to its symbolic importance is that reparation should function as *condemnation*, a “cogent critique of history and thus as a potent restraint on its repetition” (Soyinka, 1999, p.83). Chmielewski’s case for reparation to non-German, non-Jewish Holocaust victims rests on his contention that without indemnification for all victims, there would be “no effective condemnation of the inhuman system”. This would be tantamount to recognising persecution as admissible (1958, p.12). The right of torture survivors to reparation is, according to the UN Special Rapporteur on Torture (2000) closely linked with the prevention or non-repetition of further violations. In his report, he argues that beyond the function of alleviating the suffering of victims, reparation “has an inherent preventive and deterrent aspect” (p.7). Amnesty International’s 12-point programme for the prevention of torture (1984) includes in its recipe of practical measures one of “compensation and rehabilitation”. Victims, it argues, should be entitled to financial compensation and appropriate medical care and rehabilitation. Peters (1985), regarding the benefits of actions against torturers (civil suits by individuals and criminal trials), confines himself to benefits in terms of the future of torture, in fact making no mention of individual survivors. Both van Boven (1993) and the Association for the Prevention of Torture (APT, 2000) also describe the inherent link between the right to reparation and the prevention or non-repetition of further violations. Forms of reparation other than financial measures, such as the erecting of monuments, plaques, museums and memorials can play a role in preventing the reoccurrence of atrocities by serving as teachers, “vehicles for the intergenerational transmission of historical memory” [Hamber, (1998c, p.4)].

Reparation, it is argued, is one way of affirming and reinforcing society’s fundamental values (Shelton, 1999). In this way, it could be said to serve a boundary-marking (or “Durkheimian”) function in society, and to symbolise a break with a past where such values were undermined or shattered. What Roht-Arriaza (1995) calls the “denunciatory model” focuses on the symbolic and norm-creating qualities of punishment both for the victim and for the larger society, the affirmation of values and the establishment of structures that create or sustain behaviour consistent with those values. Sveaass & Lavik (2000) assert that, on a societal level, when there is no confirmation of, or repentance for, human rights violations, equilibrium is not restored and a lack of respect for laws and social regulation is perpetuated. In a very similar manner, Fischman & Ross (1990) contend that denial of torture “increases collective anxiety, generates a collapse of ethical values and affects the moral fibre of society”. Reparation and rehabilitation contribute to a situation in which certain basic values are recognised by society as sacrosanct (Bamber, 1994). The Court in *Letelier v. Republic of Chile* makes this function of awards explicit in concluding that “an award of punitive damages of no less than \$5,000,000 to each plaintiff is appropriate to reflect adherence to the world community’s proscription of torture and to attempt to deter its practice” (quoted by Lillich, 1993, pp. 213-4). Hannah Arendt declares that when a wrong is committed “the wrongdoer is brought to justice because his act has disturbed and gravely endangered the community as a whole...It is the body politic itself that stands in need of being repaired, and it is the general public order that has been thrown out of

gear and it must be restored...It is, in other words, the law, not the plaintiff, that must prevail" (1964, p.261)

Individual level

What is the goal?

Before one discusses the possible role of reparation in the recovery of the torture survivor, one must first address the concept of "recovery" itself. If there is some consensus on the need for the survivor to deal with his/her traumatic experiences, there is far less discussion of what constitutes success in this endeavour. The end, or aimed-for situation has been variously described as "healing", "closure", "rehabilitation" or "mastery" (terms connected with a therapy ideal), and as "(re)integration" or restoration to the original state (which are connected with a more political approach). Laura Dansky of Survivors International says that the survivors assisted by that organisation approach it "because they want to feel better". "Feeling better", however, constitutes something quite different for each individual. One must also be wary of hidden cultural assumptions underlying some of the terms listed above.

Herman (1992) asserts that resolution of severe trauma (she does not deal specifically with torture) is never final, but that its best indices are the survivor's restored capacity to take pleasure in life and to engage fully in relationships with others, and a greater interest in the present and the future than in the past. Herman also cites Mary Harvey's seven criteria for the resolution of trauma - that the physiological symptoms are brought within manageable limits; that the person can bear the feelings associated with remembering the trauma; that the person has control over the memories; that memory of the event(s) is a coherent narrative; that diminished self-esteem is restored; that important relationships are re-established; and that the person has constructed a coherent system of meaning incorporating the traumatic event(s).

There is no clear agreement in the literature on the impact of torture relative to other types of trauma. Some studies suggest that the psychological effects of torture are sufficiently characteristic to constitute a "torture syndrome" (Benfeldt-Zachrisson, 1988). Whether or not this is the case, there would seem to be some consensus that standard treatments fall short when it comes to helping torture survivors (Peters, 1985; Fischman & Ross, 1990). This has led to some attention being paid to the need to develop specific techniques. A rehabilitation practice has been developed over recent decades to deal specifically with the problems of torture survivors, and treatment centres have appeared. Such centres vary to a certain extent in their emphases, some focusing more on the medical aspects, others on the psychotherapeutic, still others taking a more psycho-social approach. The many organisations now involved with survivors rarely offer clear definitions of their ultimate goals. Jacobsen & Vesti (1992) of Copenhagen's International Rehabilitation Council for Torture Victims (IRCT) suggest that the "broken human being" left behind by the torturers "needs help to again believe in the future" (p.25). Denford says that the rehabilitative aim of the Medical Foundation "is centred on the purpose of freeing the victims rather than curing them" (1996, p.155). Stuart Turner has argued that therapy should be based on needs. Common problems include trauma reactions, depression, somatic (bodily) expression of emotional disturbance and, perhaps most importantly, changes in outlook or belief concerning self and the world (Turner and Gorst-Unsworth 1990). One of the primary effects of torture is to prevent people opposing oppressive regimes because it stops people trusting each other in effective opposition.

Important differences have been demonstrated when torture includes sexual assault (of men or women). Here shame, humiliation and profound avoidance reactions are very likely (eg Van Velsen et al. 1996). This could have important implications for policies on reparation in general as well as on therapy. Depression has been linked to current social isolation (a stronger determinant of depression than trauma experience in a group of Iraqi refugees studied by Gorst-Unsworth and Goldenberg (1998).

Another approach establishes as its goal the direct reversal of the effects induced by torture techniques. Cunningham & Silove (1993) assert that the challenge for those who work with torture survivors is to help them deal with the guilt, shame, degradation, isolation and despair engendered by their experiences, to restore a sense of dignity and empowerment, as well as an ability to trust other people. Adopting a more political stance, it has also been argued that torture is essentially political and social, aimed at destroying the capacity for dissent and activism. Consequently, rehabilitation must involve restoration of these capabilities.

How best to reach that goal

Related to the last point above, it is possible (indeed likely) that the specific nature of torture, relative to other types of traumatic experience, has implications for the measures or interventions that will be most beneficial to the survivors. Among its significant characteristics are its severity, its political motivation and the deliberate infliction of suffering upon one person by another.

Torture survivors are not a homogeneous group. Even if there were agreement as to what constitutes “healing” or “closure”, it must also be recognised that the best or preferred route to such a goal may differ from one survivor to another. The Torture Abolition and Survivors Support Coalition (TAASC)²³, made up of survivors from all over the world, emphasises that the road to healing comes in many forms. Their collection of personal testimonies of survivors clearly illustrates this. For some survivors, treatment centres represent the best option. For others, speaking publicly and insisting that governments be held accountable for their actions is the most desirable route. Reparation is one of many possible means said to have a positive impact on the “rehabilitation” of those who have survived what Buber calls a “wound in the order of being” (see Simpson 1993), or Benfeldt-Zachrisson (1985) terms a “catastrophic existential event”. One must infer, then, that pursuit of reparation will be a more desirable avenue for some survivors than for others.

The role of reparation

In her theoretical look at remedies in human rights law, Shelton (1999) outlines the objective as the restoration to the individual to the extent possible his/her capacity to achieve the ends that he/she personally values. The following sections will set out some of the many hypotheses regarding the effects on the individual of reparation.

One often finds that the powers attributed to reparation are immense. In South Africa, for example, the Reparations and Rehabilitations Committee of the Truth and Reconciliation

23. TASSC, a project of the Guatemala Human Rights Commission/USA was established in 1998 by a coalition of organisations and led by Sr. Dianna Ortiz.

Commission was mandated to design a policy of measures "aimed at rehabilitating and restoring the human and civil dignity of victims". In a similar vein, the Inter-American Court of Human Rights emphasised that reparation "consists of full restitution, meaning the restoration of the prior situation, the reparation of the consequences of the violation, and indemnification for patrimonial and non-patrimonial damages, including emotional harm".²⁴

The possible beneficial effects for survivors of pursuing reparation are a relatively recent topic of discussion. El-Sarraj contends that among the medical and psychotherapeutic approaches, "a necessary and often overlooked aspect of the rehabilitative process is the question of monetary compensation for the torture victim" (1995, p.107). Rita Maran²⁵ notes the impressive rise over recent years of the use of International Human Rights Law by organisations devoted to psycho-social treatment. REDRESS has also recently (1997) perceived a growing awareness of the importance of seeking reparation as part of the process of rehabilitation. Among those who argue most strongly from this perspective is Gordon (1995) who asserts that (at least in the Israeli context) compensation suits can be an organic element in the rehabilitation of the individual survivor. (It is, however, worth noting that neither El-Sarraj nor Gordon founds these assertions on survivor testimonies, but rather on more general experience.)

It is difficult to ignore the lengths to which people have gone (and still go) to pursue reparation after violations and atrocities. The most obvious example has been the Jews and what Soyinka calls the "obsessed commitment of survivors of the Holocaust, and their descendants, to recover both their material patrimony and the humanity of which they were brutally deprived" (1999, p.83). What, then, are the effects that the pursuit and/or receipt of reparation can have on the individual survivor? In some sense, the "list" of possibilities presented here is an artificial one because many of the elements are inextricably linked. Acknowledging the dignity of the survivor, for example, cannot be separated from ideas of vindication and social reintegration.

An important point to note is that no reparation of any kind can remove the harm done, "or be guaranteed to converge with, and ameliorate, all the levels of psychological pain suffered by the survivor" (Hamber, 1998c, p.5); although "Wiedergutmachung" (making good again) is not possible in a literal sense, however, it is argued that reparation serves many different purposes for the individual survivor. Loewy (1998) insists that although money cannot rectify some harms, reparation can at least help ameliorate the pain and anguish in material and, perhaps more importantly, in symbolic ways. The general assumption of most experts is that reparation can help alleviate the distress of survivors. Indeed van Boven explicitly states that reparation (for human rights violations) has the purpose of "relieving the suffering" of victims (1993). The struggle against impunity has been greatly promoted by psychologists and psychiatrists (particularly from Latin America) who have worked with survivors. Summerfield argues that "the question of social validation and reparation for victims remains a resonant one, and almost universally the human costs are higher when this is denied" (1995, p.496). The specifically man-made nature of the suffering, it is asserted by Sveaass & Lavik (2000), means that in addition to medical and psychological therapeutic techniques, the survivor needs moral rehabilitation "that optimally implies justice through legal procedures and economic compensation" (p.40).

24. Quoted by Edelstein (1994), p.2

25. In personal correspondence February 2001

Theories

There are several *cognitive* theories about what it is that torture survivors require. Torture, it is asserted, can create a fundamental fracture in what are variously called “structures of meaning”, “third-order premises”, “models of reality”, “mental maps”, or “organising principles”. Agger & Jensen (1996) contend that the experience disrupts the person’s vital assumptions and beliefs. The most basic of these assumptions, according to Janoff-Bulman (1999) are the benevolence of the world, the meaningfulness of the world, and self-worth. Turner (1989) argues that torture can have a profound effect on the survivor’s view of his/her self and of humanity, because the horrors of the experience cannot be reconciled with previous assumptions. The devaluation of the world view as a result of torture, and the loss of the ability to maintain an optimistic outlook are also highlighted by Melamed et al (1990). What the survivor needs to do to prevent psychological disintegration is to rebuild his/her assumptions, “ultimately creating a set of assumptions that can account for the traumatic experience, yet provide some modicum of personal solace” (Janoff-Bulman, 1999, p.313). What then is the potential role of reparation? It may be the case that pursuit of reparation can help rebuild some assumptions about oneself and the world. The fact that people are willing to help/advise and take one seriously, the fact that an authority deems the torture wrongful and worthy of redress, may go some way to restoring the survivor’s shattered faith in the world. Hamber (1995) says that one of the ways in which the TRC *could* be psychologically healing is that by creating an accurate picture of the past, it could liberate survivors from a skewed view of humanity derived from their experiences of repression.

But would survivors express such cognitive needs? If not, are they relevant? Are *only* the expressed perceptions of survivors to be considered?

Reparation signifies vindication, and helps identify responsibility. This is of particular relevance in light of the often-reported feeling of guilt among survivors of torture (Melamed et al, 1990). Disclosure of responsibility is one of the basic premises that must be fulfilled, according to Sveaass & Lavik (2000), before there is any possibility of progress. Quintero (2000), exploring a Colombian case, insists that basic to any “recovery” on an emotional, even familial level, is that the author of the harms be identified. Hamber (1998c) also emphasises the psychological importance for survivors of appropriately redirecting blame towards those truly responsible and relieving the guilt often felt by survivors.

Related to this point is the inherent link (mentioned above) between reparation and the ending of impunity. Edelman and her colleagues (who work with victims of repression in Argentina and other Latin American countries) insist that a situation of impunity, where no sanctions are taken against the perpetrators, can have serious negative consequences for the individual survivor. It functions, they argue, as a second injury which can cause additional anxiety. Because no measures are taken against those who caused the injury, Edelman (1996) contends that a life of repetition of the trauma is created. The argument is almost always the same: that impunity is devastating for the health of the survivor. It is most forcefully presented by Gurr & Quiroga who contend that “Impunity interrupts the normal process of healing of the survivor of repression, the grief of the families of disappeared victims, and the process of social reparation. Impunity prolongs the psychopathological consequences of repression, both in the individual and in the society” (2001, p.27).

The processes and effects of obtaining reparation can contribute significantly to the re-establishment of equality, dignity, value and esteem to survivors (Danieli, 1995). Among the purposes of torture are the dehumanisation, denigration and humiliation of the individual into submission (Bouhoutsos, 1990). Of the two main claims of survivors noted by the OMCT (1990), one was a demand for recognition of their dignity. Feelings of shame and of being devalued are often suffered by victims (Scheff, 1994). One way to help rehabilitate their self-esteem, according to Braithwaite & Mugford (1994), is through a ceremonial show of community respect for them, be it in the form of an apology by the offender or a public declaration of the perpetrator's guilt. Borneman (1997) also discusses the importance for survivors of the restoration of dignity. Re-establishment of the self-esteem of the individual, he asserts, requires the staging of an event at which there is a public repudiation of the actions that initially caused their diminishment. Such an event seeks to repair the damage to the survivor's self-image and to destroy the perpetrator's claim to mastery. Each of the measures outlined by the following authors is a form of reparation.

Herman (1992), from a psychological perspective, argues that helplessness and isolation are the core experiences of psychological trauma (including torture) and that empowerment and reconnection are the core experiences of recovery. This suggests one of the potential benefits that pursuit and/or receipt of reparation may have for the individual survivor. The theme of control or mastery is raised again and again in the literature, although in different ways by various authors. Empowerment, says Herman, is a basic principle of recovery from any trauma. In terms of "ordinary" crime, Shapland (1984) suggests that pursuing civil litigation can allow the victim to regain a sense of control through the court action, thus illustrating that he/she is no longer an outsider. One could speculate that owing to the specific nature of torture (where the victim is completely helpless and under the torturer's control), regaining a sense of control *may* be all the more important to the survivor.²⁶ Engel (1962) describes the situation of survivors of Nazi camps for whom any form of initiative had been suppressed. The message of repression in Chile, according to Becker et al, was always that "anything can happen at any time, no matter who you are, what you think, or what you do" (1990, p.136). It has been pointed out that the unpredictability of the torture situation can have important consequences for self-esteem (Melamed et al, 1990), and that retaining the ability to make at least some decisions is of paramount importance. Wilson & Raphael (1993) list as one of their four "final steps" in helping survivors of torture, the facilitation and empowerment of a sense of personal control over life events and decisions (maybe even control over the decision to/not to pursue reparation?). Gordon (1994) deals specifically with the torture of Palestinians in the Occupied Territories, and is strongly of the opinion that pursuit of civil claims has a rehabilitative potential for the survivor, and also that it has several advantages over criminal proceedings. Foremost among these, he lists the greater control over proceedings held by the survivor in a civil suit. Mere awareness of this, he suggests, can help the transition from victim to survivor. The survivor, as the initiator of the suit, has the power to direct the proceedings and also to withdraw. Also important, suggests Gordon, is the metaphorical substitution of roles of survivor and torturer, the latter no longer being in control. (There is an interesting parallel here, with post-war reparation between belligerent states which,

26. In a somewhat similar manner, Cunningham & Silove (1993) suggest that the learned helplessness model of Seligman and colleagues seems particularly pertinent to survivors of torture who have often experienced such profound loss of control of their worlds, both external and internal, that it is difficult for them to reclaim any sense of self-efficacy or purpose afterwards.

says Zemmali (1992) expresses the new balance of power.) The actual object/amount received, suggests Hamber (1998), may be the symbol of the survivor's mastery over the past.

Turner (1989), based on his work with survivors, points out that their experiences left many with the feeling that their lives were empty and without meaning. For the survivors of Nazi camps, according to Engel (1962), the continuous threats and deprivations had often stripped life of all meaning save for the hope of survival. Among others, Victor Frankl (whose writings will be discussed below) has described the sense of meaninglessness with which the survivor of torture can be faced, having experienced the world's indifference. Finding meaning, he says, is crucial in order to preserve a sense of self. Summerfield (1995), however, contends that reparation can help survivors to generate a meaning for events.

Frankl also discusses the role that can be played by an individual attempting to overcome the horrors experienced, by creating a task or a mission, a future goal to aim for. Herman's (1992) study of the testimonies of trauma survivors found that for some, the "survivor mission" may take the form of pursuing justice and holding the perpetrator accountable. Janoff-Bulman (1999), does not refer specifically to pursuing reparation, but discusses the benefits for survivors who come to frame their suffering as providing benefits for others. For some survivors, one of the goals of pursuing reparation may be either to bear witness on behalf of others who endured the same suffering or, by seeking to make the perpetrators accountable, to ensure it is not repeated in future. On a political level, Gordon (1995) contends that raising accusations against the state can be important for the individual survivor of torture by signifying engagement with matters of principle and the struggle against torture.

The "conspiracy of silence" (Danieli, 1995), or what Martin-Baro called "circles of silence", surrounding torture is widely agreed to be detrimental to survivors' recovery. Silence has been called the "second wound". According to Hamber (1995) it can be individually destructive in the long run, leading to feelings of exclusion and being misunderstood, as well as the impression that nobody is willing to hear one's story. Based on their work with Chilean survivors, Lira et al assert that social denial of the individual's terrible experiences "deepens the injury...making its healing more difficult"²⁷. Primo Levi's writings, and the research of Chambon et al with torture survivors, highlight the distress caused by not being heard, by having one's reality distorted or simply not believed. In a case study of a specific South African community, it was found that being promised some form of reparation and being given the opportunity to go on stage to tell their stories was a very powerful experience for many victims. "They felt that they now had a voice" (Van der Merwe, 1998). Yael Danieli, director of the group project for holocaust survivors and their children, and director of a centre for rehabilitation of torture survivors in New York, says that in her experience total silence is the most common way in which society responds to the survivors of trauma. That silence leaves the sufferers with no option but to repress their pain, thereby delaying the desired healing process. In Guatemala, the project known as "The Recovery of Historical Memory" was based on the premise that enabling victims

27. Translated by Garcia-Peltoniemi, 1990.

to speak out freely after years of official denial was a necessary step in restoring their dignity (Mersky, 1997). Weschler²⁸ quotes a Uruguayan psychoanalyst who said "This point about *no one's ever knowing* was the very subject matter of the torturer's discourse...That's what the torture was *all about*. That's why an amnesty will be so terrible, because it will perpetuate the torture itself". The important feature of any reparative measures in this context is that they are *public*.

Part of the pursuit of reparation involves telling (or writing down) one's story. For reasons that are only beginning to be understood, it seems that such disclosure or translation of traumatic experiences into words as a testimony can have psychological benefits (Van der Veer, 1998; Smyth & Pennebaker, 1999). Based on their work with refugee survivors of political persecution, Agger & Jensen (1996) note the universality of testimony as a ritual of healing, and discuss the benefits to the individual of creating such a testimony. Allodi (1980) reports on three studies dealing with Argentinean and Chilean survivors, each of which explicitly states that the possibility of recovery from the pain begins with telling one's story and sharing it with others. Reporting on 39 survivors of torture or mock execution, Cienfuegos & Monelli (1983) noted significant relief of post-traumatic symptoms in the great majority. Apart from its therapeutic or cathartic value, they contend that the testimony itself can be a political and legal weapon. Others have proposed that written testimonies (which also play a part in pursuit of reparation) help channel the anger of survivors into constructive action (Fischman & Ross, 1990). Simpson makes the point that survivors often feel a strong need to break their enforced silence and that their testimony could in some way be the confession their torturer does not want. The final report of South Africa's TRC notes that although not all storytelling heals and not all victims wanted to tell their stories, for others, storytelling before a respectful audience and to an official body had healing potential. This is illustrated by several testimonies included in the report.

"Acknowledgement" is what happens to information when it is put on official record.²⁹ Mendez (1997) says that official acknowledgement at least begins to heal wounds. Hayner (1998) and Sveaass & Lavik (2000) also point to the psychological importance of public disclosure and confirmation by a third party. This is now an affair for the official authorities, and the individual is no longer the private bearer of the awful knowledge. In this context, compensation has an importance that exceeds its material value, in that it is a symbolic acknowledgement that serious damage has been inflicted on the individual. From a psychological point of view, according to Sveaass & Lavik, where there is no public or official acknowledgement of the truth of the survivor's story and no confirmation of the reality experienced, this situation is the continuation of the political violence. An award or reparation confirms the truth of that experience. Simpson (1993) suggests that some survivors feel a need to keep their horrific memories alive until they have been recognised by others or by society, and that when their story is ignored they feel all the more compelled to "keep the embers burning". The second main claim noted by the OMCT (1990) is that what was done to the survivors should be recognised as a crime.

Apart from whatever actual award is made, the judgment of a court (or other official body) that reparation is due is also a definition of the survivor as a worthy or deserving victim.

28. In Boraine et al, 1994, p.43.

29. Nagel makes the now renowned distinction between "knowledge" and "acknowledgement". See Weschler (1989).

Elias (1986) explores the struggles that take place around the label “victim” and the person it applies to. Miers (1983) makes the related observation that one of the main implications of the symbolic nature of state compensation is that the award defines who is seen as deserving. In a survey of victims of “ordinary” violent crime, it was found that receipt of compensation was considered important less in terms of the amount given, and more in terms of its symbolism and the statement it made (Shapland, 1984). Victims often perceive it as society’s judgment of them. “Victims see it (quite correctly) as a judgment by the state on the worth of their claim and their status as victim” (Maguire & Shapland, 1997, p.218). In a later set of guidelines, Shapland (1990) reiterates the point that although victims know the truth of their own experiences, they need recognition that they were indeed victims of the offence, and acknowledgement of that status by the community and official agencies. Raphael & Wilson (1993) ascribe great importance, in terms of the ultimate outcome, to how the society defines the violation, how it influences and prescribes a response, and how it facilitates recovery. In Colombia, it has been argued that an important part of “reparacion integral” is that victims (of repression, disappearance, torture) are publicly recognised and identified as such (Quintero, 2000).

The above point leads to another end that has been suggested and may be served by the pursuit of reparation, namely that it may help in the social reintegration of the survivor. Blackwell (1993) contends that torture is not only an assault on the individual but also on the pattern of relationships through which people define themselves and give meaning to their lives.³⁰ The historically predictable conduct of social life, he says, “has been replaced by violence, terror, and the consequently pervasive sense of insecurity” (p.735). Shapland (1990) also notes the greater isolation and loneliness felt by those who have been victimised by the state. Trust in other people is a basic need of human beings and Gerald Gray (1998) of Survivors International maintains that since the consequence of torture is to vastly reduce trust in others, “anything that restores the trust is therapeutic”. Arcel et al (2000) similarly identify as one of the most detrimental effects of torture, the social exclusion which often follows, and the distrust of others and of society that survivors feel.

In this context, interventions obviously may be needed at a number of different levels. Community and individual interventions are likely to be integrated. The process of therapy as outlined by Herman (1992) is probably crucial. The first phase she identifies as having to do with safety and trust. This may be precisely what the torturer has set out to attack (for example the application of torture as a means of preventing effective opposition in low-grade warfare, Turner, 1995). Where the survivor is left with persisting insecurity and mistrust, it may be very hard to apply one of the more effective structured interventions (Herman’s second phase). Current evidence suggests that cognitive-behavioural approaches are, in general, most likely to be effective in the psychotherapeutic treatment of individuals with trauma reactions and may be combined with anti-depressant medication (reviewed in Foa et al, 2000). Further evidence regarding the cultural appropriateness of any intervention involving torture survivors is required. Herman finally points to the need for (re)integration as the third and final phase of therapy.

30. Mollica et al (1987) found that the Southeast Asian survivors of repression and torture whom they studied perceived themselves as socially isolated in a hostile world with nobody they could rely on.

So there are increasingly effective approaches to the treatment of trauma reactions. In this context, the process and cultural appropriateness of intervention as well as the synergy between individual and social approaches are probably all especially important. These authors contend that reparation is a prerequisite for social reintegration, because it makes a statement about the survivor (that he/she was not responsible for the torture), about the perpetrator (that he/she was in the wrong), and about the survivor's "worth" in human terms.

In a statement on the United Nations International Day in Support of Victims of Torture in 2000, the director of the OMCT listed as one of the forms of "real reparation" due to survivors, their "reinsertion into the social framework". Participation in a victim-centred approach to reparation, according to Roht-Arriaza (1995), could give survivors the ability to find reintegration and thus lessen isolation.

For those survivors living in countries of refuge, pursuit of reparation may, according to Fischman & Ross (1990) play another role. They suggest that such survivors may perceive their country of exile as hostile as long as it takes no action against the repressive regime(s) in their home countries. (Simalchik (1995) says that this is the extension of the "circles of silence" into the host community.) This finding is echoed by Gonsalves (1990), who found that many of the Chilean refugee survivors of political repression interviewed in the US had a continued sense of persecution and of vulnerability as long as no action was being taken. In general victimology, this has been termed the "second insult" of system participation (Doerner & Lab, 1995).

For the individual, receipt of reparation (in whatever form) may symbolically mark the point of moving onto a new phase in his/her life (Hamber, 1998c). Berdichevsky (1995) highlights how, for many survivors, the experience of torture is seen as a reference point in their lives, a point at which their individual biography is perceived as having been broken. Espita (2000) found that for some survivors of political repression in Colombia, their imprisonment or torture created a "biographical rupture" and destroyed the facility for "critical memory". It is conceivable that the verdict and the award of reparation could permit the re-establishment of the lifeline. Helen Bamber mentions that for some survivors, the anticipation of receiving reparation centred on the hope or expectation that "it would be the end of the road, the end of the hate road".

The end of the road or the beginning?

It is likely that the actual psychological impact of receiving reparation has varying consequences for survivors. For some, it may be the final part of a personal healing journey, but for others it may only be the beginning of a longer process. Hamber (1997) assesses the impact of giving public voice to trauma at the TRC's hearings in South Africa, and warns against the simplistic assumption that catharsis through public acknowledgement of one's suffering is enough for emotional healing. Although, he says, it may have relieved feelings of guilt and gone some way to restoring the survivor's dignity, psychological healing is a personalised matter that may require a lengthy period of support from both individuals and groups. In a later paper (1998c), he suggests that while reparation may be a useful marker for the individual in his/her process of "working through" the traumas of the past, the legacy of these traumas does not simply disappear when reparation is granted.

The potential benefits to the individual of receiving reparation may be dependant on the type of support he/she receives before and after the award. This is a point which will be further explored below.

Individual and socio-political needs

Having listed the possible roles which reparation may serve on both an individual and a socio-political level, it is important to note that the needs of each may not necessarily coincide.

Some authors make the assumption that individual and socio-political aspects go hand in hand. Summerfield insists that “this denial, and the impunity of those who maintain it, must be challenged if survivors are to make sense of their losses and the social fabric is to mend” (1995, p.495). Likewise, Sveaass & Lavik contend that the moral dimension of the perpetrators’ acts “will continue to follow the victims, the perpetrators and the entire society as a dark shadow until processes for the restoration of justice have taken place” (2000, pp.38-39). They contend, rather too easily perhaps, that the same psychological dynamics occur at the individual and socio-political levels, and that the manner in which atrocities of the past are dealt with always has similar implications for the healing and self-image of the survivor and the society as a whole.

Reisman (1999) points out that in the sphere of the international protection of human rights, compensation uneasily straddles public and private law (the claimant being an individual and the defendant a State). While the compensation of the injured individual may have precipitated the legal process, centre-stage is shared with the concern for reinforcing human rights norms and ensuring the public order of the community. The reparation given must always be seen in the light of public sanctioning goals.

Hamber explores the “competing and often diverging psychological needs of the individual and the society with regards to making reparations” (1998c, p.1). In another paper with Wilson (1999), he warns that psychologising the nation is problematic. The authors caution against the subordination of individual needs to the exigencies of national unity and reconciliation, and suggest that there may be many divergences between individual psychological processes and national processes such as truth commissions. At the same time, they recognise that the two are in some ways closely bound, as evidenced by the psychological importance for some of speaking in public at the TRC hearings.

PART III EMPIRICAL STUDIES ON REPARATION

Sources of Information

What follows is a review of the relevant research that has already been published in this area. Sveaass & Lavik (2000) note a significant and continuous increase since the 1980s, in the number of treatment programmes and centres, empirical studies and theoretical reflections on the impact on the individual of experiencing torture and other deliberate trauma. As will be clear, however, research on the impact of reparation has been scarce. Since valuable insights can be gleaned from a variety of sources, this review will include literature from general victimology, from research on survivors of other human rights violations as well as torture, and some autobiographical accounts written by survivors.

Body of Personal Observations

The earliest of these can be regarded as personal case studies, coming largely from psychologists and psychiatrists who were themselves held in Nazi death camps. Although one must be aware of the individual subjective nature of the accounts, three in particular appear worthy of attention.

Viktor Frankl

Frankl's influential memoir, *Man's Search for Meaning* (1959), recounts his harrowing experience of life in a Nazi Concentration Camp. Out of these experiences he develops a theory about the psychological reactions of survivors of horrific abuses. For Frankl, the primary motivation of human beings is to find a meaning to their lives, and he quotes Nietzsche's dictum that "he who has a *why* to live can bear with almost any *how*". The horrific experiences of the concentration camp, he says, strip away all but "the last of human freedoms", the ability to choose one's attitude to the circumstances. "Under the influence of a world which no longer recognized the value of human life and human dignity...if the man...did not struggle against this in a last effort to save his self-respect, he lost the feeling of being an individual, a being with a mind, with inner freedom and personal value" (p.70). What cannot be taken away even in the worst situation is the opportunity to make a victory of the experiences, to retain dignity and to find meaning in suffering. The only way to fight the psycho-pathological influence of the camp was to identify a future goal to aim for; decay set in when the person ceased to live for the future and could see no purpose to continued existence.

Frankl observed among those who survived the camps an almost irresistible desire to talk. There was also a sense of bitterness, at the lack of feeling and the superficial responses they frequently met when they returned to their former lives. The freed prisoner, he says, often became disillusioned by the cruel indifference of the world. The feeling of meaninglessness is extremely detrimental to wellbeing, and logotherapy aims to assist the survivor to find meaning in life and its suffering. This involves a change of attitude, perhaps by creating a task or performing an act, by becoming aware of what can be done about a situation, by finding a direction, or by changing a tragic situation into one of human achievement. Frankl continually reminds the reader of the ability of survivors, in the face of unimaginable suffering, to find an inner calm and thereby to retain dignity,

and even to find contentment. There is always a residue of freedom not to surrender mentally to conditions.

Primo Levi

In the preface to his book, *If This is a Man: The Truce* (1979), Levi explains its origins in his experiences both in Auschwitz and after liberation. "The need to tell our story to "the rest", to make "the rest" participate in it, had taken on for us ... the character of an immediate and violent impulse, to the point of competing with our most elementary needs. The book has been written to satisfy this need...the chapters have been written not in logical progression, but in order of urgency" (1979 pp.15-16). He speaks of emerging with a "torrent" of urgent things to tell the world, and feeling that they ought to shake every conscience to its foundations. Yet, what emerges repeatedly in his descriptions of the time since his liberation is horror at other peoples' indifference, an indifference he had dreaded in his dreams in the concentration camp: "the ever-repeated scene of the unlistened-to story" (p.66).

Like Frankl, Levi believes implicitly that the conviction that there is some meaning or purpose in life is deep-rooted in every human being. Among those he classifies as the "saved" in the camps were those who managed to retain a long-term view of their lives, and those who retained their humanity amid the horrors of Auschwitz, reminding the author that something pure and uncontaminated still existed.

In terms of settling accounts, Levi describes arriving in Munich on his long journey home from Auschwitz, feeling that he had "enormous things" to say to every single German. Moreover, he felt that every German should have something to say to him. "We felt an urgent need to settle our accounts, to ask, to explain and comment ... Did "they" know? ... If they did not, they ought, as a sacred duty, to listen...I felt I was moving among throngs of insolvent debtors, as if everybody owed me something, and refused to pay. ... I felt that everybody should interrogate us and listen to our tale in humility. But no one looked us in the eyes" (p. 376). Later on he declares an unwillingness ever to forgive the culprit "unless he has shown (with deeds, not words, and not too long afterward) that he has become conscious of the crimes and errors ... and is determined to condemn them, uproot them, from his conscience and that of others" (p.382).

The predominant need expressed by Levi is to tell his story. So strong was this need that he began recording his experiences on the spot in the camp, even though he knew he would not be able to retain the scraps of paper, and he felt "compelled" to begin writing immediately he arrived back in Turin. The result, for the author, was "the liberating joy of telling [his] story".

Eric Lomax

"The Railway Man" (1996) is the story of Eric Lomax who was tortured during World War II by the Japanese on the Burma-Siam Railway (Lomax 1996). His memoir highlights the central importance, for him, of establishing the truth of what had happened to him and to his companions during their captivity.

He recounts how his immediate reaction following their liberation was to take statements from the survivors, "to get all the facts on paper and into the hands of the South-East Asia Command before we were all dispersed" (p.198). He also recalls his anger towards

his torturers and his feeling that he had “unfinished business” with them. Lomax was disillusioned on his return to Britain to find the public uninterested, and the experiences of the prisoners of war relegated “to the bottom of the page...already a footnote to the history of the war” (p.210). His “need to know” more about what had happened, persisted over many years until after his retirement in 1982, when it developed into an “obsession”. In particular, the need to identify those responsible for his torture led him to a “personal quest,” publishing requests for information and eyewitness accounts, and trawling through public records. He admits to having been “still consumed by the desire to make [his torturer] suffer fully the consequences of his actions” (p.242).

Lomax attributes his eventual release from anger and hatred to several things. Firstly, his experiences with the Medical Foundation, where he was amazed that the staff “cared enough to listen and observe, and to listen again”, and where he was finally able to talk about his experiences. Secondly, he came across information allowing him to identify the torturer whose face had haunted him. Finally, he made the journey to Thailand and Japan to meet his torturer, whom he questioned about his torture and that of his comrades, and from whom he received an apology. It was not enough, he says, to read and hear about this man’s remorse and desire to make reparation; he needed to see it for himself, “to see Nagase’s sorrow so that [he] could live better with [his] own” (p.241). The theme of reparation and its role in his eventual coming to terms with his experiences permeates the story he tells.

Some of the recurrent themes in these personal accounts (which, of course, are not a representative sample) are the urgent need of survivors to tell their story, and the importance of *other people listening*. The reactions of those around the survivor seem to be paramount. Truth is also central to all three accounts - the need to “record”, so that denial is not possible. Although none of these authors refers specifically to reparation in a formal sense, there is a definite expression particularly by Levi and Lomax of “unfinished business” or “unsettled accounts”, that something is owed to them by their tormenters, whether it be a show of remorse in word or deed or the according of dignity by listening to their story.

Seeking Survivors' Perceptions

As well as the personal accounts above, some relevant empirical research is reviewed in the following sections, beginning with material from the general victimology literature.

Victimology

In his discussion of victim compensation schemes in various countries, Wright (1996) laments the dearth of research into the wants of the victims, and the effects upon them of such schemes. Earlier, Reeves (1984) observed the preponderance of "unquestioned assumptions" and the assertion, despite the lack of research to support it, that reparation is necessarily in victims' best interests. Since then, some research has been carried out into this topic. From the literature on victims of "ordinary" crime, Fattah (1997) reviews a series of studies carried out in several countries in order to address the question of "what do crime victims really want?" The general conclusion reached is that victims have a greater desire for redress than for retribution or punishment, and Fattah surmises that their basic wishes and needs would be better served by a system of restorative rather than retributive justice. "In its attempt to achieve divine, metaphysical and abstract goals, the criminal justice system ignores the basic needs of the victims; it leaves their wishes unfulfilled and their desires unmet. This is particularly true of the primary need for compensation" (p.265).

Similar conclusions have been reached in examinations of British Crime Survey data. Hough & Moxon (1985) found that the principle of reparation by offenders enjoyed some public support and in particular the support of victims. Harding (1984) reviewed a number of pilot reparation projects in Britain. He found that victims were often willing to participate and, contrary to public opinion, did not necessarily demand excessive or unrealistic settlements. However, there is a limit to how far we can draw useful conclusions from this research. Doerner & Lab (1995) have found that in the case of serious violent offences more punitive sanctions tend to be favoured, either instead of or as well as restorative measures such as compensation.

Shapland's (1984) study of 278 victims of "ordinary" violent crime in Britain set out to assess their attitudes toward the criminal justice system and in particular toward compensation. She found a favourable response to the idea of compensation. Her findings also emphasised the importance to victims of the *process* and the manner in which their cases were dealt with, as opposed to the final outcome. She found a desire for status within the system, for an active and recognised role in procedures, and also for information throughout the process. The same concern with a lack of information and a feeling of being excluded from their cases was found by Kelly (1982) among rape victims. Shapland's conclusion is that the expressed needs of victims are being ignored. "If we never look at the reactions of victims, how can we discover whether suffering is alleviated, expenses or losses recompensed, moral status restored, or co-operation with the justice system increased?" (p.273).

Van Dijk (1985) carried out a study in the Netherlands on the perspective of victims (of violent crime) concerning compensation by the state or by the offender. He focused primarily on the numbers seeking and receiving compensation and not on the meanings attached to such a process. One interesting finding, however, was that a majority of those interviewed expressed a clear preference for receipt of reparation from the offender rather

than from a state agency. Although, in the case of torture survivors, this is clearly confounded by the fact that the state itself is regarded as the perpetrator, the point to note is that importance is clearly placed less upon the amount/object received than on the moral (even punitive) aspects of the reparation. The latter, according to Van Dijk, seems to have a great potential for satisfying the victim's demand for justice.

Stöf sel (1980) reports on an aftercare programme involving survivors of a 3-week hostage situation in Holland which had ended violently. He notes that some of the hostages had suffered specific financial losses as a result of the hijack but that they were not the only ones who wanted compensation. Many others, considering themselves "unpaid soldiers" of the state, also expected some form of financial compensation "as a proof of recognition" (p.240). Interestingly, the author says that in some cases this desire for compensation was "a handicap for the aftercare" because it was "practically impossible" in these cases to give any psychological help until the material problems were solved. Finally, he points out that when some ex-hostages were awarded compensation and others were not, questions arose surrounding the criteria for awards, and the price of a day in captivity.

Research exploring the impact of reparation or compensation on the victim have been almost non-existent. One recent study in the Netherlands [reported by Malsch (2000)] looked at 59 people who had received compensation for non-material damage suffered as a result of a road traffic accident. Respondents were asked how they had spent the money and whether or not they felt adequately compensated by the amount they had received. The results of this study show that the majority felt insufficiently compensated. Asked to assess whether the compensation received had contributed to a reduction in the length of time needed to deal with their suffering, the respondents estimated that this reduction would be in the region of 40%. Although one must be cautious about the reliability of the results (because the answers given were not related to the gravity of the harms suffered), this study raises some questions about the ability of monetary compensation to redress non-material damages, even in 'ordinary crimes'.

Survivors of human rights violations

In recent years, some empirical research has been conducted on survivors of human rights violations, and various survivor groups have been studied. Engdahl & Eberly (1990) review a large number of such studies, in particular those concerning concentration camp survivors and prisoners of war. The resulting data centres on the forms of torture and ill-treatment, symptoms, diagnoses and syndromes³¹, rather than on any factors that could be involved in helping recovery. The authors note that reports focussing on torture survivors (as distinct from other groups) are relatively more recent - the earliest included in their review was published in 1980. Unfortunately (for present purposes), they appear also to consist mainly of descriptions of examinations of survivors, and the key symptoms and syndromes observed.

The following sections provide an overview of some of the research and findings considered most relevant. Some studies relate to particular survivor groups, others are concerned with the situation in a specific country attempting to come to terms with its own past atrocities.

31. The introduction of the category Post Traumatic Stress Disorder (PTSD) led to increased attention to and study of survivors. One must, however, be wary regarding the relevance of PTSD research.

The "Comfort Women"

After decades of little public attention, the issue of the 20,000 women held as sex slaves by the Japanese Imperial Army during World War II has recently begun to receive exposure. These women were subjected to rape, torture, starvation, mutilation and even murder. Approximately three out of four did not survive the war (Parker & Chew, 1999). After the War, for political reasons and also because of the cultural shame felt by the survivors, the suffering of the "comfort women" was ignored. Decades later, however, a long and arduous redress movement began and still persists today.

For present purposes, the case of the "comfort women" yields some interesting insights into the meanings attached by the survivors to various forms of reparation. Beginning in 1988, survivors began to organise themselves into groups to seek redress for the wrongs they had suffered. Slowly, encouraged by the reports published by such groups, others began to come forward and give their first-hand accounts. In 1990, under pressure from groups of Korean survivors, Japan's Emperor expressed "intense sorrow" at the wrongs inflicted upon Korean comfort women. The women, however, rejected his statement as inadequate. Later that year, a total of thirty-seven organisations combined to draft an open letter to the Japanese government making the following six demands:

- That the government admit to the forced draft of Korean women as comfort women
- That a public apology be made for this
- That all barbarities be fully disclosed
- That a memorial be raised to the victims
- That the survivors or their bereaved families be compensated
- That these facts be continuously related in historical education so that such misdeeds are not repeated

None of these measures was forthcoming, and the government continued to deny its past involvement in sexual slavery. The turning point in the movement came in 1991 when one woman announced her willingness to testify and bring formal legal action. Following this first lawsuit, and the dramatic surfacing of wartime documents demonstrating the extent of military coercion and involvement, the Japanese Government appointed a committee to study the issue. Several official expressions of remorse were made, but the survivors rejected such statements as long as the Diet, Japan's Parliament, refused to issue an apology. Activists also condemned the government's failure to promise compensation.

Japan's approach to monetary redress in fact turned out to be controversial. The Government set up the "Asian Womens' Fund" which is funded by donations from private individuals and organisations and does not pay compensation to individual survivors but rather is used to improve the conditions of all the women. This attempt at a community rehabilitative approach has been severely criticised by survivors. They have argued that it is a welfare-type system based on socio-economic need rather than on moral restitution, and thus fails to take responsibility for the wrongs committed. Although some victims have accepted money from the fund, many have refused even to apply. "Comfort women" and advocacy organisations insist that the government must shoulder the entire cost and argue that the existing fund "is not redress in the form of reparations; atonement can only be achieved through money paid by the government in the form of personal

compensation, along with a formal apology from the Diet" (Brooks, 1999, p.89). Many have also refused to accept payments in the form in which they were offered, because that form did not signify an adequate acceptance of responsibility and atonement for the wrongs done. Brooks suggests that ignoring the wishes of the "comfort women" (by denying personal compensation in favour of community rehabilitative measures) adds insult to an injury too long denied.

The two most significant issues (for current purposes) arising from the case of the "comfort women" are that the desire for reparation can resurface after decades of silence, and also that money in itself is not sufficient for many.

An East German study

Borneman (1997) presents an ethnographic study of the work of an East German Commission of Vindication/Rehabilitation.³² At a time when the courts could not handle the number of claims regarding past injustices, such commissions were set up in many workplaces and dealt with such wrongs as criminalisation and imprisonment for attempting to flee, defamation, persecution and the forced giving up of children for adoption. As remedies, they most often recommended formal apologies, adjustment of lost pensions, or "economic compensation" for particular losses. Their principal function was to right a wrong and thereby to re-establish the dignity of the survivor. Borneman observed Commission proceedings, interviewed its members, and administered open-ended questionnaires to those who appeared before it, in order to evaluate the work of vindication. His findings are useful, especially because he includes examples and quotes from individual respondents. The individuals concerned were divided over whether they felt their dignity had been restored and many were dissatisfied with, for example, the amount of compensation received and the refusal of perpetrators to apologise. One woman appearing before the Commission reported feeling "alone at the head of a long table", forced to "talk and answer questions, was questioned, felt interrogated, they are sitting like a court" (p.129).

Based on responses following the actions of the Commission, and on the criticisms levelled at it, Borneman concludes that the central condition for survivor satisfaction entails both raising the status of the survivor to that enjoyed before he/she was wronged *and* correspondent condemnation and lowering of the unjustly elevated status of the perpetrator. He also found that despite recognising the Commission's measures as inadequate to fully redress the wrongs, nearly all of those who appeared before it still regarded its work as an essential aspect of justice. The public nature of the Commission was found to be important to the survivors, who expressed some dissatisfaction both at the disinterest of the wider public, and at the fact that the determination of the Commission held no juridical validity.

32. Such Commissions operated from 1989 to 1994 to restore the dignity of victims of the previous regime.

Japanese-Americans

Nakayama (1999) discusses a survey carried out by Maki which is particularly important (despite its small scale) as it is one of the few studies of survivors carried out *after* receipt of compensation (each survivor was awarded \$20,000 in 1998). The study sought to ascertain the actual and perceived effects of reparation on elderly Japanese Americans in the Los Angeles area: how the money had been spent, and whether or not the awards had changed the lives of the recipients. The findings suggest that although the survivors' lives had not been dramatically changed, a majority still considered the symbolism of the payments important. One of the most common reactions to the payments was the feeling that the US government had at last recognised that an injustice had been committed. Regarding the question of whether or not an apology alone would have been sufficient, responses were mixed. 32% felt that an apology without monetary payment would have been meaningless, but another 27% stated that an apology on its own would have sufficed.

Rosewood Massacre Survivors³³

Yamamoto's (1999) research into the views of survivors of the Rosewood Massacre reveals that their reactions to the eventual granting of reparation were very mixed. For some, he says, the bitterness felt during the long struggle for reparation was lifted and they felt a sense of peace. Others, however, reacted negatively. Many found the entire reparation process extremely frustrating, and fewer than seventy of the four hundred applicants for property claims actually received compensation. For those who did receive it, the amounts were so small that the money "was neither life changing nor healing" (p.58).

Internees in Northern Ireland

Daly (1980) bases his paper on his experience as a psychiatrist in Northern Ireland during the 1970s. The survivors concerned are those who were arrested, interrogated and interned by the security forces during the early 1970s on suspicion of withholding information about IRA activities. The experience of those arrested varied considerably, but some were exposed to isolation and sensory deprivation, deprived of food and water and made to stand for extended periods. Others reported severe beatings and threats.³⁴ Hundreds of civil claims were taken, many of which led to compensation. The most severe cases resulted in payments ranging from £10,000 to £25,000.

Although Daly discusses the benefits of compensation, he notes that those eager to pursue litigation were in a minority. The vast majority, he says, were extremely ambivalent about taking action, principally due to concern about stigmatisation. It is important to note this factor in the context of continuing conflict; many survivors felt that their

33. The 1923 massacre took place when white mob violence destroyed a predominantly black Florida hamlet and state law enforcers either participated or failed to intervene.

34. An inter-governmental case was brought by Ireland against Britain at the European Court of Human Rights which resulted in a finding by the Commission that torture had occurred. The Court later decided to use instead the term "ill-treatment".

experiences had already singled them out as “marked men” who somehow deserved what had happened. Also significant is the fact that this research, the focus of which was the effects of measures of reparation, concerned itself also with those who did *not* pursue cases. Daly reports that compensation applicants often felt in a dangerous position, and that the publicity surrounding some cases resulted in further stigmatisation of survivors as psychologically handicapped. He mentions the fact that most settlements took place out of court, enabling the British authorities to avoid exposure of the individuals responsible for the illegal activities. What is not explored, however, is the impact of this situation on the survivors and on their motivation to pursue a case. It could be that because the judgments did not reveal and record the “whole truth”, or because the practices could still be continued, the measures were not perceived as adequate by the survivors.

Based on his findings, Daly concludes that compensation plays an important role in what he calls “secondary and tertiary prevention” in cases of torture, meaning that it can help reduce the impairment or disability brought about by torture. Among the effects of financial compensation, according to this study, were that it in some measure helps to restore confidence in human nature and that it provides a sense of having “got one’s due”. Feelings of resentment and hostility were also lessened.

A broader study of survivor groups

Danieli’s study (1995) is a more wide-ranging exploration than the others reviewed here, covering several survivor groups from different countries and situations. It begins by recognising the enormity of the task of designing meaningful measures for redressing horrific experiences suffered in the past. The study is based on survivors’ testimonies and includes direct quotes, one of its specific aims being to convey “what the *victims* themselves feel is helpful or not”. Survivors (including Holocaust survivors, Japanese-Americans, and survivors of repression in Chile and Argentina) were interviewed in order to understand more fully the experience of receiving reparation and/or compensation, what survivors felt was helpful (or not), and the psychological meanings of compensation.

Holocaust survivors, it was found, often experienced the pursuit of “Wiedergutmachung” (compensation) as a set of additional hardships and continued persecution. One survivor quoted describes his experiences, the indignity of having to prove his worthiness, the insult of the amount he was offered, and the emotional energy absorbed by the constant stirring up of painful memories. Danieli found disagreement among survivors over whether financial compensation should be accepted at all. For some, the money is a practical necessity; for others it is not needed, yet they insist upon it for symbolic reasons. The interviews show differences in perceptions even among victim groups within the same country. In Argentina, for example, many of the Madres officially refused economic reparation offered as an attempt to buy their silence whereas many former prisoners regarded the payments as their rightful reparation for their suffering.

Among Japanese-Americans, Danieli concludes that the \$20,000 received was seen as vindication after such a long period of time. The amount itself was a token, less important than the acknowledgement it signified. In general terms, Danieli argues that what victims want, above all, is *public acknowledgement of a debt*.

Chile

Turning now to countries where there have been large-scale attempts to deal with the atrocities of former regimes, there have been some valuable findings regarding the wants and needs of the survivors. There are two principal sources of information from Chile on survivors' perceptions of reparation:

- (a) The Chilean National Commission on Truth and Reconciliation (1993) made a series of proposals for reparation, outlining the measures it regarded as just in order to address the violations of the past. While survivors of torture did not fall under the Commission's definition of those entitled to reparation, the consultative process in which the Commission engaged warrants attention. The Commissioners attested that many of the victims who attended sessions throughout Chile perceived the very setting up of the Commission as an initial gesture of reparation. The report also lists some of the contributions made at such sessions. Their common features include the desire that expressions of reparation be made publicly and that the good name and dignity of each victim be restored. The information gathered and the body of suggestions received indicated that certain reparation measures deserved more immediate attention than others. Notable among these was the perceived need among survivors for some symbolic gesture to restore the good name of victims and to ensure that no such violations would occur again.
- (b) There is a body of psychological literature from Chile concerned with survivors of human rights violations. Becker, Lira, and colleagues, based on their work with survivors of political repression, have insisted on the limitations of psychotherapy, and the necessity of social reparation. Without the latter, they argue, "the traumatic experiences of political origin, which have resulted in psychological harm to either the individual or the family, can only be partially elaborated. Individual reparation as a product of therapeutic intervention, remains necessarily and inevitably inconclusive" (1989, translated by Garcia-Peltoniemi (1990)). In another paper, Becker et al argue that "victims know that individual therapeutic intervention is not enough. They need to know that their society as a whole acknowledges what has happened to them" (1990, p.174).

The Former Yugoslavia

Kutnjak Ivkovi (2001) explores victims' perceptions of the International Tribunal for the Former Yugoslavia (ICTY), in terms of its fairness and its delivery of "justice". Although the issue of reparation is not explicitly addressed, his research sheds some light on what victims in this situation perceive as "fair" or "just". The author investigates what features the ICTY should incorporate in order for the victims to feel that justice has been served, and discovers that highest importance was attributed to objectivity, professionalism and independence. Also, in accordance with the basic premises of Thibaut & Walker (1975) about procedural justice, it appears that perceptions of the *procedures* of the Tribunal have an independent effect on satisfaction with, and perceived fairness of, its decisions. When respondents criticised the tribunal or questioned its fairness, they expressed concern that the principal perpetrators would not be tried, and that the justice seemed too slow. The overwhelming majority thought that the decisions would be, or were, just, but some expressed dissatisfaction over the leniency of the punishment meted out. It is interesting to note that a large proportion (over half) of the respondents perceived retribution as the most important purpose of punishment. One of the conclusions the study reaches about the process of the ICTY is that in order for victims to feel as though a measure of justice has been achieved, it is critical that they are kept informed about the Tribunal and its activities.

South Africa

The transition of power in South Africa over the past decade, and the attempts to deal with the legacy of past atrocities has become a rich source of relevant material. One of the tasks of the South African Truth and Reconciliation Committee (TRC) was "to implement measures aimed at the granting of reparation to, and the rehabilitation and restoration of the dignity of, victims of violation", to this end, a Reparations and Rehabilitation Committee was established. Repeatedly insisting that its work was victim-driven, the Committee engaged in an "extensive, sluggish and drawn out consultative process" (Fernandez, 1999, p.176) before issuing its recommendations, one aim of which was to ascertain the needs and expectations of victims. (Ironically, this process has been criticised, on the grounds that immediate needs were ignored during the discussions; some victim groups also alleged that their voices were given insufficient weight relative to other groups.) The hearings revealed that the needs of victims and families varied. Some wanted financial assistance while some demanded punishment of the perpetrator(s), and others simply wanted a tombstone as commemoration. The TRC (1997), formulated community rehabilitation programmes based on the needs expressed by the victims in their statements (TRC 1997). Over 90 per cent asked for a range of services such as education, medical care and housing. The South African case is perhaps unique in the sense that granting amnesty to perpetrators denied survivors the opportunity to pursue any form of civil claim. The immense scale of the violations allowed consideration of collective, community-based measures of reparation.

There have been three very significant research papers from South Africa. Two of these were produced by the Centre for the Study of Violence and Reconciliation (CSV) and the Khulumani Victim Support Group. The first (1998) was based on eleven workshops which aimed to elicit the views of a sample of survivors concerning the TRC's final recommendations, with particular regard to reparations and rehabilitations. The total number of participants was 560, and the views expressed were of survivors' own perceptions of the situation as it affected them.³⁵ The report found that a majority of participants regarded reconciliation and reparation as integrally linked, and that there could be no resolution without some form of reparation. Also of concern were the ongoing psychological problems of survivors and the lack of mechanisms for their continuing support. Participants generally were in favour of symbolic reparation to help do away with the legacy of the past. Based on the TRC's draft material assistance programme, the survivors were asked what they thought of potentially receiving the proposed amounts. In general they were found to be supportive and felt that some of their needs would be adequately addressed. The most common reservation expressed concerned the length of time before the proposed amounts were to be received. Brandon Hamber (1997), however, urges some caution in interpreting the apparent satisfaction of the survivors with the monetary amounts offered, because of their poverty (in which case any amount of money would be welcomed) and their lack of information with which to compare the offers made. Desperate need, he says, may have stifled criticism.

35. One reservation which is raised by the authors is that those who participated were likely to have interacted in some way with the TRC and to be relatively more informed and politicised than the general population of survivors.

He also raises the possibility that dissatisfaction may increase as time passes and the financial impact fades. In general, his contention is that the participants may not have been in a position to make an informed decision on the adequacy of the proposed measures.

The second CSVr paper (2000) again discusses the views of survivors on reparation, this time two years after the TRC final report. Interestingly, the authors note a shift in perceptions. At the time of the first study, people thought about reparation primarily in terms of their immediate needs arising from the traumas suffered, for example medical treatment, reburial of bodies or erecting of tombstones. The idea of restitution was seldom expressed, and the authors suggest that it was beyond the belief of most that the damage could be repaired or that they could be returned to the financial position they had lost. Feelings of entitlement to restitution or demands for large sums of money were not usually expressed. However, according to the second piece of research, the passage of time, combined with the treatment of both victims and perpetrators, led to a change in victims' attitudes toward and expectations of reparation. In particular, seeing the granting of amnesties and legal assistance to perpetrators while most victims had no assistance with their statements to the TRC, or with challenging its findings, led to a certain bitterness. The authors conclude that these factors have led to a situation where "victims now understand that it is only through reparations that there could be any sort of equity and justice resulting from the TRC process" (p.2). Victims, it seems, are still waiting for a "fair deal" and are increasingly likely to regard reparation as the only route that may yield this.

The third significant piece of research is Simpson's (1998) evaluation of the TRC process. He found that the needs of victims were complex and changed over time, particularly when it came to the issue of reparation. For some, principal desire was for information; for others it was for widespread public acknowledgement of what had happened to them. Some rejected the TRC process entirely, including any form of reparation, as an inadequate substitute for punishment, and demanded "full justice"; others wanted direct confrontation with the perpetrator(s). Simpson found that the needs of some survivors were personal and private, whereas for others the goal was community-based or political vindication. He also found that needs changed over time for the same individual. As the prospects of material reparation became more real, so too did the demands of some survivors for monetary compensation. The TRC's reparation provisions, Simpson asserts, were hotly contested, "dominated by competing interpretations of what survivors wanted and needed from the process, but in which the victims' themselves have often been silenced". He contends that monetary reparation raises many difficulties for survivors, including resentment at having to prove their qualification to receive awards, and the measuring of their sufferings in terms of the amounts granted. Significantly, Simpson states that strictly collective or symbolic reparation often does not address individual needs, and that the TRC often underestimated "the passion associated with the monetary expectations" of many survivors.

The most glaring gap in the information from South Africa is the lack of research into whether or not reparation and rehabilitation measures have in fact helped in "the rehabilitation and the restoration of the human and civil dignity of victims" and had "a meaningful and substantial impact on their lives" (TRC, 1998, p.170). Hamber (1997) laments this situation and contends that the emotional needs of many survivors remain unmet. The failure of the TRC to deliver on the many proposals it put forward is well documented. It may be the case that some, who had begun to hope that they would receive some form

of reparation, did not in the end do so. The effects of this on the survivor and his/her rehabilitation have not been investigated.

Need to “face” the perpetrator

In studies of victims of “ordinary” crime, it has been found that the victim often expresses a desire to meet or to “face” the perpetrator (for example Galaway, 1985). Braithwaite & Mugford (1994) point out that the legal processes common in modern society have “sanitised” such opportunities out of the equation. In his case study of a specific South African community during the TRC process, Van der Merwe also finds that for victims there is often a need to have personal interaction with the perpetrator. “They want to be able to call that person(s) to account personally. They want to be able to relate their suffering and demand an explanation” (1998, p.4). He also recounts findings from other communities where victims reported a great sense of empowerment that went with the ability to stand up to one’s victimiser. Such findings echo the writings of Eric Lomax who experienced relief by returning years after his torture to the Far East to meet his torturer face-to-face. Helen Bamber, based on her experience with victims, likewise highlights the importance for some of them of facing their torturers. In this context, she suggests, reparation may appear a “cop-out” to some victims because its mechanisms do not afford them the opportunity to confront the perpetrator.

PART IV GAPS IN INFORMATION

In his study on the right to restitution, rehabilitation and compensation, van Boven (1993) begins his conclusions by observing that the “perspective of the victim is often overlooked”. He speculates that many authorities may consider it “a complication, an inconvenience and a marginal phenomenon”, and insists that systematic attention must be paid to the issue. Although previous research has yielded some important information about how survivors of various wrongs view the issue of reparation, there remain significant areas in which our information is less than complete.

Analysis of Survivors' Needs

To some extent psychological studies of victimisation are helpful in evaluating survivors' needs, but as Engdahl & Eberly (1990) again note, far more is known about the traumatic effects of maltreatment than about what measures can be helpful in the recovery process. “There remains little research on whether various intervention techniques have long-term effects or on which models are best” (Young, 1997, p.201). This is particularly the case when it comes to the effects of such reparative measures as restitution. Doerner & Lab (1995) review the research and find two waves of evaluations of reparative schemes. Initially, process evaluations focussed on the number of cases handled, time taken, etc. Later, outcome evaluations looked at the impact on victims, but this was largely confined to assessing the amounts awarded. No attention was paid to the psychological impact of restitution or the meanings attached to it by its recipients. Raphael & Wilson (1993) also lament the fact that there is as yet a dearth of systematic investigation and documentation of the effectiveness of the many approaches to dealing with the problems of torture survivors. Gonsalves (1990) interviewed 32 exiles who had survived political repression (including torture) in Chile; however, his research focussed entirely on cataloguing the effects of their experiences, and paid no attention to any measures aimed at alleviating such consequences. The same is true of the study of 55 tortured political ex-prisoners in Turkey undertaken by Basoglu & Paker (1994). A mere catalogue of medical and/or psychological effects of torture, according to Sveaass & Lavik (2000), ignores the essential moral dimension, and the need for moral rehabilitation. Jacobsen & Vesti (1992) confirm that Amnesty International's studies in the 1970s concentrated on proving that torture had taken place, and then on identifying its effects. It was only more recently that attention switched more toward the question of how best to remedy the damage.

Concerning the specific issue of reparation, there is an abundance of accounts listing the “need for acknowledgement” or “restoration of dignity”, and of prescriptive writings without any evident grounding in the experiences of survivors. Even articles purporting to address this failing fail on closer inspection to do so. Drinan & Kuo (1993), for example, set out to explore “what the The Torture Victims' Protection Act (TVPA) means to victims of torture and to the field of international human rights”. Their analysis, however, is confined to the legal significance of the act, and not to any subjective perceptions of its meaning or importance. Hayner (1994), in her comparative study of fifteen truth commissions, sets out to assess their adequacy and effects; she does not however include among her criteria the perceptions/attitudes/opinions of survivors.

Unfortunately many of those whose writings are based on their experiences of working with torture survivors fail to address the question of reparation. Berdichevsky (1995), of the Canadian Center for Victims of Torture, lists the factors he sees as facilitating recovery in the long term. Neither reparation, nor any form of acknowledgement/vindication features in this list.

Follow-up Studies

A major gap in the literature found to date is in the area of follow-up studies of survivors who have (or have not) received reparation. In the absence of studies into the effects of reparation, one is faced with speculation and generalisations. Garkawe (1997), for example, argues in favour of monetary compensation for Australia's "stolen generation", saying "I believe this can have a significant positive psychological effect on recipients. Anecdotal evidence suggests that crime victims benefit psychologically from a victim compensation award, and by analogy, this should also be true in respect of the stolen generation" (p.278).

Some of the interviews carried out in preparing this report have suggested that although receiving reparation can bring a certain amount of satisfaction and vindication for some survivors, it may not do so for others. Kerim Yildiz of the Kurdish Human Rights Project (KHRP) discussed two cases in particular where monetary compensation was received from the Turkish government for imprisonment and torture. One survivor was a wealthy, educated man, the other a villager who lived in relative poverty. Neither found relief when their case was concluded; indeed both continued to have serious, even worsening, psychological problems. Dr. Perren-Klinger³⁶ expressed her own opinion that in many cases receiving reparation often does not make a big difference to the survivor. "They fight for "their right" to be recognised and compensated; once it is done, the breakdown comes". She also noted the lack of research in this particular area. For present purposes, it would be very valuable to have information on the perceptions of those survivors who have pursued cases, and what change (if any) they regard it as having brought to their lives. Such information is of immense importance to organisations seeking to provide assistance to torture survivors.

36. In personal correspondence, March 2001.

Pursuit of Reparation as a "Way of Life"

One issue not dealt with in the literature, but mentioned by several of those to whom I have spoken, is the importance that pursuit of reparation can assume in a survivor's life. Helen Bamber, for example, referred to a specific group of Holocaust survivors for whom compensation and reparation became what she called a "compulsive need". She described their "campaigning zeal" and spoke of them being in "battle mode", "energised" by the struggle against the perpetrator.

Based on his experience as a lawyer, Geoffrey Bindman pointed out that for some survivors, the legal case can itself become a focus, a way of dealing with their problems, a way of keeping hope alive. Although this can be beneficial, he said, it can only be maintained while the case continues. The same can be true, he suggested, of relationships built up during the course of the litigation, between the survivor and lawyers and others involved in advising or supporting him/her. Such contacts can assume a far greater importance in the life of the survivor than in the life of the other party, leading in some cases to a kind of dependency when the case is concluded and the basis for the relationship disappears. Kerim Yildiz (KHRP) remarked that although reactions to case conclusions obviously vary, many survivors helped by his organisation continued their contact with it or became involved with other human rights organisations after their cases ended. Many of these were people who had not been active in such a way prior to their torture. One survivor, he recalls, set up a website telling his story and giving a chronology of his entire case against Turkey in the European Court of Human Rights.

Future research should look more closely at how important the pursuit of reparation becomes to the survivor, and at what then happens when the case concludes. Such information could help in the development of better support services for survivors during and after the process. Jerry Gray (of Survivors International), for example, has suggested that support systems may make an enormous difference to the survivors' view of the value of reparation.

Survivors' Expectations Surrounding Reparation

The question of survivors' "expectations" is an important one. Previous studies (outlined above) have not explored the expectations of those pursuing reparation, either before or during the process, and such knowledge could help those in supportive or advisory roles to better prepare their clients for the process, the ultimate aim being to reduce levels of disappointment and disillusionment when the case is concluded.

Some interviewees who work with survivors have expressed certain reservations about the pursuit of reparation. These reservations arise from their observation of survivors whose expectations are unrealistic in terms of the likelihood of their receiving reparation, the form/extent of the eventual award, the length of time the process will take, and the difficulties involved in the procedures. Some of those interviewed even suggested that raising the person's expectations, however unintentionally, may in the end cause further hurt or damage if those expectations are not met. Geoffrey Bindman remarked that his clients have frequently had unrealistic hopes. Some, he said, have made "absurd" demands for specific amounts, probably reflecting the anger they feel toward their torturer(s).

Hamber (1995) is perhaps the only author to broach this topic. Discussions about expectations and reparations, he says, were among the most fruitful held by the Khulumani Survivor Group workshops. Wishes and expectations varied widely, from those who would be satisfied simply with an admission of the truth, to others who wanted to see the perpetrators brought to justice. Hamber says that "the ultimate form of compensation would be to meet these needs, and conversely, *the greatest disappointment and frustration would be to fail to do so*" (emphasis added). Expectations need to be mediated.

What if the pursuit of reparation is unsuccessful?

REDRESS emphasises in its philosophy that *successful* attempts at redress play an important role in the healing and empowerment of torture survivors. Neve Gordon (1994) in his strong support for the rehabilitative potential of pursuing a civil claim, also places emphasis on "success". The lower burden of proof required of a civil (versus a criminal) case increases the likelihood of success which, he says, is a very important concept in the survivor's healing process. Success leaves a feeling that some sort of justice has been achieved, and also that it has been witnessed in court.

The fact that an award of reparation symbolically affirms the survivor's status and the worthiness of his/her claim, raises the possibility of its reverse. If a claim is pursued but is *unsuccessful*, the result could be profound disillusionment, or worse. The survivor may perceive their story as having been declared untruthful, or themselves as being thought unworthy. The Reparations and Rehabilitation Committee in South Africa recognises the need to give attention to those who exited the TRC processes without having been found to be "victims", and the possibility that this might constitute yet another traumatic experience for them.

The survivor who engages in a public legal battle, says Herman (1992), must not be deluded into thinking that victory is inevitable, but "must be secure in the knowledge that simply in her willingness to confront the perpetrator she has overcome one of the most terrible consequences of the trauma" (p.211). In reality, this might not be so simple.

To date, authors on the subject of reparation have made no mention of the outcome, in terms of healing or rehabilitation, if the case fails to secure a favourable judgment. Given the numerous obstacles to success in cases of human rights abuses, this appears to be an extremely important issue. Helen Bamber (1995) points out that failure in a case can have profound (even devastating) effects and can compound the original defeat (by their captors or torturers). For this very reason, she suggests, Holocaust survivors dread being rendered helpless again by losing their cases. "Not winning the battle is another defeat." Interestingly, Geoffrey Bindman suggests that survivors may interpret "even 99% success" as failure. Survivors, he says, often regard their cases in "black and white" terms. Courts, however, tend not to do so, and judgments sometimes involve an element of compromise or a partial vindication of the perpetrator. Such situations can cause immense disappointment for the survivor who may have expected 100% success and vindication.

What if the judgment is unenforced?

Even in cases where the court finds in favour of the survivor and makes an award of reparation, the reality is that the judgments often remain unenforced. No mention has been made in the literature to date of the effect on the survivor of this situation. Is there any "resolution" for the survivor in the judgment alone?³⁷ Or does the failure to actually provide the reparative measure(s) compound the sense of injury?

One Peruvian family, whose son was "disappeared" by the security forces in 1990, took its case before the judicial system in Peru and later before the Inter-American Court of Human Rights. In 1998, the court found the Peruvian Government directly responsible, and ordered that reparation be paid - that those responsible be brought to justice and that their son's remains be returned to the Castillo family. The judgment was ignored, and last year the family made a statement: "Is it not a refined form of permanent torture, an evil objective, to leave the authors of the crime unpunished and leaving the victims discouraged?... Before we die, we would like to take a final taste of justice to our tombs and not the idea that the world is some dark omen where justice is nothing more than words".

There is little value in the finding, reached by most of the above research, that the wants and needs of survivors are complex and vary widely. There are, however, some interesting and important points raised by the studies outlined above. Among them is the observation that survivors may experience some dissatisfaction both during and after the reparation process. The reasons for this must be better examined, as must the need for adequate preparation and support for the survivor, and the question of how best these might be delivered to the benefit of the survivor. Another issue that emerges is that combinations of reparative measures may be important in satisfying the survivor in the reparation process. Also emanating from some of the research is the observation of the importance to many survivors of the *public* nature of the judgment or award. These three issues should be examined in greater detail.

37. Lutz (1995) suggests that even in situations where monetary reparation is delayed or impossible on a large scale, the very process by which a state acknowledges that the survivor is legally entitled to reparation "is likely to help restore that person's sense that justice is being done and may have a positive impact on his or her mental health" (p.560).

PART V
ISSUES TO BE ADDRESSED
IN ANY FUTURE STUDY OF SURVIVORS'
PERCEPTIONS OF REPARATION

The Difficulties Associated with Pursuing Reparation

The traditional victimology literature often refers to the hazards that can face the victim when confronting the “system”. Doerner & Lab (1995) and Smith & Hillenbrand (1997) warn that this may involve another ordeal which exacerbates or heightens suffering. Many programmes are devised on what officials think their clients need and not necessarily on what victims themselves want or need. There are, she says, some benefits in civil litigation, but some suffer greater damage as a result, in the form of further psychological and emotional harm. Further insight into this area could help in designing more effective support and advice.

Danieli (1995) points out that the process of applying for reparation can be a traumatic experience in itself. She raises the possibility that, far from restoring the dignity of the survivor, pursuit of reparation may protract victimisation, particularly because claimants need to prove their own worthiness for an award. The process can, she suggests, stir up memories and drain emotional energies. Wise (1993) recounts the hysteria of some Holocaust survivors when they were asked to recall painful memories of persecution and torture in pursuit of reparation.

In the decision to distribute reparation collectively to Japanese Americans (who had been interned during World War 2), several inadequacies in the process of individual claims were put forward. Most relevant for present purposes was the argument that individual approaches would unnecessarily open wartime wounds. The inevitably adversarial character of such cases, it was suggested, would lead to the nature of the pain and suffering undergone by the claimants being contested (Reisman, 1999). Doerner & Lab (1995) echo such concerns, claiming that the type of examinations (physical and interrogatory) that survivors must undergo in pursuing a claim could cause them further psychological and emotional harm. Recognising this, the Center for Justice and Accountability³⁸ includes as one of its objectives appropriate referrals for psychological, medical and social services to its clients, “assisting them in overcoming the aftermath of their experiences and *in coping with the sometimes long and difficult course of legal action in the pursuit of justice*” (emphasis added).

Bouhoutsos (1990) questions the assumption that the process of reliving pain and sharing feelings about it *necessarily* facilitates recovery. Victims, he reminds us, are widely disparate. According to de Ridder’s (1998) discussion of South Africa’s Truth and Reconciliation Commission (TRC), the psychological responses of survivors to its processes were mixed. Many reported an initial sense of relief at having unburdened

38. This centre was formed in 1998 in San Francisco. It provides legal services to those who have suffered human rights violations, seeking to punish violators and pursue redress for survivors.

themselves; however a worrying number found that in the weeks that followed there was a return and intensification of symptoms associated with the original violation, as well as the onset of new symptoms which may have been associated with a retraumatisation. Hamber (1995) also points out that giving testimony does not necessarily restore the dignity of the survivor nor yield feelings of resolution. The feeling that one's story is not believed, he says, can be a potentially psychologically damaging experience and support should be provided for those undergoing the legal process.

Sr. Dianna Ortiz, who was abducted and tortured by Guatemalan security agents in 1989, spent several years demanding justice. She filed a lawsuit against the Guatemalan government and called for an investigation. She also held a five-week vigil outside the White House, demanding the declassification of documents on her case and those of others in Guatemala. She made a statement last year, outlining the painful flashbacks and harrowing consequences for her of prolonged interviews during which she was accused of lying. Eventually, she was no longer able to subject herself to further trauma brought on by the investigators' questions.

Raphael and Wilson (1993) criticise the lack of systematic research into the effectiveness of various forms of assistance offered to survivors. They further raise the possibility that compensation may *not* help the survivors' recovery. If the desire for compensation and/or revenge dominate, moving on may prove very difficult for the individual. Herman (1992) suggests that for some, the focus on the goal of compensation can tie their fate to that of the perpetrator(s) thus delaying their recovery, and Fattah (1997) echoes this point.³⁹ Neve Gordon (1994) similarly suggests that the struggle for compensation may have an adverse effect on the survivor, motivating him/her to maintain the disability in order to substantiate his/her claims. Based on her own experience, Dr. Perren-Klinger⁴⁰ expressed her personal opinion that the reparation "business" can be a dangerous one when it is too protracted. This means, she says, that the traumatic events "go on, leading to chronicity" (permanent malaise). Given the long period often involved in such cases, this is a worrying possibility; however Lillich (1993) points out that in the USA the unlikelihood of immediate enforcement of judgments has not deterred plaintiffs. It would, nevertheless, be useful to investigate survivors' attitudes to such delays and how they might affect the potential benefits of pursuing reparation.

Herman's (1992) detailed exploration of recovery from trauma suggests some difficulties which may be encountered even by those whose cases *are* successful (in terms of their being awarded reparation). As the survivor sheds his/her victim identity, Herman argues, "ordinary life" may feel strange, boring, even a letdown. "Letting go of the need for intensity" (p.203) may not be easy. Stauffer & Hamber (1996) insist on the need for a follow-up, monitoring stage *after* reparation is received, thus ensuring that the proper support

39. Some have gone as far as to assert that the desire for compensation can be the *cause* of "traumatic neuroses" (Matussek, cited in Engdahl & Eberly, 1990). There is, however, a suggestion that such attributions came from review boards resisting large-scale compensation claims.

40. In personal correspondence, March 2001.

structures are in place for the further recovery of the survivor. De Ridder (1998) also criticises the inadequate provision made for professional psychological counselling for individuals who went before the TRC to tell their stories. Some of them, she found, were further traumatised by the experience. Hamber (1995) argues that although reparation *can* be a psychologically healing process, it is imperative that such processes are accompanied by the support of appropriate services for those who may as a result find painful memories unearthed or experience feelings of bitterness or anger.

Future research should explore the perceptions of those who are going through (or who have gone through) the procedures of pursuing reparation. Once again, one finds that authors make statements that are in fact hypotheses about what is “best” for survivors. Garkawe’s (1997) paper on reparation for the “stolen generation” of Australia suggest that an administrative tribunal is a far more appropriate mechanism for dealing with such cases than use of the court system. An administrative tribunal could be more informal and culturally sensitive, less adversarial, and could incorporate support services for victims as part of its structure. Garkawe’s paper makes interesting points but the basis for his findings is entirely unclear, and no mention is made of the views of survivors themselves.

Process Versus Result

Some of the theories outlined above, as to how reparation is supposed to benefit the survivor of torture, emphasise the importance of the *end result* whereas others stress the effects of the *process* of seeking reparation. Do the benefits derive only from the judgment delivered or rather from the actual measures received (monetary or otherwise)? Are the procedures involved in pursuing a case also perceived as important by survivors?

Some useful insights can be gained from research (largely from the United States) into procedural justice. The premise is that in encounters with the law, people are sensitive to the process and procedures they experience. Lind et al (1990), for example, concludes that the dignity accorded the individual during the legal process, the opportunity to make his/her case to a decision-maker, the degree of control the person has over the procedure, and its symbolic aspects (rather than the outcome), are all important determinants of the satisfaction experienced by the individual in his/her encounter with the law. The authors speculate that respectful treatment and dignified court ceremony lend importance to the individuals’ cases and hence function as a symbolic form of satisfaction.

In Britain, Joanna Shapland (1984) carried out a survey of victims of so-called “ordinary” violent crime who were pursuing their cases in court. She found that for victims, the significance of the treatment they received from the authorities was of prime importance. Their assessment of the concern expressed by the authorities and the extent to which they felt they were kept informed were greater predictors of satisfaction than the ultimate verdict. The reverse of this is that compensation cases may be counterproductive if the process involved in their pursuit involves excessive or too searching application procedures (Roht-Arriaza, 1995). In the guidelines she drew up for the UN (1990), Shapland again emphasises the point that the procedures with which victims have to contend are very important in determining the degree of satisfaction they achieve.

Daniels et al (1991) trace the development of the movement for reparation among Japanese Americans. Once the drive for redress had begun and even before the

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Commission was created, it had become clear “that the therapeutic effects of the struggle for redress were important events...and would be so even if no Commission were established, even if its report papered over the truth” (p.5).

One study of work with torture survivors found a similar emphasis on process over result among respondents. Although it should be stressed that this research was not concerned with the specific issue of reparation, the findings are relevant for those who work with survivors. Elsass (1997) discusses a six-month follow-up study of torture survivors who had undergone psychotherapy. They were asked to give an account of “what they got out of” the experience. His findings again confirm the importance for survivors of the *form* of the care (in terms of trust, safety, and a supportive approach) whereas the therapists' emphasis was on *content*. Parleviet (1998) makes some interesting observations on the process and result of truth-telling (as opposed to other forms of reparation). The process is important, it is argued, because people become actively involved, regain a sense of dignity, and have their experiences validated.

Which part of the whole process of seeking reparation is beneficial to the survivor? Is it the creation of his/her testimony, its translation into a public (“acknowledged”) record, the judgment of its truthfulness/worthiness by the court, the acknowledgement by the perpetrator of responsibility, or the symbolic handing over of an object/amount? (It may of course be some or all of these).

Operational/Administrative Issues

The manner in which reparation is administered should not be regarded as a side issue. “Genuine reparation and the process of healing, does not occur *through* the delivery of an object (e.g. a pension, a monument, etc.), but through the process that takes place *around* the object. It is how the individual processes, the symbolic meaning of reparations, that is critical.” (Hamber, 1998, p.7). Zalaquett similarly emphasises the importance of ritual and ceremony when he insists that aspects of form “are so essential to convey the deeper meaning of the exercise” (1995, p.50). In an earlier paper⁴¹, for example, the same author insists that reparation must be made in such a way that it is not received as a payment or trade-off. In some countries, he points out, reparation has been offered (in the absence of truth and other measures) as a way of buying silence. This, he says, is essentially wrong and robs reparation of its potential importance.

If as these authors suggest, the manner in which reparation is delivered so greatly affects its effects on the survivor, then greater attention needs to be paid to the issue. To explore survivors' perceptions could help to maximise the benefit to the individual of receiving reparation.

41. In Boraine et al, 1994

Survivors Who Decline or Refuse to Pursue Reparation

The very nature of some processes aimed at “closure” is inherently contradictory. Hamber & Wilson (1999) point out that reparation (granted either through truth commission processes or after formal enquiries) can help in coming to terms with torture, but can also prove problematic for some who may perceive offers of financial reparation as “blood money”. There have been some notable examples of individuals and groups refusing to accept reparation on these grounds.

For some, says Bamber, “personal compensation and the winning of their rights through the legal procedures necessary for claims to such rights is important in the healing process. For others...it is humiliating and too easy a way for the state to dispose of its responsibility. If it is accompanied by impunity, avoidance and denial, it is unacceptable to many” (1994, pp.11-12). Most famously the Madres de Plaza de Mayo in Argentina split over attempts to compensate them and many declared this an attempt to buy their silence in the absence of truth or justice.⁴² The necessary feature, according to Hamber (1998c), is that any reparation offered must be tied to truth recovery. If the silence surrounding the acts remains intact, he argues, reparation will not serve the desired purposes for the survivor.

There are others whose reasons for not pursuing an available legal route are less clear. Thygesen (1980), for example, notes that among Danish and Norwegian survivors of Nazi concentration camps, only half of those rendered incapable of work through their experience had applied for compensation. Unfortunately he does not go beyond this to explore the reasons for this finding. It may be that some survivors simply regard the pursuit of reparation (and all that it entails) as something which would not meet their specific needs. Espita (2000) reports that some survivors of political repression in Colombia opted for silence and isolation, and did not want to record their experiences or to talk about them with anyone.

42. Roniger and Sznajder (1999) suggest that what is occurring is a struggle over the interpretation of recent history, with parties struggling to promote or deny hegemonic status to each other's interpretations. They quote one survivor: “There is no money that can pay for torture...there are men and women selling their conscience...” (p.199).

Are there Survivors Who Drop Out of the Reparation Process and if so, Why?

It would be interesting in any future study to investigate whether there are many torture survivors who go through the initial stages of seeking information and advice about pursuing a case, possibly even beginning proceedings, but then change their minds. To what extent might their decision have been effected by fears about the time such action might take, emotional upset and the possibility of failure?

What of Punishment? Is Reparation Presented (and Desired) in the Spirit of Reconciliation or of Punishment?

Many of the "gatekeepers" interviewed remarked that the main "want" expressed by survivors is often an unfocussed desire for "justice". There has, however, been little exploration of what this word means to the survivor. If, as Shelton (1999) claims, the concept of reparation in international law has traditionally included both a compensatory element (restitution or damages) and a punitive one, which is the more important for the individual?

Cohen states that "the act of reparation is symbolically extremely important - and may be more effective than individual punishment in meeting the victims' need for recognition of their dignity" (1995, p.24). However, it must be recognised that for some survivors, prosecution and punishment are the most important components of "justice". In South Africa, for example, there was intense conflict over the question of amnesties for perpetrators of torture. Even though truth and reparation were to be part of the settlement, some groups went as far as to challenge the constitutionality of amnesties, claiming that pardoning the perpetrators was a further act of victimisation, like rubbing salt into the wounds of the victims (Verwoerd, 1999).

What is the relationship, for survivors, between reparation and justice? Is the pursuit of other forms of reparation a substitute for criminal punishment where the latter is not possible? Very often, in South Africa for example, the choice is not open. In such cases is reparation perceived as justice in itself? In Argentina, many refused offers of compensation, arguing that without truth and justice, it was a veiled attempt to silence their demands and avoid accountability. From the opposite position, Gordon (1995) lists several reasons why, from the point of view of the survivor, civil rather than criminal proceedings are in fact preferable (more control over the proceedings, a greater likelihood of success, etc.). It may be misleading to present the division so rigidly, however. Cohen (1995), for example, lists compensation as one of the forms a "justice" approach can take.

The central criticism of reparative mechanisms is that they fail as punishment (Zedner, 1994).⁴³ Zedner traces the renaissance of reparative justice, and the evidence (from Britain at least) that many victims would welcome the opportunity to seek some reparation in place of traditional punishment. He goes on to investigate to what extent reparation including the imposition of "pain" can plausibly fulfil the purposes of punishment, and concludes that it can. He argues that the public drama of the court hearing

43. It should be clarified that Zedner does not consider prosecution of the perpetrator as a form of reparation.

or trial, the identification of the perpetrator and in particular the formal attribution of guilt can go a long way to meeting the requirements of censure. The question left unaddressed is whether offending behaviour must always be met by the infliction of further pain for justice to be done.

It is unclear what importance survivors attach to the punishment of those who inflicted their injuries. Helen Bamber (2000) suggests that for some survivors, pursuing reparation can be seen as a way of hurting the enemy, and *can* sometimes become an “ugly” process. Geoffrey Bindman (2000) also remarks that some (though not all) of his clients express a desire to inflict harm on the perpetrators. Based on his own experience, Theo van Boven expresses the opinion that prosecution/punishment of the perpetrator is indeed an important issue for some survivors, and that seeing their tormentors punished provides “some form of satisfaction”; however, he emphasises that punishment is rarely the most important measure in the eyes of the victim, and that it is secondary to establishment and public acknowledgement of the truth of what happened to them. If indeed it is important for survivors to see the offender punished, do the available forms of reparation provide an adequate measure of censure?

A related question is the impact, for the survivor who is bringing the case, of how a judgment is phrased. Lillich (1993) raises the issue of compensatory versus punitive damages in US court decisions. He quotes court decisions in which it is clear that punitive damages are imposed as a deterrence and as an expression of the depth of international revulsion at the offences. A question to explore would be the effect (if any) of such wider stated aims on the individual claimant.

The Need for Information

A separate issue is that of those survivors who have not pursued reparation for other reasons. Miers (1985) provides evidence from several countries to suggest that even in the case of “ordinary” crime (and where both perpetrator and victims are individuals and citizens of the same country), the number of eligible victims who pursue compensation schemes is often very low. This may be because of ignorance of the existence of such compensation schemes. Among van Boven’s guidelines for reparation to victims of human rights violations are measures to ensure that states make information about mechanisms for redress available.⁴⁴ To date there has been no research into torture survivors’ awareness and knowledge of their rights to reparation under international and national law, or into the mechanisms and assistance available to those who wish to pursue such rights. The UN Special Rapporteur (2000) stresses the increasing need for legal assistance to obtain reparation, compensation and rehabilitation services.

Sveaass (2000) points out that, in her experience, what survivors most often spontaneously discuss are physical and psychological rehabilitation as well as the possibility of obtaining work and earning a living of one’s own. Very rarely mentioned, she says, is “the legal side” - prosecution of the offenders or presenting a case where compensation can be given; however she contends that the reason for this situation may be “that people do not

44. See Appendix 2.

expect that anything can be done with this". During her years of experience with refugee survivors she hardly ever heard them mention financial compensation, but again her impression is that if the issue had been raised "as something that would be possible to ask for" the picture may have been a different one.⁴⁵

It must be borne in mind in any future research that survivors may not broach the issue of reparation for the simple reason that they are unaware of the mechanisms available to pursue a case, or because their expectations that anything could be achieved are so low.

Torture Survivors Are Not a Homogeneous Group

It is clear that one will never reach a definitive conclusion about the benefits of reparation. It is well documented in general victimology that the same process or procedure can and does have different meanings and results for different individuals (Fattah, 1997). What is beneficial for one person may be deleterious for another. Benfeldt-Zachrisson (1985) warns that "how, and to what extent, the terror, humiliation, loss of dignity and physical suffering will mark the victim is something that cannot be generalised" (p.343).

Determining what it is that survivors want may not be an easy matter, the difficulty being that they are many and may not speak with a single voice (Neier, 1993).⁴⁶ Berdichevsky (1995) emphasises the importance of understanding each individual as a unique human being whose needs may differ from those of others who have had similar experiences. He warns those assisting survivors against making assumptions or applying personal biases. Simalchik (1995) also says that there is no "typical" profile of a torture survivor, and that differing factors combine to influence the recovery process of each.

The following sections will outline some questions which are felt to be inadequately addressed in the literature to date. They raise variables which may effect survivors' perceptions of reparation. Any future study should consider the possible significance of each.

"Political" and "non-political" survivors

An important variable to consider when discussing survivors' perceptions and expectations of reparation is whether or not they were political activists prior to being tortured, and whether they perceive their torture as part of a political struggle. This may have important implications when it comes to their desire to pursue (or not to pursue) a case against the perpetrator(s). Primo Levi, in his personal account of Nazi death camps, describes two typical categories of survivor behaviour. Those who ended up in the camps because of

45. It is important to explore the impact, if any, of the increasing dissemination of information on human rights and available mechanisms on various populations of torture survivors. As Rita Maran (1998) remarks, people may be quite unaware that the horrors they have undergone are a matter of wide public concern, and that there are measures for which they are legally entitled to apply.

46. In Borraine et al (1994)

some political commitment, he argues, are defined by their insistence on *remembering* as a duty. They do not want to forget “and they do not want the world to forget, because they understand that their experiences were not meaningless, that the camps were not an accident, an unforeseen historical happening” (1979 p.390).

Some research has already been carried out which suggests certain differences between political and non-political survivors. Allodi & Cowgill⁴⁷ found that for political detainees there was a positive relationship between individual ideological preparation, commitment, group support and psychological recovery from trauma. Basoglu et al (1997) found that responses to torture differed between political activists and non-activists, the former suffering from less severe psychological problems despite having been subjected to more severe torture. The authors propose a role for “psychological preparedness” for trauma (see also Basoglu et al, 1994). Another study suggests that the ability to transform the experience into a meaningful one by continuing the political struggle may be an important contributor to psychological health (Basoglu & Paker, 1995). It is possible that for some, reparation may have a more ideological meaning than for others. Weschler (1990) suggests that politically active people, who were tortured for their beliefs, can rehabilitate themselves only when they return to the political struggle. He does not, however, make specific reference to the pursuit of reparation and its possible role in such reintegration. Becker et al (1990) discuss survivors who had for some time been involved in a political project that gave deep meaning to their lives. For some of these people, seeking reparation (among other activities) enabled them to transform private suffering into a part of the political struggle against repression. Making the facts public can, for some, be a politicisation of what they have experienced. It can help them to regain their identity as a political activist, a fundamental part of the self-esteem destroyed by the torturer.

Survivors remaining in their home countries and those in exile

It is important to note that most studies of torture survivors are concerned with those who are in exile, and only very few have been conducted in the country where the torture actually took place. Understandably, there may be a fear of persecution. Chilean psychologists Cienfuegos & Monelli initially published their work under pseudonyms for this reason. Jutta Hermanns (1999), who works with women survivors of sexual torture in Turkey points out that some of them are afraid to make accusations against their perpetrators because of cultural taboos, and that those who do take legal action may again be faced with repressive actions to force them to stop.

Clearly, it is unwise to make generalisations based only on the testimonies of those living in exile. It seems that the only comparative studies of survivors in exile and those in their countries of origin (as reviewed by Somnier et al, 1992) have adopted the narrow approach of solely comparing their symptoms (which, incidentally, were found not to differ significantly). No information was afforded on their (possibly) differing needs and perceptions.

There is some mention by those working with torture survivors of the issue of location and its relationship to needs and rehabilitation. According to Denford, the experience of the Medical Foundation in developing projects shows that “the needs of torture survivors who

47. See Benfeldt-Zachrisson (1988)

remain in their own country differ in a number of important ways from the requirements of those who have sought refuge in foreign lands" (1996, p.162). Somnier et al (1992) remind us that *most* torture survivors reside in their native country. It is easy to see why issues of reparation may not be as important for this group, especially if they have to mobilise all available energy and resources for mere survival and safety. The risk of reprisals is likely to have a profound effect on the survivor, and also on those who could help him/her.

The question of timing (relative to when the torture took place)

It is sometimes argued that if a long time has passed since the torture was inflicted reparation may no longer be relevant; van Boven (1993), however, contends that it is well established that for many, the passage of time does not lessen the suffering. The interest of many survivors (and their relatives) in reparation seems to persist over long periods of time. This is perhaps most evident in the case of holocaust survivors. In Atlantic Monthly Oct. 1993, Wise describes the New York offices of the Jewish Claims Conference, when even as recently as 1992, the announcement of a new accord aroused the expectations of many survivors who "packed the shabby waiting room..., jammed its telephone lines, and mailed in tens of thousands of requests for applications". Malsch (2000) suggests that the passage of time, and years of public indifference to the wrongs suffered, may in fact lead to increased feelings of injustice and more strongly advanced claims for redress at a later point.

In general, the only references to time in the literature on torture surround the legal aspect of statutes of limitations. Several authors, among them Danieli (1995), have argued that there should be no such statutes. Cohen insists that "no amount of time can be too long to satisfy the needs for truth and some measure of accountability, nor can some arbitrary legal time limit be set. The argument that some wounds are too old to be exposed has little moral integrity" (p.32).

This review has found no references to survivors' perceptions about the length of time since the torture occurred. It is conceivable that it may significantly affect their wants/needs. Cunningham & Silove (1993) argue that survivors suffer a series of traumas, and that their priorities vary substantially over time. Lutz (1995) observes that the normal psychological responses to severe human rights abuses may prevent a victim from seeking redress for a much longer time than that often prescribed in statutes. The primary concern of the survivor will be to rebuild his/her life and, having addressed physical needs, it may take a considerable period of time before other issues become important.

It may be the case that the survivor has to reach a point of "readiness" before the desire for reparation emerges, or indeed before it can have any beneficial effect for him/her. Hamber insists that "When reparations are granted before the survivor is psychologically ready, any form of reparation can be expected to leave the survivor feeling dissatisfied" (1998c, p.5). Quite apart from any psychological "readiness", several of those to whom I have spoken have raised the point that in the earliest stages following the experience of torture, reparation is simply not a priority, not even an issue, for victims. Sir Nigel Rodley, for example, said that those with whom he has had contact are often still in the torture situation, whether in prison or simply still at risk by remaining in the particular country. Almost none of them have ever mentioned the question of reparation to him, their immediate and desperate requests being for their release from the dangerous situation.

Dr. Stuart Turner, who often meets refugees and asylum-seekers in Britain, has also pointed out in conversation the infrequency with which the issue of reparation is raised. His patients, he says, have far greater immediate concerns with security issues for themselves and their families. Helen Bamber pointed out that even when in exile in a country such as Britain, many survivors (at least initially) feel in some way that “a continuation of the torture is going on”, compounded by the host country’s treatment of them. Foremost in their minds is the immediate need for safety, security and protection.

Cultural differences

Sveaass & Lavik (2000) point to indications that concepts, including that of reparation to victims of torture, are very widely accepted. Chester (1990), however, raises the important issue of different cultural interpretations of torture and trauma.⁴⁸ These could result in different perceptions of wants and needs among survivors, and in different attitudes to the pursuit of reparation. Among victims of so-called “ordinary crime”, Maguire & Shapland (1997) note cultural differences, even within Europe, concerning the victims’ wish to play an active role in pursuing prosecutions or compensation. Kerim Yildiz also points out that some countries (such as Turkey) seem to have (or to be developing) a “culture” of taking cases against the state, whereas others do not have such a “culture”. This may, of course, be due to a lack of information or of appropriate mechanisms.

The “medical model”, or the notion that torture survivors are a group analogous, in a way, to cancer victims, and that a treatment effective for all could somehow be developed is questioned by Weschler (1990). He argues that “a Uruguayan torture victim has more in common with other Uruguayans than he does with torture victims from other places” (p.495), and that a political or social model is required. Dr. Perren-Klinger, however, based on her experience with survivors in Switzerland, suggests that “justice”, “recognition” etc. may help in certain cultural settings but perhaps not in others. Both cultural and political peers, people who have lived through the same things can, she says, be of immense help to the individual. She is critical of the ethnocentric view, which fails to explore in each cultural situation what is needed by the survivors and to what extent they are helped by reparative measures, if at all.

Raphael & Wilson (1993) suggest that while some cultural norms may favour denial and privacy, others emphasise ritual expression and “working through”. Elsass (1997) questions the applicability of the individualism which he says underlies all Western approaches. This is clearly relevant to the question of pursuing individual reparation claims. It may be that more attention should be paid to the social and cultural context which could be of immense importance to survivors who were tortured for political activism.

In one of the only articles to deal with the subject, An-Na’im (1992) is concerned with the cultural underpinnings and popular perceptions of national and international legal norms and remedies, focussing specifically on Islamic culture(s). Such an inquiry, he says, is useful in that it evaluates the practical efficacy of the available remedies by including factors such as the motivation of victims to seek redress. Among the issues raised in his

48. See also Gurr & Quiroga (2001) on cultural differences in concepts about the process of torture and its meaning, which affect the type of response or intervention required.

article are the fact that Islamic Shari'a law may recognise a right, but not accord the same quality or level of remedy to all victims of its violation; it may also not recognise that the remedy it provides may be objectionable from an international point of view. It may be unrealistic in some cases to expect survivors to demand fulfilment of international obligations which they perceive to be inconsistent with their faith.

Both Maria Piniou-Kalli and Kerim Yildiz have indicated that torture survivors in Turkey will often contact lawyers or human rights organisations almost immediately (sometimes within a couple of days) upon their release. This may be for information in the first instance, but is often with the intention of pursuing a case against the Turkish state. This group could be worthy of further study to ascertain why it is that they, exceptionally, are eager to initiate cases so soon after their ordeals. This may be a result of the particular human rights situation in the country, or because information on how to go about such a case is more readily available in Turkey and more support is likely than would be available in other countries. It is also interesting to note that so many cases are pursued by those who are not in exile, and who are therefore putting themselves at some risk by their action.

Direct and indirect victims

van Boven (1997) includes under the heading "victims" entitled to reparation the immediate family or dependants of the direct victim, and persons who have suffered because they intervened to assist victims in distress or to prevent victimisation (p.515); also the family or dependants of those who have "disappeared".

Although it is far less common for organisations such as REDRESS to be involved with these so-called "indirect" victims, it may be valuable to explore a number of questions regarding this issue. Is the meaning of reparation different if the litigant is a family member or another indirect victim of the torture? In such cases could there be more of an element of "bearing witness", whereby the acknowledgement and documenting of the truth, rather than any monetary amount is of paramount significance?

Self-initiated proceedings and those initiated through a truth commission process

The question here is whether it makes a difference in terms of the meaning to the individual survivor, if the reparation comes about after a personal pursuit or as part of a larger truth commission process.

Hamber & Wilson (1999) raise the possibility that state-initiated reparation may be perceived by some survivors as bringing about premature closure which, if granted before the individual is psychologically ready, will lead to feelings of dissatisfaction. Lutz (1995) makes a similar point regarding suspicion among survivors of government-proposed compensatory schemes. It is possible that those who choose to pursue individual cases have different expectations and experiences from those who are less active in the process of receiving reparation. If, as has been asserted by Zehr and others, one of the needs of survivors is *to be involved* in the judicial process, this may have implications for the benefit felt from self- versus other initiated proceedings.⁴⁹

49. On the other hand, Pinou-Kalli (1993) discusses the trials of torturers in Greece, which were primarily privately initiated (by victims). Many torturers were never brought to trial because their victims refused to sue privately, on the basis that it was the State's responsibility to prosecute.

Another issue is the possibility of mass or community action. Theo van Boven (1993) recommends that in addition to individual means of reparation, “adequate provision be made to entitle groups of victims or victimised communities to present collective claims for damages and to receive collective reparation accordingly”. The precedents for compensating groups are the extensive German programme following World War 2, and the US government’s decision to compensate Japanese Americans interned during that war. Tomuschat (1999) makes the point that although a system of reparation based on individual claims may be workable and effective in certain situations, it does not provide the legal framework for dealing with large-scale violations. If vast numbers have suffered, he suggests, a pattern of collective settlement is preferable. What has not been investigated is whether reparation is perceived differently (and has different effects) by the survivor when it is delivered to the individual rather than as part of an overall political restitution.

Reparation in the context of socio-political transition or torture as an ongoing phenomenon

Torture survivors may pursue and receive reparation under very different circumstances. For some, the regime under which their torture occurred has been overthrown and a new democratic society created. For others, their cases are pursued in the context of the persistence of the oppressive regime where torture still occurs. In the latter instance, the drama of socio-political transition does not exist. How this difference affects the individual survivor has not yet been examined.

Gender differences

An issue which has not been touched upon in the literature is that of the survivor’s gender. Do men and women differ in their perceptions of, desire for and/or expectations of reparation? This question (and its conceivable relationship with cultural differences as mentioned above) deserves attention.

FUTURE DIRECTIONS

Before outlining the future research options for REDRESS, two points should be considered.

Subjective Perceptions Versus Objective Rights

It is not being argued here that survivors' perceptions should be used as the main guide to legal measures. Such suggestions have been raised regarding victims of "ordinary crime", particularly in the United States where victims' rights lobbies are vociferous (Miers, 1992). Strong arguments would be raised, theoretical and practical, against allowing such opinions to shape the law. As Zalaquett (1994)⁵⁰ outlines, there is a duality between the individual survivors and the nation, and while survivors deserve respect and consultation, the socio-political structure is in the hands of society. Because both are related, he says, there should be a "special place" for the opinions and feelings of survivors, but they should not hold veto powers. It may be that the political/societal functions of reparation could still be served while taking the needs of survivors into account.

From a human rights law point of view, some reservations have been voiced about research such as the proposed study. If the findings suggest that those who receive reparation are not always satisfied, or that pursuing reparation can entail difficulties and stresses, it is feared that this could undermine the efforts of those campaigning for the *right* to reparation. This, it should be emphasised, is not in any way the intention. The question of needs does not effect that of rights. In the moral and ethical domain, the right to reparation must be upheld; however, it is also valuable to look at how survivors themselves perceive that right and how they interact with it. For some it will be a positive experience, for others not, but the ultimate aim is to ascertain how the right can best be exercised for the benefit of the survivor.

It is hoped that organisations whose work centres on helping torture survivors might modify the *way* in which they work as a result of any future findings - the aim is not that they should change their ultimate goals. In REDRESS' own case, for example, the right of survivors to pursue reparation will always be upheld and campaigned for; however, it may be that a greater knowledge and understanding of survivors' own perceptions and expectations could help the organisation to better advise and support those who use its services.

Will Future Research Yield Any Findings Beyond What is Already Known?

One danger of organising a research project into torture survivors' perceptions of reparation is that the findings will consist of little beyond the observation that survivors' perceptions vary. Quite apart from the details of the trauma suffered, victims are individuals with different experiences, (ethnic/religious/national backgrounds, culture, political involvements, family situations and education). Reparation will be more desirable and also more beneficial for some than for others, and since a bland finding would be a waste of resources, a methodological case-by-case approach would clearly find little favour with funding organisations.

50. In Boraine et al, 1994.

Some Questions to be Explored

Numerous questions have emerged in the course of this research. Some of these have been addressed (to various extents) in previous research projects. Others have not yet been explored. Bearing in mind that torture survivors are not a homogeneous group, and that definitive answers of the kind "Torture survivors want x or y..." will never be produced, what follows are some of the many important issues to be addressed in any future research:

- Are different degrees of "satisfaction" associated with the various forms of reparation?
- Can different measures of reparation be found to be helpful to survivors in different situations?
- Do combinations of measures have different meanings for, or effects upon, different survivors?
- What is perceived by the survivor as "fair and adequate" compensation?
- What is the relationship (from the point of view of survivors) between truth and justice? Is the fact that the truth is recorded in any decision to award compensation the important fact for the survivor? Does the handing over of compensation or other forms of reparation, strengthen the value of the "truth" for the survivor? What value then in recording the truth without any such symbolic aspects?
- Do those who pursue cases for reparation have realistic expectations of what they may be awarded if successful?
- Have reparation and rehabilitation measures in fact helped in "the rehabilitation and the restoration of the human and civil dignity of victims" and had "a meaningful and substantial impact on their lives" (TRC, 1998, p.170)?
- What of survivors whose expectations of some form of reparation had been raised, but who did not in the end receive reparation? The effects of this position on the survivor and his/her rehabilitation have not been investigated.
- What role is assumed by the pursuit of reparation in the life of survivors, and what then happens when the case concludes?
- What is the outcome, in terms of healing or rehabilitation, if the case fails to secure a favourable judgment?
- What is the effect on the survivor of a situation where a favourable judgment remains unenforced?
- Where there is no possibility of obtaining any form of reparation, what effect does this have on the survivor and his/her family?
- What are the attitudes of survivors to some of the possible difficulties associated with pursuing reparation (including long delays, the adversarial legal system, the stirring up of painful memories, the feeling that their stories are not believed) and how might this detract from the potential benefits of pursuing reparation?
- Is it the case that the benefits felt derive only from the judgment delivered or also from the actual measures received (monetary or otherwise)? Or could it be the case that elements of the procedures involved in pursuing a case are also perceived as important by survivors?
- Does the manner in which reparation is administered alter its symbolism and effects for the survivor? If so, in what way(s)?

- How do survivors perceive the relationship between reparation and justice? Can reparation be perceived as justice in itself?
- What is the extent of torture survivors' awareness and knowledge of their rights to reparation under international and national law? How well do they understand the mechanisms and assistance available to pursue such rights?
- To what extent do survivors who were political activists prior to being tortured perceive their torture as part of a political struggle?
- Are there differences between survivors remaining in their home countries and those in exile, in terms of needs and perceptions surrounding reparation?
- Are there cultural differences in perceptions of wants and needs among survivors, (including different attitudes to the pursuit of reparation)?
- Is the meaning of reparation different to a litigant who is a family member or another indirect victim of the torture?
- Does it make a difference, in terms of the meaning to the individual survivor, if the reparation comes about after a personal pursuit or as part of a larger truth commission process?
- Is there a difference for the survivor between reparation in the context of societal transition and reparation in the context of torture as an ongoing phenomenon in society? If so, how does this affect the individual survivor?
- Are there differences in how men and women perceive and interact with the right to pursue reparation?

Four Possible Directions

The objective of a possible future research project is to give organisations such as REDRESS, which works with the legal right to reparation and its attendant language and concepts, a better understanding of how those at the receiving end of reparation perceive the process.

In light of what this research has yielded, there are several options open to REDRESS. The feasibility of each of these must be considered against the background of this objective. One option would be not to pursue any further research on the issue of survivors' perceptions. It is my impression however that there are important areas where our knowledge is patchy and on which some valuable research could be carried out. The particular topics, which are of interest in the general human rights sense and especially to organisations working with survivors, surround survivors' expectations (of results and effects); their experience of the difficulties associated with pursuing reparation and how best these might be lessened; the meaning to survivors of different forms of reparation; and follow-up explorations of reactions to receiving reparation and the perceived effect it has had on their lives.

- (a) The first possible direction would be an immediate follow-up to the present report, in the form of a seminar at which the report and its implications could be discussed with a

wider audience. Those attending could include representatives of REDRESS and organisations such as the IRCT, other centres for torture survivors and NGO's involved in working directly with survivors.

- (b) The second direction would be to draw together a seminar to include torture survivors. Under the guidance of members of the organisations mentioned above, survivors could talk about their experiences and flesh out the issues raised in this report. Several issues would have to be considered before setting up such a situation, however. For example, it would perhaps be more valuable to separate survivors into three groups (those survivors whose cases have concluded, those who are in the process of bringing a case and finally survivors who have not yet initiated their cases) rather than to attempt a broader grouping. Careful consideration would have to be given to the numbers involved if the exercise is to be a fruitful one. Another question to be addressed in advance is that of which nationalities to include in a group. Broadly speaking, a choice will have to be made between three options. The research could focus on a number of more homogeneous groups such as survivors from particular countries; alternatively, the groups could include survivors from the same region (for example Latin America), or each group could include many different nationalities, displaying differences in experience and perceptions, with the aim of exploring wider points of view and stimulating discussion.
- (c) The third option would be a relatively modest study focusing on one particular country. The obvious option would be to look at torture survivors who have come to England, bearing in mind that such a study would not address all of the complexities raised earlier in this report. Nevertheless, if one of the ultimate aims is to better inform the way in which organisations like REDRESS operate, the findings could be very helpful.
- (d) Finally, one could embark upon a more conventional research project in the form of a broader survey of torture survivors. This is by far the most complex and costly option, but it is what is required if one seeks to generate clear policy directive implications or generalisations of the nature "what torture survivors want is...". It is also the only course of action if one wishes to deal comprehensively and sensitively with all of the nuances and variables listed earlier in this report, such as the length of time since the torture occurred, cultural factors, whether the survivor was politically involved or not, whether the case is initiated by the individual survivor or as part of a large-scale state programme of reparation, the sex of the survivor and whether or not the survivor is in exile. Such a project is technically feasible, but there are several reasons why it is not the option recommended here. It would demand large-scale resources in logistical and travel terms, and would require sampling and organisation of immense complexity. Available resources may not be sufficient for such an undertaking. Outlined below are two of the more obvious technical difficulties involved.

Sample Composition

The sample studied will be an issue of paramount importance. This is true of options (b) and (c) in the previous section, but particularly of option (d) Theo van Boven (1993) explores the importance of the victim's perspective in his study, and draws attention to a very important point when he quotes Maheu:

"The groans and cries to be heard in these pages are never uttered by the most wretched victims. These, throughout the ages, have been mute... for history records only the words and deeds of those who are capable, to however slight degree, of ruling

their own lives, or at least trying to do so. There have been - there still are - multitudes... who, as a result of poverty, terror or lies have been made to forget their inherent dignity, or to give up the efforts to secure recognition of that dignity by others... The lot of the victim who complains and is heard is already a better one"

Two points in particular must be noted. Firstly there is the question of the "hidden figure", the thousands of people who have been tortured but whose experiences are not known about or reported. To provide a representative sample of such a population is an impossibility.⁵¹ There is always a danger that those who have caught the attention of organisations such as REDRESS may have some particular characteristics not representative of torture survivors in general.⁵² This point is made not to deny the importance of exploring the wants and needs of these individuals, but simply to warn against any sweeping statements to the effect that the findings apply to "all survivors". Melamed et al (1990) raise the possibility that those coming forward may have something to gain (compensation, therapy, asylum etc.) and may not be representative.

Engdahl & Eberly (1990) are critical of the fact that those studied in empirical research may be "less healthy" than the total population of survivors (being clinical cases or applicants for compensation on the basis of incapacity). It is worth investigating whether or not cases are more often pursued by those who are "less healthy". Sarantidis et al (1995) also question the extent to which their findings permit generalisations, on the basis that the participants in their study may not be comparable with the population of torture survivors usually treated in the Athens Medical Centre for the Rehabilitation of Torture Victims. The risk with a broad, international, heterogeneous sample is that so many variables will be involved that any findings will be impossible to interpret properly.

Difficulties Involved in Interviewing Torture Survivors (Practical and Ethical)

The second issue is that even if enough people are selected in a sample to cover the many variables that have been mentioned, there are other logistical and ethical problems surrounding this kind of research. Several authors have discussed the difficulties of carrying out research with torture survivors. Sarantidis et al (1995) in their study of the long-term effects of torture under the Greek dictatorship, found that almost half of those contacted were unwilling to be interviewed. There may be a number of reasons for this - among those given in that particular study were that the topic was too upsetting, the matter too personal, and that confidentiality might be breached. The authors also mention some practical difficulties, including the time required for the assessment, the fact that many years may have elapsed since the torture itself, and the possible resistance to any psychological assessment.⁵³ Peters (1985) refers to similar difficulties in his questioning of torture survivors.

51. For example, Shapland, Willmore & Duff (1985) studied 276 victims of ordinary crime and found that knowledge of the available mechanisms for redress was the key determinant in whether an application was made for compensation.

52. The impact of forced migration, for example, may be important but also difficult to disentangle. Some (e.g. Basoglu & Paker, 1995) have specifically selected a non-refugee group to avoid the complication of refugee status. This, however, may introduce a bias into the sample.

53. Gonsalves (1990) interviewed 32 survivors of political repression from Chile who were in exile in the USA and makes some useful comments on the difficulties in procedure. Among them, he mentions the problem of suspicion.

Needs Assessment

This section outlines some cautionary points to bear in mind in any future study of the *needs* of survivors. All too often in the literature, there are vague references to assessing the needs of the torture survivor. In large part, they come from those making the first contact with the survivor in a medical setting, and for this reason the assessments mostly concern immediate physical and psychological trauma (e.g. Denford, 1996).

Maguire's (1985) review of the research on victims' needs, albeit relating to ordinary crime and not to torture, is a useful one. He warns that knowledge of the *effects* of victimisation can yield broad inferences about *needs*. One runs the risk, he says, of recommending solutions that do not coincide with victims' subjective understanding of the difficulties they encounter. Another approach asks victims to identify their own needs; however, such "expressed needs" must be recognised as having been shaped by cultural factors, by expectations and by knowledge of what is possible or available.⁵⁴ (If a survivor does not know that mechanisms for reparation exist, he/she may be able only to express a diffuse wish for "justice" or "acknowledgement".) This approach, he says, is particularly unsatisfactory where emotional needs are concerned. Research experience suggests that when asked to identify their needs, people will first focus on those of a practical and informational nature. The obvious alternative, to present the respondent with a list of possible needs, may render it impossible to disentangle sudden awareness of an existing but unarticulated need, from a response along the lines of "that sounds like a good idea" (Maguire, 1985, p.543). The third, and somewhat neglected, approach outlined is the attempt to learn from the practical experience of individuals and organisations involved in providing services to victims. This could yield a valuable picture of the types of help and service sought by victims, and the types of need presented. One disadvantage of this method is that the information gleaned is always to some extent "second hand". Another is that no insight is gained into those who are unaware of or reluctant to seek or use help and services.

Exploring Survivors' Preferences

In order to properly examine survivors' preferences regarding the various forms of reparation, it would first be necessary to explain in detail all of the available options or possible reparative measures. This is to ensure that what the survivor perceives as reparation is clear, because there is evidence to suggest that attitudes to pursuing redress, and rates of so doing, are closely related to knowledge of the procedures available. Shapland, Willmore & Duff (1985) studied 276 victims of ordinary crime and found that knowledge of the available mechanisms was the key determinant in whether an application was made for compensation.

54. Schadler (cited in HEUNI, 1989) has questioned whether it is possible to determine what victims might like if professionals' attitudes and practices were sympathetic to their needs, or whether their expressed views simply reflect the cultural position of legal thinking in a particular country. (See Maguire & Shapland, 1997).

Torture Survivors Who do Not Pursue Reparation

It could be worth considering whether or not any future research should include consideration of those torture survivors who are not pursuing reparation, either because of ignorance of the available mechanisms, or because they choose not to do so (for ideological reasons, because of the difficulties involved, or even because they regard reparation as something that would not meet their specific needs).

The Problem of Evaluation

If a future project is to effectively evaluate the effects of reparation, a number of demands would be placed on the research framework. Ideally, in order to draw clear conclusions, one would require a control group of torture survivors who don't receive any reparation as well as a group who do. Additionally, one would need a design in which survivors would be interviewed before and after the reparative process in order to make a comparison. Such demands are almost impossible to fulfil in practice and the implications of this situation for the findings and conclusions will have to be considered.

CONCLUSION

The movement for justice and accountability for serious violations of human rights has rapidly progressed over the past decade. Many torture survivors have obtained some elements of reparation in national or regional courts. For some, their torturers have been brought to justice. The advent of ad hoc Tribunals of the Former Yugoslavia and Rwanda and the soon to be established International Criminal Court, are further examples of how perpetrators of acts of gross human rights violations can, and will be, held accountable for their crimes. Torture survivors will, therefore, be able to obtain justice.

Reparation for the victims or survivors of torture, which is their *right* under international and many national laws, is becoming more and more a realistic possibility. As a result, many legal academics and lawyers, sociologists, medical practitioners and psychologists are now discussing the concept of reparation, what it entails and why it is so important; however, only a few of these experts have actually sought the opinions and experiences of survivors themselves. For instance, how do *they* perceive reparation, and what are their expectations of achieving it; what do *they* need or want when they follow the route to redress?

This preliminary survey identifies the theoretical and empirical studies on torture survivors' perceptions of the processes of obtaining reparation. The survey goes further, however, by looking at the difficulties of obtaining reparation, the meanings of specific forms of reparation expressed by survivors, and the different levels of expectations held by disparate individuals and socio-political groups. Too many questions about torture survivors' perceptions remain unanswered, and this survey is a first step towards understanding their attitudes and motivations. Without their contributions, we are in danger of encouraging people whose lives have been shattered to exercise rights about which they are unclear via legal processes in which they are not involved and probably do not understand. Worse still, these actions could produce outcomes which neither satisfy them nor match their expectations.

REDRESS has concluded that further extensive research must be carried out in this important area. Difficulties in organising research must be overcome. We have clearly defined the next stages of an overall research programme, the outcome of which will be a more fundamental understanding of torture survivors' perceptions of the processes and effects of obtaining reparation. This knowledge will provide us with a sound basis from which we can formulate guidelines for providing advice and services to victims and survivors.

If we are to help torture survivors rebuild their lives we must encourage them to express their opinions, thereby ensuring that reparation, in an appropriate form, contributes to their recovery. For people who have suffered such terrible violations, it is the very least we can do.

THE WAY AHEAD

This preliminary survey has underlined the need for further research into the attitudes, needs and wants of torture survivors who seek to obtain reparation. We now plan to implement a long-term research programme focusing on survivors' views on the processes and effects of obtaining different forms of reparation. This will give us a more comprehensive understanding of this complex issue.

At the end of the programme, we intend to apply this knowledge by defining guidelines for those offering advice and services to torture survivors, their families and friends. Doctors, psychologists and counsellors at rehabilitation centres, human rights lawyers, NGOs and other specialists concerned with rehabilitation and reparation will thus have a clearer understanding of how to treat, advise and help both individual survivors and groups of survivors from widely varying backgrounds and socio-political groups.

In order to achieve this, it is essential that we maintain a high momentum over the course of the three-stage programme which will last for four years. The programme will consist of two major seminars, qualitative and quantitative research study, and dissemination of information.

First Stage - Seminar of Steering Group and Experts

The main aims of this 2-day Seminar will be:

- To agree on the parameters of the strategic research programme, such as:
 - specific areas of research to be explored
 - methodology of research
 - designation of responsibilities
 - timetables to be set
- To consider the feasibility and define the structure of the survivors' seminar.
- To approve the budget for the overall research programme to include:
 - the cost of the appointment of a Project Coordinator
 - budget for Second and Third Stages of programme

The Seminar would be attended by:

Members of the Steering Group: Professor Stan Cohen (London School of Economics and Political Science), Dr Bruna Seu (Birkbeck College), Dr Stuart Turner (Trustee of REDRESS), Carla Ferstman (REDRESS), Bill Dishington (REDRESS) and Keith Carmichael (REDRESS).

Others taking part in this Seminar would include directors of rehabilitation centres, lawyers who have acted on behalf of torture survivors, UN International Experts on Reparation, International Associations concerned with rehabilitation and reparation, and torture survivors (refugees and non-refugees) who have followed the route of reparation.

The Seminar will be planned for the first half of 2002. A Report will be produced and widely distributed.

Second Stage - Seminar of Torture Survivors

The main aims of this 2-3 day Seminar are:

- To encourage survivors to comment on the Preliminary Survey
- To identify the attitudes and opinions of torture survivors about the different processes and effects of obtaining reparation. The key elements to focus on are:
 - What factors influence survivors to seek reparation?*
 - do those who seek reparation share any specific characteristics?
 - how clear were they about their right to rehabilitation and reparation?
 - what forms of reparation did they hope to achieve?
 - What did survivors think of the process of seeking reparation?*
 - do those who seek reparation prefer the process of a civil action, rather than the process of a criminal lawsuit to bring their torturers to justice? If so, why?
 - how do they envisage the process of obtaining reparation differing in different fora, for instance, regional, national or international courts, or independent tribunals or commissions of enquiry?
 - How has the outcome affected the survivor?*
 - if they have received some form of reparation, monetary or otherwise, were they satisfied with the result? If not, why not?
 - has obtaining reparation re-confirmed a sense of meaning in their lives?
 - was the process of obtaining (or not obtaining) reparation, more or less beneficial than the actual receipt of reparation ?
- To seek the advice of torture survivors on how to carry out the Third Stage of the research programme

In order to classify the results of this Seminar, it is recommended that established research techniques are used, for instance, questionnaires, individual discussions with professional counsellors or interviewers, and organised group discussions.

Those attending (25-50) will come from varied backgrounds and will be mainly people displaced from the country in which they were tortured. This Seminar cannot therefore be a representative sample of torture survivors as a whole. It can nevertheless provide an important fund of knowledge which will guide us in future dealings with the issues surrounding reparation. These torture survivors would be categorised according to:

- age, gender, nationality, socio-economic group, culture, system of government, country of current residence
- country where torture was committed, period of arbitrary detention
- injuries and medical treatment received

- knowledge, or not, of processes and procedures for obtaining redress⁵⁵
- whether they plan to seek redress or have started on the route to reparation, whether or not a judgment has been awarded in their favour/if judgment has been enforced/if some form of reparation received

This Seminar would take place in the second half of 2002. Reports would be distributed widely.

Third Stage - Qualitative and Quantitative Research Study

Following the Second Seminar, the Project Coordinator would start to plan the comprehensive research study. S/he would liaise with rehabilitation centres and NGOs to identify victims and survivors willing to participate in the study. These would include volunteers from diverse backgrounds, those with recognised status (refugee/non-refugee), some who have started on the route to reparation and others who have not chosen not to seek redress.

The Project Coordinator would work with a qualified research Institute to ensure that the sample of victims interviewed are statistically representative of the total number of survivors world-wide. The research Institute would also advise on the methodology for carrying out the attitude survey (for example, the use of questionnaires, individual and group discussions). Working with the research agency would ensure that attitudes and opinions could be accurately classified and calibrated.

This structural approach would enable the Project Coordinator to further assist the recovery of survivors by:

- identifying and calibrating the needs, wants and attitudes of those who seek reparation

The findings of this research survey will form the basis of new guidelines which will assist those providing advice and services to torture victims, survivors, their families and friends.

Dissemination of Information

After consultation with national NGOs, some of this information can be included in 'The Torture Survivors' Handbook'. We intend to produce this Handbook for distribution in most countries. It will feature the local agencies which can assist survivors in different ways as well as outlining for survivors their right to rehabilitation and reparation under international law. It will also outline the processes and procedures for obtaining redress under their domestic laws.

This Handbook, together with other publications, will be distributed to social service organisations, NGOs, lawyers, human rights activists, advice bureaux, government ministries, prisons and other centres of detention.

55. Shapland, Willmore & Duff (1985) studied 276 victims of ordinary crime and found that knowledge of the available measures was the key determinant in making an application for compensation.

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APPENDIX 1

PEOPLE INTERVIEWED

Professor Sir Nigel Rodley KBE (United Nations Special Rapporteur on Torture)

Mrs Helen Bamber OBE (Director, Medical Foundation for the Care of Victims of Torture)

Geoffrey Bindman Esq (Bindman & Partners)

Professor Theo van Boven (University of Limburg)

Kerim Yildiz Esq (Director, Kurdish Human Rights Project)

Ms Fiona McKay (Kurdish Human Rights Project)

OTHERS WHO HAVE CONTRIBUTED THEIR THOUGHTS ON AN INFORMAL BASIS

Jean-Michel Diez Esq (Asociacion para la Prevencion de la Tortura)

Dr Jerry Gray (Survivors International)

Dr Gill Hinshelwood (Medical Foundation for the Care of Victims of Torture)

Ms Rita Maran (University of California, Berkeley)

Sra Dianna Ortiz (Torture Abolition and Survivors Support Coalition)

Dr Gisela Perren Klinger (Institut Psychotrauma Schweiz)

Dr Maria Piniou-Kalli [Medical Rehabilitation Centre for Torture Victims (MRCT-Athens)]

Dr Jose Quiroga (Program for Torture Victims of Los Angeles)

Dr Nora Sveaass (International Society for Health and Human Rights)

APPENDIX 2

UNITED
NATIONS**Economic and Social
Council**Distr.
GENERALE/CN.4/Sub.2/1996/17
24 May 1996ENGLISH
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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of Discrimination
and Protection of Minorities
Forty-eighth session
Item 10 of the provisional agenda

THE ADMINISTRATION OF JUSTICE AND THE
HUMAN RIGHTS OF DETAINEES

Revised set of basic principles and guidelines on the right to
reparation for victims of gross violations of human rights and
humanitarian law prepared by Mr. Theo van Boven pursuant to
Sub-Commission decision 1995/117

1. In its decision 1995/117 of 24 August 1995 the Sub-Commission on Prevention of Discrimination and Protection of Minorities requested the Special Rapporteur on the right to restitution, compensation and rehabilitation of gross violations of human rights and fundamental freedoms to submit, without financial implications, in time for the Sub-Commission's consideration at its forty-eighth session, a revised set of proposed basic principles and guidelines on the subject in the light of existing relevant international instruments. In the revised set of basic principles and guidelines the comments received from States, intergovernmental organizations and non-governmental organizations (E/CN.4/Sub.2/1994/7 and Add.1 and E/CN.4/Sub.2/1995/17 and Add.1-2) as well as the relevant sections of the reports of the Sub-Commission's working group on the administration of justice and the question of compensation (E/CN.4/Sub.2/1994/22, paras. 18-39, and E/CN.4/Sub.2/1995/16, paras. 10-33) were to be taken into account.

2. In response to the above-mentioned decision of the Sub-Commission, the Special Rapporteur now submits, annexed hereto, the requested revised set of basic principles and guidelines (see annex). In the preparation of this revised document the Special Rapporteur had the benefit of broad expertise assembled in a workshop organized by the International Commission of Jurists and the Maastricht Centre for Human Rights of the University of Limburg which met in Geneva from 20 to 22 February 1996. The text reproduced in the annex is the result of an in-depth consideration of the subject by the

workshop in the light of the comments and reports referred to above. It should be noted that a new title is proposed to reflect the contents of the revised document: Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law.

3. The Special Rapporteur expresses the hope that, in accordance with the intention conveyed in Sub-Commission decision 1995/117 of 24 August 1995, as well as in Commission on Human Rights resolution 1996/35 of 19 April 1996, the revised set of basic principles and guidelines hereby submitted will enable the Sub-Commission to make substantial progress on this matter at its forty-eighth session.

Annex

BASIC PRINCIPLES AND GUIDELINES ON THE RIGHT TO REPARATION FOR VICTIMS OF GROSS VIOLATIONS OF HUMAN RIGHTS AND HUMANITARIAN LAW

The duty to respect and to ensure respect for human rights and humanitarian law

1. Under international law every State has the duty to respect and to ensure respect for human rights and humanitarian law.

Scope of the obligation to respect and to ensure respect for human rights and humanitarian law

2. The obligation to respect and to ensure respect for human rights and humanitarian law includes the duty: to prevent violations, to investigate violations, to take appropriate action against the violators, and to afford remedies and reparation to victims. Particular attention must be paid to the prevention of gross violations of human rights and to the duty to prosecute and punish perpetrators of crimes under international law.

Applicable norms

3. The human rights and humanitarian norms which every State has the duty to respect and to ensure respect for, are defined by international law and must be incorporated and in any event made effective in national law. In the event international and national norms differ, the State shall ensure that the norm providing the higher degree of protection shall be applicable.

Right to a remedy

4. Every State shall ensure that adequate legal or other appropriate remedies are available to any person claiming that his or her rights have been violated. The right to a remedy against violations of human rights and humanitarian norms includes the right of access to national and international procedures for their protection.

5. The legal system of every State shall provide for prompt and effective disciplinary, administrative, civil and criminal procedures so as to ensure readily accessible and adequate redress, and protection from intimidation and retaliation.

Every State shall provide for universal jurisdiction over gross violations of human rights and humanitarian law which constitute crimes under international law.

Reparation

6. Reparation may be claimed individually and where appropriate collectively, by the direct victims, the immediate family, dependants or other persons or groups of persons connected with the direct victims.

7. In accordance with international law, States have the duty to adopt special measures, where necessary, to permit expeditious and fully effective reparations. Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

8. Every State shall make known, through public and private mechanisms, both at home and where necessary abroad, the available procedures for reparations.

9. Statutes of limitations shall not apply in respect of periods during which no effective remedies exist for violations of human rights and humanitarian law. Civil claims relating to reparations for gross violations of human rights and humanitarian law shall not be subject to statutes of limitations.

10. Every State shall make readily available to competent authorities all information in its possession relevant to the determination of claims for reparation.

11. Decisions relating to reparations for victims of violations of human rights and humanitarian law shall be implemented in a diligent and prompt manner.

Forms of reparation

Reparations may take any one or more of the forms mentioned below, which are not exhaustive, viz:

12. Restitution shall be provided to re-establish the situation that existed prior to the violations of human rights and humanitarian law. Restitution requires, inter alia, restoration of liberty, family life, citizenship, return to one's place of residence, employment of property.

13. Compensation shall be provided for any economically assessable damage resulting from violations of human rights and humanitarian law, such as:

- (a) Physical or mental harm, including pain, suffering and emotional distress;
- (b) Lost opportunities including education;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Harm to reputation or dignity;
- (e) Costs required for legal or expert assistance.

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14. Rehabilitation shall be provided and will include medical and psychological care as well as legal and social services.
15. Satisfaction and guarantees of non-repetition shall be provided, including, as necessary:
- (a) Cessation of continuing violations;
 - (b) Verification of the facts and full and public disclosure of the truth;
 - (c) An official declaration or a judicial decision restoring the dignity, reputation and legal rights of the victim and/or of persons connected with the victim;
 - (d) Apology, including public acknowledgement of the facts and acceptance of responsibility;
 - (e) Judicial or administrative sanctions against persons responsible for the violations;
 - (f) Commemorations and paying tribute to the victims;
 - (g) Inclusion in human rights training and in history textbooks of an accurate account of the violations committed in the field of human rights and humanitarian law;
 - (h) Preventing the recurrence of violations by such means as:
 - (i) Ensuring effective civilian control of military and security forces;
 - (ii) Restricting the jurisdiction of military tribunals only to specifically military offences committed by members of the armed forces;
 - (iii) Strengthening the independence of the judiciary;
 - (iv) Protecting the legal profession and human rights defenders;
 - (v) Improving, on a priority basis, human rights training to all sectors of society, in particular to military and security forces and to law enforcement officials.

MISSION OF REDRESS

Mission

- To rebuild the lives and livelihoods of torture survivors and their families so that they can become active and contributing members of society again.
- To eradicate the practice of torture world-wide.

Objectives

- To obtain reparation for victims of torture and, when appropriate, their families, anywhere in the world.
- To make accountable all those who perpetrate, aid and abet acts of torture.

Strategies

- To provide legal advice and assist torture survivors gain both access to the courts and redress for their suffering.
- To promote the development and implementation of national and international standards which provide effective and enforceable civil and criminal remedies for torture.
- To increase awareness of the widespread use of torture and of measures to provide redress.

Reparation for the victims or survivors of torture, which is their *right* under international and many national laws, is becoming more and more a realistic possibility. As a result, many legal academics and lawyers, sociologists, medical practitioners and psychologists are now discussing the concept of reparation, what it entails and why it is so important; however, only a few of these experts have actually sought the opinions and experiences of survivors themselves. For instance, how do *they* perceive reparation, and what are their expectations of achieving it; what do *they* need or want when they follow the route to redress?

This preliminary survey identifies the theoretical and empirical studies on torture survivors' perceptions of the processes of obtaining reparation. The survey goes further, however, by looking at the difficulties of obtaining reparation, the meanings of specific forms of reparation expressed by survivors, and the different levels of expectations held by disparate individuals and socio-political groups. Too many questions about torture survivors' perceptions remain unanswered, and this survey is a first step towards understanding their attitudes and motivations. Without their contributions, we are in danger of encouraging people whose lives have been shattered to exercise rights about which they are unclear via legal processes in which they are not involved and probably do not understand. Worse still, these actions could produce outcomes which neither satisfy them nor match their expectations.

REDRESS has concluded that further extensive research must be carried out in this important area. Difficulties in organising research must be overcome. We have clearly defined the next stages of an overall research programme, the outcome of which will be a more fundamental understanding of torture survivors' perceptions of the processes and effects of obtaining reparation. This knowledge will provide us with a sound basis from which we can formulate guidelines for providing advice and services to victims and survivors.

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