

MODULE 9

Introduction

Both regional and international law instruments and jurisprudence require States to provide redress to victims of torture or ill-treatment. Article 14 of the UN Convention against Torture (UNCAT) requires every State party “to ensure in its legal system that the victim of torture obtains redress and has an enforceable right to fair and adequate compensation”. The [UN Basic Principles and Guidelines on the Right to a Remedy and Reparation](#) for Victims of Gross Violations of International Human Rights Law and Serious Violations of Humanitarian International Law offer guidance on the right of victims to redress.

Regional human rights instruments. The European Court of Human Rights ([Article 41](#)), the African Commission on Human and Peoples’ Rights ([Rule 121](#)), the African Court on Human and Peoples’ Rights ([Article 27](#)), the Inter-American Commission on Human Rights ([Article 51](#)), and the Inter-American Court of Human Rights ([Article 63](#)) all have jurisdiction to award reparations to complainants.

Domestic provisions. The right to reparation is included in the constitutions of some States, or in domestic anti-torture laws or criminal legislation. It may also be included in the law that governs private claims for civil wrongs, or sometimes administrative law. For example:

- Art. 113 of the [Constitution of Bolivia](#) provides all victims whose rights have been violated with “the right to timely indemnification, reparation and compensation for damages and prejudices”.
- Art. 6 of Uganda’s [Prevention and Prohibition of Torture Act 2012](#) provides for victims’ right to “compensation, rehabilitation or restitution”.

States have a dual obligation with regard to the right of survivors to redress: a substantive obligation (to provide reparation) and a procedural obligation (to provide an effective remedy). CAT’s [General Comment No. 3](#) provides for five forms of reparation: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. These should be envisaged as complementary to one another, rather than as alternatives.

Forms of reparation

Restitution. This consists of reinstating the victim to the situation they were in before the violation was committed. Given the nature of the crime, restitution is often not possible in cases of torture, but it can be provided in relation to other violations perpetrated alongside torture. In any event, it should be accompanied by measures to address the structural causes behind the violation. This can include such things as restoring a person’s liberty or reputation, employment, or property.

In the [Loayza-Tamayo v. Peru](#) case (arbitrary arrest, incommunicado detention, and torture and ill-treatment, including sexual violence by the authorities), the IACtHR ordered as

measures of satisfaction that the victim be reinstated in her teaching position with all benefits attached to it, that she be entitled to her full retirement benefits, and that no civil decision issued against her by domestic courts have any adverse effect on her whatsoever (para.192).

Compensation. Compensation is monetary in nature and should cover both pecuniary and non-pecuniary harm. It is not sufficient by itself to provide relief to victims of torture and should be coupled with other forms of reparation (see *Module 10: Compensation*).

Rehabilitation. This form of reparation should be holistic and include psychological and medical care as well as legal and social services. This should enable the victim to reintegrate into society and restore their dignity. This is a long-term form of reparation that cannot be fulfilled by the provision of a one-time service. It should be tailored to each individual according to their needs and the circumstances surrounding their case, as well as their social context, etc.

In the Purna Maya v. Nepal case (torture by the army of a woman in detention for the purpose of obtaining information and on a discriminatory basis), the Human Rights Committee ordered that the victim be awarded the entire array of reparation measures, including full psychological rehabilitation and medical treatment.

Satisfaction. This entails cessation of the violation, disclosure of the truth (for instance the whereabouts of a disappeared person, or the search for the bodies of those killed). The search for and disclosure of the truth should not jeopardise the victims' or witnesses' security. It also entails taking administrative sanctions where warranted, the release of public apologies, the building of memorials and other such collective and commemorative measures that acknowledge the violations. Again, this should be in addition to criminal prosecutions and other forms of reparation.

In the IHRDA and others v. DRC (Kilwa) case, which involved a massacre, arbitrary detention, and torture of a community, the AComHPR decided that public apology, contributing to the promotion of social justice and peace, was an appropriate measure of reparation amongst other measures.

Guarantees of non-repetition. These are measures to prevent the future recurrence of the crime of torture and other violations. It entails legislative reform as well as change of policies and practices; for instance, ratifying and implementing the UNCAT into domestic law. It also entails the training of police, detention, army, judicial authorities, medical staff, and all other relevant actors to anti-torture standards. It also touches on the transformation of social norms to end the climate of permissibility and impunity for such acts. It entails lifting barriers to the absolute prohibition of torture.

In the Azul Rojas Marín v. Peru case (torture of an LGBTI person in detention), the IACtHR ordered measures such as adopting a protocol on the investigation of such cases, a training plan for State officials on the prevention of violence against the LGBTI community, and a system to collect statistics on violence against the LGBTI community.

Effective remedy

This right includes access to justice and fair and impartial proceedings for victims of torture (Basic Principles, para. 12). It entails the criminalisation of torture in domestic law, as well as providing victims with avenues to seek and obtain redress (CAT General Comment No. 3, para. 19). Perpetrators of torture should be either prosecuted or extradited.

This right has close ties to the States' due diligence obligations under UNCAT (see *Module 2: Definition of Torture and UNCAT*). In particular, States have a duty to investigate cases of torture. In addition, mechanisms to seek relief should be made known and accessible to victims of torture (CAT General Comment No. 3, paras. 23 and 25). This includes setting up the adequate protection mechanisms and ensuring that the system to obtain reparation does not deter victims from making use of it (financial accessibility, for instance, or other obstacles) (CAT General Comment No. 3, para. 30). These mechanisms and proceedings should be non-discriminatory and gender sensitive.

Obstacles to reparations

Obstacles faced by victims of torture in obtaining reparations can be both legal and factual. Some legal challenges are statutes of limitations to initiate proceedings, whether criminal or civil, immunities, amnesties and pardons, lack of domestic criminalisation of torture, lack of avenues for victims to access reparations, etc. (CAT General Comment No. 3, para. 37).

Factual obstacles refer to the inability or unwillingness of the State to deliver reparations, lack of due process and judicial independence, the cultural and social norms which may get in the way of victims obtaining redress, the inability to locate a perpetrators' assets or seize them, etc.

States must strive to lift these barriers by implementing changes in the domestic legal system and policies. It should also develop "coordinated mechanisms" to enable the implementation of reparation measures for victims (CAT General Comment No. 3, para. 38).

After the conviction of former Chadian President Hissène Habré by the Extraordinary African Chambers, victims of torture were meant to receive millions of dollars in compensation. A trust fund was established by the African Union to disburse these compensations. However, because of numerous challenges, including the lack of contributions to the trust fund, victims have yet to receive compensation.

Beneficiaries

The impact of torture is complex, affecting the victim, their family, and the wider community. The UN Basic Principles define victims as those who have individually or collectively suffered harm. The term 'victim' also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims or to prevent victimisation (UN [Basic Principles](#), para. 8).

Additionally, victims are also those who have suffered harm as an indirect consequence of torture. This can also include members of the community or a targeted ethnic minority. For instance, civil party admissibility before the ECCC (Cambodia) has not been restricted to direct victims but also includes indirect victims who personally suffered injury as a direct result of the crime committed against the direct victim. Indirect or secondary victims can include family members and extended family members, and people from the same community or ethnic group.

In the [Chitay Nech et al. v. Guatemala](#) case dealing with enforced disappearance, the IACtHR found that the forced disappearance of indigenous leaders was used to “punish indigenous communities in their struggle to claim their rights as an indigenous people,” thereby extending the concept of victimhood to communities. The [Working Group on Enforced Disappearances](#) has also considered that “persons who have suffered harm in intervening to assist victims in distress or prevent victimisation” are also to be considered victims (at paras. 51 and 52).

Certain categories of victims such as refugees, victims of sexual violence, child victims, or victims of violence in conflict should be provided with specific types of reparations measures. This is the case in particular in the context of rehabilitation, where care services should be adapted to their particular vulnerability. In addition, asylum seekers or refugees should receive support in relation to their asylum claim.

The role of the lawyer

Survivor-centred approach. The reparation measures that are being put forward in the claim should be tailored to the situation and needs of the survivor. Their opinion on what they want out of the proceedings should be prioritised and taken into account at all stages of the proceedings. This means that lawyers have a duty to inform survivors of what exactly each reparation measure means.

Holistic care. In formulating the reparation measures, a holistic approach should be taken. This means that lawyers should focus on all aspects of the well-being of the survivor when formulating reparation claims. Where survivors are suffering from trauma or PTSD, then the claim for rehabilitation will be paramount.

Documenting the claim. To make the claim for reparation strong, you need to support it with documentation. Include evidence such as psychological and medical reports, property titles for lost property, salary slips to show income gained before the violations happened, witness testimonies, reports, media clippings, and research papers on patterns of violations in the country, etc.