



INVESTIGATING TORTURE AGAINST LGBTIQ+ PERSONS

A step towards increased accountability

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REDRESS

Ending torture, seeking justice for survivors



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Introduction

Violence against LGBTIQ+ persons can, and often does, amount to torture, in breach of States' obligations under international law. It can take many forms, including arbitrary detention, physical and sexual abuse by State actors and other forms of harassment and abuse, violence by non-State actors which is tolerated or supported by the State, the use of conversion therapy practices, and 'corrective' rapes.

The prohibition against torture and other cruel, inhuman or degrading treatment or punishment (CIDTP) is accepted as an absolute and non-derogable human right. Despite strong international legal protection, in practice, violence against LGBTIQ+ persons remains common in many States across the world. It is often ignored or considered a minor offence by

State authorities, when it should properly be characterised as torture or CIDTP.

Such violence is also rarely investigated and impunity remains high, which in turn perpetuates further discriminatory violence against the LGBTIQ+ community. Where investigations do proceed, legislative, institutional, or practical issues often result in investigations which are inappropriate and ineffective.¹

This briefing paper sets out the relevant international standards concerning the duty to investigate torture against LGBTIQ+ persons, and offers concrete recommendations to strengthen the legal framework and improve the practice of investigations into such discriminatory violence.

Why investigate LGBTIQ+ torture?

It is the State's obligation to investigate torture. But also, an effective investigation into LGBTIQ+ torture can contribute to:

- Clarifying the facts, and establishing individual and State responsibility
- Facilitating prosecution of those responsible, and facilitating processes to allow redress and reparation for victims
- Deterring further violence and identifying measures to prevent its recurrence
- Unmasking possible discriminatory motives and identifying and tackling the root causes of structural discrimination and torture against LGBTIQ+ persons

¹ See, for example, REDRESS, [Unequal Justice: Accountability for Torture against LGBTIQ+ persons in Africa](#), 2022.

Recommendations

To ensure that cases of torture against LGBTIQ+ persons are adequately and effectively investigated with a view to holding perpetrators accountable and providing redress to victims, States are encouraged to take the following steps:

a) Develop an understanding of LGBTIQ+ violence as a form of torture based on international human rights standards, with a view to considering the gravity of the violence suffered by members of the LGBTIQ+ community and crafting appropriate measures to respond to it.

b) Where necessary, amend national legislation to criminalise torture as a separate offence, as defined under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**UNCAT**), and ensuring that discrimination is specifically included amongst the potential purposes of torture.

c) Develop and adopt guidelines and/or protocols on the effective investigation of violence, including torture, against LGBTIQ+ individuals based on international human rights standards, following consultations with relevant stakeholders such as civil society organisations.

d) Ensure that those bodies tasked with the investigation of torture against LGBTIQ+ persons are independent and well-resourced, and transparent in their operations; and ensure that other

authorities cooperate with those investigative bodies in their investigations.

e) Provide investigative bodies with powers to commission impartial experts to assist in investigations and ensure that investigative bodies act with due diligence in the gathering of evidence, including evidence probing the discriminatory intent.

f) Establish effective mechanisms for complaints to be made and for the protection of victims and witnesses.

g) Train investigative bodies, prosecutors and judges (and other relevant law enforcement and medical personnel) on discrimination against LGBTIQ+ persons; the link between discrimination, violence and torture; and anti-torture standards. Specifically, this should cover the obligations to conduct impartial, prompt and effective investigations into LGBTIQ+ violence, including:

- i. Taking all reasonable steps to unmask possible discriminatory motives and establishing whether feelings of hatred or prejudice played a role in the events; and
- ii. Delivering fully reasoned, impartial, and objective decisions, without omitting suspicious facts that may be indicative of violence motivated by discrimination on the grounds of sexual orientation or gender identity.

The prohibition of torture

UNCAT includes four elements in its definition of torture (Article 1):

- Severe pain or suffering, whether physical or mental;
- Inflicted intentionally;
- For a specific purpose (such as obtaining information or a confession; to punish, intimidate or coerce; or for any reason based on discrimination of any kind);
- By or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity.

States must criminalise torture as a separate offence in their domestic law (UNCAT, Article 4), and must incorporate at least those four elements into their definition of torture (although they can adopt a broader definition, if desired). The adoption of the UNCAT elements of torture allows for the investigation and prosecution of State-tolerated or State-supported violence towards LGBTIQ+ persons as torture.²

In the context of LGBTIQ+ violence, when criminalising torture in national laws, it is important that the third element (specific purpose) expressly includes "discrimination of any kind" (UNCAT, Article 1), as violence against the LGBTIQ+ community often takes place due to discrimination against their actual or perceived sexual orientation or gender identity.³

The fourth element of the definition of torture concerning the involvement of a public official is also relevant in the context of torture against LGBTIQ+ persons, particularly to the assessment of State responsibility when such violence is perpetrated by private actors. The UN Committee against Torture has encouraged States to interpret this requirement broadly, for instance to encompass all *de facto* authorities, such as rebel and insurgent groups that exercise quasi-governmental prerogatives.⁴ The fourth element also captures situations where the State has failed to exercise due diligence to prevent, investigate and punish torture by private actors.⁵

What are the relevant treaties and instruments?

- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)
- The Optional Protocol to the Convention against Torture
- The International Covenant on Civil and Political Rights (ICCPR)
- The African Charter on Human and Peoples' Rights
- The Robben Island Guidelines for the Prohibition and Protection of Torture in Africa
- The American Convention on Human Rights (ACHR)
- The Inter-American Convention to Prevent and Punish Torture
- The European Convention on Human Rights (ECHR)

² The UN Special Rapporteur on Torture noted the lack of an explicit crime of torture or variations of the article 1 definition as a common barrier to national investigations and accountability for torture; she also noted that a few countries have excluded the purpose of discrimination from the crime. See UNHRC, SRT, [Good Practices in national criminalization, investigation, prosecution and sentencing for offences of torture](#) (SRT 2023 Report on Investigations) 22 February 2023, UN Doc. A/HRC/52/30, para 40.

³ See, for example, REDRESS, [Unequal Justice: Accountability for Torture against LGBTIQ+ persons in Africa](#), 2022, pp. 24-25. ⁴

⁴ UN Committee against Torture (CAT), [Report of the Committee against Torture: 51st and 52nd sessions](#) (2013-2014), 2014, UN Doc. A/69/44, p. 113-114, paras C (8) – (9) and 121; CAT, [Elmi v Australia](#), Communication No. 120/1998, 25 May 1999, UN Doc. CAT/C/22/D/120/1998, para 6.5; CAT, [General Comment No. 2](#) (CAT General Comment No. 2) 24 January 2008, UN Doc. CAT/C/GC/2, para. 18.

⁵ See, e.g., CAT, [Dzemajl and Others v Yugoslavia](#), Communication No. 161/2000, 21 November 2002, UN Doc. CAT/C/29/D/161/2000; CAT General Comment No. 2, para. 18.

The duty to investigate LGBTIQ+ torture

Under UNCAT, States have a duty to conduct investigations wherever there is a “reasonable ground to believe that an act of torture has been committed in its jurisdiction”, whether in response to a complaint or on their own initiative (Articles 12 and 13). States also have the same duty to investigate CIDTP (Article 16).

The duty to investigate instances of torture or ill-treatment creates a two-fold right: the right to lodge a complaint to the competent authorities, and the right to have the complaint investigated promptly and impartially.

The right to lodge a complaint

This means that States should ensure the right to lodge a complaint is enshrined in law, and that the relevant procedures to complain to the competent authorities are accessible to everyone.⁶

The right to have the complaint investigated

According to the UN Special Rapporteur on Torture (SRT), “the minimum standards applicable include that the investigation be independent, impartial and subject to public scrutiny, that the competent authorities act with due diligence and expediency, and that victims are involved”.⁷ Investigators should use best endeavours to determine the nature and circumstances of any acts of torture or other ill-treatment and identify those

responsible with a view to holding them accountable.

Further explaining some of these standards, investigations into torture allegations should be:

- a) **Prompt:** an investigation must be commenced without any delay (within a few hours and no later than 24-48 hours) either following a formal complaint, or even where no formal complaint has been made, as long as there is reasonable ground to believe that an act of torture has been committed;⁸ and it should be carried out expeditiously throughout, thereby minimising the risk of loss of evidence and ensuring the protection of witnesses and victims.⁹ Any delays should be explained and documented in writing and subject to judicial oversight.
- b) **Impartial:** the investigation must be carried out by an organ other than the one implicated in the alleged violation and by competent and qualified individuals.
- c) **Effective:** the investigation must be thorough and capable of establishing the truth and identifying those involved; meaning that authorities must make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation.

⁶ Istanbul Protocol: [Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman and Degrading Treatment \(Istanbul Protocol\)](#), 2022, para 196.

⁷ SRT 2023 Report on Investigations, para 61.

⁸ Istanbul Protocol, para. 193; UN Human Rights Council (UNHRC), Report of the Special Rapporteur on Torture (SRT), [Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment](#), 23 September 2014, UN Doc. A/69/387, paras. 24 and 68(a); SRT 2023 Report on Investigations, para 67.

⁹ Istanbul Protocol, para 193.

Transparent: the investigation must enable a certain level of public scrutiny to ensure public confidence in the good administration of justice, for example by publishing reports on the numbers of complaints, investigations conducted, its timeframes and outcomes.¹⁰

These principles should be applied to an investigation regardless of whether the acts of torture or ill-treatment were perpetrated by State or private actors.

According to the European Court of Human Rights (**European Court**),¹¹ the obligation to effectively investigate cases of torture and ill-treatment against LGBTIQ+ persons requires:

- taking all reasonable measures to collect and secure evidence;
- exploring all practical means of discovering the truth concerning the incident;
- taking all reasonable steps to unmask possible discriminatory motives and establish whether feelings of hatred or prejudice played a role in the events; and
- delivering fully reasoned, impartial, and objective decisions, without omitting suspicious facts that may be indicative of violence motivated by discrimination on the grounds of sexual orientation or gender identity.
- conducting a prompt investigation, with reasonable expedition.

The State duty to investigate was also discussed by the Inter-American Court of Human Rights (**Inter-American Court**) in the context of discriminatory torture against the LGBTIQ+ community in *Azul*

Rojas Marín v Peru (Azul).¹² In this judgment, the Inter-American Court noted that States have additional obligations to investigate possible discriminatory motivations, and should:

- take all reasonable measures to establish whether violence was motivated by discrimination;
- issue fully reasoned and impartial decisions following an examination of all the evidence; and
- avoid omitting any suspicion or events that would indicate that violence was motivated by discrimination.

In *Azul*, the Inter-American Court determined that the investigative authorities did not take the actions necessary for an effective investigation of allegation of torture, stating that:

...[E]vidence was not secured in the areas where the presumed victim said she had been in the Casa Grande Police Station; nor was the immediate custody required of key evidence, including the clothing that Ms. Rojas Marín was wearing at the time and the rubber baton involved in the incident...¹³

[D]uring the investigation, the Public Prosecution Service never examined the possibility of whether the detention and subsequent torture of the presumed victim were motivated by Ms. Rojas Marín's sexual orientation or gender expression. The authorities did not conduct any investigative action in relation to the derogatory comments that Ms. Rojas Marín stated she had received concerning her sexual orientation. Also, during one of the psychiatric assessment, one of those possibly responsible made homophobic

¹⁰ SRT 2023 Report on Investigations, para 66.

¹¹ European Court of Human Rights (**ECtHR**), *Identoba and Other v Georgia (Identoba)*, App no. 73235/12 (12 August 2015); ECtHR, *MC and AC v Romania*, App no. 12060/12 (12 July 2016); ECtHR, *Aghdomelashvili and Japaridze v Georgia*, App no. 7224/11 (8 January 2021); ECtHR, *Sabalić v Croatia*, App no. 50231/13 (14 April 2021).

¹² Inter-American Court of Human Rights (**IACtHR**), *Azul Rojas Marín v Peru (Azul)*, Preliminary objections, merits, reparations and costs, 12 March 2020, Series C No. 402.

¹³ *Ibid*, para. 195.

*comments which were not followed up on.*¹⁴

The Inter-American Court concluded that the authorities had failed to conduct an appropriate and effective investigation, and ordered the State to adopt a protocol on effective investigations into LGBTIQ+ violence.¹⁵

In *Vicky Hernandez v Honduras* (a case concerning the murder of a transgender woman) the Inter-American Court reinforced its approach in *Azul*, and established a similar duty to investigate violence against the LGBTIQ+ community (in cases other than torture).¹⁶ In addition, the Court stressed the enhanced duty to investigate violations of the rights of LGBTIQ+ human rights defenders and transgender women,¹⁷ and emphasised that a failure to recognise (in identity documents, for example) a victim's gender identity can negatively impact an investigation because lines of investigation relevant to the determination of the motive for the violence could be ignored.¹⁸ The African Commission on Human and People's Rights (**African Commission**) has not yet issued any judgments specifically on violence against LGBTIQ+ persons, but would possibly be influenced by these decisions from the Inter-American and the

European Courts. Importantly, the African Commission has decided individual cases involving the duty to investigate allegations of torture,¹⁹ and in a case concerning indigenous tribes in Sudan, the African Commission has acknowledged that torture

*...is a tool for discriminatory treatment of persons or group of persons who are subjected to the torture by the State or non-State actors at the time of exercising control over such person or persons. The purpose of torture is to control populations by destroying individuals, their leaders and frightening entire communities.*²⁰

Such a conclusion by the African Commission regarding discriminatory purposes could and should be equally applicable to cases of torture against LGBTIQ+ persons, as torture is often used as a form to 'control', 'destroy', and 'frighten' the entire LGBTIQ+ community. Further, the Robben Island Guidelines, adopted by the African Commission to prohibit and prevent torture in Africa, pay particular attention to gender-based forms of torture and ill-treatment, and call on States to establish readily accessible and fully independent mechanisms to investigate instances of torture.²¹

¹⁴ *Ibid*, para. 197.

¹⁵ *Ibid*, para. 244.

¹⁶ IACtHR, *Vicky Hernández v Honduras*, Merits, reparations and costs, 26 March 2021, Series C No. 422, para. 152.

¹⁷ *Ibid*, para. 98.

¹⁸ *Ibid*, paras. 122-124.

¹⁹ African Commission on Human and Peoples' Rights (ACHPR), *Abdel Hadi, Ali Radi v. Sudan*, Communication 368/09, 2013.

²⁰ See, for example, ACHPR *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan*, Communication 279/03- 296/05, 27 May 2009, para. 156.

²¹ ACHPR, UNHRC, APT, *Resolution On Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment In Africa* (the Robben Island Guidelines), Second Edition, 2008, paras. 5 and 17-19.

Unmasking discriminatory purposes

In cases of torture or ill-treatment against LGBTIQ+ persons it is particularly important that State authorities investigate the possibility that the acts could have been motivated by discrimination.

This is crucial to establish the existence of the third element of the definition of torture (specific purpose), and “to ensure that violations rooted in discriminatory social norms around gender and sexuality are fully recognized, addressed and remedied”.²²

The right to know whether or not torture or ill-treatment was motivated by prejudice against LGBTIQ+ persons is a key component of the right to access justice and reparations, and an important factor in preventing future violations.²³

According to existing international caselaw on LGBTIQ+ torture,²⁴ the duty to investigate the discriminatory purpose does not translate into an obligation to produce results. It relates to the efforts and process employed by authorities, meaning that the State has to use its best endeavours to unmask any discriminatory motive. Additionally, the assessment of the “elements of intent and purpose do not involve a subjective inquiry into the motivations of the perpetrators”, but rather require an objective determination taking into account all the circumstances.²⁵

For instance, the following facts and circumstances may support a conclusion

Treating discriminatory torture cases as ‘ordinary cases’ can mean giving tacit consent to hate crimes

“In the absence of such a meaningful investigation [into homophobic motives] by the law-enforcement authorities, prejudice-motivated crimes would unavoidably be treated on an equal footing with ordinary cases without such overtones, and the resultant indifference would be tantamount to official acquiescence or even connivance in hate crimes.”²⁶

“The authorities’ failure to investigate possible discriminatory motives may, in itself, constitute a form of discrimination.”²⁷

that acts of torture or ill-treatment impacting the LGBTIQ+ community were motivated by discrimination (though cases must be assessed on an individual basis):

- insults, threats, statements or declarations based on hate or prejudice, or that make reference to a person’s sexual orientation or gender identity;
- the nature of the act (such as humiliating strip-searches, rape, conversion therapy practices, sexual abuse);
- the victim’s status as an LGBTIQ+ activist, or their participation in events which celebrate or recognize the

²² UNHRC, [Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment](#) 5 January 2016, UN Doc. A/HRC/31/57, paras. 51-52, 55.

²³ Inter-American Commission on Human Rights (IACHR), [Violence against LGBTI Persons](#), para 506.

²⁴ Specifically those from the IACtHR and the ECtHR mentioned in this briefing paper.

²⁵ CAT General Comment No. 2, para. 9.

²⁶ *Identoba and Other v Georgia*, para 77.

²⁷ Azul, para 196.

- diversity of LGBTIQ+ persons (such as Pride March or demonstrations);
- the existence of a general high level of hostility towards the LGBTIQ+ community;²⁸

- the lack of any other obvious motive.

Investigating bodies and their role

In order to ensure compliance with the above obligations, States must have investigative bodies or mechanisms that are institutionally and functionally independent, in order to ensure impartiality.²⁹ According to the European Court, independence means not only a lack of hierarchical or institutional links, but also practical independence from the party under investigation.³⁰

Indeed, as stressed by the UN SRT, “if investigators are not hierarchically, administratively and financially independent of the authorities they are investigating, there is an irreconcilable conflict of interest.”³¹

The independence of investigative bodies is one of the key elements ensuring accountability for torture, and other rights violations, particularly where other State actors (such as the police) are unable or unwilling to investigate, or where they lack the necessary independence to do so effectively.

Investigative officers must also be empowered to commission investigations by impartial medical or other experts.³² In cases of torture or ill-treatment against LGBTIQ+ persons, investigators are encouraged to rely on expert witnesses

who are able to identify the often nuanced discrimination and prejudice against diverse sexual orientations and gender identities.³³

The Istanbul Protocol: a practical tool for practitioners

The Istanbul Protocol: Manual on the Effective Investigation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides critical guidance to States to ensure they fulfil their international obligation to investigate, prosecute, and punish torture and other ill-treatment.

It informs medico-legal investigations conducted by both State and non-State actors into torture worldwide. It serves as a guide to legal practitioners and clinicians in best practices for their conduct and documentation of medico-legal assessments of individuals alleging torture and/or ill-treatment.

Personnel should not use discriminatory presumptions and stereotyping when receiving, processing and investigating

²⁸ In *Identoba*, where LGBTIQ+ demonstrators were attacked by counter-demonstrators during a march, the European Court also considered the high level of hostility against the LGBTIQ+ community in that State to conclude that the attacks had been motivated by discrimination.

²⁹ Istanbul Protocol, para 193.

³⁰ ECtHR, *Burlyu and Others v Ukraine*, App No. 3289/10 (6 February 2019), para 127.

³¹ SRT 2023 Report on Investigations, para 63.

³² Istanbul Protocol, para 193.

³³ IACHR, *Violence against LGBTI Persons*, para 509.

complaints.³⁴ The investigative teams and bodies must reflect the diversity of the communities and people they serve.³⁵

Investigative bodies should also carefully plan and prepare their investigations,³⁶ and conduct a full range of investigative steps in order to establish a record that is as comprehensive and accurate as possible.³⁷ Such steps include gathering (a) witness testimony (from the victim, perpetrators and others), (b) physical evidence, including forensic evidence gathered from the crime scene; (c) medico-legal evidence, including reports from clinicians and medical records; (d) digital evidence (for example, from computers and mobile phones); (e) photographs, and (f) documentary evidence, both official and unofficial, including that demonstrating systemic patterns of torture and ill-treatment.³⁸

Investigative bodies need to take particular care over the way they handle investigations into sexual violence, which is often a form of violence perpetrated against members of the LGBTIQ+ community. Relevant precautions in such cases include: (a) taking the victim's statement in a safe and comfortable environment that offers privacy and inspires confidence; (b) recording the victim's statement to avoid or limit the need to repeat it; (c) providing the victim with medical, psychological and hygienic care, both on an emergency basis and on

an ongoing basis if required; (d) undertaking a complete and detailed medical and psychological examination immediately by appropriate trained personnel, if possible of the sex preferred by the victim, advising the victim that they may be accompanied by a person of confidence if they so wish; (e) documenting the investigative measures and handling the evidence diligently, taking sufficient samples, performing tests to determine the possible perpetrator of the act, securing other evidence such as the victim's clothing, investigating the scene of the incident immediately, and guaranteeing the proper chain of custody, and (f) providing the victim with access to free legal assistance at all stages of the proceedings.³⁹

Further, investigative bodies shall carry out investigations with enough transparency to allow the public to understand and scrutinise the process and outcomes of the investigations.⁴⁰ These bodies should also ensure that the complainant, their lawyers and judicial authorities have access to the investigation and its results.⁴¹

Some States have introduced their own Protocols and Guides setting out best practice for investigations into certain relevant types of violence, which reflect the universal standards referred to above.⁴² Such guides can be a useful way to provide practical advice for investigative

³⁴ Azul, paras 203-204.

³⁵ Istanbul Protocol, para 193.

³⁶ Istanbul Protocol, paras 204-205.

³⁷ Istanbul Protocol, para 206.

³⁸ Istanbul Protocol, paras 204-237.

³⁹ Azul, para. 180. See also Istanbul Protocol, para 197; WHO Guidelines for medico-legal care for victims of sexual violence (2003); UN Committee against Torture, [General Comment No. 3 \(CAT General Comment No. 3\)](#), 13 December 2012, UN Doc CAT/C/GC/3, para. 21; Sara Ferro Ribeiro and Danaé van der Straten Ponthoz, *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict – Best Practice on the Documentation of Sexual Violence as a Crime or Violation of International Law*, 2nd ed. (London, 2017), p. 239, which lists the following strategies to mitigate retraumatisation: (a) ensuring physical and emotional safety before, during and after interview; (b) promoting trustworthiness; (c) choice; (d) collaboration and participation; and (e) empowerment.

⁴⁰ Istanbul Protocol, para 193; SRT 2023 Report on Investigations, para 66.

⁴¹ Istanbul Protocol, para 193.

⁴² These include the following from Argentina and Uruguay, only available in Spanish: Specialist [Argentinian] Prosecutorial Unit for Violence against Women, *Protocol on the investigation and Litigation of Cases of Violent Deaths of Women (Femicides)* (2018) (Unidad Fiscal Especializada en Violencia contra las Mujeres (UFEM), [Protocolo para la investigación y litigio de casos de](#)

bodies, translating the standards into a domestic context.

Promoting a survivor-centred approach

Under international law, the duty to investigate torture or ill-treatment entails ensuring the safety of complainants and witnesses, protecting them against any ill-treatment or intimidation as a result of their complaint or any evidence given (Article 13, UNCAT).

In practice, complaints and investigations mechanisms are only accessible and effective if victims and witnesses can use them feeling safe and are protected from intimidation, reprisals, and all kinds of re-victimisation or re-traumatisation.⁴³ This is especially critical for LGBTIQ+ victims who often not only have to overcome multiple barriers to report violence that they have suffered, but also may face increased risks of further harassment and discrimination due to societal and/or structural discrimination.

Hence, wherever possible, personnel with expertise in working with LGBTIQ+ or gender-based violence victims should be involved in victim support and communication. Therefore, training of stakeholders on issues relating to LGBTIQ+ rights, anti-torture standards, and on how to conduct trauma informed interviews, is crucial for ensuring that LGBTIQ+ persons are acknowledged and treated with

respect and dignity before, during and after investigations and legal proceedings.⁴⁴

For instance, in Azul, the Inter-American Court ordered the State to create and implement a training plan for police, prosecutors and the judiciary regarding violence against LGBTIQ+ people, including measures to raise their awareness of the need for:

(a) respect for sexual orientation and gender expression in their actions involving civilians, especially LGBTIQ+ people who report having suffered sexual violence or torture;

(b) due diligence in conducting investigations and judicial proceedings related to discrimination, sexual violence and torture of LGBTIQ+ people, and

(c) the discriminatory nature of stereotypes concerning sexual orientation and gender expression and the negative impact that their use has on LGBTIQ+ people.⁴⁵ The development of guides and protocols for investigative bodies (as referred to in the previous section) can help to consolidate and reinforce any training provided.

[muertes violentas de mujeres \(femicidios\)](#); UFEM, *Murder of transvestite Amancay Diana Sacayán: best practice for prosecutors* (2020) (UFEM, [Travesticidio de Amancay Diana Sacayán. Documento de buenas prácticas de intervención fiscal](#); Prosecutor General [of Uruguay], [Investigation and Litigation of Femicides. Guide for Prosecutors](#) (2021) (Fiscalía General de la Nación de Uruguay, *Investigación y litigio de femicidio. Guía de actuación para fiscales*)

⁴³ Istanbul Protocol, paras 196-197.

⁴⁴ Istanbul Protocol, paras 203-204, 210; WHO Guidelines for medico-legal care for victims of sexual violence (2003), paras 3.1.4, 3.1.8, 4.6; Sara Ferro Ribeiro and Danaé van der Straten Ponthoz, *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict – Best Practice on the Documentation of Sexual Violence as a Crime or Violation of International Law*, *ibid*, for example at pp. 144, 153-154.

⁴⁵ Azul, para 248.

Additionally, investigations should be participatory as to enable the complainant and their lawyers to request investigative measures, challenge existing ones if they believe they have been ineffective and be able to submit their own evidence.⁴⁶ Further, the participation of victims in justice processes, including in investigations, must be facilitated by schemes which respond to the holistic needs of the victim, whether physical, material or psychological. This also includes keeping victims and their representatives informed about their role and the scope, timing and progress of proceedings, as well as inform victims of their rights and services available to them.⁴⁷

Finally, as mentioned above, one of the purposes of effective investigations is to facilitate the process for victims to obtain redress. Notably, States have the obligation to ensure that victims of torture have enforceable rights to full and effective redress (UNCAT, Article 14),

which includes restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. Reparations awarded by human rights tribunals can be wide-ranging, as can be seen in the box below.

Access to justice is a key measure of satisfaction for survivors of torture. This right includes access to justice and fair and impartial proceedings for survivors of torture, and such proceedings can empower survivors through their participation and engagement in the legal process.⁴⁸ Satisfaction also includes the verification of the facts and a full and public disclosure of the truth – to the extent that such disclosure is not harmful to the survivors or others –, and an official declaration or judicial decision restoring survivors’ dignity and acknowledging that their rights have been violated.⁴⁹ In this sense, investigations are key and a failure to investigate acts of torture “may constitute a de facto denial of redress and constitute a violation of the State’s obligations under article 14” of UNCAT.⁵⁰

Azul Rojas Marín v Peru

In the Azul case, the Inter-American Court ordered comprehensive and holistic forms of reparation for both individual as well as societal harm, and structural discrimination, including orders requiring Peru to (a) adopt a protocol for the effective investigation and administration of justice in criminal proceedings relating to cases of violence against members of the LGBTIQ+ community, instructing State representatives to abstain from using discriminatory presumptions and stereotyping, and including due diligence standards developed by the Court in the judgement; (b) provide training to members of the justice system and the police on LGBTIQ+ rights and due diligence investigations; and (c) implement a data collection system to officially register all cases of violence against members of the LGBTI community, including disaggregated information.⁵¹

⁴⁶ Istanbul Protocol, para 197.

⁴⁷ UN OHCHR, [UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#), Article 4.

⁴⁸ See for example: Helen Duffy, *Strategic Human Rights Litigation: Understanding and Maximising Impact* (Hart Publishing 2018), p. 83.

⁴⁹ CAT, General Comment No. 3, para 16.

⁵⁰ *Ibid.*

⁵¹ Azul, paras 242, 243, 248-249, 252.

Identoba and Others v Georgia

In the *Identoba and Others v Georgia*, the European Court ordered just satisfaction to the victims in the form of compensation for pecuniary and non-pecuniary damages resulting from the violations of their rights. Other measures of reparation adopted or in progress include (a) an investigation into the acts of torture and ill-treatment suffered by the victims; (b) the adoption of the State's first National Human Rights Strategy; (c) the adoption of the Law on the Elimination on All Forms of Discrimination which includes protection based on sex and gender identity; and (d) the establishment of a new mechanism of monitoring and overseeing implementation of antidiscrimination policy by the Public Defender's Office.⁵²

In conclusion, the implementation of the standards outlined above is crucial to ensure investigations are effective and carried out according to international law, that violence against LGBTIQ+ persons is adequately treated as torture – where it meets the definition under UNCAT –, and that LGBTIQ+ survivors can exercise their right to access to justice and reparations.

⁵² *Identoba and Other v Georgia*, paras 108-110. At the European system, a finding of violation of the ECHR or its Protocol "imposes on the State a legal obligation under Article 46 of the ECHR to put an end to the breach and to make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach"; also, under article 41 the European Court is empowered to afford just satisfaction; it follows that this legal obligation includes not just the payment of sums awarded by way of just satisfaction, but also the selection, subject to supervision by the Committee of Ministers, of the general and/or individual measures to be adopted in its domestic legal order – see *Assanidze v Georgia*, App No. 71503.01, 8 April 2004, para 198. In *Identoba*, the measures are outlined in the [updated action plan](#) (15.11.2016), adopted by the State as part of the execution of the judgment, overseen by the Council of Europe's Committee of Ministers' Department for the Execution of Judgments of the European Court of Human Rights, paras. 8-12, 26, 32, 36.

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Durban Gay Pride in South Africa.

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