

PRACTICE NOTE 10

REPARATION FOR TORTURE SURVIVORS

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REDRESS

Ending torture, seeking justice for survivors

This guide is part of a series of Practice Notes designed to support the implementation of reparation awards on behalf of survivors of torture and other grave human rights violations. It is aimed at practitioners that assist survivors in their journeys to reparation. Other REDRESS Practice Notes complementary to this one include The Law Against Torture, Holistic Strategic Litigation Against Torture and Implementation of Decisions.

This Practice Note is aimed at facilitating the understanding of reparation and its many facets, principles, and standards. It provides practical and comparative examples related to claiming and accessing reparations in different contexts in a survivor-centred manner, and proposes strategies to overcome obstacles in the journey towards reparation. This Practice Note is complemented by REDRESS Practice Notes on Claiming and Implementing Reparation, Survivors Centred Approach, and Compensation.

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ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ACommHPR	African Commission on Human and Peoples' Rights
ActHPR	African Court on Human and Peoples' Rights
ACHR	American Convention on Human Rights
CAT	UN Committee Against Torture
CEDAW	UN Committee on the Elimination of Discrimination against Women
CRSV	Conflict-Related Sexual Violence
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
HRC	UN Human Rights Committee
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
NGO	Non-Governmental Organisation
NSAG	Non-State Armed Group
OAS	Organisation of American States
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNCAT	UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

1. INTRODUCTION

Reparation for human rights violations, including torture, is key to victims' and survivors' paths towards recovery. It is a complex and multifaceted concept that practitioners must fully understand to adequately guide and advise survivors. This Practice Note aims to facilitate practitioners' understanding of reparation in the context of torture and other severe human rights violations. It acknowledges that reparation measures are context and person specific.

This Practice Note encourages practitioners to incorporate a survivor-centred approach into their practice in all phases of the reparation process. The rights, welfare, involvement and participation, and needs and preferences of victims of human rights violations must be prioritised to address the disconnects that often exist between formal reparation processes and affected communities.

This document provides a general introduction to the concept and principles of reparation. It proposes practical and comparative examples of claims for, access to, and implementation of reparation measures in different contexts, and explores obstacles faced by survivors before domestic, regional, and international mechanisms. This Practice Note covers:

- 1. The right to reparation:** This section describes the concept of reparation, its principles, forms, and who is entitled to redress.
- 2. State's duty to deliver reparation:** This section lays out the international legal obligations regarding effective investigations and prosecution of perpetrators, the provision of effective remedies for victims to claim reparation, and some practical comments when the perpetrator is a private actor.
- 3. The practice of reparation:** This section explores the most common challenges that practitioners and victims face in law and practice for accessing justice

and reparation from a domestic perspective, including material, legal, and contextual obstacles.

A Note on Terminology

Decisions: UN human rights organs and regional human rights systems use different language to refer to their findings. The UN treaty bodies and special procedures issue “views”. The Inter-American Commission on Human Rights (IACHR) issues “reports”. The African Commission on Human and Peoples’ Rights (ACCommHPR) issues “decisions”. The European Court of Human Rights (ECtHR), the African Court on Human and Peoples’ Rights (ACtHPR), and the Inter-American Court of Human Rights (IACtHR) issue “judgments”. For simplicity, this Practice Note refers to all of the above as “decisions”.

Remedies, reparation and redress: In this Practice Note, we use the term “remedies” to refer to the legal processes that can provide for the identification of the truth, justice, and reparation, as well as the specific outcomes to judicial processes. We use “reparation” to refer to the substantive measures, as defined in this Practice Note, designed and implemented to repair the harm done as a result of a human rights violation. “Redress” is occasionally used as an all-encompassing term referring to both concepts.

Victims and survivors: Throughout this Practice Note we use both the terms “victim” and “survivor”. In discussing international jurisprudence and the legal standards on the right to reparation, we use the term “victim” for consistency with the language used by courts, and regional and international bodies. In providing commentary, we use the term “survivor” to refer to both individuals who have survived human rights violations as well as their families and communities, and to the families of those who died as a result of violations.

Our use of the word “survivor” rather than “victim” is in no way intended to diminish the legal status of persons as victims of crimes and violations under domestic and international law, either individually or collectively. Where we use the term “survivor” we do so to reinforce the self-determination, dignity, and strength of individual victims and emphasise the possibility of healing and rehabilitation.

2. THE RIGHT TO REPARATION

2.1 When are States responsible for reparation?

A State must provide reparation when a human rights violation is attributable to it. This is the case where violations are committed by representatives, officials, or agents of the State, private actors acting on behalf of the State or exercising State-like functions, or when the State failed to prevent, protect, and/or investigate the violations. In such cases, States must ensure that victims can access justice and an effective remedy, including reparation.

States must provide effective remedies to ensure that victims of human rights violations perpetrated by private actors can access reparation. This responsibility entails creating legal frameworks and mechanisms that enable victims to seek and obtain redress for the harm they have suffered and might include judicial procedures or reparation programs. Judicial remedies generally begin with individual applications and complaints through a litigation process that must be decided by a judge based on exhaustive evidence, legal arguments, and procedural requirements. In contrast, reparation programs are typically administrative mechanisms established in cases of systematic and mass human rights violations. They aim to provide redress to the greatest possible number of victims and are more flexible in nature. The burden of proof is lower, and compensation is generally provided based on fixed amounts (see section 3.4).

2.2 The right to an effective remedy and reparation

The right of victims to an effective remedy and to reparation is well-established in international human rights law and international humanitarian law and is enshrined in various international treaties and instruments. These include:

<p><u>Universal Declaration of Human Rights (UDHR)</u></p>	<p>Article 8 Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.</p>
<p><u>International Covenant on Civil and Political Rights (ICCPR)</u></p>	<p>Article 2 (...) 3. Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.</p>
<p><u>International Convention on the Elimination of All Forms of Racial Discrimination</u></p>	<p>Article 6 States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.</p>

International Convention
for the Protection of All
Persons from Enforced
Disappearance

Article 24

(...)

4. Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation.

5. The right to obtain reparation referred to in paragraph 4 of this article covers material and moral damages and, where appropriate, other forms of reparation such as:

(a) Restitution;

(b) Rehabilitation;

(c) Satisfaction, including restoration of dignity and reputation;

(d) Guarantees of non-repetition.

(...)

Convention against
Torture and Other
Cruel, Inhuman or
Degrading Treatment or
Punishment

Article 14

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.

(expanded on in General Comment 3 by the Committee Against Torture (CAT))

<p><u>Convention (IV) respecting the Laws and Customs of War on Land</u></p>	<p>Article 3 A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.</p>
<p><u>International Committee of Red Cross Customary International Humanitarian Law Rules</u></p>	<p>Rule 150 A State responsible for violations of international humanitarian law is required to make full reparation for the loss or injury caused</p>

In 2005, the United Nations (UN) General Assembly adopted the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles and Guidelines). These Guidelines are used as an interpretative tool for reparation.

From a regional perspective, the African Commission on Human and Peoples' Rights (ACoMHPR) explained in its General Comment 4 that providing redress to victims of torture is an international obligation derived from the African Charter on Human and Peoples' Rights (ACHPR). Similarly, the Inter-American Court of Human Rights (IACtHR) has ruled that the right to an effective remedy is incorporated in the right to access to justice embodied in Articles 8 and 25 of the American Convention on Human Rights (ACHR) (See e.g. Case Women Victims of Sexual Torture in Atenco v. Mexico).

2.3 Who are the beneficiaries of reparation?

The Basic Principles and Guidelines and the CAT's General Comment 3 define victims as those who individually or collectively suffered physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights as a result of a violation. The CAT notes that the status of "victim" should be recognised regardless of whether the perpetrator was identified, prosecuted, or sanctioned.

i. Direct and indirect victims

Torture has serious impacts on the person who was subjected to it (direct victim), and on their relatives or dependents, and those “who have suffered harm in intervening to assist victims in distress or prevent victimisation” (indirect victim) (see: Basic Principles and Guidelines). Both direct and indirect victims are entitled to reparation.

The Trial Chamber of the International Criminal Court in its reparation order in the case of *The Prosecutor v. Bosco Ntaganda* (2021) noted that there are at least four categories of indirect victims:

“(…)

- a. the family members of direct victims;
- b. anyone who attempted to prevent the commission of one or more of the crimes under consideration;
- c. individuals who suffered harm when helping or intervening on behalf of direct victims; and
- d. other persons who suffered personal harm as a result of these offences.”

The IACtHR has ruled that the harm suffered by indirect victims, especially those with close links to the direct victims, is presumed and, as such, additional evidence is not needed to demonstrate the harm. (See e.g., *Case Myrna Mack Chang v. Guatemala*).

A person can be both a direct and an indirect victim; therefore, practitioners must claim reparation for each type of harm suffered. This situation could arise, for example, if two relatives suffer a human rights violation. In this scenario, both individuals are entitled to receive reparation as direct victims and to obtain redress as indirect victims for the harm suffered as a result of the violations against their relative.

CASE STUDY

The IACtHR in the *Case Massacre Santo Domingo v. Colombia* decided that a military operation by the Colombian armed forces took place in breach of international humanitarian law. The armed forces attacked the civilian population, resulting in deaths, injuries, and property damage. In the list of victims, the Court recognised that some persons were both direct and indirect victims as they not only suffered injuries caused by the attacks, but their relatives were also affected.

In certain circumstances, the harm suffered by the direct victims' relatives can result in a violation of their rights. On numerous occasions, the IACtHR has recognised the violation of the right to personal integrity of the direct victims' relatives because of the additional suffering that they have experienced due to the circumstances of the violations committed against the direct victims and the subsequent acts or omissions of the State authorities concerning those acts, including the lack of an investigation. Practitioners should verify the circumstances of the direct victims' relatives to determine the severity of their suffering and claim comprehensive reparation measures on their behalf.

CASE STUDY

Linda Lopez Soto was 18 years old when she was subjected to kidnapping, sexual slavery, and other forms of torture by a private individual over a period of four months. Although Linda's sister reported her disappearance to the Venezuelan authorities, they were dismissive and did not take adequate measures to find her. Once Linda managed to escape her captor, she required medical treatment due to the severity of the violence, including facial reconstruction. She was then re-victimised through the judicial process because of gender stereotypes, unjustified delays, and corruption. In its judgment, the IACtHR (*Case Lopez Soto et al. v. Venezuela*) found that the right to personal integrity of the relatives of Linda Lopez Soto was also breached due to:

“(i) the personal repercussions on their physical and emotional health and an irreversible alteration of their life projects; (ii) the total rupture of the family dynamic, which in this case is particularly serious, bearing in mind that most of the siblings were minors at the time of the facts; (iii) severe effects at the financial level and the inadequacy of the available resources; (iv) feelings of fear and helplessness in the face of the threats and harassment suffered, and (v) individual and social effects revealed by anguish, powerlessness and vulnerability as a result of the prolonged search for justice, and the revictimizing actions of the organs responsible for the investigation and prosecution, as well as owing to the indications during the judicial proceedings that they were part of a prostitution network or the accusations that the father was a drug-trafficker or a paramilitary”.

ii. Individual and collective reparation

Individual reparation aims to redress the harm done to a specific victim. Providing individual reparation ensures that individual victims feel a sense of personal justice as their own grievances have been examined and addressed individually. This usually takes the form of restitution, satisfaction, compensation, and rehabilitation (see 2.4 Forms of Reparation).

Collective reparation focuses on delivering redress to groups of victims and survivors that have suffered harm and are bound by a common identity, experience, or form of violation. This type of reparation can be provided in at least two scenarios. The first scenario arises when individuals suffer human rights violations because of their belonging to a group or collective. In these cases, reparation may consider the motivations of the violations, including gender, sexual orientation, political position, race, or ethnicity. The second scenario exists when violations affect the collective as a group and the individual harm cannot be differentiated; examples include violations against ancestral lands against indigenous peoples or against ethnic groups.

Collective reparation is generally provided in the form of satisfaction and guarantees of non-repetition, although it can also include material compensation and rehabilitation. Collective reparation is especially relevant in the context of systematic and gross human rights violations, for instance, in armed conflict situations.

CASE STUDY

The IACtHR in the case *Members and Militants of the Unión Patriótica v. Colombia* analysed the violence (including genocide) against a left-wing political movement in Colombia (Unión Patriótica) during the 1980s and 1990s. Violence against members of the Unión Patriótica included killings, torture, enforced disappearance, sexual violence, threats, forced displacement, and arbitrary detentions. These acts were committed with direct and indirect State participation.

In its judgment, the IACtHR ordered collective reparation measures aimed at restoring the dignity of the members of the Union Patriótica collectively. This was done by ordering a documentary on the stigmatisation and violence suffered by the Unión Patriótica members, the building of a memorial, and the designation of a commemoration day. The Court also ordered individual reparation measures, including compensation, comprehensive rehabilitation, ensuring the conditions for the return of those internally displaced, and searching for victims of enforced disappearance.

Collective reparation often does not respond to the intimate individual nature of human rights violations and victims' unique suffering. For that reason, collective reparation does not nullify the State's obligation to implement individual reparation measures. Victim representatives should, as far as possible, try to distinguish between victims and individualise their needs. This could be done, for instance, by distinguishing between harm inflicted to specific individuals and harm inflicted to collective groups or communities.

Identifying collective harm in torture cases

Practitioners can take into consideration the AComHPR's General Comment 4, which sets out rules to identify collective harm and to address collective reparation in cases of torture:

- Collective harm could be identified when torture is perpetrated against members of marginalised or disadvantaged groups, groups of people that have suffered individually but due to their common experience have a common identity, a community sharing the same geographical territory, and a particular group which self-identifies as a collective, among others.
- Collective reparation shall address the group's particularities and be sensitive to the collective harm suffered.
- States must ensure the full and informed participation of victims in the reparation process, especially those who are more vulnerable within the group.
- Collective reparation must include the recognition of torture and ill-treatment suffered by victims and the State's responsibility for these acts.
- The reparation measures must be proportional to the harm suffered.
- Collective reparation must not substitute individual reparation.

iii. Transgenerational trauma

The impact of torture and human rights violations can extend beyond immediate victims and affect future generations. This is the case, for example, when a family is pushed into poverty due to the loss of a primary breadwinner who suffered human rights violations, which can lead to long-term consequences and disrupt access to education.

The concept of transgenerational harm or trauma becomes particularly relevant in cases of systemic violations or violations that occur within the context of an armed conflict. It may take several generations for communities to fully recover their rights and regain their rightful place in society. The lasting effects of such violations

highlight the need for comprehensive reparation that addresses the consequences of past violations and supports the long-term healing and empowerment of affected individuals and communities.

When preparing reparation claims, practitioners should explore and document the trauma and harm caused to younger and older generations within the community of the survivors.

The **Truth Commission in Colombia** recognised the existence of transgenerational trauma in its final report. The report highlighted the long-lasting impacts of violence, silence, and impunity during the armed conflict on subsequent generations who were not directly affected by the violence. These effects manifest in various areas, including emotional well-being, social dynamics, cultural practices, and economic conditions. The report shed light on the profound and wide-ranging consequences of the conflict, extending beyond immediate victims and highlighted the need for comprehensive efforts to address and heal these intergenerational wounds.

2.4 How should reparation be delivered?

Reparation should be delivered following certain minimum standards to be effective. Reparation principles are developed in the CAT's General Comment 3, the Basic Principles and Guidelines, and the AComHPR's General Comment 4. Each of the principles outlined below should be considered in the design and implementation of reparation measures and programmes, and practitioners have a crucial role in monitoring their application.

Accessible: State authorities must ensure that survivors have access to and are aware of, or have information on, the mechanisms available to access reparation. Authorities must eliminate legal, cultural, economic, geographic, and other obstacles that prevent survivors from accessing reparation, especially for vulnerable populations. The State must consult survivors and encourage their participation in the reparation process in order to identify and address their needs and overcome obstacles.

Survivors of human rights violations must receive clear information about available remedies and other avenues for accessing reparation, their rights, and public services that they are entitled to. The disclosure of information must be effective and reach the highest possible number of victims. Additional measures might be needed to reach the most marginalised groups, including those who are displaced, those who live in rural areas, indigenous peoples, migrants that may not speak the national language, children, people deprived of liberty, and others.

Adequate: Reparation measures must be appropriate and proportionate to the gravity and circumstances of the violations. This means that reparation respond to the individual facts of each case, the human rights violations and harm suffered, and the victims' needs.

Comprehensive: This refers to the full scope of reparation measures (see 2.4, CAT's General Comment 3, and Basic Principles and Guidelines). To be comprehensive, reparation should attempt to address the various dimensions of the harm caused.

Holistic: Reparation must address the physical, psychological, economic, social, cultural, and other dimensions of victims' harm.

Non-discriminatory: Reparation must abide by the principle of equality and should not discriminate based on the survivor's race, sexual orientation or gender identity or expression, ethnicity, socioeconomic position, disability, language, religion, political beliefs, or any other characteristic. In assessing reparation, survivors should be treated in a fair, dignified, and compassionate manner. Differential approaches are required in designing and implementing reparation measures.

Prompt: The effects of severe human rights violations, especially torture, often give rise to urgent needs for survivors. Harm can become aggravated if not addressed promptly. As such, reparation must be delivered without undue delay. When necessary, interim reparation measures should be provided until more long-term measures can be implemented (see section 2.6).

The concept of “**prompt reparation**” is associated with promptness in accessing justice. As it is impossible to determine a universal time limit to decide on a domestic remedy, the IACtHR has developed four elements to analyse the time spent by a domestic authority in investigating and prosecuting violations in light of international standards (See e.g., Case *Furlan at al. v. Argentina*). Other international human rights bodies, such as the Human Rights Committee (HRC), have also considered these four criteria:

- i. Complexity: This element refers to the number of victims, the complexity of the facts and evidence, the time elapsed since the violation, and the context, among other factors.
- ii. The procedural activity of the interested party: The conduct of the interested party (victims or their relatives) must not obstruct the normal development of the procedure. In cases of torture, victims are in an unbalanced situation because they are often deprived of liberty, the evidence is held by the State, the victim is often prevented from filing complaints, etc. These circumstances must be considered by the authorities to avoid unnecessary delays in progressing torture claims.
- iii. Conduct of the authorities: Judges or administrative authorities deciding on reparation must act with due diligence and avoid unjustified delays.
- iv. Adverse effect on the judicial situation and impact on personal integrity: If the passage of time in deciding reparation could result in further violations against victims, the authorities are compelled to act promptly so that the case is decided as soon as possible.

Survivor-centred: Reparation should consider the unique harm suffered by survivors and their individual wishes and expectations of redress in order to develop tailored measures. The effective participation of survivors is vital for reparation to adequately respond to their needs and priorities. Throughout the design and implementation of reparation measures and programmes, survivors’ safety and security, privacy, and the principle of do-no-harm must be prioritised.

The **Kinshasa Declaration**: In the context of conflict-related sexual violence (CRSV), survivors from the African continent have demanded through a public declaration their participation in and co-creation of reparation programmes. They affirmed that they should participate “*in the design, implementation, monitoring and evaluation*” of reparation programmes.

For more information and practical guidance on ensuring a survivor-centred approach in the design and implementation of reparation programmes, please see REDRESS’ *Practice Note on A Survivor-Centred Approach to Seeking Reparation for Torture*.

Sustainable: Reparation measures and programmes should be designed and funded considering that they often need to be implemented over a long period of time, particularly in cases of mass violations with a large number of victims. They should be adequately resourced with technical, human, financial, and other resources.

2.5 Forms of reparation

The Basic Principles and Guidelines and other international and regional instruments recognise that reparations can take different forms, including **restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition**. These forms of reparation should be implemented following the principles laid out previously, in complementarity with each other, on a case-by-case basis, and in accordance with preferences and needs of survivors.

i. Restitution

This form of reparation aims to restore victims to their situation before the human rights violation occurred. The African Commission in its General Comment 4 mentioned some examples of restitution measures in torture cases, including the release of a person arbitrarily detained, restoration of citizenship, employment, land or property rights, among others. Yet, as noted by the CAT in its General Comment 3, in cases of torture it is not always possible to restore the victim to their original situation.

CASE STUDY

In *Sidi Abdallah v. Morocco*, the victim suffered torture in detention and was forced to confess to crimes committed against the Moroccan Police. He was subjected to sexual violence, beating, and his face being urinated on, among other forms of torture. Sidi Abdallah was sentenced to life imprisonment based on this forced confession.

The victim reported the torture to the investigating judge several times. These allegations were not taken seriously and did not trigger an investigation. At the beginning of his imprisonment, the victim had the right to receive visits from his family, but was subsequently transferred to another prison, further away from his family, in isolation, and without the right to receive visits. The victim was also denied medical assistance.

In its decision, among other forms of reparation, the CAT ordered restitution measures, including returning the victim to a prison closer to his family, suspending the use of solitary confinement, and reactivating his right to receive visits.

Practitioners should note that restitution is not always the best solution for victims because the original situation could be prejudicial to their empowerment and individual agency. This is the case, for example, when structural discrimination and inequality have led to violence. In cases of gender-based violence, restitution to the victim's original situation could mean a disempowered position which leaves them vulnerable to further violence. In such cases, forms of reparation with a transformative element are preferred (see 2.5).

ii. Compensation

Under this form of reparation, victims are awarded monetary compensation for the financial (pecuniary) and non-financial (non-pecuniary) harms suffered as a result of human rights violations. Pecuniary damages relate to economic losses that are easily quantifiable (e.g., money lost, loss of future earnings, legal, medical or other care costs, etc.). Non-pecuniary damages relate to losses that have no clear

monetary value (e.g., mental anguish, pain and suffering, change in the project of life, etc.).

Compensation must be proportional to the harm suffered. The Basic Principles and Guidelines state that victims should receive compensation for the following types of harm and costs (Principle 20):

- a) Physical or mental harm
- b) Lost opportunities, including employment, education and social benefits
- c) Material damages and loss of earnings, including loss of earning potential
- d) Moral damage
- e) Costs of legal or expert assistance, medicine and medical services, and psychological and social services

CASE STUDIES

In *R. R. and others v. Nepal*, the HRC found that compensation provided by the State to the victim's family for the rape and killing of a 16-year-old girl was not commensurate to the gravity of the facts. Consequently, the HRC noted that Nepal must provide adequate and effective compensation to R.R.'s family.

In *Mohammed Abderrahim v. Egypt*, the ACommHPR decided on the case of torture and ill-treatment suffered by a person deprived of liberty for over 15 years. The Commission ruled that due to the seriousness of the facts, restitution was impossible. Instead, the Commission ordered other forms of reparation, including full compensation.

This form of reparation is explained in detail in the REDRESS Practice Note on Compensation.

iii. Rehabilitation

According to the HRC's Resolution 22/21, rehabilitation aims to redress the physical, psychological, social, and other harm suffered by the victim through specialised services and other measures, such as administrative measures. Prior and informed consent and victim participation are required.

Rehabilitation is particularly important in cases of torture due to the severe physical, psychological, and social consequences of torture. Rehabilitation can include priority access to specialised medical care, psychological treatment, or social services, depending on the harm caused to the victim. Other measures can facilitate the survivor's access to employment or benefits, again recognising their victim status.

CASE STUDY

In *Montesinos Mejia v. Ecuador*, the IACTHR declared that the State was responsible for the torture and ill-treatment of a victim in detention. The victim suffered threats, physical violence by officers, and isolation. The Court ordered immediate psychological and psychiatric treatment of the victim for as long as necessary, including free medication. The Court further ordered that this treatment be provided promptly, at the nearest health centre, in a way that recognises the individual as a victim of human rights violations and responds to the victim's specific needs as a result of the torture suffered.

iv. Satisfaction

This form of reparation aims to acknowledge the commission of a human rights violation and to dignify the survivor's memory. Satisfaction measures contribute to redressing harm that cannot be compensated or otherwise redressed.

Satisfaction can be individual or collective and its implementation should be informed by and designed in consultation with victims. The Basic Principles and Guidelines highlight different forms of satisfaction including public recognition of the violations, public apologies, the issuance and publication of judicial decisions, the disclosure of the truth, commemoration ceremonies, remembrance days, tributes, museums, publications, and school curriculums, among many others (Principle 22).

CASE STUDY

In the case of *Women Victims of Sexual Torture in Atenco v. Mexico*, related to different forms of sexual violence (including rape, threats, and forced nudity) committed by Police officers against women in the context of a social protest, the IACtHR ordered that Mexico provide public apologies to the victims, publish the Court's judgment, and offer scholarships to some of the victims as satisfaction measures.

Judicial decisions and truth-telling processes are crucial to dignify the memory of victims. In this regard, General Comment 3 by the CAT emphasizes that satisfaction measures are tied to the obligation to investigate and prosecute. This involves verifying facts and disclosing the truth. The General Comment underscores that the disclosure of information should prevent revictimization and ensure the safety of victims, their relatives, witnesses, and others who may be at risk due to truth-telling and judicial processes.

Comparative experiences

In transitional justice scenarios, Truth Commissions emerge as a fitting mechanism to facilitate victim satisfaction by unveiling information regarding gross human rights violations during dictatorships or armed conflicts. These commissions ideally consist of independent authors and researchers, culminating with a final report and specific recommendations to restore democracy and peace.

For instance, the "Nunca Más" report, published in 1984 by the Comisión Nacional sobre la Desaparición de Personas (CONADEP) in Argentina, meticulously documented atrocities such as torture, extrajudicial executions, sexual violence, and enforced disappearances perpetrated by the government against the civilian population as a means of repression. This report significantly contributed to the conviction of former military members through subsequent criminal prosecutions.

Another notable example is the Truth and Reconciliation Commission established in South Africa in 1999. This mechanism included public hearings where victims had the possibility to participate, and perpetrators had the chance to talk about their crimes. Victims were given the authority to decide on their pardon.

v. Guarantees of non-repetition

Guarantees of non-repetition aim to prevent the continuation and recurrence of the violation. These measures sometimes give rise to the need for structural changes to prevent future violations, which in turn contributes to the realisation of transformative justice. According to the Basic Principles and Guidelines, guarantees of non-repetition could be achieved through legislative and institutional reform, constitutional amendment, and security sector reform, among other measures. This form of reparation is essential in contexts where human rights violations have a recurring pattern or are due to systemic problems, where the aim is to have an impact beyond the individual case by instigating longer-term legal and policy reform.

CASE STUDY

The IACtHR has been progressive in ordering non-repetition measures. For example, in *Azul Rojas Marin v. Peru*, the victim suffered discriminatory torture, including sexual violence, based on her sexual orientation. These acts were committed by police officers during her arbitrary detention. Following her release, Azul filed a criminal complaint against the perpetrators. Peruvian authorities did not act with due diligence, and instead, replicated stereotypes. The investigation was closed and the perpetrators were not prosecuted.

In its judgment, the IACtHR ordered the adoption of a protocol on the investigation and prosecution of acts of violence against LGBTIQ+ individuals, awareness-raising and training of State agents on violence against LGBTIQ+, the design and implementation of a system to produce and compile statistics on violence against LGBTIQ+, and the removal of the indicator of “*eradication of homosexuals and transvestites*” from the public safety plans of the regions and districts of Peru.

2.6 Transformative reparation

Transformative reparation attempts to change the circumstances in which victims and survivors live and address the unequal structures and norms at the root of the violation. Transformative reparation seeks to improve the lives of survivors and to eliminate the conditions that enabled violations to occur, rather than merely restoring survivors to the position they were in prior to the violations.

CASE STUDY

In the case *Tunikova and Others v. Russia*, the ECtHR reiterated that domestic violence constitutes a violation of the ECHR. The applicants had sustained bodily injuries, including one case of severe mutilation, at the hands of their former partners or husbands, and received death threats. The ECtHR held that there had been a violation of the right to freedom from torture and found that the State had failed to establish a legal framework to combat domestic abuse effectively, had not assessed the risks of recurrent violence, and had not carried out an effective investigation into the domestic abuse.

The Court acknowledged that domestic violence in Russia is systemic and ruled that the State must take measures to address this problem. In addition to providing compensation, the Court ordered Russia to enact domestic legislation to put an end to the violations and mitigate their effects. This

included implementing effective remedies, establishing a comprehensive definition of domestic violence, and adopting a comprehensive and targeted response that involves all relevant areas of the State. The aim was to redress the consequences of domestic violence as much as possible and ensure a holistic and coordinated approach to combatting it.

CASE STUDY

The case of *González et al. (“Cotton Fields”) v. Mexico* decided by the IACtHR has been considered a landmark case regarding transformative reparations in cases of violence against women.

In 2001, the bodies of three women were discovered in an abandoned cotton field. The murders occurred in Ciudad Juárez, a city on the border of the US and Mexico, where gender-based violence, including abduction, rape, and murder of young women became endemic in the 1990s. The Court concluded that the State had failed to protect the victims due to the lack of effective measures adopted to find the victims when their relatives reported their disappearances to the authorities. The Court also declared that Mexico violated its obligation to conduct effective investigations with a gender-based approach to identify, prosecute, and punish the perpetrators.

In enunciating transformative reparation for the first time, the Court noted that reparation is not only restitution but also a rectification to avoid the *“reestablishment of the same structural context of violence and discrimination”*. The Court ordered Mexico to comply with a broad set of remedial measures, including constructing a national memorial, renewing investigations with a gendered-lens, developing trauma sensitive training for inquiries concerning sexual assault, removing legal and factual obstacles for reporting and investigating gender-based violence, and providing compensation for the families of the victims.

2.7 Interim relief

Survivors of torture often require urgent measures to address their immediate physical, psychological, economic, and emotional needs. Immediate medical care, including specialised treatment for physical injuries and psychological trauma, is crucial to mitigate harm and to ensure the survivors' well-being and recovery. Consequently, survivors cannot wait for the resolution of reparation claims, which are often protracted, to obtain care for their urgent needs.

States must develop strategies to implement interim measures to protect the personal integrity and lives of victims. Domestic mechanisms for claiming reparation should establish the possibility of seeking interim measures while a judicial or administrative process is ongoing. However, these obligations are not always fulfilled by the State, and often civil society and practitioners step in to fill the gap and provide interim relief.

Queen's University Belfast, in collaboration with REDRESS, elaborated the Belfast Guidelines on Reparations in Post-Conflict Societies based on comparative experiences in seven countries. This document notes that interim reparations aim to mitigate urgent needs caused by the harm suffered rather than amount to a full discharge of the obligation to repair.

The Guidelines also state that during hostilities, States, and, in certain circumstances, non-State armed groups, have the primary obligation to alleviate the harms caused. This includes providing aid and medical assistance, conducting search and rescue operations for the wounded, sick, and shipwrecked, and facilitating the repatriation of remains and personal belongings of the deceased. This document also notes that these measures are distinct from reparation.

3. STATES' DUTY TO DELIVER REPARATION

The right of victims to an effective remedy draws both from the duty of States to investigate, prosecute, and punish perpetrators and from the duty to provide redress to victims. This section focuses on States' obligations related to the right to an effective remedy and to claim reparation in cases of torture.

3.1 States' duties to investigate, prosecute, and punish the perpetrators

In cases of torture, investigations must be promptly initiated by competent and impartial authorities (UNCAT, Article 12). The duty to investigate refers mainly to the State's obligation to hear and address through effective mechanisms. As highlighted by the Istanbul Protocol, investigations should be initiated *ex officio*, meaning that a complaint is not a prerequisite to the initiation of an investigation where there are grounds to believe that torture has occurred (see also Module 5: Instigating Prosecutions for Torture).

CASE STUDY

In **X. and Y. v. Russia**, the CEDAW Committee found that the State had failed to ensure the protection of the victims against repeated acts of domestic violence due to the lack of effective investigations against the perpetrators. The Committee ordered a review of the judicial proceedings to prosecute and punish the perpetrators. The Committee further ordered exhaustive and impartial investigations to identify the structural causes that led to the victims being deprived of protection.

Some human rights bodies, such as the IACtHR, recognise the investigation of violations, prosecution, and punishment of perpetrators as an independent form of reparation, distinct from the five 'traditional' forms of reparation set out in 2.4. The Basic Principles and Guidelines suggest that investigations, prosecutions, and perpetrator punishment constitute a form of satisfaction. Considering the investigation, prosecution, and perpetrator punishment as a separate form of reparation could highlight the importance of this measure and result in more accurate follow-up and implementation.

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has published a report entitled: Good practices in national criminalisation, investigation, prosecution and sentencing for offences of torture. Among other relevant aspects, the report highlights that the duty to investigate and prosecute is linked to the obligation to provide reparation. It also reiterates that States parties to the CAT have clear obligations under the treaty, including the criminalisation of acts of torture, asserting jurisdiction over such offences, promptly and impartially examining complaints, and conducting thorough investigations.

3.2 States' duty to ensure an effective remedy for violations by public officials

Besides criminal investigation and prosecution, States are obliged to provide appropriate and prompt reparation for human rights violations for which they are responsible. This includes enacting legislation that establishes remedies through which victims and survivors can seek reparation. These remedies include constitutional complaint mechanisms (for instance *habeas corpus* petitions) and civil or administrative procedures against public entities (for instance civil courts, ombudspersons, and disciplinary bodies). The authorities must identify the existence of harm or damage attributable to the action or omission of State officials. In these scenarios, remedies include sanctioning individuals and/or ordering public

entities to provide reparation to survivors. These avenues are country-specific and depend on the constitutional and legislative framework of each State.

In cases of torture, the State should identify whether public authorities directly participated in the acts of torture, facilitated the commission of the acts of torture, or knew or had reason to know about the torture but failed to adopt measures to prevent it. The authorities must also determine the severity and impacts of the violations on the victims, including physical and mental harm, and the costs of medical and psychological treatment, to direct the responsible public entity to provide comprehensive reparation in addition to the criminal investigation and sanction of those responsible.

CASE STUDY

2007 Kenya post-election violence: Article 22 of the Kenyan Constitution provides that the High Court will hear cases of human rights violations and provide redress for victims. In 2020, the Constitutional and Human Rights Division of the High Court decided on a constitutional petition filed by NGOs claiming reparation in eight cases of sexual violence committed in the post-electoral context in 2007 (Petition 122/2013). The petition was filed against the Attorney General, Director of Public Prosecutions, Independent Policing Oversight Authority, and Inspector-General of the National Police Service due to their direct or indirect participation in the cases of sexual violence.

The Court found that Kenya failed in its duty to protect and to investigate and violated the prohibition of torture in relation to some of the victims and ordered compensation awards for them.

3.3 States' duty to provide remedies for violations by private actors

In cases of violations committed by private actors, States must ensure that survivors are able to access justice and reparation. In addition to the initiation of criminal proceedings, domestic remedies may enable survivors to claim reparation. This is in accordance with Principle 15 of the Basic Principles and Guidelines, which

establishes that “in cases where a person, a legal person, or other entity is found liable for reparation to a survivor, such party should provide reparation to the survivor or compensate the State if the State has already provided reparation to the survivor.”

While private actors are primarily liable for providing reparation in cases where they have perpetrated the violation, often they are not able to do so. For example, in situations where private actors are indigent or lack sufficient assets. In such cases, according to the principle of subsidiary liability, it is the State’s responsibility to ensure that victims and survivors receive reparations in accordance with international standards and principles. Additionally, States must provide interim measures to victims and survivors for violations committed by private actors (see section 2.6).

i. Non-State Armed Groups

According to the International Committee of the Red Cross (ICRC), there are around 524 Non-State Armed Groups (NSAGs) worldwide and approximately 150 million people live in territories under levels of control exercised by NSAGs.

While international humanitarian law does not clearly state whether NSAGs have a specific obligation to provide reparation for acts committed by their members, emerging practice and caselaw indicates that NSAGs have a duty to provide reparation to victims of human rights violations. The notion of responsibility of NSAGs to provide reparation finds particular support where a NSAG has *effective control* over part of a territory.

Transitional justice contexts (see definition *infra* section 3.4) provide examples of NSAGs contributing to reparations for breaches of international humanitarian law and human rights law attributable to them.

Reparation by NSAGs in Transitional Justice Contexts

In the Solomon Islands, the 2000 Townsville Peace Agreement between the Malaita Eagle Force, the Isatabu Freedom movement, and the Government foresees that the NSAG would contribute to locate forcibly disappeared persons and would provide compensation for victims.

The 2013 agreement between the Government of Sudan and the Justice and Equality Movement-Sudan provided that the parties would collaborate to provide compensation to victims of the armed conflict, including refugees.

In Colombia, the peace agreement celebrated in 2016 with the former Revolutionary Armed Forces of Colombia (FARC) established that the group's properties would be disposed of to contribute to reparation. Also, it was agreed that the FARC would participate in infrastructure reconstruction works in the areas most affected by the conflict. The FARC also contributed to truth-telling processes, recognising responsibility for certain acts such as abductions, sexual violence, and forced child recruitment, and offering public apologies to the victims.

ii. Businesses

The international responsibility of businesses for human rights violations is becoming increasingly relevant as businesses grow in importance, influence, and, in some cases, exercise State-like control over areas of a territory. Consequently, businesses have a duty to respect human rights, including by exerting due diligence in the way they carry out their activities.

The UN Guiding Principles on Business and Human Rights highlight that States have a duty to ensure that victims of human rights violations caused by businesses can access effective remedies through accountability and reparation mechanisms. This obligation has been echoed by the IACtHR in *Kalina y Lokono v. Suriname*, and by the AComHPR in *Social and Economic Rights Action Center (SERAC) v. Nigeria*.

In its 2019 report on Business and Human Rights, the IACHR noted that businesses have committed or contributed to the commission of serious human rights violations. The report highlights the importance of domestic normative frameworks in holding businesses accountable and liable for human rights violations, irrespective of individual responsibility. It also emphasises the need for effective remedies to ensure adequate reparation for victims of such violations.

Many businesses have ties with several countries (through parent and subsidiary companies, shareholders, place of incorporation, etc). As such, remedies can sometimes be sought in one or more countries, which may differ from the country where the violations occurred.

3.4 Reparation in transitional justice contexts

What is transitional justice?

As defined by the UN Secretary General, transitional justice generally refers to the set of approaches and measures used to address past human rights abuses and promote accountability, reconciliation, and the rule of law in societies transitioning from conflict or authoritarian rule. It encompasses a range of mechanisms, including criminal prosecutions, truth commissions, reparation programs, and institutional reforms.

Transitional justice often focuses on investigations and prosecutions, reparation, truth-telling, and screening, among other mechanisms for redress. To varying degrees, these mechanisms contribute to providing comprehensive reparation to victims and survivors. For example, truth commissions usually issue final reports about the causes, perpetrators, and patterns of human rights violations committed during conflict. This process can be a way to dignify victims through their participation. The reports usually make recommendations, including on the need for further reparation measures.

Reparation programmes are common in transitional justice contexts. These programmes are often administrative in nature. They may limit claims to certain human rights violations within specific timeframes. The Reparation Program in Peru, Victims Law in Colombia, and the Truth, Reconciliation and Reparations Commission in The Gambia each recognise torture committed during the respective armed conflict as a type of crime to repair through administrative programmes.

CASE STUDY

In the case ***Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*** the IACtHR decided on a military and paramilitary operation took place in 1997 in Choco, Colombia, resulting in the death of one person and the forced displacement of hundreds. The Court determined that Colombia was responsible for collaborating with paramilitary groups in carrying out the military operation, failing to provide effective protection to the displaced individuals, and conducting inadequate investigations to clarify the events and hold those responsible accountable.

In its judgment, the IACtHR assessed the administrative reparation programme adopted by Colombia for victims of the armed conflict and stated:

“(...) such measures of reparation must be understood in conjunction with other measures of truth and justice, provided that they meet a series of related requirements, including their legitimacy – especially, based on the consultation with and participation of the victims; their adoption in good faith; the degree of social inclusion they allow; the reasonableness and proportionality of the pecuniary measures; the type of reasons given to provide reparations by family group and not individually; the distribution criteria among members of a family (succession order or percentages); parameters for a fair distribution that take into account the position of the women among the members of the family or other differentiated aspects, such as whether the land and other means of production are owned collectively.”

Reparation programmes require survivors to provide evidence of the harm they have suffered and establish a connection between that harm and the programme's eligibility criteria. These programmes should also encompass both direct and indirect victims, while also considering gender (including identity and expression), race/ethnicity, and age, among other factors.

One of the major features of administrative reparation programmes is that they are intended to facilitate the delivery of reparation to victims and survivors. The burden of proof is thus usually lower than that required by courts. The application and decision-making processes are intended to be more efficient and expedient, although this often depends on the specific context. Such programmes should be complemented with criminal investigations and additional forms of reparation.

4. THE PRACTICE OF REPARATION

Despite the existence of an international obligation to provide reparation to victims of human rights violations, victims and practitioners face challenges that can prevent them from realising their right to reparation. This subsection highlights the most pertinent issues and offers suggestions for overcoming them.

4.1 Material and social considerations

i. Geographic limitations

Rural populations often have to move to metropolitan areas or head municipalities to reach public authorities, including the judiciary, hospitals, or other support infrastructures. States should ensure that all victims can participate in person or remotely in trials and other activities related to reparation processes, which might require facilitating transport, access to the internet, etc.

While States have the primary responsibility in this regard, practitioners may need, where possible, to take measures to ensure that victims' access to reparation mechanisms is facilitated in the absence of State action.

ii. Health and other individual circumstances

Torture has serious impacts on survivors' mental and physical health, usually causing severe and long-term trauma, which can include physical or psychological disabilities. These conditions can often represent an obstacle to victims' and survivors' access to reparation if support is not offered.

This can be compounded by other circumstances, such as displacement of the survivor from their hometown or community. Age, gender, sexual orientation, gender identity, ethnicity, race, culture, religion or beliefs, or exposure to other or repeated violations also place survivors in a situation of heightened vulnerability. As

such, survivors require tailored responses and particular attention to their individual circumstances in order to enable their participation and access to reparation.

The Trial Chamber of the ICC in the Reparation orders of the Ntaganda case determined that all victims are to be treated equally, with special attention given to the more vulnerable. According to the Court, the determination of priorities in the reparation process should consider victims who require physical and psychological assistance, victims with disabilities, sexual violence survivors, people who are homeless, and former child soldiers, among others.

iii. Stigmatisation and revictimization

Torture survivors often encounter stigmatisation within their communities. This can occur, for instance, when the torture they endured is connected to their gender identity, sexual orientation, political affiliation, or took place during a period of detention. This exposes survivors to a significant risk of being revictimized and subjected to victim-blaming. Furthermore, such circumstances can hinder survivors' ability to seek justice and obtain reparation, discouraging them from pursuing available avenues for recourse.

Practitioners should prioritise the concerns of survivors, be cognisant of such risk factors, and proceed in a culturally aware and sensitive manner. They should also have referral pathways in place to ensure access to adequate counselling and implement mitigating measures to minimise any adverse impact of the reparation process. In this regard, see our Practice Note on A Survivor-Centred Approach to Seeking Reparations for Torture.

iv. Legal representation and costs of justice

Civil and criminal proceedings as an avenue to obtain reparation often require legal representation, and a lack of legal representation is an obstacle to redress. States must ensure that vulnerable populations can access free legal assistance without

discrimination. Practitioners should advise victims on existing legal aid schemes and *pro bono* practices that may help them access reparation more easily.

In some countries, a fee needs to be paid to access administrative or judicial reparation programs. Due to the situation of vulnerability of victims of human rights violations, and in particular, torture, States should waive this requirement for such violations. While this should remain a State obligation, civil society and donors can often facilitate survivors' access to reparation by providing free legal assistance and supporting the payment of legal costs.

Comparative experience: *Sepur Zarco Case* (Guatemala)

The comprehensive strategic litigation deployed in the Sepur Zarco case has been considered good practice for victims' reparation. The case relates to the systematic rape and other forms of sexual violence against indigenous women in Sepur Zarco territory during the armed conflict in Guatemala. These acts were committed by military officials.

Despite the stigma suffered by victims of sexual violence in Guatemala, a group of women victims from Sepur Zarco, supported by local organisations, filed a criminal complaint. The victims received psychosocial and medical support from organisations. During the litigation process, legal representatives took measures to prevent their revictimization. The organisations obtained financial support, through international donors, including States, to help victims finance the justice process. This enabled them to overcome the material and social obstacles to justice.

This case contains multiple examples of good practices for holistic strategic litigation, which were collected by UN Women in the report [Documenting good practice on accountability for CRSV: The Sepur Zarco case](#).

For more on strategic litigation as a tool for reparation, see the REDRESS [Practice Note on Holistic Strategic Litigation against Torture](#).

v. Threats against victims

In many countries, actively seeking reparation for human rights violations is a risk factor for survivors. Reparation often involves disclosure of information, recognition of responsibility, and prosecution of perpetrators, which can lead to backlash against individual survivors, their families, and their communities. These threats often prevent survivors from claiming reparation.

Practitioners must analyse the security context and risk factors and ensure that survivors, their relatives, and their associates are safe before taking any action that may pose a risk towards them.

4.2 Legal obstacles

i. Limitation Periods

Usually, domestic law has a temporal limit (statutes of limitation, also known as prescription or limitation periods) for individuals to apply for reparation through judicial remedies and administrative programmes. If victims of human rights violations do not apply for reparation within that period, their claims could be refused. According to the former UN Rapporteur on the Right to Restitution, Compensation and Rehabilitation for Survivors of Gross Violations of Human Rights, limitation periods are inapplicable in cases of gross human rights violations, such as torture, since the passing of time does not mitigate the effects of those acts on survivors but rather increases the post-traumatic consequences. Therefore, survivors require *“all necessary material, medical, psychological and social assistance and support over a long period of time.”* The CAT’s General Comment 3 highlights that States must ensure that torture victims are able to obtain redress regardless of when the violation occurred.

Imposing limitation periods that prevent access to remedies for gross human rights violations, including torture, can be raised as a breach of a State’s international obligations. Practitioners can litigate it before international and regional treaty bodies.

CASE STUDIES

Ordenes Guerra v. Chile (IACtHR, 2019)

A group of families of victims of human rights violations during the Chilean dictatorship filed civil actions claiming reparation. Their claims were rejected by the judicial authorities due to the statute of limitation since the facts occurred in 1973 and 1974 but the applications were submitted in 1999 to 2001. In its judgment, the IACtHR found that Chile violated the victims' right to access justice, arguing that according to international standards, claims for reparation for gross human rights violations are not subject to statutes of limitations.

The IACtHR considered that if the statute of limitation does not apply to the criminal prosecution of gross human rights violations, it should also not apply to reparation claims. Consequently, the IACtHR ordered the Chilean State to grant compensation directly to victims and required the State to find prompt solutions for victims in the same situation as the applicants.

Purna Maya v. Nepal (HRC, 2017)

During the armed conflict in Nepal, sexual violence against women was committed by public officials as a tool to intimidate and extract information. At that time, Nepalese legislation stated that victims of rape could report these acts only within 35 days of the commission of the crime. The HRC examined a case of gang rape and other forms of sexual torture committed by Nepalese soldiers against Purna Maya to obtain information on the activities of her ex-husband. The domestic remedies were ineffective because of the application of a statute of limitation. In its decision, the HRC found that the State violated the ICCPR and established that Nepal should provide an effective remedy by investigating the facts. The HRC ordered Nepal to provide compensation and appropriate measures of satisfaction to the victim. Finally, the Committee found that Nepal should abolish the 35-day statute of limitations for reporting rape cases, among others guarantees of non-repetition.

ii. Amnesties

Amnesties are legal measures that prevent the prosecution of certain crimes. Usually, amnesties take place in transitional justice contexts to facilitate a peaceful transition to democracy. Amnesties can represent a legal barrier for survivors to access domestic remedies. According to international human rights law, amnesties are not permissible in cases of gross human rights violations, such as genocide, crimes against humanity, war crimes, torture, and enforced disappearance. In these cases, any restriction that prevents victims from accessing justice and reparation is in breach of international law.

The IACtHR has consistently held that amnesties that hinder the investigation and prosecution of serious human rights violations are incompatible with international human rights law. As a result, the Court has declared laws that impede the investigation and prosecution of such crimes null and void. This principle has been applied in cases such as *Barrios Altos v. Peru*, *Cantuta v. Peru*, *Almonacid Arellano v. Chile*, and *Gelman v. Uruguay*.

Similarly, the ECtHR has established that amnesties for cases of torture are incompatible with the duty to investigate and prosecute, embodied in the European Convention (see e.g.: *Case of Association "21 December 1989" and others v. Romania* and *Ould Dah v. France*).

iii. Immunities

Immunity refers to the legal limits shielding States and individuals from prosecutions or other legal claims. This often applies to public officials acting in their official capacity within their own State. Immunities can also bar States from exercising their jurisdiction over public officials from another State, such as diplomatic – or other – representatives. Nevertheless, immunity ceases when the representative finishes their functions.

See also: International Court of Justice (ICJ), *Germany v. Italy* regarding State immunity, and *Democratic Republic of the Congo v. Belgium* regarding the immunity of an acting Head of State from prosecution in a third country.

CASE STUDY

Pinochet Case (United Kingdom House of Lords, 1998)

This case concerned the prosecution in Spain of former Chilean dictator, Augusto Pinochet, arrested in the UK, for the commission of international crimes, including torture, enforced disappearance, and systematic killings. The UK House of Lords ruled that a former Head of State enjoys immunity for acts committed within their functions as Head of State. Since committing international crimes could not be considered part of their official functions, immunity from prosecution of former State officials does not apply in cases of gross human rights violations and international crimes.

In the case *Jones and others v. United Kingdom*, the ECtHR found that immunities for State officials apply in relation to civil claims even in cases of torture, since in its view, the exceptions to immunities only apply to criminal prosecutions and not to civil proceedings. This precedent has been widely criticised by experts and NGOs due to its obvious incompatibility with victims' rights (see [here](#)). Consequently, practitioners must be aware that immunities continue to constitute an obstacle to claiming reparation beyond criminal prosecutions and strategic litigation is needed to overcome this legal barrier.

iv. Legal reform as reparation

These legal obstacles to accessing reparation are generally incompatible with international human rights law. Practitioners have an opportunity to develop policy advocacy and legal strategies to trigger legal reform on these issues. Legal reform can be requested, for example, as a guarantee of non-repetition: measures limiting the right to a remedy must be lifted, repealed, or amended to allow victims and survivors to obtain justice and for violations to not to be repeated according to international human rights obligations.

4.3 Contextual challenges

General contexts of impunity, corruption in justice institutions and in the administration of justice, weak democracies, lack of economic, human, and financial resources, ongoing armed conflict, or other circumstances also represent obstacles preventing survivors from obtaining reparation. These obstacles are structural and challenging to address since they are linked to weak and/or illegitimate institutions and can themselves trigger further violations. These obstacles can also put victims at risk in the reparation process.

According to the AComHPR's General Comment 4 and the CAT's General Comment 3, these factors cannot be raised as reasons to not provide comprehensive reparation to victims. This is because there exist legal and political alternatives, including international cooperation, to fill structural gaps in reparation schemes for victims and survivors. To address these contextual obstacles, advocacy and holistic strategic litigation are crucial tools. Forums to address these challenges can be international and regional complaint mechanisms.

5. FURTHER READING

UN Documents

- General Assembly resolution 60/147. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.
- Committee Against Torture. General Comment No. 3 on the implementation of article 14 by States parties.
- Human Rights Council Resolution 22/21. Torture and other cruel, inhuman or degrading treatment or punishment: rehabilitation of torture victims,
- UN Special Rapporteur on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms. Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms,
- HRC General Comment No. 31. The nature of the general legal obligation imposed on States Parties to the Covenant.
- CEDAW General Recommendation No. 28. The core obligations of States parties under article 2 of the Convention.
- CEDAW General Recommendation No. 30. Women in conflict prevention, conflict and post-conflict situations.
- CEDAW General Recommendation No. 33. Women's access to justice.

- Office of United Nations high Commissioner for Human Rights. Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Office of United Nations high Commissioner for Human Rights. Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy.

African Human Rights System

- African Union. African Charter on Human and Peoples' Rights.
- AComHPR. General Comment No. 4 on the African Charter on Human and Peoples' Rights. The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5)
- ACtHR. Fact Sheet on Filing Reparations Claims.

Inter-American Human Rights System

- OAS. American Convention on Human Rights.
- OAS. Inter-American Convention to Prevent and Punish Torture.
- IACHR's thematic reports: <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/reports/thematic.asp>
- IACHR. Mecanismos Nacionales de Implementación de Recomendaciones y Decisiones Internacionales en materia de Derechos Humanos (Only in Spanish).
- IACHR. Guía de Buenas Prácticas y Orientaciones Básicas para la Implementación de Decisiones de la Comisión Interamericana de Derechos Humanos (Only in Spanish).
- IACHR. Petition and Case System Informational Booklet.

European Human Rights System

- Council of Europe. European Convention on Human Rights.
- ECtHR. Guide on Article 13 of the European Convention on Human Rights (Guide to an Effective Remedy).
- Council of Europe. Article 41 of the European Convention on Human Rights.

Reports and Articles

- International Committee of the Red Cross. Why the ICRC Talks to Armed Groups.
- UN Women and American University Washington College of Law. Documenting Good Practice on Accountability for Conflict Related Sexual Violence: The Sepur Zarco Case.
- International Commission of Jurists. The Right to a Remedy and Reparation for Gross Human Rights Violations.

Related REDRESS Practice Notes and Training Modules

- Practice Note 1: The Law Against Torture.
- Practice Note 2: Holistic Strategic Litigation Against Torture.
- Practice Note 3: Istanbul Protocol Medico-Legal Report.
- Practice Note 4: Implementation of Decisions.
- Practice Note 5: Strategic Litigation of Enforced Disappearances in Africa.
- Holistic Strategic Litigation Module 5: Investigating Prosecutions for Torture.
- Holistic Strategic Litigation Module 7: Advocacy.
- Holistic Strategic Litigation Module 8: Forum Choice.
- Holistic Strategic Litigation Module 11: Writing a Human Rights Claim.

Case law databases

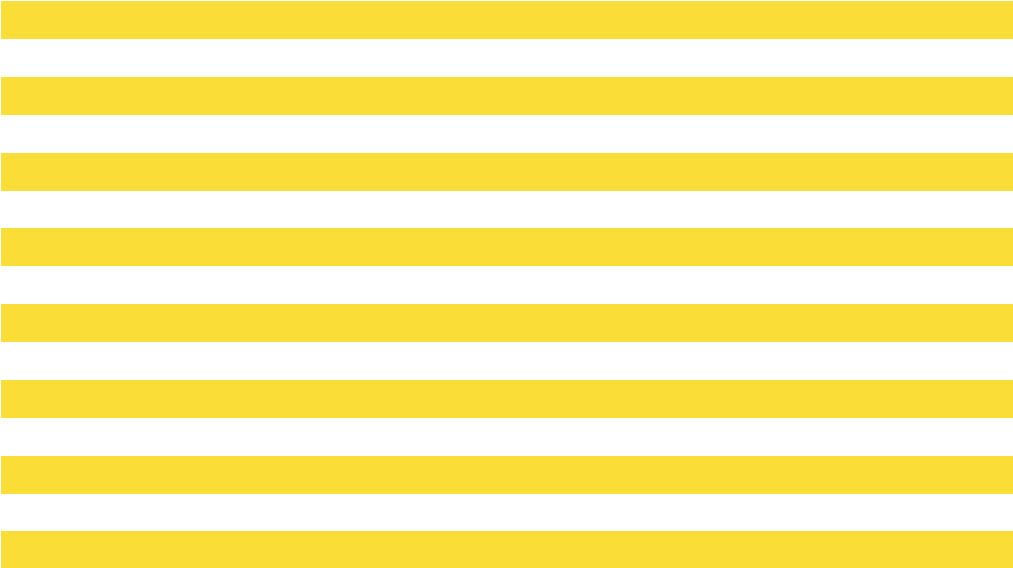
- UN Treaty bodies jurisprudence database: <https://juris.ohchr.org/AdvancedSearch>
- AComHPR decisions database: <https://achpr.au.int/en/category/decisions-communications>
- ACtHPR judgments database: <https://www.african-court.org/cpmt/latest-decisions/judgments>
- IACtHR's judgments database: https://corteidh.or.cr/casos_sentencias.cfm?lang=en
- ECtHR's judgments database: <https://www.echr.coe.int/Pages/home.aspx?p=caselaw&c>

Other

- GSF. [Kinshasa Declaration on the Rights to Reparation and Co-creation of Survivors and Victims of Conflict-Related Sexual and Gender-Based Violence](#),
- Queen's University Belfast, REDRESS. [Belfast Guidelines on Reparations in Post-Conflict Societies](#)
- International Rehabilitation Council for Torture Victims. [Implementing the Right to Rehabilitation for Torture Survivors: A Guide](#).
- OSJIL. [From Rights to Remedies: Structures and Strategies for Implementing International Human Rights Decisions](#)



REDRESS is an international human rights organisation that delivers justice and reparation for survivors of torture, challenges impunity for perpetrators, and advocates for legal and policy reforms to combat torture. Our cases respond to torture as an individual crime in domestic and international law, as a civil wrong with individual responsibility, and as a human rights violation with state responsibility.



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