

PRACTICE NOTE 12

**COMPENSATION
FOR VICTIMS
OF TORTURE**

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REDRESS

Ending torture, seeking justice for survivors

This guide is part of a series of Practice Notes designed to support those seeking to obtain reparation on behalf of survivors of torture and other grave human rights violations. The series is aimed at practitioners who assist survivors in their journeys to reparation. Other **REDRESS** Practice Notes complementary to this one include "[A Survivor-Centred Approach to Seeking Reparation for Torture](#)", "[Holistic Strategic Litigation Against Torture](#)", "[Implementation of Decisions](#)", and "[Reparation for Torture Survivors](#)".

This Practice Note aims to provide guidance on the practical aspects of building compensation claims on behalf of torture survivors. It is focused primarily on litigation before regional and international human rights bodies, although it may also be useful to claims brought before national courts and other bodies.

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ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ACommHPR	African Commission on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ACtHPR	African Court on Human and Peoples' Rights
CAT	UN Committee Against Torture
ECHR	European Convention on 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
NGO	Non-Governmental Organisation
UNCAT	UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UN	United Nations

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 IACHR issues “reports”. The ACommHPR issues “decisions”. The ECtHR, the ACtHPR, and the IACtHR issue “judgments”. For simplicity, this Practice Note refers to all the above as “decisions”.

Remedies, reparation, compensation 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, described more fully in the Practice Note on “Reparation for Torture Survivors”, designed and implemented to repair the harm done as a result of a human rights violation. We use “compensation” to describe a particular form of reparation involving payment of a sum of money to a torture survivor, and this form of reparation is the focus of the present Practice Note. “Redress” is occasionally used as an all-encompassing term referring to both concepts.

Pecuniary and non-pecuniary harm: We refer to “pecuniary harm” when referring to losses that are economic and thus more easily quantifiable in monetary terms (e.g., loss of earnings or medical expenses). We refer to “non-pecuniary harm” when referring to losses that are not economic and thus less easily quantifiable in monetary terms (e.g., pain and suffering). This Practice Note elaborates upon each of these categories in detail.

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.

Torture: This Practice Note focuses primarily on reparation for survivors of “torture”, but we also draw guidance from cases that deal with reparation for victims of “cruel”, “inhuman”, and/or “degrading” treatment or punishment. While we recognize that “torture” may be distinguishable from these other forms of treatment or punishment, UN human rights organs and regional human rights systems often adopt a common approach towards how they compensate survivors of all of these forms of treatment.

I. INTRODUCTION

It is well-established that a State responsible for torture may, as part of its obligation to provide reparation to torture survivors, be required to compensate the victim by payment of a sum of money (see [Practice Note: Reparation for Torture Survivors](#)). However, the exact nature and extent of the compensation that may be available to a torture survivor are often less clear. This Practice Note aims to provide practical guidance for practitioners about how to build an effective compensation claim against States on behalf of torture survivors. While non-State actors (including armed groups, corporations, and individuals) may also be responsible for torture, this Practice Note will focus on implementing State responsibility for torture through the payment of compensation.

This Practice Note is primarily aimed at organisations and lawyers who represent survivors of torture in strategic human rights litigation and reparation claims, including before international and regional courts and mechanisms. It will also be useful for anyone who is supporting survivors of torture in other ways, and for practitioners bringing other types of legal action at the national level including civil claims and criminal complaints.

We define compensation in this Practice Note to refer to a payment of a sum of money by a State to a survivor or other person connected to that survivor aimed at repairing the financial (pecuniary) and/or non-financial (non-pecuniary) harm caused to the survivor by the State's violation. There is a substantial practice by a range of fora adjudicating compensation claims by torture victims, particularly regional human rights courts, namely the ECtHR, IACtHR and the ACtHPR. Other human rights bodies such as the HRC generally do not quantify compensation or, like the ACommHPR, do so only in rare cases, leaving the determination of the specific amount of compensation payable to the respondent State or to subsequent

legal proceedings. In any event, different fora have taken different approaches to determining who is entitled to compensation, and what compensation can be awarded. Moreover, despite the extensive practice, adjudicators often do not provide detailed explanations for their determinations about compensation.

This Practice Note seeks to draw together practice from across different fora with a view to establishing a concrete body of guidance that may assist practitioners in building an effective compensation claim before any such forum, while also noting the key variations in approach that should be borne in mind before each of the main fora considered in this Practice Note.

This Practice Note covers:

- 1. Compensation as a form of reparation for torture:** This section situates compensation within the general framework of reparation for victims of torture.
- 2. The building blocks of a compensation claim:** This section lays out the three elements that must be established for a successful compensation claim, namely breach, harm, and causation.
- 3. Who is entitled to compensation:** This section addresses the different categories of persons that may claim compensation before the relevant international fora, including direct and indirect victims and successors.
- 4. What compensation can be claimed:** This section describes the categories of harm for which compensation may be claimed, including damages for pecuniary and/or non-pecuniary harm. It also considers other sums that may be claimed, such as costs and interest.

II. COMPENSATION AS A FORM OF REPARATION UNDER INTERNATIONAL HUMAN RIGHTS LAW

It is a general principle of international law that a violation of an international obligation triggers the responsibility of the State to which the violation is attributable. As described in Practice Note: Reparation for Torture Survivors, 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, adopted by the UN General Assembly in 2005 (Basic Principles and Guidelines), together with other international and regional instruments, recognise that full and effective reparation may take five forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Those forms of reparation are complementary rather than alternative and are to be requested and should be awarded according to the preferences and needs of torture victims in each particular case (see our Practice note on Reparation for Torture Survivors). The present Practice Note focuses on compensation as a form of reparation given the relative complexity in determining both who is entitled to compensation and what compensation can be claimed, and the many practical aspects of building a compensation claim that may be of use to practitioners.

The Basic Principles and Guidelines recognise that compensation is a form of reparation for serious violations such as torture and note that compensation “should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case.”

The relevant universal and regional instruments also recognise the importance of compensation. They provide for the implementation of this right to reparation in different ways, as shown through the examples in the table below.

ACHPR	The ACommHPR’s <u>General Comment No. 4</u> on the ACHPR has clarified that the prohibition of torture in Article 5 is complemented by a right to redress, encompassing the right to an effective remedy and to adequate, effective and comprehensive reparation, including compensation.
ACHR	Article 63(1) of the ACHR provides that the IACtHR has the authority, on holding that there has been a violation of a right under the ACHR (including the right not to be subjected to torture under Article 5(2)), to order payment of “fair compensation” to the injured party.
ECHR	Article 3 of the ECHR prohibits torture and Article 41 provides that, “[i]f the [ECtHR] finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party”. The ECtHR’s Practice Direction on Just Satisfaction Claims confirms that “[t]he purpose of the Court’s award under Article 41 of the Convention in respect of damage is to compensate the applicant for the actual harmful consequences of a violation”.
ICCPR	The ICCPR prohibits torture in Article 7. However, Article 2(3)(a) of the ICCPR requires each State party to “ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy [...]”. In its <u>General Comment No. 31</u> , the HRC has clarified that “the Covenant generally entails appropriate compensation”.
UNCAT	Article 14 of the UNCAT obliges each State party to “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”. The scope of this right has been clarified by the Committee against Torture in its <u>General Comment No. 3</u> .

While each of the systems above recognises compensation as a form of reparation, the survivor cannot always initiate and/or pursue the claim for that compensation on an individual basis. This will depend on whether the particular system, and sometimes the survivor's home State, has recognised the right of individuals to submit complaints. Further details about the right of individual complaint can be found in Redress' Module 8 (Forum Choice). Practitioners should make sure they know the accurate procedural moment to present the compensation claim depending on the relevant rules. For example, reparation claims before the Inter American System and European Systems must be submitted together with the initial application and are considered together with the merits of the case. In contrast, before the African System the full reparation claim should be submitted together with the merits submission after the decision on the admissibility of the case. (See more on upcoming Practice Note on Litigation for Reparation).

III. THE BUILDING BLOCKS OF A COMPENSATION CLAIM: BREACH, HARM AND CAUSATION

All claims for compensation must prove at least the following three elements in order to be successful:

(i) Breach	the State in question has violated the prohibition of torture
(ii) Harm	the victim of torture has suffered pecuniary or non-pecuniary harm
(iii) Causation	there is a clear link between the breach and the harm suffered

The elements of harm and causation are the most relevant for the present Practice Note. A survivor of torture will likely fail to recover compensation if they are unable to establish that harm has occurred and link that harm to the torture inflicted. Harm and/or causation that is merely asserted and/or speculated, for example, may not be enough.

CASE STUDY: *Feilazoo v Malta* (ECtHR, 2021)

The applicant in this case alleged that the conditions of his immigration detention, including excessive isolation and unnecessary placement with new arrivals in Covid-19 quarantine, constituted a breach of Article 3 of the ECHR. The applicant requested compensation in the amount of EUR 109,000 for pecuniary harm, mainly comprising loss of earnings during his detention and subsequent prison sentence, and future loss of earnings. The applicant also claimed EUR 309,000 in non-pecuniary damage.

The Court upheld the alleged breach of Article 3 of the ECHR so far as the applicant's immigration detention was concerned, but it held that the applicant had failed to demonstrate that, prior to his detention, he had an established or regular income. The loss of earnings claims was rejected because it was found to be "hypothetical and unsubstantiated". The Court awarded the applicant EUR 25,000 in non-pecuniary compensation, plus any tax that may be chargeable.

A. Burden of proof

The burden of proving breach, harm and causation typically lies with the survivor claiming compensation. That burden of proof will sometimes be relaxed in certain circumstances, such as where presumptions of fact are made that injuries sustained while in a State's official custody were caused by State agents in the absence of any other plausible explanation. In certain circumstances, a forum may presume both harm and causation of harm, as with the IACtHR in respect of non-pecuniary harm in cases of torture, forced disappearance and arbitrary detention (see e.g., *Ticona Estrada et al. v Bolivia*; "*Mapiripán Massacre*" *v Colombia*; *Maritza Urrutia v Guatemala*). It is important to note that the general principle remains that the claimant bears the burden of proving all elements of the claim, including harm and causation, and that the presumptions noted above can differ with respect to specific forms of harm and across different fora.

CASE STUDY: *Ticona Estrada et al. v Bolivia* (IACtHR, 2008)

On 22 July 1980, a military patrol detained brothers Renato and Hugo Ticona Estrada in Bolivia and subjected them to torture. One of the brothers was forcibly disappeared. The Court found that the State violated several articles of the ACHR, including the right to humane treatment under Article 5 (and, specifically, the right not to be subjected to torture under Article 5(2)).

The Court found that in cases of forced disappearance, it is evident that pecuniary and non-pecuniary harm flow from the violation. For example, in ordering compensation for non-pecuniary harm of around US\$ 272,000 to Renato and his relatives, the Court stated that "the non-pecuniary damage sustained by Mr. Ticona Estrada is evident, since it is human nature that a person subjected to forced disappearance suffers from deep pain, anguish, terror, impotence and insecurity. As a result, this damage need not be proven."

B. Standard of proof

1. Proving harm

As to the standard by which an applicant must prove harm, the precise standard of proof is not usually specified in the assessment of compensation. Thus, whereas the ECtHR applies the standard of “beyond reasonable doubt” when assessing whether there has been a violation of the ECHR, it is less prescriptive when determining whether certain harm has been suffered. Its Practice Directions on Just Satisfaction Claims clarifies that “[t]he applicant should submit relevant evidence to prove, as far as possible, not only the existence but also the amount or value of the damage.”

The ECtHR seeks to apply that approach in a realistic manner. It has thus recognised that “[a] precise calculation of the sums necessary to make complete reparation (*restitutio in integrum*) in respect of the pecuniary losses suffered by applicants may be prevented by the inherently uncertain character of the damage flowing from the violation” (*Kuric and Others v Slovenia*). The ECtHR clarified in another case that “[t]he question to be decided in such cases is the level of just satisfaction, in respect of both past and future pecuniary loss, which it is necessary to award to each applicant, the matter to be determined by the Court at its discretion, having regard to what is equitable” (*E. and Others v The United Kingdom*).

The IACtHR has generally used the lower standard of proof of “balance of probabilities” to determine human rights violations. But its practice in determining whether and to what extent losses have been proven varies, including according to the type of harm and damages sought. The IACtHR generally presumes the non-pecuniary harm suffered by a torture victim, without requiring the claimant to prove such harm specifically. For proving pecuniary harm, the Court tends to require applicants to submit “sufficient documentary evidence ... so that the Court may estimate the expenses which have been actually incurred” (*Bueno-Alves v Argentina*). While the Court may presume certain categories of loss that would ordinarily be incurred, e.g. medical expenses, or funeral expenses paid for by family members (*Caracazo v Venezuela*), absent specific evidence for the sums claimed, the Court may award a lower sum based on considerations of equity.

The ACTHPR applies the standard of “preponderance of the evidence” when assessing whether a violation of the ACHPR has occurred (Fact Sheet on Filing Reparation Claims). But it too is typically more flexible when determining whether harm has been suffered (especially in cases of egregious violations of human rights, such as torture), focusing on “the principles of equity, fairness and reasonableness”. This is the case when the ACTHPR determines the existence of non-pecuniary harm, which, similar to the practice of the IACTHR and the ECtHR, is often presumed to exist and which is quantified on the basis of fairness and the circumstances of the case (see e.g., *Lohe Issa Konate v Burkina Faso (Judgement on Reparations)*; *Lucien Ikili Rashidi v Tanzania*). In contrast, for the assessment of claims for pecuniary harm, the ACTHPR’s Fact Sheet on Filing Reparation Claims requires the applicant to submit “specific evidence of the precise loss”.

While none of the fora considered in this Practice Note provides an exhaustive list of documentary evidence that can be submitted in support of a compensation claim, the Rules of Court of the ECtHR refer to expert reports, itemised bills, and invoices as examples of such evidence (Rules of Court). Other forms of evidence are addressed in Section V of this Practice Note, when considering the particular categories of compensation that may be claimed.

2. Proving causation

As to the standard by which an applicant must prove causation, the ECtHR’s Practice Directions on Just Satisfaction Claims requires that, with respect to pecuniary harm, the applicant must establish a “direct causal link ... between the damage and the violation found” (by contrast, “[a] merely tenuous or speculative connection is not enough”) (Practice Directions on Just Satisfaction Claims). As to non-pecuniary harm, the Practice Direction states that “the causal link between the alleged violation and the moral harm is often reasonable to assume, the applicants being not required to produce any additional evidence of their suffering”.

The IACTHR has generally presumed the existence of a causal link between an established violation related to torture and non-pecuniary harm, and it therefore

does not necessarily require additional evidence. However, in assessing the causal link between a violation and pecuniary harm, the Court has consistently required the applicant to establish a “direct causal nexus with the acts declared as violations” (*Garcia Prieto v El Salvador*; *Radilla Pacheco v Mexico*).

The ACtHPR also requires the applicant to establish a “causal link between the wrongful act and the [pecuniary] harm” in order to be entitled to reparation (Fact Sheet on Filing Reparation Claims). The Court has further noted that claims for pecuniary damages “must be accompanied by probative supporting documents and buttressed by explanations establishing the link between the expenditure or material loss and the violation” (*Ingabire Victoire Umuhoza v Republic of Rwanda*). Similar to the European and the Inter-American Courts’ practice, the African Court has presumed the existence of a causal link between a violation and non-pecuniary harm, noting that “such link may result from the violation of a human right, as an automatic consequence, without any need to prove otherwise” (*Zongo and Others v Burkina Faso*).

The most relevant question is the specific means by which an applicant may establish harm and its causation. We consider that question in detail, by reference to different categories of harm, in Section V.

IV. WHO IS ENTITLED TO COMPENSATION

The individual or group of individuals who directly suffered the torture are entitled to compensation. The major fora also recognize that other individuals may also be entitled to compensation.

A. Direct and indirect victims

There is no uniform definition of “victim” that is adopted across the relevant fora. In one of the leading definitions, the CAT’s General Comment No. 3 defines “victim” in a way that extends beyond the individual who directly suffered the torture. According to General Comment No. 3, “[v]ictims are persons who have individually or collectively suffered harm”, regardless of whether the perpetrator is identified, and regardless of any ties between the victim and the perpetrator.

As a general rule, all major fora recognise that individuals who have suffered harm as a consequence of torture may claim compensation, either as a direct victim, because the torture act has been inflicted upon them, or as an indirect victim, because they have been affected by the violation indirectly.

The category of “indirect victims” is not necessarily confined to relatives of the direct victim of torture. For instance, according to the Basic Principles and Guidelines, a “victim” can include any person “who [has] suffered harm in intervening to assist victims in distress or to prevent victimization.”

Rather than adopting a formalistic approach when deciding whether a person qualifies as an indirect victim, the IACtHR tends to consider connecting factors such as whether there is a particularly “close” relationship between the claimant and the victim, “whether the individuals have been involved in seeking justice in the specific case”, or “whether they have suffered as a result of the facts of the case or of subsequent acts or omissions on the part of the state authorities in relation to the facts” (*Ibsen Cárdenas and Ibsen Peña v Bolivia*).

The ACTHPR has similarly adopted a relatively broad approach to the concept of “indirect victims”, and has held that a legal entity, namely a human rights organization, was an indirect victim of a violation of the right to life, even though that organization had only claimed symbolic compensation (*Zongo and Others v Burkina Faso*).

In contrast, the ECtHR has maintained a more restrictive approach, which tends to limit the category of “indirect victims” to close family relatives (*Varnava and others v. Turkey*).

CASE STUDY: *Aloeboetoe et al v Suriname* (IACtHR, 1993)

This case addressed the arbitrary arrest and eventual murder of an individual belonging to an indigenous group in Suriname during the 1986-1992 Civil War. Eventually, the State accepted full responsibility, leaving the Court only the task to rule on reparation. In its decision, the Court held that non-relative third parties may qualify as indirect victims and be awarded compensation for the harm caused by the wrongful death of a direct victim. The Court found that three conditions must be met for a claim of compensatory damages filed by a third party to be admitted:

- 1) the compensation sought must be based on periodic payments that the third party had previously received from the direct victim;
- 2) the nature of the relationship between the victim and the third party meant that such payments would likely have continued had the direct victim survived; and
- 3) the third party had a financial need that was – and could only be – satisfied through the direct victim’s periodic payments.

B. Successors of victims

If the direct victim dies before the application is lodged, the relatives of a torture victim may have standing to claim compensation before the major human rights fora (*Dr Amin Mekki Medani and Mr Farouq Abu Eissa v the Sudan*). Certain

particularities apply to the Inter-American and the European systems, which may influence a potential award of pecuniary or non-pecuniary damages.

In the Inter-American system, claims for pecuniary and non-pecuniary harm survive the death of the direct victim and pass directly to the victim's heirs. The IACtHR recognises the children or the spouse of the deceased as the relevant successors, or parents in the absence of such other successors.

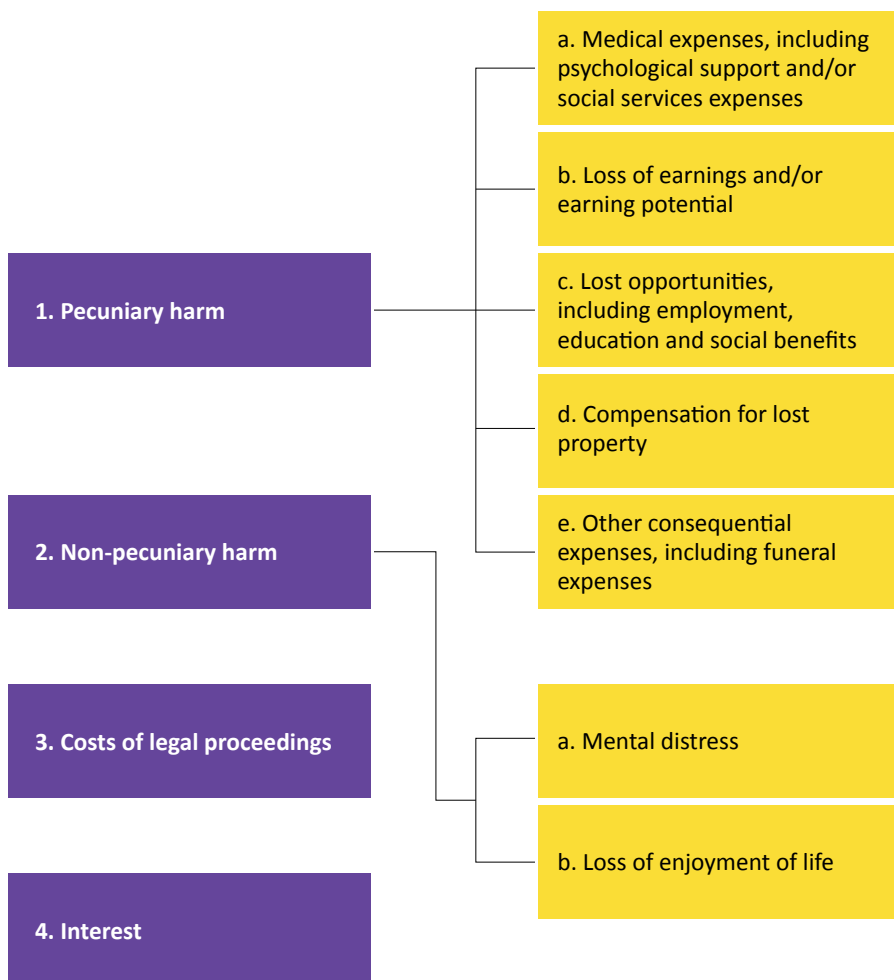
In the European System, an application lodged by the victims before their death may be continued by their heirs or close family members, provided that they have a sufficient and legitimate interest in the case (*Hristozov and Others v Bulgaria*). If the alleged victim of a violation has died or has been forcibly disappeared before the submission of the application, it may be possible for the person with the requisite legal interest as next-of-kin to introduce an application raising complaints related to the death or disappearance of his or her relative (*Varnava and Others v Turkey*).

C. Collective claims for compensation

Torture survivors may submit their claims for compensation individually or, if more than one individual was affected by the same measure, some fora permit a group of victims collectively to claim for compensation. The latter may be possible when the victims belong to a community or group with a common identity, ethnicity, religion, language or other common distinguishing physical, social or cultural characteristic that links the group. Compensation has been awarded in cases where the injury affects the group as a whole, and individual harm cannot easily be identified, as may happen in cases where the wrongful conduct was targeted at a community. In such cases, the ACTHPR and the IACtHR have awarded compensation for pecuniary and non-pecuniary harm to any identifiable members of such community and have determined a lump-sum amount due to the victims (or their families) on the basis of equity (see e.g., *Moiwana Community v Suriname*; *Río Negro Massacres v Guatemala*; *Plan de Sánchez Massacre v Guatemala*; *Integrantes y Militantes de la Unión Patriótica v Colombia*).

V. WHAT COMPENSATION CAN BE CLAIMED

The following categories of compensable harm in torture claims can be identified from the practice across the different human rights fora:



This chart is intended as a guide for practitioners in identifying what categories of loss may be considered in any particular case. It is not intended as a mathematical formula or rigid checklist, given that each case will present its own facts and potential categories of loss.

The above chart is presented in the knowledge that human rights fora themselves frequently choose not to explain in any detail the bases on which they order compensation, or even the categories of compensation they have awarded. But even in those circumstances it remains the case that, the more specific and substantiated a compensation claim a victim can present, the more likely that victim may be to recover an amount of compensation that reflects the harm they have suffered.

Not all fora order a specific sum to be paid for each head of loss. Some non-judicial bodies, such as the HRC and other UN treaty bodies (including CAT), as well as regional bodies such as the IACHR and ACommHPR, tend to not determine a set amount of compensation to be paid. Even so, presenting a specific and substantiated compensation claim before such bodies could still increase the prospects of the forum ordering the responsible State to provide appropriate compensation.

Further, claiming compensation may require attention to specific rules or requirements that are particular to the specific body determining that claim. For instance, Article 41 of the ECHR on its terms empowers the ECtHR to award “just satisfaction” only “if the internal law of the High Contracting Party concerned allows only partial reparation to be made”. However, it appears that in practice the ECtHR does not rigidly apply those terms, especially where the violation in question relates to torture (*Mikheyev v. Russia*; *Jalloh v Germany*).

In those cases where the relevant court or non-judicial body has not determined the amount of damages that should be paid, this has sometimes presented difficulties for the enforcement stage, either because of the State’s unwillingness to comply with a decision they do not consider binding or because of the lengthy domestic processes that must be followed to determine the amount of compensation due. This can result in compensation being paid years later, or in some cases not

paid at all. Consequently, if a forum is open to either ordering a specific amount of compensation or ordering the State to pay compensation in an amount to be determined, it is strongly advisable for a torture victim to provide as specific and substantiated a compensation claim as possible, in order to encourage the forum to order a specific amount of compensation.

CASE STUDY: *Santo Domingo Massacre v Colombia* (IACtHR, 2012)

The IACtHR found Colombia responsible for violations of the right to personal integrity and the right to life (among other violations). The Court noted that although Colombia had compensated some victims, it had not compensated others. It refrained from specifying the amount of compensation for those victims not yet compensated.

Instead, the Court ordered Colombia to “grant and execute, within one year, using an expedited internal mechanism, the pertinent compensation and indemnities for pecuniary and non-pecuniary damage, in favour of the injured victims and the next of kin of victims who have not received reparation under the domestic contentious-administrative jurisdiction”. The compensation was to be determined based on “objective, reasonable and effective criteria of the Colombian contentious-administrative jurisdiction.”

Enforcement problems followed and so did numerous submissions to the IACtHR over the following nine years about Colombia’s compliance with the IACtHR’s decision. The victims received compensation only in 2021, thus illustrating the severe delay that can arise when human rights bodies do not order a specific amount as compensation.

A. Category 1: Compensation for pecuniary harm

Pecuniary harm is the economic loss resulting from a State’s violation of the prohibition of torture.

A victim who wishes to obtain compensation for pecuniary harm should make

a specific and substantiated claim to that effect. The ECtHR has what appears to be the most detailed formal requirements governing such claims, requiring the applicant to submit itemised particulars of all claims, together with any relevant supporting documents (such as expert reports, itemised bills and invoices), within the time limit fixed for the submission of the applicant's observations on the merits. According to Rule 60 of the Rules of Court of the ECtHR, failure to comply with these requirements may result in rejection of the claims in full or in part (ECtHR Q&A for Lawyers; Practice Directions on Just Satisfaction Claims). In general, it is strongly advisable to particularise and substantiate claims for compensation for pecuniary harm before any international or regional forum as much as possible.

1. Category 1.a: Medical expenses, including psychological support and/or social services expenses

Past and future medical, psychological and social services expenses incurred because of torture can in principle be recovered.

To substantiate claims for this category of compensation, applicants should submit documentary evidence to prove that the expenses have been or will be incurred, such as invoices for medical treatment, receipts for payments made, medical histories certificates, or even expert reports which can summarise the total expenses that have been incurred and/or will likely be incurred in the future (Lutsenko and Verbytskyi v Ukraine). Particularly where future medical and related expenses are at issue, an expert report from a medical professional can be an effective way of substantiating these future expenses. Crucially, the evidence needs to show not only the existence of the harm, but also a causal link between the harm and the violation. The following example illustrates a survivor's largely successful compensation claim in circumstances where the survivor was able to substantiate through documentation the claimed medical and related expenses.

CASE STUDY: *B v Russia* (ECtHR, 2023)

On 7 May 2023, the ECtHR found that Russia had violated the prohibition of inhuman or degrading treatment by disregarding the survivor's suffering and failing to protect her personal integrity during the criminal proceedings against the survivor's alleged abusers.

The survivor claimed RUB 1,316,831.25 (approximately EUR 15,200 at the time of the application), comprising: (a) RUB 35,000 and RUB 6,947.77 incurred for ten psychotherapy sessions and medication prescribed for her treatment; (b) RUB 1,134,000 for future psychotherapy sessions; and (c) RUB 140,883.48 for medication to be received during the following three years.

In support of this, the applicant relied on a psychotherapist's report which diagnosed her with anxiety-depressive disorder as part of post-traumatic stress disorder originating in the traumatic experience of her sexual abuse, her mother's death, and her participation in the criminal proceedings. The ECtHR awarded the applicant EUR 13,553 in respect of pecuniary damages, namely the actual and future expenses for psychotherapy and the expenses incurred for medication, plus any tax that may be chargeable.

However, different fora have sometimes approached the assessment of compensation for future medical and psychological expenses on broader bases of fairness or equity. The IACtHR has sometimes determined the amount on the basis of fairness, in light of such medical evidence as was available to the Court (*Loayza Tamayo v Peru*). The ECtHR has also at times decided to quantify compensation "based on its own assessment of the situation", particularly where medical evidence of expenses is available but there are some doubts as to its accuracy or completeness (*Mikheyev v Russia*; *Denis Vasilyev v Russia*). In those same cases the ECtHR has been reluctant to multiply medical expenses according to life expectancy, and it has also recognised that disability benefits or pensions that will be available from the State should be deducted from the compensation due.

CASE STUDY: Mikheyev v Russia (ECtHR, 2006)

The applicant in this case attempted suicide at the police station after being tortured by police officers, based on which the ECtHR found a violation of the prohibition of torture in Article 3. The applicant claimed pecuniary damages relating to ongoing medical treatment resulting from the accident, as well as for loss of income arising from his disability status. The applicant claimed RUB 23,562,500 to cover his future medical expenses up to the age of 65 (approximately EUR 680,000).

The ECtHR disagreed with the applicant's calculation of the compensation claimed (i.e. multiplying annual medical expenses by average life expectancy and excluding disability income), which it described as being "not in line with the Court's approach to the calculation of future losses". The Court instead awarded a lower sum based on its own assessment (EUR 130,000). The Court recognised "the seriousness of the applicant's condition, the need for specialised and continuous medical treatment and his complete inability to work in the future", but did not explain why EUR 130,000 was an appropriate figure in those circumstances.

Even if some fora may be prepared to exercise broad discretion to award lump sums, it should again be emphasised that this should not encourage applicants to advance vague claims of round numbers of estimated future expenses. For example, in a case before the ACTHPR, a survivor claimed future health-care expenses allegedly caused by unlawful detention by relying on approximated expenses of USD 20,000 per year, extrapolated out towards an estimated life expectancy of 80 years (reaching a total of USD 280,000). The Court rejected that claim and awarded zero compensation for those claimed expenses noting that: "[T]he Applicant is requesting reparations for future material prejudice, without demonstrating in which circumstances they are going to occur." (Leon Mugesera v Rwanda).

Some fora may consider whether compensation should be reduced based on whether the applicant acted reasonably and whether there were any courses of action that they could have taken to mitigate damage e.g. by seeking professional

help, following medical instructions etc. The burden of proof will be on the State to establish that the victim should have acted differently and, in practice, fora have been reluctant to find that victims of torture have contributed to their own loss (*Bueno-Alves v Argentina*).

2. Category 1.b: Loss of earnings and/or earning potential

The loss of past and future earnings, as well as damages for a victim's earning potential and reduced capacity for work, can be claimed before all major fora that award compensation for harm caused by torture. This category of loss may also be claimed by close relatives or next of kin of the victim, including spouses, elderly parents and children.

Compensation for loss of earnings may cover past and future loss of earnings. Past losses include all earnings which were not received as a result of the violation. Future losses include all earnings during the remainder of the victim's working life which would not be obtained because of the violation. Assessing future losses may involve greater uncertainty, and require more assumptions, given both the length of time involved and the unavoidable absence of data regarding the actual circumstances that will prevail in the future.

In some countries, compensation amounts for personal injuries and reduced capacity for work may be estimated on a standardised tariff basis which varies depending on the level of injury and based on normative tables that set percentages for losses of limbs or capacities (see, for example, Denmark's injury calculator). This is not the case at the international level, where the method of calculation of loss of earnings may differ from system to system. Even within systems, there is no such standardisation, which is probably unavoidable given the very different circumstances that prevail across countries within the same region (across States parties to the ECHR, for example, salary levels and other economic circumstances vary considerably).

The IACtHR has developed an approach to determining lost earnings through an assessment of both factors specific to the victim and factors arising from the general

circumstances prevailing in the country that person is from. For example, the Court has considered the gross earnings of an individual, calculated on the basis of the actual past salary of the victim, where such evidence is available, and multiplied by the life expectancy in the relevant State. Claimants may also argue that the relevant forum should consider other factors, especially when calculating losses to future earnings, including inflation, and the potential for the claimant's future increase in earnings through education and career advancement (*El Amparo v Venezuela*).

If the whereabouts of the victim are unknown or the victim has passed away, the IACtHR would then deduct a set percentage (25%) from the amount granted to his or her relatives to account for personal expenses that will no longer be incurred (*Loayza Tamayo v Peru; El Amparo v Venezuela*).

The focus on the actual salary of the victim is a key differentiating factor from the tariff-based system of compensation for personal injury favoured in many domestic systems, and it is an important way by which the IACtHR individualises reparation awards.

However, in cases where the salary of the victim cannot be ascertained, the IACtHR has generally (i) referred to the minimum wage set at a domestic level and adjusted it as necessary, (ii) used comparator groups, such as by identifying the salary range for a particular profession or level of employees, or (iii) made a broad assessment based on equity. The two examples in the boxes immediately below illustrate scenarios (ii) and (iii), respectively.

CASE STUDY: *Cantoral-Benavides v Peru* (IACtHR, 2001)

In calculating the future earnings of the victim, who at the time of his detention was a biology student, the Court noted that:

...the victim should receive from the State compensation [] the salary that a newly graduated biologist would have earned in the first years of his career, for the period from the date on which Luis Alberto Cantoral Benavides was released to the date of the present Judgment. Payment of the corresponding sums will compensate Mr. Cantoral Benavides for the income he did not receive...

CASE STUDY: *Bámaca Velásquez v Guatemala (Reparations)* (IACtHR, 2002)

The victim, at the time of his disappearance, was a guerilla commander at *Unidad Revolucionaria Nacional Guatemalteca* (URNG). The Court did not award any compensation for the time period before a ceasefire agreement was signed in Guatemala. As for the post-ceasefire period, the Court reached a sum based on equity:

...the second period, beginning in the month of March 1997, covers the remaining years in the victim's life expectancy. In this connection, the Court recognizes that it is not possible to establish with certainty what the occupation and income of Mr. Bámaca Velásquez would have been when he undertook a work activity in his country. Bearing in mind the lack of certain probatory elements on the possible income the victim could have earned, the Court decides in equity to set the amount to be paid as compensation for the loss of income during that period as US\$100,000.00...

The ECtHR will generally require substantiation of the loss of past and future earnings by showing an established income. In cases where the actual salary of the victim cannot be ascertained, the ECtHR has generally determined the compensation on the basis of equity.

For the substantiation of future loss of earnings where the victim's salary can be ascertained, the ECtHR may have regard to actuarial evidence. Such evidence relies on mathematical models to assist in forecasting the future income of the victim had the violation not occurred, and to calculate the appropriate amount of compensation that should be granted. These models consider factors such as the age, level of education, the social and economic conditions of, and the risks to which the individual would normally be exposed (*Cakici v Turkey*). This borrows from other actuarial practices that have been used in domestic proceedings, including the "Ogden Tables", which are used in the UK to calculate compensation in personal injury claims, and which also have been used by claimants before the ECtHR (*The Ogden Actuarial Tables – UK*).

While the ECtHR may have regard to actuarial evidence, it will not necessarily adopt the figures produced by that evidence (*Ipek v Turkey*). The cases below illustrate the ECtHR's preference for making a general assessment of what it considers to be equitable, whether or not actuarial evidence may be available.

CASE STUDY: *Ipek v Turkey* (ECtHR, 2004)

The applicant's two sons were abducted and ultimately presumed to be killed by the security forces following a military operation. For compensation for pecuniary harm in relation to the disappearance and presumed death of his sons, the applicant claimed a total of GBP 106,393.08 for loss of income, relying on the annual salary of his sons at the time of the violation (around GBP 2,343.46 per year) and the average life expectancy for Turkish men (65.1 years). Noting that there were no actuarial tables applicable for Turkey, to calculate his sons' loss of income, the applicant relied on the Ogden Actuarial Tables used to calculate personal injury claims in the UK. The ECtHR, however, awarded the sum of EUR 7,000 for each of the applicant's sons on an equitable basis.

CASE STUDY: *Kismir v Turkey* (ECtHR, 2005)

A student of Kurdish origin died while in police custody. In claiming compensation, the student's mother submitted that her son would have worked as a teacher, and that compensation should be calculated on the basis of the average annual salary for a teacher, which was approximately GBP 2,000. Taking into account the average life expectancy in Turkey in that period and having regard to actuarial tables, the applicant calculated the estimated loss of earnings of her son as GBP 45,151.28. The Court did not consider the evidence submitted as sufficient, particularly because the applicant failed to submit any evidence showing that the victim was accepted into university and that there was no guarantee he would have graduated and have found a job. However, the Court awarded a sum of GBP 16,500 for pecuniary damages on an equitable basis.

CASE STUDY: Tunikova and Others v Russia (ECtHR, 2022)

Four victims of domestic violence filed claims against Russia. One of the applicants, Ms. Gracheva, claimed EUR 912,519 in respect of pecuniary damage. This amount included EUR 30,660 for physical treatment and rehabilitation of her left hand, EUR 692,112 for the purchase, maintenance and repair of a prosthetic right hand, and EUR 189,747 for loss of earnings based on her previous income in the advertising department at a local newspaper. The Court took issue with the claims concerning loss of future earnings and expenses, including the applicant's reliance on past wages, and instead awarded those on an equitable basis:

The amounts claimed were obtained by multiplying the costs of prosthetics and past wages by the average life expectancy. This method of calculation is not in line with the Court's approach to the calculation of future losses. It will therefore have to deal with the claim on an equitable basis based on its own assessment of the situation.

Taking into account Ms Gracheva's age, her position as primary caregiver of her minor children, the nature of her disability which restricts the options of accessible employment, and her lifelong dependence on expensive adaptive aids, the Court awards her EUR 300,000 for the loss of earnings and future medical expenses... (citations omitted)

Having found violations of Articles 3 and 14 of the ECHR, the Court ultimately awarded Ms Gracheva EUR 330,660 in respect of compensation for pecuniary harm, which comprised (i) EUR 30,660 for her physical treatment and rehabilitation, and (ii) EUR 300,000 for her loss of future earnings and future medical expenses, as well as EUR 40,000 in respect of compensation for non-pecuniary harm.

The ACtHPR's decisions show that the Court is relatively strict in relation to claims of loss of past and future earnings. Many of the claims for loss of earnings have been dismissed for lack of evidence. The ACtHPR's jurisprudence emphasises the need to establish the loss of past and future earnings, and the causal link between the violation found and the loss of earnings (*Amini Juma v Tanzania*). The ACtHPR has declined claims of loss of income when the applicant did not demonstrate they had a source of regular income (*Mohamed Abubakari v Tanzania*). For instance, the Court refused to award compensation for an alleged loss of an auto-mechanic business where the victim failed to provide documentary evidence such as a business licence or registration with the revenue authorities as proof of the existence of business (*Amini Juma v Tanzania*). Yet, in *Lohe Issa Konate v. Burkina Faso* where a regular source of income had been established, it awarded damages for loss of past and future earnings, although based on equity. The Court noted that although the applicant adduced documentary evidence demonstrating that, prior to the violation, he had published 5000 copies of a newspaper on a weekly basis, he was unable to present evidence showing the sale figures. The Court accordingly awarded less than 1/5th of the amount of compensation claimed.

As a general observation about the three fora considered above, a successful applicant will need to prove an established income or provide a sound basis for the relevant court to determine the loss of past and/or future earnings. The following may serve as a useful checklist of elements to be considered when building up a claim for future loss of earnings.

Elements of lost earnings claim	Possible means of proof
Past salary or other income	Proof of existence of employment or business ownership, plus proof of salary earned or profits from business
→ If no proof of past salary or other income	Minimum or average salary statistics from the survivor’s State, or average salary of a member of the relevant profession from that State
→ If no working history	Consider education and/or training, and average salary of a member of the relevant profession from the survivor’s State
Life expectancy	Average life expectancy in the survivor’s State
Opportunities for further education or training, and career progression	Reference to salary range for relevant career, applying higher figures from that range for later years of career
Inflation	Reference to an historical index or other source of information to determine assumed rate of inflation
Deductions	Possible deductions to reflect any compensation or support already received from respondent State, or to reflect lower expenses for family of victim who is deceased or cannot be located.

3. Category 1.c: Lost opportunities

Lost opportunities, such as employment, education and social benefits, may also be claimed by direct and indirect victims. However, they are less frequent as standalone claims than the prior categories of pecuniary loss. In the European and Inter-American Courts' practice, claims for lost opportunities are generally brought together with loss of earnings claims and are jointly substantiated. Indeed, for direct victims, there would typically be no need to turn to lost opportunities if they can sustain a lost earnings claim (or at least obtain compensation assessed on an equitable basis for such lost earnings). Claims for lost opportunities have also sometimes been submitted as claims for non-pecuniary damages before the ECtHR (*Nevmerzhitsky v Ukraine*).

The IACtHR has acknowledged compensation for lost opportunities in cases involving indirect victims and has tended to approach the extent of that compensation on a flexible basis. For example, in *Aloeboetoe et al v Suriname*, acknowledging the indirect victims' loss of opportunities to access education, the Court recognised that the compensation allocated to the heirs of the victim included "an amount that will enable the minor children to continue their education until they reach a certain age" (*Aloeboetoe et al v Suriname*). The IACtHR has further developed this head of damage under the concept of *proyecto de vida* (life plan), as compensation for non-pecuniary harm, which is addressed below.

Otherwise, the ECtHR and IACtHR have acknowledged that the amount of damages for lost opportunities involves flexibility, as it depends necessarily on uncertain variables such as career advancement and whether the victim would have pursued a certain career or study track. They therefore tend to assess the amount due on an equitable basis (*Beck, Copp and Bazeley v United Kingdom*).

4. Category 1.d: Compensation for lost property

In some cases where a State is found responsible for violating the prohibition of torture, the same or surrounding conduct of the State also results in loss of the applicant's property (*Tibi v Ecuador*). Compensation may thus be awarded for the loss of movable and immovable property where that is causally linked to conduct of the State in violation of a protected right.

***Tibi v Ecuador* (IACtHR, 2004)**

On 27 September 1995, Daniel Tibi, a French merchant of Ecuadorian art and precious stones, was arrested by police officials in Quito, Ecuador, on allegations of drug trafficking. He was detained without an arrest warrant or information regarding the charges against him, and his property, including paintings, gems, a vehicle, and securities, worth around USD 200,000, were seized by the police. While in detention, Mr. Tibi was subjected to various forms of torture until his release in January 1998. Despite a court order, Mr. Tibi's property was not returned to him.

In 2004, the IACtHR found that Ecuador was responsible for numerous violations of rights under the ACHR, including the prohibition of torture, as well as the right to property. The Court ordered Ecuador to pay EUR 148,715.00 as compensation for pecuniary damages, including EUR 82,850.00 as compensation for the property seized from Mr. Tibi when he was detained.

5. Category 1.e: Other consequential expenses, including funeral expenses

The major fora have recognised consequential damages in their determination of compensation for pecuniary damage to the extent they have been duly substantiated, including:

- (i) Funeral arrangements (see e.g., *Caracazo v Venezuela*; *Vardanyan v Armenia*);
- (ii) Transportation of victims and their next of kin (see e.g., *Al and Others v Poland*; *Corley and others v Russia*; *Amini Juma v Tanzania*);
- (iii) Search for and locating the victims (see e.g., *Caracazo v Venezuela*; *Radilla Pacheco v Mexico*);
- (iv) Food and water costs during detention (see e.g., *Petukhov v Ukraine*);
- (v) Food, accommodation and other costs incurred while investigating the whereabouts of a victim (see e.g., *Trujillo Oroza v Bolivia*);

- (vi) Telephone calls, stationery, photocopying and fax services (see e.g., *Molina Theissen v Guatemala*); and
- (vii) Living in exile (see e.g., *Sébastien Germain Marie Aikoué Ajavon vs Republic of Benin; Carpio Nicolle et al. v. Guatemala*).

In order to succeed, claims for consequential damages should be properly substantiated (see *Berdzenishvili and Others v Russia; Niyonzima Augustine v Tanzania*). Pursuant to the Rules of the ECtHR, in particular, “itemized particulars of any claim [...] along with supporting documents or vouchers” must be submitted with an application (ECtHR, Rules of Court). Exceptionally, in cases where circumstances show that substantial costs and expenses had been incurred but specific evidence is not available, the courts may be willing to establish an amount of compensation for consequential damages on an equitable basis (IAcTfHR, *De la Cruz Flores v Peru*).

B. Category 2: Compensation for non-pecuniary harm

Compensation for non-pecuniary harm provides redress for harm other than the economic harm suffered because of the violation of the victim’s rights. Non-pecuniary damages seek to compensate victims for the suffering they experience as a result of a human rights violation, including the mental distress and the loss of enjoyment of life caused to the direct victims and their next of kin, as well as other suffering that cannot be assessed in financial terms (*Mikheyev v Russia, “Street Children” (Villagran-Morales et al.) v Guatemala*). The major fora use terms like “non-pecuniary”, “non-material” and “moral” harm interchangeably to reflect the same broad category of harm. Within that category, it may be useful to distinguish (i) mental distress and similar descriptions like emotional pain and suffering, and (ii) loss of enjoyment of life, for example inability to have children or the erosion of a communal way of life.

Compensation for non-pecuniary harm is different from compensation for pecuniary harm in at least two aspects. Non-pecuniary harm for victims of torture can generally be established even without specific evidence and the quantification of compensation for non-pecuniary harm necessarily rests on equitable

considerations. When calculating compensation claims for non-pecuniary damages practitioners will want to identify previous cases with similar facts or where the torture had a comparable impact, and refer to the damages that were awarded in that case, and make the argument that the amount should be the same or perhaps higher. Cases from the same tribunal are likely to be the most persuasive in this respect, but sometimes they will also look at comparative experience elsewhere.

While all major fora determine the amount of compensation by applying broad considerations of fairness, certain features may influence a particular body's assessment. For instance, from the ECtHR's practice the following features emerge:

- (i) While pecuniary damages need to be claimed and substantiated, the ECtHR may, on its own motion, award non-pecuniary damages based on the principle of equity (*Davtian v Georgia*; *Bursuc v Romania*). In other words, there is a presumption that the non-pecuniary harm has been suffered.
- (ii) The ECtHR considers that non-pecuniary damages give recognition to the fact that "moral damage occurred as a result of a breach of a fundamental human right" and must reflect "the severity of the damage". However, the Court has also observed that non-pecuniary damages "are not intended to give financial comfort or sympathetic enrichment at the expense of the Contracting Party concerned" (*Varnava and others v Turkey*).
- (iii) A legal presumption applies in torture cases that a causal link exists between the alleged violation and the non-pecuniary harm (*Ilerde and others v Turkey*; *Roth v Germany*, *Practice Directions on Just Satisfaction Claims*).
- (iv) The equitable basis of the Court's assessment has produced significant variations in the amount of non-pecuniary damages awarded across different cases. But torture victims are likely to receive a relatively higher amount of compensation for non-pecuniary harm compared to victims of other violations. The Court has tended to contrast torture victims, who have suffered infringements to life, physical and mental integrity, with victims who have suffered in the context of procedural injustice. In a recent judgment concerning the rendition to and torture of an individual at Guantánamo Bay, the ECtHR found violations

of several obligations including the prohibition of torture. Relying on the seriousness of the violations, and their duration, context and lasting impact on the survivor's mental and physical health, the ECtHR ordered Lithuania to pay the full amount claimed: EUR 100,000 in respect of non-pecuniary damage (*Al-Hawsawi v Lithuania*).

- (v) Even within the context of cases of torture and related forms of ill-treatment, the extent of non-pecuniary damages will vary significantly according to the gravity of the suffering at issue, as illustrated by the cases considered in the box immediately below.

CASE STUDY: *El-Masri v The former Yugoslav Republic of Macedonia* (ECtHR, 2012)

This case concerned a particularly grave set of facts. The applicant was tortured and ill-treated by the State, which then transferred him knowingly into the custody of the CIA although there had been serious reasons to believe that he might be subjected to further torture and/or ill-treatment. The Court's factual findings included the following (at para 205):

“The Court observes that on 23 January 2004 the applicant, handcuffed and blindfolded, was taken from the hotel and driven to Skopje Airport. Placed in a room, he was beaten severely by several disguised men dressed in black. He was stripped and sodomised with an object. He was placed in an adult nappy and dressed in a dark blue short-sleeved tracksuit. Shackled and hooded, and subjected to total sensory deprivation, the applicant was forcibly marched to a CIA aircraft (a Boeing 737 with the tail number N313P), which was surrounded by Macedonian security agents who formed a cordon around the plane. When on the plane, he was thrown to the floor, chained down and forcibly tranquillised. While in that position, the applicant was flown to Kabul (Afghanistan) via Baghdad (Iraq).”

Having found a violation of the prohibition of torture (among other violations), the Court awarded the applicant EUR 60,000 given “the extreme seriousness of the violations of the Convention of which the applicant was a victim and ruling on an equitable basis.”

CASE STUDY: Vladimir Vasilyev v Russia (ECTHR, 2012)

A detainee was denied appropriate medical treatment in the form of footwear that would have ameliorated the suffering caused by the amputation of part of the applicant's toe and foot because of frostbite suffered during detention. The ECTHR found that this amounted to degrading treatment in violation of Article 3 of the ECHR.

The Court rejected the applicant's claim for pecuniary damages as it was unsubstantiated and/or unrelated to the Court's findings. However, it still awarded EUR 9,000 in non-pecuniary damages having regard to the nature of violations involved and making an assessment on an "equitable basis."

The IACTHR and ACTHPR also accept claims for non-pecuniary damages, though the practice of the IACTHR is more extensive and expansive. The IACTHR also resorts to the principle of equity and, in doing so, weighs the circumstances of the case, the nature of the violations, the suffering caused and experienced, and the time elapsed since the violation (Bedoya Lima et al. v Colombia). In addition, the IACTHR makes the following evidentiary presumptions with regard to non-pecuniary damages:

- (i) It does not require evidence to prove direct or indirect moral suffering for torture victims as "it is characteristic of human nature that anybody subjected to the aggression and abuse [...] will experience moral suffering" (Aloboetoe et al. v Suriname).
- (ii) For direct relatives, defined as "mothers and fathers, sons and daughters, spouses, and permanent life partners," in the absence of any evidence to the contrary, the IACTHR presumes suffering to exist on account of the torture of their relative (see e.g., Ibsen Cárdenas and Ibsen Peña v Bolivia; Tibi v Ecuador).

An arguably unique feature of the Inter-American system is that non-pecuniary harm may also arise from damage to the victim's "life plan" (*proyecto de vida*). According to the Court, "[t]he so-called 'life plan' deals with the full self-actualisation of the person concerned and takes account of her calling in life, her particular

circumstances, her potentialities, and her ambitions, thus permitting her to set for herself, in a reasonable manner, specific goals, and to attain those goals” (*Loayza Tamayo v Peru*, *Women Victims of Sexual Torture in Atenco v Mexico*). The Court has focused on this type of harm in cases where irreparable loss or severe impairment of the opportunities for personal development have been established. While the terminology of “life plan” is arguably unique, the ECtHR has focused on similar considerations in practice, as illustrated by a comparison of the two cases below:

CASE STUDY: *Mikheyev v Russia* (ECtHR, 2006)

The applicant was tortured in police custody and, during a break in questioning, attempted to commit suicide by jumping out of a window at the police station. The effects were severe and long-term, which impacted how the Court assessed compensation for non-pecuniary harm:

“The Court reiterates that at the time of the accident the applicant was a healthy young man in permanent employment. While in the hands of the police he was subjected to torture, which caused him severe mental and physical suffering. Then, after the accident, he underwent several operations on his spine. Now he has lost his mobility and sexual and pelvic function, and is unable to work or have children. He has to undergo regular medical examinations, and the risk of aggravation of his condition persists. Given the exceptionally serious consequences of the incident of 19 September 1998 for the applicant, the Court awards him EUR 120,000 in compensation for non-pecuniary damage, plus any tax that may be chargeable on this amount.”

CASE STUDY: Cantoral-Benavides v Peru (IAcHR, 2000)

The applicant was detained under harsh conditions causing him to suffer physical and psychological disorders. The Court found that the Respondent's ill-treatment of the applicant was "detrimental" to his "life project", including because it destroyed the prospects of a man who prior to the suffering was 20-year-old biology student. The Court considered that the best way to restore the victim's life plan was for the State to provide him with a fellowship for advanced or university studies, to cover the costs of a degree preparing him for the profession of his choosing, and his living expenses for the duration of those studies, at a learning institution of recognized academic excellence, which the victim and the state select by mutual agreement.

C. Category 3: Costs required for legal or expert assistance

Victims are also generally entitled to recover the costs they have been forced to incur in order to obtain redress for torture. The relevant international fora generally deal with the recovery of costs separately from the question of compensation for pecuniary and non-pecuniary harm. This category may include costs incurred in legal proceedings at the domestic level and at the international level – for example, reflecting a victim's attempts to seek legal redress first before domestic courts and then before international human rights fora after the former proved unsuccessful (*"Street Children" (Villagrán-Morales et al.) v Guatemala*; *Loayza Tamayo v Peru*; *Garrido and Baigorria v Argentina*; Practice Direction on Just Satisfaction; *Zongo and Others v Burkina Faso*).

Such costs will typically include legal representation, court registration, translation fees, and postal expenses. They may also include travel and subsistence expenses. In certain instances and separate from costs that the survivor or other applicant has himself or herself incurred, the Inter-American Court may order the State to reimburse the representatives of the victims directly for their costs, including costs incurred by civil society organisations that have assisted the victim (*"Street Children" (Villagrán-Morales et al.) v Guatemala*).

Where possible, the applicant should provide documentary evidence showing the quantum of the costs that were actually, reasonably, and unavoidably incurred. The ECtHR has previously refused to award any sum for claims for costs that were not substantiated (*Dumbrava v Romania*). However, even if no documentary evidence exists, a claim for the reimbursement of costs should still be made, as some fora may nonetheless award sums for costs on an equitable basis, especially where there are good reasons for the absence of documentary evidence, including for instance the time that has expired since the domestic proceedings (*Rio Negro Massacres v Guatemala*).

There may be certain particularities in how each forum approaches costs. For example:

- (i) The ECtHR may uphold claims for costs only to the extent that they relate to the violations it has found and may reject them to the extent that they are tied to inadmissible claims or claims that have not led to a finding of a violation. (Practice Directions on Just Satisfaction Claims)
- (ii) The IACtHR may also award the reimbursement of legal costs incurred by the victims or their representatives with regard to the monitoring of the State's compliance with a judgment (*Xákmok Kásek v Paraguay*).

D. Category 4: Interest on unpaid compensation

There are two categories of interest that may be claimed in addition to the compensation outlined above. Each category aims to make up for the lost time value of money, but over different periods of time. The first category is interest that may be awarded from the date of the event giving rise to the violation through to the date of the decision ordering payment. The IACtHR has awarded this interest when calculating the lost earnings that would have been received between the time of the violations and the date of the decision (*El Amparo v Venezuela*; *"Street Children" (Villagrán-Morales et al.) v Guatemala*). This category of interest has been awarded less frequently in other fora. Before the ECtHR, for example, such interest has generally been limited to cases involving dispossession of property (*Scordino v Italy*; *Stran Greek Refineries v Greece*).

The second category of interest is connected to implementing the award of compensation and becomes payable only where the State fails to meet its payment obligations (as ordered by the relevant forum) on time. This category of interest is sometimes called “default interest” and, while this again makes up for the lost time value of money, it can also act as a sanction of a State that does not abide by its payment obligations (and as an incentive for prompt payment). This category will be calculated after the decision is issued and until the State makes the payment.

The following may serve as a helpful checklist for what should be specified when claiming interest, especially with respect to the first category of interest:

- (i) The extent of the compensation on which interest is claimed: in the absence of a good reason, this may be all the compensation claimed.
- (ii) The rate of interest claimed: this will typically be based on the practice in the particular forum. The ECtHR, for example, tends to award a rate equal to the marginal lending rate of the European Central Bank plus three percentage points. The IACtHR by contrast tends to apply a rate derived from the respondent State in question. The ACtHPR takes the rate applicable at the Central Bank of the Community of West African States.
- (iii) Whether interest should be simple (i.e., calculated solely on the original amount) or compounded (i.e., calculated on the original amount plus the interest already accumulated on it). The major fora tend to award simple interest, although this is out of step with international litigation more generally and may undercompensate a victim given that the interest on money available to a victim would, if it had been placed in a bank by the victim, likely be compounded. The prospects of obtaining compound interest are likely to be low based on existing practice, but suitable circumstances for such a claim could arise, particularly where the survivor has faced substantial delay in obtaining redress through no fault of his or her own.
- (iv) The period of time over which interest is claimed: for the first category of interest, this is generally the time between the event giving rise to the

violation and the date of the decision. For the second category, it is generally the time between the date by which the State is ordered to make a payment, and the date on which the State actually makes the payment. The period of time may differ across the relevant fora. The ACtHPR, for example, tends to afford Respondent States a six-month grace period before which interest will start running, while the ECtHR generally only grants three months.

APPENDIX I - SUMMARY OF APPROACHES TO COMPENSATION BY LEADING FORA

	European Court of Human Rights	Inter-American Court of Human Rights	African Court on Human and Peoples' Rights
Prohibition of torture	Art. 3 of ECHR: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.	Art. 5(2) ACHR: No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.	Art. 5 ACHPR: Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.
Availability of compensation and burden and standard of proof			
Compensation as a form of reparation	Art. 41 of ECHR: If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.	Art. 63(1) of ACHR: If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.	Art. 27 of 1998 ACHPR Protocol: If the Court finds that there has been a violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.

Burden of proof	On claimant, although some presumptions apply.	On claimant, although some presumptions apply.	On claimant, although some presumptions apply.
Standard of proof (Breach, Harm, Causation)	Beyond reasonable doubt, although more relaxed for proving harm and causation in cases of torture, referring to providing evidence, "as far as possible" on the existence and value of damage. Claimant needs to establish a direct causal link. Presumption of non-pecuniary harm.	Balance of probabilities. More relaxed for proving harm resulting from torture. Presumption of non-pecuniary harm.	Preponderance of evidence. More relaxed for proving harm resulting from torture. Presumption of non-pecuniary harm.
Who is entitled to compensation?			
Direct and indirect victims	Yes	Yes	Yes
Successors of victims	Yes	Yes	Less clear
Collective claims for compensation	Less clear	Yes	Yes
What compensation can be claimed?			
Pecuniary harm - Medical expenses - Loss of past and future earnings - Lost opportunities - Other consequential damages, including funeral expenses	Pecuniary harm - Medical expenses: requires evidence of actual expenses. - Loss of past and future earnings: requires substantiation by showing an established income. - Lost opportunities: generally awarded on an equitable basis.	Pecuniary harm - Medical expenses: cases vary, with some courts awarding compensation on an equitable basis. - Loss of past and future earnings: Considers range of factors (including average minimum wage) if no evidence of past earnings is provided.	Pecuniary harm - Medical expenses: cases vary, with some courts awarding compensation on an equitable basis. - Loss of past and future earnings: jurisprudence emphasises the need to establish the past and future earnings. - Lost opportunities: generally awarded on an equitable basis, and with a degree of speculation.

	<p>- Other consequential damages, including funeral expenses: itemized particulars of any claim must be submitted.</p>	<p>- Lost opportunities: generally awarded on an equitable basis, and with a degree of speculation. Connected with compensation for the non-pecuniary harm to “life plan”.</p>	
Non-pecuniary harm	<p>Determines the amount of compensation by applying broad considerations of equity. ECtHR may, on its own motion, award non-pecuniary damages. A legal presumption applies in torture cases that a causal link exists between the violation and non-pecuniary harm.</p>	<p>Determines the amount of compensation by applying broad considerations of equity. IACtHR may also award compensation arising from damage to the victim’s “life plan”. A legal presumption applies in torture cases that a causal link exists between the alleged violation and non-pecuniary harm.</p>	<p>Determines the amount of compensation by applying broad considerations of equity. A legal presumption applies in torture cases that a causal link exists between the violation and non-pecuniary harm.</p>
Legal costs and expenses	<p>Will uphold claims for costs only to the extent that they relate to the violations it has found; previously refused to award any sum for claims for costs that were not substantiated.</p>	<p>Reasonable legal costs and expenses awarded to claimants; costs associated with the claim in domestic and international courts awarded. The IACtHR has also ordered States to pay to the costs of NGOs involved in the claim directly to them.</p>	<p>Reasonable legal costs and expenses awarded to claimants; costs associated with the claim in domestic and international courts awarded.</p>
Interest	<p>Tends to award default interest at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points.</p>	<p>Tends to award default interest at a rate derived from the respondent State in question.</p>	<p>Tends to award default interest at the rate applicable at the Central Bank of the Community of West African States.</p>

DOCUMENTS AND 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 Committee. General comment no. 31 (80), The nature of the general legal obligation imposed on States Parties to the Covenant : International Covenant on Civil and Political Rights

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)
- ACtHPR. Fact Sheet on Filing Reparations Claims.

European Human Rights System

- Council of Europe. European Convention on Human Rights.
- ECtHR. Guide on Article 13 of the European Convention on Human Rights (Right to an Effective Remedy).
- Council of Europe. Article 41 of the European Convention on Human Rights.
- ECtHR. Practice Direction Just Satisfaction Claims.

Inter-American Human Rights System

- OAS. American Convention on Human Rights.

- OAS. Inter-American Convention to Prevent and Punish Torture.
- IACOMHR's. Guía de Buenas Prácticas y Orientaciones Básicas para Implementación de Decisiones de la Comisión Interamericana de Derechos Humanos (Only in Spanish).
- IACOMHR. Petition and Case System Informational Booklet.
- Council of Europe. European Convention on Human Rights.

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.
- Practice Note 10: Reparation for Torture Survivors.
- Practice Note 11: A Survivor-Centred Approach to Seeking Reparation for Torture.
- Holistic Strategic Litigation Module 5: Investigating Prosecutions for Torture.
- Holistic Strategic Litigation Module 11: 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.
- ACOMHPR decisions database.
- ACTHPR judgments database.
- IACtHR's judgments database.
- EctHR's judgments database.

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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