

The staying power of pain

A comparison of torture survivors from Bosnia and Colombia and their rates of anxiety, depression and PTSD

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Abstract

This article describes symptoms of anxiety, depression and PTSD among Bosnian (n=17) and Colombian (n=17) torture survivors served by the Florida Center for Survivors of Torture, a programme of Gulf Coast Jewish Family Services, Inc. Information from clients enrolled in the programme for six months or more was collated over a 14 month period in order to better prioritize and design services for the two distinct populations. On average, the Bosnians in this sample experienced torture approximately 14 years ago while the Colombians' experience was approximately six years ago. Types of torture experienced by clients are documented using HURIDOCS and the number of family and friends affected by extreme trauma are counted. Employment and education levels attained are also identified.

Findings show that 100% of Bosnians are symptomatic for depression and over half possess symptoms of PTSD compared to 35% of

Colombians for depression and 18% for PTSD, despite the differences in years since trauma occurred. High incidences of torture experienced by Bosnian clients and high numbers of family and friends affected support the high rates of symptoms. For the Colombian clients, high rates of employment and years of education, as well as earlier intervention, may contribute to their lower rates of symptoms.

The two client groups are distinguished by the unique circumstances experienced by each, including punctuated wartime versus a prolonged insurgency, as well as the refugee versus asylum seeker experience. This exploratory project informs the torture treatment model while recognizing the importance of ethnic, political and cultural perspectives affecting the healing process.

Key Words: torture, PTSD, depression, Bosnia, Colombia

Introduction

It is the historic policy of the United States to admit refugees of special humanitarian concern from around the world each year, reflecting our core values and our tradition of being a safe haven for the oppressed.¹ Of special concern at any time are those individuals who have suffered torture. Meeting the threshold of torture experience as defined by the United Nations Convention Against Torture² is the sole admission criteria for services from the Florida Center for Survivors of Torture.

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The Florida Center for Survivors of Torture (Florida Center), a programme of Gulf Coast Jewish Family Services, Inc. (GCJFS) is funded primarily by the United States Office of Refugee Resettlement and the United Nations Voluntary Fund for Victims of Torture, and has offices in both the Tampa Bay and Miami-Dade areas of Florida. The Florida Center is the only such treatment centre in the state. In 2004, Florida received double the number of refugees and entrants³ than the country of Canada.⁴

Unlike most other centres around the world, the Florida Center utilizes a community-based network model that focuses on the delivery of multidisciplinary services and network programme training.⁵ The Florida Center is a "Centre Without Walls" offering services in the communities in which survivors live through a diverse network of trained partners. An individual and intensive treatment plan is devised based on an in-depth psychosocial intake assessment and questionnaire for each survivor. Treatment plans will vary based on the stated and found needs of each individual. Rigorous case management of multidisciplinary services is provided by the Florida Center. This may include mental health professionals, psychiatrists, psychologists, physicians, attorneys, interpreters and other service providers. This model is flexible enough to meet the variety of needs presented by torture survivors from different cultures, experiences and their preferred ways of healing. Each year, the Florida Center provides case management to over 250 survivors, and has served clients from 43 countries in the world since the programme's inception in 2000. Additionally, the Florida Center has provided professional training in working effectively with survivors of torture to over one thousand network providers to date. The Tampa Bay office has served significant numbers of individuals from the former Yugoslavia

who are primarily Bosnian Muslim refugees and from Colombia who are primarily Christian asylees and asylum seekers.

This study examines samples of two client groups from the Florida Center, their symptoms of anxiety, depression and PTSD, and additional factors impacting their rehabilitation after six months of being enrolled in the programme. The Bosnian refugees whose experiences of torture are a result of an intense war and genocide are compared with Colombian asylum seekers, who have been targeted by the para-military and guerrilla forces that are deeply embedded in that country at the societal level. Individuals who have experienced extreme trauma as a result of physical and/or psychological torture are often affected long after the trauma has occurred.⁶ As a social service programme serving torture survivors from diverse backgrounds, the authors are interested in describing two distinct client groups in order to better respond to emerging client needs. The distinct differences in length of time since the trauma is notable as are other factors examined including torture experiences of family and friends of the study participants, and employment rates and education levels attained.

Background

Conflict histories

Bosnia

"In 1992 soldiers came to my village in Bosnia and took everyone to a nearby school. Since the war had just started we were not sure which side the soldiers were on. At the school, the men were taken and beaten until they were almost unrecognizable and the women were raped. I was raped and beaten with a large stick and rifle. When we returned to the village, the houses and everything was burned. Today, 33 members of my family are missing. I think they were killed and buried in a mass grave."

Bosnian client

The Bosnian War, which lasted almost four years (1992-1995), was one of the most brutal conflicts in recent history leaving approximately 200,000 people dead and many more civilians physically and emotionally wounded as a result of the use of concentration camps, torture and organized rape. Close to three million people were forced to leave their homes and become refugees.⁷ This year marks the 10th anniversary of the massacres at Srebrenica – when at least 7,800 Bosnian Muslims were killed – and the perpetrators of these war time human rights abuses remain at large.⁸ Thousands of “disappearances” are still unresolved. Tens of thousands of war refugees were resettled in the United States as well as other countries in the Americas and Europe.

Upon arriving in the United States, Bosnians were entitled to legal status as well as various refugee resettlement benefits. Their traditional patriarchal family structure and reliance on extended family and gender roles are challenged in resettlement, as women adapt more quickly to western norms and children obtain English language skills more easily than adults. These factors, along with other issues regarding acculturation, often compound the effects of torture.⁹

Colombia

“My grandfather was a village leader and member of a political party in opposition to the FARC in Colombia. The FARC threatened him because of this. Then, my cousin began dating a man who was a member of FARC but she didn’t know it. When we learned of this, my family tried to break up the relationship. The FARC members became angry and they killed my cousin. They threatened the rest of our family and then killed my grandfather. The police could not help us. When my father was travelling with his friends, FARC stopped them at a

roadblock and shot them and hit my father in the back. Another time, a group of boys who wanted to be FARC killed a person and I saw them.”

Colombian client

Contrary to repeated peace talk attempts, the long-running armed conflict in Colombia between the government and the main armed opposition group, the Fuerzas Armadas Revolucionarias de Colombia, (FARC) continues to be significant. Both the army and its paramilitary allies with the guerrilla forces are responsible for serious and systematic abuses of human rights and international law including politically motivated killings, forced disappearances and kidnappings. According to recent data relating to torture in Colombia, approximately 55% is committed by army-backed paramilitaries, 11% directly by the security forces and almost 7% by armed opposition groups.

In the remaining cases (27%) responsibility is not known. The majority of victims of torture are subsequently killed. Between July 1996 and June 2001 over 1,200 people were reportedly tortured, of these over 88% of the victims were subsequently killed.¹⁰ The United States Committee for Refugees and Immigrants reports that Colombia has the second largest number of internally displaced persons in the world with approximately 2.9 million displaced since 1985.¹¹ Overall, roughly one of every 10 Colombians is now living abroad.¹²

Despite this upheaval, little research is available on the impact of the ongoing internal conflict that affects Colombia’s citizens at the societal level. Colombians are seeking asylum in the United States at rates higher than ever before, often leaving family members behind, in desperation and in spite of threats to their personal safety, thus reflecting the severity and magnitude

of the country's instability. As asylum seekers in the United States, Colombians are not guaranteed legal status, or access to social welfare benefits. Within the current United States political climate, their futures are increasingly uncertain as they wait years for their asylum claims to move through the American immigration court system.

Impact of torture

The torture literature has grown in recent years. However, comparisons between torture survivors as refugees and asylum seekers are very limited. Research suggests that the dynamic nature of the refugee and immigrant experience must be considered especially at the service delivery level, in order to accommodate the range of different cultural and situational contexts in which survivors live.¹³ PTSD has been strongly associated with torture survivors and their history and severity of traumatic exposure. Other predicting factors for PTSD symptoms are proximity to danger, the increasing threat to an individual's life¹⁴ and the traumatic loss of family.¹⁵ Longitudinal studies among refugees and torture survivors have shown continued high rates of PTSD¹⁶ and symptoms of depression¹⁷ despite the length of time since the experience of trauma. Studies have also revealed several protective factors for lower PTSD rates.

Psychological preparedness for particular traumas lowered PTSD symptoms including prior exposure to traumatic stressors, expectation of traumatic events, and the belief that torture is an instrument used by the ruling class to manipulate behaviours.¹⁸ Higher levels of education have also been associated with lower psychological sequelae post-trauma.¹⁹

In recent years, studies have examined the complexities of acculturative stress among refugees and immigrants.^{6,17,20} Blair²¹

found that Cambodians who experienced greater numbers of stressors during resettlement were at higher risk for major depression. Formal resettlement in a "safe third country" is a voluntary process, although individuals and families may have been forced into leaving their home countries because of war and persecution. Individuals who voluntarily relocate have shown lower levels of depression compared to those individuals who are less willing or who strongly regret being placed in that position.²² Another complexity of acculturative stress is unemployment post-trauma.²³ Stutters and Ligon¹³ suggest that social service and community-based organizations who work with refugees and diverse groups are in a unique position to learn more about the prevalence rates of anxiety and depression, which can impact the use of assessments and the delivery of services to clients.

Methods

The Florida Center staff, having observed distinct differences in client expectations and service utilization between the Bosnian and Colombian clients, was interested in quantifying these presumed differences. Bosnian and Colombian clients of the Florida Center who received services from the Tampa Bay office for between six and 24 months and who completed a mid-service assessment during a single 14 month period (September 2004 to December 2005) were selected for this study. Of the 96 active clients from Bosnia and 46 active Colombian clients, 17 Bosnians, 18% of active clients, and 17 Colombians, 37% of active clients, had a completed mid-service assessment within the 14 month period. This represents 14% (34/235) of the total Florida Center client base from the period. A mid-service assessment uses the Hopkins Symptom Checklist – 25 (HSCL-25),²⁴ which measures for symptoms of anxi-

ety and depression, and the Harvard Trauma Questionnaire (HTQ),²⁵ which measures for PTSD symptoms. Trained interpreters were used to administer the assessment for those clients who were not fluent in English. In addition to the questionnaires, a client data sheet data, including clients' personal torture narrative, was compiled based on archival data located in client files and the Florida Center client data tracking system. Analysis was conducted using SPSS, a statistical software tool used for social science research.

Personal identifiers have not been used in this study. Upon enrolling in the Florida Center programme, all participants signed consent for treatment and a privacy notice explaining that data derived from routine programmatic procedures are subject to research projects and that no personal identifying information will be used. No additional information outside of programmatic procedure has been collected for this study. All data obtained from Florida Center clients is confidential and kept in full compliance with the Code of Federal Regulations Protection of Human Subjects.²⁶

Results

Demographics

Of the 17 Bosnian clients enrolled in this study, 12 were female and five were male. Nine participants from Colombia were fe-

male and eight were male. The mean age (standard deviation – SD) for participants was similar: 48 (11.8) for Bosnians and 43 (13.3) for Colombians. Twelve participants in each group were married while three Bosnians and four Colombians were single, and two Bosnians were widowed compared to one widowed Colombian.

Symptoms

The average length of time among study participants since experiencing extreme trauma and torture during the Bosnian War is 14 years. Yet, despite the time that has elapsed, scores for anxiety, depression and PTSD symptoms among Bosnians are substantially higher than the scores of the Colombian participants whose averaged experience of torture was only six years ago. Using the HSCL-25 to measure for symptoms of anxiety and depression, the mean scores for symptoms of anxiety among Bosnian participants are substantially higher than the Colombian participants. 100% of the Bosnian participants' scores are consistent with symptoms of depression compared to 35% of Colombians whose scores reveal symptoms for depression. The HTQ assessment for PTSD symptoms resulted in 53% of Bosnians showing more symptoms compared to 18% of Colombians. See Table 1.

Table 1. Client scores for anxiety, depression and PTSD.

	HSCL-25 Anxiety	HSCL-25 Depression	HTQ PTSD
<i>Bosnians</i>			
Median	2.66	2.58*	2.92**
SD	0.609	0.486	0.697
Range	1.80-3.70	1.86-3.30	2.18-4.9
<i>Colombians</i>			
Median	1.83	1.62	1.93
SD	0.636	0.325	0.446
Range	1.00-3.10	1.07-2.20	1.13-2.81

*) Depression scores of >1.75 are considered symptomatic for depression.

**) PTSD scores of >2.5 are considered symptomatic of PTSD.

Experiences of torture

During the intake process, clients are asked to tell their story. An open-ended format allows clients to describe with as much or as little detail the situation surrounding their torture. Clients' narratives are documented by the Florida Center staff by recording the identified types of torture as listed by the Human Rights and Documentation Systems, International (HURIDOCs) Standard Formats.²⁷ Details from the unprompted narrative of recounting their trauma history reveal that Bosnians in the study reported a total of 28 types of personal trauma sustained with 113 incidences. Self-reported forms of trauma by Colombian clients in the study group were much fewer: 16 types of personal traumas were reported with a total of 48 incidences having occurred. See Table 2. In telling their story, clients often relay their experiences through what others

close to them have endured. For the Bosnian participants in this study, 98 incidences of extreme trauma occurred to people close to them: torture (N=28) and killing (N=45) being the most common occurrences. Family and friends of Colombians suffered as well, with 46 occurrences reported including harassment and death threats. These additional events compound the effects of the personal torture and trauma experienced.

Additional variables and findings

While the time since the trauma occurred is substantially different between the two client groups, the length of time in the United States is relatively similar. For the Bosnians, like most refugee groups, their transitional time in a host country (i.e. Germany) was prolonged while the international community worked to devise a permanent repatriation or resettlement solution. As a result,

Table 2. *Methods of violence experienced by clients based on HURIDOCs codes.*

Methods of violence HURIDOCs code²⁶	Type of act (categories condensed)	Bosnian	Colombian
03 01	Beating (blows with objects, slapping, kicking, punching)	13	2
03 05	Rape/sexual harassment/molestation (forced sex, sexual comments and other forms of harassment, sexual threats, forced touching)	8	0
03 10	Strangulation	1	0
03 15	Deprivation (of food, water, needed medical attention, sleep, extreme exposure)	22	0
03 17	Immobilization (being tied or bound)	0	1
03 19	Stress to senses (blind folding, overcrowding, loud/disagreeable noises, screams and voices)	5	1
03 20	Psychological torture and ill-treatment	12	3
03 21	Degradation (forced into acting, forced nakedness, verbal abuse)	13	5
03 22	Threats – not including death threats	15	15
03 23	Death threats	15	16
03 24	Torture as a witness	7	2
04	Indiscriminate attacks (being shot at, forced at gun point, hostage)	2	3
	Totals	113	48

the averaged length of time the Bosnian participants have been in the United States is only six years although they left Bosnia at the time of the war. For the Colombian clients, their averaged length of time in the United States is approximately four years while their trauma occurred approximately six years ago. The Colombian numbers reflect a more common experience of asylum seekers who may make strategic plans to flee their country when necessary and to seek asylum in a pre-selected country based on a variety of reasons.

Of the 34 participants in this study, 26 have been clients of the Florida Center for approximately one year, while four have been enrolled for only six to eight months and four for as long as two years. As clients of the Florida Center, participants receive client-centred intensive case management. For some, this may include cognitive behavioural mental health therapies. Of the participating clients in this study, ten are receiving mental health services, four of whom are Bosnian and six are Colombian. Notable differences among the groups include level of education and current employment. Fifteen Bosnian participants achieved the equivalent of an American high school education. Conversely, 14 Colombian clients participated in technical college or business specific trade school or higher. Current employment figures show 82% (N=14) of Colombian participants are currently employed while the same percentage of Bosnian participants are unemployed. See Table 3 for education and employment rates.

Discussion

Symptoms associated with torture trauma will vary with respect to learned patterns of coping influenced by ethnic, political and spiritual perspectives. This descriptive study clearly delineates two client groups: one

Table 3. Client education levels and current employment status.

Highest level of education completed in country of origin	Bosnian	Colombian
No formal education	2	0
Primary school	9	0
Secondary school	4	4
Technical/trade school	2	7
University/advanced degree	0	6
Current employment status	Bosnian	Colombian
Employed	3	14
Not employed	14	3

refugee population whose trauma was sustained in a relatively short amount of time 14 years ago, compared to asylum seekers whose experiences of trauma were less frequent but deeply personal and threatening over a longer period of time and occurring more recently.

Bosnians, exhibiting consistently higher symptoms of anxiety, depression and PTSD, not only report more incidences of trauma experienced by them and by those close to them, they also had attained lower levels of education than the Colombian participants, and currently have a very low employment rate implying low functioning in daily living.²³ Culturally, the barriers confronted by this population include adjustment from a socialist to capitalistic system, language barriers and loss of community. They have created a community in the Tampa Bay region that is relatively small, 7,489 in 2000.²⁸ Additionally, as Muslims living in the US during the time of war against terror, they can face social and religious isolation, discrimination, and little understanding of their traditions.

Colombians, on the other hand, who had achieved very high levels of education with 82% of study participants being currently employed, appear to have more strength

based skills and a greater number of options available to them, which may contribute to their resiliency and improved mental health functioning. Moreover, Colombians come to the United States from a similar capitalistic system, and to Florida in particular where there are established Latin American communities in our Tampa Bay service area numbering 222,452 persons or nearly 20% of the total population.²⁸ Unlike Bosnians, Colombians in this study, not having experienced religious persecution, can more easily integrate their predominantly Christian religion and spiritual practices into their new American lives. And, unlike Bosnians, Colombians in the Tampa Bay area can find work and build communities using their native Spanish. They also have access to a shared Latin American culture which can ease the acculturative process.

Despite having experienced extreme trauma on average 14 years ago, Bosnian participants remain deeply affected today as shown through the HSCL-25 and HTQ. The psychological stage of the refugee process²⁹ suggests that the post-migration process yields patterns, including the risk for *decompensation*, which can occur at any point when survival needs are unmet, cultural identities are confused, and there is an inability to separate the past, present and future. Contributing to the acculturative stress is the impact of severe torture experienced in a short period of time, and the torture and killing of loved ones. For Colombians, whose experiences of torture occurred only six years ago, they exhibit protective factors such as fewer incidences of trauma, fewer family members and friends who were affected by trauma, and possess higher levels of education. Additionally, early intervention for the Colombian survivors may contribute to the lower rates of symptoms compared to the Bosnians. Of the 17 Bosnians in this

sample, no individual reported receiving mental health services in Germany or elsewhere during the roughly five to eight years while awaiting resettlement in the US.

The fundamental difference between refugees and asylum seekers is that refugees are invited to come to the United States for resettlement (after documentation of their story and thorough background checks) with a clear and protected immigration status. By contrast, although the experience of persecution and torture may be the same, an asylum seekers' status and prospects are unknown for an undetermined amount of time into the future. For Bosnians, there was little choice in them fleeing their home due to the intensity and severity of the war. Families were ordered out of their homes and villages and there was no warning or time to plan. Whereas in Colombia, where the conflict has been incessant and pervasive for decades, torture methods reflect an ongoing pattern of sustained intimidation, threats and manipulation that interferes with the psychological well-being of individuals and communities. With these common methods, as a society, Colombians may possess a degree of preparedness as the population grows accustomed to frequent and consistent threats and incidences of extreme violence and harassment. In addition, they may have legitimately fled their homes after cautiously and secretly planning and saving for years in preparation for any eventuality.

Findings from this study have implications for services provided by torture treatment programmes. Due to protracted international conflicts and warehousing of refugee populations, the experiences of torture and trauma among new arrivals may not have occurred recently, but symptoms can be as persistent and severe nonetheless. Screening for anxiety, depression and PTSD can provide a baseline for clients as they ac-

cess services and may reflect daily functioning abilities. These measurements can be incorporated in the programme's existing client psychosocial evaluation throughout the client's time with the programme. Clients experiencing cultural isolation compared to cultural integration will utilise services differently. Additionally, accessing services may have cultural connotations, which need to be incorporated into the service delivery model in order to fit the needs of the clients. Future studies could examine the types of services accessed by groups, cultural perceptions of progress towards stability within a social service programme, acculturation processes of refugees versus asylum seekers, and a comparison of long versus short-term affects of trauma.

Summary

This study described Bosnian and Colombian torture survivors who are being served at the Florida Center for Survivors of Torture. Comparisons between the two groups included scores of anxiety, depression and PTSD, incidences of trauma among the clients and their families, immigration status, length of time since trauma, length of time in the US, current employment, and level of education attained. Findings from this descriptive study are consistent with existing literature with respect to symptoms and potential related risk and protective factors, and also highlight interesting outcomes potentially impacting service delivery within the torture treatment movement. Bosnian clients in this study, who were witnesses to and victims of more incidences of torture and extreme trauma, exhibit high scores for anxiety and depression, and all exhibit symptoms for PTSD. Colombian survivors enrolled with the Florida Center report fewer incidences of torture and have substantially lower rates of anxiety, depres-

sion and PTSD. For Bosnians, the number of family and friends victimized during the Bosnian War was over double that of the Colombian clients. Moreover, the limited education among Bosnians studied and the very low employment rates are consistent risk factors for low mental health functioning. The very high rates of employment for Colombians in this study compared to the Bosnian participants imply higher functioning abilities in daily activities.

The sample size can limit transferability of the findings but highlights the impact of torture and trauma within various cultural contexts. The Florida Center's programme model 9 Centre Without Walls' focuses on the needs of individual clients and is able to account for the dynamic and various factors affecting their mental health, and subsequently, the degree to which they access services, are present in their daily lives, support themselves financially, and participate in their community and in the lives of friends and families. The Florida Center works to stabilize clients and help them recover a sense of normalcy similar to their lives prior to the traumatic experiences. Because the power of intentionally inflicted pain is intense and long lasting, torture rehabilitation services are essential among survivors regardless of the length of time that has elapsed since the experience of torture.

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Treatment of torture victims – a longitudinal clinical study

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Abstract

Aim: To look at the effect of physiotherapy as part of the multidisciplinary treatment of torture victims.

Methods: Monitoring of an extended, personally designed, multidisciplinary treatment of 21 torture victims, earlier exposed to both physical and psychological torture, over nine months with assessment of outcome.

The physiotherapy comprised elements such as massage, exercise on land, balance training and stimulation of proprioception, all aiming at regaining body awareness. Effect of treatment was measured using the fibrositis index.

Non-parametric statistics using the Wilcoxon test was applied.

Results: Prior to treatment the median score of the fibrositis index was 15 points (range 2-34). After nine months of multidisciplinary treatment the median score of the fibrositis index was 2

points (range 0-15). This decrease in experienced muscle pain was statistically significant ($p < 0,0001$).

Conclusion: A high percentage of the torture victims in our study suffered from fibromyalgia prior to treatment. A multidisciplinary treatment involving individualised physiotherapy and psychotherapy had a significant effect on musculoskeletal pain in torture victims. Following nine months of treatment, only one torture victim in our study could be classified as suffering from fibromyalgia when applying the fibrositis index.

Key words: torture, diagnosis, physiotherapy, effect of treatment

Introduction

Torture is unfortunately an increasing problem throughout the world and, according to Amnesty International, government-sanctioned torture is verified in more than 100 countries.¹ Torture is known to have long-term physical and psychological effects on the victims.²

In 1980, Danish medical doctors started to diagnose and carry out treatment and rehabilitation of torture victims who had come to Denmark from various parts of the world, and in 1984 the International Rehabilitation and Research Centre for Torture Victims, RCT, was opened. At this centre essential treatment principles for torture victims were developed.

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Torture may be characterized as physical and/or psychological; most commonly victims have been exposed to both forms of torture. As a consequence hereof, the treatment specially designed for torture victims is a combination of psychotherapy and physiotherapy, commonly known as multidisciplinary treatment.³ Since the 1980s Denmark has been known for developing various forms of active treatment aimed at torture victims. In an earlier paper we have described the examination methods used when dealing with torture patients.³ Furthermore, a characteristic finding important for the present study is that torture victims are known to have widespread generalised pain.⁴ A way of measuring this type of pain is applying the fibrositis index, which is used to diagnose fibromyalgia.⁵

The aetiology of fibromyalgia is partly unknown. The diagnosis is based on a set of criteria where pain all over the body for more than three months is the main concern.⁵ Not all patients showing widespread pain fulfil the fibromyalgia criteria.⁶ Furthermore the criteria are solely based on symptoms, and this opens the possibility of having a set of subgroups, all showing the same symptoms. The symptoms in these subgroups may have different origins, one of which could be torture.

Multidisciplinary treatment of torture victims is a lengthy procedure,⁷ so it is important to look at the obtained effects of this expensive treatment, which involves various health professionals. The data presented here come from a longitudinal study where the health state of torture victims was monitored prior to and following treatment. Our aim was to see if a multidisciplinary treatment had a beneficial effect on the experienced pain from the musculoskeletal system in a group of torture victims.

The hypothesis behind the treatment

is that the physiotherapy directed towards improving and regaining body awareness, in conjunction with psychotherapy, will improve the victims' muscle pain.

Material and methods

Participants

Twenty-one torture victims, all men, with an average age of 32 years (range 20-48 years) participated in the study. Each victim was regularly examined over a nine month period by an experienced rheumatologist from RCT. Prior to this examination, RCT's psychotherapist had taken a detailed anamnesis concerning the imprisonment and torture methods that each victim had been exposed to.

The torture victims were mainly from Latin American countries and from the Middle East (Table 1).

Torture history

The victims included in the study had lived in Denmark for an average of 2.6 years (range one month to ten years). Only one of the victims spoke Danish. Therefore, interpreters at the RCT assisted during the examination of the victims. Registered physical torture methods from the group studied were as follows: Blows delivered unsystematically and systematically, physical and sexual torture, electric shock torture, suffocation torture, water torture, burns, pharmacological torture, torture of teeth, mutilations, and physical exhaus-

Table 1. Place of origin of the torture victims in this study.

	Number
The Middle East	8
Europe	5
Latin America	7
Africa	1
Total	21

Table 2. Forms of physical torture and number of studied victims exposed to these.

	Number (21)	% 100
Blows (beaten up) unsystematically applied	19	90
Blows systematically applied (e.g. falanga)	8	38
Electrical torture	14	67
Exhaustion	7	33
Suspension torture	10	48
Water torture	8	38
Sexual torture	4	19
Submarine torture	5	24
Mutilations	3	14
Torture against teeth	3	14
Burns	2	10
Pharmacological torture	1	5
Total	21	100

tion. All had been exposed to a mixture of psychological and physical torture methods. Table 2 gives details of torture methods and exposure.

All victims had been exposed to sleep deprivation for several days and nights, having had nothing to eat or drink, and having had to relieve themselves in their clothes. The physical exhaustion of the victim had been combined with an attempt to create a psychological breakdown by exposure to deeply humiliating situations.

Physical assessment

The physical examination was focused on changes to the joints, ligaments, bone and muscle tissue. Changed joint mobility, sequelae of breaking of bone, tendonitis, bursitis and the tearing of ligaments were registered (published elsewhere³). The muscle tissue was examined for pain using the fibrositis index.⁸

This index is based on a regional palpation of eight regions of muscle groups and has a maximum score of 24 points (worst case scenario). The index in our study was

modified by adding four extra regions, the masseter and the temporalis regions, giving a maximal score of 36. We registered the modified fibrositis index from each victim twice, prior to and right after nine months of treatment.

Psychological assessment

A psychotherapist examined the clients at the start and had initial consultations with each victim individually twice a week. Later on they met once a week over the nine months of treatment.

Treatment

The principles of the multidisciplinary treatment were described by Bloch & Høhne together with recommendations for how to design individual physiotherapy courses for each torture victim.⁷

During the nine months of treatment, all patients had psychotherapy treatment alongside the physiotherapy, initially twice a week, later once a week.

The physiotherapy always focused on the victim's main pain problems. The course of treatment was planned by the physiotherapist and the rheumatologist together; taking the torture the victim had been exposed to into account. The most important factor was to create a "safe" situation and to avoid creating a situation or position that might be felt as an imitation of the torture situation.

As soon as a relationship of trust was created between the patient and the health professionals, heat treatment and massage became possible to carry out. This treatment was aimed at making the victim able to cope with being touched during treatment. Once the possibility for further physiotherapy was established, relaxation and breathing exercises as well as posture-awareness exercises were added to the programme. Following this, other more specific treatment methods

became possible. The treatment programme was individualised according to the torture the victims had been exposed to.⁷ The final step in the treatment programme was further rehabilitation with the inclusion of fitness training with aerobic exercises like cycling and occupational therapy adjusted to each person's need.

The psychotherapy also was designed to suit each victim and was adjusted to meet the needs of each individual as the treatment progressed. All through the course, physiotherapist and psychotherapist cooperated closely on the treatment programme.

Statistics

The Wilcoxon matched pairs signed ranks test for related samples was used for statistical comparisons between groups.⁹ A p-value of < 0,05 was considered statistically significant.

Ethics

These studies were in accordance with the Helsinki Declaration 1983.

Results

All torture victims completed the study, and all reported results include the whole study group.

Diagnoses

The diagnoses of the victims are shown in Table 3.

81% of the victims fulfilled the criteria for fibrositis/fibromyalgia, and 52% showed regional muscle pain.

57% had abnormal joint mobility and 10% showed sequelae after torture provoked bone fractures. Headache was another great pain problem and was found in 67% of the victims. Other less frequent conditions are also reported in Table 3.

Table 3. *Diagnoses.*

	Number (21)	% 100
Artralgia and osteoarthritis	2	10
Abnormal joint mobility	12	57
Subluxatio carpo-metacarpalis 1 dxt.	1	5
Fracture of the spine, thorax or nose	3	14
Fracture of the extremities	2	10
Tendinitis	5	24
Fasciitis plantaris pedis	4	19
Hyperkyphosis thoracalis.	3	14
Regional muscle pain	11	52
Fibrositis syndrome/ fibromyalgia	17	81
Cephalagia	14	67
Bruxism.	1	5
Hemiparesis after torture	1	5
Infections after torture	2	10
Prolapsus disci i.v. lumb.	1	5
Total	21	100

Effect of treatment

In this study we focused on the effect of the treatment programme on muscle pain and the extent of this pain measured by the fibrositis index. The victims were diagnosed as fulfilling the fibromyalgia criteria using the fibrositis index. The results for all victims included in this study are shown in Figure 1. Prior to treatment, the median score of the fibrositis index was 15 points (range 2-34). Following nine months of multidisciplinary treatment, the median score of the fibrositis index was 2 points (range 0-15). This decrease in experienced muscle pain was statistically significant ($p < 0,0001$).

Discussion

Our results show that a remarkably high number of the torture victims in this study fulfil the fibromyalgia criteria when applying the fibrositis index (81%). It is obvious that this has to be taken into account when designing a treatment programme.

Chronic persistent pain is known in

torture victims.¹⁰ It is also known that widespread pain does occur after injuries,¹¹ in particular cervical spine injuries.¹² One possible cause of fibromyalgia could be repeated overloading of the muscle tissue, creating microtraumas in the muscle tissue. Muscle tissue is damaged when exposed to blows causing release of muscle component. Myoglobinaemia and myoglobinuria may be found immediately after torture of the blow type, but one never gets the opportunity to measure this.

We do know, however, that torture vic-

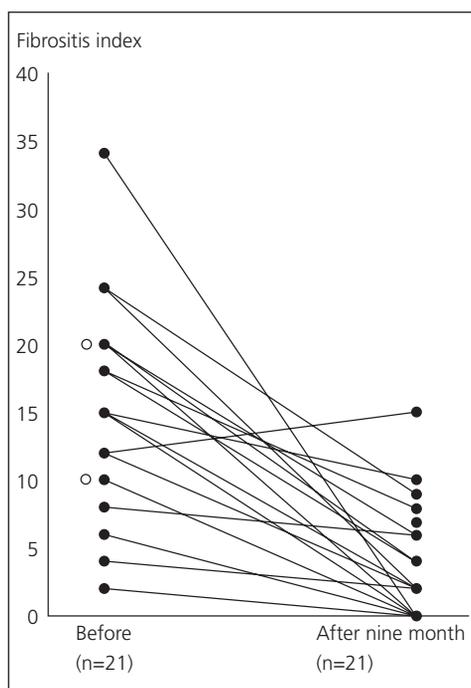


Figure 1. The modified "Fibrositis index" recorded prior to and right after completion of a multidisciplinary treatment programme. Each graph shows an individual victim. Two graphs show overlap between two individuals. Prior to treatment: Median 15 (range 2-34) After treatment: Median 2 (range 0-15).

tims have been admitted to military hospitals for treatment of kidney stop after severe blows, and many torture victims have described that they had red urine following torture (medical history from client assessments at RCT). This may very well be due to myoglobinuria. At the RCT, elevated myoglobin in plasma or myoglobinuria has never been seen, but these tests are usually carried out months or years after torture has ceased. We would therefore not expect to see this phenomenon.

For future purposes, when possible during the examination of torture victims immediately after torture, we advise to test for myoglobin in blood and urine to be able to verify torture and its sequelae. A further study of muscle damage in torture victims is not ethically possible if biopsies are needed. Only if non-invasive methods, like MRI or ultrasound, are used can changes in muscle tissue be studied.¹³

Recent studies of pain perception in chronic pain patients show that exposure to extended pain may change a person's pain perception: pain is remembered, and any pain stimuli will be perceived as amplified.^{14,15} Torture victims are known to suffer chronic persistent pain,¹⁰ and part of their pain perception may very well be due to a changed perception of pain.

In the present study we do find that fibromyalgia seen in torture victims has been successfully treated using a multidisciplinary approach, and all but one of the victims showed significant improvement of the fibrositis index at the end of the treatment period. To our knowledge, this finding is new. Our individualised treatment scheme accounted for the victims' different backgrounds and experiences, and since this is known to be necessary when dealing with torture victims,¹⁶ it explains the excellent effect of our specific treatment approach.

We did not measure the psychological wellbeing of the victims in this study. Another longitudinal study of tortured refugees with posttraumatic stress disorder exposed to a multidisciplinary treatment, Carlsson et al,¹⁷ did not see any improvement in mental symptoms or in life quality. This study differs from ours in the degree to which the torture victims received the full multidisciplinary treatment scheme. Only 70.9% of participants in the Carlsson study¹⁷ received both physiotherapy and psychotherapy, while the rest only received psychotherapy. The programme did not seem to be as individualised as the one applied in our study. The focus in the Carlsson study was also mainly on mental health. The physiotherapy part combined with the psychotherapy may therefore be of great importance for the beneficial effect of the treatment.

In our study the physical and psychological treatment was extensive and these two elements were always in close connection. The treatments lead to an improvement of the victims who experienced less pain in the musculoskeletal system.

Today, there is no known cure for the fibromyalgia patients generally seen in the rheumatology clinic. The findings from the treatment of torture victims give hope to other fibromyalgia sufferers. If one subgroup, like torture victims, responds to treatment, other subgroups may be defined which could respond to a similar more individualised specific treatment. Future studies ought to focus on different subgroups of patients with chronic widespread pain, as well as on early treatment of these.

Our conclusion is that a high percentage of torture victims in the study group suffered from fibromyalgia prior to treatment. A multidisciplinary treatment involving individualised physiotherapy and psychotherapy had a significant effect on musculoskeletal

pain in torture victims. Following nine months of treatment only one torture victim in our study could be classified as suffering from fibromyalgia when using the fibrositis index.

Apart from the implications for torture victims, this multidisciplinary treatment may also have implications for future treatment of fibromyalgia patients in general.

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Documentation of torture victims. Implementation of medico-legal protocols

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Abstract

This article outlines the background for performing medical documentation in the context of a rehabilitation centre by reviewing literature and current practices. The article moreover delineates 6 ways of using medico-legal documentation in torture prevention: National legal proceedings; international legal proceedings; asylum cases; research, lobbying and advocacy activities. This article forms the basis for a Pilot Study performed at the Rehabilitation and Research Centre for Torture Victims in Copenhagen, which is described elsewhere.¹

Key words: documentation, torture, Istanbul protocol, prevention of torture

Introduction

Documentation is believed to be a highly effective strategy for preventing torture and is applied in different variations by institutions ranging from the International Committee of the Red Cross (ICRC) to small local

NGOs. By documenting abuse and maltreatment, facts can be presented to political leaders, prison wards and guards and others with power to change practice. Likewise, documentation is essential for persecuting perpetrators legally, another strategy believed to be highly preventive. Persecuting perpetrators of torture is also a way of offering redress and compensation and can thus play an important part in the rehabilitation of the individual and the torturestruck society.

As a way of streamlining and improving documentation methods, a group of experts within law, medicine, health care, psychology and social sciences created a manual, which has become the authoritative document on the subject: Istanbul Protocol – Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment.² However the Protocol is not widely applied.

There are many explanations for the lack of implementation. The volume and extent of the Protocol no doubt plays an important part, but another explanation may be that most approaches to victims of torture are rehabilitative in their scope. The rehabilitative and documentary strategies are seldom applied simultaneously. Documenting torture is not necessarily a logical consequence of rehabilitating torture victims – quite contrary, important ethical principles such as

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doctor-patient confidentiality and the therapeutic approach to victims inscribed in various ethical codes of health care personnel inhibit a combination of the two approaches. Moreover resources are often scarce and performing documentation represents an additional cost.

There are however many arguments for adding a medico-legal component to rehabilitation. Rehabilitation is important for the individual victim, the family and the torture-struck society, but in order to get to the root of the problem, torture must be prevented from occurring altogether. The primary source of information about a stealth phenomenon like torture is the individual victim in the rehabilitation process. The rehabilitation process is thus an important source of information for improving and developing preventive strategies.

The synergies between rehabilitation and documentation are noticeable as a large part of the information is essentially similar. This is especially true for the medical and psychological part of the Istanbul Protocol, but legal and practical information also typically surface during rehabilitation.² The victim for instance often describes the type of torture. Such information is recorded in the medical journal of each client, but inaccessible for other purposes due to the way it is collected, recorded and administered.

Where medico-legal documentation is gathered, it is rarely on the basis of the Istanbul Protocol, a likely reason being the high level of detail and the time required to perform a full examination. In a pilot study performed at the Rehabilitation and Research Centre for Torture Victims in Copenhagen (RCT) a full Istanbul-examination was estimated to take several hours if not combined with obtaining information for rehabilitation.³ A similar study by the Archbishop's Human Rights Office (ODHAG)

in Guatemala estimated as much as seven hours to perform a full examination according to the Istanbul Protocol.⁴

The experiences and strategies of other organizations in the field can provide lessons and ideas for the implementation. Medical and psychological methods of documentation will not be discussed in this report, since the aim is not to evaluate these methods but to assess how documentation can be implemented in a rehabilitation context.

Literature and current practices

It is widely agreed that the method of medico-legal documentation can be instrumental in fulfilling a range of *legal* obligations within the UN human rights system and the Geneva Conventions, including the UN Convention against Torture and its Optional Protocol (OPCAT).⁵ Notably, the principle of non-refoulement and the many principles to ensure the persecution of perpetrators can hardly be fulfilled without some sort of medico-legal documentation.

The professional *ethical codes* for physicians and health care personnel⁶ have more ambiguous implications for medico-legal documentation. On the one hand, the ethical codes are in line with the UN human rights in stipulating that all must be done to prevent torture and relieve the consequences, but on the other hand some of the most fundamental principles of the doctor-patient relationship – confidentiality, therapeutic focus etc. – do not adjust easily to medico-legal documentation. With documentation, the doctor's role changes from being purely therapeutic to becoming more investigative since the doctor has to judge whether the patient's story is legitimate, a concern which is irrelevant for treatment and rehabilitation. There are circumstances where documentation is detrimental to treatment or the doc-

tor has to choose between the two. Should the doctor then prioritize documentation and thus possibly help prevent torture in the long run or should the doctor focus on treating fewer victims thoroughly? The doctor should always act according to the best interest of the patient, but the dilemma is significant. Documentation must thus never compromise the best interest of the patient. Likewise, the principle of anonymity, which cannot be compromised by the doctor, requires careful consideration when performing medico-legal documentation.

In practice, a wide range of factors affects medico-legal documentation. The *aim* of the investigation for one (i.e. gathering evidence for a trial or screening large prison populations) largely determines the process since the level of detail and resources per victim varies accordingly.⁷ Also security issues affect the process. In countries where torture victims are mainly refugees who have fled the country where the torture occurred, security measures play a small role although measures are in place to make the clients feel safe. In countries where torture occurs security issues play a dominant role for many NGOs since both the investigative team and the alleged victims risks violent repercussions from authorities attempting to silence accusations of torture and abuse. The proximity to perpetrators affects both the victim, who might be afraid or nervous and the investigator who has to rely on the goodwill of the authorities. Applying the security measures listed in the Istanbul Protocol and in the ICRC guidelines involves securing access to all prisoners, always speaking to prisoners in private, the ability to conduct follow-up visits and to record the identity of the alleged victim.⁸ Securing these measures can be both costly and impossible, but if they're not in place, the victim may be better off not being documented.

A number of practical issues, such as the *time* and *resources* available and the *composition of the investigation team and their level of expertise* also affect implementation. The time available for medico-legal documentation basically sets the limits. At well-equipped centres a client may undergo a thorough rehabilitation process lasting up to one year, involving a wide range of doctors, psychologist, nurses, physiotherapist and social workers. However the time spent on one client equals time away from a new one, and time is thus still an issue at a comparatively well-resourced establishment.

For many organizations such as the ICRC and the Committee for the Prevention of Torture (CPT), which are involved in prison visits, the time spent on each inmate or client has to be carefully measured against seeing as many as possible. To cope with this problem some organizations, such as the International Rehabilitation Council for Torture Victims (IRCT), propose a screening methodology whereby a large prison population can be screened.

In addition to identifying victims for further investigation, this method renders a large data set, which allows the investigative team to speak for the entire population.⁹ Similarly, the resources available affect the documentation process. A well-resourced team will for instance be able to photograph and videotape injuries and store data in an advanced data-system, while a team with fewer resources will have to rely on descriptions of injuries. Similarly, the type of experts available and their professional skill and experience with torture affects the investigation.

There are also several different methods for collecting data. The interview is the core of the documentation process and all observers emphasize the need to adopt an open questioning technique which allows the al-

leged victim to describe events in his/her own words, without suggesting answers.¹⁰ The interview can take the form of a narrative/story, where the victim tells anything that comes to mind. The narrative can be an important element in assessing the credibility of the victim and guiding the interview.¹¹ The use of questionnaires is debated, since they tend to oversimplify, but it is widely recognized that the investigator needs some sort of checklist or questionnaire to lead the investigation.¹² Photographs and videotaping is recommended by all observers as a good way of documenting injuries. Self-reporting methods where the main source of data is the alleged victim's own report are generally discarded due to low credibility, while data of a more general nature (country reports, crime and health statistics) are recommended by some observers as a way of contextualizing the individual case.

Throughout the data collection process, the investigator should be aware that torture victims typically experience memory lapses and confusion.¹³ The victim also risks retraumatization when describing the torture incidence and the investigator should carefully observe the victim to avoid this.¹⁴ Cultural differences between the investigator and the victim can also affect the data collection, since they may be speaking within different regimes of truth and understanding.¹⁵

A victim may have a different perception of pain and suffering than the investigator and thus perceive some torture methods differently from the investigator. The investigator should also pay attention to him/herself and any interpreters involved. Counter transference, i.e. feelings of guilt, rage, sadness, helplessness or an exaggerated identification with the victim, can seriously affect both and impede the investigation.¹⁶

The medical and psychological components of the medico-legal investigation as

well as the special character of sexual torture are thoroughly described in the Istanbul Protocol and other literature on the subject. The procedures resemble those applied in the rehabilitation process. There are however significant differences between examining for rehabilitative and documentary purposes. First of all, medico-legal documentation represents an alteration of focus: The physician is no longer only concerned with treatment but has to assess the degree of consistency between the allegations of torture and the objective findings. At the end of the process, the investigator has to put forward an interpretation thus assuming an entirely new and more judgmental role. Moreover, in documentation, injuries that have healed or are otherwise unimportant for the ongoing treatment (typically scars) are also important and should be thoroughly described and perhaps photographed.¹⁷

The *legal* component of documentation is generally new to the rehabilitation process. The aim of documenting for legal purposes is the same as in other criminal investigation, i.e. to seek to establish the course of events and gather evidence. The literature offers many opinions on what information is most important to obtain from the victim, the main point of disagreement being the level of detail. Some emphasize that every little detail is important since it can be corroborated with other evidence. Others are more concerned with recording key points such as the place and date of torture and recommend leaving the specific details for later. The aim of medico-legal documentation is to prove that an incident amounts to torture or ill-treatment. The investigator must seek to prove by facts that all elements in the definition of torture were present in the incident. Useful documentation thus mirrors the torture definition¹⁸ and evolves around the questions:

- What was done?
- Who did it?
- Why was it done?
- Where was it done?¹⁹

The individual case is normally the basis of any useful documentation, but general reports about the situation in a country can also be valuable in identifying torture patterns. The combination of individual cases, general reports and if possible a compilation of similar cases all strengthens each case individually since many similar cases can support the individual complaint and point to a pattern of abuse. Documentation in the form of photographs of injuries, medical records, testimonies, prison records etc. should be sought as supporting evidence, since mere claims of being subjected to torture can seldom be proven conclusively. Accusations of torture tend to occur in contexts where emotions and allegiances are very strong, and the possibility of false accusations being put forward as well as true allegations being discarded should be acknowledged.²⁰

Learning from others

Although medico-legal documentation is a relatively new strategy of prevention and few apply the Istanbul Protocol in its entirety, there are a number of organizations that have obtained know-how and experience in the field. The organizations vary in size, aim, resources available and methods but there are common denominators in their work. Almost all of the NGOs use medico-legal data proactively for advocacy and lobbying purposes, but have had a more difficult time assisting victims in bringing perpetrators to trial due to the legal and political systems in their countries.

The ICRC and the CPT under the Council of Europe are examples of inter-

national organizations that have specialized in prison visits and been instrumental in developing methods of medico-legal documentation. Both organizations use the data obtained as a basis for entering into dialogue with the authorities and have found this to be an effective strategy of prevention. The experiences of these organizations are included in the Istanbul Protocol, but since they are prison visiting mechanisms and not rehabilitation centers, the implementation issues are generally different from those explored in this article.

Many organizations involved in the rehabilitation of torture victims, typically rehabilitation clinics and human rights organizations working at a grassroots level in violent societies, have experience with medico-legal documentation. The Centre for the Prevention and Rehabilitation of Torture Victims and their Families (CPTRT) in Honduras have developed "La Pesquisa", a screening system where the health status and story of all new prisoners are attempted to be recorded through visits. The data is used for lobbying, advocacy and research. The CPTRT has, for instance, studied police conduct on the basis of medico-legal documentation. The Asian Human Rights Commission (AHRC) in Sri Lanka as well as the Centre for Victims of Torture (CVICT) in Nepal have gained experience in applying medico-legal documentation for legal purposes. Both have succeeded in bringing cases of torture to court. Medico-legal documentation has played an important role although results have been mixed due to the lack of an efficient legal system in both countries.

The Bangladesh Rehabilitation Centre for Torture Victims (BRCT) has developed a distinct system of medico-legal documentation where a proactive effort of identifying victims is coupled with a follow-up of treatment and/or legal action, enabling the

NGO to work towards rehabilitation and prevention simultaneously. The BRCT has developed a comprehensive database system of news clippings and data about torture incidences and the rehabilitation process. The aim is to use the database for research on the phenomenon of torture, prevention strategies and the rehabilitation process. The BRCT documentation system is rather new and the use of the data has not been developed fully.

The ODHAG in Guatemala has taken a different approach to medico-legal documentation launching a pilot study and attempting to be as true as possible to the Istanbul Protocol. The ODHAG study is thus quite similar to that of the Rehabilitation and Research Centre for Torture Victims in Copenhagen in aiming at investigating how the Istanbul Protocol can be implemented by a rehabilitation centre.

However there are important variations due to the context: The ODHAG study involved prison visits and was potentially dangerous for both the investigator (the documentation was conducted by one person alone, a psychologist) and the inmates. As a safety precaution the prison authorities were not informed about the true purpose of the visits. Six individuals and one group were documented, thus demonstrating that group documentation can also be a way of obtaining information though this type of information hardly meets the requirements for evidence presented in legal proceedings.

The documentation process was not optimal since access to prisoners was restricted. The investigator for instance had to interview prisoners through bars and could not always inspect injuries thoroughly. An important achievement of the ODHAG study was the use of data obtained in the study of a case at the Inter-American Court for Human Rights (IACHR). ODHAG has further-

more used the data to substantiate a shadow report on Guatemala to the UN Committee Against Torture in May 2006.²¹

Possible use of data

Traditionally medico-legal documentation was developed as a way of gathering evidence to persecute perpetrators, but the review of literature on the subject and current practices have revealed several other ways to use medico-legal documentation.

National legal proceedings: Medico-legal documentation is a way of gathering evidence of torture. The methods are applied in various forms in court cases around the world and many organizations pursue this strategy although it is often difficult due to malfunctioning legal systems and authorities that hamper investigations, often violently. In many countries a fair trial can be rare, but thorough medico-legal documentation generally strengthens the victims position since it becomes more difficult to disregard the complaint. In Denmark and other countries where torture victims are primarily refugees, the main obstacle for assisting victims in persecuting their perpetrators is not a malfunctioning legal system, but the fact that the crime was committed several years ago in a country far away. A case can only be pursued if both the victim and the alleged perpetrator are residents in Denmark, which is rare. Furthermore, the far-away crime scene and the time passed makes it extremely difficult to investigate the allegation and often the authorities in the country are not helpful in investigating allegations against their own police/military.

International legal proceedings: International Criminal Tribunals such as the International Criminal Court (ICC) and the Tribunals established in former-Yugoslavia (ICTY) and Rwanda (ICTR) as well as International Human Rights Courts such

as the IACHR and the European Court for Human Rights (ECHR) are likely outlets for medico-legal documentation.²² As a rule of thumb, national legal procedures should be exhausted as the international options are reserved for those cases that cannot or will not be pursued nationally. Also, it is generally more complicated taking a case through the international system. Not many rehabilitation centers have been involved in this type of activity, with the notable exception of ODHAG in Guatemala, who has provided medico-legal documentation in one case at the IACHR. Medico-legal documentation has however been presented as evidence in several cases at the international level.²³

Asylum cases: Medico-legal documentation can be instrumental in investigating asylum cases, where the asylum seeker alleges torture as a reason for being granted asylum. Previous subjection to torture does indicate that the person has been persecuted by the authorities and thus faces an increased risk of torture upon return if the regime has not changed. Asylum cases represent special challenges for conducting medico-legal investigations, since there is often suspicion that the asylum seeker has exaggerated or invented the allegations of torture with the aim of obtaining asylum.

Research: The information collected for documentation can especially if it is systematically and meticulously registered be used for various research purposes. A database could for instance be used to identify individuals or groups for research projects, i.e. to identify clients who have been subjected to the same kind of torture or experienced similar sequelae. But such a database could also be used for research on its own. One possibility could be to conduct quantitative analysis on torture methods in various regions. Or it could be used to study the effect of medico-legal documentation on the pre-

vention of torture. BRCT in Bangladesh has compiled medico-legal documentation and information about the rehabilitation process for almost two years now and is considering how the data can be used for research. The CPTRT has studied police conduct and torture patterns through medico-legal documentation.

Lobbying: These activities are another area where medico-legal documentation can be useful to substantiate communications with authorities and others with the ability to change the situation. The process of persuading authorities to change behavior is facilitated if they can be presented with documentation that the problem is indeed real and severe. In a Danish context, medico-legal documentation could for instance be presented at hearings in Parliamentary Committees about refugee and asylum matters. Internationally, ODHAG has as previously mentioned, used medico-legal documentation in a shadow report to the UN Committee against Torture (CAT) as well as in their national oriented lobbying activities. Also the AHRC and CPTRT are skilled in using this type of information for international and national lobbying. The CPTRT even succeeded in establishing a dialogue with the authorities, which enabled them to gain access to prisons on an almost regular basis. Medico-legal documentation can also be applied in urgent action appeals such as those of IRCT, where focus is on persuading authorities to intervene on behalf of an individual judged to be in imminent danger.

Advocacy: Advocacy efforts can be strengthened by medico-legal documentation. Mediastrategies typically focus on individual case stories, but also on statistics for instance the prevalence of different torture methods or where the torture took place could be relevant. Amnesty Interna-

tional typically publishes individual cases with a focus on the narrative. This has both an advocacy and a legal aim. At the BRCT, the AHRC and CPTRT the journalistic approach is part of the preventive and awareness-raising work in the society.

Summary

In the past decade the fight against impunity for perpetrators of torture has been significantly strengthened. One very important achievement has been the development of the Istanbul Protocol on medical documentation in 1999. A further achievement has been the establishment of international and national institutions responsible for the legal persecution of perpetrators of crimes such as genocide, crimes against humanity, war crimes and other serious crimes, including torture.

In this survey it was demonstrated that the aim of medical documentation and the context it is performed in essentially defines how it can and should be conducted, as well as how the medico-legal documentation is used for preventive purposes. The review of current practices in the field of medico-legal documentation revealed that very few organizations at NGO-level apply the Istanbul Protocol, and that few have a systematized approach to medico-legal documentation. The general explanation seems to be lack of time and resources. There are, however, notable exceptions. The BRCT in Bangladesh and ODHAG in Guatemala is among the most prominent. BRCT has more or less developed a distinct system of medico-legal documentation involving a proactive effort of identifying victims and a two-tiered process of treatment and documentation. ODHAG has, on the other hand, conducted a pilot study on the implementation of the Istanbul Protocol, quite similar in scope to that of RCT in Copenhagen, except for variations

resulting primarily from the prison context and heightened security concerns. The results of the ODHAG project showed that the information was useful for both legal and advocacy activities, but that it was time-consuming. The CPTRT in Honduras, the AHRC in Sri Lanka & Hong Kong as well as the CVICT in Nepal, also have important experience in applying medico-legal documentation in practice. Finally we have delineated six different ways of using medico-legal documentation in torture prevention: National legal proceedings, international legal proceedings, asylum cases, research, lobbying and advocacy activities.

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Impunity or immunity: wartime male rape and sexual torture as a crime against humanity¹

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Abstract

This paper seeks to analyze the phenomenon of wartime rape and sexual torture of Croatian and Iraqi men and to explore the avenues for its prosecution under international humanitarian and human rights law.

Male rape, in time of war, is predominantly an assertion of power and aggression rather than an attempt on the part of the perpetrator to satisfy sexual desire. The effect of such a horrible attack is to damage the victim's psyche, rob him of his pride, and intimidate him. In Bosnia-Herzegovina, Croatia, and Iraq, therefore, male rape and sexual torture has been used as a weapon of war with dire consequences for the victim's mental, physical, and sexual health. Testimonies collected at the Medical Centre for Human Rights in Zagreb and reports received from Iraq make it clear that prisoners in these conflicts have been exposed to sexual humiliation, as well as to systematic and systemic sexual torture.

This paper calls upon the international community to combat the culture of impunity in both dictator-ruled and democratic countries by bringing the crime of wartime rape into the international arena, and by removing all barriers to justice facing the victims. Moreover, it emphasizes the fact that wartime rape is the ultimate humili-

ation that can be inflicted on a human being, and it must be regarded as one of the most grievous crimes against humanity. The international community has to consider wartime rape a crime of war and a threat to peace and security. It is in this respect that civilian community associations can fulfil their duties by encouraging victims of male rape to break their silence and address their socio-medical needs, including reparations and rehabilitation.

Key words: sexual torture, male rape, wartime rape, gender crimes, Croatia, Iraq

Introduction

Wartime rape of both men and women had never been judged as a crime against humanity before the codification of the charters of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda

1) An earlier version of this paper was presented at the IX IRCT International Symposium on Torture: Providing Reparation and Treatment, and Preventing Impunity, 9-10 December 2006, Berlin, Germany.

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(ICTR). The case law of both these tribunals has made a great contribution to the development of international humanitarian and human rights law, particularly on gender crimes and sexual assault. This development is clearly reflected in the Rome Statute of the International Criminal Court promulgated in 1998.

This paper tries to address three principle issues relating to the above topic: wartime male rape as a crime of war and a threat to peace and security under international humanitarian and human rights law; the use of wartime male rape and sexual torture as a strategic weapon of war during the Yugoslav crisis and the US-led invasion of Iraq; and, finally, potential socio-legal remedies for meeting the needs of male rape victims under national, regional, and international law, as well as civilian and psycho-social remedies within civil community associations.

Rape as a crime against humanity

In past years, male rape in particular, and rape in general, during armed conflict have been overshadowed by other war crimes. Legally speaking, rape was never considered or prosecuted as a crime against humanity under international humanitarian law before the establishment of the ICTY and the ICTR in 1993 and 1994 respectively.³ The Charter of the International Military Tribunal (IMT) of 1945, and the Charter of the International Military Tribunal of the Far East (IMTFE) of 1946,⁴ had excluded rape from crimes against humanity, although the Control Council Law No. 10 (CCL10) did add it to its list of these crimes; nevertheless no prosecution of rape has taken place under this law.⁵ In the last few decades, however, rape as a crime of war has been implicitly mentioned in a number of international humanitarian law conventions.⁶ Re-

3) Article 5 of the ICTY Statute states that "The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population: (a) murder; (b) extermination; (c) enslavement; (d) deportation; (e) imprisonment; (f) torture; (g) rape; (h) persecutions on political, racial and religious grounds; and (i) other inhuman acts." This article is echoed in Article 3 of the ICTR Statute. See A. Callamard, et al., *Investigating Women's Rights Violations in Armed Conflicts* (Montreal, Quebec: Rights & Democracy, Amnesty International, 2001) 119 (hereinafter Callamard); S. Sarai, *The Rape of the Balkan Women: An Argument for the Full Recognition of Wartime Rape as a War Crime* (M.A., Queen's University at Kingston, 2000) 28 (hereinafter Sarai); Statute of the International Criminal Tribunal for the Former Yugoslavia, United Nations SCOR, 48th Sess., 3175. Annex, at 40, UN Doc. S/25704, 3 May 1993. (As Amended on 19 May 2003 by Security Council's Resolution 1481) (hereinafter the ICTY Statute); Statute of the International Criminal Tribunal for Rwanda, Rules of Procedure and Evidence, UN Doc. ITR/3/REV.1 (1995), entered into force on 29 June 1995 (hereinafter the ICTR Statute).

4) Crimes against humanity are listed in Article 6 (paragraph c) of the IMT Charter. This article is literally echoed in Article 5 (paragraph C) of the IMTFE Charter. See Charter of the International Military Tribunal (IMT), in Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis (London Agreement), 8 August 1945, 58 Stat. 1544, E.A.S. No. 472, 82 U.N.T.S. 280; Charter of the International Military Tribunal for the Far East (IMTFE), 19 January 1946, 26 April, 1946, T.I.A.S. No.1589, 4 Bevans 20.

5) Article II (paragraph 1/C) defines crimes against humanity as "Atrocities and offences, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhuman acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic law of the country where perpetrated. See Control Council Law No. 10, Punishment of Persons Guilty of War Crimes, Crimes against Peace and against Humanity, 20 December 1945, 3 Official Gazette Control Council for Germany 50-55 (1946) (hereinafter Control Council); M. Jarvis, *Sexual Violence and Armed Conflict: United Nations Response* (New York, N.Y.: UN Division for the Advancement of Women, 1998) 4 (hereinafter Jarvis).

cently, the systematic mass rape of Bosnian and Rwandan women between 1991 and 1995 challenged and developed the case law of the ICTY and the ICTR, allowing these bodies to make a great contribution to the development of international humanitarian and human rights law, particularly on gender crimes and sexual assaults. This development has been reflected clearly in the Rome Statute of the International Criminal Court, of 1998,⁷ and the Statute of the Special Court for Sierra Leone.⁸

Despite the conventions' and statutes' fine-sounding norms, however, none of them has provided an explicit definition of rape as genocide, as a war crime, or as a crime against humanity in the true sense of the term. Consequently, the case law of

the ICTY and ICTR has developed different definitions through the trials and judgments of a number of suspects charged with, or convicted for, wartime rape as a crime against humanity.⁹

As a matter of fact, the ICTY and the ICTR were the first ever tribunals in the history of the international judicial system to prosecute and convict wartime rape as a crime against humanity. Before developing their own definitions of rape, both tribunals turned to classical definitions in national laws, which were inadequate to prosecute this grievous crime and, consequently, inappropriate to address the needs of the victims. This was due to the lack of a comprehensive technical definition, the responsibility for which must be shared by feminist legal

6) Namely; Article 27 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Geneva IV), which reads, in part: "Women shall be specially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault"; Article 76(1) of Protocol I Additional to the Geneva Conventions states "women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault"; and Article 4 (paragraph 2/e) of Protocol II Additional to the Geneva Conventions classifies "outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault." See A. Callamard, *Documenting Human Rights Violations by State Agents* (Montreal, Quebec: Rights & Democracy, and Amnesty International, 1999) 7 (hereinafter Callamard); Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Geneva IV), Opened for signature 12 August 1949, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287 (Entered into force on 21 October 1950) (hereinafter Geneva IV); Protocol I Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, Opened for signature on 12 December 1977, 1125 U.N.T.S. 3 (Entered into force on 7 December 1978) (hereinafter Additional Protocol I); Protocol II Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-Inter-

national Armed Conflicts, Opened for signature on 12 December 1977, 1125 U.N.T.S. 609 (Entered into force on 7 December 1978) (hereinafter Additional Protocol II); Turkey: End Sexual Violence against Women in Custody!, June 2003, AI-Index EUR 44/006/2003, at p. 13.

7) The ICC Statute broadened the concept of rape to cover other sexual assaults as crimes against humanity and war crimes. Article 7 (1/g) states that "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity," are crimes against humanity. Moreover Article 8 (2/b/xxii) considered "committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva conventions," to be war crimes. See Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9 (17 July 1998), 37 I.L.M. 999-1069 (Entered into force on 1 July 2002) (hereinafter the Rome Statute).

8) Similarly, Article 2 (g) of the Statute of the Special Court for Sierra Leone provides that "rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence," as crimes against humanity. See Statute of the Special Court for Sierra Leone, UN Doc. S/2002/246, appendix II, 2178 U.N.T.S. 138. (06/03/2002) (hereinafter The Sierra Leone Statute).

writers and national and international legislators.¹⁰

The ICTY and the ICTR case law presented a number of rape cases, three of which alone permitted three distinct definitions of rape based on the elements of the crime.¹¹ Drawing heavily on national laws, since no comprehensive definition of rape existed in international law,¹² the Trial Chamber I of the ICTR defined rape in the

Akayesu Judgement of 2 September 1998,¹³ as: “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive.” At the same time, the Tribunal defined sexual violence, including rape, as “any act of [a] sexual nature which is committed on a person under circumstances which are coercive.”¹⁴

While this landmark definition of rape has restricted the elements of the crime to

9) Prosecutor v. Alfred Musema, (2000) Judgement and Sentence, 27 January 2000, ICTR-96-13-T (hereinafter Musema Judgement); Alfred Musema v. The Prosecutor, (2001) Appeal Judgement, 16 November 2001, ICTR-96-13-A (hereinafter Musema Appeal Judgement); Prosecutor v. Anto Furundžija, (1998) Judgement, 10 December 1998, IT-95-17/1-T (hereinafter Furundžija Judgement); Prosecutor v. Anto Furundžija, (2000) Appeal Judgement, 21 July 2000, IT-95-17/1-A (Furundžija Appeal Judgement); Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković (2001) Judgement, 22 February 2001, IT-96-23-T and IT-96-23/1-T (hereinafter Kunarac Judgement); Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković (2002) Appeal Judgement, 12 June 2002, IT-96-23-A and IT-96-23/1-A (hereinafter Kunarac Appeal Judgement); Prosecutor v. Duško Tadić, (1997) Opinion and Judgement, 7 May 1997, IT-94-1-T (hereinafter Tadić Judgement); Prosecutor v. Duško Tadić (1999) Appeal Judgement, 15 July 1999, IT-94-1-A (hereinafter Tadić Appeal Judgement); Prosecutor v. Eliézer Niyitegeka, (2003) Judgement and Sentence, 16 May 2003, ICTR-96-14-T (hereinafter Niyitegeka Judgement and Sentence); Eliézer Niyitegeka v. The Prosecutor, (2004) Appeal Judgement, 9 July 2004, ICTR-96-14-A (hereinafter Niyitegeka Appeal Judgement); The Prosecutor v. Jean de Dieu Kamuhanda, (2004) Judgement, 22 January 2004, ICTR-95-54A-T (hereinafter Kamuhanda Judgement); Prosecutor v. Jean-Paul Akayesu, (1998) Judgement, 2 September 1998, ICTR-96-4-T (hereinafter Akayesu Judgement); Prosecutor v. Jean-Paul Akayesu, (2001) Appeal Judgement, 1 June 2001, ICTR-96-4-A (hereinafter Akayesu Appeal Judgement); Prosecutor v. Juvénal Kajelijeli, (2003) Judgement and Sentence, 1 December 2003, ICTR-98-44A-T (hereinafter Kajelijeli Judgement and Sentence); Prosecutor v. Laurent Semanza, (2003) Judgement and Sentence, 15 May 2003, ICTR-97-20-T (hereinafter Semanza Judgement and Sentence); Laurent Semanza v. The Prosecutor, (2005) Appeal Judge-

ment, 20 May 2005, ICTR-97-20-A (hereinafter Semanza Appeal Judgement); Prosecutor v. Mikaeli Muhimana, (2005) Judgement and Sentence, 28 April 2005, ICTR-95-IB-T (hereinafter Muhimana Judgement and Sentence); Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić and Dragoljub Prcać, (2001) Judgement, 2 November 2001, IT-98-30/1-T (hereinafter Kvočka Judgement); Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić and Dragoljub Prcać, (2005) Appeal Judgement, 28 February 2005, IT-98-30/1-A (hereinafter Kvočka Appeal Judgement); Prosecutor v. Sylvestre Gacumbitsi, (2004) Judgement, 17 June 2004, ICTR-2001-64-T (hereinafter Gacumbitsi Judgement); Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo, (1998) Judgement, 16 November 1998, IT-96-21-T (hereinafter Čelebići Judgement); Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo, (2001) Appeal Judgement, 20 February 2001, IT-96-21-A (hereinafter Čelebići Appeal Judgement); Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo, (2001) Sentencing Judgement, 9 October 2001, IT-96-21-Tbis-R117 (hereinafter Čelebići Sentencing Judgement); Prosecutor v. Zdravko Mucić, Hazim Delić and Esad Landžo, (2003) Judgement on Sentence Appeal, 8 April 2003, IT-96-21-Abis (hereinafter Čelebići Judgement on Sentence Appeal).

10) N. Quénivet, *Sexual Offenses in Armed Conflict and International Law* (Ardsey, N.Y.: Transnational Publishers, 2005) 1-2 (hereinafter Quénivet).

11) A.-M. de Brouwer, *Supranational Criminal Prosecution of Sexual Violence: The ICC and the Practice of the ICTY and the ICTR* (Antwerpen, Belgium: Intersentia, 2005) 105 (hereinafter de Brouwer).

12) Akayesu Judgement, supra note 9, at paragraph 686.

(a) a physical invasion (penetration) of sexual nature, (b) committed on a person (male or female), (c) under circumstances which are coercive (against the victim's will or without her or his consent),¹⁵ the Tribunal conceded that "sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact."¹⁶ Simultaneously, the Tribunal noted that "rape may include acts which involve the insertion of objects and/or the use of bodily orifices not considered to be intrinsically sexual." For example, the Tribunal considered "the interahamwes thrusting a piece of wood into the sexual organs of a woman as she lay dying," an act of rape.¹⁷ This instrumental rape, like

other forms of sexual violence, constitutes a method of torture and sexual mutilation.¹⁸

However, this broad definition of rape, as established in the Akayesu Judgement, was the first conceptual definition that refrained from specifying sexual organs, and that did not require penetration or the lack of consent as essential elements of the crime of rape set forth in classical definitions. In contrast to the prosecution's and the defence's attempts to elicit an explicit description of rape in physical terms, the Tribunal ruled that "rape is a form of aggression and that the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts," thereby establishing a more acceptable definition

13) Jean-Paul Akayesu, the Mayor of Taba Commune in Gitarama during the 1994 Rwandan genocide, has made history. He was the first defendant to appear before the ICTR and to be charged with rape as a crime against humanity in connection with Articles 3 (g) of the ICTR Statute, Article 4 (e) of the Protocol II Additional to the Geneva Conventions echoed in Article 4 (e) of the ICTR Statute, and Article 3 common to the 1949 Geneva Conventions. See Additional Protocol II, *supra* note 6, at Article 4 (e); Geneva IV, *supra* note 6, at Article 3; The ICTR Statute, *supra* note 3, at Article 3 (g).

14) Akayesu Judgement, *supra* note 9, at paragraph 598.

15) In the Muhimana Judgement, the Trial Chamber III of the ICTR ruled that "coercion is an element that may obviate the relevance of consent as an evidentiary factor in the crime of rape." See Muhimana Judgement, *supra* note 9, at paragraph 546.

16) The Tribunal considered the incident described by witness KK in which Akayesu ordered the interahamwe to undress a student and force her to do gymnastics naked in the public courtyard of the bureau communal, in front of a crowd, an act of sexual violence. See Akayesu Judgement, *supra* note 9, at paragraph 688; M. Karagiannakis, "The Definition of Rape and its Characterization as an Act of Genocide: A Review of the Jurisprudence of the International Criminal Tribunals for Rwanda and

the Former Yugoslavia," (1999) 12 *Leiden Journal of International Law* 479 (hereinafter Karagiannakis).

17) In this connection, in the Čelebići Judgement, the Trial Chamber II of the ICTY indicated that vaginal or anal penetration by the penis under coercive circumstances constituted rape. Moreover, the Chamber ruled that the act of forcing victims to perform fellatio on one another constituted a fundamental attack on their human dignity as an offence of inhuman and cruel treatment under Articles 2 and 3 of the ICTY Statute, and noted that such act "could constitute rape for which liability could have been found if pleaded in the appropriate manner." See Akayesu Judgement, *supra* note 9, at paragraph 686; Čelebići Judgement, *supra* note 9, at paragraphs 1065-1066 & 940. Paragraph 940 was literally echoed in paragraph 962.

18) In his report submitted to the UN Commission on Human Rights on the issue of torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur Nigel Rodly stated that he received abundant information regarding the practice of rape and sexual abuse as a weapon to punish, intimidate and humiliate the victims, who were mostly women. He added that rape and other forms of sexual abuse were apparently associated with other methods of torture. See UN Commission on Human Rights, Report of Special Rapporteur on Torture and Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc. E/CN.4/1994/31, (6 January 1994), at paragraphs 431-432.

that would protect the victims, particularly in cases of mass violence, and recognize cultural diversity on the concept of rape as a violation of the victim's personal dignity. Later on, the same Trial Chamber took the same decision in the *Musema* Judgement when it asserted that "the essence of rape is not the particular details of the body parts and objects involved, but rather the aggression that is expressed in a sexual manner under conditions of coercion."¹⁹ It must be emphasized that the above definition has been reflected in a number of ICTR and ICTY judgments of war crime suspects charged with rape as a crime against humanity between 1998 and 2005.²⁰ The Trial Chambers at both Tribunals had no difficulty adopting and endorsing the definition of rape and sexual violence articulated in the *Akayesu* Judgement, or agreeing with its conclusion.²¹

The Tribunals' case law led to a new definition of rape enacted in the *Furundžija* Judgement by the Trial Chamber II of the ICTY. Noting that no definition of rape existed in the international law, and relying on Article 5 of the ICTY Statute, Article 27 of the Geneva Convention IV, Article 76 (paragraph 1) of the Additional Protocol I, and Article 4 (paragraph 2/e) of the Additional Protocol II,²² the Chamber concluded that rape "is a for-

cible act of the penetration of the vagina, the anus or mouth by the penis, or of the vagina or anus by other object."²³

From what has been said, it becomes clear that the ICTY Trial Chamber definition of rape in the *Furundžija* Judgement distinguished between the actual rape resulting in the sexual penetration of the vagina or anus of the victim by the penis of the perpetrator, on the one hand, and other sexual assaults falling short of actual penetration, on the other. This was in spite of the fact that the latter constitutes a serious abuse of a sexual nature upon the physical and moral integrity of the victim by means of coercion, threat of force or intimidation in a way that is degrading and humiliating for the victim's dignity.²⁴ Furthermore, the *Furundžija* definition was in sharp contrast to the *Akayesu* definition of rape. While the Trial Chamber I of the ICTR explicitly rejected a mechanical definition of rape as proposed by the prosecution and found in many national laws, the *Furundžija*'s conceptual definition stated the body parts in minute detail. Based on the above discussion, one might conclude that the *Furundžija* definition is more accurate and the *Akayesu* broader; in any event, this has qualified the first as the most acceptable definition of the crime of rape in interna-

19) *Akayesu* Judgement, supra note 9, at paragraph 687; de Brouwer, supra note 11, at 107 & 109; *Musema* Judgement, supra note 9, at paragraph 226; Quénivet, supra note 10, at 8.

20) Namely, *Čelebići* Judgement, supra note 9, at paragraphs 478-479; *Musema* Judgement and Sentence, supra note 9, at paragraphs 220 & 226; *Niyitegeka* Judgement and Sentence, supra note 9, at paragraph 456; *Muhimana* Judgement and Sentence, supra note 9, at paragraphs 535-551.

21) *Čelebići* Judgement, supra note 9, at paragraphs 478-479; *Musema* Judgement, supra note 9, at para-

graphs 20-27; *Muhimana* Judgement, supra note 9, at paragraph 535.

22) *Furundžija* Judgment, supra note 9, at paragraph 175; Geneva IV, supra note 6, at Article 27; Additional Protocol I, supra note 6, at Article 76 (paragraph 1); Additional Protocol II, supra note 6, at Article 4 (paragraph 2/e).

23) *Furundžija* Judgment, supra note 9, at paragraph 174.

24) *Ibid.*, at paragraph 186.

tional law at the present time and for the foreseeable future.²⁵

There is no doubt that the Preparatory Commission for the International Criminal Court (PrepCom) was influenced by ICTY and ICTR case law. This was reflected in the elements of crimes (EoC) prepared to help the court in its interpretation and application of Articles 6 (genocide), 7 (crimes against humanity), and 8 (war crimes) as stated in article 9 of the ICC statute, and in consistency with the PrepCom mandate.²⁶ As wartime rape in the former Yugoslavia and Rwanda fits the crime of genocide as well as crimes against humanity and war crimes under the ICC statute, the PrepCom provided three sets of EoC on the definition of rape: one according to Article 7 (paragraph 1/g), crimes against humanity; another according to Article 8 (paragraph 2/b/xxii), war crimes associated with an international armed conflict; and a third according to Article 8 (paragraph 2/e/vi), war crimes as-

sociated with an armed conflict of an international character.²⁷

Rape as a strategic weapon of war

Male rape in times of war is predominantly an assertion of power and aggression rather than an expression of satisfying the perpetrator's sexual desire. The impact of such a horrible attack can damage the victim's psyche and cause him to lose his pride, break him down, and perhaps even extend this feeling to his entire family and society.²⁸ In ancient wars and societies, male rape in times of war was considered as an absolute right of the victorious soldiers to declare the totality of the enemy's defeat and to express their own power and control. It has been used as a weapon of war and a means of punishment in many cultures. In the military context, there was a widespread belief that when a victorious soldier emasculated a vanquished enemy and sexually penetrated him, the victim would lose his

25) Akayesu Judgement, supra note 9, at paragraph 687; de Brouwer, supra note 11, at 114-115; Quéniwet, supra note 10 at 10.

26) The PrepCom was established by the Rome Conference of Plenipotentiaries on the Establishment of an International Criminal Court, and mandated by the conference to prepare proposals for the practical operation of the ICC, including: draft texts of Rules of Procedure and Evidence; Elements of Crimes, a relationship agreement; financial regulations and rules; an agreement on privileges and immunities of the court; a budget for the first financial year; the rules of procedure of the Assembly of State Parties; and proposals on a provision on aggression. On 30 June 2000, the PrepCom adopted finalized draft texts of the Rules of Procedure and Evidence (PCNICC/2000/1/Add.1) and Elements of Crimes (PCNICC/2000/1/Add.2). See de Brouwer, supra note 11, at 130; J. Lee, et al., Annotated Rome Statute of the International Criminal Court (Vancouver, B.C.: International Center for Criminal Law Reform & Criminal Justice Policy, 2002) 4 (hereinafter Lee).

27) Finalized Draft Text of the Elements of Crimes, UN Doc. PCNICC/2000/1/Add.2, (2 November 2000), at pp. 12, 34, and 43 (hereinafter Finalized Draft).

28) A. Groth & A. Burgess, "Male Rape: Offenders and Victims," (1980) 137 *American Journal of Psychiatry* 806 (hereinafter Groth); C. Anderson, "Males as Sexual Assault Victims: Multiple Levels of Trauma," (1982) 7:2-3 *Journal of Homosexuality & Psychotherapy* 145 (hereinafter Anderson); G. Lipscomb, et al., "Male Victims of Sexual Assault," (1992) 267:22 *Journal of American Medical Association* 3066 (hereinafter Lipscomb); G. Mezey & M. King, "The Effects of Sexual Assault on Men: A Survey of 22 Victims," (1989) 19:1 *Psychological Medicine* 205 (hereinafter Mezey); O. Jones, "Sex, Culture, and the Biology of Rape: Toward Explanation and Prevention," (1999) 87:4 *California Law Review* 829 (hereinafter Jones); S. Ben-David & P. Silfen, "Rape Death and Resurrection: Male Reaction after Disclosure of the Secret of being a Rape Victim," (1993) 12 *Medicine and Law* 181 (hereinafter Ben-David).

manhood, and could not be a warrior or a ruler anymore.²⁹

For the first time in the history of international legal discourse, rape was defined in gender-neutral terms in the Tribunals' case law and in the ICC Elements of Crimes, as both men and women could be victims of rape. Although the Office of the Prosecutor has never charged any of the war crimes suspects with rape for sexual assaults on men, the Trial Chamber I of the ICTR recognized in the Akayesu case that "rape and sexual violence constitute one of the worst ways of harming the victim as he or she suffers both bodily and mental harm."³⁰

When war finally came to an end in the former Yugoslavia, the medical records of health care centres provided evidence of

male rape and sexual torture of Croatian and Bosnian Muslim men including castration, genital beatings, and electroshock.³¹ Testimonies collected at the Medical Center for Human Rights in Zagreb from fifty-five men who were captured by Serb militants, emphasized that they had been exposed to five categories of systematic and organized sexual torture, with the aim of expressing aggression, psychologically damaging the victims, and destroying their identity, rather than satisfying the perpetrators' lustful desires. These assaults included rape, deviant sexual acts, total and partial castrations, injuries to the testes with blunt objects, and a combination of other injuries.³² In this sense, male rape was used as a weapon of war to inflict serious mental, physical, and

29) In spite of the lack of evidence on male rape incidents during war, recent studies have confirmed that men were also raped but to a much lesser extent. Some writers have controversially alluded to one of the most famous male rape cases during WWI, when the Ottoman Turks captured and sexually assaulted Thomas Edward Lawrence, known as Lawrence of Arabia, on 2 November 1917 in Deraa, Syria. He was subjected to humiliating treatment including beatings and sexual assault at the instigation of the governor. See J. Godl, Feature Articles: The Disputed Sexuality of T. E. Lawrence, Online: First World War www.firstworldwar.com/features/telawrence.htm (Accessed on: 21 June 2006); J. Wilson, Lawrence of Arabia: The Authorized Biography of T. E. Lawrence (New York, N.Y.: Atheneum, 1990) 5 (hereinafter Wilson); L. Stermac, et al., "Sexual Assault of Adult Males," (1996) 11:1 Journal of Interpersonal Violence 52 (hereinafter Stermac); Quénivet, supra note 10, at 17.

30) Akayesu Judgement, supra note 9, at paragraph 731.

31) Different reports from the battlefield in Croatia and Bosnia-Herzegovina claimed that male captives were subjected to systematic brutal rape and sexual assaults during armed conflict. It has been estimated that more than 4,000 Croatian men were sexually abused by Serb militants. Ruling on the first case before the ICTY, the Prosecutor charged Dušku

Tadić with sexual violence against male prisoners at the Omarska concentration camp. See D. Zarkov, "The Body of the other Man: Sexual Violence and the Construction of Masculinity, Sexuality and Ethnicity," in Gender, Armed Conflict and Political Violence. A Conference Held in Washington, D.C., 10-11 June 1999 (Washington, D.C.: The World Bank, 1999), Online: World Bank www.worldbank.org/gender/events/armedconflict.htm (Accessed on: 28 November 2002); E. Carlson, "Sexual Assault on Men in War," (1997) 349:9045 The Lancet 129 (hereinafter Carlson); H. van Tienhoven, "Sexual Torture of Male Victims: Dutch Refugee Health Centre First to Examine this Subject in Detail," (1993) 3:4 Torture 133 (Tienhoven); L. Wadham, "Shame of Bosnia's Raped Pow's," The Sunday Telegraph (28 April 1996) 10; M. Jarvis, Redress for Female Victims of Sexual Violence during Armed Conflict: Security Council Responses (LL.M., Faculty of Law, University of Toronto, 1997) 8 (hereinafter Jarvis); Prosecutor v. Dušku Tadić also Known as "Dule" & Goran Borovinca, Indictment of 13 February 1995, 34 I.L.M.1028, IT-94-1-I, at paragraph 2.6. (hereinafter Tadić Indictment).

32) M. Lončar, "Sexual Torture of Men in the War," in L. Arcel & G. Šimunković, eds., War Violence, Trauma and the Coping Process: Armed Conflict in Europe and Survivor Responses (Copenhagen: Rehabilitation Center for Torture Victims, 1998) 213.

sexual health consequences leading to the destruction of the victim, and to be evidence of the perpetrators' complete victory.³³

In occupied Iraq, the Abu Ghraib Scandal of April 2004 revealed that rape and sexual torture of both Iraqi women and men were conducted in a systematic way to crush the spirit of the political detainees who opposed and resisted the invasion.³⁴

Although President Bush has described the abuses at Abu Ghraib as "exceptional isolated cases" and "a disgraceful conduct by a few American troops," his administration continued the policy of deliberate coercive interrogation inside Iraq, in Afghanistan and in CIA secret prisons in other parts of the world.³⁵ Worse than this is the administration's attempt to develop outrageous

legal theories to justify torture and finally legalize it. Recently, the American president signed the Military Commissions Act of 2006 (MCA) after it had been passed by the Congress. This bill has rendered the Geneva Conventions unenforceable in court and has immunized CIA personnel from prosecution for their abuses. Section 5 of the bill provides that the Geneva Conventions and related treaties are unenforceable in court in civil cases involving the US government or its agents. Moreover, this law bars aliens held as "unlawful enemy combatants" from filing cases to challenge the legality of their detention or raise claims of torture or other abuses.³⁶

The worst of the above is the promotion of the culture of impunity by an interna-

33) Wartime rape and sexual torture of Croatian and Bosnian Muslim men was not a new phenomenon. Case studies, interviews with involved doctors and psychologists, as well as personal contacts with victims, indicate that political prisoners in Chile, El Salvador, Greece, and Sri Lanka, were often subjected to all forms of sexual violence in the eighties and nineties of the last century. Similarly, during the years of armed conflict in the Democratic Republic of Congo, men and boys were raped and sexually assaulted in multitudes by combatants, particularly in the eastern part of the country. See G. Daugaard, et al., "Sequelae to Genital Trauma in Torture Victims," (1983) 10 Archives of Andrology 245 (hereinafter Daugaard); I. Agger, "Sexual Torture of Political Prisoners: An Overview," (1989) 2 Journal of Traumatic Stress 305 (hereinafter Agger); J. Cienfuegos & C. Monelli, "The Testimony of Political Repression as a Therapeutic Instrument," (1983) 54 American Journal of Orthopsychiatry 43 (hereinafter Cienfuegos); M. Peel, et al., "The Sexual Abuse of Men in Detention in Sri Lanka," (2000) 355:9220 The Lancet 2069 (hereinafter Peel); R. Dominguez & E. Weinstein, "Aiding Victims of Political Repression in Chile: A Psychological and Psychotherapeutic Approach," (1987) 24 Tidsskrift for Norsk Psykologforening 75 (hereinafter Dominguez); Seeking Justice: The Prosecution of Sexual Violence in the Congo War, Human Rights Watch, March 2005, Vol. 17, No.1 (A), at p. 20-21 (hereinafter Seeking Justice).

34) A. Taguba, Hearing Article 15-6 Investigation of the 800th Military Police Brigade, Online: Global Security www.globalsecurity.org/intell/library/reports/2004/800-mp-bde.htm (Accessed on: 25 August 2004) (hereinafter Taguba Report); A. Zagorin, "The Abu Ghraib Scandal you don't Know," Time 165:7 (14 February 2005) 36; L. Burnham, Sexual Domination in Uniform: An American Value, Online: Counterpunch (22-23 May 2004) www.counterpunch.com/burnham05222004.html (Accessed on: 31 May 2004); M. Bloche & J. Marks, "Triage at Abu Ghraib," The New York Times (4 February 2005) A19; R. Mollica, "Surviving Torture," (2004) 351:1 New England Journal of Medicine 6; S. Fiske, et al., "Why Ordinary People Torture Enemy Prisoners," (2004) 306:5701 Science 1482; S. Miles, Oath Betrayed: Torture, Medical Complicity, and the War on Terror (New York, N.Y.: Random House, 2006) 27; W. Bennett, et al., "None Dare Call it Torture: Indexing and the Limits of Press Independence in the Abu Ghraib Scandal," (2006) 56:3 Journal of Communication 469.

35) D. Rose, Guantanamo: America's War on Human Rights (London: Faber & Faber, 2004) 17; M. Bowden "Lessons of Abu Ghraib," The Atlantic Monthly 293:6 (July-August 2004) 33-34; R. Kunzendorf, et al., "The Fine Line between Fantasizing Torture and Countenancing Abu Ghraib," (2004-2005) 24:4 Imagination, Cognition and Personality 301 (hereinafter Kunzendorf).

36) A. Lewis, "Making Torture Legal," *The New York Review of Books* 51:12 (15 July 2004) www.nybooks.com/articles/17230 (Accessed on: 29 July 2004); D. Jehl & D. Jonstone, "CIA Expands its Inquiry into Interrogation Tactics," *The New York Times* (29 August 2004) A1; J. Mariner, *The Military Commissions Act of 2006: A Short Primer*, Online: FindLaw (9 October 2006) <http://writ.news.findlaw.com/mariner/20061009.html> (Accessed on: 14 October 2006); K. Roth, "Justifying Torture," in K. Roth, et al., eds., *Torture: Does it Make us Safer? Is it Ever Ok? A Human Rights Perspective* (New York, N.Y.: Human Rights Watch, 2005) 184-185 & 190 (hereinafter Roth); N. Lewis, "Broad Use of Harsh Tactics is Described at Cuba Base," *The New York Times* (17 October 2004) A1; R. Brody, "The Road to Abu Ghraib: Torture and Impunity in U.S. Detention," in K. Roth, et al., eds., *Torture: Does it Make us Safer? Is it Ever Ok? A Human Rights Perspective* (New York, N.Y.: Human Rights Watch, 2005) 145-146; United States, The House of Representatives, 109th Congress, 2nd Session, House of Representatives Authorization of an Act may be Cited as "Military Commissions Act of 2006," 3 January 2006.

37) Human Rights Watch, Press Release, "U.S. Tries to Get Off the Hook on War Crimes: Ahead of United Nations Resolution on Iraq, U.S. Tries to Exclude its Troops from Prosecution," (20 May 2004); UN Security Council's Resolution 1487 (2003), Requesting that the ICC shall for a 12 months period starting 1 July 2003 not commence or proceed with investigation or prosecution of any case arises involving current or former officials or personnel from a contributing state not a Party to the Rome Statute over acts or omissions relating to a UN established or authorized operations (12 June 2003) UN Doc. S/RES/1487 (2003). In fact, this is not a new phenomenon in the legacy of the international organization, which has also recognized and protected war crime suspects. In October 1992, the United Nations and the EC invited the Yugoslav war factions, including two war criminals, to negotiate peace in Geneva. Referring to this event, Haris Siladžić, at that time the Bosnian foreign minister and head of the Bosnian delegation said: "If you kill one person, you're prosecuted; if you kill ten people, you're a celebrity; if you kill a quarter of a million people, you're invited to a peace conference." Later on, in his opening statement at the second panel of a symposium on practical implications of universal jurisdiction, held at the UCLA School of Law on 7 March 2003, Reed Brody, a special counsel with Human Rights Watch, said something similar to Siladžić saying: "We used to say that if you kill one person, you go to jail; if you kill 20 people, they put you in an insane asylum; and if you kill 20,000

people, you get invited to a peace conference, or you get an amnesty, or you die in your sleep."

Moreover, despite its mandate to maintain peace and security, the UN Security Council waged a hidden war against Iraqi civilians by imposing US-initiated comprehensive economic sanctions on Iraq between 1991 and 2003. Until 1995, it was estimated that 567,000 Iraqi children under the age of five have died of malnutrition and preventable diseases. The genocidal effects of the UN sanctions on Iraqi children and civilians were documented by Ramsey Clark, the former US Attorney General, international advocacy groups and NGO's, the UN Food and Agriculture Organization, and the UN children's fund. See F. Boyle, "UN Abets Genocide in Rwanda," Online: Twatch-L (1998) TWATCH-L@LISTSERVE.ACSU.BUFFALO.EDU (Received on: 25 September 1998); Food and Agriculture Organization of the United Nations, *Evaluation of Food and Nutrition Situation in Iraq* (Rome: FAO Technical Cooperation Programme, 1995) 50 (hereinafter FAO); J. Mueller & K. Mueller, "Sanctions of Mass Destruction," (1999) 78:3 *Foreign Affairs* 45 (hereinafter Mueller); P. Pellett, "Sanctions, Food, Nutrition, and Health in Iraq," in A. Arnove, ed., *Iraq under Siege: The Deadly Impact of Sanctions and War* (Cambridge, Mass.: South End Press, 2000) 163 (hereinafter Pellett); R. Clark, "The Devastation of Iraq by War and Sanctions: Fire and Ice," in R. Clark, et al., eds., *Challenges to Genocide: Let Iraq Live* (New York, N.Y.: International Action Center, 1998) 29 (hereinafter Clark); R. Clark, "Report on the Impact of UN Sanctions on the Civilian Population of Iraq," A Letter to the Members of the UN Security Council from Ramsey Clark, the former US Attorney General (14 November 1997) (hereinafter Ramsey Report); R. Masri, "International Law: Sanctions are Criminal," in R. Clark, et al., eds., *Challenge to Genocide: Let Iraq Live* (New York, N.Y.: International Action Center, 1998) 37 (hereinafter Masri); S. Flounders, "Introduction: Break the Silence," in R. Clark, ed., *The Impact of Sanctions on Iraq: The Children are Dying* (New York, N.Y.: International Action Center, 1998) 1 (hereinafter Flounders); S. Lewis, "The United Nations, Human Rights and the Rights of Children," (The Sixth John Humphrey Lectureship in Human Rights, InterAmicus, Faculty of Law, McGill University, 5 November 1997); "Symposium: Justice and Sovereignty: Implications of the International Criminal Courts: Panel: Universal Jurisdiction: Practical Implications of Universal Jurisdiction," (2003) 8 *UCLA Journal of International Law and Foreign Affairs* 72; Un Children's Fund, *Disastrous Situation of Children in Iraq*, UNICEF Report PR/GVA/96/035 (4 October 1996).

tional organization. In this respect, the UN Security Council Resolution 1487 (2003) adopted on 12 June 2003 has exempted the American troops and personnel serving in any UN force in Iraq from prosecution for international war crimes under the Rome Statute of the ICC.³⁷

However, investigations of convicted American troops involved in the disgraceful Abu Ghraib scandal revealed that the abuses of Iraqi detainees did not erupt spontaneously at the lowest levels of the military chain of command; rather it was the product of a deliberate policy drawn up at the highest levels immediately after the decision by Secretary of Defence Donald Rumsfeld to step up the hunt for “actionable intelligence” among Iraqi prisoners.³⁸

Mechanisms of justice and socio-legal remedies for wartime male rape victims

This paper provides three kinds of potential remedies available for addressing the needs of Croatian and Iraqi wartime male rape victims: legal remedies, remedies within the United Nations system, and psycho-social

remedies within civil community associations.

Under the heading of legal remedies, there are four different fora that have jurisdiction over perpetrators: national courts in Iraq, Croatia, Serbia, and the United States; national courts experiencing universal jurisdiction; regional courts; and international ad hoc and permanent courts. Although the American-led occupation laws did not give any mandate to the Iraqi national courts over the American coalition troops and personnel, these courts, according to the principles of international law, still have jurisdiction to define and punish wartime male rape crimes committed within Iraqi territory. Article 146 of the fourth Geneva Convention requires each High Contracting Party to prosecute any offence that qualifies as a grave breach of the convention. Similarly, Article 5 of the Convention on the Prevention and Punishment of the Crime of Genocide, as well as Article 5 (par.1) of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, obligates the Iraqi, Croatian, Yugoslav, and American governments, as

38) D. Rose, “American Interrogation Methods in the War on Terror,” in T. Williamson, ed., *Investigative Interviewing: Rights, Research and Regulation* (Portland, Or.: Willan Publishing, 2006) 54; J. Paust, *Abuse of Iraqi Detainees at Abu Ghraib: Will Prosecution and Cashiering of a Few Soldiers Comply with International law?*, Online: Jurist <http://jurist.law.pitt.edu/forum/paust1.php> (Accessed on: 3 June 2004); Kunzendorf, *supra* note 35, at 302; S. Hersh, “Torture at Abu Ghraib: American Soldiers Brutalized Iraqis, How Far up Does the Responsibility Go?,” *The New Yorker* (5 May 2004) A1; T. Regan, “Abu Ghraib Report: ‘Failure of leadership’ at Highest Levels,” *The Christian Science Monitor* (20 August 2004) 3.

39) Moreover, Article 14 of the Convention against Torture provides for redress and compensation for torture victims, and requires State Parties to prosecute perpetrators. It reads: “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.” See Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, GA Res. 39/46, 39 UN GAOR, Supp. (No.51) at 197, UN Doc. A/39/51 (1984), reprinted in 23 *International Le Aterials* 1027 (1984), Substantive changes noted in 24 *I.L.M.* 535 (1985) (Entered into force on 26 June 1987); Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, GA Res. 260A (III), 3 UN GAOR at 174, UN Doc. A/810 (1948); D. Shelton, *Remedies in International Human Rights Law* (Oxford, N.Y.: Oxford University Press, 2005) 115; Geneva IV, *supra* note 6.

state parties, to take the necessary measures to establish jurisdiction over wartime male rape crimes.³⁹

Croatian and Iraqi victims can also institute civil lawsuits against rapists in the courts of the United States under two pieces of legislation: the Alien Tort Claims Act, passed in 1980, and the Torture Victim Protection Act, signed in March 1992.⁴⁰

In this respect, the Supreme Court of Canada, in the case of *R. v. Finta*, states that: "The principle [of Universality] permits the exercise of jurisdiction by a state in respect of criminal acts committed by non-nationals against non-nationals wherever they take place". Additionally, subsection 7 (para. 3.71) of the Canadian Criminal Code provides that "every person who commits a war crime or a crime against humanity that would constitute an offence against Canadian laws in force at that time shall be deemed prosecutable as if he or she had

committed a crime in Canada at that time." Accordingly, under this provision and pursuant to both the Torture Convention 269.1 of the Canadian Criminal Code, Canadian authorities may prosecute wartime rape perpetrators found within Canadian territory.⁴¹

Before the political abuse of the Belgian universal jurisdiction in April 2003, war crime victims were able to file lawsuits against their perpetrators. Unfortunately, after a number of high-profile lawsuits were filed against the American president and his secretary of defence for alleged crimes committed during the Gulf War of 1999, the Belgian government passed an amendment in April 2003 changing the law. The new amendment provides that the victim or the defendant must be Belgian.⁴²

On the regional level, Iraqi victims of wartime rape may file petitions with the Inter-American Court of Human Rights, which prosecutes violations of the rights to

40) Alien Tort Claims Act, Judiciary Act, ch. 20, s.9(b), 1 Stat. 73, 77 (1789) (currently, with some changes, 29 U.S.C.S. 1350 (1982)); *Doe v. Karadzic*, 866 F.Supp. 734 at 741 (U.S. Dist. 1994); E. Eric, "The Torture Victim's Protection Act, the Alien Tort Claims Act, and Foucault's Archaeology of Knowledge. (Michel Foucault) (Torture: Paradigms, Practices, and Policies)," (2003) 67:2 Albany Law Review 501; F. Kirgis, "Restitution as a Remedy in U. S. Courts for Violations of International Law," (2001) 95:2 The American Journal of International Law 341; *Filartiga v. Pena-Irala*, 630 F.2d 876 at 648 (2nd Cir 1980); J. Terry, "Torture Victims: Rights and Remedies under United States Law," (1989) 2 Harvard Human Rights Yearbook 169; *Kadic' v. Karadzic'*, 34 I.L.M. 1592 at 1600 (2nd Cir. 1994); M. Brandt, "Doe v. Karadzic': Redressing Non-State Acts of Gender-Specific Abuse under the Alien Tort Statute," (1995) 79 Minnesota Law Review 1413-1414; Torture Victim protection act, Pub. L. No. 102-256, 106 Stat, 73 (1992), (codified at 28 U.S.C., ss.1350, 1331, and 1367); War Crimes Act of 1996, 21 August 1996, 18 USC 2401, 35 I.L.M. 1539-1540.

41) Canadian Criminal Code, R.S.C., 1985, c. C-46; D. Matas, "The Case of Imre Finta," (1994) 43

University of New Brunswick Law Journal 283; I. Cotler, "War Crimes Law and the Finta (*R. v. Finta*) (1994) 1 S.C.R. 701) Case," (1995) 6 The Supreme Court Law Review 577; I. Cotler, "Canada-War Crimes-Crimes against Humanity-Criminal Law-Constitutional Validity-Jurisdiction-Actus Reus-Mens Rea-Defenses-Alternative Remedies-Canadian Charter of Rights and Freedoms," (1996) 90:3 The American Journal of International Law 460; *R. v. Finta*, 1989, 50 c.c.c. (3d) 236 C.J., affd at (1992) 73 c.c.c. (3d) 65 (Ont. C.A.).

42) Belgium: Act Concerning the Punishment of Grave Breaches of International Humanitarian Law, 10 February 1999, 38 I.L.M. 918-925; Diaz, et al. c. Pinochet, (6 November 1998), Brussels Dossier No. 216/98, Notices No. 30.99.2447/98; (1999) Journal des Tribunaux 308-311; Prosecutor c. B & C, (20 November 1997) Brussels Dossier No. 54 A. R. (C. Mlt.); Procureur c. X, (1995) Journal des Tribunaux 542 (Bruxelles, Cour d'appel, Ch. mis. acc.); Procureur c. X, (1996) Revue de droit pénal et de criminologie 198 (Bruxelles, Ct. de Cass., 2e chambre); Procureur c. X et al., (1996) Revue de droit pénal et de criminologie 906 (Bruxelles, Ct. de Cass., 2e chambre).

life and personal integrity as a remedy under Articles 1 (para.1), 8, and 25 of the American Convention on Human Rights. Under these articles, state parties are obligated to provide a fair hearing before a competent and independent court, and to make effective internal remedies to the victims.⁴³

Croatian victims of wartime rape can file cases with the International Criminal Tribunal for the Former Yugoslavia according to Article 5 of the statute of the tribunal, which has the mandate to prosecute and indict war crime suspects for crimes against humanity, including rape and sexual torture. Moreover, rule 106 of the tribunal's Rules of Procedure and Evidence provides that the Registrar shall transmit to the competent authorities of the state concerned the judgement finding the accused guilty of a crime. After this, the victim may file a lawsuit with a national court or another competent body to obtain compensation.⁴⁴

By the same token, Croatian and Iraqi victims of sexual torture have the right to receive reparations under Articles 75 and

79 of the Rome Statute of the International Criminal Court and rules 94-99 of the ICC Rules of Procedure and Evidence. Pursuant to Article 79 (para.1), the Trust Fund for victims and their families was established on 9 September 2002 under the Assembly of State Parties' Resolution 6, of 9 September 2002.⁴⁵

Remedies for wartime rape victims could also be obtained within the United Nations system under both the treaty-based procedure, including the Human Rights Committee and the Commission against Torture, and the non-treaty procedure, involving the UN Commission on Human Rights and its Sub-Commission, which provides that "all victims of gross violations of human rights and fundamental freedoms should be entitled to restitution, a fair and just compensation, and the means of rehabilitation." The Human Rights Committee, which was established under the International Covenant on Civil and Political Rights, has an individual complaint procedure. Individuals of more than eighty countries that ratified the Optional

43) American Convention on Human Rights, Opened for signature 22 November 1969, O.A.S.T.S. No. 36; Reprinted in 9 I.L.M. 673 (1970) (Entered into force on 18 July 1978). *Carrocoles v. Bolivia*, (1982), Inter-American Court of Human Rights (OEA/Ser.L/V/II.57, Doc. 6 rev. 1) Case No. 7481, Report No. 30/82; *Caypani et al v. Peru*, (1990), Inter-American Court of Human Rights (OEA/Ser.L/V/II.79, Doc. 12 rev. 1) Case No. 10.308, Report No. 37/90; *Celestine v. United States*, (1989), Inter-American Court of Human Rights (OEA/Ser.L/V/II.77, Doc. 7 rev. 1) Case No. 10.031, Report No. 23/89; *Fenelon v. Haiti*, (1982), Inter-American Court of Human Rights (OEA/Ser.L/V/II.61, Doc. 22 rev.1) Case No. 6586, Report No. 48/82; *Ford et al. v. El Salvador*, (1983), Inter-American Court of Human Rights (OEA/Ser.L/V/II.61, Doc. 22 rev. 1) Case No. 7575, Report No. 17/83; *Korte v. Costa Rica*, (1987), Inter-American Court of Human Rights (OEA/Ser.L/V/II.71, Doc. 9 rev.1) Case No. 9788, Report No. 16/87; *S. Dav-*

idson, "Remedies for Violations of the American Convention on Human Rights," (1995) 44:2 *International and Comparative Law* 405.

44) *Compensation and Participation: Judges' Report of 13 September 2000*, Online: The International Criminal Tribunal for the Former Yugoslavia <http://www.un.org/icty/pressreal/tolb-e.htm> (Accessed on: 23 December 2006); The ICTY Statute, *supra* note 3; M. Keegan, "The Preparation of Cases for the ICTY," (1997) 7:1 *Transnational Law & Contemporary Problems* 119.

45) The Rome Statute, *supra* note 7. W. Marieke & G. Pablo, *Reparations and the International Criminal Court: A Prospective Role for the Trust Fund for Victims*, Online: International Center for Transitional Justice www.vrwg.org/Publications/02/ICTJ%20Trust%20Fund%20Paper.pdf (Accessed on: 23 December 2006).

Protocol to the Political Covenant may complain against such states to the Human Rights Committee under this procedure.⁴⁶ Moreover, wartime rape victims are entitled to receive psycho-social remedies, including counselling and rehabilitation.⁴⁷

Conclusion: What have we learned? What must we do to help these victims?

At the fifty-eighth anniversary of the Universal Declaration of Human Rights, let us recall General Dallaire's critical question as stated in his book "Shake Hands with the Devil": "Are we all human, or are some more human than others?" General Dallaire asked this question after he was informed by an American officer that the lives of the 800,000 Rwandans slaughtered in the genocide were only worth risking the lives of ten American troops, in a reference to the ten Belgian blue helmets who were massacred by Hutu militias at the beginning of the Rwandan Genocide.⁴⁸

To reinforce the norms of the Universal Declaration of Human Rights, stressing that all humans are equal and no one is more human than another, we should combat the culture of impunity in both dictator-ruled and democratic countries by bringing the crime of wartime rape into the international arena, and by removing all barriers to justice facing the victims. Moreover, we should emphasize the fact that wartime rape is the ultimate humiliation that can be inflicted on a human being, and it must be regarded as one of the most grievous crimes against humanity. The international community has to consider wartime rape a crime of war and a threat to peace and security. It is in this respect that civilian community associations can fulfil their duties by encouraging victims of male rape to break their silence and address their socio-medical needs, including reparations and rehabilitation.

46) In this respect, Article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights states that: "A State Party to the Covenant that becomes a Party to the Present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant." Optional Protocol to the International Covenant on Civil and Political Rights, Adopted on 16 December 1966, 999 U.N.T.S. 302 (Entered into force on 23 March 1976).

47) L. Kynes, "Letting the CAT Out of the Bag: Providing a Civil Right of Action for Torture Committed by U.S. Officials Abroad, an Obligation of the Convention Against Torture," (2005) 34:1 Georgia Journal of International and Comparative Law 187; R. Elder, et al., "Rehabilitation of the War Casualties in Croatia 1992: A Situation Analysis,"

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Torture in Egypt

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Abstract

This article is concerned with the increasing prevalence of torture in Egypt. Torture is a widespread problem in Egypt, being practiced in the majority of police stations and state security places. It has become a routine practice and is seen daily on a systematic basis. The number of people who are subjected every month to torture is unimaginable. In addition, there are deaths that occur as a result of the torture. However, the Egyptian government does not give clear answers about the issue. Everyone could be exposed to torture, and for different, illogic reasons. The case of Bany Mazar is a horribly clarifying one. The unclear political situation and the absence of democracy play the main role in the highly increasing rate of torture in Egypt.

Key words: torture methods, Egypt, El Shariiaa, police, prison

Introduction

One of the Amnesty International reports is concerned about torture practice in Egypt, issued on the 28th of February, 2001, notes that over the two past decades (1980s,

1990s) thousands of detainees have been subjected to torture and ill-treatment in Egypt.¹ In May 1996 the UN Committee against Torture stated that it had received information on torture allegations mainly through reports of the UN special rapporteur on torture, AI, and the World Organization against Torture (Organisation Mondial Contre Torture, OMCT). The committee further noted that its requests to conduct a visit to Egypt had received no reply. A conclusion made by the UN special rapporteur is that "torture is systematically practiced by the security forces in Egypt, in particular the state security intelligence, since in spite of denials of the government, the allegations of torture submitted by reliable, non governmental organizations consistently indicate that reported cases of torture are seen to be habitual, widespread and deliberate in at least a considerable part of the country."¹⁻³

Examining prevalence of torture in Egypt

Over the last two decades, NGOs working in the field of human rights have documented thousands of torture cases in police stations, prisons and state security headquarters (Table 1). Meanwhile the human rights center for the assistance of prisoners (HRCPA) monitored 1124 torture cases in prisons (El Nadeem).⁴

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The Legal Aid Center reported about 100s case of torture between 1994 and 1995.

The Egyptian organization for human rights has documented in its annual reports⁵⁻⁷ the continuation of torture and ill-treatment of prisoners being widespread in the majority of the Egyptian prisons, especially that of El Wady el Gedid and Abou Za'abal.

In addition to torture and ill-treatment, the absence of adequate medical care and the bad conditions of prisons led, for example, to the death of eight prisoners within the year 1999.⁶

In Table 2 the numbers of torture cases and deaths in 2000-2004 can be seen.

However, the report mentions that these cases are only a limited sample chosen from hundreds of other cases. The other cases the organization was informed about have not been documented for different technical reasons.⁸

The Egyptian Association Against Torture (EAAT) reported the death of seven persons under torture, in addition to another 38 persons who underwent torture in different police stations and state security intelligence. All of these came to be victims within only 50 days, that is to say one death

per week and approximately one live victim every one and a half days.⁹

Discussing systematic torture in Egypt, El Nadeem⁴ assumes that the exact number of torture victims is in reality several times more than what has been revealed as many victims could not report on officials who tortured them. The simplest of these reasons is the fear of police threats to re-arrest and torture them and their families all over again if they dare to come forward. Sometimes if the victims try to put forth a complaint or report what happened, police authority would frame them for crimes they did not commit.

Review of torture methods used in Egypt

Methods used to induce this suffering are either physical, like beating, or psychological, like threats. These methods are applied

Table 2. *The reported torture cases and deaths.*⁸

Year	Torture cases	Death under torture
2000	13 victims	10 victims
2001	14 victims	7 victims
2002	12 victims	12 victims
2003	45 victims	13 victims
2004 till April	24 victims	2 victims

Table 1. *Deaths under torture as reported by El Nadeem Center between 1994 and 2000, could be summarized as follows.*⁴

Name	Place of torture	Date of death
F. EB. AM.	Helwan PS	16/8/1994
R. A. M. A..	Misir Qadima PS	31/10/1994
A. I. M.		15/8/1995
A. AH. A,	Mansoura PS	6/6/1996
M. ED., M. ET. S. A. S. A.	Coast Guard PS., Port Said	6/1996
M. H. M.	Police Patrol, Kafr Al Dawar	7/1996
M. I. O. A.Z.	Mansoura PS	7/1996
S. A. B.	Al-Zawiah AL-Hamra PS	16/8/1996
M. S. AE.	Helwan PS	27/8/1996
A. M. M. T.	Omranniya PS	31/7/1999
R. S.	Fayoum PS	14/2/1999
M. A. A.	Giza PS	3/2000

PS = police station.

through specific techniques, and aim at achieving and serving the torturer's goals whatever they are.

According to the report of El Nadeem Center,⁴ the methods used in incarceration places as described by 272 victims who visited the Center between 1993 and 2001 are:

- 1) *Beating*: constitutes the first reception ritual awaiting the victims, it is usually called "reception party".
 - Three victims died from beating on testicles while one victim had an abortion.
- 2) *Suspension*: constitutes one of the commonest methods used in police stations and jails where the victim becomes totally incapacitated.
 - Twenty-seven victims have been subjected to suspension. Most of them have suffered partial or total tearing of the nervous plexuses with the resultant motor and sensory deficits.
- 3) *Spraying icy water on the body*: ice logs may also be placed on the victim's chest.
 - Most victims were subjected to this method.
- 4) *Sexual abuse, rape*: used against both men and women, where the victim is first forced to take off her/his clothes. Clothes and parts of the body are described with obscene words while touching sensitive parts.
 - Forty-three victims were subjected to this kind of torture.
 - Seven women among them were stripped and abused by words and touch.
 - Seven have been threatened by rape.
 - One woman was actually raped.
 - One man was exposed to violently squeezing the scrotum.
- 5) *Deprivation*: the most common way is to blindfold the victim.
 - Almost all cases were subjected to blindfolding.
- 6) *Humiliation*: including verbal abuse, ridiculing the victim and her/his body, calling them humiliating names that violate their dignity and their parents and family.
 - Almost all victims were subjected to this kind of torture.
- 7) *Electric shock*: frequently electrodes are connected to genitals.
 - Thirty-six victims were subjected to the electric torture.
- 8) *Unsanitary conditions*: keeping large numbers of people in very small rooms, which are not well ventilated, dirty and dark.
 - Most victims have been subjected to these conditions.
- 9) *Threats of harming the victim's family*.
 - Twenty-four cases were subjected to these threats.
 - In eight cases the threats were actual carried out.
- 10) *Watching torture of other victims*: that might be a family member (spouse, mother, father ...).
 - Eight cases were subjected to this method.
- 11) *Dragging on the floor*.
 - Eight cases were subjected to this method.
 - One of them was dragged from his home to the police station.
- 12) *Forcing the hands into extremely hot water*: resulting in the skinning of hands
 - One victim was exposed to this method.
- 13) *Breaking bones*:
 - Four cases suffered broken bones as a result of beating.
- 14) *Burning*: by cigarettes or red hot metal tool.
 - Nine victims were subjected to this method.

- Four among them had deep burns complicated by infections.
- One victim was burnt by pouring kerosene on his body and setting him on fire.⁴

M. Ali – 29/12/2005

A young man who lived in one of the Egyptian villages was working as a farmer. He lived with his old parents and had two married sisters and two brothers.

One day a horrible murder occurred in the village, three families (ten persons) were killed during sleep and their genitals were cut. Each family lived in a separate house.

Nobody heard or witnessed anything around the houses, however M. Ali was accused of this crime. He was detained and tortured to confess, but he did not confess except when the officers brought his family and started to torture them ... they took first his father and sister, who left an infant behind her, then they took his mother ... starting to torture the family, M. Ali accepted to say whatever they wanted him to say ... officers offered his father a “generous” offer: (on condition M. confesses, we will prove that he is insane, admit him to a mental hospital and then he will be discharged)...

M. Ali confessed under both physical and psychological torture and was trained by detectives how to jump and to play the role of an assassinator. He was then admitted to a mental hospital where he was tied to the bed for about 100 days.

Some activists knew about the story and a case of torture was raised up in front of the persecutor general.

The medical report of the mental hospital proved that M. Ali is not insane; he has no mental illness at all.

At the beginning of September the court started to look into the case and after a few days M. Ali was judged innocent despite his

confession, because of the marked contradictions in the intelligence story. However, the whole family is still suffering severe harassment guided by the officers who tortured M. and who apparently decided to revenge the refusal of M.’s family to scarify their son.

The illogic horrible context M. had been through prevented him from seeking psychological help immediately. He chose to be isolated for a period of time. His first visit to El Nadeem Center was in 2000. Months after the first interview he preferred to write his story rather than to verbally express it.

Discussion

An understanding of why torture is practiced in Egypt may be obtained by the ideals of the Egyptian regime and what this ideology is fighting for while torturing.

In this context we may observe that Egypt is passing through a period of imbalance and disturbance. The target is not communism, nor socialism, nor liberalism, nor even the Islamic ideology. Egypt is hosting a mixture of many ideologies that reflect themselves in many aspects of life. One profound example is the presence of (Article 59) of the Egyptian Constitution,¹⁰ which states that the protection, support and maintenance of the “socialist” gains are a national duty; and (Article 73), in which the President of the Republic is also expected to protect socialist gains. Those articles are still present, while the actual state policy is clearly directed towards privatisation and market economy.

A further contradiction is the following: while the state confiscates books under pressure of Islamists and maintains that Islam is the “official” religion of the state and that “El Shariaa” is the main source of legislating laws (Article 2), we find the cover of a weekly “official” state-owned magazine carrying an advertisement for alcoholic drinks

in many successive volumes.^{11,12} In this context, Egyptian prisons and detention centres host 20,000 detainees, most of whom are kept illegally under the pretext of being Islamists.¹³

This mixture of ideologies leads in turn to a vague identification of the in-group and the out-group, i.e. the “enemy” and the “friend”. From this perspective, state violence and torture are not restricted to or directed toward certain groups, but, as reported, Islamists are tortured as well as communists, socialists, criminals, poor people, human rights defenders, anti-war people, and suspects, thus creating another heterogeneous mixture, this time composed of victims.

The enemy is considered to be anyone who is not clearly belonging to the system, who is not supported by the regime.

This lack of “system” results in a confusion regarding what one should or should not do to avoid becoming a victim. The result is a people who appear as “passive” to the outside observer.

Power and authority pose two deeply different meanings. While power refers to the absolute illegitimate force, authority carries the legitimate right to command others.¹⁴ What in fact dominates the political life in Egypt is certainly the absolute power and not the authority, given that much of the police practices are in violation of the Constitution and the law.

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Methods and sequelae of torture: a study in Sri Lanka

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Abstract

A retrospective study was performed to document the physical and psychological methods of torture and their sequelae on 90 victims of torture who attended the Family Rehabilitation Centres in Vavuniya, Trincomalee and Anuradhapura, using a standard assessment format.

The study showed that the methods of torture practised in Sri Lanka are similar to that of other countries. The methods are physical and psychological. Being a victim of a traumatic event would be physically and psychologically stressful.

Key words: torture, human rights, Sri Lanka

Introduction

Considering the wide range of situations which involve human induced physical and psychological suffering, a clear and acceptable definition of torture is problematic.¹ In this paper, torture as defined by The World Medical Association in its Tokyo Declaration,² is used.

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As a confession was considered the most important proof of guilt in past times, torture was perceived as a legitimate means of obtaining such a confession. At present however, changes in law and forensic sciences have reduced the importance of torture-extracted confessions in legal proceedings. Yet, torture is taking place in the world today. Peters³ has asserted that the use of torture in these present times is a result of the changed “face” of political crime in modern times.

In ancient Sri Lanka, 32 types of torture were described. Though inflicted by the King’s men, and “lawful”, they were inhuman, cruel and degrading. These torture methods included being trampled by an elephant and being impaled on a pointed iron pole. After the British captured Kandy, the capital of Sri Lanka (then referred to as Ceylon) in 1815, the Convention signed by the British Governor and the Principal Chiefs of the Kandyan Provinces expressly prohibited the practice of torture.⁴ Thus, Section Six of the Kandyan Convention stated, “Every species of bodily torture and mutilation of limb, member or organ are prohibited and abolished”.

Article 11 of the 1978 constitution of the Democratic Socialist Republic of Sri Lanka has expressly prohibited torture.⁵ In 1994, the Government of Sri Lanka, by an act of Parliament, gave effect to the UN Conven-

tion against Torture.⁶⁻⁷ The current Penal Code and Criminal Procedure Code of Sri Lanka have also provided several clauses to protect the survivors of torture and to punish the perpetrators. For instance, survivors of assault could claim compensation from the perpetrators under the civil law of the country. Despite these legal advancements however, only a few cases have been filed by the State against perpetrators of torture. And of these, only a few have been convicted.

The objectives of the present study, therefore, are an exploration of the methods of torture practised in Sri Lanka today and the sequelae on torture survivors. Such an understanding of torture and its effects is deemed to be beneficial in designing rehabilitation services for survivors.

Materials and methods

This study was conducted at three of the 14 branches of the Family Rehabilitation Centre (FRC), situated in the districts of Vavuniya, Trincomalee and Anuradhapura. FRC is a non-governmental organisation providing holistic care for torture survivors in Sri Lanka. The study was completed within a period of 36 months. A standard assessment format developed by the International Rehabilitation Centre for Torture Survivors (IRCT) was utilized to document data from the survivors of torture who came to seek medical, legal and/or psychological help from the FRC. The information collected was that of basic demographic information and methods and sequelae of torture. The identity of the alleged perpetrator was not studied.

Results

The sample size of the study was 90 (83 males and 7 females). The age range was 19 to 58 years with 34 years as the mean age. The physical methods of torture reported

by the survivors are presented in Table 1. In addition, each of the following methods was reported by 2% of the sample: the removal of nails, application of electricity and application of heat to the body. Further, methods such as having had to walk on knees, being forced to drink petrol, hands being pressed on machines, and an eye being removed, were each reported by 1% of the sample.

Psychological methods of torture reported in the present study are shown in Table 2. In addition to those listed, 2% men-

Table 1. *Physical methods of torture.*

Method	Frequency
Beating of the body	99%
Falanga	32%
Suspension by hands	30%
Dry Submarino (covering the head with a bag)	19%
Wet Submarino (covering the head with a bag and putting water into the bag)	17%
Suspension by feet	11%
Beating the genitals	11%
Burning the body	8%
Cutting the body	8%
Beating the ears	8%
Putting chilli powder in eyes	7%
Parrot perch	7%
Binding with ropes	7%
Applying petrol on body	4%
Cramped confinement	3%
Palestinian hanging	3%

Table 2. *Psychological methods of torture.*

Method	Frequency
Blindfolded	42%
Deprived of food	24%
Death threats	22%
Solitary confinement	21%
Others tortured in survivor's presence	12%
Consumption of faeces/flesh	9%
No toilet facilities	8%
Forced nakedness	8%
Threat to survivor's family	7%
Verbal humiliation	4%
Sexual assault	4%
Deprivation of medicine	4%

tioned having to lie with dead bodies while 1% mentioned receiving sexual threats, others being killed in the survivor's presence and receiving sexual threat regarding the survivor's spouse.

The physical and psychological sequelae of torture are shown in Tables 3 and 4, respectively.

Discussion

Most types of physical and psychological torture methods reported in this study are self-explanatory. Some of these torture methods, such as "falanga", require further explanation. Falanga is the severe beating on

the soles of the feet resulting in extreme pain and possibly causing fractures of bones, swelling of feet or the development of blisters. Late sequels may be difficulty in walking or standing for prolonged periods of time and pain in the ankles and feet. Another method, suspension, could take many forms. Some examples are wrists tied together and then lowered in front of the legs which are in maximum flexion at the knees and hips, or a wooden or iron bar pushed behind the knees and in front of the elbows and then lifted and suspended, or the person left hanging with the head downwards.

Physical and psychological torture tends to occur simultaneously. It is often difficult to separate them. For instance, some torture survivors in the present study reported that while being beaten they also received death threats. In some instances however, the persons were subjected to only psychological torture, such as being blindfolded or being deprived of food. Physical and psychological torture is documented by Rasmussen.⁸

Research has shown that survivors of torture have significantly greater mental and physical health implications than those who have not experienced torture.⁹ The literature on the psychological sequelae of torture has included symptoms of depression, anxiety, sleep disturbances, nightmares and concentration difficulties.¹⁰ The present study findings on the sequelae of torture are in accordance with those reported in such previous studies.

The present research is one of the few documented studies on torture methods and sequelae in Sri Lanka. Therefore, it better informs our understanding of this particular variety of violence within the Sri Lankan cultural context. This study informs that torture is prevalent in Sri Lanka, even in these modern times. The results also corroborate the findings of previous studies on

Table 3. *Physical sequelae.*

Sequelae	Frequency
Body aches	32%
Chest pain	26%
Abdominal discomfort	26%
Headache	22%
Impaired vision	19%
Back ache	14%
Painful soles	13%
Skin infections	7%
Pain in the genitals	6%
Dizziness	6%
Impaired hearing	6%
Difficulty in breathing	3%
Numbness	3%
Tremors	2%
Body wounds	2%

Table 4. *Psychological sequelae.*

Sequelae	Frequency
Anxiety	32%
Fear (of being tortured in the future)	27%
Sleep disturbances	26%
Depression	13%
Nightmares	11%
Decreased energy	6%
Difficulty in concentrating	4%
Uncontrollable anger	4%
Loss of memory	3%
Sexual difficulties	2%
Loss of appetite	2%
Social withdrawal	1%

the sequelae of torture and are useful when designing rehabilitation services within the unique cultural context of Sri Lanka.

A limitation of the present study however is that there may have been a loss of information because of the subjective meaning of an episode of torture.¹¹ For instance, certain forms of verbal or physical violence, such as swearing or slapping, although classified as torture in this study, might have been perceived as “mistreatment” by some torture survivors, and thus not reported. Further, verification of the reported torture experience was difficult, and thus had to be taken at “face-value” of its accuracy. Even if witnesses were present, locating them and obtaining evidence would have been difficult and perpetrators would be unlikely to confirm the experience of torture.

Another limitation of the study was that factors such as the person’s cultural, religious and political ideology, age, individual coping strategies and pre-morbid personality may have affected the individual’s response to torture and thus the subsequent psychopathology reported at the time of the study.¹² Therefore, some of the psychological as well as the physical sequelae of torture reported here may have resulted from a combination of these factors rather than only from the simplistic conclusion that it resulted as a direct consequence of the torture experience. In addition, the pre-morbid personality may not be recognised on survivors of torture.¹²

As the present study shows, physical and psychological torture is taking place in Sri Lanka and torture survivors experience physical and psychological after-effects associated with the torture experience. A multidisciplinary treatment approach within the unique cultural and social milieu of Sri Lanka would need to be considered when designing intervention programmes for

torture survivors. This is especially relevant in the field of psychological interventions, as the concept of psychotherapy is relatively new in Sri Lanka though firmly established in most Western countries.¹³

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Consequences among protest survivors of 2006 in Nepal

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Abstract

This study is based on the secondary data gathered from various health institutions, human right organizations, a political party and news agencies in Nepal.

The Centre for Victims of Torture has its own primary data of traumatized victims from the mobile medical rescue team and from observing for human rights violations. There have been gross human rights abuses. Even the rescue team was not found to be safe from the incident. Moreover, the head and neck along with the vital organs of the body were made the target. The injured people were managed in different hospitals. Many victims suffer from the aftermath of this brutality through combat fatigue, also called acute crisis reaction. They are in need of comprehensive rehabilitation in the form of medical, psychological and social assistance.

Key words: consequences, protestors, victims, acute crisis reaction, rehabilitation

Introduction

Many people were injured and killed in the

peaceful rally organized by the seven party alliance, civil society, and the Nepal Communist Party (Maoist), which took place from Chaitra 23, 2062 BS (April 5, 2006) to Baisakh 13, 2063 BS (April 26, 2006). To date it is the largest movement in the history of Nepal.

Many health sectors, the mobile rescue team, the Red Cross Society, the United Nations, human rights' organizations, and volunteers from Nepal and around the world have been involved in the rescue of the protestors.^{1,2} The Centre for Victims of Torture (CVICT), one of the leading organizations in the field of rehabilitation of torture and trauma survivors was involved with three principle objectives: Rescue of the injured through the medical team, observation for human rights violations and an outcome assessment of trauma survivors.³

Results

Data collection and analysis was performed quantitatively, using simple random sampling.

According to various news agencies, it is assumed that about 6000 people were victims of trauma and 21 people were killed. A sample from the analysis of trauma survivors taken at the following treatment centers shows a total of 1211 documented victims (Table 1).^{1,2,4,5}

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Table 1. Number of trauma survivors at treatment centres. ⁵⁻¹²

Treatment Centre	Frequency
B&B Hospital, Kathmandu	24
Binayak Nursing Home, Kathmandu	317
Centre for Victims of Torture, Nepal	140
Kathmandu Model Hospital, Kathmandu	520
Kathmandu Medical College, Kathmandu	24
Medicare Nursing Home, Kathmandu	27
Nepal Medical College, Kathmandu	3
Nepal Orthopedic Hospital, Kathmandu	13
Om Hospital & Research Centre, Kathmandu	12
TU, Teaching Hospital, Kathmandu	131
Total No. of Victims	1211

Table 2. Data of the torture victims.

Age (year)	%
< 15	6.9
16–30	60.4
31–45	24.7
46–60	7.1
> 60	0.8
Site of injury	%
Head and neck	39.2
Upper and lower limbs	44.8
Thorax and spine	14.1
Abdomen and pelvis	2
Total	100
Sex wise distribution	%
Males	90.9
Females	9.1

All data was recorded and analyzed using the SPSS 10 WINDOWS programme. The findings (Table 2) show the age group 16-30 years as being the largest in number. This is significant as this is the productive age group that is most prone to become incapacitated and dependant due to a handicap. The male/female ratio shows males are more involved and made targets for victimization, but females are not completely safe from the trauma.

39.2% of the victims received head and neck injuries, while 14.1% sustained thorax and spine injuries. 2% had abdomen and pelvis injuries and 44.8% injury to limbs (Table 2). We can therefore see that vital organs are made the target for physical assault by the security forces.

The mode of assault predominantly included tear gas, rubber bullets and the lathi charge. In some instances metallic bullets were used as well. Many victims sustained injury in the stampede. In many instances physical assault also included the random beating of a victim by groups of police, with the objective of preventing the person from attending the next protest.

The newly formed government has

promised compensation to the victims in the form of treatment, employment, education and income generation programmes.

Physical consequences

Early consequences such as abrasions, bruises, lacerations, wounds, fractures, and dislocations, are injuries that could be healed by effective treatment and the natural course of healing. But the late sequels will remain in the form of scars, infections, mal-united bones, deformity, disfiguration, mutilation of body parts/amputation, impairment of vision and hearing, broken teeth, muscle atrophy, chronic pain, gait abnormality, hyper or hypo mobility of joints, and the dysfunction of various body parts.^{13,14}

Psychological consequences

There are many psychological sequels. The important ones are: acute crisis reaction, post-traumatic stress disorder, anxiety disorder, depressive illness, headaches, sleep disturbances, memory problems, lack of concentration, decreased self esteem, seizures, and alcohol and substance abuse.

Acute crisis reaction is of special interest in a time of war crisis. Following over-

whelming traumatic experiences, three types of symptoms have been recognized:

1. Re-experiencing of the torture events in intrusive memories as unwanted recollections of the incident in the form of distressing images, nightmares and flashbacks.
2. An attempt to avoid reminders of the torture events including person, place and even thoughts associated with the events.
3. Increased arousal resulting in loss of sleep, irritability, emotional blunting, detachment from other people, being unresponsive to surroundings and exaggerated startle response.

In addition, those victims mentally impaired have to face the social stigma of criticism. They are in need of comprehensive rehabilitation in the form of extensive medical, psychological and social assistance. The health care delivery system in Nepal is equipped to offer medical services, but psychosocial intervention is still required for the victims, even if it is not developed well.^{15,16} CVICT has staff available for various types of psychosocial interventions as well as psychosocial counselors, however this may not be adequate depending on the flow of victims.

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Sir,

Since your publication in June of 2006 of our article “Psychology and U.S. psychologists in torture and war in the Middle East” on the use of the Stanford Prison Experiment as the basis for the torture at Abu Ghraib and other prisons,¹ I learned of the following on the website of the American Psychological Association.² It is direct proof that the U.S. military knows, beyond its psychologists, that constructing prison situations like Abu Ghraib will result in torture. To quote from the website:

“A video documentary of the study, *Quiet Rage: the Stanford Prison Experiment*, has been used extensively by many agencies within the civilian and military criminal justice system ... It is also used to educate role-playing military interrogators in the Navy SEAR program (SURVIVAL, EVASION, AND RESISTANCE) on the potential dangers of abusing their power against others who role-playing (sic) pretend spies and terrorists”.³

Instructing the military on the dangers of certain situations leading interrogators

to torture their own military is one thing. But they then know that creating situations like Abu Ghraib will lead to torture without instructions to do so. Neither U.S. military interrogators, nor its psychologists, its other health workers, nor high-ranking officers and Administration civilian officials protest or change Iraqi prison “situations”. Thus the torture is deliberate policy, and has so far provided deniability to the public. Being told not to torture in such prisons does no good without objective outside supervision from international agencies – as even the original experiment showed us in 1971.

I should note in conclusion that my findings are not intended to implicate Professor Zimbardo in the Pentagon’s misuse of his science; he has in fact publicly stated that he has been concerned this could happen.

*Gerald Gray, LCSW**

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