Lesson Series 55

Reparation as an effective remedy for human rights abuse

Summary

This lesson looks at the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

Among the elements making up effective reparation are compensation, judicial sanctions and public acknowledgment of the violation suffered. The lesson also briefly examines the situation in Asia, where reparation for human rights abuse is far from satisfactory.
Theme: Reparation as an effective remedy for human rights abuse

The Issue

Reparation for human rights abuse is very important. In fact, it is a key component of the effective remedies states are obligated to provide to victims of violations. Not only does it serve as an acknowledgment of the wrong suffered by individual victims and a means to compensate for this wrong, it also requires both the individual perpetrator and the state to take responsibility for the wrongs.

Reparation should include monetary compensation as well as medical, psychological and social assistance. Most importantly perhaps—although frequently overlooked, particularly in Asia—it must also include access to justice: legal means of addressing the violation and ensuring it does not happen again.

The Lessons

The lessons in this series will discuss international principles regarding victims’ rights to remedies and reparations for human rights violations, as well as specific cases from Asia.

Lesson 1 gives an overview of the UN Basic Principles and Guidelines on remedies and reparations for human rights violations.

Lesson 2 discusses the situation of reparation and remedies in a few Asian countries.
Lesson 1

This lesson will outline the main provisions of the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. These principles were adopted as a General Assembly resolution of March 2006. Additional international and/or national jurisprudence will also be included to elaborate on the UN principles where relevant.

(All text in italics below is taken from the UN Basic Principles and Guidelines.)

Victims' right to remedies

Most international jurisprudence requires that state parties make reparation to individuals whose rights have been violated. The common article 2 of both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)—cornerstones of international human rights law—obliges states to provide effective remedies to victims of abuse. This includes investigation into human rights violations, prosecution of the perpetrators and giving reparation to the victims. Similar provisions are found in other international and regional instruments, such as the Convention against Torture (CAT), the Geneva Conventions, the Rome Statute, the African Charter on Human and People’s Rights, the American Convention on Human Rights and the European Convention on Human Rights.

While international law requires state to provide effective remedies, it does not always spell out the mechanics of providing reparation to victims. For this reason, the preamble to the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation notes that the purpose of the document is to “identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law”.

11. Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim’s right to the following as provided for under international law:

(a) Equal and effective access to justice;
(b) Adequate, effective and prompt reparation for harm suffered;
(c) Access to relevant information concerning violations and reparation mechanisms.

It is important to remember that both justice and reparation constitute an effective remedy; neither one precludes the other.
Reparation

Reparation comprises of individual and collective measures to address the wrongs suffered by victims of human rights abuse. These include access to justice, as well as measures providing moral reparation, such as formal recognition of state responsibility, commemoration activities and the erecting of monuments, as well as pecuniary—financial—compensation. The right to reparation is therefore classified into four components: restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition.

15. Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.

16. States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.

17. States shall, with respect to claims by victims, enforce domestic judgements for reparation against individuals or entities liable for the harm suffered and endeavour to enforce valid foreign legal judgements for reparation in accordance with domestic law and international legal obligations. To that end, States should provide under their domestic laws effective mechanisms for the enforcement of reparation judgements.

18. In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Restitution

19. Restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property.
According to the Inter-American Court of Human Rights, full restitution includes “the restoration of the prior situation, the reparation of the consequences of the violation, and indemnification for patrimonial and non-patrimonial damages, including emotional harm” (Godínez Cruz v. Honduras, Series C No. 8, Compensatory Damages, Judgment of 21 July 1989).

Furthermore, the Court has noted that when full restitution for the injury suffered is not possible, given the irreversible nature of the damages suffered, “under such circumstances, it is appropriate to fix the payment of ‘fair compensation’ in sufficiently broad terms in order to compensate, to the extent possible, for the loss suffered” (Velásquez Rodríguez case, Interpretation of the Compensatory Damages Judgment, 17 August 1990).

**Compensation**

20. Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

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

It is made clear that the right to compensation includes pecuniary and non-pecuniary damages. This right is recognized in a range of international and regional instruments, including the ICCPR, CAT and the Rome Statute. In particular, these instruments stress the need for ‘appropriate’ compensation to victims, proportionate to the gravity of the violations suffered. For this reason, in Wilson v. the Philippines, the Human Rights Committee observed that “As to the violations of articles 7 and 10 suffered while in detention... compensation due to the author should take due account both of the seriousness of the violations and the damage to the author caused” [Albert Wilson v. Philippines, Communication No. 868/1999, November 2003].

The right to fair compensation by the Inter-American Court of Human Rights has been interpreted to refer to compensatory and not punitive damages. It is for this reason that non-pecuniary damages are included, referring to the victim’s pain, suffering, mental anguish, humiliation and lost enjoyment of life. This was recognized by the Sri Lankan Supreme Court:
"...it is not a punitive element that must enter into the enhancement of compensation payable, but the need to assuage the Petitioner’s hurt feelings by a recognition of the enormity of the wrong complained of... this Court acknowledges the seriousness of the harm done and that it has tried to establish some reasonable relation between the wrong done and the solatium applied" [Saman v. Leeladasa, SC Application No. 4/88, 1989].

The Inter-American Court has further noted that, “It is obvious to the Court that the victim suffered moral damages, for it is characteristic of human nature that any one subjected to the kind of aggression and abuse proven in the instant case will experience moral suffering. No evidence is required to arrive at this finding” [Loayza Tamaya case, Series 2 No. 42, Reparations, Judgment of 27 November 1998]. In other words, non-pecuniary damages can be awarded even in the absence of any proof of abuse.

International standards, including those flowing from the right to an effective remedy under article 2(3) of the ICCPR, do not prescribe any fixed or specified quantum for specific kinds of violations or injuries resulting thereof. It is for national courts or bodies to determine the amount of compensation that is appropriate in the case, which includes taking into account the relevant circumstances and factors, such as the economic situation of the country concerned and comparable awards. At the same time, relevant international standards must also be considered; ultimately, any compensation prescribed by law or awarded in practice must be appropriate, must reflect the seriousness of the violation and the harm suffered. This has been made clear from the jurisprudence and practice of international human rights treaty bodies, including the Human Rights Committee.

Rehabilitation

21. Rehabilitation should include medical and psychological care as well as legal and social services.

It is essential that victims are socially reintegrated into society, whether through medical, legal or social means. In fact, when victims are rehabilitated, they can become important voices for change. (See HRCS Lesson Series 53 for further details.)

Satisfaction and guarantees of non-repetition

22. Satisfaction should include, where applicable, any or all of the following:

(a) Effective measures aimed at the cessation of continuing violations;

(b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim’s relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;

(c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance
with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;

(d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;

(e) Public apology, including acknowledgement of the facts and acceptance of responsibility;

(f) Judicial and administrative sanctions against persons liable for the violations;

(g) Commemorations and tributes to the victims;

(h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

23. Guarantees of non-repetition should include, where applicable, any or all of the following measures, which will also contribute to prevention:

(a) Ensuring effective civilian control of military and security forces;

(b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;

(c) Strengthening the independence of the judiciary;

(d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;

(e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;

(f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;

(g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;

(h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

While addressing specific immediate needs of the victims—such as burial of bodies or judicial sanctions against the perpetrators—satisfaction and non-repetition also contribute to the longer term restorative aims of
reparations. Moreover, they fall under the long term responsibility of the state to ensure that such human rights violations will not recur.

A central component of satisfaction is public acknowledgment of the violation. According to the former special rapporteur on the right to restitution, compensation and rehabilitation,

“This is not simply the right of any individual victim or closely related persons to know what happened, a right to the truth. The right to know is also a collective right, drawing upon history to prevent violations from recurring in the future. Its corollary is a “duty to remember”, which the State must assume, in order to guard against the perversions of history that go under the names of revisionism or negationism; the knowledge of the oppression it has lived through is part of a people’s national heritage and as such must be preserved. These, then, are the main objectives of the right to know as a collective right” [Quoted in Redress Trust, ‘Audit Project: A Survey of the Law and Practice of Reparation for Torture in 30 Countries Worldwide’, April 2003, p. 22].

In other words, proper investigation of the violation, holding the perpetrators to account, commemorating the victims and acknowledging the violation in relevant historical and legal material, are all actions to be taken by states where applicable. Much can be learnt from the people of Kwangju, South Korea who took great pains to ensure that the massacre of May 1980 was not forgotten in the country’s struggle for democracy and human rights. (See HRCS Lesson Series 37 for details.)

In many countries, independent inquiry commissions are sometimes set up to look into particular gross human rights violations. When set up in an impartial and effective manner, these can serve to not only document human rights violations as historical records, but can serve justice to society. (For further study, see HRCS Lesson Series 44 on human rights documentation and HRCS Lesson Series 34 on truth commissions.)

Ultimately, all of these actions will serve as the path to guarantee that such violations do not occur again.

Questions For Discussion

1. Discuss the strengths and weaknesses of the UN Basic Principles and Guidelines on reparation and remedies, as well as other relevant international jurisprudence.
2. What mechanisms are available in your own country/region regarding remedies and reparations of gross human rights violations? How do they compare to international standards?
Lesson 2

This lesson discusses the available remedies and reparations for human rights abuse in Asia. It also looks at a petition being prepared on inadequate reparation and remedy submitted by a Sri Lankan citizen under the Optional Protocol to the ICCPR.

A. Lack of effective remedies

Most Asian countries have institutionalized impunity. This means that state officials are rarely prosecuted and punished for their abuse of human rights; in other words, no effective remedies exist, including reparations. In turn, this encourages further abuse of rights. This is the case even though countries are party to international human rights covenants and some even have corresponding domestic legislation, however inadequate. Even when laws exist, they are not properly enforced. (For more information, see HRCS Lesson Series 40.)

London based human rights group REDRESS notes the following regarding torture provisions in certain Asian countries:

South Asia (India, Nepal and Sri Lanka)
Despite the fact that impunity is institutionalised (at least until recently in Sri Lanka) in the three South Asian Countries investigated, surprisingly, victims of torture have sometimes been successful in obtaining reparation. In India and Sri Lanka this is due to an impressive jurisprudence that has been developed by the Supreme Courts. However, time limits for submitting complaints are still woefully short and the compensation awarded low. Steps are being taken in all three countries, with varying degrees of success, to introduce safeguards against torture but these are seen as less than radical. While Nepal has enacted specific legislation allowing survivors to claim compensation, the act has serious shortcomings: few claimants have been successful and compensation has been inadequate. Although the domestic judiciary has been largely responsible for the reparation rights that exist, the region, particularly India, continues to suffer from the absence of access to regional or international complaints mechanisms.

East and South East Asia (China, Indonesia, Japan and Philippines)
The countries in East and South East Asia differ widely from one another in their provisions for reparation. Impunity remains widespread, although some reparation cases have been successfully fought in China and the Philippines. In none of the four countries included in the study have the highest courts interpreted their respective constitutions as empowering them to provide reparation for torture. In those countries with statutory legislation on the right to compensation, the acts are deficient and in the case of the Philippines, the absence of State liability for official human rights violations and the requirement for the State’s consent for any legal action is in contravention of international obligations to grant an effective
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remedy. In Indonesia, despite new laws, there has been an almost complete absence of reparation for the large number of survivors of past and more recent torture.

Perhaps the one common feature of this region is the large discrepancy between law and practice. Again the lack of regional human rights mechanisms and the refusal, in practice, to submit to individual complaints mechanisms, leaves survivors with extreme difficulties in gaining any reparation [Audit Project: A Survey of the Law and Practice of Reparation for Torture in 30 Countries Worldwide, p. 43].

Enforced disappearance is one gross human rights abuse that no country in Asia has criminalized, which largely means there is no way to make a complaint regarding a disappeared person, or to claim reparations. Unlike Sri Lanka, which allows for fundamental rights applications based on the constitution in the Supreme Court, most other Asian countries do not have similar mechanisms through which basic human rights violations can be heard. The Philippines has a writ petition system and India allows for public interest litigation; however, none of these are adequate in addressing grave human rights abuses.

As noted in article 11 of the UN Basic Principles and Guidelines, reparations for human rights violations include a judicial remedy—prosecution and punishment of the perpetrators. What commonly occurs throughout the region however, are the following two scenarios: one, reparations or remedies are seen as merely compensation, without any prosecution of the perpetrators; and two, compensation is paid as part of a criminal indictment. The first scenario makes no distinction between judicial and non-judicial remedies, even though a judicial remedy is a fundamental tenet of international human rights law. This can include a country’s national human rights body making recommendations for compensation, or even a country’s apex court awarding compensation for fundamental rights violations without any criminal action taken against the perpetrators. The second scenario indicates that where no judicial remedy is available (due to the lack of legislation for instance), there is no compensation either.
B. Inadequate reparation for Sri Lankan victim Palitha Tissa Kumara


Koralaliyanage Palitha Tissa Kumara, a prominent 31-year-old artisan and father of two took leave from his work restoring two historic houses on 2 February 2004 and returned to his home at Halwala, Matugama the same night.

About 8:30am the next day, February 3, a police jeep and Pajero arrived at Tissa Kumara’s house. There were four officers in the jeep and six officers in the Pajero. Sub Inspector (SI) Silva and the driver got out of the Pajero. P Rajitha, his wife, describes what happened next:

One of them said to me, “Call Tissa Kumara out, we want him to make a sign for us.” Therefore, I called for my husband, whom I refer to as Palitha. When Palitha came out SI Silva assaulted and kicked him right before my eyes. SI Silva also shouted at him in obscene language. Then the police pushed my husband into the back of the police jeep and threw his shirt onto him. When I queried why my husband was being arrested, I was also scolded in obscene language. The police jeep left with Palitha inside.

The police then went to the house of Galathara Don Shantha at Galathra junction. Mr Galathara was also brought out of his house, and put in the jeep. Several other young people were picked up on the way back to Welipenna police station.

After arriving at the police station, the police took Tissa Kumara to SI Silva’s room, and he was told to sit on the floor. The other persons were taken to the cells. A little later, Galathara was brought in and made to sit opposite him. Then SI Silva took a cricket post and started hitting Tissa Kumara repeatedly, between the shoulders. While hitting him, he told Galathara, “Look—this is how the others will also be treated.” He pulled up Tissa Kumara and kept hitting him hard all over his body.
P Rajitha recalls what her husband told her later had been done to him:

There were several others who had also been arrested along with my husband on suspicion of robbing a boutique nearby. However the others had confessed to their involvement, so they had not incurred the wrath of the police. Palitha refused to confess, as he was not involved. One Sarath had been apprehended on suspicion and had falsely implicated Palitha as revenge [thinking that Tissa Kumara was somehow to blame for his arrest].

My husband told me that SI Silva severely assaulted him, demanding information and shouting, “Give me the bombs, give me the weapons and tell about the robbery.” He had been beaten all over his body, especially over the chest and heart. While hitting Palitha on the heart SI Silva had remarked, “I am going to kill you.” After each beating, Palitha had also been dragged and soaked with cold water. He also said that SI Silva made Sarath, who was a co-suspect in the case for which Palitha was arrested, and who had been suffering from tuberculosis, spit into my husband’s mouth, saying, “You too will be dead within two months from today due to TB.”

After the spitting incident, another policeman had given Palitha some water with which to rinse his mouth. This same policeman had taken pity on him and given him a mattress to sleep on. However SI Silva had subsequently arrived and had taken the mattress away, thus forcing my husband to spend the night on the floor.

The beating went on for possibly two hours, and in that time Tissa Kumara recalls being hit about 80 times, on all parts of his body, soaking his clothes with blood. The blows were often so forceful and wild that the officer also hit and smashed an electric bulb on the ceiling. Throughout this time, Galathara was watching in terror. Tissa Kumara noticed that he had involuntarily urinated on seeing the manner in which he was beaten up. After this, even other officers became concerned at the relentless beating and savagery of the attack. Another came in and said to SI Silva, “Are you trying to kill this man? Stop this hitting.” However, he did not stop. Then the officer left and came back with about eight other officers, and one of them literally had to pull the cricket post out of SI Silva’s hands. It was after this that SI Silva brought Sarath and forced him to spit into Tissa Kumara’s mouth, the victim all the while pleading for him not to do this, saying that he would catch the disease and spread it to his wife and children, but to not avail...

Tissa Kumara was first kept in the cell for about three days. In that time he often vomited, and could not eat or drink. He could not even urinate in the corner hole, despite attempts by Galathara,
who was locked in the same cell, to help him. Each time he tried to stand up, severe pain in his right ear caused dizziness and disorientation. On the third day SI Silva came and told him to get up, raise his arms and bend down. He found it very difficult, and so the officer punched him in the chest about 13 times, and once in the face. While punching him he said, pointing, “This is where your heart is and I am hitting so that you will die in two months.” On another occasion SI Silva came and handcuffed Tissa Kumara to a bar of the cell door, and then pulled the door open and shut, injuring his wrist...

On February 5, some officers took Tissa Kumara to Itthapana District Hospital. The doctor who examined him refused to admit him because his injuries were too serious. The police brought him back to the station and then again took him to the hospital, to be examined by another doctor, who also said he could not be admitted there. After that the police took Tissa Kumara to the Wetthawa Government Hospital, where he was likewise refused admission. But while there, a lawyer came and met him and talked to the police officers, after which he followed them back to the station. The lawyer demanded the police bring Tissa Kumara before a magistrate, and waited for some time at the station. However, eventually he came to the cell and told Tissa Kumara that it did not seem that the police would bring him before a magistrate and because of other commitments he had to leave.

That night SI Silva came back to the cell and took a grenade out of its packing. Then he pulled Tissa Kumara’s hand through the bars and took his thumbprint with warm ceiling wax, which he in turn he planted on the grenade. He took down Tissa Kumara’s personal details and came back with a statement that he forced him to sign, without explaining anything of the contents. He also fingerprinted him.

In the morning of February 6 Tissa Kumara was again taken to Wetthawa Government Hospital, but he received no treatment and was kept handcuffed while the police went to get a signature on some documents from one person there. Then the officers brought him back to the police station. At about 5:30pm he was taken to an office in the Magistrates Court of Matugama, where he was produced with several others before an acting magistrate. Tissa Kumara told the acting magistrate
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That he was severely assaulted and that his thumbprint had been planted on a grenade, and asked for medical treatment. A lawyer appearing on his behalf requested that he be examined by a Judicial Medical Officer (JMO), which the acting magistrate duly recorded. After the hearing, Tissa Kumara was taken to Kalutara Remand Prison and admitted to the prison hospital...

On February 10 Tissa Kumara was again brought before a magistrate, and on February 12 he was taken to a JMO at the General Hospital of Colombo. Several doctors examined and noted his injuries, took X-rays and photographs. The JMO instructed that he be brought for further examinations.

The police filed two fabricated cases against Tissa Kumara, for possession of a grenade and for robbery. Although he complained to the Human Rights Commission of Sri Lanka (HRC) and National Police Commission (NPC), he did not obtain any immediate relief; instead, he was remanded at Kalutara Remand Prison, where he received no treatment.

Subsequently, Tissa Kumara filed a fundamental rights application at the Supreme Court against Sub Inspector Silva and others, alleging that his right under article 11 of the Sri Lankan constitution, not to be tortured, had been violated. This petition was decided on 17 February 2006. The Court decided that Sub Inspector Silva had indeed violated Tissa Kumara’s right not to be tortured and directed him to pay the sum of Rs 5000 (USD 44) as compensation, while the State was ordered to pay a sum of Rs 20 000 (USD 176).

As Sri Lanka is party to the Optional Protocol of the ICCPR—article 2 of which clearly states that reparation should be paid to victims of rights violations, without which no effective remedy is possible—its citizens are enabled to make individual complaints to the body. In consultation with the AHRC, a submission on behalf of Tissa Kumara is being prepared to note that ‘the amount of compensation awarded by the Supreme Court does not reflect the seriousness of the violation and is not an adequate form of reparation as required by the provision of article 2 of the ICCPR’. Moreover, it ‘violates the substantive aspect of the complainant’s right to an effective remedy’.

In particular, it is noted that the compensation of Rs 25 000 awarded by the Court ‘is likely to have consisted of non-pecuniary or moral damages only. However, international jurisprudence recognises pecuniary damages based on loss or harm to the victim’s earnings’ as an element of compensation. Although Tissa Kumara did not initially advance a specific amount to be considered by the Court as pecuniary damages, he did request the
amount to ‘take into consideration the future consequences of the physical and psychological harm caused to the complainant as a result of the torture’. His injuries indicated that he would not be in a position to engage fully in his profession as artisan during his recovery.

An analysis of the jurisprudence of Sri Lanka’s Supreme Court in torture cases from 2000 to the present shows that in 2000, Rs 25 000 was the lowest amount of compensation awarded, with several awards of Rs 100 000 and more. In the case of Angeline Roshana, the Supreme Court found that respondents had unlawfully arrested the petitioner, had held her for two days and had severely beaten her in custody, thereby violating the prohibition of unlawful arrest (article 13) and the prohibition of torture (article 11) under Sri Lanka’s Constitution. The Supreme Court awarded Rs 100 000 as damages [SC (FR) Application No. 1/2001, 2002]. The highest award for torture (excluding death in custody cases) has been Rs 800 000 in the case of Gerald Perera. In this case of mistaken identity, the petitioner was unlawfully arrested and severely tortured by several police officers, resulting in life threatening injuries. The Supreme Court found a violation of articles 11 and 13 of the Sri Lankan Constitution and awarded Rs 800 000 [SC (FR) Application No. 328/2002, 2003].

Since 2004-5, there has been a marked decrease in the awards in torture cases. In the case of Brahmanage Arun Sheron Suranga Wijewardana, the petitioner was unlawfully arrested, beaten up by several police officers, including with a pipe, and forced to put his face into the toilet opening which was then flushed. The Supreme Court awarded him Rs 12 000 [SC (FR) Application No. 553/2002, 2005].

All three cases described above, as well as the case of Tissa Kumara, concern torture resulting in serious or severe injuries. Given that the Supreme Court awards compensation essentially for non-pecuniary damages, it is not apparent how the large discrepancies of awards can be justified in light of the substantial pain and suffering in all cases, even when accounting for the especially serious nature of the conduct and injuries in such instances as the Perera case.

Moreover, the amount of Rs 25 000 awarded to Tissa Kumara, which was the minimum amount awarded by the Supreme Court in 2000, indicates a failure to take national economic realities into account. Official statistics noted that Sri Lanka’s average household monthly expense in 2006 was Rs 22 671. The country’s rising inflation rate—11.6 in 2005 and 13.7 in 2006—has resulted in a considerable increase in the cost of living. The amount of Rs 25 000 awarded in 2006 is thus worth significantly less than it was over five years ago. More importantly, an amount equivalent to the average monthly household expense for police torture resulting in a series of injuries, including a bone fracture, is clearly insufficient to account for the pain and suffering and to remedy the future consequences that can be expected to result from the torture. It also fails to confer symbolic acknowledgment of the seriousness of the violation.
For these reasons, the submission under the Optional Protocol is to suggest that the amount of compensation should be increased to at least USD 4000, which would not only reflect the seriousness of the torture inflicted, but would also provide appropriate compensation as required by the right to an effective remedy.

Furthermore, the Human Rights Committee is suggested to request the Supreme Court to make rules regulating its practice and procedure, as it has the power to do under the Constitution, with a view to ensuring transparency, consistency and appropriateness of its compensation awards in fundamental rights cases.

Questions For Discussion

1. Discuss how you would go about obtaining reparations in your country context. Are you aware of individuals who required/obtained reparation from the state? Was it adequate?
2. In the case of Tissa Kumara, what elements would constitute an effective remedy in your opinion? Which of these elements have been met in his case?

References
