

Annex

BASIC PRINCIPLES AND GUIDELINES ON THE RIGHT TO  
REPARATION FOR VICTIMS OF GROSS VIOLATIONS OF  
HUMAN RIGHTS AND HUMANITARIAN LAW

The duty to respect and to ensure respect for human rights and humanitarian law

1. Under international law every State has the duty to respect and to ensure respect for human rights and humanitarian law.

Scope of the obligation to respect and to ensure respect for human rights and humanitarian law

2. The obligation to respect and to ensure respect for human rights and humanitarian law includes the duty: to prevent violations, to investigate violations, to take appropriate action against the violators, and to afford remedies and reparation to victims. Particular attention must be paid to the prevention of gross violations of human rights and to the duty to prosecute and punish perpetrators of crimes under international law.

Applicable norms

3. The human rights and humanitarian norms which every State has the duty to respect and to ensure respect for, are defined by international law and must be incorporated and in any event made effective in national law. In the event international and national norms differ, the State shall ensure that the norm providing the higher degree of protection shall be applicable.

Right to a remedy

4. Every State shall ensure that adequate legal or other appropriate remedies are available to any person claiming that his or her rights have been violated. The right to a remedy against violations of human rights and humanitarian norms includes the right of access to national and international procedures for their protection.

5. The legal system of every State shall provide for prompt and effective disciplinary, administrative, civil and criminal procedures so as to ensure readily accessible and adequate redress, and protection from intimidation and retaliation.

Every State shall provide for universal jurisdiction over gross violations of human rights and humanitarian law which constitute crimes under international law.

Reparation

6. Reparation may be claimed individually and where appropriate collectively, by the direct victims, the immediate family, dependants or other persons or groups of persons connected with the direct victims.

7. In accordance with international law, States have the duty to adopt special measures, where necessary, to permit expeditious and fully effective reparations. Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

8. Every State shall make known, through public and private mechanisms, both at home and where necessary abroad, the available procedures for reparations.

9. Statutes of limitations shall not apply in respect of periods during which no effective remedies exist for violations of human rights and humanitarian law. Civil claims relating to reparations for gross violations of human rights and humanitarian law shall not be subject to statutes of limitations.

10. Every State shall make readily available to competent authorities all information in its possession relevant to the determination of claims for reparation.

11. Decisions relating to reparations for victims of violations of human rights and humanitarian law shall be implemented in a diligent and prompt manner.

#### Forms of reparation

Reparations may take any one or more of the forms mentioned below, which are not exhaustive, viz:

12. Restitution shall be provided to re-establish the situation that existed prior to the violations of human rights and humanitarian law. Restitution requires, inter alia, restoration of liberty, family life, citizenship, return to one's place of residence, employment of property.

13. Compensation shall be provided for any economically assessable damage resulting from violations of human rights and humanitarian law, such as:

- (a) Physical or mental harm, including pain, suffering and emotional distress;
- (b) Lost opportunities including education;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Harm to reputation or dignity;
- (e) Costs required for legal or expert assistance.

14. Rehabilitation shall be provided and will include medical and psychological care as well as legal and social services.

15. Satisfaction and guarantees of non-repetition shall be provided, including, as necessary:

- (a) Cessation of continuing violations;
- (b) Verification of the facts and full and public disclosure of the truth;
- (c) An official declaration or a judicial decision restoring the dignity, reputation and legal rights of the victim and/or of persons connected with the victim;
- (d) Apology, including public acknowledgement of the facts and acceptance of responsibility;
- (e) Judicial or administrative sanctions against persons responsible for the violations;
- (f) Commemorations and paying tribute to the victims;
- (g) Inclusion in human rights training and in history textbooks of an accurate account of the violations committed in the field of human rights and humanitarian law;
- (h) Preventing the recurrence of violations by such means as:
  - (i) Ensuring effective civilian control of military and security forces;
  - (ii) Restricting the jurisdiction of military tribunals only to specifically military offences committed by members of the armed forces;
  - (iii) Strengthening the independence of the judiciary;
  - (iv) Protecting the legal profession and human rights defenders;
  - (v) Improving, on a priority basis, human rights training to all sectors of society, in particular to military and security forces and to law enforcement officials.

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CONSIDERATIONS CONCERNING CRITERIA  
FOR FINANCIAL COMPENSATION TO  
VICTIMS OF TORTURE

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It is generally recognized in treaties and in customary international law that states are liable for damages for gross violations of human rights.

Torture can be defined as such a gross violation, and the responsible persons/states are therefore in principle liable for damages.

On this occasion we will therefore concentrate on the special aspects concerning claims for compensation in connection with the practice of torture.

#### When is a state responsible for the exercise of torture ?

A state is not only responsible when its authorities have given direct orders to practise torture. It is also responsible when a government or the responsible authorities tacitly accept the exercise of torture - in individual cases or as an administrative practice. In this connection we would like to refer to the European Commission of Human Rights' decision in the case against the Greek military junta.

Government sanctioned torture can be defined as torture executed with the knowledge, responsibility, acceptance or approval of the government, as well as situations where torture is initiated or institutionalized by the government.

#### Why should victims of torture be given a considerably larger compensation than victims of other tortious acts ?

- a. The damage has been deliberately inflicted as opposed to e.g. a traffic accident.
- b. Torture is not only a deliberate act - as e.g. violence in general - it has often been carefully planned, most often also in details and in collaboration with others.
- c. The victim is completely helpless - he/she has no authority or doctor from whom he can seek protection.
- d. Those who design torture often have long term goals, and sometimes the torture is executed with the intention of inflicting irreparable damage on the victim, i.e. breakdown of his/her personality.
- e. Being exposed to torture often puts the victim in a very painful situation: Should he/she give the wanted information and put others in danger ?
- f. Being exposed to torture often leaves the victim with a feeling of shame and guilt which is otherwise only known from victims of "civil" rape.

The consequences of torture are not comparable with any other apparently similar medical conditions.

### The late sequelae of torture

Sequelae of torture may appear long time after the torture - an interval of up to 10-15 years has been observed. There should therefore be no time limitation in respect of claims for compensation related to torture and it must be possible to reopen the cases if late sequelae should appear or if the injuries prove to be more serious than originally estimated.

### Assistance to torture victims

Concerning assistance to victims of torture, we would like to refer to:

- Article 14 in the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment\*): *"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 death of the victim as a result of an act of torture, his dependants shall be entitled to compensation."*
- Paragraph 59 in the Vienna Declaration and Programme of Action on Human Rights\*\*): *"The World Conference on Human Rights stresses the importance of further concrete action within the framework of the United Nations with a view to providing assistance to victims of torture and ensure more effective remedies for their physical, psychological and social rehabilitation."*

\*) Ratified by 72 UN Member States

\*\*\*) Accepted by all 183 UN Member States

The UN Committee Against Torture usually refers to the elements of assistance to victims of torture as the three M's:

#### 1. MORAL

Obtain redress (the victim's exemption from false accusations and the just punishment of the perpetrator(s))

#### 2. MONEY

Fair and adequate compensation

#### 3. MEDICAL

Means for as full rehabilitation as possible

re 1. Moral

We will not deal further with this question as we are here to discuss financial rehabilitation.

We would, however, like to emphasize the importance of obtaining redress. This includes dealing with the very serious problem of impunity. It is a general opinion in our rehabilitation movement that although material compensation is of extreme importance, satisfactory rehabilitation can never be fulfilled in a society where impunity exists:

re 2. Money

This point concerns the past, e.g. compensation for sufferings which took place in the past:

a. Compensation for physical and psychological sequelae

This compensation should correspond to existing compensation rules established by legislation or levels of compensation established by the courts in the country in question, but with an addition of at least 50% because torture is a specific trauma which leaves the victim with extremely serious personal injury.

b. Compensation for:

- imprisonment (number of days)
- lost working capacity
- lost seniority
- lost property
- lost values in general

This compensation should follow the normal rules for compensation to other victims.

c. A lump sum should be paid to the victim in consideration of the special nature of the trauma by the country responsible for the torture.

re 3. Medical

This kind of assistance concerns the future and should comprise:

- physical rehabilitation
- psychological rehabilitation incl. family

Here again we would like to underline that the problem of impunity often has an inhibitory effect of the psychological rehabilitation of the victim and his/her family. In fact, as mentioned earlier, this problem makes a satisfactory rehabilitation impossible.

- social rehabilitation including legal help, and help with education, housing, work etc.

Today specific rehabilitation centres and programmes exist where such a rehabilitation can take place. Of course the entire rehabilitation should be free of charge to the victim and his/her family.

### The size of the compensation

Finally we would like to make some special remarks regarding the size of the compensation.

- Material damage: Loss of working capacity, whether the reason is physical or psychological, must be fully compensated. The compensation for disablement should be given as a compensation for permanent injuries, also in cases where it is not possible to prove any loss of income.
- Non-material damage: Compensation should be given for pain and suffering with regard to the special nature of torture - see above - as opposed to other violations of human rights. A compensation should be given which partly ensures the victim a life without material worries, and which partly reflects the state's exceptionally serious responsibility. The compensation should thus contain a considerably penalizing element in addition to what is customary in actions for damages, including other cases/lawsuits concerning inflicted pain and suffering.

If the country in question is bound by international conventions against torture and torture is taking place in that country, it has disregarded its duty to make sure that torture is not taking place; this fact should also be reflected in the demand for a considerable higher compensation in cases related to torture. Both the UN and the Council of Europe have made conventions against torture and this shows that the international society regards the exercise of torture with great seriousness. The size of the compensation should also reflect this seriousness.

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## Damages for Gross Violations of International Human Rights Awarded by US Courts\*

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Cases involving international human rights issues began to be litigated with increasing frequency in US courts during the 1970s.<sup>1</sup> It was not until the landmark decision of *Filartiga v. Peña-Irala*<sup>2</sup> in 1980, however, that the question of obtaining damages from the perpetrators of gross human rights violations first arose. That case produced a judgment of \$10,385,364 against the defendant,<sup>3</sup> and judgments in six other cases decided during the past dozen years have ranged in amount from \$2,707,516 to \$60,004,852.<sup>4</sup> While

\* An earlier version of this Article appeared as a chapter in The Netherlands Institute of Human Rights. Seminar on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms, 225-38 (SIM Special No. 12, 1992). It has been updated and an Appendix has been added for present publication.

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1. See Richard B. Lillich, *The Role of Domestic Courts in Promoting International Human Rights Norms*, 24 N.Y.L. Sch. L. Rev. 153 (1978).

2. 630 F.2d 876 (2d Cir. 1980).

3. See 577 F. Supp. 860, 867 (E.D.N.Y. 1984).

4. In order of amount of damages awarded they are: *Siderman de Blake v. Republic of Argentina*, No. CV 82-1772-RMT(MC), slip op. (C.D. Cal. Sept. 28, 1984) (*rev'd on other grounds*, Mar. 7, 1985) (*rev'd and remanded for further proceedings*, 965 F.2d 699 (9th Cir. 1992)) (\$2,707,515.63); *Trajano v. Marcos*, 878 F.2d 1439 (9th Cir. 1989) (text in WESTLAW), No. 86-0207, slip op. (D. Haw. Mar. 25, 1991), No. 86-0207, slip op. (D. Haw. May 13, 1991) (*aff'd*, 978 F.2d 493 (9th Cir. 1992)) (\$4,407,966.99); *Letelier v. Republic of Chile*, 488 F. Supp. 665 (D.D.C. 1980), 502 F. Supp. 259 (D.D.C. 1980) (assessing damages), 567 F. Supp. 1490 (S.D.N.Y. 1983), No. M18-302, slip op. (S.D.N.Y. Nov. 10, 1983) (motion for certification for appeal under 28 U.S.C. § 1292(b) denied), 575 F. Supp. 1217 (S.D.N.Y. 1983) (order to appoint receiver on behalf of judgment creditors awarded), *rev'd*, 748 F.2d 790 (2d Cir. 1984), *cert. denied*, 471 U.S. 1125 (1985), damages awarded by Chile-U.S. Commission, see 86 Am. J. Int'l L. 346 (1992), 31 I.L.M. 1 (1992) (\$5,062,854.97); *Forti v. Suárez-Mason*, 694 F. Supp. 707 (N.D. Cal. 1988), No. C-87-2058-DLI, slip op. (N.D. Cal. Apr. 20, 1990) (\$8,000,000); *Martinez-Baca v. Suárez-*

at present payment seems certain in only one instance,<sup>5</sup> the unlikelihood of immediate enforcement of judgments has not deterred plaintiffs: suits alleging \$139 and \$120 million damages, for instance, are pending in the United States against former Guatemalan defense minister General Hector A. Gramajo<sup>6</sup> and former Haitian president General Prosper Avril,<sup>7</sup> respectively.

In *Filartiga*, which sparked much of the subsequent human rights litigation in the United States, two Paraguayan plaintiffs brought an action against another citizen of Paraguay for the torture and death of their son and brother. The plaintiffs made their claim under the Alien Tort Statute, a federal law dating back to the Judiciary Act of 1789, which provides that "[t]he district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."<sup>8</sup> Because the United States at the time the action was commenced had not ratified a treaty prohibiting torture upon which the plaintiffs could rely,<sup>9</sup> jurisdiction under the statute necessarily turned upon whether torture violated "the law of nations," i.e., customary international law.

In an unreported decision, the US district court thought itself bound by precedent to hold that "'the law of nations,' as employed in § 1350, [excludes] that law which governs a state's treatment of its own citizens."<sup>10</sup> In short, the court ruled that torture of a Paraguayan by a Paraguayan in Paraguay did not violate customary international law. On appeal, the US court of appeals reversed, holding that "an act of torture committed by a state official against one held in detention violates established norms of the international law of human rights, and hence the law of nations."<sup>11</sup> The court emphasized that "official torture is now prohibited by the law of nations. The prohibition is clear and unambiguous, and admits of no distinction

between treatment of aliens and citizens."<sup>12</sup> Thus federal jurisdiction over the cause of action existed under the Alien Tort Statute.

The *Filartiga* holding that torture constitutes a violation of customary international law has been highly praised by the vast majority of legal commentators.<sup>13</sup> What has been largely ignored in the literature, however, is the important follow-up question to which the court of appeals' opinion makes only passing reference—namely, the choice of law to be applied to determine the defendant's liability and the amount of damages to be awarded.<sup>14</sup> The two issues, often commingled, were distinguished by the court in the following passage:

Pena argues that the customary law of nations . . . should not be applied as rules of decision in this case. In doing so, he confuses the question of federal jurisdiction under the Alien Tort Statute, which requires consideration of the law of nations, with the issue of the choice of law to be applied, which will be addressed at a later stage in the proceedings. The two issues are distinct. Our holding on subject matter jurisdiction decides only whether Congress intended to confer judicial power. . . . The choice of law inquiry is a much broader one, primarily concerned with fairness . . . ; consequently, it looks to wholly different considerations.<sup>15</sup>

The court proceeded no further with its analysis than to note that, "[i]n taking that broad range of factors into account, the district court may well decide that fairness requires it to apply Paraguayan law to the instant case."<sup>16</sup>

On remand, the district court entered a default judgment against the defendant Pena and referred the question of damages to a magistrate. Before the magistrate, the plaintiffs acknowledged that "[t]o the extent this case is viewed as a municipal tort, stripped of its international aspect, the [court of

Mason, No. C-87-2057-SC, slip op. (N.D. Cal. Apr. 22, 1988) (\$21,170,699); and Quiros de Rapaport v. Suárez-Mason, No. C-87-2266-JPV, slip op. (N.D. Cal. Apr. 11, 1989) (\$60,004,852).

5. In *Letelier*, 488 F. Supp. at 665, after a US court assessed damages in the amount of \$5,062,854, the matter eventually was referred to a five-member OAS panel that ordered Chile to pay \$2,611,892. See *Contemporary Practice of the United States Relating to International Law*, 86 Am. J. Int'l L. 346, 347-52 (1992).

6. *Xuncax v. Gramajo*, No. 91-11564WD, slip op. (D. Mass. June 5, 1991).

7. *Paul v. Avril*, No. 91-0399, slip op. (S.D. Fla. May 3, 1991).

8. Judiciary Act, ch. 20, § 9(b), 1 Stat. 73, 77 (1789) (current version at 28 U.S.C. § 1350 (1988)). See generally Anne-Marie Burley, *The Alien Tort Statute and the Judiciary Act of 1789: A Badge of Honor*, 83 Am. J. Int'l L. 461 (1989).

9. While the Senate gave its advice and consent to the Convention Against Torture in 1990 and to the International Covenant on Civil and Political Rights in 1992, Articles 4(1) and 7 of which respectively prohibit torture, the President has ratified only the latter to date. White House Statement on Signing the International Covenant on Civil and Political Rights, 28 Weekly Comp. Pres. Doc. 1008 (June 5, 1992).

10. See *Filartiga v. Peña-Irala*, 630 F.2d 876, 880 (2d Cir. 1980).

11. *Id.* At the time of the act in question the defendant was Inspector General of Police in Asuncion, Paraguay. *Id.* at 878.

12. *Id.* at 884.

13. See, e.g., Jeffrey H. Blum & Ralph G. Steinhardt, *Federal Jurisdiction over International Human Rights Claims: The Alien Tort Claims Act after Filartiga v. Peña-Irala*, 22 Harv. Int'l L.J. 53 (1981); Human Rights Law Symposium, 4 Hous. J. Int'l L. 1 (1981); and Symposium, *Federal Jurisdiction, Human Rights and the Law of Nations: Essays on Filartiga v. Peña-Irala*, 11 Ga. J. Int'l & Comp. L. 305 (1981). Cf. Michael Danaher, *Case Comment, Torture as a Tort in Violation of International Law: Filartiga v. Peña-Irala*, 33 Stan. L. Rev. 353 (1981).

14. *But see*, e.g., Gordon A. Christenson, *The Uses of Human Rights Norms to Inform Constitutional Interpretation*, 4 Hous. J. Int'l L. 39, 46-49 (1981).

15. *Filartiga*, 630 F.2d at 889 (footnote omitted).

16. *Id.* at 889 n.25. Two contemporary commentators thought that the court had adopted "a hybrid approach" to the choice of law issue. Blum & Steinhardt, *supra* note 13, at 97. "Although it formally left the issue open on remand, the Second Circuit appears to have opted for the course of incorporating situs law by reference, at the same time suggesting that the suit might proceed under the law of nations as articulated in the federal common law. The court of appeals indicated that the district court might well choose to apply Paraguay law against battery and wrongful death." *Id.* at 102. They presciently predicted that, "[a]s a practical matter, in any given suit under § 1350, the choice of law may as a result be something of a wild card." *Id.*

appeals'] suggestion that Paraguayan law as opposed to New York law, should govern is consonant with choice of law principles applicable to torts.<sup>17</sup> Given "the international character" of the tort, however, the plaintiffs preferred that the magistrate "look to the practice under international law. This means that the ultimate remedy must satisfy international standards, but that domestic remedies should be taken into account and ignored or supplemented when they frustrate rather than fulfill the goals of the international community."<sup>18</sup> International law, as part of federal common law, therefore was not necessarily to be the rule of decision,<sup>19</sup> but rather a brooding omnipresence capable of trumping Paraguayan law in an appropriate case. This use of international law in the Alien Tort Statute context had been foreshadowed in a perceptive article by Dean Christenson, who urged US courts "to give respect and deference to the law of the place of injury, as well as to international law. . . . The *lex delicti* should not be displaced by using the human rights law against torture as the rule of decision unless the *lex delicti* so departs from these human rights norms that it would upset the peace of nations to apply it."<sup>20</sup>

The district court, in an opinion that remains the most thoughtful, if not definitive, treatment of the applicable law question, prefaced its discussion with the following paragraph:

17. Plaintiffs' Post-Trial Memorandum of Facts and Law at 35, *Filartiga v. Peña-Irala*, 577 F. Supp. 860 (E.D.N.Y. 1984), citing and quoting the *Restatement (Second) of Conflict of Laws* § 145(1) (1971), which states that courts in tort cases should apply the "law of the state which . . . has the most significant relationship to the occurrence and the parties," including the place of injury, the place where the conduct causing the injury occurred, the place of domicile, residence or nationality of the parties, and the place where the relationship of the parties is centered. Applying the Restatement's choice of law approach, a commentator already had concluded that "the *Filartigas'* cause of action should be brought under Paraguayan tort law." Danaher, *supra* note 13, at 362.
18. Plaintiffs' Post-Trial Memorandum of Facts and Law at 44, *Filartiga v. Peña-Irala*, 577 F. Supp. 860 (E.D.N.Y. 1984). The memorandum contains the following footnote to the statement quoted in the text: "Since this Court sits as an enforcer of the law of nations as part of the federal common law, the rules applied by the federal courts in deciding whether to incorporate state law or fashion a wholly independent federal common law also guide this court to applying international principles here." *Id.* at 44.
19. For the view that it should be, see Richard A. Conn, Jr., Note, *The Alien Tort Statute: International Law as the Rule of Decision*, 49 *Fordham L. Rev.* 874, 881-89 (1981).
20. Christenson, *supra* note 14, at 46. An amicus curiae brief before the district court, urging that it award sizeable punitive damages, despite the fact that they were not recognized in Paraguay, employed more traditional choice of law analysis to supplant Paraguayan law. It accepted that under the choice of law rules of the *lex terti* "damages should be assessed under Paraguayan law in the first instance," but noted that Paraguayan law need not be determinative "when the application of such law is inconsistent with the public policy of the forum." Brief of the International Human Rights Law Group as *Amicus Curiae* in Support of Plaintiffs' Objections to the Magistrate's Report at 4, *Filartiga v. Peña-Irala*, 577 F. Supp. 860 (E.D.N.Y. 1984). While it also invoked "the international character" of the tort of torture, it did so as additional evidence that withholding punitive damages would violate the public policy of the forum, not as an international law rule of decision. *Id.* at 7-9.

The Court of Appeals decided only that Section 1350 gave jurisdiction. We must now face the issue left open by the Court of Appeals, namely, the nature of the "action" over which the section affords jurisdiction. Does the "tort" to which the statute refers mean a wrong "in violation of the law of nations" or merely a wrong actionable under the law of the appropriate sovereign state? The latter construction would make the violation of international law pertinent only to afford jurisdiction. The court would then, in accordance with traditional conflict of laws principles, apply the substantive law of Paraguay. If the "tort" to which the statute refers is the violation of international law, the court must look to that body of law to determine what substantive principles to apply.<sup>21</sup>

Examining the origins of the word "tort," the court found that "[t]here was nothing about the contemporary usage of the word in 1789, when Section 1350 was adopted, to suggest that it should be read to encompass wrongs defined as such by a national state but not by international law."<sup>22</sup> Accordingly, it concluded that "it should determine the substantive principles to be applied by looking to international law, which, as the Court of Appeals stated, 'became a part of the common law of the United States upon the adoption of the Constitution.'"<sup>23</sup> Although the district court recognized that "[t]he international law described by the Court of Appeals does not ordain detailed remedies but sets forth norms," it reasoned that "[b]y enacting Section 1350 Congress entrusted that task to the federal courts and gave them power to choose and develop federal remedies to effectuate the purposes of the international law incorporated into United States common law."<sup>24</sup>

The district court therefore found itself directed to international law to determine the rule of decision concerning the damages to be awarded the *Filartigas*.<sup>25</sup> However, despite the belief that "the interests of the global community transcend those of any one state," it did not regard the traditional choice of law principles, which it deemed to be part of the common law of the United States, as entirely irrelevant.<sup>26</sup> "Clearly," it concluded, "the court should consider the interests of Paraguay to the extent they do not inhibit the appropriate enforcement of the applicable international law or conflict with the public policy of the United States."<sup>27</sup> Applying this approach,

21. *Filartiga*, 577 F. Supp. at 862.

22. *Id.*

23. *Id.* at 863 (citing *Filartiga v. Peña-Irala*, 630 F.2d 876, 886 (2d Cir. 1980) and noting that the emphasis was in the court of appeals' opinion).

24. *Id.* at 863.

25. See the last sentence in its prelatory paragraph *supra* note 21. Since a default judgment already had been entered against the defendant, the district court did not address the question of whether international law also controlled the determination of a defendant's liability in Alien Tort Statute cases. Presumably it would, as the same principles would seem to apply.

26. *Id.* at 863.

27. *Id.* at 863-64.

which blends the arguments advanced by both the plaintiffs and the amicus curiae,<sup>28</sup> the court balanced the contacts with the United States and Paraguay and concluded that they made it "appropriate to look first to Paraguayan law in determining the remedy for the violation of international law."<sup>29</sup>

The magistrate, who had looked *exclusively* to Paraguayan law, had recommended that the deceased's father and sister receive \$150,000 as compensation for emotional pain and suffering, loss of companionship, and disruption of family life; that Dr. Filartiga receive \$50,000 for past expenses related to funeral and medical expenses and to lost income; and that Dolly Filartiga receive \$25,000 for her future medical expenses for treatment of psychiatric impairment. However, he had recommended against an award of \$10,364 for expenses incurred in connection with the action, as well as against an award of punitive damages.<sup>30</sup>

The district court adopted all four of the magistrate's affirmative recommendations. With respect to the expenses incurred in prosecuting the action, the court found that they actually were compensable under Paraguayan law and ordered that an award of \$10,364 be made. Thus Paraguayan law served as the rule of decision with respect to the first five items of damages. However, with respect to punitive damages, which admittedly were not recoverable under the Paraguayan Civil Code, the court scarcely heeded its own injunction that it "look first to Paraguayan law,"<sup>31</sup> proceeding apace to find that the objectives behind the international law prohibition of torture "can only be vindicated by imposing punitive damages."<sup>32</sup> Most importantly, however, it justified punitive damages not by invoking public policy concepts, rejecting Paraguayan law and applying the *lex fori*, as the amicus curiae had recommended,<sup>33</sup> but by looking directly to international law.

Since the court noted what the plaintiffs had conceded, namely, "that damages designated punitive have rarely been awarded by international tribunals,"<sup>34</sup> it relied primarily on policy arguments rather than legal precedents to make its international law case.<sup>35</sup> As the court explained:

28. See text at notes 17-18 and accompanying note 20 *supra*.

29. *Filartiga*, 577 F. Supp. at 864 (emphasis added) (citing *Lauritzen v. Larsen*, 345 U.S. 571 (1953) and *Restatement (Second) of Conflict of Laws* § 145(2) (1971)).

30. See 577 F. Supp. at 865. See also *Filartiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980).

31. See text accompanying note 29 *supra*.

32. 577 F. Supp. at 864.

33. See text accompanying note 20 *supra*.

34. 577 F. Supp. at 865. See *infra* text accompanying note 35.

35. The court found "some [international] precedent for the award of punitive damages in tort" against states in *The I'm Alone* (Can. v. U.S.), 2 Green H. Hackworth, *Digest of International Law* 703, 707 (1941). Cf. 1 Marjorie M. Whiteman, *Damages in International Law* 722 (1937) ("While punitive or exemplary damages, as such, have rarely been awarded by arbitrators, they have at times apparently been assessed in diplomatic settlements.") See also Jordan J. Paust, *On Human Rights: The Use of Human Right Precepts in U.S. History and the Right to an Effective Remedy in Domestic Courts*, 10 Mich. J. Int'l L. 543, 628 & n.524 (1989).

[T]he international law of damages has developed chiefly in the resolution of claims by one state on behalf of its nationals against the other state, and the failure to assess exemplary damages as such against a respondent government may be explained by the absence of malice or *mala mens* on the part of an impersonal government. Here Pena and not Paraguay is the defendant. There is no question of punishing a sovereign state or of attempting to hold the people of that state liable for a governmental act in which they played no part. . . .

Where the defendant is an individual, the same diplomatic considerations that prompt reluctance to impose punitive damages are not present. The Supreme Court in *dicta* has recognized that punishment is an appropriate objective under the law of nations, saying in *The Marianna Flora*, 24 U.S. (11 Wheat.) 1, 41, 6 L.Ed. 405 (1826), that "an attack from revenge and malignity, from gross abuse of power, and a settled purpose of mischief . . . may be punished by all the penalties which the law of nations can properly administer."<sup>36</sup>

For these reasons the court regarded it "essential and proper to grant the remedy of punitive damages in order to give effect to the manifest objectives of the international prohibition against torture."<sup>37</sup>

In determining the amount of punitive damages, the court considered a variety of factors, including the nature of the acts for which damages were being assessed. "Chief among the considerations the court must weigh," it stated,

is the fact that this case concerns not a local tort but a wrong as to which the world has seen fit to speak. Punitive damages are designed not merely to teach a defendant not to repeat his conduct but to deter others from following his example. . . . To accomplish that purpose this court must make clear the depth of the international revulsion against torture and measure the award in accordance with the enormity of the offense. Thereby the judgment may perhaps have some deterrent effect.<sup>38</sup>

Finding no judicial precedents to guide it,<sup>39</sup> the court looked to jury verdicts for punitive damages in the United States and, more pertinently, to the punitive award of \$2,000,000 in *Letelier v. Republic of Chile*<sup>40</sup> to support its conclusion that "an award of punitive damages of no less than \$5,000,000 to each plaintiff is appropriate to reflect adherence to the world community's

The court also noted that \$2,000,000 in punitive damages had been awarded in *Letelier v. Republic of Chile*, 502 F. Supp. 259 (D.D.C. 1980). "While the court imposed the damages under domestic laws, it mentioned that 'tortious actions' proven were 'in violation of international law.'" *Filartiga*, 577 F. Supp. at 865 (citing *Letelier*, 502 F. Supp. at 266).

36. 577 F. Supp. at 865.

37. *Id.*

38. *Id.* at 866.

39. *Id.* "There are no binding precedents to guide the court in determining what amount lies within those respectable bounds that hedge the judiciary and yet may serve to come to the attention of those who think to practice torture." *Id.*

40. See *supra* text accompanying note 35.

proscription of torture and to attempt to deter its practice."<sup>41</sup>

With rare exceptions, US court cases after *Filartiga* have failed to address, much less clarify, the choice of law problems. In *Forti v. Suárez-Mason*,<sup>42</sup> for instance, where plaintiffs demanded damages for official torture, prolonged arbitrary detention, summary execution, causing a disappearance, and cruel, inhuman and degrading treatment, the district court sought to determine whether they had stated cognizable "international tort" claims.<sup>43</sup> The awards of compensatory damages for pain and suffering and punitive damages were not specifically linked, however, to international, US, or Argentine law.<sup>44</sup> In *Trajano v. Marcos*,<sup>45</sup> on the other hand, where the torture and death of the deceased was held to be "a tort in violation of the laws of nations,"<sup>46</sup> the district court explicitly grounded its award of damages upon various articles of the Philippine Civil Code.<sup>47</sup> Finally, in *Martínez-Baca v. Suárez-Mason*<sup>48</sup> the district court, after initially stating that the "[p]laintiff's claims arise under international law and California law,"<sup>49</sup> ultimately seemed to base damages solely upon international law:

International law principles, as incorporated in United States common law, provide the proper rules for calculating the damages. . . . International law requires that an injured plaintiff must be compensated for all actual losses. Federal common law remedies likewise provide compensation for losses resulting from a defendant's wrongdoing. Accordingly, plaintiff should be awarded all pecuniary and non pecuniary damages, including pain and suffering and loss of employment, resulting from his torture and prolonged arbitrary detention. An award of punitive damages is also proper in order to punish and deter such acts and thereby further international human rights. Humans must be deterred from inflicting such cruel punishment on fellow humans.<sup>50</sup>

Nevertheless, its conclusions of law found that both compensatory and punitive damages were "proper under the law of nations, the statutory and common law of the United States and the common law of California . . ."<sup>51</sup>

41. *Filartiga*, 577 F. Supp. at 867.

42. *Forti v. Suárez-Mason*, 694 F. Supp. 707 (N.D. Cal. 1988), No. C-87-2058-DLI, slip op. (N.D. Cal. Apr. 20, 1990).

43. 672 F. Supp. 1531, 1540 (N.D. Cal. 1987). It held that all these claims, except for the one based upon cruel, inhuman and degrading treatment, were "international torts" actionable under the Alien Tort Statute. See *id.* at 1541, 1543; see also *Forti* 694 F. Supp. at 711-12.

44. *Forti*, No. C-87-2058-DLI, slip op. at 2 (N.D. Cal. Apr. 20, 1990).

45. *Trajano v. Marcos*, 878 F.2d 1438 (9th Cir. 1989) (text in WESTLAW), *aff'd* by 978 F.2d 493 (9th Cir. 1992).

46. *Trajano v. Marcos*, No. 86-0207, slip op. at 3 (D. Haw. Mar. 25, 1991).

47. *Id.* at 3-4.

48. *Martínez-Baca v. Suárez-Mason*, No. C-87-20570SC, slip op. (N.D. Cal. Apr. 22, 1988).

49. *Id.*

50. *Id.* at 4.

51. *Id.* at 8 (emphasis added).

Surveying these three disparate judicial opinions, one can only endorse the observation of two commentators that the choice of law in Alien Tort Statute cases is "something of a wild card."<sup>52</sup> Yet several important trends emerge from all this rich chaos:

1. Human rights victims and their estates now are being awarded damages by US courts under the Alien Tort Statute (and occasionally under the Foreign Sovereign Immunities Act) for gross violations of their human rights. While the statute only permits aliens to sue, the recently enacted Torture Victim Protection Act<sup>53</sup> now permits US citizens as well as aliens to bring suit against individuals who have engaged in torture or extra judicial killing.<sup>54</sup>

2. In addition to human rights victims and their estates, other plaintiffs in Alien Tort Statute cases have included husbands and wives, fathers and sons, mothers and sisters, and widows. Thus, regardless of what law the US court may have applied (US, foreign, or international), close relatives of

52. See *supra* text accompanying note 16. The legal literature, as mentioned above, has not adequately addressed what is now becoming a potentially significant problem. The present writer supports the approach taken by Dean Christenson that loosely tracks *Filartiga* by looking in the first instance to the *lex delicti* subject to an international law override. See *supra* note 20 and accompanying text. Christenson's choice of law views have been critiqued by Professor Paust, who believes that the legal standard governing liability and damages always has been and should remain international law. Jordan J. Paust, *Litigating Human Rights: A Commentary on the Comments*, 4 Hous. J. Int'l L. 81, 93-95 (1981). See also Paust, *supra* note 35, at 611-28. Dean Randall, who has written more extensively (and most recently) on the topic, appears to take a position closer to the International Human Rights Law Group, see *supra* text accompanying note 20, than to Christenson. Kenneth C. Randall, *Further Inquiries Into the Alien Tort Statute and a Recommendation*, 18 N.Y.U. J. Int'l L. & Pol. 473, 534-38 (1986). Cf. Kenneth C. Randall, *Federal Courts and the International Human Rights Paradigm* 57, 86 (1990), where he appears to put even greater stress upon the *lex delicti*.

53. Torture Victim Protection Act of 1991, Pub. L. No. 102-256 (1992). For a description and analysis of an earlier bill that served as the basis of the Act, see Matthew H. Murray, Comment, *The Torture Victim Protection Act: Legislation to Promote Enforcement of the Human Rights of Aliens [sic] in US Courts*, 25 Colum. J. Transnat'l L. 673 (1987).

54. Note, however, that since they cannot avail themselves of the Alien Tort Statute, and the Torture Victim Protection Act permits suits only in the case of torture or extra judicial killing, US citizens still have no remedy against human rights violators for prolonged arbitrary detentions, disappearances, or other violations of customary international law. Arguably, such plaintiffs should be able to obtain jurisdiction over all human rights violators right now under 28 U.S.C. § 1331 (1988), the federal question statute, since as the district court in *Forti* remarked, "a case presenting claims arising under customary international law arises under the laws of the United States for purposes of federal question jurisdiction." *Forti v. Suárez-Mason*, 672 F. Supp. 1531, 1544 (N.D. Cal. 1987). See Kenneth C. Randall, *Federal Questions and the Human Rights Paradigm*, 73 Minn. L. Rev. 349, 386-424 (1988). *Ortiz v. Gramajo*, No. 91-11612WD, slip op. (D. Mass., filed June 13, 1991), an action brought by a US nun before the enactment of the Torture Victim Protection Act, may test this proposition. Note also that in some instances US citizens, as shown by *Letelier v. Republic of Chile*, 488 F. Supp. 665 (D.D.C. 1980) *et seq.*, and *Nelson v. Saudi Arabia*, 923 F.2d 1528 (11th Cir. 1991), may obtain jurisdiction over foreign states that have violated their human rights by invoking the Foreign Sovereign Immunities Act.

human rights victims have been allowed to assert claims based upon their own as well as the victims' injuries.

3. Where US courts have found gross human rights violations to have occurred, they have ordered compensatory damages, *inter alia*, for pain and suffering (both physical and mental), past and future medical expenses, lost income (past, present, and future), loss of consortium, and various other expenses, costs, and attorney's fees.

4. In at least four cases—*Filartiga*, *Forti*, *Rapaport*, and *Martínez-Baca*—US courts have awarded punitive damages.

The net effect of these developments has been to provide relief, at least notionally, to human rights victims and their close relatives; to serve as a deterrent against both the recurrence of gross human rights violations and their perpetrators' seeking asylum, refuge, or residence in the United States; and to contribute in a meaningful, public way to the progressive development and application of international human rights law.

The courts of a single state, of course, cannot provide even a partial solution to the problem of providing redress to victims of gross human rights violations. Other states should be encouraged to enact legislation, far more expansive than the Alien Tort Statute or the new Torture Victim Protection Act, to enable their courts to provide similar redress against human rights violators found within their jurisdiction. An International Convention for the Redress of Human Rights Violations that would obligate states parties to enact legislation along these lines would be a promising first step.<sup>55</sup> Such a convention could define just what gross human rights violations were actionable, provide a common choice of law approach for courts to follow, establish general norms governing the allowance of compensatory and, especially, punitive damages,<sup>56</sup> and provide for the enforcement of judgments

55. The Maastricht Conference of 1992 concluded, *inter alia*, that this proposal "deserves due consideration. The preparatory and drafting process for such a convention can serve to focus the attention of governments on these issues, promote exchanges of national experience and lead countries to develop adequate arrangements for anticipating, preventing, stopping and remedying gross violations of human rights." Netherlands Institute of Human Rights, Seminar on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms 20 (SIM Special No. 12, 1992). The Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities on the topic attached the Maastricht conclusions as an Annex to his second progress report. See van Boven, Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms, U.N. Doc. E/CN.4/Sub.2/8, at 21, 24 (1992).

56. Supposedly excessive damage claims and awards in the United States have often been criticized. Cf. J. McBride, *Redress for Human Rights Violations*, in *Droit Sans Frontiers* 161, 169 (Hand & McBride eds., 1991) ("As an American he clearly understood the need to inflate damage claims!"). Therefore, consideration undoubtedly would have to be given during the drafting of any such convention to limiting or even possibly excluding one or more types of damage claims. Certainly there are recent international precedents for such limitations or exclusions. See UN Compensation Commission, Determination of Ceilings

against human rights violators wherever they might reside. While US courts to date have taken the lead in the limited area of providing remedies to aliens whose human rights have been violated, it is high time to expand and universalize the protection that domestic courts are capable of providing. During this process, it is to be hoped that US courts will continue to serve as experimental laboratories for the development of what has become a promising means of redress for victims of gross human rights violations.

## APPENDIX

### Damages in Cases Involving Violations of International Human Rights

#### I. CASE LAW ARISING UNDER THE ALIEN TORT STATUTE

##### *Filartiga v. Peña-Irala*<sup>57</sup>

Dolly Filartiga (sister) and Dr. Filartiga (father) sued defendants for the torture and killing of family member Joelito Filartiga.

##### *Damages Claimed*.<sup>58</sup>

1. Past & Future Pecuniary Losses	
Funeral, Memorial Expenses	\$ 24,710
Legal Costs	\$ 101,364
Medical Expenses	
Dr. Filartiga	\$ 50,740
Dolly Filartiga	\$ 29,120
Lost Income	
Past	\$ 71,300
Future	\$ 162,500

##### 2. Non-Pecuniary and Punitive Damages

The plaintiffs asked the court to consider the emotional and physical pain suffered by plaintiffs in determining the amount of punitive and compensatory damages to award and to maximize its power to provide monetary remedy to the plaintiffs.<sup>59</sup>

Total \$ 439,734

for Compensation for Mental Pain and Anguish, U.N. Doc. S/AC.26/1992/8 (Jan. 27, 1992) (ceilings established for amounts of compensation for mental pain and anguish); *Eastern Airlines, Inc. v. Floyd*, 111 S. Ct. 1489 (1991) (Warsaw Convention held not to allow recovery for purely mental injuries).

57. 630 F.2d 876 (2d Cir. 1980), *remanded on issue of damages*, 577 F. Supp. 860 (E.D.N.Y. 1984) (jurisdiction under Alien Tort Statute).

58. See Plaintiffs' Post-Trial Memorandum of Facts and Law app., *Filartiga v. Peña-Irala* 577 F. Supp. 860 (E.D.N.Y. 1984).

59. *Id.* at 69-70.

*Damages Awarded:*<sup>60</sup>

1. Compensatory Damages		
Emotional Pain & Suffering		
Dr. Filartiga	\$	150,000
Dolly Filartiga	\$	150,000
Future Medical Expenses (Dolly Filartiga)	\$	25,000
Past Expenses (Funeral, Medical) and and Lost Income (Dr. Filartiga)	\$	50,000
Expenses Related to Suit	\$	10,364
2. Punitive Damages		
Dolly Filartiga	\$	5,000,000
Dr. Filartiga	\$	5,000,000
Total	\$	10,385,364

*Von Dardel v. Union of Soviet Socialist Republics*<sup>61</sup>

Plaintiffs (half-brother and legal guardian of Swedish diplomat Raoul Wallenberg) sued the Soviet Union seeking declaratory and injunctive relief and damages for the alleged unlawful seizure, imprisonment, and possible death of Wallenberg. The plaintiffs obtained a default judgment in the amount of \$39 million that was later vacated.

*Forti v. Suárez-Mason*<sup>62</sup>

Alfredo Forti sued on his own behalf for arbitrary detention without charges, theft of personal property, and suffering from "mental cruelty" during detention; additionally, he sued for the disappearance of his mother. Co-plaintiff Deborah Benchoam sued on her own behalf for detention without charges, sexual abuse, torture, and theft of jewelry; additionally, she sued for the beating of her husband and for having to witness the murder of her brother Reuben.<sup>63</sup>

*Damages Claimed:*<sup>64</sup>

1. Compensatory Damages	\$	10,000,000
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60: 577 F. Supp. 860 (E.D.N.Y. 1984).

61: 623 F. Supp. 246 (D.D.C. 1985), *vacated on other grounds*, 736 F. Supp. 1 (D.D.C. 1990) (defendant's motion to set aside default judgment and to dismiss granted upon finding that defendant did not waive sovereign immunity under the Foreign Sovereign Immunities Act and thus there was no jurisdiction under the Alien Tort Statute).

62: 694 F. Supp. 707 (N.D. Cal. 1988) (jurisdiction alleged under 28 U.S.C. § 1331, Alien Tort Statute, and on pendent and ancillary grounds).

63: *Forti v. Suárez-Mason*, No. C-87-2058-DLJ (N.D. Cal., judgment filed Apr. 20, 1990).

64: Plaintiff's Complaint at 19-20, *Forti v. Suárez-Mason*, 694 F. Supp. 707 (N.D. Cal. 1988)

2. Punitive or "Exemplary" Damages	\$	10,000,000
3. Reasonable Attorneys' Fees and Costs of Suit	—	—
4. Any Other Relief Deemed Proper	—	—

*Damages Awarded:*

1. Compensatory Damages (Pain & Suffering)		
Debora Benchoam	\$	3,000,000
Alfredo Forti	\$	1,000,000
2. Punitive Damages		
Debora Benchoam	\$	3,000,000
Alfredo Forti	\$	1,000,000
Total	\$	8,000,000

*Martínez-Baca v. Suárez-Mason*<sup>65</sup>

The plaintiff claimed that he suffered four years of prolonged arbitrary detention without trial and endured repeated incidents of torture and cruel, inhuman, and degrading treatment. In a judgment entered by default on April 22, 1988, the court found that international law, by virtue of its incorporation in US law, provided for the assessment of compensatory and punitive damages.<sup>66</sup> The court emphasized the deterrent value of assessing punitive damages, and noted that international human rights would thereby be furthered.<sup>67</sup>

*Damages Claimed:*

Unavailable

*Damages Awarded:*

1. Compensatory Damages (Pain & Suffering <sup>68</sup> )	\$	10,000,000
2. Punitive Damages <sup>69</sup>	\$	10,000,000
3. Lost Income with Interest	\$	1,170,699
Total	\$	21,170,699

65: No. C-87-2057-SC (N.D. Cal., April 22, 1988) (jurisdiction alleged under 28 U.S.C. §§ 1331, 1332, and the Alien Tort Statute; court explicitly found jurisdiction under §§ 1332(a)(2) and 1331, in the latter instance finding federal common law, as incorporating international law, the basis of federal question jurisdiction).

66: *Id.* at 4.

67: *Id.*

68: The court found that the award of compensatory damages was proper under the law of nations and the statutory and common law of the United States. *Id.* at 8.

69: The court found that the award of punitive damages was proper under the law of nations, the statutory and common law of the United States, and the common law of California. *Id.* at 8.

*Quiros de Rapaport v. Suarez-Mason*<sup>70</sup>

Plaintiffs Susana Quiros de Rapaport and María Teresa Pinero de Georgiadis sued for emotional anguish and loss of companionship, affection, consortium, and future financial support sustained by the death of their husbands Horacio Luís Rapaport and Angel Georgiadis. They also sued for their daughters' psychological problems allegedly caused by the deaths of Horacio and Angel. María Elena Pérez de Antonanzas sued for the disappearance of her son, Nestor Rubén Antonanzas, for out-of-pocket and medical expenses incurred as a result of Nestor's disappearance, for anguish at the loss of his companionship and affection, for the psychological care of her daughter Norma, and for Norma's lost educational opportunities as a result of her forced refugee status.<sup>71</sup>

*Damages Claimed:*  
Unavailable

*Damages Awarded:*

1. Compensatory Damages (Pain & Suffering)	
Quiros de Rapaport	\$ 10,000,000
Pinero de Georgiadis	\$ 10,000,000
Norma Antonanzas de Barroso	\$ 5,000,000
Pérez de Antonanzas	\$ 5,000,000
2. Punitive Damages	
Susana Quiros de Rapaport	\$ 10,000,000
Pinero de Georgiadis	\$ 10,000,000
Norma Antonanzas de Barroso	\$ 5,000,000
Pérez de Antonanzas	\$ 5,000,000
3. Costs (Unenumerated)	\$ 4,852
Total	\$ 60,004,852

*Siderman de Blake v. Republic of Argentina*<sup>72</sup>

The Siderman family (spouses José and Lea and their children Carlos and Susana) sued the Argentine government and the Province of Tucuman for compensation for land expropriated during the "dirty war," and for the torture of José Siderman. Lea sued for loss of consortium during the period of José's detention.

In an order filed March 14, 1984, the court found: (1) that the Alien Tort Statute conferred jurisdiction over José's torture claim but that the act of state doctrine barred adjudication of the property claim;<sup>73</sup> and (2) that the children and wife of José have no standing to sue for damages for the torture of José.<sup>74</sup>

The District Court for the Central District of California assessed the following damages, which are being appealed, against Argentina and the Province of Tucuman:

*Damages Claimed:*  
Unavailable

*Damages Awarded:*

1. José Siderman (on his own behalf as torture victim)	
Pain & Suffering; Emotional Distress	\$ 1,000,000
Physical Injuries	\$ 250,000
Loss of Earnings (Interest Not Mentioned)	\$ 1,200,000
Medical Expenses	\$ 7,516
Moral Damages	\$ 150,000
Subtotal	\$ 2,607,516
2. Lea Siderman (Wife of José):	
Loss of Consortium	\$ 100,000
Total	\$ 2,707,516

II. PENDING CASES ARISING UNDER THE ALIEN TORT STATUTE

*Pending Marcos Cases*

The district courts in Hawaii and California dismissed the following five suits as nonjusticiable under the act of state doctrine, without reaching the question of jurisdiction under the Alien Tort Statute. The five suits (four individual, one class action) were consolidated for appeal to challenge the dismissal. On appeal, the United States Court of Appeals for the Ninth Circuit reversed and remanded the lower courts' dismissals. The consolidated remands were heard in the federal district court in Hawaii in the Spring of 1992; plaintiffs won on the issue of liability. The damages phase of the trial is expected to occupy the remainder of 1993.

An amicus brief alleges jurisdiction under the Alien Tort Statute for the

70. No. C87-2266 JPV (N.D. Cal., Apr. 11, 1989) (judgment silent regarding jurisdictional basis adopted).

71. Plaintiff's Memorandum of Points and Authorities in Support of Request for Damages at 4-5, *Quiros de Rapaport v. Suárez-Mason*, No. C87-2266 JPV (N.D. Cal., Apr. 11, 1989).

72. No. CV 82-1772-RMT (MCx), slip op. (C.D. Cal. Sept. 28, 1984) (LEXIS) *rev'd on other grounds*, Mar. 7, 1984; appeal argued to 9th Cir., Apr. 17, 1991. The original judgment awarded the damages outlined in the text.

73. The slip opinion is ambiguous with respect to the jurisdictional basis for its award of damages for Lea's loss of consortium claim.

74. *Siderman*, No. CV 82-1772-RMT (MCx), slip op. (C.D. Cal. March 14, 1984).

plaintiffs in the five consolidated cases.<sup>75</sup> A default judgment awarding damages was awarded only in the *Trajano* case; this judgment was affirmed on appeal.

A. *Hilao v. Marcos*<sup>76</sup>

"Hilao is a class action by the alleged victims or personal representatives of victims of torture perpetrated [by defendants]. The complaint alleges that the plaintiffs were university students and labor organizers who were detained and routinely subjected to electric shock, beatings, Russian roulette, gang rapes, and in some cases murder. They sue the defendants for violation of the law of nations, seeking compensatory and punitive damages of \$75 million."<sup>77</sup>

B. *Trajano v. Marcos*<sup>78</sup>

Plaintiff Philippino mother sued defendants alleging kidnapping, torture, and murder of son, as well as "false imprisonment, wrongful death, kidnapping, and violation of international law on behalf of [her son's] estate, and the intentional infliction of emotional distress for her own suffering on being shown the tortured body of her son."<sup>79</sup>

*Damages Claimed:*

1. Compensatory and Punitive Damages	Unavailable
2. Attorney's Fees and Costs	
Fees	\$ 381,511
Costs	\$ 5,789

*Damages Awarded:*<sup>80</sup>

1. Estate of Archimedes (victim)	
Past, Present, Future Lost Earnings	\$ 236,000
Moral Damages (Physical Suffering, Mental Anguish, Fright, Bodily Injury, Wrongful Death, and Execution)	\$ 175,000
Exemplary or Punitive Damages	\$ 1,250,000
2. Agapita (mother of victim)	
Mental Anguish	\$ 1,250,000
Exemplary or Punitive Damages	\$ 1,250,000

75. Memorandum of Professors as *Amici Curiae* in Support of Plaintiffs at 13-14, *Trajano v. Marcos*, Nos. 86-2448, 86-2449, 86-2496, 86-15039, 87-1706, 87-1707 (9th Cir., May 13, 1991)

76. 878 F.2d 1439 (9th Cir. 1989) (text in WESTLAW).

77. *Id.*

78. 878 F.2d 1439 (9th Cir. 1989) (text in WESTLAW), *aff'd* by 978 F.2d 493 (9th Cir. 1992).

79. *Id.*

80. *Trajano v. Marcos*, No. 86-0207 (D. Haw., May 13, 1991).

3. Attorney's Fees and Costs

Fees	\$ 232,344
Costs	\$ 14,623
Total	\$ 4,407,967

The court applied Philippine civil law to determine the amount of damages.

C. *Sison v. Marcos*<sup>81</sup>

Plaintiff mother and brothers of decedent (José and US citizen Ramón) sued for alleged wrongful death and intentional infliction of emotional distress from the torture and murder of son Francisco by persons allegedly under direction of defendants. José (living brother of decedent and co-plaintiff) also sued for assault and battery, false imprisonment, and "other" torts derived from his detention and torture. Another plaintiff, Jaime Piopongco (US citizen) sued for assault, "interference with and destruction of a business, and violations of the law of nations arising out of the closure of his radio station . . . and . . . subsequent arrest and torture."<sup>82</sup>

D. *Ortigas v. Marcos*<sup>83</sup>

Thirteen Philipinos sued defendant alleging imprisonment and torture in violation of international law.<sup>84</sup>

E. *Clemente v. Marcos*<sup>85</sup>

Action by eight Philipinos alleging the same cause as in *Ortigas*.<sup>86</sup>

*Paul v. Avril*<sup>87</sup>

Six Haitians seek compensatory and punitive damages against defendant for torture; cruel, inhuman or degrading treatment; and arbitrary arrest and detention.<sup>88</sup> Plaintiffs argue that the Foreign Sovereign Immunities Act does not provide immunity for "heinous" human rights violations by individuals acting beyond the scope of "official authority."<sup>89</sup>

81. 878 F.2d 1439 (9th Cir. 1989) (text in WESTLAW).

82. *Id.*

83. 878 F.2d 1439 (9th Cir. 1989) (text in WESTLAW).

84. *Id.*

85. 878 F.2d 1439 (9th Cir. 1989) (text in WESTLAW).

86. *Id.*

87. No. 91-0399, slip op. (S.D. Fla. May 3, 1991) (jurisdiction alleged under Alien Tort Statute).

88. Plaintiffs' Memorandum of Law in Opposition to Defendant's Motion to Dismiss at 1, *Paul v. Avril*, No. 91-0399, slip op. (S.D. Fla. May 3, 1991).

89. *Id.* at 6.

*Damages Claimed:*

\$120,000,000

*Damages Awarded:*

Case Sub Judice

*Xuncax v. Gramajo*<sup>90</sup>

This is an action by nine Guatemalan citizens against the defendant. Teresa Xuncax sues on behalf of herself, her children and her husband for the summary execution of her husband, Felipe Andrés-Tomás. Juan Diego-Francisco sues for beatings and torture he suffered, for the beating of his wife, and for his exile. Juan Doe sues for the arbitrary detention, torture, and murder of his father. Elizabet Pedro-Pascual sues for the murder of her sister, Maria, and on her own behalf for the destruction of her home and for forced exile. José Alfredo Callejas sues for the disappearance and presumed summary execution of his father, Alberto Callejas y Callejas. The remaining four plaintiffs sue for their forced flight into Mexico as a result of the defendant's behavior.<sup>91</sup>

*Damages Claimed:*

## 1. Summary Execution

## Compensatory Damages

(For Mental Anguish Suffered by Listed Plaintiffs and Fear, Agony, and Abuse of Next of Kin<sup>92</sup>)

\$2 million each to Xuncax, Doe, and Pedro-Pascual

\$ 6,000,000

## Punitive Damages

\$5 million each to Xuncax, Doe, and Pedro-Pascual

\$ 15,000,000

## 2. Disappearance of Callejas' father

## Compensatory Damages

Plaintiff Callejas

\$ 2,000,000

## Punitive Damages

Plaintiff Callejas

\$ 5,000,000

## 3. Torture

## Compensatory Damages

\$2 million each to Xuncax, Doe, and

Diego-Francisco	\$ 6,000,000
Punitive Damages	
\$5 million each to Xuncax, Doe, and Diego-Francisco	\$ 15,000,000
4. Cruel, Inhuman, or Degrading Treatment	
Compensatory Damages	
(For Gross Humiliation of Plaintiffs, Incitation of Fear, Anguish, and Forcing of Exile)	
\$1 million to each of 9 plaintiffs	\$ 9,000,000
Punitive Damages	
\$1 million to each of 9 plaintiffs	\$ 9,000,000
5. Arbitrary Detention	
Compensatory Damages	
\$1 million each to Xuncax, Doe, and Diego-Francisco	\$ 3,000,000
Punitive Damages	
\$1 million each to Xuncax, Doe, and Diego-Francisco	\$ 3,000,000
6. Wrongful Death	
Compensatory Damages	
(For Pecuniary Loss, Loss of Society, Comfort, Attention, Services, Support)	
\$2 million each to Xuncax, Doe, and Diego-Francisco	\$ 6,000,000
Punitive Damages	
\$5 million each to Xuncax, Doe, and Diego-Francisco	\$ 15,000,000
7. Assault and Battery	
Compensatory Damages	
\$2 million each to Xuncax, Doe, and Diego-Francisco	\$ 6,000,000
Punitive Damages	
\$5 million each to Xuncax, Doe, and Diego-Francisco	\$ 15,000,000
8. False Imprisonment of Plaintiffs and/or Kin	
Compensatory Damages	
\$1 million each to Xuncax, Doe, and Diego-Francisco	\$ 3,000,000
Punitive Damages	
\$1 million each to Xuncax, Doe, and Diego-Francisco	\$ 3,000,000
9. Intentional Infliction of Emotional Distress	
Compensatory Damages	
\$1 million to each of 9 plaintiffs	\$ 9,000,000

90. No. 91-11564WD, slip op. (D. Mass. June 5, 1991) (jurisdiction alleged under 28 U.S.C. § 1331, Alien Tort Statute, and by pendent and ancillary jurisdiction).

91. Complaint at 5-7, Xuncax v. Gramajo, No. 91-11564WD, slip op. (D. Mass. June 5, 1991).

92. This rationale is repeated to justify most of plaintiff's award requests.

Punitive Damages	
\$1 million to each of 9 plaintiffs	\$ 9,000,000
Total	\$139,000,000

Damages Awarded:  
Case Sub Judice

### III. CASE LAW ARISING UNDER OTHER JURISDICTIONAL BASES

#### *Letelier v. Republic of Chile*<sup>93</sup>

Plaintiffs (widow of Dr. Letelier and widower and parents of Ms. Moffitt) sued Chile and individuals for the assassination of family members by high officials of the Chilean secret police during the Pinochet regime.

In 1980, the District Court assessed damages against the defendants (Chile and individuals) in the amount of \$4,138,675.88 (components of award detailed below). The plaintiffs attempted to enforce this award over a period of five years.<sup>94</sup>

The enforcement of the judgment having become a diplomatic matter, it was referred to a five member arbitral commission of the OAS. The Chile-US Commission recently ordered the Government of Chile to compensate the plaintiffs on the basis of a 1914 international settlements treaty between the United States and Chile.<sup>95</sup>

#### A. DISTRICT COURT

Damages Claimed:  
Unavailable

93. 488 F. Supp. 665 (D.D.C. 1980), 502 F. Supp. 259 (D.D.C. 1980) (assessing damages), 567 F. Supp. 1490 (S.D.N.Y. 1983), No. M18-302, slip op. (S.D.N.Y. Nov. 10, 1983) (motion for certification for appeal under 28 U.S.C. § 1292(b) denied), 575 F. Supp. 1217 (S.D.N.Y. 1983) (order to appoint receiver on behalf of judgment creditors awarded), *rev'd*, 748 F.2d 790 (2d Cir. 1984), *cert. denied*, 471 U.S. 1125 (1985), damages awarded by Chile-U.S. Commission, see 86 Am. J. Int'l L. 346 (1992), 31 I.L.M. 1 (1992) (jurisdiction predicated on Foreign Sovereign Immunities Act).

94. See 567 F. Supp. 1490 (S.D.N.Y. 1983) (holding, *inter alia*, to reserve approval of application for relief against Chilean airline allegedly involved in assassinations), No. M18-302, slip op. (S.D.N.Y. Nov. 10, 1983) (denying appeal of district court), 575 F. Supp. 1217 (S.D.N.Y. 1983) (holding that creditors who had obtained judgment against Chile were entitled to the appointment of a receiver of Chile's property interest in the national airline), 748 F.2d 790 (2d Cir. 1984) (holding that judgment obtained under the Foreign Sovereign Immunities Act does not necessarily permit execution against assets of foreign state's wholly-owned airline to satisfy it where the airline has "separate juridical status" from Chile).

95. 86 Am. J. Int'l. L. 346 (1992), 31 I.L.M. 1 (1992).

#### Damages Awarded:<sup>96</sup>

1. Ms. Letelier (for death of Dr. Letelier):	
Survival Statute (Pain & Suffering)	\$ 30,000
Punitive Damages	\$ 1,000,000
Wrongful Death Statute	\$ 1,526,479
2. Ms. Moffitt's Parents (for death of daughter):	
Survival Statute (Pain & Suffering)	\$ 80,000
Punitive Damages	\$ 1,000,000
Wrongful Death Statute	\$ 916,096
3. Mr. Moffitt (for death of wife)	
Pain and Suffering	\$ 400,000
4. Reasonable Attorney's Fees	
Counseling Fees	\$ 100,000
Reimbursement of Expenses	\$ 10,280

#### B. ARBITRAL PANEL

##### Damages Requested:

Not broken down <sup>97</sup>	\$ 2,900,000
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##### Damages Awarded:

1. Widow Letelier (for death of Dr. Letelier)	
Moral Damages	\$ 160,000
Medical Expenses	\$ 16,000
2. Four Children of Dr. Letelier	
(\$80,000 to each)	\$ 320,000
3. Widow and Sons of Dr. Letelier	
Loss of Financial Support	\$ 1,200,000
4. Mr. Moffitt (for death of wife)	
Loss of Financial Support	\$ 233,000
Moral Damages	\$ 250,000
Direct Costs	\$ 12,000
5. Parents of Mrs. Moffitt	
Moral Damages	\$ 300,000
Medical and Direct Costs	\$ 20,000
6. Special Expenses	
Incurred in bringing case before the Commission (not including expenses of prior lawsuits); awarded to both families	\$ 100,492
Total	\$ 2,611,892

96. 502 F. Supp. 259 (D.D.C. 1980)

97. Barbara Crossette, "\$2.6 Million Awarded Families in Letelier Case," *N.Y. Times*, Jan. 13, 1992, at A11.

*Nelson v. Saudi Arabia*<sup>98</sup>

Plaintiff Scott Nelson sues for arbitrary detention without charges and torture suffered when, in the course of performing a job for which he was hired by the defendants, he reported safety violations at a Saudi Arabian hospital. His wife Vivian sues for mental anguish and torture suffered when an Arabian official offered to set her husband free in return for her sexual favors.

*Damages Claimed:*

Amounts are unavailable, but both compensatory and punitive damages were claimed.

*Damages Awarded:*

Case Sub Judice

## IV. PENDING CASES ARISING UNDER OTHER JURISDICTIONAL BASES

*Ortiz v. Gramajo*<sup>99</sup>

Sister Ortiz, a United States citizen, sued for compensatory and punitive damages for personal injury resulting from kidnapping, torture, rape, burning, and brutal abuse by Guatemalan personnel under direction of defendant.<sup>100</sup> Additionally, the plaintiff seeks redress for defamation allegedly committed by defendant.<sup>101</sup>

*Damages Claimed:*<sup>102</sup>

1. Torture	
Compensatory Damages	\$ 1,000,000
Punitive Damages	\$ 1,000,000
2. Cruel, Inhuman, or Degrading Treatment	
Compensatory Damages	\$ 1,000,000
Punitive Damages	\$ 1,000,000
3. Arbitrary Detention	
Compensatory Damages	\$ 500,000
Punitive Damages	\$ 500,000

98. No. 881791, slip op. (S.D. Fla. Aug. 11, 1989), *rev'd and remanded* 923 F.2d 1528 (11th Cir. 1991), *cert. granted*, 112 S. Ct. 2937 (1992), *argued* Nov. 30, 1992. (Eleventh Circuit, in finding jurisdiction under the Foreign Sovereign Immunities Act, reversed the district court's dismissal for lack of subject matter jurisdiction. Case pending before the Supreme Court.)

99. No. 91-11612WD (D. Mass. filed June 13, 1991) (jurisdiction alleged under 28 U.S.C. sec. 1331, 1332(a)(2), and through pendent and ancillary jurisdiction).

100. Complaint at 1, *Ortiz v. Gramajo*, No. 91-11612 WD (D. Mass. filed June 13, 1991).

101. *Id.* at 1.

102. Complaint at 14-20.

4. Assault and Battery	
Compensatory Damages	\$ 1,000,000
Punitive Damages	\$ 1,000,000
5. False Imprisonment	
Compensatory Damages	\$ 500,000
Punitive Damages	\$ 500,000
6. Intentional Infliction of Emotional Distress	
Compensatory Damages	\$ 500,000
Punitive Damages	\$ 500,000
7. Defamation of Character	
Compensatory Damages	_____
Punitive Damages	_____
Total	\$ 11,000,000

*Damages Awarded:*

Case Sub Judice

*Todd v. Murdani*<sup>103</sup>

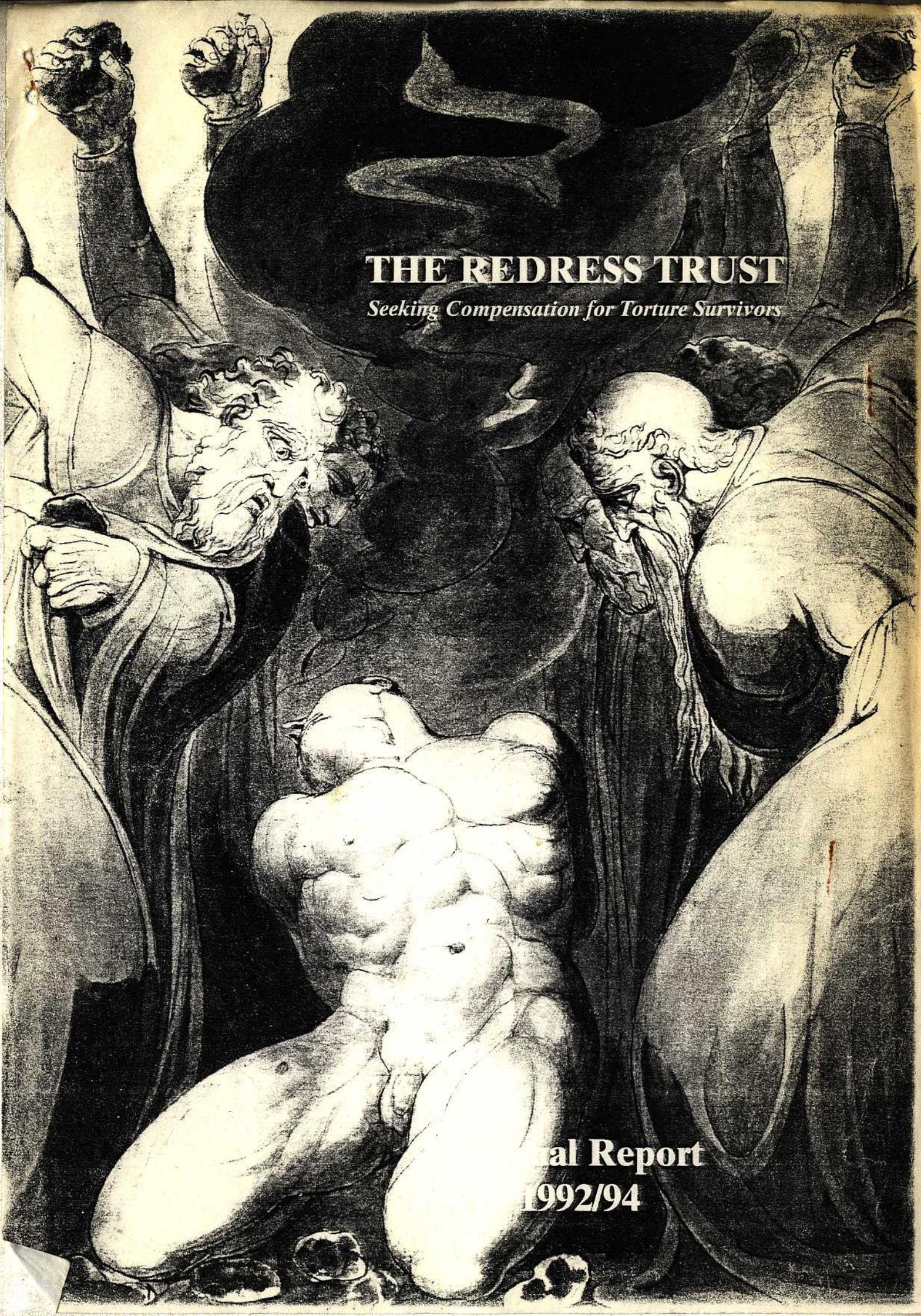
Plaintiff mother, a Malaysian citizen, sued three Indonesian generals on her own behalf and for the summary execution of her son, Kamal Bamadhaj, a citizen of New Zealand.

*Damages Claimed:*<sup>104</sup>

1. Summary Execution	
Compensatory Damages	\$ 2,000,000
Punitive Damages	\$ 10,000,000
2. Wrongful Death	
Compensatory Damages	\$ 2,000,000
Punitive Damages	\$ 10,000,000
3. Assault and Battery	
Compensatory Damages	\$ 1,000,000
Punitive Damages	\$ 2,000,000
4. Emotional Distress (mother and son)	
Compensatory Damages	\$ 1,000,000
Punitive Damages	\$ 2,000,000
Total	\$ 30,000,000

103. (D. Mass. filed September 22, 1992) (jurisdiction alleged under the Torture Victim Protection Act, Alien Tort Statute, § 1331, and pendent and ancillary jurisdiction).

104. Complaint at 8.



**THE REDRESS TRUST**

*Seeking Compensation for Torture Survivors*

**Annual Report**  
**1992/94**

THE REDRESS TRUST

Registered Charity Number 1015787

A Limited Company Registered in England Number 2774071

Redress Trust는 장소와 시간에 상관없이 고문피해를 당했던 사람들의 재활을 촉진하고 보호하며, 그들과 그들의 가족들이 적절한 때 그들이 당하는 고통으로부터 구제될 수 있도록 돕는 것을 사명으로 한다.

*The Redress Trust's Mission*

To promote the rehabilitation and protection of people  
who are or at any time have been victims of torture  
anywhere in the world, and to help them and,  
when appropriate, their families  
to gain redress for their  
suffering

도움을 원하거나 더이상의 정보를 위한 경우 W. Dishington 에게 연락 要  
연락처:

If you wish to help, or to find out more,  
please contact William Dishington, at:

6 Queen Square  
London WC1N 3AR  
United Kingdom  
Tel: 071-278-9502  
Fax: 071-278-2252 /9410  
Email: redresstrust@gn.apc.org

(The Trust is most grateful to the Tate Gallery which has kindly granted permission to reproduce  
The Blasphemer by William Blake on the front cover.)

배상 방법을 찾고자 하는 우리 고문 피해자들은 많은 장애에 봉착해있다. 우리 가족, 친구들, 의사와 정치가들은 처음부터 '지나간 일은 잊어버리고' 그냥 살아가라고 한다. 많은 고문피해자들은 그렇게 하려고 한다.

우리는 그런 얘기를 들었다.

그러나 그들은 우리의 말을 듣지 않았다.

우리들이 한 이야기 중 일부는 너무 끔직한 것이어서 그들 대부분은 믿지 않는다. 그들은 우리가 간신히 이루어낸 생각, 즉 생존하기 위해서는 반드시 파열 상태 -고문의 희생자가 되었다는 감정-을 극복해야한다는 점을 완전히 이해할 수 없다.

우리들 모두는 고문에 직면했었고 그것을 견디는 방법을 배워왔으며, 우리들이 겪은 시련의 의미와 우리가 무엇을 해야할지 배웠다. 우리는 생존하기 위해 행동을 취해야 했다.

우리들 가운데 많은 사람들에게 있어서 목적은 -명예의 문제로서- 국가로 하여금 우리가 고문당했음을 인정하게 하는 것이다. 우리는 고문자들이 처벌받기를 원한다. 우리는, 그들이 인간 존재인 우리를 파괴하는데 실패했음을 증명해야 한다. 그리고 우리는 우리의 삶을 다시 시작하여 사회에 기여하는 일구 성원이 될 수 있도록 금전적 배상이 이루어지기를 원한다.

*take action to survive.*

*For many of us the goal, as a matter of honour, is for the states to admit that we had been tortured. We would like to see the torturers brought to book. We need to prove that they did not succeed in destroying us as human beings. And we need the financial compensation so that we can reclaim our lives and again become contributing members of society."*

*(Torture Survivor, 19 November 1993)*

CHAIR'S FOREWORD

의장의 序言

이것은 우리의 1차 연례보고서로 새로운 비정부조직(NGO)을 출범시키는데 나타나는 어려움을 고려하면 그 자체로서 하나의 성과이다... 언제나 그렇듯이 대의의 발전은 사람들에게 달려있다. 나는 우선 초대 의장이었던 故 Peter Davies OBE에게 감사하고 싶다. Redress Trust의 설립에 바쳐진 그의 헌신과 기여는 두드러진 것이었다. 또한 Trust의 발전기 동안의 Keith Carmichael의 헌신도 인정해야한다. 그의 결단력과 독심이 없었다면 Trust는 가능할 수 없었다.

Redress Trust는 고문피해자의 배상과 관련되어 있으며, 따라서 고문희생자들과 관련된 기존 조직 및 기구의 활동에 존재하고 있는 대단히 중대한 간극(gap)을 메운다.

사례연구(case work)는 우리 활동의 핵심이며, 활동을 개시한지 오래되지 않았지만, 이미 우리가 응답할 수 있는 것보다 훨씬 많은 고문피해자들의 관심을 끌고 있다. 우리의 독특한 사업이 보다 널리 알려짐에 따라 그런 경우는 훨씬 증가할 것이다.

우리는 법률적 자격요건을 갖춘 스텝들을 절박하게 필요로 하고 있다. 따라서 우리는, 우리가 제공할 수 있는 지원의 수준을 유지하고 고문피해자 및 그들 가족들의 필요에 부응하기 위해 우리의 자원(resources)을 증대시킬 방법들을 찾아야만 한다.

우리가 다룬 사례 중 일부가 이 보고서에 다루어져 있으며, 그것은 또한 우리의 작업의 또다른 측면들을 자세히 보여줄 것이다. 우리는 다른 비정부 조직들과 긴밀한 관계를 가지며, 고문 문제에 관련된 일국적, 지역적, 국제적 단체 및 기구와의 연계를 발전시키고 있다. 어려운 경제적 시기에 출범한 새로운 자선단체(charity)로써, 우리가 성취한 많은 것들은 우리의 스텝과 자원봉사자들의 헌신적 활동의 결과이다. 나는 그들 모두에게 감사하고 싶다.

법률고문위원회(Legal Advisory Council)에 대한 감사...

'Friends of The Redress Trust'의 발족...

than we can respond to. These will grow as our unique service becomes better known.

We urgently need to appoint legally qualified staff. We must, therefore, find ways to increase our resources so that we can maintain our standards of

Leah Levin  
(Chair of the Trustees)



고문과 Redress

많은 사람들은 아직도 고문은 계몽주의 이래, 양차 대전기를 제외하고는 거의 사라져버린 중세적인 잔혹행위라고 믿고 있다.

그렇지만 사실은 그렇지 않다. 전세계에 걸쳐 집단-인종 간의 갈등이 증가함에 따라, 독재자들이 반대자들을 일소하려 애쓰고 심지어 일부 민주적 정부조차 '극단적 요소들'을 억제하려 노력함에 따라 고문의 사용이 유행적인 정도에 이르르고 있다.

기존의 관점에 의하면 고문은 죄수로 부터 정보를 획득하기 위해 사용되는 폭력적 심문 형태이지만, 증거와 생존자들의 증언을 검토해보면 그러한 관점은 단지 작은 부분에 불과하다. 고문의 목적은 -소수 인종 집단의 지도자, 인권활동가, 노조원, 변호사, 정치인, 학생 운동지도자, 언론인들의- 인성과 정체성을 파괴하고 그들의 강인한 성격을 약화시키려는 것이다. 그것은 민주주의에 적대하는 가장 효과적인 무기이다.

반고문 국제법과 일부 국가의 법률은 고문피해자들이 정당한 보상을 받아야 할 권리와 고문자들에 대한 처벌을 국가의 의무로 규정하고 있다. "각국의 party는 자국의 법률체계안에 고문 행위의 피해자가 배상을 받고, 가능한한 완전히 재활할 수 있는 수단을 포함하여 정당하고 적절한 배상을 받을 권리를 갖도록 보장할 것이다. 고문 행위의 결과로 피해자가 사망할 경우 그의 부양 가족이 보상받을 권리를 갖게 된다." (UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984. 14조.)

그러나 법정에 소송이 제기되는 경우는 극히 소수이다. 고문에 대한 법정의 판단은 강제할 적절한 기제의 결여.....

Trust는 고문피해자들과 그의 가족들이 법정소송을 제기하는 것을 돕고자 한다. Trust는 법이라는 사슬(chain)안에 있는 중요한 고리(link) 강제기제와 같은 역할을 할 것이다.

우리는 고문에 관련된 많은 국제·국내 조직들과 개인들과 긴밀한 접촉을 유지한다. 그들은 고문피해자들이 석방되고, 신체와 정신이 치유되는 것을 돕는다. 1992년에 전세계에 있는 63개의 재활 전문 센터가 48000여명의 고문피해자들을 도와왔다.

그들과 많은 목적을 공유하고 있긴 하지만, Trust는 고문피해자들 -남성, 여성, 어린이- 이 소송을 제기하는 것을 돕고, 그들이 받는 고통에 대한 보상을 받을 수 있는 법적 기제를 확립하기 위해 일하고 있는 유일한 조직이다.

1984년 이래, Keith Carmichael은 광범위한 인권, 법률요건, 비정부 조직(NGO)의 경험을 통해 사람들의 자문에 응해왔다. 그는 보상받기를 원했지만 그 방법을 모르고 있던 90명 이상의 고문피해자들을 만났다. 일부 비정부조직이 고문피해자들의 석방, 은신처 제공, 의료적 치료를 통해 고문피해자들을 돕기는 했지만 배상을 획득하는데 도움을 준 바는 없었다.

1990년에 그는 이러한 필요에 부응하여 보상을 받고자 하는 고문피해자들에게 실제적이며 법률적인 도움을 줄 수 있는 새로운 조직의 출범을 주도했다. 2년 후인 1992년 12월, Trust는 영국의 자선단체(charity)의 하나로 등록했다.

# OBJECTIVES

Provide legal assistance for torture survivors to gain access to courts  
 고문 피해자가 소송을 제기할 수 있도록 하기 위한 법적 지원 제공

Seek enforcement of existing rights of victims to compensation

Help victims collect damages

Support international action for reparation for torture survivors  
 고문 피해자들이 여타 방식에 의한 국제적 보상 받기 지원

고문 피해자에 대한 자의성 회복을 위한 피해자 지원 프로그램

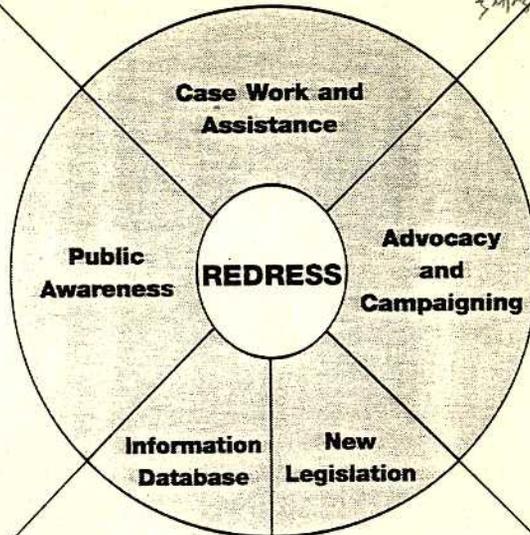
Increase awareness of the widespread use of torture

정신치료센터 Trust 센터

Establish the Trust as a source of information

Assist governments in prosecuting torturers  
 고문자들은 기소하는 정부 지원

Co-operate with all other organisations with an interest in the same field  
 고문에 대해 관심을 가진 다른 모든 단체들과 협력



Maintain accurate information on:

National and international laws against torture

Case histories, procedures and precedents

국내, 국외의 고문 사례

고문사실의 절차 관련

이 대한 정당한 처벌의 유지

Promote the extension of national and international law against torture

국제적, 국외적 고문법의 확대를 촉진

Advocate effective national civil remedies

효과적인 국내 시민 배상행위의 촉진

## AIMS

I

### 목적

그외에 다음과 같은 목적을 가지고 있다.

- \* 고문피해자들의 건강과 용기의 증진.
- \* 고문피해자들과 가족들의 명예, 인간됨, 신망의 회복.
- \* 고문피해자들의 취업, 연금의 권리, 주거, 의료·교육적 서비스의 보호.
- \* 고문을 자행한 나라로부터의 고문사실의 시인(admission) 확보.
- \* 고문자들이 자신의 범죄에 대한 책임을 지도록 만드는 것.
- \* 고문 발생을 줄이기 위해, 국제적으로 도덕적 분위기의 개선.

Redress Trust는 변호사들의 국제적인 네트워크의 도움을 받아 혁신적이며 비영리적인 법률서비스를 제공한다. 고문과 관련된 다른 비정부조직은 고문피해자들이 배상을 받도록 -이러한 잘못을 바로잡도록- 도움을 주지는 못한다.

## TORTURE AND REDRESS

Case work is the primary task of the Trust and we will work closely with the network of lawyers around the world. When approached, we will provide whatever assistance we can to torture survivors, and seek reparation for them.

- Filing cases under national laws which provide remedies
- Seeking remedies in the European Court of Human Rights

### 고문과 Redress

판례연구(사례연구, case work)는 Trust의 기본적인 임무로써 우리는 전세계의 법률가 네트워크와 긴밀한 협조한다. 요청이 있을 경우, 우리는 고문피해자들에게 우리가 할 수 있는 모든 도움을 제공할 것이며, 다음과 같은 일을 통해 그들이 보상을 받을 수 있도록 도울 것이다.

- \* 고문행위가 일어난 나라에서 소송제기.
- \* 배상을 규정한 국내법 하에서 사례(판례)수집.
- \* European or International Courts of Human Right에서 배상책 찾기.
- \* 국제 모임에서 이슈화
- \* 외교적 조치를 통한 노력.
- \* 언론 캠페인을 조직.

On his return to the USA, members of the Trust introduced Mr B to lawyers and the media, and supported his testimony before a Congressional Subcommittee. In 1989, he received an apology and a settlement of \$12 million (£8 million) from the government of Saudi Arabia.

The primary work for our next year is:

- Case work: going to court, approaching lawyers
- Advocacy: preparing papers, press releases
- Networking: 'Redress for Torture Bill'
- Information: database on laws, torturers, and torturers.

- Public awareness - inform all interested parties

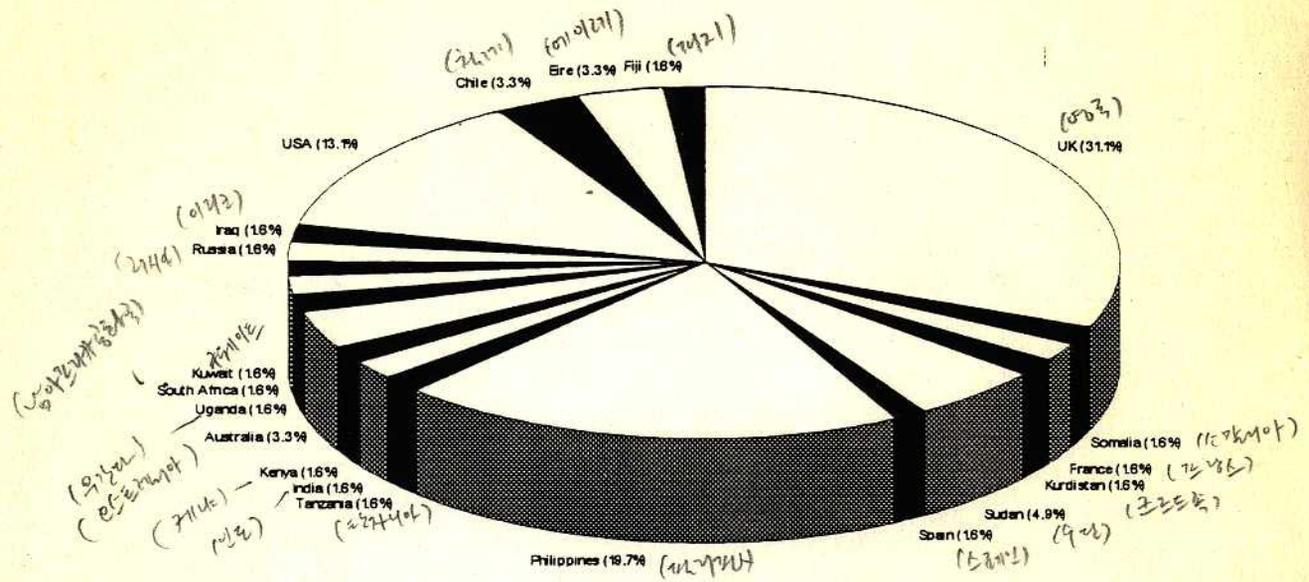
내년 우리들이 할 작업의 우선 순위와 프로그램은 다음과 같은 점에 초점이 맞추어져 있음.

- \* 판례연구: 진행중인 재판이 종결될 때까지 가능한 모든 지원 및 조언을 제공할 법률 사무관(legal officers), 모니터 요원 임명.
- \* 선전작업(advocacy) 및 캠페인: 국제 단체에 소송 사건 및 서류의 제출.
- \* 새로운 입법: 'Redress for Torture Bill' 프로그램의 제안.
- \* 정보 데이터베이스: 고문, 고문피해자, 고문자에 대한 포괄적인 법률 데이터베이스 구축.
- \* 고문에 대한 공적인 인식 제고: 고문에 관심을 가지고 있는 정당 및 공개 단체에 고문의 실상과 Trust의 활동에 대한 정보 제공.

## MEASURING PROGRESS

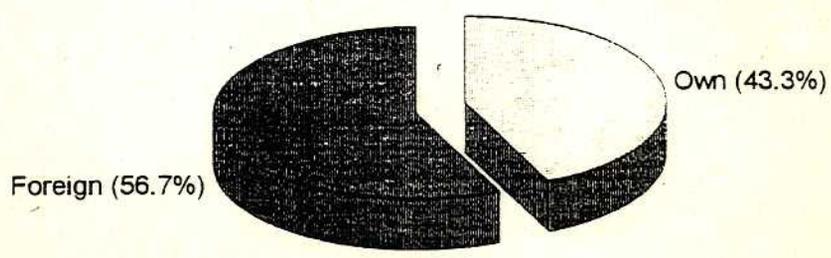
### 1. Case work and assistance

60 people of 20 different nationalities who have suffered from torture have approached the Trust, and would like our help and support in seeking reparation.



31 of these approaches have been since December 1992, and prior to that date 29 torture survivors have approached members of the Trust for assistance. Many NGOs and rehabilitation centres have referred cases to us.

Of all the cases the Trust is involved in, the majority are torture survivors who seek compensation from a foreign government.



We, in conjunction with lawyers, have assisted 4 torture survivors in the USA and 1 UK citizen, all of whom were tortured abroad, to bring their cases to

court. Members of the Trust were involved in the case of an American who received a settlement and an apology from the foreign government.

As a result of 1 torture survivor winning his case, his family benefited, as did other relations - their honour and spirits were restored; they again became contributing members of society. The Trust has also helped torture survivors and their families, with introductions to medical and psychiatric specialists, advice on seeking asylum, provision of entry visas, and payment for travel. A total of 16 victims' and other families have benefited from our assistance.

In the case of 1 UK citizen tortured abroad, the High Court granted leave to serve writs on 3 of his torturers, but as yet none have been sentenced. However, in another case of a UK citizen, tortured abroad, he was able to make a charge against his torturers. A domestic tribunal subsequently sentenced them to imprisonment.

We liaise closely with 25 NGOs with an interest in the same field, and the majority of rehabilitation centres for torture victims around the world. Many referrals have come from these organisations.

In order to facilitate case work and provide other assistance to torture survivors, we have built a network of 192 law firms, human rights legal groups and other legal institutions in 58 countries on all continents.

## **2. Advocacy and campaigning**

The UK government has acknowledged the work of the Trust, and we are also liaising closely with the US Administration. Governments from 4 other countries have directly approached the Trust.

The UN Centre for Human Rights, the UN Voluntary Fund for Victims of Torture, The UN Committee against Torture (CAT) and the UN Special Rapporteur on Torture are fully informed about the Trust's mission and progress.

The Trust has liaised with the European Commission, the European Parliament, the Council of Europe, and the European Committee for the Prevention of Torture or Degrading Treatment or Punishment (CPT), as well as both the European and Inter-American Commissions and Courts of Human Rights.

## **3. New legislation**

Trust members were involved in the drafting and lobbying for the US Torture Victim Protection Act of 1991 (TVPA) which provides an effective remedy for victims. One torture survivor has since invoked this Act and there are several cases recently filed in which the victim seeks to use the TVPA.

The Trust was also involved in the drafting of an amendment to the Foreign Sovereign Immunities Act which, when passed, will authorise American courts to hear torture cases brought against foreign countries by US citizens. In the UK, together with our Legal Advisory Council, we have drafted a 'Redress for Torture Bill' providing a civil remedy for torture victims.

## **4. Information database**

We have now identified many sources of information on torture, and continue to receive information from NGOs concerned with torture.

In order to undertake case work, advocacy, campaigning and plan new legislation, we have started to establish a comprehensive database on international law, state laws and case law against torture.

As part of this research programme, we have initially established that 19 torture survivors have received reparation, and 3 torturers have been convicted.

## MEASURING PROGRESS

In September 1987, 3 Turkish citizens were arrested and accused of being members of the communist party of Turkey. They were held incommunicado for 13 days before being sentenced to 4 years and 2 months imprisonment. Whilst in custody, they were questioned and subjected to ill-treatment by the police. They were later released conditionally. In 1990 they filed their cases with the European Commission, and in a friendly settlement, the Turkish government agreed to pay each of the applicants a sum of 173,765,000 Turkish Lira (£3,750).

In 1983, a French citizen on Corsica was arrested as a suspect for murder and attempted murder allegedly committed by the Corsican National Liberation Front. 5½ years later he was acquitted. Whilst in police custody, he was subjected to ill-treatment and beating. He filed a criminal complaint, and in 1987 made an application to the The European Commission of Human Rights. The European Court of Human Rights ruled in August 1992 that there had been violations of the European Convention on Human Rights and he was awarded 1 million FF (£114,000) for the inhuman and degrading treatment and the unjustified detention, and 300,000 FF (£34,000) for costs and expenses.

In September 1992, in a friendly settlement with the Argentine government arranged by the Inter-American Commission of Human Rights, 13 Argentinians who had been unlawfully arrested and tortured received compensation ranging from 4,401 to 71,739 pesos (£2,858 to £46,584) for unlawful arrest and torture by their government.

### 5. Public information and education service

To date the Trust has been featured on:

- BBC 1 Television - *9 0 'Clock News*
- BBC 2 Television - *Westminster Daily*

and 4 other television programmes.

Articles in The Guardian, The Times and The Observer, have increased public awareness of the Trust's work.

Additionally, 25 national and regional radio broadcasts, 1 international television programme, 4 international radio broadcasts and 4 international press agencies have introduced The Redress Trust to audiences on all continents.

## SURVIVORS OF TORTURE

The Trust, in conjunction with its international network of lawyers, has provided legal and other assistance to a number of torture survivors.

In 1983 Mr N, an American citizen, was recruited by the government of Saudi Arabia to work as an engineer in a hospital. In the course of his work, he discovered serious health and safety defects. He raised the alarm, and after protesting when no action was taken, he was arrested and detained without charge for 39 days.

*"I was taken to a small cell," he said, "where officials proceeded to beat and torture me. They strapped a rod tightly behind my knees and forced me to do knee-bends until my legs buckled underneath me and I fell to the floor in agony. As I rolled around on the floor in excruciating pain, my tormentors pulled off my shoes and, holding my ankles down with a rod, beat the bottom of my feet with a bamboo cane ... the officials returned to my cell and brutally beat me about my body until I could no longer breathe and fell unconscious..."*

Mr. N was held in solitary confinement in rat-infested cells, deprived of fresh air and exercise, beaten, starved and forced to sign a statement written in Arabic, which he could not understand.

Since his return home in 1984, Mr. N has had four surgical operations and is diagnosed as suffering from diffuse nerve injury and post-traumatic stress disorder. He has been judged completely disabled, and unable to work.

Mr. N was determined to seek compensation. On 23 March 1993, the Supreme Court of the United States ruled that Mr. N could not sue a foreign government in the US courts. *"However monstrous such [police] abuse [torture] undoubtedly may be,"* one judge pronounced, *"a foreign state's exercise of the power of its police has long been understood ... as peculiarly sovereign in nature."*

The Trust is not prepared to accept this judgment as the last word. It has helped to obtain the US government's agreement to negotiate a settlement, and has developed other plans to ensure that Mr. N receives his compensation sometime during 1994. We provide a reassuring and supportive service.

Not only do we introduce torture survivors to lawyers, and medical and psychiatric specialists, but we also advise those who seek asylum, and organise entry visas and housing. We have paid travel expenses, and made available our office facilities to survivors and their families.

## SURVIVORS OF TORTURE

In May 1991, Mr A, a UK citizen, was arrested in Kuwait as part of a hunt for those responsible for the circulation of a contentious video. He was forced into a vehicle and taken to a military prison, where he was blindfolded and handcuffed, whilst being beaten and gun-whipped. He was intimidated and threatened into signing a full confession, and then released.

After 2 days, he was again kidnapped and taken to a palace with a swimming pool in which five or six bodies were floating. He was forced into the water, and repeatedly held under.

*"I was then dragged into a small room where some foam mattresses, which were soaked in petrol, were set alight... my body was very badly burnt... when they did let me out, they threatened to shoot me ... but eventually I was taken to hospital."*

After coming to the UK, he and certain members of his family have received several death threats. He is claiming compensation for the severe permanent physical and psychological injuries allegedly afflicted on him.

A High Court judge gave leave to serve writs for compensation on members of the Kuwaiti Royal Family alleged to have tortured Mr A. In 1994, the Court of Appeal concluded that state immunity could not be relied on to defeat a torture claim. The Kuwaiti government will have to decide whether to defend itself, or face the prospect of an adverse judgment in which its assets will be vulnerable to seizure.

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Mr E practised as a lawyer in Sudan, when a bloodless coup in 1989 heralded the formation of a military council. As he was a member of the Bar Association which had criticised the new military government, the authorities arrested him.

*"I was taken to the Security headquarters," he said, "I stayed there on the roof for 8 days ... I was severely tortured ... It was very cold, and I was forced to stand on one foot for 8-10 hours in the night ... they would pour cold water on me ..."*

After 8 days, he was transferred to a secret detention centre, where he was held incommunicado, beaten and whipped.

*"They forced me to stand up on one foot for many hours and the place was filled with very cold and filthy water and it was very cold at night ... I was forced to stand for three hours in a bucket of ice ... the first ten minutes were very painful. After that, I didn't feel anything, then I passed out."*

Whilst detained, he was never interrogated nor charged. After 48 days when his health had seriously deteriorated, he was released in January 1990. He had a medical check in Sudan, was hospitalised for 2 months in Egypt, and finally in the UK where one of his legs had to be amputated.

We are collecting further evidence on the case of Mr E before devising strategies so that he receives an apology from Sudan, and some form of

compensation for his suffering. Mr E has started the Sudanese Victims of Torture Group for which we have provided office services.

Mr M was involved in the Kurdish movement in Iraq. In 1985, he escaped to Turkey, and was arrested.

*"I spoke fluent Turkish, but they accused me of being a "bloody Kurd". In this special underground prison, they gave me electric shocks on my genitals ...they beat my feet, and arranged false executions when I thought I would be shot."*

4 1/2 months later, he was transferred to a "corrupt refugee camp" from which he escaped with friends and his British ex-fiancee, only to be imprisoned again after arrest on the Greek border.

*"In the cell the walls and mattress were covered in blood. They beat me, threatened to shoot me, and electrocuted my mouth and feet. A doctor saw me and said I would die soon, but they just beat me even more."*

He was then moved to another prison, made friends and eventually escaped to France, where he was taken at gunpoint to an underground prison by police. They threatened to return him to Iraq to be hanged but instead he was sent back to Turkey. There he was imprisoned for a year, and hospitalised after being made to stand in the snow. He reached the UK on 16 June 1989, and now seeks redress.

Torture survivors who seek reparation face many obstacles and difficulties.

고문에 대한 보상을 원하는 고문피해자들은 많은 장애와 어려움에 직면한다.  
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난점

\* 소송을 제기하기 위한 주요 목격자 및 의학적 증거 확보의 어려움.  
- 고문은 대개 그것이 자행되었음을 식별해내기 어려운 방식으로 신중하게

진행된다.

- 고문이 자행되고 있는 나라의 의사들은, 자신들에게 주어질 위험 때문에 고문이 자행되었다는 의학보고서에 관련되기를 꺼려한다.

- \* 행동을 취할 수 있는 시기상 제약
- \* 현지 치료책의 부재, 또는 그것의 비효율성.
- \* 정부의 은폐.

Redress Trust가 제공하는 지원책

- \* 가능할 경우, 의료적 조언자의 도움, 요구되는 증거에 대한 지침, 법률적 자료의 준비에 있어서의 지원을 통한 이러한 증거의 수집.
- \* 배상과 명확한 지침을 찾고자 하는 방식에 대한 조언이 요구될 때 변호사 및 Trust의 법률 고문 위원회의 소개.
- \* 배상을 얻을 수 있기 위해 새로운 국내 입법에 대한 작업.
- \* 이러한 문제들의 해결을 위해 정치인 및 정부 관리와의 접촉.

## ADVOCACY AND CAMPAIGNING

Recent initiatives seeking to address torture have placed special emphasis on enforcement measures. Although the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment specifies that states will outlaw torture in their national legislation, the incidence of torture is increasing.

The same group was involved in drafting an amendment to the US Foreign Sovereign Immunities Act of 1976 which, when passed, will authorise American courts to hear torture cases brought by US citizens against foreign states.

### Advocacy & Campaigning

The Trust is also assisting the development of a

反고문 UN 회의(UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)가 국내법에서 고문을 불법화하게 될 나라들을 상세히 지적했지만, 고문 행위는 증가하고 있다. 184개국에 이르는 UN 회원국 중에 80여개국이 이 회의를 비준했지만 (1994.3), 이 나라 중 40% 이상을 고문을 자행하고 있다. Trust는 고문피해자들이나 고문 피해 집단을 대신해 국제회의에 지속적으로 개입할 것이며, 이용가능한 채널을 활용하기 위해 비정부 조직과 합법적 기구들과 긴밀히 연대할 것이다.

고문피해자들이 자국에서 배상을 받도록 하기 위해서, 새로운 국내 입법은 반고문 국제법과 조응해야 할 필요가 있다. 우리는 영국과 여타의 나라들에서 입법을 촉진하기 위해 변호사, 인권활동가와 정치인으로 이루어진 집단(task group)을 설립했다.

Trust의 법률고문위원회(Legal Advisory Council)의 구성원들은 고문피해자들에 대한 공적 치유책(civil remedy)를 제공하는 'Redress for Torture Bill 1994'의 초안을 영국의회에 제출했다. 우리는 올해 말 이 건이 의회에서 다루어지기를 희망하고 있다.

\*미국 사례-

Trust는 또한 모든 인권침해, 특히 고문에 대한 배상을 위한 새로운 새로운 국제회의의 발전을 지원하고 있다.... 우리는 또한 고문피해자들에 대한 서비스를 개선하기 위해 일하고 있다. 우리는 고문피해자들의 권리, 그들의 석방, 재활, 배상, 보상을 위한 조치에 대해 언급하고 있는 국제적인 고문피해자 헌장(Torture Victims' Charter)의 초안을 준비해왔다. \*영국-미국 사례-

benchmark Torture Victim Protection Act of 1991, which received President Bush's assent on 12 March 1992. It provides a civil remedy against torturers, making them liable to pay damages to US and non US victims who protest their cases within 10 years of acts of torture.

The Trust initiated 2 Parliamentary Questions in order to establish the right of torture victims who were tortured abroad to take action against the perpetrators and seek redress in the UK.

In a debate on torture in the House of Lords on 10 March 1994, the Minister of State at the Foreign and Commonwealth Office, The Rt Hon The Baroness Chalker of Wallasey, said:

*"Today, I read that a new non-governmental organisation, the Redress Trust, has recently come into being and is arguing for UK courts to assume jurisdiction for claims by UK nationals who allege that they have been tortured in third [world] countries. We shall work with them and with other non-governmental organisations. They certainly add to what governments can do."*

Members of the Trust were also involved in initiating a debate in the US Congress on the issue of US courts hearing cases of Americans who have been tortured abroad. Recently, President Clinton's Administration has directed the Department of State to resolve, as soon as possible, the claims of 3 survivors who were tortured abroad.

RAISING AWARENESS (고문에 대한 인식 제고)

The Trust has publicised in the media the cases of several torture survivors.

# Victims look for Redress

tales of chains, beatings, filth and degradation

"His head was forced into the filthy pool approximately six times.

"But at present victims of torture face many obstacles when seeking redress.

he was jailed, beaten, starved and held in solitary confinement in a rat-infested cell for 39 days in 1984 after he refused to keep silent about safety violations at King Faisal Hospital in Riyadh.

"When you come back to this country and your own government turns its back on you, the torture continues."

A NEW human-rights group is pressing for legislation to allow victims of torture to sue foreign governments in the British courts.

For three weeks he was constantly beaten and kicked while handcuffed, suspended from a beam by ropes, sexually abused and urinated on.

officials have acknowledged that the case has potentially serious implications for relations with an ally whose feelings bruise easily—and happens to sit atop the world's biggest reserve of oil.

"Don't say too much. We don't want to upset the Saudis. We need them more than they need us."

### Torture charity

A new charity launched today aims to help the world's torture victims win compensation. The Redress Trust will offer legal advice and campaign for changes in the law.

## THE OBSERVER

Human rights experts say there are no reliable figures on the number of such cases, but they use words such as "fairly common" and "legion" to describe the frequency.

It has been formed to help people tortured mentally or physically by foreign governments.

legs were crushed and spine broken under torture

WASHINGTON EDITION / LOS ANGELES TIMES

they were unable to defend themselves from their tormentors but are now determined to fight back.

"They played an elaborate psychological game. It has shattered my nerves."

Carmichael, as a British subject, would not benefit directly from the proposed law, but he said that if the United States acts, other countries may follow.

Mr Carmichael said: "Torture has become a world epidemic but at present there is no mechanism to compensate the victims and punish the torturers.

### NEW LAW JOURNAL

Last Friday's Court of Appeal judgement that a writ for damages may be served on the Kuwaiti government for allegedly assisting the torture of a British citizen represents a landmark ruling for victims of torture, writes Keith Carmichael, Honorary Director of the Redress Trust.

tortured repeatedly for 454 days.

THE WASHINGTON POST

# Torture

It was bad enough for Saudi Arabian police to beat him on the soles of his feet and break his knees while trying to get him to confess to charges they never even explained. But for the U.S. government to side with the torturers in court, that was too much.

The New Law Journal - Friday 28 January 1994

Saudi Arabia enjoys "sovereign immunity" from lawsuits resulting from government actions carried out in the kingdom.

He testified that he was beaten, deprived of food and water and subjected to electric shocks, and that his toenails were pulled out with pliers.

he was held without any formal charge for 2½ years, suffering repeated beatings, sexual assaults, near-starvation and a broken back.

"Too often the attitude of governments is not to make waves, lest trade with human rights abusers be jeopardised."

Lord Justice Butler-Sloss, sitting with Lord Justices Evans and Rose, accepted that there was a strong argument that the state immunity normally enjoyed by governments did not apply to cases of torture.

The State Department, he said, "has done nothing to help me in my efforts to obtain some small measure of justice."

## Raising Awareness(고문에 대한 인식 제고)

1994년 3월 7일, 상원에서 성공적으로 출범한 이래, 우리는 텔레비전과 라디오와 신문의 폭넓은 관심을 받았다.

Trust는 국제법·국내법(소송법 포함), 고문피해자와 고문자에 대한 포괄적이고 현대적인 정보체계를 수립하고 있다.