CHAPTER 18

ความผิดฐานทรมาน เขตอำนาจสากล กับการหยุดยั้งการกระทำของรัฐ

Universal Jurisdiction: Ending Torture of Individuals by States

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บทคัดย่อ

ใจความหลักของ “การทรมาน” อธิบายได้ว่าหมายถึง การกระทำใดก็ตามโดยเจตนาที่ทำให้เกิดความเจ็บปวดหรือความทุกข์ทรมานอย่างสาหัสไม่ว่าทางกายหรือทางจิตใจต่อบุคคลใดบุคคลหนึ่ง โดยความรู้เห็นเป็นใจของเจ้าพนักงานของรัฐ เพื่อความมุ่งประสงค์ เช่น เพื่อให้ได้มาซึ่งข้อสนเทศ เพื่อลงโทษ เพื่อข่มขู่ให้กลัว หรือเพื่อบังคับขู่เข็ญบุคคลนั้น การทรมานเป็นการกระทำที่ทั่วโลกเห็นพ้องต้องกันว่าเลวทรามอย่างยิ่ง ถึงขนาดที่มีการต้องห้ามการทรมานโดยสิ้นเชิง (Absolute ban) อาจแบ่งพิจารณาได้ในสามแง่มุมคือ หนึ่ง การห้ามการทรมานนั้นบัญญัติอยู่ในสนธิสัญญาและข้อตกลงระหว่างประเทศที่มีผลผูกพันทางกฎหมายจำนวนมากมาย เช่น อนุสัญญาเจนีวาทั้งสี่ฉบับ ธรรมนูญกรุงโรมว่าด้วยศาลอาญาระหว่างประเทศ ปฏิญญาสากลว่าด้วยสิทธิมนุษยชน อนุสัญญาต่อต้านการทรมานและการปฏิบัติหรือการลงโทษที่โหดร้าย ไร้มนุษยธรรม หรือที่ย่ำยีศักดิ์ศรี และยังต้องห้ามตามกฎหมายจารีตประเพณีระหว่างประเทศอีกด้วย สอง การทรมานนั้น ไม่อาจยกเหตุอันใดมาเป็นข้อต่อสู้เพื่อกล่าวอ้างว่าไม่มีความผิด และไม่อาจอ้างสถานการณ์เรื่องความมั่นคงของประเทศชาติมาเป็นข้อยกเว้นให้รัฐไม่จำต้องรักษาหน้าที่ของตนในการคุ้มครองบุคคลจากการทรมานได้เลย และสาม การห้ามโดยสิ้นเชิงนี้ เห็นได้จากการที่ความผิดฐานทรมานนั้นถูกกำหนดให้เป็นความผิดสากล กล่าวคือ ไม่ว่าผู้กระทำความผิดฐานทรมานนั้นจะไปปรากฏตัวอยู่ในรัฐใดก็ตาม รัฐนั้นสามารถใช้หลักเขตอำนาจสากลในการดำเนินคดีต่อผู้กระทำได้ แม้จะไม่มีความเกี่ยวข้องใดๆ ต่อตัวผู้กระทำหรือผู้เสียหายเลย

บทความนี้มุ่งศึกษาว่ากลไกการกำหนดให้ความผิดฐานทรมานเป็นความผิดสากลดังกล่าว สามารถหยุดยั้งการทรมานบุคคลโดยรัฐเป็นผู้กระทำหรือไม่ นอกจากนี้ บทความนี้ยังพิจารณาถึงปัจจัยต่างๆ ที่เป็นอุปสรรคต่อความรับผิดชอบของรัฐในกรณีความผิดฐานทรมานนี้อีกด้วย จากการพิจารณาดังกล่าว บทความนี้มีข้อสรุปว่า แม้หลักเขตอำนาจสากลจะมีคุณูปการอย่างมากในการเพิ่มโอกาสใน

การนำผู้กระทำมาเข้าสู่กระบวนพิจารณา แต่หลักเขตอำนาจสากลก็มีข้อจำกัดในตัวเอง และมีข้อจำกัดในเรื่องการไม่สามารถขจัดปัญหาอื่นๆ ที่เป็นอุปสรรคต่อความรับผิดชอบของรัฐต่อความผิดฐานทรมานอีกด้วย ดังนั้น หลักเขตอำนาจสากลจึงไม่สามารถหยุดยั้งการทรมานที่รัฐเป็นผู้กระทำได้ด้วยตัวเอง หากแต่เป็นมาตรการที่สำคัญมาตรการหนึ่งที่จะทำหน้าที่ควบคู่ไปกับกลไกอื่นๆ ดังจะได้เสนอต่อไปในบทความนี้ อันเป็นกลไกที่มีความสำคัญไม่ยิ่งหย่อนไปกว่ากัน เพื่อประโยชน์แห่งการเสริมสร้างความเข้มแข็งของความสามารถที่จะป้องกันและหยุดยั้งการทรมานบุคคลโดยรัฐเป็นผู้กระทำ

คำสำคัญ: การทรมาน/ ความผิดสากล/ เขตอำนาจสากล/ สิทธิมนุษยชน/ ความรับผิดชอบของรัฐ

Abstract

Torture can be defined as an intentional infliction of physical or mental pain or suffering on a person with the consent of a person acting in an official capacity, for a certain purpose such as to obtain information or to punish, intimidate or coerce the person. It is universally recognized as such a heinous act that it is absolutely prohibited in three regards. First, the prohibition of torture is enshrined in numerous treaties and legally binding international agreements such as all four Geneva Conventions, the Rome Statute of the International Criminal Court, the Universal Declaration of Human Rights and other major human rights Conventions, the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), as well as customary international law. Second, there can be neither defense to nor derogation from this prohibition and third, the absolute ban is

reflected through the ascription of universal jurisdiction to the crime of torture. With a special emphasis on the UNCAT, this article studies whether this mechanism of universal jurisdiction can end torture of individuals by States. It further determines factors that hinder State accountability in relation to the crime of torture. The article concludes that while universal jurisdiction is invaluable in increasing the likelihood of perpetrators being brought to justice, it has limitations in itself as well as in relation to eliminating other hindrances to State accountability and therefore is a mechanism that cannot singlehandedly combat torture by States but is a significant feature that will work with other equally prominent mechanisms of a "comprehensive system" proposed in this article for the purposes of reinforcing the ability to prevent and put an end to torture by States.

Keywords: Torture/ Universal jurisdiction/ Human rights/ State accountability

Introduction

States have the responsibility to protect the peace and maintain the stability of its nation, but how far would one go to uphold security? In light of the recently published "CIA Torture Report" (2014) it seems that State officials are capable of going very far, too far, perhaps, towards national security, too far away from the responsibility to protect human rights, too far into the characteristics of those many States so wish to defend their country from. Torture encompasses the very annihilation of respect for

human dignity and both treaty law and customary international law deems torturers a universal criminal whom the international community has a responsibility to prosecute whenever found. This article seeks to find out whether universal jurisdiction can single-handedly put an end to the torture of individual by States. It starts with the definition of the notion of torture and its applicable legal regimes in Part I. Part II reviews States' obligations under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) while Part III shows that while universal jurisdiction is invaluable in increasing the likelihood of perpetrators being brought to justice, limitations exist in relation to its ability to end torture. Part IV brings up some problems that facilitate State impunity. The paper makes a submission that, in light of the limitations of universal jurisdiction together with the hindrances to State accountability which cannot be solved by universal jurisdiction, making torture a universal crime alone cannot end torture by States. Part V therefore recommends accurate internalization of existing international human rights obligations, specialized institutions to receive torture complaints and monitor compliance to those obligations and creative reparations that offer impactful remedies that contribute to a more lasting change than monetary reparations which the author believes would supplement and reinforce the mechanism of universal jurisdiction for the purposes of ending torture.

I. Torture and Applicable Regimes

Torture is abhorred by all legal regimes. It violates human rights; is prohibited under all four Geneva Conventions; * acts of torture can amount to crimes against humanity or genocide under the Rome Statute; (United Nations General Assembly, 1998, article 7, 8) is a crime under the United Nations Convention against Torture and related texts; customary international law, the rules of which all states irrespective of any treaty membership are bound to respect, prohibits it; (International Committee of the Red Cross, 2005, Rule 90) it is morally wrong and undermines the rule of law and justice. (Emyr Jones Parry, 2012, pp. 689-690, 689) It is such a heinous act that its use is absolutely prohibited. The absolute ban means that, unlike some rights which may be suspended, such as during times of public emergency, the prohibition against torture can never be derogated from. There can be no lawful resort to torture and neither can there be a defense, such as superior order,

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* International Committee of the Red Cross, Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention) (1949) art 3, 12, 50; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Convention) (1949) art 3, 12, 51; Geneva Convention relative to the Treatment of Prisoners of War (Third Convention) art 3, 17, 87, 130; Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) (1949), art 3, 32, 147; Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol 1) (1977), art 75(2)(a), (e), 85; Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (1977), art 4(2)(a), (h).

to justify torture. (United Nations General Assembly, 1984, article 2(2), (3)) International law simply does not recognize "the right to commit torture" under any circumstance whatsoever. (Committee Against Torture, 2008, para 1)

To live free from torture is a fundamental human right at the heart of shared humanity, enshrined in numerous treaties and legally binding international agreements through the explicit and absolute prohibition against torture (Amnesty International United States of America, 2012) as set out by, for example, Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights, Article 1 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter, UNCAT), Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 5 of the American Convention on Human Rights, and Article 5 of the African Charter on Human and Peoples' Rights. (The Redress Trust, 'Ending Torture: A Handbook for Public Officials', 2006)

II. State Obligation in Relation to the Prohibition of Torture

The definition of torture under the UNCAT is linked to it being a "purposeful official act" (UNCAT, art 1) which highlights that State machinery "which should be prohibiting, preventing, investigating and prosecuting such an act has not functioned properly" (The Redress Trust, Ending Torture (n 9) 4) because the State has negated one of its core functions to "guarantee the rights of those coming

within its jurisdiction, and to ensure their security and well-being." Such responsibility is reflected in the international system for the protection of human rights which States are both makers as well as duty-holders of. (The Redress Trust, 2006)

The general obligation for State parties to take actions that will reinforce the prohibition against torture through legislative, administrative, judicial, or other actions that must, in the end, be effective in preventing it is enshrined in Article 2 of the UNCAT. (UNCAT (n 10) art 2(1)) To ensure this is achieved, the Convention further outlines specific preventive measures in Articles 3 to 15. (Committee Against Torture, para 25) The Committee against Torture has clarified that the "provisions of Article 2 reinforce this peremptory jus cogens norm against torture and constitute the foundation of the Committee's authority to implement effective means of prevention." (Committee Against Torture, para 1) Some of these include criminalizing torture with appropriate punishment; (UNCAT (n 10) art 4) establishing universal jurisdiction over such crime; (UNCAT (n 10) art 5) educating personnel who may be involved with treatment of individuals under detention about the prohibition of torture; (UNCAT (n 10) art 10) keeping review rules on interrogation; (UNCAT (n 10) art 11) ensuring prompt and impartial investigation, (UNCAT (n 10) art 12) right to complain, (UNCAT (n 10) art 13) and right to redress; (UNCAT (n 10) art 14) and making statement obtained from torture unusable. (UNCAT (n 10) art 15) Not only must States take active measures, knowing but doing nothing also incurs State responsibility as well. (Committee Against

Torture, para 18) Moreover, protection as regards prohibition on torture must be applied indiscriminately. (Committee Against Torture, para 20-21)

III. Universal Jurisdiction

Among the many mechanisms the UNCAT has put forth to end torture is to make it a universal crime so that there will be no safe haven for torturers, irrespective of their rank in State. This section explains the concept of universal jurisdiction and examines the contributions and limitations of universal jurisdiction in relation to its ability to end torture.

Universal jurisdiction is primarily based on customary international law and can be established under a "multilateral treaty in the relations between the contracting parties, in particular by virtue of clauses which provide that a State party in the territory of which an alleged offender is found shall either extradite or try that person." (Institut de droit international, 2005)

Universal jurisdiction is based on the idea that some crimes are so heinous it offends humanity as a whole and as a result obligates every country to prosecute it shall the opportunity arise. (Paul Chevigny, 2006) From an international human rights law point of view, the notion was that treatment of individuals by States and governments is distrusted therefore "mechanisms which would leave the enforcement of human rights entirely in the hands of those same states and governments" are similarly distrusted as well. (Alex Mills, 2014, pp. 1-53, 34) The ascription of universal jurisdiction to the crime of torture reflects the notion of absolute

ban of the crime; that it is absolutely prohibited any time anywhere and that perpetrators are subject to prosecution by every nation. The rationale is that there would be no safe haven for torturers.

A. Contributions

Universal jurisdiction contributes to State accountability by obligating them to provide access to justice to victims or torture. The Committee against Torture is of view that "the obligation does not depend on traditional jurisdictional connections of territory or nationality, particularly where 'a victim is unable to exercise the rights guaranteed under article 14 in the territory where the violation took place." (Committee against Torture, 2012, para 22)

Universal jurisdiction also prevents State immunity to shield perpetrators who are State leaders from proceedings. The House of Lords in the Pinochet case held that state immunity did not prevent extradition proceedings against Pinochet, former head of state of Chile, who had presence within United Kingdom territory even though the allegations of torture were unconnected to it. (Regina v Bow Street Metropolitan Stipendiary Magistrate and Others, 2000, AC 147) Pinochet's mere territorial presence triggered the exercise of universal jurisdiction, a treaty-based obligation, which cannot be prevented by State immunity. This is a correct understanding of State obligation because the UNCAT defines torture as an infliction of severe pain by a state official, therefore recognizing State immunity for acts of torture would have "effectively negated the Convention's obligation of universal jurisdiction."

Moreover, when one nation brings proceedings towards a torturer based on universal jurisdiction, it can prompt the concerned nation to take its own action against the torturer. (Mills, (n 29) 25) The notion of States affirming and encouraging each other is a right step forward to international cooperation in bringing justice and seeing an end to torture.

Therefore overall, because of increased access to justice, rejecting of state immunity as a defense and its "domino effect" universal jurisdiction increases the possibility of bringing perpetrators to justice.

B. Limitations

Despite the aforementioned merits of universal jurisdiction, in practice it has some limitations. First of all, political influence can undermine universal jurisdiction.* Some States may not elect to resort to universal jurisdiction because of the rationale of "I'll scratch your back if you scratch mine" meaning they hope for reciprocity from other States in not capturing or prosecuting their own nationals in nay instance in the future. On the other hand, although universal jurisdiction is a basis for extradition but States with the torturer may not send the criminal over. Finally, some States may seek to limit universal jurisdiction by concluding separate bilateral agreements with various other States in the hopes of evading wide jurisdiction. **

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* Chevigny, The Limitations of Universal Jurisdiction (n 28) referring to the case where the US threatened to withdraw NATO headquarters from Belgium.

** referring to the US undermining and limiting of ICC jurisdiction

Secondly, universal jurisdiction may not be able to end torture because if a torture case is tried elsewhere where there is no connection to the torture, the effect of the prosecutions in the territory where it was committed or where the victims reside might not be felt strongly enough to deter future torturers from that concerned country.

Thirdly, as will be illustrated in Part IV, universal jurisdiction has limitations in relation to ending State torture because there are still many problems that hinder State accountability to the crime of torture that universal jurisdiction cannot solve.

IV. Hindrances to State Accountability

Despite State obligation under such legal instruments, torture is still prevalent. "Governments across the political spectrum and from every continent still collude in this ultimate corruption of humanity: using torture to extract information, force confessions, silence dissent or simply as a cruel punishment." (Amnesty International USA, Torture in 2014 (n 8).

Not only does universal jurisdiction have limitations in ending torture by States in itself, but there are many other issues that hinder State accountability to the crime of torture. This section examines those hindrances and show that universal jurisdiction alone cannot eliminate them.

A. Complaint System

The first problem in holding States accountable arises when the victim has no means through which he or she can report the official involved in torture. If such complaint system is lacking, it

would be as good as if torture never happened at all because there would be no notification of it. Perpetrators would be able to evade accountability and if victims' mouths are always kept closed, States can continue to resort to torture with impunity. Without an identification of an act of torture, there can be no trace to the torturer resulting in no person to be subject to any jurisdiction, let alone universal jurisdiction, in the first place.

B. Definition

Flawed definitions of the crime of torture also hinder State accountability. If torture in State legislation is not defined according to the definition in Article 1, as the Committee against Torture has repeatedly observed, (Amnesty International, 2011, p. 13) the obligation of States to end torture will become obsolete because the torture the UNCAT hopes to end and the "torture" being criminalized under national criminal legislation would not be the same crimes.

In the United Kingdom, legislation criminalizing torture (Criminal Justice Act of the United Kingdom, 1988, s 134) does not consistently comply with the strictest definitions of the crime. So even with universal jurisdiction ascribed to torture, the flawed definition undermines its effect because tortures could "travel to or even reside in the United Kingdom with complete impunity."*

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* The Redress Trust, 'Ending Impunity in the United Kingdom for Genocide, Crimes against Humanity, War Crimes, Torture and Other Crimes under International Law: The Urgent Need to Strengthen Universal Jurisdiction Legislation and to Enforce it Vigorously' (2008).

C. Interpretation of Defenses

Following the same lines of argument as the above, if national legislation interprets Article 1 in a way that gives rise to defenses, such interpretation would render the objective of the UNCAT to absolutely ban torture obsolete. Countries with such flawed interpretation would then become a "safe haven" for torturers despite universal jurisdiction ascribed to torture because in those countries, they would have a defense to claim they have not committed the crime.

In the United Kingdom, it is a complete defense "if the conduct was lawful in the State where the torture occurred" (Criminal Justice Act, (n 39) s 134(4), 5(b)(iii)) and it could be further interpreted to apply where that State "has not defined torture as a crime or where the executive has given an authoritative legal opinion that a particular method of torture, such as waterboarding, was not torture." (The Redress Trust, (n 40) 12)) Such defense is a violation of a State's obligation under the UNCAT because the Convention states that torture "does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions" meaning that they must be lawful not only under national law, but under international law as well.

D. Interpretation of Non-Retroactivity

Another fallacy concerns the interpretation of fundamental rules of international law such as the principle of non-retroactivity. The House of Lords in Pinochet (Andrea Bianchi, 1999, pp. 237-277) interpreted that the rule of non-retroactivity forbade the extradition

of Pinochet to Spain for the acts of torture he committed prior to the incorporation of the UNCAT to UK legislation. It seems that in this instance, the merits of universal jurisdiction did little to convince the judges that the rule of non-retroactivity should be outweighed by the need for universal jurisdiction by virtue of the nature of the crimes. (R v Bow Street Metropolitan Stipendiary Magistrate, 1999, 2 WLR 827 [912])

E. Disregard of International Commitment

The final and most fundamental obstruction to States' accountability to be mentioned in this paper is the States' very own disregard to international commitment. The provisions of the UNCAT among various other treaties and legal regimes provide torture-combating measures that are anything but weak. State obligation is spelled out without ambiguity, the rules are there but what seems to be lacking is State's respect to be bound to them. This contributes to the system of blanket impunity that shields officials from accountability (Nicolas J S Davies, 2014) where position of power is used to, for example, obstruct investigations.

The problem of State policy disregarding international commitment to universal principles for the sake of protecting their own interests may well stem from the adherence to draconian beliefs and principles such as the principle of absolute sovereignty which while still important, should be revisited and challenged in light of the growing sophistication and realization of human rights, human dignity, State responsibility and individual criminal responsibility. Without this respect, international law is just a

"standard" that a State "promotes"* rather than something that can and should hold them accountable. Circumstances have changed, so should our understanding of what is right or wrong and subsequently State attitude and the law.

The obligation of universal jurisdiction is yet another commitment that disrespectful States may disregard, so its ascription to the crime of torture may have no effect on such State.

V. Proposal : Comprehensive System for Efficient Prevention

Torture is a serious crime deserving of an equally robust mechanism to dissuade and eventually eradicate; "the pervasive and pernicious nature of this abuse demonstrates that a global ban is not enough." (Harold Hongju Koh, 2014) To see torture vanquished from the global community, one must not merely solve the problem at its final stage but should rather oversee measures that would prevent the problem from occurring in the first place.

As evident from the above analysis, universal jurisdiction, while invaluable in contributing to the increased likelihood of bringing perpetrators to justice, is far from being the final solution to preventing and ending torture by States. As mentioned in Part II, the UNCAT already provides robust measures to eradicate torture but the problem is that States do not implement them properly. Therefore, the key to ending torture rests on the proper internalization of already existing obligations of legal instruments as well as

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* "The plea of vital interest, which has been one of the main justifications for wars in the past, is indeed the very one which the UN Charter was intended to exclude."

a "complete system" which entails prevention, complaint, investigation,* bringing to justice, and creative reparation measures. It is to be noted that universal jurisdiction enforces the absolute prohibition in the "bringing to justice" aspect only. In response to the limitations of universal jurisdiction and hindrances of State accountability, the following is proposed.

1. Proper internalizing of obligation into national legislation

Since the UNCAT among other related texts on the prohibition of torture has already created a strong framework to end torture, the proper and accurate internalization of international law provisions that holds State to obligations under those instruments would immensely contribute to ending torture.

A. Definition

Torture must be defined strictly in accordance with the letter and more importantly the spirit of Article 1 of the UNCAT. The Committee against Torture has commented that "by defining the offence of torture as distinct from common assault or other crimes, the Committee considers that States parties will directly advance the Convention's overarching aim of preventing torture." (Committee Against Torture, para 11) This move of stigmatizing the crime aims to alert perpetrators, victims, and the public of its special gravity, to entail appropriate punishment to match its seriousness and

** Office of the United Nations High Commissioner for Human Rights, Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Professional Training Series No 8/Rev 1, 2004).

strengthen its deterrent effect. The codification of torture as a distinct crime would also "enhance the ability of responsible officials to track the specific crime of torture" and "enable and empower the public to monitor and, when required, to challenge State action as well as State inaction that violates the Convention." (Committee Against Torture, para 11) Moreover, it should be made sure that there is no serious discrepancy between the definition of torture in Article 1 and the one in national legislation so as to eliminate loopholes for impunity. (Committee Against Torture, para 8)

B. Defense

Since the absolute ban on torture is anything but ambiguous, national legislation should mirror such explicit prohibition as well. The incorporation of Article 2(3) of the UNCAT should be clear that superior orders may not be invoked as a justification of torture. Moreover, national legislation must implement State obligation under Article 14 of the UNCAT and legislate an exception to state immunity for torture among other serious crimes under international law which gives rise to universal jurisdiction. (Oliver Jones, 2007, pp. 163-175)

C. Non-retroactivity

As regards the problems in interpretation of non-retroactivity, legislature needs to implement its State obligation by including a provision on retrospectivity on "each occasion that an international crime is introduced into domestic law" so as to prevent impunity arising from misinterpretations in violation to the spirit of the UNCAT. (The Redress Trust, p. 13)

2. Interrogation guidelines

As observed, universal jurisdiction is a measure to bring perpetrators to justice but measures to prevent one from becoming a perpetrator is needed for the effective eradication of torture. To this end, there must be binding law on interrogation guidelines that will provide safeguards for persons under any form of arrest, detention or interrogation. The content of these rules for human rights safeguards of detainees may be supplemented by international humanitarian law such as those governing international armed conflicts in which there is an abundance of to draw up guidelines on procedural safeguards and habeas corpus, for example. (Committee Against Torture, para 13) Moreover, international organizations such as the International Committee of the Red Cross should be allowed to gain timely access to prisoners or detainees to monitor compliance with such interrogation guidelines which must be in line with international standards. (David Francis, 2015)

3. Specialized units

If torture remains in secrecy, perpetrators will not be held accountable. Thus an effective mechanism to ensure accountability should include a readily available and powerful specialized unit to receive complaints so that acts of torture do not go unreported. Victim complaint reception is important because victims are the very evidence needed to prove torture happened and would allow the trace back to perpetrators to ultimately achieve accountability. In absence of victims and their complaints, it is not possible to claim torture has happened. Therefore a victim protection and

complaint system is very important, for without it, there would not be a perpetrator to be subject to universal jurisdiction in the first place.

Next, because "sitting back and expecting accountability to happen is never enough, accountability must be pursued and enforced," (Amnesty International United States of America, 2014) specialized units with the competence to investigate allegations of torture should be established to pursue accountability.

Finally because transparency is key to accountability, another preventive measure for ending torture should involve a monitoring unit to ensure State officials cannot act without oversight. (D K, 2014) This monitoring unit should be responsible for continual evaluation which is a "crucial component of effective measures." (Committee Against Torture, para 7, 23)

Additionally, an important unit that can serve as one of the complaint reception or monitoring units is the profession of journalists. It must be ensured that journalists are protected of their freedom of speech so they are able to cover on human rights abuse and torture issues. (French Journalist Expelled from North Mali, 2013).

4. Creative reparations

Easily administered reparations, such as providing monetary compensation to torture victims, won't make a lasting impact towards States or victims alike. In addition to prosecuting perpetrators, public acknowledgement, public apology, establishing of centers and foundations in memorial or in honor of torture victims are all

reparations that can be effectuated which is extremely important for the recovery of torture survivors, because the reconciliation and justice they bring about is more than could ever be achieved by monetary reparations. These creative forms of reparations would also serve as a reminder to States of them being held accountable and would hopefully act as a deterrence to future crimes.

5. Challenge through good legal reasoning

States' disregard of international commitment can be remedied not only by exerting international pressure on the State (Ronagh McQuigg, 2011, pp. 813-828) but also by being critical of and continuing to challenge principles that obstruct the recognition of human rights law through good legal reasoning whether from practice, jurisprudence, or scholarly debate. As evident from the development of international law and jurisprudence of international tribunals, for example, much achievement has already been accomplished by the collaboration of the international community, with continued efforts, the prospect of overturning State impunity can be achieved.

Summary

Universal jurisdiction is a mechanism much needed to increase the likelihood of bringing perpetrators of the crime of torture to justice. However, the reassurance exuded by the term "universal" can lull one into a false sense of complacence; that someone out there is going to bring justice for all of mankind. In reality, there are various factors which render the effects of universal

jurisdiction obsolete, most notable of them all being national legislation which contributes to the shielding of perpetrators from accountability. The ascription of universal jurisdiction therefore is insufficient. To combat torture by States special emphasis should be placed to the elimination of all hindrances to state accountability especially at the national level. Moreover, monitor mechanisms which are paramount to preventing torture from ever occurring should be in place. It is the combined and collective actions of each and every "nation" that bring force and meaning to the mechanism of "universal" jurisdiction and effectuate its purpose to end torture of individuals by States.

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