

Volume 11 | Issue 2

Summer 2008

Destroying Minds: Psychological Pain and the Crime of Torture

Nora Sveaass
University of Oslo

Follow this and additional works at: <https://academicworks.cuny.edu/clr>

 Part of the [Law Commons](#)

Recommended Citation

Nora Sveaass, *Destroying Minds: Psychological Pain and the Crime of Torture*, 11 N.Y. City L. Rev. 303 (2008).

Available at: 10.31641/clr110210

The CUNY Law Review is published by the Office of Library Services at the City University of New York. For more information please contact cunylr@law.cuny.edu.

DESTROYING MINDS: PSYCHOLOGICAL PAIN AND THE CRIME OF TORTURE

Nora Sveaass*

First of all, I want to thank the organizers for this important initiative and for the honor and opportunity to be present and take part in the discussions here at this symposium, with its objective to reiterate the absolute prohibition against torture and underscore the obligations of all States parties to the U.N. Convention Against Torture (“the Convention”)—to prevent torture as well as ill-treatment. The recent adoption of General Comment 2 is an important step in the global work against torture.¹ The General Comment summarizes the standards for the implementation of Article 2 by States parties, addressing all three parts of the article: namely, the obligation to take effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under its jurisdiction; the absolute prohibition of torture, implying that no exceptional circumstances whatsoever—state of war, threat of war, internal political instability, or any other public emergency—may be invoked as a justification of torture; and finally that an order from superiors may not be invoked as a justification of torture.²

The General Comment emphasizes that “[t]he obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment . . . under article 16, paragraph 1, are interdependent, indivisible and interrelated.”³ It also notes that the definitional threshold between ill-treatment and torture is often unclear and that conditions that give rise to ill-treatment frequently facilitate torture.⁴ As Ms. Felice Gaer underlined in her opening state-

* Nora Sveaass is a Doctor of Psychology and Assistant Professor at the Department of Psychology at the University of Oslo, Norway. Ms. Sveaass also serves as a chairperson of the Human Rights Committee of the Norwegian Psychological Association, a board member of the International Society for Health and Human Rights, and a member of the U.N. Committee Against Torture. For many years Ms. Sveaass has worked as a clinical psychologist, supervisor, and trainer in relation to traumatized refugees and health workers in the field. She has published on the subjects of human rights violations, psychology, and health care.

¹ U.N. Office of the High Comm’n on Human Rights [OHCHR], *Comm. Against Torture, Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, General Comment No. 2: Implementation of Article 2 by States Parties*, U.N. Doc. CAT/C/GC/2 (Jan. 24, 2008) [hereinafter *General Comment No. 2*].

² *Id.*

³ *Id.* ¶ 3.

⁴ *Id.*

ment, there is no excuse *not* to prevent ill-treatment—ill-treatment is wrong, and it is harmful. The two are not easily differentiated, and the practice of ill-treatment may represent the slippery slope to torture.⁵ In her opening speech she also referred to the specifications in the General Comment, summarizing the practice of the Committee [against Torture] in relation to State responsibility where torture and ill-treatment are committed by non-State officials and private actors.⁶ When a State party fails to prevent and protect, even when torture or ill-treatment is committed by non-State officials or private actors, the State party may be held accountable under the Convention when it—despite knowing or having reasonable grounds to believe that such impermissible acts are happening—fails to exercise due diligence to stop, intervene, sanction the acts, or provide remedy to victims.⁷ This principle has been applied when States parties have failed to protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking.⁸ This is an important principle that underlines the responsibility to protect and prevent the kind of violence that destroys so many lives at a global level—a violence that particularly may be directed at persons who have been made vulnerable in different ways. I will come back to this.

I. “THE BREAKING OF BODIES AND MINDS”

I will speak about the kind of pain and suffering that is inflicted—severely and intentionally—towards the mind, the emotions, and values of people: psychological torture or ill-treatment. It is the process by which psychological pain is transformed into humiliation and dehumanization, where the essence of being human—namely personal agency, values, emotions, hope, relationships, and trust—is under attack. Nevertheless, this kind of treatment has often been categorized as ill-treatment and, as such, under the threshold for torture. The lack of visual proof of the violence, the victims’ “unwillingness” to describe such degrading and humiliating acts, as well as the torturer’s need to define this as something other than torture, have made such labeling possible. With clear reference to the standards defined in the General Comment, I will argue that not dealing seriously with all aspects of this

⁵ Felice Gaer is the former Vice-Chair and Rapporteur of the Committee Against Torture. See Felice Gaer, *Opening Remarks: General Comment No. 2*, 11 N.Y. CITY L. REV. 187 (2008).

⁶ *Id.*

⁷ General Comment No. 2, *supra* note 1, ¶ 18.

⁸ *Id.*

kind of suffering, in addition to being against the Convention, ignores the vast existing knowledge on torture and its consequences both on the mind and the body of the individual and on society as a whole.

So, my subject today is “the breaking of bodies and minds.” I have borrowed this term from the title of Eric Stover and Elena Nightingale’s important book from 1985, a book that clearly sets the issue of torture and gross human rights violations on the agenda of health professionals around the world.⁹ The authors put forward a strong appeal for the active engagement of health workers in the prevention of torture as well as for their engagement in developing and providing care and assistance in the healing process of those exposed to torture. But the main message in the book was based on the disturbing reports of collaboration of health professionals in physical and psychological torture.¹⁰ References here were made both to doctors and other health professionals engaged, or in any way assisting, in torture occurring in the torture chambers as well as in unethical practice and misuse of psychiatry for political purposes.¹¹ The question then, in 1985, was “how is it that members of the most humane and compassionate of all professions can participate in the most serious violations of human rights?”¹²

II. HEALTH PROFESSIONALS, ETHICS AND HUMAN RIGHTS

Unfortunately this question can be raised today as well, twenty-three years later. It is a lamentable fact that there still exists a willingness to apply insights and methods, developed for communication, healing, and health, in situations where both the application of knowledge and the presence of health professionals contribute to a planned and intended harm. This application is in strong contrast to the ethos and objective of all health professionals—namely to do no harm.

Over the years, health professionals across the globe have responded to the challenges in relation to torture prevention and participation in different ways. Different declarations and guidelines have been developed with respect to health professionals and

⁹ THE BREAKING OF BODIES AND MINDS: TORTURE, PSYCHIATRIC ABUSE, AND THE HEALTH PROFESSIONS (Eric Stover & Elena O. Nightingale eds., W.H. Freeman 1985).

¹⁰ *Id.*

¹¹ D.A. Hamburg, *Foreword* to THE BREAKING OF BODIES AND MINDS: TORTURE, PSYCHIATRIC ABUSE, AND THE HEALTH PROFESSIONS at xi (Eric Stover & Elena O Nightingale eds., W.H. Freeman 1985).

¹² *Id.*

the absolute prohibition of torture. In 1975, the World Medical Association adopted the Tokyo Declaration stating that “[t]he physician shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures, whatever the offence the victim of such procedures is suspected, accused, or guilty, whatever the victim’s beliefs or motives, and in all situations, including armed conflict and civil strife.”¹³ The principles of this declaration were repeated and strengthened in Hamburg in November 1997, focusing especially on the need to speak out against the use of torture, the particular responsibility to report when doctors participate or condone such acts, and the need to protect those who actually speak.¹⁴ This declaration has been revised again in 2006 in light of the events in the context of the war against terror.¹⁵

The World Psychiatrist Association developed the Declaration of Hawaii, a document emphasizing that the psychiatrist must never use professional knowledge in a way that represents breaches to ethical principles.¹⁶ Torture is not explicitly mentioned here. The International Council of Nurses (“ICN”) adopted declarations in 1983 and 1998 referring to existing human rights law as basic in all their work, and that nurses must never allow themselves to give into pressure as to practice that may harm.¹⁷ The Declaration specifies that action as well as lack of action can be harmful.¹⁸ As for psychologists, the International Union of Psychological Science adopted principles over thirty years ago that have recently been revived in the Universal Declaration of Ethical Principles for Psychologists, which guide a psychologist’s professional conduct. Following the Declaration, psychologists must not give in to pressure or practice their profession in any way that actively and intentionally harms human integrity and human rights. Likewise, they must

¹³ World Med. Ass’n, Declaration of Tokyo, *Guidelines for Physicians Concerning Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment in Relation to Detention and Imprisonment*, (rev. May 2006) (Oct. 1975), available at <http://www.wma.net/e/policy/c18.htm>.

¹⁴ *Id.*

¹⁵ Nimisha Patel, *Torture, Psychology and the ‘War on Terror’: A human rights framework*, in *JUST WAR: PSYCHOLOGY AND TERRORISM* 74 (Ron Roberts ed., PCCS Books 2007).

¹⁶ WORLD PSYCHIATRIC ASS’N, DECLARATION OF HAWAII, (Jul. 10, 1983), available at <http://www.worldpsychiatricassociation.org/content/ethics-hawaii.shtml>.

¹⁷ INT’L COUNCIL OF NURSES, POSITION STATEMENT: NURSES AND HUMAN RIGHTS (rev. 2006) (1998), available at <http://www.icn.ch/pshumrights.htm>; INT’L COUNCIL OF NURSES, POSITION STATEMENT: TORTURE, DEATH PENALTY AND PARTICIPATION BY NURSES IN EXECUTIONS (1998), available at <http://www.icn.ch/pstorture.htm>.

¹⁸ WORLD PSYCHIATRIC ASS’N, *supra* note 16. See generally Int’l Rehabilitation Council for Torture Victims, www.irct.org (last visited Oct. 7, 2008).

not, in any way, collaborate or provide knowledge that may do such harm, and must actively protest when informed.¹⁹

The U.N. Principles of Medical Ethics, relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment, adopted by General Assembly Resolution 37/194 of December 18, 1982, offers explicit guidance for all health personnel, underlining the duty to protect health and provide treatment.²⁰ It states that:

It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.²¹

Furthermore, it states that “[t]here may be no derogation from the foregoing principles on any ground whatsoever, including public emergency.”²²

III. “DO NO HARM”

The many declarations, resolutions, and guidelines referred to above are important messages to health workers globally and should represent cornerstones in all health work and for all ethical practice. In addition, all professional health workers have their own ethical codes at a national level. Whereas some national ethical codes do include reference to torture and the absolute prohibition, most of the professional codes of conduct for health professionals do not contain explicit reference to torture or the duty to prevent torture in all possible ways, nor to the absolute principle of non-participation in such practices. Furthermore, the ethical codes in general do not refer to international human rights law as an important basis for their own principle or standards.

The commitment to do no harm, and avoid medical or psy-

¹⁹ See INT’L UNION OF PSYCH. SCI., UNIVERSAL DECLARATION OF ETHICAL PRINCIPLES FOR PSYCHOLOGISTS 3–4 (2008), available at <http://www.sipsych.org/english/Universal%20Declaration%20as%20ADOPTED%20by%20IUPsyS%20&%20IAAP%20July%202008.pdf>.

²⁰ Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 37/194, Annex, U.N. Doc. A/RES/37/194 (Dec. 18, 1982) [hereinafter Principles of Medical Ethics].

²¹ *Id.* at Princ. 2.

²² *Id.* at Princ. 6.

chological knowledge to be applied for purposes other than medical or beneficial ones, is often stated in general terms. Such general statements may be insufficient in a context where there may be pressures on health professionals to serve custodians and interrogators.²³ A requirement for all the international, as well as the national, codes of professional ethics should therefore include a much clearer message related to the obligation of all health workers to prevent and, in all possible ways, work against torture; in no way participate in or condone acts of torture or ill-treatment; and that those who violate these principles must be held accountable, not only in the professional context, but also in a legal one.²⁴ Specifically, there is the need for formulations that make the prohibition of torture and cruel treatment operationally sound and provide clear guidance on these issues, including specific restrictions in accordance with accepted international human rights standards.²⁵

IV. HEALTH PROFESSIONALS AND NATIONAL SECURITY ISSUES

The question raised in 1985²⁶ has become highly actualized with respect to the “war against terror” and the involvement of health professionals as consultants to interrogations for national security purposes. And together with this, the issue of “dual loyalty” of health professionals has raised with strength. Both in the United States and in Britain, doctors and psychiatrists have taken a position against participation in interrogations related to national security in a context of “war against terror.” In Britain, the British Psychological Society (“BPS”) issued a declaration in 2005 concerning torture and other ill-treatment, but despite this being a laudable initiative, the declaration does not explicitly articulate a policy against torture and fails to state that a psychologist’s complicity or participation in torture should be investigated and punished.²⁷ In the United States, the American Psychological Association (“APA”) responded to the challenges involved in psychologists’ participation in national security issues by establishing the Psychological

²³ Leonard Rubenstein et al., *Coercive U.S. Interrogation Policies*, 294 J. AM. MED. ASS’N. 1544 (2005).

²⁴ *See id.*

²⁵ *See id.*

²⁶ *See* THE BREAKING OF BODIES AND MINDS, *supra* note 12.

²⁷ THE BRIT. PSYCH. SOC’Y, DECLARATION OF THE BRITISH PSYCHOLOGICAL SOCIETY CONCERNING TORTURE AND OTHER CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT (2005), *available at* http://www.bps.org.uk/downloadfile.cfm?file_uid=31ECE47D-1143-DFD0-7E39-FEDC69E40861&ext=pdf.

Ethics and National Security task force (“PENS”) in order to guide the policy on the role of psychologists in interrogations in foreign detention centers for the purpose of U.S. national security.²⁸ In the introduction, the PENS report refers to the following: “Psychologists have a valuable and ethical role to assist in protecting our nation, other nations, and innocent civilians from harm, which will at times entail gathering information that can be used in our nation’s and other nations’ defense.”²⁹ The report clearly states that “[p]sychologists may serve in various national security-related roles, such as a consultant to an interrogation.”³⁰

The debate over this principle and the role of the psychologist in an interrogation for national security reasons, even with the condition mentioned in the PENS report that it has to be done in a manner consistent with the Ethics Code,³¹ has been and is still intense in the general public, among human rights activists, and among psychologists both inside and outside the United States. Allegations have been put forward that psychologists have been active, not only in the consulting rooms giving advice to interrogators, but also that they have been present during interrogations where harsh and abusive techniques of interrogation are being applied. This is not only alarming, but totally unacceptable. When psychologists are being used to design ways of creating severe stress and discomfort, and psychological evaluations are used in order to find vulnerabilities to exploit for reasons related to information gathering, there is reason for alarm. The special teams consisting of psychologists that were designed for the purpose of advising interrogators have been called “Behavioral Science Consultation Teams” (“BSCTs”). Whereas APA Director of Ethics, Stephen Behnke has noted that “[p]sychologists take advisory or consultative roles in relation to interrogations to help ensure interrogations are safe, legal, ethical, and effective,” others have argued that psychologists are supposed to help interrogators break resistance and in such a way as to obtain information.³² In a letter to former APA President Dr. Koocher, Steven Reisner quotes the Army Surgeon General, Lt. Gen. Kevin Kiley, who comments on

²⁸ AM. PSYCH. ASS’N., REPORT OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION PRESIDENTIAL TASK FORCE ON PSYCHOLOGICAL ETHICS AND NATIONAL SECURITY, June 2005, available at <http://www.apa.org/releases/PENSTaskForceReportFinal.pdf>.

²⁹ *Id.* at 2.

³⁰ *Id.* at 6.

³¹ *Id.* at 6–7. See generally AM. PSYCH. ASS’N., ETHICAL PRINCIPLES OF PSYCHOLOGISTS AND CODE OF CONDUCT (2002), <http://www.apa.org/ethics/code2002.pdf>.

³² Mark Benjamin, *Psychological Warfare*, SALON, Jul. 26, 2006, <http://www.salon.com/news/feature/2006/07/26/interrogation/index2.html>.

the role of psychologists on the teams in the following way: “[Psychologists are to] check the medical history of detainees . . . and what are their buttons. [Psychologists] will greatly assist [the interrogators] with: obtaining more accurate intelligence information, knowing how to gain better rapport with the detainees and also knowing when to push or not to push harder in pursuit of intelligence information.”³³

Recently, the American Psychological Association joined the American Psychiatric Association and the American Medical Association and banned its members from being involved in interrogations. The serious issues involved with trained psychologists participating in interrogations are related. First, to the fact that psychologists have been working in settings where the detainees are deprived of their human rights, in sites where they are held without due process and in violation of Common Article 3 of the Geneva Conventions; and secondly, psychologists participated, or in different ways have been involved, in interrogations where abusive and harsh techniques are used. Among these enhanced methods of interrogation have been methods also involving psychological torture, like prolonged isolation, sleep deprivation, inducing fear, and sexual and cultural humiliation.³⁴

As has been reported numerous times, for example in the report by Physicians for Human Rights, a regular interrogation tactic has been the systematic deprivation of sleep—that is, a disturbance of sleep over a period of time.³⁵ For any psychologist to go along with the concept of sleep deprivation as an “interrogation method” is of deep concern. All psychologists are aware of a number of studies and scientifically-based evidence showing that depriving people of their sleep over time has severe and destructive effects on cognitive, emotional, and somatic functions of those exposed.³⁶

It would take too long to go into the many strong voices that have been raised against the involvement of psychologists in this business. But some attempts have been made at clarifying and limiting the unethical practice involved in psychologists’ engagement. The APA issued resolutions denouncing torture in 2006 and in 2007. Specifically, the 2007 resolution has been welcomed as a

³³ Posting of Dana Leighton to http://www.mindhacks.com/blog/2006/08/apa_endorses_partici.html (Aug. 6, 2006, 05:29) (alterations in original).

³⁴ See PHYSICIANS FOR HUM. RTS., *BREAK THEM DOWN: SYSTEMATIC USE OF PSYCHOLOGICAL TORTURE BY U.S. FORCES 1* (2005), available at <http://physiciansforhumanrights.org/library/documents/reports/break-them-down-the.pdf>.

³⁵ *Id.* at 4.

³⁶ See *id.* at 11.

great step ahead, as a resolution that leaves fewer ethical loopholes than the previous year's resolution.³⁷ But as long as there is an opening for participation and work in settings where harsh and abusive methods are accepted and applied, there is an imminent risk.

The resolution adopted by APA on August 19, 2007 condemns the use of torture and states an unequivocal prohibition for psychologists to participate in certain methods of interrogation or detainee-related operations.³⁸ The list includes a long overview of those things that have always been regarded as methods of torture—psychological as well as physical. This resolution is an important step, but there still exists a possibility for psychologists to participate in interrogations of “illegal combatants” in sites of extrajudicial detention. A proposal to restrict psychological activity only to treatment was put forward, but failed. A stronger and wider message is thus needed to stop participation and indirect condoning of destructive and humiliating methods for the sake of “national security.”

V. ETHICAL PRACTICE AT A GLOBAL LEVEL

In a recent article, Brad Olson, Stephen Soldz, and Martha Davis wrote, “[p]sychologists should concentrate their efforts into healing and empowering individuals, not in exploiting a sense of powerlessness in the service of intelligence gathering.”³⁹ Likewise, in the introduction to her article, *Torture, Psychology and the “War on Terror”: A Human Rights Framework*, Nimisha Patel writes:

Any involvement by psychologists in interrogation involving torture or other cruel, inhuman or degrading treatment or punishment for ‘national security’ or other purposes, not only perverts the ethos of all psychological practice, but inevitably and justifiably, erodes and undermines the public’s trust in us, in our profession and in our activities.⁴⁰

³⁷ See Corann Okorodudu, William J. Strickland, Judith L. Van Hoorn & Elizabeth C. Wiggins, *A Call to Action: APA’s 2007 Resolution Against Torture*, 38 *MONITOR ON PSYCH.* 22 (2007).

³⁸ AM. PSYCH. ASS’N., REAFFIRMATION OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION POSITION AGAINST TORTURE AND OTHER CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT AND ITS APPLICATION TO INDIVIDUALS DEFINED IN THE UNITED STATES CODE AS “ENEMY COMBATANTS,” Aug. 19, 2007, available at <http://www.apa.org/governance/resolutions/councilres0807.html>.

³⁹ Brad Olson, Stephan Soldz & Martha Davis, *The Ethics of Interrogation and the American Psychological Association: A Critique of Policy and Process*, 3 *PHIL., ETHICS, & HUM. IN MED.* (2008), <http://www.peh-med.com/content/pdf/1747-5341-3-3.pdf>.

⁴⁰ Patel, *supra* note 15, at 74.

It is my solemn hope that all health workers and their associations can speak out and develop unequivocal guidelines against unethical practice. These ethical guidelines should contain an active prohibition against participating in any act of torture or ill-treatment or behaving in any way that condones such actions, whether they form part of investigations and procedures in national security matters or are applied, in any other way, to cause severe pain with intention and purpose—a stance that would bring them in line with international law on this point—as well as clarify standards and limits of the professionals. These guidelines should be formulated in such a way that they provide specific guidance and specify restrictions as to roles and activities. Health workers have at all times participated in the care of persons in marginalized and vulnerable settings, either as care providers, as consultants, or as supervisors. But the absolute condition must be that these are lawful settings, respecting human rights, particularly the absolute prohibition of torture and ill-treatment, including access to legal and health assistance, and the right to be heard.

One could also argue, with reference to state obligations to prevent torture and ill-treatment, that it is a responsibility, not only of the professional associations, but also on the part of the State party, to ensure that professional ethics and procedures for the investigation and punishment of personnel involved in torture or other ill-treatment are in line with international law. This State obligation can be regarded as “part of their duties to eliminate obstacles that impede eradication of torture and ill-treatment,” as stated in the General Comment.⁴¹

VI. SEVERE PAIN AND SUFFERING

Torture is wrong—whether it leaves temporary scars or permanent ones; whether the scars are visible; whether the torture has produced temporary or lifelong mental disability or dysfunction. The short or long-term consequences on tortured individuals can nevertheless in themselves never be sufficient arguments to decide whether acts are torture or not. First of all, there is an objective definition of torture and, secondly, it is well known that reactions to extreme stressors are highly individual, especially psychological reactions. It is a well-known observation that a number of people do survive torture without developing severe mental health problems. The observed effects in the aftermath of torture, physi-

⁴¹ General Comment No. 2, *supra* note 1.

cal as well as psychological, are always important in the process of establishing a case of torture; but the degree of suffering after torture cannot alone be an indicator of torture committed. But having said this—I will, in my talk, point to the long-lasting and devastating effects of torture and ill-treatment, particularly to the systematic psychological methods of breaking people down. In light of the fact that torture that does not leave visible scars has been regarded as less violent, a lesser violation, and not amounting to torture, I will particularly focus both on the immediate and the long-term consequences of this particular form of violation. I will point to some of the psychological mechanisms involved for the person who is exposed, as well as to some of the social consequences. A stronger awareness of how these mechanisms work, as well as the destructive mechanisms that form part of the psychological destruction, is needed for both prevention and rehabilitation.

The U.N. Convention defines torture as “any act by which severe pain and suffering, whether physical or mental, is intentionally inflicted [upon] a person.” This means that the infliction of severe mental pain is considered an act of torture, provided the other elements of the definition are there.⁴² Attempts at restricting the concept of torture to acts that produce severe physical pain, thus excluding mental pain and suffering resulting from acts not causing direct severe physical pain, are legally and psychologically wrong. Psychological ill-treatment in captivity and as a part of interrogations, also of the kind that at first glance may not resemble our common picture of torture, nevertheless, when administered systematically, is nothing but torture. Long-time standing, hooding, forced nudity, sleep deprivation, and isolation are examples.⁴³ These methods have been practiced in political prisons for years in many places in the world; they have been defined as torture. We know a lot about the impact of the exposure to these kinds of methods, and those who have been subjected to these methods, when possible, have been given rehabilitation services developed specifically for torture survivors.

VII. THE TOTAL EXPERIENCE OF BRUTALITY

First, some words about physical and psychological torture. It is, of course, extremely difficult to make a clear distinction, and I

⁴² Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment art. 1, Dec. 10, 1984, 1465 U.N.T.S. 85, 23 I.L.M. 1027.

⁴³ HUM. RTS. WATCH, STRESS AND DURESS TECHNIQUES USED WORLDWIDE (2004), http://hrw.org/english/docs/2004/06/01/usint8632_txt.htm.

will argue there is no such thing as physical torture “by itself.” The situation as it is for the person being tortured—being in a per definition powerless situation, knowing or expecting something terrible to happen, the fear, the uncertainty, the confusion, and the lack of information associated with the circumstances in which physical harm is being inflicted—constitutes an extreme, painful psychological event. Seeing, hearing, or smelling other human beings in the room who are actively and deliberately causing strong physical pain and misery on oneself, are likewise psychological stressors far outside the range of what people normally experience. So even the most “direct” forms of physical torture, like being beaten, kicked, or burned, are necessarily coupled with psychological stressors. But in the attempts to delineate differences among the various kinds of torture, we must never forget that causing severe physical pain is instrumental; it has a purpose, namely to weaken the person’s psychological resistance and open the person up for information, confessions, admitting to acts committed or not committed, promises of collaboration, or for that matter, break them down.

Sadly enough, torturers have many methods available to them, methods that represent different levels of systematic and intentional infliction of psychological pain. Whereas some of the so-called psychological methods mostly stimulate fear and hopelessness, other kinds of torture include severe physical pain and together provoke strong emotions, attacking the core of identity and being of the person. Rape as sexual torture is an example of this. It may cause long-lasting physical injuries, which it often does, and at the same time it is the kind of psychological torture that ranges at the absolute top in terms of mental problems afterwards. Sexual violence, in particular rape, represents the ultimate violation of a person’s integrity; it violates one’s sense of being and worth, and mobilizes shame and feelings of total worthlessness.

Another method that has been discussed extensively in the context of the “war against terror,” whether it is a form of ill-treatment that amounts to torture, is “waterboarding,” a way of treating detained persons. This method was also applied under the Latin-American military dictatorships, or “dirty wars,” then referred to as “el sub marino” (the submarine).⁴⁴ This act, where the person is strapped down and his or her head is immersed in water, at times in very filthy liquids, causes strong bodily reactions combined with intense sensations and fears of dying. The body shakes and the

⁴⁴ *Id.*

lack of air results in strong reflexes similar to the classic gag reflex.⁴⁵ The feeling that one is drowning may be overwhelming, and such a fear or exposure to life-threatening situations and fear of death is, in psychological and psychiatric terms, described as a major stressor. Threat to life constitutes one of the central criteria when considering the severity of stressors in Post Traumatic Stress Disorder (“PTSD”) assessments.⁴⁶ Waterboarding, for the reasons described above, must also be considered a mock execution and, as such, illegal under international law.⁴⁷ Water-boarding was included as one of the interrogation techniques that were seen as contravening Article 1 of the Convention Against Torture.⁴⁸

VIII. PAIN AND SURVIVAL

People who have been tortured may refer to different strategies that they themselves have chosen under torture that made it possible to survive painful acts, as if they are trying to leave the body, so to speak. Afterwards, they can refer to images of what happened during torture, but almost as from a distance. This distancing, also called dissociation, may be helpful in the acute situation. But it is a strategy that may be difficult to live with in the aftermath and has proved counterproductive in the long run. Nevertheless, given a lack of alternatives, torture victims sometimes still resort to this strategy.

I have said that physical torture, as such, is not possible. Physical torture always contains different levels of psychological torture, from fear to anguish, intended or less intended. But on the other hand, it may be possible to describe extremely painful situations where no direct or obvious physical pain is inflicted. Perhaps a better word for this would be non-physical torture.⁴⁹ The body is left intact so to speak—no burns, no blood, no bruises. It is the

⁴⁵ Brian Ross & Richard Esposito, *CIA's Harsh Interrogation Techniques Described*, ABCNEWS.COM, Nov. 18, 2005, <http://abcnews.go.com/print?id=1322866>.

⁴⁶ See PHYSICIANS FOR HUM. RTS. & HUM. RTS. FIRST, LEAVE NO MARKS: ENHANCED INTERROGATION TECHNIQUES AND THE RISK OF CRIMINALITY 3 (2007), available at <http://physiciansforhumanrights.org/library/documents/reports/2007-phr-hrf-summary.pdf>.

⁴⁷ E.S. Carlson, *In Praise of Torture*, 25 NORDIC J. OF HUM. RTS., 202–204 (2007).

⁴⁸ See U.N. Human Rights Comm., Committee Against Torture, *Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment: Consideration of Reports Submitted by State Parties under Article 19 of the Convention, Conclusions and Recommendations*, United States of America, ¶ 24, U.N. Doc. CAT/C/USA/CO/2 (Jul. 25, 2006) [hereinafter *Consideration of Reports*].

⁴⁹ Metin Başoğlu et al., *Torture vs Other Cruel, Inhuman, and Degrading Treatment: Is the Distinction Real or Apparent?*, 64 ARCHIVES OF GENERAL PSYCHIATRY 277 (2007), available at <http://archpsyc.ama-assn.org/cgi/reprint/64/3/277>.

sense of humanity or dignity that is under attack. So, since the brutality of psychological torture is very much based on what we know of human psychological function, on information and knowledge developed within the realm of psychology, I will nevertheless refer to it as such, namely psychological torture. Psychological torture is the systematic destruction of meaning; it is the systematic destruction of that which we normally can consider the building blocks of human mental health.⁵⁰ That is, a sense of control and agency, a sense of worth and capability to form relationships with others, an experience of integrity and dignity, as well as respect from other human beings. Furthermore, trust, safety, and feeling some kind of predictability and future perspective in life must be mentioned. We consider all of these basic elements in our lives, and when something serious happens in these domains, it is usually experienced as distressful, and where possible, is frequently reason for referral to psychological or medical treatment.

IX. PSYCHOLOGICAL TORTURE AND THE DESTRUCTION OF MEANING

Psychological torture can be understood as a systematic attack on these basic conditions in human lives. We are talking about ways of treating human beings where intense fear and total lack of protection and agency is provoked in the person, and by this, causing psychological pain in the sense that it is one's own self and identity that is being threatened. Psychological torture is deliberate and targeted attacks on the mind and dignity of the person—through humiliation, through degrading mocking, through forcing people into shameful actions and positions and impossible choices. It is a process by which the value system and beliefs are actively scorned and undermined. It is a way in which people are forced into going against what they believe in, even actively performing or expressing acts or attitudes very much against their own values. For instance, it is placing people in a double-bind situation—where you are damned if you do and damned if you don't, and there is no way out. This technique was well described by clinical psychologists in South Africa who argued that many of the methods applied in the apartheid prisons seemed to be based upon psychological knowledge, like for instance this double-bind situation, initially described as a kind of communication pattern in

⁵⁰ Nora Sveaass, *The Organized Destruction of Meaning*, in PAIN AND SURVIVAL: HUMAN RIGHTS VIOLATIONS AND MENTAL HEALTH 43 (Nils Johan Lavik, Mette Nygard, Nora Sveaass & Eva Fannemel eds., Scandinavian University Press 1994).

families causing severe distress and even pathology on children.⁵¹ This principle, when exploited in a context of torture, had necessarily very harmful effects because it causes severe confusion as well as total powerlessness.

I will briefly refer to some of the techniques that, when used as part of interrogation or punishment on persons in detention, can be regarded as nothing but torture. Being forced to witness the torture of others is a dramatic example of extreme psychological and harmful stressors without any “physical” pain being inflicted. A number of the former prisoners in Pinochet’s prisons were forced to listen to tapes where allegedly their loved ones were being tortured.⁵² But even in cases where the tortured person is a stranger, the fact that one is forced to take part by observing, represents a serious threat. The feeling of not being able to do anything, not to stop it, is something that violates most people’s sense of humanity and may result in serious feelings of guilt years after the event. This situation is, of course, strongly aggravated if the victim is a close relation. Not being able to save or help a child, mother, husband, or wife from excruciating pain is, to most people, an unbearable nightmare.

Sleep deprivation, which has been practiced in political prisons in oppressive regimes has also, as mentioned, been reported as part of “enhanced” interrogation techniques, and is well known as an extreme method to create psychological distress and risk of psychological disintegration.⁵³ A number of sleep studies can document the extreme effects on the person of repeated interruptions of sleep.⁵⁴ Likewise, sensory deprivation is something that has been tested in research laboratories under controlled condition.⁵⁵ The results are clear—being deprived of visual, auditory, and sensory stimulation created strong feelings of confusion and anxiety, which must be considered a systematic way of breaking down the mind.⁵⁶

Being forced to stand on one’s feet for hours and days and being under the total control of another person is reported as ex-

⁵¹ Lionel Nicholas, *The Contribution of Double-bind Theory to the Understanding of Oppression*, in *PSYCHOLOGY AND OPPRESSION: CRITIQUES AND PROPOSALS* 190 (Lionel Nicholas ed., Skotaville Publishers 1993).

⁵² See generally Jonathan Franklin, *Chile Identifies 35,000 Victims of Pinochet: Presidential Commission Brings Forward New Claims About Torture*, *THE GUARDIAN*, Nov. 15, 2004.

⁵³ *HUM. RTS. WATCH*, *supra* note 43.

⁵⁴ *PHYSICIANS FOR HUM. RTS.*, *supra* note 46, at 22.

⁵⁵ *Id.*

⁵⁶ *Id.*

tremely stressful.⁵⁷ Such acts do not cause direct pain, but indirectly they put severe strain on the body. Psychologically, it can be understood as extremely degrading, as well as a confirmation that one is worth nothing; one is totally given over to the will of others and is in no way in a condition to leave or protest. The aching muscles will recover, but the sense of being an object for others will not. "They would not let you rest, day or night. Stand up, sit down, stand up, sit down. Don't sleep. Don't lie on the floor."⁵⁸

Only those who have experienced prolonged isolation can give a full impression of what that is like. When isolation is forced upon a person, one must be very strong-willed and determined to manage such a situation without feeling that one is falling apart, or with the sense of going crazy. Prolonged isolation is, first of all framed, as a situation completely without information and structure, and the person is totally left to him or herself, often with a high level of anxiety, guilt, and possible despair. In the aftermath, people have expressed that of all the torture they have been exposed to, including severe physical pain, the prolonged isolation was the most painful. As clinicians we see what it does to people, not only in the immediate period following release, but also for many, a nightmare for always.

Tom Moe, who experienced solitary confinement as a prisoner of war in Vietnam, has described it in the following way:

What I was not prepared for were the effects of solitary confinement. For the first nine months of my captivity, and sporadically later, I didn't see, hear or talk to another American. Although physical pain was inflicted on me deliberately and effectively, I would discover what an incredible burden mental pain would add to my suffering, how a dark fog slowly could creep over my consciousness, trying to rob me of my remaining power of reasoning. I saw that the mind could convince life itself to slip away through the beckoning black hole that pain created. I learned how vital it was to keep the mind as sharp as possible.⁵⁹

There are many deliberate, well-planned, and destructive ways of breaking people down—ways that actively apply knowledge based on studies of the human mind. The best way to understand the deep and painful effects of these is by listening to the stories of those who have endured this. Whereas some have been able to tell their stories to others, others have been able to write themselves.

⁵⁷ DARIUS M. REJALI, TORTURE AND DEMOCRACY 316 (2007)

⁵⁸ ROSS & ESPOSITO, *supra* note 45.

⁵⁹ Tom Moe, *Pure Torture*, 24 NOTRE DAME MAGAZINE (Jan. 1996), <http://www.nd.edu/~ndmag/moew95.html> (last visited Nov. 18, 2008).

The books by Jacobo Timmerman, Omar Rivabella, Ariel Dorfman, Oriana Fallaci, and others, are strong testimonies of what excruciating pain, as well as longtime confusion and mental terror do to a person's mind.⁶⁰

Another example of psychological torture is the use of dogs to induce fear in prisoners, something that has been known both through pictures in the press and from discussions about its effects and legal status. Again, this represents situations where severe and frightening emotions are provoked in a setting that is dominated by animosity and hostility. Similarly, methods like sexual humiliation, other than rape, where sexual identity, cultural values, and personal limits are actively focused and ridiculed, create deep wounds. Of the many stressors we are talking about, such scenes may be part of frequent flashbacks in the aftermath, as well as experiences that may change the person's conception of him- or herself. In the same way, forced nudity, aggravated by blindfolding, represents very direct and intricate ways of stripping a person of their dignity and worth.

I mentioned peoples' strategies in relation to pain, namely the attempts to mentally leave the scene, moving out of the body, so to speak. In relation to this as a mental strategy, psychological torture must be seen as the full invasion of the person where no safety room is possible—in other words, no distance can possibly be created. If one is exposed to any of the aforementioned acts—if one's phobias for dogs or other events is being systematically used to create extreme fear; if one has to walk around, or stand, naked and hooded under the gaze of others; if one's body or one's movements are being mocked and ridiculed; if one is exposed to extreme and systematic confusion; if one is forced to witness brutality against others or coerced into impossible choices—there is no "safe" place to go, there is no psychological option for distancing. All senses and emotions are mobilized and activated. There is no escape and the person is forced into being fully present, with severe consequences of long-term changes that occur in the conception of the self and in relations, in one's perception of one's own body, as well as worth and integrity, capabilities, and possibilities. The person will be fearful as well as humiliated, degraded as well as dehumanized, sometimes to the point that they have trouble facing themselves in the aftermath. As earlier described, the attack is to-

⁶⁰ See, e.g., JACOBO TIMMERMAN, *PRISONER WITHOUT A NAME, CELL WITHOUT A NAME* (2002); OMAR RIVABELLA, *REQUIEM FOR A WOMAN'S SOUL* (1987); ARIEL DORFMAN, *DEATH AND THE MAIDEN* (1994); ORIANA FALLACI, *A MAN* (1981).

tal; it goes to the core of human experience and the possibility for protection against this invasion is null. So, together with the well-known posttraumatic reactions, the constant reliving of the experiences, flashbacks, strong fear, and a constant arousal establishes the torture—not as something that has an end and belongs to the past, but something that goes on and on and on as a living nightmare.

In all kinds of torture there are a number of very destructive elements. There is a total lack of control and space to take care of one's own person; there is powerlessness and no escape. Systematic confusion, lack of information, messages that create fear and ambivalence, combined with the fact that things happen to you and you are forced into participation of acts very foreign to you, are all ways of breaking down personality and identity. It is the destruction of values and humanity and humiliation in its absolute sense. But the ridicule and humiliation is not only directed to those directly involved; it is a process by which groups of people are exposed as unworthy of humanity. By de-humanizing the "enemy," the group, to which persons form a part, is dehumanized and defined as unworthy as well. Psychological torture, understood in this way, is not only an attack on the person in detention, but a message to the world about groups of people, of the enemy, not deserving protection or respect. As was said by Barack Obama, "Torture is how you create enemies, not how you defeat them. Torture is how you get bad information, not good intelligence."⁶¹ It is therefore my contention that torture, especially psychological torture, creates fear, aggression, and the risk of vengeance. Torture and humiliation strategies draw an enemy-picture of people without dignity. It might be useful to quote Mahatma Gandhi who once said, "It has always been a mystery to me how men can feel themselves honored by the humiliation of their fellow beings."⁶² Internationally today, there are a lot of important studies going on in the field of social psychology and humiliation, pointing to the harmful effects of humiliation.⁶³

X. WAR VICTIMS AND TORTURE—A STUDY ON MENTAL PAIN

A recent study by the psychiatrist Metin Başoğlu, based on a

⁶¹ Editorial, *At Least McCain, Obama are Clear about Torture*, THE SACRAMENTO BEE, Feb. 1, 2008, at B6, available at <http://www.sacbee.com/110/story/678617.html>.

⁶² John B. Severance, GANDHI, GREAT SOUL 33 (1997).

⁶³ See EVELIN LINDNER, MAKING ENEMIES: HUMILIATION AND INTERNATIONAL CONFLICT (2006).

study of 279 torture survivors from the former Yugoslavia, examines the distinction between various forms of ill-treatment and torture during captivity, with respect to the psychological impact of the different stresses people had undergone.⁶⁴ He looked at the role of subjective experience in torture and what consequences this experience has in the long run. Briefly, he found that those who had experienced no physical torment, but had exposure to stressors like mock execution, threats of rape, witnessing torture, humiliating treatment, sleep-deprivation, blindfolding, etc., reported that these events had been as distressing as most physical torture stressors.⁶⁵ People exposed to these nonphysical forms of torture later developed equally high levels of PTSD as those who had been exposed to direct physical torture. Başoğlu and his team especially looked at the subjective components of control and the level of perceived distress and sense of uncontrollability.⁶⁶ The important observation from this study is that the pervasive feeling of being without control in the situation, in fact, totally helpless and rendered to the decisions and actions of others, correlated strongly with later psychological problems, PTSD, as well as depression.⁶⁷

XI. TORTURE AND ILL-TREATMENT IN PRIVATE DOMAINS

So far, I have referred to the torture that takes place in detention centers and where the role of public officials is rather clear and unambiguous. But the General Comments, with reference to the jurisprudence of the Committee, makes clear that the State obligation to prevent torture also includes the obligation to exercise due diligence and provide protection to persons who are exposed to impermissible acts in other contexts. The failure to stop, investigate, or sanction acts of torture or ill-treatment in the private domain, or by private actors, must consequently be considered a violation of the Convention. For many years, the discussion related to severe psychological and physical violence committed within homes, in privately owned institutions, etc., have been raised as important issues of concern for States parties to the Convention. Gender-based violence is a typical example of violence that has been known but silently condoned by State officials in most places in the world, as little has been done to prevent or sanction it. “Gender-based violence is nearly universal, affecting women of

⁶⁴ BAŞOĞLU, *supra* note 49, at 278.

⁶⁵ *Id.* at 284.

⁶⁶ *Id.* at 283.

⁶⁷ *Id.* at 283–84.

every class, race, ethnicity and social background in all the pursuits of life and at every phase of the life cycle. The number of its victims exceeds those of war and the most brutal dictatorships of our time.”⁶⁸

I have referred to the devastating effect of lack of control and lack of options to escape. When the perpetrators are known, the psychological effect is particularly painful, as this represents very conflictive and often contradictory situations. The need for any State party to be aware, to act, to inform, to stop and to sanction such acts of psychological and physical violence is of absolute priority, both for the adults involved and for children. Protecting all vulnerable groups in society—in a way where voices are heard and taken seriously and where their complaints are being heard in a way that is appropriate for their needs and experiences—is a major challenge for any community.

One of the State obligations, in their work to prevent torture and ill-treatment, is thus to take active measures to prevent, investigate, punish, and also redress acts committed by non-State actors. Strategies and plans of action must be developed, implemented, and monitored in order to provide protection to groups made vulnerable, and groups that may live in situations where there are few options and where they may experience limited sense of control over their own lives. Women in violent relationships, victims of human trafficking, and young people in danger of being gender mutilated are all examples of persons who may need the available protection, both to prevent violence from happening and to prevent additional psychological burdens related to lack of action and reaction.

XII. REPARATION AND REHABILITATION

Some final words in relation to reparation and rehabilitation after torture. It is an acknowledged principle in international law that persons exposed to torture shall be redressed and compensated for what they have been through. This is a highly important principle, from both a legal and a health perspective.⁶⁹ But at the same time, and particularly from the mental health perspective, this process of rehabilitation and compensatory action may be a long and a complex one. From the victim’s point of view, it may, at

⁶⁸ Rhonda Copelon, *Recognizing the Egregious in the Everyday: Domestic Violence as Torture*, 25 COLUM. HUM. RTS. L. REV. 291, 292 (1994).

⁶⁹ Katharine Shirey, *The Duty To Compensate Victims Of Torture Under Customary International Law*, 14 INT’L LEGAL PERSP. 30 (2004).

times, seem almost an impossible one to undertake. To get on one's feet again—understood as the ability to function in society, to accept oneself as worthy and with dignity, and be capable of trusting as well as being trusted—is an arduous venture and requires not only inner strength and determination but actions and attitudes from the society in which the person lives. Even more so if the person remains in the society that has been responsible for the destructive acts.

Reparation and rehabilitation is about recognition and apology, and it is about recreating meaning and dignity. In order for this to happen, there are some basic requirements that should be present for any process to be possible or positive. First of all, a public recognition that the wrong that was done against the person was in fact wrong is an important step. A public confirmation acknowledges and confirms the person's own sense of injustice. This may seem obvious, but when people have been exposed to torture for a period of time, nothing can be taken for granted, and feelings of guilt and shame can preclude the sense of an "objective" evaluation of the crime. Such a confirmation can thus be a first, but important step. Furthermore, the principle of accountability has wide-ranging psychological aspects. Impunity in relation to torture crimes creates a context in which rehabilitation may be rendered almost impossible.⁷⁰ Knowing that someone is taking on the responsibility, the perpetrators themselves and/or others responsible for what happened, again confirms that it happened, it was wrong, it will be investigated, and some kinds of sanctions will be decided upon. For persons who have experienced an existence totally void of rights and legal principles, this may help recreate a sense of safety and predictability, and in the long run, justice. Redress and reparations after torture must therefore consist of a combination of interventions, where legal, social, economic, and health-related actions are needed. Even the best of therapy and care will not have the desired effect if it is provided in a context of impunity and denial.

The Torture Convention contains clear provisions in relation to these important aspects—namely to disclosure, investigations, accountability, legal sanctions, and redress for the person who has been tortured. Being aware of these provisions and knowing that principles exist, which render such crimes as absolutely unacceptable and internationally prohibited under all circumstances, may

⁷⁰ Paz Rojas Baeza, *Impunity: An Impossible Reparation*, 69 NORDIC J. OF INT'L L. 27 (2000).

have a therapeutic effect in itself. I am quite sure that very few people exposed to torture worldwide are aware of the principle of absolute prohibition. Knowing about the existence of such principles, as well as to the importance of accountability and legal sanctions in the wake of torture, may well be knowledge that strengthens people's resilience in such circumstances. The very wide dissemination of these important moral and legal principles is therefore an important tool in itself. Many torture victims have reported that knowing that there were people out there who knew what was happening and who were fighting for their rights, and at the same time, knowing that what happened inside was wrong, contributed to survival, and especially to psychological survival.

The points that are so clearly pinpointed in the General Comment to Article 2 with regard to the absolute prohibition and the far-reaching obligations of the State party to prevent torture and ill-treatment thus have important psychological consequences. To those who have experienced the violence, knowing that the international standards for prohibition, prevention, and reparation are so clear, and in principle, undisputed, represents important psychological backing. In the light of the responses of society in relation to torture and other ill-treatment, it is possible to see oneself not as a degraded and unworthy person, but as someone who has endured serious and internationally defined criminal acts, and as such, with a right to recognition, apology and redress. In the process of regaining balance and dignity, self-acceptance and agency, acknowledgement and recognition form important steps. A society that admits to wrongs and is willing to redress and provide reparation may lay the ground for the necessary work with pain, and open the doors to hope.