



Information Sheet: Psychological Torture

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1. The International Human Rights treaties to which Australia is a party, all clearly articulate the requirement for available, effective, independent and impartial remedies to be available to those whose rights have been violated under the various treaties. The Human Rights Committee has emphasised that such remedies are particularly urgent in respect of violations of the right to freedom from torture and cruel, inhuman and degrading treatment and punishment.¹
2. Almost a decade ago, the United Nations General Assembly (A/RES/60/147) [*Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*], clarified that in the context of remedy and reparations, 'victims' are conceptualised as:

'persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law.'
3. Australia ratified the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Convention) on 8th August 1989. The right to be free from torture and cruel, inhuman or degrading treatment or punishment carries with it non-derogable state obligations to prevent, punish, and redress violations of this right. Yet Australia has **NO national policy or framework for transitional justice and redress** for violations of the right to freedom torture [and other cruel, inhuman or degrading treatment or punishment]. As articulated under the Convention, the fundamental elements of such a policy and framework must include measures of reparation, satisfaction and guarantees of non-repetition as well as compensation, rehabilitation and recovery.²
4. In Australia, the justice system does recognise the concept of psychological effects of 'trauma' [but not 'torture'], and persons experiencing trauma can access schemes such as Victims of Crimes schemes. In Australia, victims of crime *may* be financially compensated in three ways: through an award of compensation in the civil courts, typically through a claim that a tort has been committed; through an order that an offender pay restitution or reparation to the victim, as part of the offender's sentence; and through a claim to a statutory compensation scheme in which awards are assessed and paid by the government. In all Australian jurisdictions, except Western Australia, there is power to order – as a sentencing option -that an offender pay compensation for loss, injury or damage as a consequence of an offence. In Western Australia, the power to order compensation is restricted to property damage or property offences.³
5. In relation to compensation for tort claims, victims of violence, including sexual assault, may be able to seek damages from an offender. Such claims are largely governed by the common law and are pursued in the civil courts. However, the recent Review of Family Violence Laws in Australia, undertaken by the Australian Law Reform Commission (ALRC) found that: "*compensation claims by way of tort are not easy methods of redress for victims of family violence, including sexual assault.*"⁴
6. It is critically important to stress, that for people from marginalised groups, such as people with disabilities, the possibility of seeking redress and reparation in the context of physical and psychological torture is virtually nil. For example, more than a quarter of rape cases reported by females in Australia are perpetrated against women with disabilities.⁵ Ninety per cent of Australian women with an intellectual disability have been subjected to sexual abuse, with more than two-thirds (68%) having been sexually abused before they turn 18 years of age.⁶ Crimes of violence committed against women with disabilities often go unreported, and when they are, they are inadequately investigated, remain unsolved or result in minimal sentences.⁷

7. A recent example can be used to highlight the lack of redress and reparation for women with disabilities who experience crimes that constitute torture.

Sarah is 40 years old. She lives in a government funded group home with five other residents. All the residents require 24-hour support which is provided by disability support workers who work in shifts. Often on the overnight shift, there is only one worker on duty. Sarah has cerebral palsy, is visually impaired, is confined to a wheelchair, and is unable to speak but can communicate with some gestures and by very slowly spelling out words on her wheelchair tray. Sarah also has an intellectual disability. She requires full assistance with toileting, feeding, showering and other personal care. She requires manual handling and needs to be placed into a hoist to be toileted, showered and transferred from her bed into her wheelchair.

Between October 2011 and January 2012, Sarah was raped more than 30 times by a male disability support worker who was employed to care for her. She was also repeatedly sexually assaulted, tortured, violated, degraded and abused in the most horrific ways. She had various objects inserted into her vagina and anus, including the perpetrator's pager that he set off after he had inserted it. She had bottles of hair shampoo shoved into her vagina and left there until the perpetrator chose to remove them. He would rape her in the shower and then just leave her hanging in the hoist for hours, naked and freezing. He would laugh at her while he was raping her, calling her a "whore", a "tart" and a "slag". He would anally rape her while she was suspended in the hoist. He would repeatedly taunt her, telling her that she wouldn't be able to tell anyone what he was doing and that no one would believe her anyway.

Sarah didn't tell anyone what had happened. Not initially anyway. She was understandably terrified of this man. He threatened to hurt her even more if she tried to tell anyone what he had done. He eventually resigned from his job and left the group home. The rape and torture of Sarah only came to light by chance, when one day she had a visit from a friend. She slowly and painfully spelled something out to her friend on her communication board. She asked him if she could have an operation to have her vagina sewn up. She said she thought this might help make sure no one would hurt her again. It was only through the dogged determination of her friend, and extreme courage from Sarah, that an investigation ensued. It eventually transpired that two of the other intellectually disabled female residents had also been raped and abused by the same perpetrator. One of them had told the staff and management what was happening to her, but they didn't believe her. In fact, she was reprimanded and punished by staff for supposedly "making up false allegations." When the three women were eventually supported to tell their stories and the evidence became undisputable, the perpetrator pleaded guilty to 12 charges of rape and in November 2013 was sentenced to 18 years jail [DPP v Kumar].⁸

8. None of the women three intellectually disabled women (and one disabled man) in the above cited case have ever received any form of support or reparation for what they have experienced. Unless these intellectually disabled individuals have a friend, or an advocate to pursue reparation on their behalf (through civil action in the Courts) they will never be afforded any measures of reparation, satisfaction and guarantees of non-repetition as well as compensation, rehabilitation and recovery.

¹ See UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, 2200A (XXI) United Nations, Treaty Series, vol. 999, p. 171; also Office of the United Nations High Commissioner for Human Rights and the International Bar Association (2003) Op Cit.

² Frohmader, C. (2013) 'Dehumanised: The Forced Sterilization of Women and Girls with Disabilities in Australia'. Women With Disabilities Australia (WWDA), Hobart, Tasmania. ISBN: 978-0-9876035-0-0. Available at: http://wwda.org.au/wp-content/uploads/2013/12/WWDA_Sub_SenateInquiry_Sterilization_March2013.docx

³ Australian Law Reform Commission (ALRC) (2010) *Family Violence — A National Legal Response*. ALRC Final Report 114. Accessed online January 2013 at: <http://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114>

⁴ Ibid.

⁵ Frohmader, C. (2011) *Submission to the Preparation Phase of the UN Analytical Study on Violence against Women and Girls with Disabilities*, (A/HRC/RES/17/11). Prepared for Women With Disabilities Australia (WWDA). Available online at: <http://wwda.org.au/issues/viol/viol2011/>

⁶ Australian Law Reform Commission (ALRC) (2010) *Family Violence — A National Legal Response*. ALRC Final Report 114. Accessed online January 2013 at: <http://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114>

⁷ Ibid.

⁸ DPP v Kumar [20 November 2013] VCC.