

30 ARTICLES ON THE 30 ARTICLES

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AT 70: STILL WORKING TO ENSURE FREEDOM, EQUALITY AND DIGNITY FOR ALL

Article 8: Right to Remedy

The pledge of effective remedy for everyone, found in Article 8, is an intrinsic – if all too often neglected – part of the system of providing justice. “True peace is not merely the absence of war, it is the presence of justice,” said Jane Addams, the second woman to win the Nobel Peace Prize, said in 1931.

After two World Wars, the drafters of the Universal Declaration of Human Rights (UDHR) considered it important to assert the principle of free treatment by fair courts – that all of us have an avenue for redress if our rights are violated. “Societies based on justice and equal rights before the law are not just more fair – they are more cohesive,” said Zeid Ra’ad Al Hussein, former UN High Commissioner for Human Rights. Economic evidence shows they are also more prosperous, he added.

Justice is not just about crime and punishment. Fair trials and due process are also vital components of any system of justice, but as defined in the UDHR, justice is a holistic concept which also includes providing effective remedies for injustice and violations of the rights of all individuals “as granted... by the constitution or by law” – and not necessarily simply financial compensation. As the old saying goes, money does not buy forgiveness, nor does it solve all woes.

Over the years, states have applied a wide variety of different remedies – either in response to domestic courts or to other entities, including regional and international courts and institutions, as well as UN bodies – and they have covered violations across the whole spectrum of civil, political, economic, social and cultural rights.

“Nothing is settled permanently that is not settled right.”

– Anonymous proverb

Some remedies are compensatory in character; some are restorative – designed to put the victim back in the position they would have been had no wrongful act been committed; and others are designed to prevent the repetition of the violation in question. In addition to money, remedies may include measures such as early

release from prison, legislative change, provision of residence permits, reinstatement in public service employment, assistance with finding jobs, or provision of housing.

When the victim is dead, the remedy may involve a matter as simple as ordering of a death certificate enabling his or her family to inherit property, or official

acknowledgement of a grave. It might involve the erection of a monument, or the naming of a square after a victim. Or it might take the form of a public oral and written apology for the wrong done, such as the 2008 National Apology by the Australian government to the 'Stolen Generations' – the descendants of Australian Aboriginal and Torres Strait Islanders who were forcibly removed from their families by the Australian authorities over a 60-year period up to 1970.

Such remedies can have immense emotional force for the families and people whose ancestors' rights were violated. Another example of this is the truth-telling and reparations provided to survivors of the "Magdalene Laundries", the Irish work-houses where, from 1922 to 1996, some 10,000 women and girls were made to work without pay in laundries run by Roman Catholic nuns. Performing a similar function, numerous Truth and Reconciliation Commissions have been set up to address gross human rights violations in many countries, most notably in Latin America, but also, for example, in South Africa and Kenya.

Other remedies may involve practical measures such as changing hospital procedures to better protect patients, or providing psychological support for someone suffering from post-traumatic stress. It may stretch as wide as the reform of the family justice system, or be as specific as a ban on corporal punishment.

While many people – especially the poor and the marginalized – receive neither justice nor remedy, when the system works in accordance with Article 8 (subsequently fleshed out in other international treaties) remedy is provided -- sometimes quite comprehensively.

In July 2011, reacting to a complaint from a 15-year-old indigenous girl in Argentina who had been a victim of rape by non-indigenous men and of discrimination based on gender and ethnicity, the UN's Human Rights Committee, based in Geneva, found numerous and wide-ranging violations of the girl's rights, including her appalling treatment at the hands of all the authorities involved: kept waiting for hours in her blood-soaked clothes in a police station; subjected to offensive remarks about her sexual history, to demonstrate her 'consent', and accused of being a prostitute. The Argentinian authorities responded by awarding the girl US\$ 53,000 in compensation and a life-long monthly stipend. She was also given a property and a scholarship. In addition, as a means of rounding off the remedy, all the judicial officials in her home province were made to undergo compulsory training on gender discrimination and violence against women.

In deportation cases, where there is a clear risk of torture or grave human rights violations in the country of return, many states adhere to the legal principle of "non-refoulement" and avoid deporting the individuals concerned. In one such case where an individual was expelled to Egypt where he was subsequently tortured, Sweden ensured his release and return to Sweden, where he was granted a permanent residence permit in July 2012 and compensation amounting to some US\$ 350,000.

In many cases, no remedy, however generous and well-considered, will completely erase the stain of the original violation of the victim's rights. But remedies are an important way to ease the pain and provide the means for the man, woman or child

concerned to look to the future rather than remained enslaved to a dark and damaging past injustice that was imposed upon them.

ENDS

This is one in a series of articles published by the Office of the High Commissioner for Human Rights (OHCHR) to mark the 70th anniversary of adoption of the Universal Declaration of Human Rights on 10 December 1948. All rights enshrined in the UDHR are connected to each other, and all are equally important.