

SEEKING REDRESS

When great wrong has been done, is it ever possible to com-

pensate victims fairly or adequately? Can punishing abusers help heal victims' wounds or prevent future abuse? Can the courts help right a wrong? Can enough money be given to compensate for the abuses? These are difficult questions and ones that the international community is constantly trying to answer. The tactics in this section all seek to bring some form of justice after human rights abuses have occurred, whether by seeking punishment for abusers or compensation for victims or by tearing down cultural and institutional structures that grant abusers impunity.

Legal cases against serious human rights abusers — those who have committed war crimes or crimes against humanity — can be arduous affairs. They require that a constellation of factors come into perfect alignment. The appropriate national or international legal structures must exist, as well as treaties or laws; there must be evidence; there must be a way to apprehend the accused and physically bring him or her to court; often there must be extradition treaties and mechanisms in place. When these cases do occur they are extraordinary, yet there is also much to be learned from them about the value of international conventions, treaties and legal structures, and about the role of the international community in preventing and redressing wrongs.

Often these court cases are less about punishing a particular human rights abuser than about sending the message that abuse will not be tolerated and that our society is one governed by laws and justice.

Action against injustices can occur completely outside legal structures. People have found many creative ways to bring abuses to light and hold perpetrators accountable for their actions.

A First in International Justice: Applying international law to dictators traveling outside their home countries.

The arrest and extradition of former Chilean dictator Augusto Pinochet is among the most extraordinary of the legal cases. It set a precedent that may be used in the future to target current and former heads of state for international justice.

The Spanish and British governments used both international and national law to determine that Chilean dictator Augusto Pinochet could be tried for human rights violations committed during his rule.

In the early years of Pinochet's 1973–1990 dictatorship, human rights activists began documenting cases of illegal detention, forcible transfer, murder, torture and disappearances carried out by Pinochet's forces. After democracy was restored in Chile, an official truth commission compiled detailed information on approximately 3,000 cases of human rights violations. Pinochet could not, however, be brought to trial in Chile, because prior to leaving office he had given constitutional protection from prosecution to himself and most of his accomplices.

Lawyers acting on behalf of the people whose human rights were violated by Pinochet's government filed criminal complaints in Spain using a procedural device called *accion popular*, or people's action, in which Spanish citizens are permitted to file private criminal actions in certain circumstances. Spanish courts allowed the case to proceed based on the principle of universal jurisdiction, which allows cases that involve torture, genocide and other crimes against humanity to be tried in Spanish courts no matter where the crime was committed and regardless of the nationality of the perpetrators and their victims.

A Spanish warrant was then issued and Pinochet was arrested by British authorities in London, where he was visiting. Pinochet and his defenders challenged the warrant, arguing that as a former head of state he enjoyed immunity from arrest and extradition. The British House of Lords, however, twice rejected this argument, ruling first that, although a former head of state enjoys immunity for acts committed in his functions as head of state, torture and crimes against humanity were not "functions" of a head of state; and second that, once Britain and Chile had ratified the 1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatments or Punishments, Pinochet could not claim immunity from charges of torture.

Pinochet was ultimately sent back to Chile for medical reasons and so was not tried in Spain. The Chilean Supreme Court stripped him of the parliamentary immunity he had granted himself and determined that he should be tried; it later ruled, however, that he was too ill to stand trial.

The Lords' ruling set an important precedent, demonstrating to the world that a head of state enjoys no immunity from prosecution on charges of torture, that such crimes can be prosecuted anywhere in the world under the principle of universal jurisdiction and that national courts can be used to force states to fulfill their obligations under international law.

The international attention also changed the political equation in Chile, which could no longer cling to national laws that had protected human rights violators, including Pinochet, from being tried for their actions. Most importantly, Pinochet's prolonged detention in London diminished the fear he engendered in the Chilean population, which began to move ahead in new ways.

Accountability for Multinationals: Using national laws to bring to justice those who perpetrate crimes against humanity in other countries.

A group in the United States uses a longstanding federal statute to allow victims of human rights abuses in other countries to bring legal cases against corporations complicit in the abuse.

The International Labor Rights Fund (ILRF) uses the Alien Tort Claims Act (ATCA) to bring legal cases against multinational corporations complicit in human rights abuses. Dating to 1789 and created to address and prevent piracy, the ATCA is a United States federal statute allowing foreign nationals to bring civil actions against U.S. citizens and corporations for violations of international law. While legal tactics have long been used to provide redress for human rights, the use of national laws for abuses taking place outside of a country represents a new opportunity for victims of human rights violations. This approach is also unique in its focus on abuses committed by multinational corporations.

Many foreign nationals do not have the option to bring cases in their own countries. ILRF's first ATCA case, for example, was brought against the energy company Unocal on behalf of Burmese refugees for the use of forced labor on an oil pipeline in Burma. If the refugees had complained in Burma, they might have faced imprisonment, torture or death, since it is against the law to provide information to foreigners about the government. The ATCA, however, allowed the foreign nationals to bring the case to the United States. For a case to be considered, there must be evidence that the corporation knowingly participated in the violation; the ILRF is working to prove this.

In addition to the case against Unocal, the ILRF has brought cases against Coca-Cola, Exxon-Mobil, Drummond and Del Monte. None of these cases has yet been concluded. The ATCA is currently being reviewed by the United States Attorney General's office, which seeks to limit the reach of the statute.

Current mechanisms in international human rights laws are not particularly effective against transnational corporations. This tactic uses available national laws to broaden the opportunities for redress for victims of the most serious human rights abuses. It also sends a message to transnational corporations that they will be held responsible for human rights violations facilitated by their business ventures, while at the same time raising awareness among the general public.

The ATCA or similar laws could be used by victims in other countries where abuse is ongoing or where there is no opportunity for legal recourse. The ATCA itself, however, is interpreted narrowly to apply only to the most

serious human rights abuses — genocide, war crimes, crimes against humanity, slavery, extrajudicial killing, torture and unlawful detention.

What universal jurisdiction laws exist in your country that could be used to hold entities accountable for violations?

Testing for Violations: Testing for discrimination.

When abuses are hidden, or accepted by members of society, it can be difficult for victims to prove that a human rights violation has taken place. A group in Hungary uses a testing method to provide evidence of discrimination and bring legal cases on behalf of victims.

Adapting a method used by United States organizations on housing discrimination, the Legal Defense Bureau for National and Ethnic Minorities (NEKI) uses a method of testing to collect evidence when there is an allegation of discrimination. The Hungarian court first recognized testing as a valid technique for documenting discrimination in a case in 2000.

The Roma form minority groups in several countries in Europe. They have been frequent targets of hate crimes and are often blamed for the increase of crime and unemployment in Hungary. Forms of discrimination faced by the Roma today include the inability to receive employment, housing and services in public accommodations. Since discrimination is often subtly carried out, direct evidence is rare.

NEKI uses testing to prove discrimination and obtain this direct evidence. The group identifies and trains people who are sent out as testers to replicate the actions of those who claim to have experienced discrimination. Each tester must be a reliable and objective observer and his or her profile must match that of the person who experienced discrimination as much as possible. In selecting testers, NEKI also evaluates whether each individual would make a credible witness during legal cases. Since litigation may last several years, testers must also be willing to stay in contact with the program for an extended period of time.

When NEKI receives a complaint, staff members assess the case and, if they decide to pursue it, send testers to the alleged place of discrimination. If the allegation concerns employment, for example, testing involves sending out a Roma and a non-Roma person with similar characteristics and qualifications, with ethnicity being their only major difference. They are sent out at closely spaced intervals on the same day to apply for a job and the testers take comparable actions in order to make the comparisons clear.

Testers record their experiences on assignment forms immediately after the test, detailing questions asked at the interview, treatment of the applicant and the manner in which the job was described, e.g. salaries and benefits. The test coordinator (the organization or the attorney) then evaluates whether or not differential treatment has taken place. This information is often used to support victims in legal cases.

As of 2002, NEKI had used the testing tactic fifteen times. In three cases, it was not possible to complete the test. Of the twelve completed tests, five did not produce evidence of systematic discrimination. The remaining seven tests, however, were convincing demonstrations of discrimination and sufficient to justify legal action.

Read more about this in a tactical notebook available at www.newtactics.org, under Tools for Action.

Adapted from work by U.S. organizations, the tactic is clearly a flexible one and other groups in the region have approached NEKI to learn about replicating their methods for human rights issues such as disability rights. Testing could also be used to look at the hiring practices of a range of institutions, including police departments or businesses.

Demanding Compensation: Convincing the government to compensate victims of abuse by police, military and armed forces personnel.

In India, the National Human Rights Commission investigates complaints of human rights abuses and recommends that local governments provide compensation to victims.

The National Human Rights Commission in India responds to verified complaints of police abuse by requesting that the government provide financial compensation to victims and issue appropriate penalties to perpetrators.

Established as part of the Protection of Human Rights Act (1993), the Commission has the power to investigate and recommend responses to human rights violations by public servants — including abetting or neglecting to prevent violations. The majority of the complaints it receives are against the police, although the Commission has also recommended compensation for victims of abuse by military and armed forces personnel.

Complaints of abuse are received from activists and media sources as well as from victims or their relatives. Common complaints include physical abuse, harassment of individuals or families, failure to follow procedures concerning treatment of women, neglect while in detention, illegal detention and torture. The Commission also receives complaints related to child labor, bonded labor and violations of the rights of vulnerable members of society, such as children, women, the disabled, certain castes and tribes, refugees, minorities and others.

When a complaint is received, the Commission calls for an enquiry report or directs its investigative division to look into the case. If the case is verified, the Commission files a report with the government of the state in which the violation occurred. The report includes recommendations for financial compensation to victims and for disciplinary action against the perpetrators. The state involved is free to recover the amount of compensation from the public servant who committed the violations.

The Commission publishes details of important cases in its monthly newsletter, *Human Rights*, and in its annual reports. The media also covers big cases.

Compensation packages help victims and their families rebuild their lives only if the rewards are substantial; in addition, care must be taken to ensure that this tactic does not deflect attention from other reforms. Despite these difficulties, however, the work of these commissions does have the benefit of making officials aware of the consequences of their actions, and thereby possible deterring future abuse.

Creating a commission like this requires substantial support from governing officials and community outreach and or publicity campaigns are necessary to ensure that victims and their families know they can use this recourse without fear of retribution.

How can you begin to hold government agencies and infrastructures accountable and convince them to support your cause?

Mobilizing Against Impunity: Raising public awareness of impunity through a referendum or petition drive.

Sometimes legislative and government tools exist but the public is unaware of them or does not know how to put them to use. A group in Uruguay organized a remarkable public effort aimed at preventing abusers in the Uruguayan military from being granted immunity from prosecution.

Using a constitutional provision that had never been invoked, Comisión Nacional Pro-Referéndum (CNR) organized a referendum in Uruguay, so that the public could vote on the congressional decision to grant impunity to human rights abusers employed by the military. In order to petition the government to hold a popular referendum, CNR needed, within one year of the impunity law's passage, to collect the signatures of 25 percent of citizens who were qualified to vote.

Gathering one quarter of the population's signatures required tremendous organization as well as extensive volunteer involvement, most of which came from women's movements. Organizing the participants posed a significant challenge. For example, during a day-long national campaign to gather signatures, organizers coordinated the efforts of 9,000 *brigadistas*, or volunteer signature collectors. In this massive undertaking, they used computers and spreadsheets to tabulate the signatures.

After the signatures were collected and submitted to the government, CNR publicly defended their validity before the electoral review committee. Throughout the process of collecting and submitting the signatures, CNR used grassroots organizing to combat heavy governmental and media opposition. It distributed leaflets, hung banners and posters, and held rallies, music festivals and bike marathons.

Although the referendum was narrowly defeated, CNR's work created a new tool with which to shape Uruguayan democracy. One in three Uruguayans was visited personally by brigadistas during the campaign and eight more popular referendums have since been attempted. The brigadistas and leaders at CNR have continued to play a role in politics.

The CNR did not achieve its ultimate goal of overturning the law granting impunity, but it did mobilize civil society in Uruguay in an unprecedented way and made impunity a national issue. The brigadistas' visits made an extraordinary number of people aware of the law first-hand and many more became aware of the issue through media coverage.

Legal provisions like the little-used referendum power in Uruguay are not available in every country. Signatures can still be collected on petitions, however, as an avenue of public awareness and a declaration to the government that the public is dissatisfied with government policies.

RESTORATIVE	Region	Initiating Sector	Target Sector	Focus	Human Rights Issue
Seeking Redress	Asia	Government	Government	National	Police and military abuses

Region	Initiating Sector	Target Sector	Focus	Human Rights Issue	RESTORATIVE
Americas	Civil Society	Government Society	National	Gross violations of human rights	Seeking Redress

Taking Responsibility for the Past: Mobilizing public resources for a socially marginalized group.

Identifying and, when possible, punishing abusers is only part of the equation. In seeking to redress human rights abuses, some groups seek compensation for victims, often in the form of treatment, financial compensation or the return of confiscated property.

To be successful, groups must often force the current government to acknowledge its part in the abuse, and to take responsibility for compensating victims or helping them obtain treatment.

The ICAR Foundation in Romania pressured the government to help provide, first, the physical premises for torture treatment centers and, second, the rights to free medicine and to insurance coverage for the specialized care and services required by torture survivors.

ICAR's tactic is part of a strategy to convince the government to take responsibility for the nation's past in order to build a better future. Many of the torturers from communist-era Romania escaped with impunity and some now occupy influential positions in society. Victims face a society in which substantial forces would prefer to forget the past — and its victims — rather than learn from that past in order to build a deeper civil commitment to democracy and human rights.

ICAR first sought to gain the trust of victims, working with the Romanian Association of Former Political Prisoners, then identified the group's unmet needs, including access to appropriate medical care and financial and legislative support. To meet these needs, ICAR targeted, among others, civil servants, medical professionals and officials at city, municipal and state agencies, such as the Ministry of Health, to provide professional services. ICAR also created alliances with other small civil society organizations, the media and the International Rehabilitation Council for Torture Victims (IRCT) in Denmark.

It took ten years, but ICAR convinced Romania's government to acknowledge its responsibility to those who had suffered at the hands of the former regime.

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ICAR's success was hard-won, and depended in large part on the political transition Romania was undergoing at that time. ICAR recognized, and used its connections to take advantage of, this political opening. New laws and the newly open society also allowed victims to organize without fear of reprisals. ICAR's tactic served the dual purpose of compensating victims and ending government impunity.

How might you begin to engage government to invest resources in providing services to victims?

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Unmasking Abusers: Publicly exposing abusers through targeted demonstrations.

When perpetrators of abuse are granted impunity, whether by law or de facto, they may go on to lead relatively anonymous lives — sometimes in the same communities as their victims. A group in Argentina decided that, even if perpetrators cannot be prosecuted through the courts, they can be revealed — or “unmasked” — to the general public.

Hijos por la Identidad y la Justicia contra el Olvido y el Silencio (Children for Identity and Justice Against Forgetfulness and Silence, or H.I.J.O.S) organizes targeted demonstrations in front of the homes of people who have been identified as perpetrators of human rights abuses. These demonstrations, called *escraches* (“unmaskings”), publicly expose the abusers and allow communities to express their moral condemnation.

H.I.J.O.S., whose members are mostly children of the disappeared, starts by identifying an individual who carried out repression under the military government in Argentina (1976–1983). Then the *pre-escrache* begins. They talk to local unions, libraries and other social organizations that work in the neighborhood where the perpetrator lives. They hand out pamphlets and organize informal lectures in the neighborhood and in the schools. The purpose of the pre-escrache is to involve the community, whose participation is essential to the success of the tactic. On the day of the escrache, protestors gather at a square or other public place near the target's home, giving speeches condemning the individual and describing his or her crimes. They post pamphlets on walls with the person's photo, name, address, telephone number and biography. A variety of other actions may be taken when appropriate. A variant of the escrache is the *escrache-movil*, a mobile demonstration that targets more than one perpetrator, generally in a single neighborhood.

H.I.J.O.S. has legal representation to assist in solving any problems that might arise with the police or with counter-demonstrators, but the key to accomplishing its objective without conflict is to involve as many people as possible in the demonstrations.

After the escrache has finished, the effectiveness of the tactic remains in the hands of the target's neighbors. Sometimes the response is staggering. There are examples of shops closing or bars becoming empty when an abuser enters. Some abusers who have been targeted have had to move from their own homes because of the social rejection.

Even though amnesty laws have made it difficult to prosecute some perpetrators, H.I.J.O.S. bypasses political and legal systems to encourage a kind of social ostracism, while making use of humor, theater and other creative demonstrations.

This tactic has some serious risks. People adapting this tactic must be certain that they are targeting the right people and that the demonstrations are not used for other political purposes. Organizers of large demonstrations around emotional subjects must have mechanisms in place to prevent the events from degenerating into violence. In some situations, actions like this might turn people in the community against the protestors, as they may not want a disturbance like this in their neighborhood.

How might you use the power of an entire community to condemn an abuse or an abuser?

RESTORATIVE	Region	Initiating Sector	Target Sector	Focus	Human Rights Issue
Seeking Redress	Europe	Civil Society	Government	National	Torture

Region	Initiating Sector	Target Sector	Focus	Human Rights Issue	RESTORATIVE
Americas	Civil Society	Society	Local	Gross violations of human rights	Seeking Redress

Rebuilding a Neighborhood: Mapping personal histories and mobilizing memory to reclaim a place in history and recover lost land.

Oppressive regimes have often forced people from their homes, dislocated whole communities and confiscated land and property. Colonial powers as well as new societies have encroached on native land. Returning this property to its former owners can be a challenge and requires that property boundaries be positively identified and delimited. The District Six Museum in South Africa meets this challenge in an innovative way.

The District Six Museum in South Africa spearheaded a land claim in which people ultimately recovered both the property and dignity they had lost under apartheid. It continues to be a space where people can collect, disseminate and exchange memories of the neighborhood and is also actively involved in promoting civic dialogue about humane cities in South Africa.

In 1966, as a result of the Group Areas Act, the racially integrated neighborhood of District Six in Cape Town was razed to the ground to make way for a new “whites only” development, but construction never took place. The only buildings left were houses of worship.

As part of a campaign to defend the land and community integrity, a group of former residents built an exhibition with a map of the old area as the central installation. They covered the floor of a Methodist church with a detailed map of their destroyed neighborhood, and invited their neighbors to place their homes, streets, stores and community spaces on it.

This memory-mapping project became the foundation for land reclamation claims. The museum organized and hosted one of the Land Courts, where people could establish formal claims to land they or their families owned. Former residents sat in chairs directly on the map of their old neighborhood, as the court granted them, in the words of one, “our land back, our homes back, our dignity back.” Since then, the museum has developed exhibitions on the histories of smaller neighboring communities destroyed under the Group Areas Act, including Kirstenbosch and Two Rivers, to publicize and support their unresolved land claims.

The District Six Museum seeks to provide a sustained process of personal healing and reconciliation, as well as to promote a lasting democratic and human rights culture in the neighborhood. Its programs keep the memory of forced removals alive and pass it on to new generations. The public memory of the past in turn strengthens efforts to prevent segregation, displacement and other abuses of democracy in the future.

In coming years, former residents of District Six will begin returning to the neighborhood to reclaim their land and rebuild. The International Coalition of Historical Sites of Conscience, of which District Six Museum is a member, can suggest creative ways to use history and the sites where that history was lived to address present day human rights issues and challenges.

Ripples in the Pond

Redress is possible long after abuses have taken place. Native communities in the United States and other countries have worked for decades to regain control of their native land through the courts and legislative bodies. The White Earth Land Recovery Project in the U.S. state of Minnesota decided to restore the land and heritage of the Anishinaabe people in another way — by buying it. **Winona LaDuke** of the White Earth Land Recovery Project talks about strategic thinking, tactical flexibility and building alliances.

When we first started to try to get our land back, we struggled through every legal mechanism possible. We went to the courts but the courts ruled against us. We went to Congress, but we got a bad deal from Congress. I testified at the UN. We tried all those mechanisms and then we decided that we should try to figure out a better way to get back our land.

So we started a land trust. We buy land from willing sellers and people have started to donate land to us as well. We have about 1,700 acres now. We grow some old corn varieties, some raspberries and strawberries. We have a big maple syrup producing operation as well.

I think of my work as organizing by example. I've been an organizer for 25 years and I've learned that we not only have to fight what is wrong, we have to illustrate what is right. People have become accustomed to what is wrong. Even in our own Native American community we have become accustomed to being treated like second-class citizens. And we have become accustomed to thinking that we cannot get back our land, we cannot control our own economy.

So we've been changing this attitude piece by piece and getting our land back. Let's say you've got a Native American cemetery somewhere that somebody is running their cows over. So you go talk to the farmer and you figure out how to get that cemetery fenced off. It's a micro approach, not a macro approach. Think of it like tiny pebbles that make big ripples in the pond.

At the same time that you're dealing with the smaller issues, you have to have your eyes open to the larger issues. You have to be very attuned to what's happening politically. And, sometimes, to meet the needs of your community you may need to build alliances with people you never thought you'd be working with.

Those of us working in indigenous rights issues in the United States have been at this a long time. We have a lot of experience with national policy analysis and we've built strategic alliances not only with other native peoples but also with environmentalists and health care providers. Right now we're trying to build an alliance around organic food issues. We're fortunate to have the experience we do, but it doesn't mean we're winning. It just means that we are cognizant of our situation.

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RESTORATIVE	Region	Initiating Sector	Target Sector	Focus	Human Rights Issue
Seeking Redress	Multiple	Civil Society	Government Society	Local	General human rights Displaced populations

Region	Initiating Sector	Target Sector	Focus	Human Rights Issue	RESTORATIVE
Americas	Civil Society	Society	Local	Indigenous rights	Seeking Redress