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Voices Against Torture is published on the Unceded Homelands of the displaced xwməθkwəyə̓m (Musqueam), səlilw̓ itulh (TsleilWaututh), and sḵwx̱wú7mesh (Squamish) Coast Salish peoples. We pay respect to the Elders past and present and are grateful for the many diverse Indigenous peoples who, over generations, cared for these shared Traditional Territories. We recognize the truth of violence, the painful history of genocide, and the forced removal that took place on this Ancestral Land. We are committed to the everyday actions that can help transform colonial impacts and help us move towards a culture of healing. This also means to us deeper alignment with the values rooted in anti-oppression and universal trauma-informed care, supporting a society based on equity, equality, and justice. We hold ourselves globally accountable to all human rights and to all Traditional Custodians of the Land wherever they now exist or compelled to co-exist. We comprehend that this Land Acknowledgement is a small but essential step in our ongoing process of remaining in right relations and continuum towards transparency and accountability.

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Editorial

Each time, with the dawn of a new year, one hopes for lasting peace – a world free of conflicts, torture and human rights abuses. Unfortunately, the prevailing trends suggested further escalation in the sufferings of humankind at the hands of human rights abuses, violent conflicts and more so in the case of gender-based violence across the globe.

Despite an evolutionary trend in rights-based frameworks and torture-related legislation at international, national and sub-national levels, and growing civil society and public partnership in this regard, not enough improvements could be witnessed in the human rights landscape over the years. The annual global reports on torture and human rights abuses, which are included in this issue, confirm this unfortunate situation.

This demands revisiting international and national strategies to arrest this trend of incidence of human rights abuses, torture and gender-based violence. As one of the underlying causes of conflicts and violence is inequity and inequality in the ranks of societies and nations, as stipulated in 'Grievance Theory,' the human right-based development planning approach can help overcome this deficit and thus promote distributive justice. Needless to say, there is relatively much less risk of conflicts and consequences of violence in societies that are more just.

We would like to underline that in many such violent conflicts, state-level external forces are involved, and their aggression and consequent upon state-level human rights violations debilitate societies morally, socially and economically, further entrenching the situation, making conflicts and violence endemic. Therefore, countries need to exercise both restraint and self-reflection in state-led, state-sanctioned, or state-tolerated aggression, and resolve their issues politically to help avoid human suffering.

Since the United Nations is the architect of current International Human Rights Law, it is its responsibility to institute, firstly, an international mechanism of human rights monitoring and evaluation based on both qualitative and quantitative indicators; and, secondly, a 'Whistle Blowing' system in case of violations of international human rights law at the state level(s). Such initiatives also need to be taken at regional, national and sub-national levels.

Farooq Mehdi and Frank Cohn

HUMAN RIGHTS OUTLOOK

Torture: A Crime Against Humanity

Torturers must never be allowed to get away with their crimes, and systems that enable torture should be dismantled or transformed.

UN Secretary-General António Guterres

Torture seeks to annihilate the victim's personality and denies the inherent dignity of the human being. Despite the absolute prohibition of torture under international law, torture persists in all regions of the world. Concerns about protecting national security and borders are increasingly used to allow torture and other forms of cruel, degrading and inhuman treatment. Its pervasive consequences often go beyond the isolated act on an individual, can be transmitted through generations, and lead to cycles of violence.

The United Nations has condemned torture from the outset as one of the vilest acts perpetrated by human beings on their fellow human beings.

Torture is a crime under international law. According to all relevant instruments, it is absolutely prohibited and cannot be justified under any circumstances. This prohibition forms part of customary international law, which means that it is binding on every member of the international community, regardless of whether a State has ratified international treaties in which torture is expressly prohibited. The systematic or widespread practice of torture constitutes a crime against humanity.

On 12 December 1997, by resolution 52/149, the UN General Assembly proclaimed 26 June the United Nations International Day in Support of Victims of Torture, with a view to the total eradication of torture and the effective functioning of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

26 June is an opportunity to call on all stakeholders, including UN Member States, civil society and individuals everywhere, to support hundreds of thousands of people worldwide who have been torture victims and those still tortured today.

Healing through rehabilitation

Recovering from torture requires prompt and specialized programmes. The work of rehabilitation centres and organizations worldwide has demonstrated that victims can transition from horror to healing. The UN Voluntary Fund for Victims of Torture, administered by the UN Human Rights Office in Geneva, is a unique victim-focused mechanism that channels funding for assistance to victims of torture and their families. Established in 1981 with a mandate to support torture victims and their families, the Fund marks its 40th anniversary. The Fund works by channeling voluntary contributions to civil society organizations providing legal, social, humanitarian, psychological and medical services. Beneficiaries include human rights defenders, persons deprived of liberty, children and adolescents, refugees and migrants, victims of enforced disappearance, indigenous peoples, victims of sexual and gender-based violence and LGBTI persons, among others. The UN Voluntary Fund for Victims of Torture accepts donations.

Watch the UN Torture Fund trailer featuring interviews with beneficiary organizations, survivors and trustees to witness how rehabilitation services help torture survivors to heal.

Why do we mark 26 June?

The UN International Day in Support of Victims of Torture on 26 June marks the moment in 1987 when the UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, one of the key instruments in fighting torture, came into effect. Today, the Convention has been ratified by 162 countries.

What constitutes torture?

"The term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or

other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions." — Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984, art. 1, para.1)

Legal standards and instruments

In 1948, the international community condemned torture and other cruel, inhuman or degrading treatment in the Universal Declaration of Human Rights adopted by the United Nations General Assembly. In 1975, responding to vigorous activity by non-governmental organizations(NGOs), the General Assembly adopted the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

During the 1980s and 1990s, progress was made in the development of legal standards and instruments and in enforcing the prohibition of torture. The United Nations Voluntary Fund for Victims of Torture was established by the General Assembly in 1981 to fund organizations providing assistance to victims of torture and their families.

The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment was adopted by the General Assembly in 1984 and came into force in 1987. Its implementation by States parties is monitored by a body of independent experts, the Committee against Torture.

The first Special Rapporteur on torture, an independent expert mandated to report on the situation of torture in the world, was appointed by the Commission on Human Rights in 1985. During the same period, the General Assembly adopted resolutions which it highlighted the role of health personnel in protecting prisoners and detainees against torture and established general principles for the treatment of detained persons. In December 1997, the General Assembly proclaimed 26 June United Nations International Day in Support of Victims of Torture.

The United Nations has repeatedly acknowledged the important role played by non-governmental organizations (NGOs) in the fight against torture. In addition to lobbying for the establishment of United Nations instruments and monitoring mechanisms, they have made a valuable contribution to their enforcement. Individual experts, including the Special Rapporteur on torture and the Special Rapporteur on violence against women, and treaty monitoring bodies such as the Committee against Torture rely heavily on information from NGOs and individuals.

Courtesy: International Day in Support of Victims of Torture | United Nations

Challenging Detention and Torture in Times Covid-19

Briefing Report February 2022, OMCT

The legal in-court and advocacy actions took place in the context of the general curtailment of access to justice when the Covid-19 pandemic hit. Many countries have reduced or temporarily suspended court operations and related criminal justice services. These measures have generally led to reduced judicial and external oversight of prisons and other places of detention, increasing case backlogs, and lengthy delays in judicial proceedings. These reduced operations also constitute a serious threat to the right to a fair trial, to the ability of victims of torture and ill-treatment to seek protection and justice, and for persons deprived of liberty to access detention and court services and remedies.

The systemic problems endemic to detention facilities in many countries, such as overcrowding, inadequate health services, and poor living and sanitary conditions, including poor cell ventilation, have been exacerbated by the Covid-19 pandemic. This has heightened the risk of Covid-19 outbreaks and endangered the lives of persons deprived of liberty, staff and the surrounding community.1 Thus, compared to the wider population, persons deprived of liberty have been at higher risk of contracting Covid-19, which can spread rapidly in detention, due in part to the high concentration of persons in confined spaces and to restricted access to hygiene and health care.2 Further, as the pandemic has deepened preexisting inequalities and exposed vulnerabilities,3 some groups in detention have been even more at risk or more adversely affected by the pandemic, such as women, children, LGBTI people, migrants, older persons, persons with disabilities, and those with underlying health problems.4

Protecting persons deprived of liberty has required, first and foremost, reducing the prison population to allow physical distancing in overcrowded detention facilities. In turn, some governments took proactive legislative, administrative, and judicial measures to reduce the number of people in detention through the use of non-custodial and early-release measures.5 Countries, including Congo-Brazzaville, El Salvador, Guatemala, India, Nigeria, Philippines, and many others, announced unprecedented mass releases of detainees, mostly non-violent offenders.6 The most commonly implemented measures have been: amnesties; bails; electronic monitoring; fines; house arrest; parole; suspended sentence orders; temporary or early releases.

Overall, efforts have focused on releasing certain categories of persons deprived of liberty, such as women, including those who are pregnant, children, the elderly, individuals with underlying health conditions, and those detained for minor or nonviolent offences. In some countries, those release mechanisms were extended to places of detention outside the criminal justice system. Health conditions, and those detained for minor or nonviolent offences. In some countries, those are released.

In addition, states are responsible for protecting the lives and health of those who remain in detention, including ensuring physical distancing within the facilities, providing medical treatment, access to medicines, and

[1]. Penal Reform International, "Coronavirus: Healthcare and human rights of people in prison", 16 March 2020, p. 2.; World Health Organisation, Regional Office for Europe, "Preparedness, Prevention and Control of COVID-19 in Prisons and Other Places of Detention, Interim Guidance", 15 March 2020, pp. 1-2.

[2]. Amnesty International, "Forgotten Behind Bars: Covid-19 and Prisons", 18 March 2021, p. 12.; Inter-Agency Standing Committee, "Interim Guidance, COVID-19: Focus on Persons Deprived of Their Liberty", developed by OHCHR and WHO, 27 March 2020, p. 2.

[3]. UN Secretary-General, "Policy Brief: The Impact of COVID-19 on Women", 9 April 2020, p. 2.

[4]. In particular the gender implications of COVID-19 in prisons are yet to be fully analysed but the initial evidence shows that the impact of COVID-19 on women and LGBTI prisoners have been different than cis male prisoners and they have faced specific challenges during the COVID-19 pandemic. Yet, women and LGBTI prisoners have been the less visible victims of COVID-19 behind bars and the policies adopted by the authorities have been very often gender blind putting them at greater risk. See: Vicki Prais, "The Impact Of COVID-19 On Women Prisoners", Human Rights Pulse, 1 June 2020; Olivia Rope, "Coronavirus and women in detention: A gender-specific approach missing", Penal Reform International, 4 June 2020,; Astrid Valencia & Josefina Salomón, "Abuse and fear: Trans women speak out about life in Nicaragua's prisons during COVID-19", Amnesty International, 9 September 2020.

[5]. "Governments around the globe have reduced prison populations in response to the COVID-19 pandemic, with an estimated one million, mostly non-violent offenders, being granted early release… The global study of prisoner release schemes in 53 jurisdictions found that many governments took swift action to protect the health and safety of corrections staff, prisoners and the wider community, with over 475.000 people released from prisons and other places of detention between March and July 2020 alone." See: DLA Piper, "A global analysis of prisoner releases in response to COVID-19", 2021.

[6]. Ibid.

adequate sanitary conditions. However, while some authorities were too slow to take action, the measures taken by others were inadequate or raised other human rights concerns. For example, family and lawyer visits were suspended or restricted and not replaced by increased access to alternative means of communication. In other cases, solitary confinement was widely used to create physical distancing.

The measures imposed by prison authorities in many countries have prevented monitoring bodies from carrying out their duties, as their access to places of detention has been limited or temporarily suspended. Consequently, they have not been able to directly assess the treatment of people in prisons and how their health is being protected against Covid-19.7 This has raised other concerns since monitoring visits play a key role in the prevention of torture and other ill-treatment in places of detention.8

There are also remarkable similarities across regions regarding the lack of transparency surrounding Covid-19 data within criminal justice systems, such as tangible, reliable, and disaggregated data about the impact of the virus on prisons and other places of detention, including the number of Covid-19 infections and related deaths, as well as the mitigation measures adopted by authorities. Some lawyers and activists are challenging these restrictions.9

Lawyers and activists stepped up their legal and advocacy strategies to denounce and prevent further deterioration of detention conditions and have employed a diverse range of interventions, including in-court actions and legal advocacy at the domestic and international levels aiming to reduce overcrowding, improve conditions and access to health in detention, protect the right of persons deprived of liberty to maintain contact with the outside world, and ensure transparency and access to information on detention facilities.

Differences among domestic legal systems and available remedies, the variety of detention realities, social and economic factors, as well as legal traditions and frameworks influence the types of legal actions and advocacy strategies in the various countries.

1.1 LEGAL STRATEGIES TO SEEK RELEASE AND PROTECT PEOPLE IN DETENTION

Civil society organizations and lawyers have developed and conducted a wide array of legal strategies, actions, and resources to protect and provide urgent assistance to persons deprived of liberty in the context of the Covid-19 pandemic. Litigation practices have involved various constitutional, criminal, habeas corpus, and public interest litigation, ranging from individual to collective cases and including judicial or quasi-judicial bodies. Cases around the world have alleged violations of a number of rights, including the right to life, the right to health, the right to be free from torture and other forms of ill-treatment, the right to information, the right to food, and the right to claim benefits while serving a sentence. Litigators used habeas corpus petitions for early or compassionate release and public interest litigation as the main tools to reduce overcrowding, improve detention conditions, and protect groups in situations of vulnerability. Amicus curiae briefs drew judicial attention to international human rights and health standards, thereby creating added pressure on authorities to adopt concrete measures or reforms.

In addition, many civil society organizations deployed legal aid services to assist those in detention particularly affected by the health crisis or with chances to benefit from early release or non-custodial measures. For example, in Colombia, the Comité de Solidaridad con Presos Políticos (CSPP) produced and circulated habeas corpus templates for persons deprived of liberty to file petitions on their own to claim urgent access to medical treatment, virtual communication with their relatives or lawyers, and the application of non-custodial measures, notably house arrest. CSPP also published a manual called "Manual de Derecho Penitenciario," which

[7]. Open Society Justice Initiative, "The Right to Health Care in Prison during the COVID-19 Pandemic", Legal Brief, July 2020.

[8]. Ibid.

[9]. See for example: Instituto de Defesa do Direito de Defesa (IDDD), "Primeiro ano da pandemia nas prisões brasileiras foi de negligência, falta de itens de prevenção e água", 15 April 2021; KELIN, KATIBA Institute, the International Commission of Jurists-Kenyan Section, Transparency International-Kenya and Women's Link Worldwide, "Five organisations filed an urgente case at the High Court in Nairoby (Kenya) on the right of access to information", 8 July 2020.

includes a section focused on Covid-19 in prisons, compiling resources and legal actions to undertake.10

1.1.1. SEEKING RELEASES THROUGH HABEAS CORPUS PETITIONS

During the pandemic, the first urgency has been to reduce the number of persons deprived of liberty to avoid overcrowding in detention facilities, and so, one of the most commonly used types of litigation, where it exists, was habeas corpus petitions, filed either individually or collectively. A habeas corpus petition, common to many national judicial systems and incorporated into international law, is used to bring a detainee before a court to determine if the person's detention is lawful.11

Habeas corpus claims for the release of children, women, and LGBTI people have proven effective in some countries. In certain contexts, older people deprived of liberty and those with pre-existing chronic diseases which belong to a risk group were allowed to serve their sentences at home. Collective habeas corpus petitions seem more effective than other types of legal action, as they have a potentially larger impact due to the release of large numbers of people in a shorter period.

In **Argentina,** collective habeas corpus petitions requesting release were filed in the state of Mendoza by the lawyers of the Association XUMEK, resulting in a court order requiring the government to review all cases of at-risk prisoners who could be placed under house arrest and urging authorities to secure the periodic supply of personal protective equipment (PPE) and hygiene items to detainees, as well as authorizing the temporary use of mobile telephones while family visits were suspended.12 The judicial decision allowed many individuals to serve their sentences at home. XUMEK also filed a collective habeas corpus petition to release children deprived of liberty and detainees in psychiatric institutions.13 In May 2021, the Supreme Court of Argentina ordered the Supreme Court of the Buenos Aires province to monitor human rights violations committed against persons deprived of liberty, following a petition filed by Centro de Estudios Legales y Sociales (CELS) in 2020, in light of the lack of implementation of the "Verbitsky" collective habeas corpus ruling (2005) and increasing overcrowding levels.14

In **Brazil,** habeas corpus petitions brought by Public Defender's Offices have been seen as a valuable strategy to reduce prison overcrowding. For instance, in the state of Espírito Santo, a collective habeas corpus petition released persons deprived of liberty who were detained because they could not pay their bail.15 Similarly, a collective habeas corpus petition filed in the state of Ceará resulted in the release of individuals who were detained for alimony debts. Both decisions have subsequently been extended at the national level.16

In the **Democratic Republic of Congo,** Alliance pours l'Universalité des Droits Fondamentaux (AUDF) filed, in April 2020, a collective habeas corpus petition to the prosecutors of the city of Kinshasa on behalf of detainees in pre-trial detention whose detention had exceeded the length allowed by law. The petition provided a list of 20 persons for release, given the risk of further human rights violations in case they would contract Covid-19 in detention.17 The collective habeas corpus petition prompted their release.

In **Honduras,** the National Committee to Prevent Torture and Cruel, Inhuman or Degrading Treatment submitted a collective habeas corpus petition to the Supreme Court of Justice to protect at-risk incarcerated people from exposure to Covid-1918, requesting the Court determine whether the imprisonment of certain categories of persons was lawful, and to consider early release for those who were particularly vulnerable. This category included detainees suffering from chronic diseases (such as diabetes, hypertension and cardiovascular illnesses), those over the age of 60, and people living with HIV/AIDS. The request was filed in March 2020 and accepted by the Constitutional Chamber of the Supreme Court in April 2020.19 Although the habeas corpus petition was not granted in this case, recommendations were issued despite the reluctance of the military authorities who oversee the prison administration.

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10. Comité de Solidaridad con Presos Políticos (CSPP), "Manual de derecho penitenciario", 2021.

11. M asha Lisitsyna, Natasha Arnpriester, "Insight: Five Ways Attorneys Are Protecting Human Rights of the Incarcerated", Bloomberg Law, 15 April 2020.

12. Xumek, "Comunicado de prensa: habeas corpus colectivo y correctivo ante la situación de emergencia por el COVID-19", 1 April 2020.

13. See: Xumek, "Habeas corpus correctivo y colectivo servicio penitenciario de Mendoza sistema de responsabilidad penal juvenil sistema de salud mental de Mendoza", https://xumek.org.ar/wp/wp-content/uploads/2020/04/Habeas-Corpus-Colectivo-CorrectivoCOVID-19.pdf.

14. CELS, "La CSJN le ordenó a la Suprema Corte Bonaerense que tome medidas de fondo contra el hacinamiento en el sistema carcelario", 13 May 2021.

15. Agência Brasil, "Covid-19: Espírito Santo prisoners Gain Freedom by Injunction", 28 March 2020.

16. See for more details: Natalia Pires de Vasconcelos, Maíra Rocha Machado, Daniel Wei Liang Wang, "COVID-19 in prisons: a study of habeas corpus decisions by the São Paulo Court of Justice", Forum Practical Perspectives: Special Section COVID-19, Brazilian Journal of Public Administration, Rio de Janeiro 54(5), September – October 2020, p. 1480-1481.

17. AUDF, "Demande de la libération des Détenus en Détention préventive, cas irréguliers de Détention et cas éligible à la libération con Cas de dépassement des délais à Makala", 21 April 2020.

18. In contravention of the recommendations of international human rights bodies, including the United Nations Committee against Torture.

19. IDLO, "Honduras Court Admits Petition to Protect Prisoners from COVID-19", 11 May 2020.

In some countries, **individual** habeas corpus petitions have been effective in leading to broader impacts. For example, in **Nepal,** when the Supreme Court suspended remand and jail/bail hearings due to Covid-19, the Public Defender Society of Nepal (PDS-Nepal) filed an individual habeas corpus petition for a client who remained illegally detained, emphasizing the right to be heard on the essential issue of detention. The Supreme Court freed their client and shortly thereafter announced they would renew remand and jail/bail hearings and allow interlocutory appeals of these decisions.20

Again, in **Nepal,** PDS-Nepal filed an individual habeas corpus petition to the Supreme Court on behalf of a convicted juvenile for resentencing to home confinement, arguing that the child's rights to life, liberty, and special protection under the law were being violated. The Supreme Court granted the writ and released the child into parental custody, considering the child's best interests. This successful case paved the way for more children to be released from detention during the pandemic, though individual habeas corpus petitions are still required to be filed. PDS-Nepal has shared this decision widely among lawyer networks and with juvenile correction centres across the country so that other legal practitioners can cite the case to build stronger arguments for the release of children.21

In **Brazil** in 2020, the Institute for Defense of the Right to Defense (IDDD), mobilized 92 lawyers and 11 law students through its network to be part of the project "Task Force COVID-19: for the right to defend life."22 The Task Force established a partnership with the Public Defender's Office of the state of Sao Paolo that referred relevant cases in areas where it does not have a presence.23 Task Force lawyers requested the release or replacement of pre-trial detention with house arrest in the first instance and through filing habeas complaints to three levels of courts.24 The Task Force represented 448 individuals under arrest or in pretrial detention in the state of Sao Paolo and obtained positive decisions for 118 of them.2528 of them were released by the judges in the first instance request.26 Less than half of positive decisions actually mentioned the pandemic among the reasons for release.27

In **Kenya,** in September 2020, KELIN and Katiba Institute filed a petition before the Constitutional and Human Rights Division of the High Court in Nairobi challenging the unlawful detention of patients for failure to pay the costs of Covid-19 testing and medical treatment while in isolation.28

1.1.2. IMPROVING CONDITIONS THROUGH CONSTITUTIONAL PUBLIC INTEREST LITIGATION

Civil society organizations and Public Defender Offices have also used constitutional public interest litigation to address the lack of access to health and hygiene services in detention facilities as well as the need to reduce overcrowding. These collective petitions were filed in the public interest, without specifying plaintiffs, and relied on scientific evidence to argue the violations of rights.

In **Mexico,** a collective amparo complaint was filed by Centro de Derechos Humanos Miguel Agustín Pro Juárez against the Governor of the state of Morelos, the Ministry of Health and other State authorities. Admitted in November 2020, this lawsuit used a public health rationale to argue, among others: "that the failure of authorities to enact pandemic guidelines and policies runs contrary to their obligation to protect those in the Morelos state prison system from Covid-19." This case also highlights the use of expert opinions by national and international experts (epidemiology, public health, forensics, and pre-trial justice experts) as part of strategic litigation efforts around the Covid-19 pandemic and human rights violations.29 Unfortunately, the judge dismissed the amparo in December 2021, more than a year after it was filed, based on the presumption that government tells the truth in its responses and no

20. See: The International Legal Foundation, "Justice in Crisis: COVID-19", https://www.theilf.org/covid-19.

21. Holly Hobart, & Ajay Shankar Jha Rupesh, "In Nepal, Creative Litigation is Protecting Vulnerable Communities Amidst COVID-19", 14 May 2020.

22. The Instituto de Defesa do Direito de Defesa (IDDD), "Justice and denial: how the magistrates turned a blind eye to the pandemic in prisons", August 2021, p. 14-15.

23. Ibid.

24. Ibid.

25. Ibid., p. 21.

26. Ibid. p. 41.

27. Ibid.

28. Katiba Institute, "Petition challenging forceful detention for failure to meet costs of isolation and treatment of covid-19 in public health facilities", 30 September 2020.

29. Centro Prodh, Open Society Justice Initiative, Amparo: "Centro Prodh vs. the Governor of the state of Morelos et al.", 29 October 2020, https://www.justiceinitiative.org/litigation/centro-prodh-vs-the-governor-of-the-state-of-morelos-et-al. See: Albertina Ortega Palma, "Expert Report on the Management of Dead Bodies in Custody and the Covid-19 Pandemic", 2 October 2020; Antigone Onlus, "Italian Policies to Prevent Covid-19 and Contain its Spread in Prisons", 5 June 2020; Luis Fondebrider and Mercedes Doretti and Luis Prieto Carrero, "Argentine Forensic Anthropology Team (EAAF), Technical Report on Measures for Preventing Transmission and Handling the Deceased by Covid-19 in Detention Centers", June 2020; Irish Penal Reform Trust, "Affidavit of Fíona Ní Chinnéide", 21 August 2020; Javier Carrasco Solís, Instituto de Justicia Procesal Penal, "Expert Report on the Obligations of Pre-Trial Services (Unidad de Medidas Cautelares) of the State of Morelos During the Covid-19 Pandemic", 2 October 2020.

omissions in the acts of government agencies are proven. Centro Prodh is appealing the decision to the federal judiciary.

Also, in Mexico, Documents A.C. filed and won two landmark collective amparo actions. The first one, filed in April 2020, prompted the Second Administrative District Judge of the City of Mexico to order a wide array of measures to protect persons deprived of liberty in 39 psychiatric hospitals.30 The second amparo, filed in May 2020, targeted the protection of persons involuntarily deprived of liberty in 350 drug-treatment residences. In both cases, the judiciary requested authorities to favour the discharge of the individuals when social and/or family support was available, to guarantee their access to the outside world, and to guarantee the access of those deprived of liberty and their families to information on the measures taken to control the spread of Covid-19 in the respective institutions.

In **Brazil,** a collaboration between the Defensoria Publica and Ministerio Publico in Rio de Janeiro resulted in the filing of a collective civil action against the state of Rio de Janeiro.31 This legal action argued that while the first urgency remains to reduce the number of incarcerated persons to avoid overcrowding, under international human rights law, states are responsible for taking appropriate, immediate measures to protect the lives and health of those in prison.

Using law and public health policy, this legal action aims to mitigate the effects of the pandemic on the prison system in Brazil, which has the third-largest prison population in the world. It also emphasises the critical role the judiciary can play in protecting those under its jurisdiction from imminent and irreparable harm that can arise from contracting Covid-19. The filing included a statement by eminent medical and scientific experts affiliated with Physicians for Human Rights, Yale and Stanford Universities and the Oswaldo Cruz Foundation (FIOCRUZ). While the precautionary measures were denied in this case, a decision on the merits is still pending.

Also, in **Brazil**, in August 2020, IDDD filed a Public Civil Action to prompt the state of São Paulo to adopt measures to protect the fundamental rights of the prison population, given non-compliance with basic protocols to contain the spread of Covid-19 in the prison system. The requests were: a) screening criteria, exclusively by health professionals, for all people who enter prisons and socio-educational units to identify possible suspected cases of respiratory diseases and immediate care of any identified cases; b) carrying out information campaigns on Covid-19, with information on prevention and treatment; c) Uninterrupted supply of water to ensure the maintenance of proper hygiene habits; guaranteed daylight for at least six hours a day; d) supply of medicines and adequate food; e) supply of essential hygiene items, such as soap, hand sanitiser (preferably in dispensers installed in circulation areas) and masks; f) supply of cleaning materials to allow for an increase in the frequency of cleaning of cells and spaces for circulation; g) adoption of measures to avoid delays in receiving the parcels delivered by families ("jumbo"); h) upgrade of medical teams to guarantee access to health for persons deprived of liberty, adults, and children. After a favourable decision, the Court of Justice of São Paulo partially ruled on some requests but dismissed several others. The decision determined that the state guaranteed uninterrupted access to water in the penitentiaries and that health standards must be observed in the preparation and storage of food supplied to detainees. The state and IDDD appealed the decision.

In **Pakistan,** at least 500 persons deprived of liberty were released in the province of Sindh by the Sindh High Courts, and the Islamabad High Court issued similar directives. According to the report published by Amnesty International and Justice Project Pakistan, "a Supreme Court decision put a halt to this countrywide momentum that could have seen a significant reduction of the inmate population. Leveraging a technicality regarding the authority of the lower courts, the Supreme Court's strong rebuke to the lower courts had a chilling effect on efforts to decongest prisons and even led to the re-arrest of prisoners who had been released in compliance with the directives of the Islamabad and Sindh High Courts."32 In its decision, though, the Supreme Court asked prison authorities to prepare lists of at-risk detainees who could be considered for release. These included women and older detainees above the age of 60, juveniles in pre-trial detention, those who had served 75% of their sentence and those suffering from pre-existing conditions. In fact, five months later, in September 2020, Prime Minister Imran Khan ordered officials to implement a Supreme Court decision to release all women deprived of liberty which was under trial, convicted of minor offences, or who had served most of their sentences.33 As of June

30. Documenta AC, "Juez ordena a gobierno de AMLO a garantizar salud en psiquiátricos ante Covid-19", 8 May 2020.

31. Open Society Justice Initiative, Conectas and Elas Existem, Amici Curiae brief: "Defensoria Publica and Ministerio Publico in Rio de Janeiro vs. State of Rio de Janeiro", 20 June 2020.

32. Amnesty International & Justice Project Pakistan, "Prisoners of the Pandemic the Right to Health and COVID-19 in Pakistan's Detention Facilities", p. 5. For the Supreme Court decision see: https://www.supremecourt.gov.pk/downloads_judgements/crl.p._299_2020_07042020.pdf

33. DAWN, "PM Imran directs authorities to release women prisoners in line with SC order", 2 September 2020.

2021, however, no lists had been submitted to the Court, and no women detainees had been prepared for release."34

1.1.3. PROMOTING HEALTH AND SAFETY THROUGH REGIONAL AND UNHUMAN RIGHTS MECHANISMS

Submissions of complaints, often with requests for precautionary measures to regional and international human rights bodies, were used quite frequently during the first year of the pandemic to ensure the health, safety, and human dignity of those in detention. Some of the regional and international bodies that were engaged include the Inter-American Commission on Human Rights (IACHR), the African Court on Human and Peoples' Rights (ACtHPR), United Nations special procedures and the United Nations human rights treaty bodies.

Petitions and requests for precautionary measures before the IACHR alleging inhumane conditions of detention and overcrowding have contributed to the release of individuals in situations of vulnerability and the improvement of detention conditions in countries such as Brazil, Colombia, Guatemala, Mexico, and Venezuela. In Colombia, for example, a request filed to the IACHR for the adoption of precautionary measures35 prompted immediate results, including access to specialised health care or medicines following requests for information made by the IACHR to the State authorities.

In the **Maldives,** a civil society organisation has worked closely with UN special procedures and UN human rights treaty bodies in order to help migrant workers who were arbitrarily detained for protesting unpaid labour at the start of the pandemic in March 2020 and to address inadequate treatment and conditions within migration detention facilities where they were being held. Despite these efforts, migrant workers were deported by the Maldivian government without informing their lawyers.36

Another creative legal strategy was the submission of an amicus curiae to an existing pending case, with the aim of raising Covid-19-related arguments. Following the submission of a case by the Pan African Lawyers Union to the African Court of Human and Peoples' Rights (ACtHPR) seeking an Advisory Opinion regarding the need to decriminalise petty offenses in Africa, the Open Society Justice Initiative filed an amicus brief in the case citing the urgent need to decriminalize vagrancy laws since they over-incarcerate poor and marginalized groups, putting them at higher risk of contracting Covid-19.37 In December 2020, the court issued its opinion confirming the discriminatory nature of these laws.38

1.2. ADVOCACY AND COMMUNICATION STRATEGIES

Civil society organizations have strengthened and built new partnerships at the national, regional and international levels to exchange information and experiences and have also created networks to monitor human rights violations in custodial settings. In many instances, CSOs successfully worked with authorities in reviewing individual cases of persons deprived of liberty whose legal status or health conditions made them eligible for release. They also supported authorities in compiling and systematise data to map and identify detainees who are more vulnerable to Covid-19. Engagement and dialogue with State authorities and information and awareness campaigns have emphasised that Covid-19 transmission among prison populations is a public health issue that goes beyond the criminal justice system.

1.2.1. MEETING WITH STATE AUTHORITIES

Civil society organisations have engaged with relevant authorities to request information and propose and explore possible solutions, leading to some improvements in prison conditions and detainee releases.

In **Pakistan,** emphasizing how the spread of Covid-19 in prisons is a public health concern contributed to addressing overcrowding issues. Providing authorities with short, medium, and long-term recommendations based on guidelines by international bodies supported the effectiveness of some measures.39

In **Colombia,** several approaches contributed to the implementation of Covid-19 mitigation strategies in certain prisons, including holding a virtual public hearing in Parliament to expose and address the impacts of the

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34. Amnesty International & Justice Project Pakistan, "Prisoners of the Pandemic the Right to Health and COVID-19 in Pakistan's Detention Facilities", p. 5.

35. Fundación Comité de Solidaridad con Presos Políticos (FCSPP), "Solicitan medidas cautelares a la CIDH en favor de las personas privadas de libertad", 21 April 2020; see also, El Tiempo, "Piden a CIDH medidas cautelares para 25.000 presos en Colombia", 21 April 2020.

36. Human Rights Watch, "Maldives: Covid-19 Exposes Abuse of Migrants", 25 August 2020.

37. Open Society Justice Initiative, "Press release: Open Society welcomes African Court's Ruling against "Arbitrary" Vagrancy Laws", 4 December 2020.

38. See: Open Society Justice Initiative, "Justice Initiative Welcomes African Court's Ruling against "Arbitrary" Vagrancy Laws", 4 December 2020.

39. Justice Project Pakistan & Group Development Pakistan, "Policy Recommendations - Safeguards for Pakistani Prisoners during COVID-19".

pandemic on prisons40; and a webinar41 organised by the Inter-American Commission on Human Rights.

In March 2020, several civil society organisations in Tunisia, including OMCT, met with multiple State institutions, including the Instance national pour la prévention de la torture (a national preventive mechanism) and published a joint statement to request a decrease of the prison population.42 Within two months, 5.000 detainees were released, bringing the numbers in line with the available beds.

In **Togo,** meetings between the Collectif des Associations Contre l'Impunité au Togo (CACIT), State authorities, and prison administrators allowed the opening of quarantine cells in the prison of Lomé and the subsequent agreement to relocate affected detainees in a dedicated detention facility with adequate medical support. By providing essential health, sanitation, and relief materials to detainees, the organisation succeeded in maintaining a certain level of prison access and monitoring.

Furthermore, advocacy efforts led by CACIT in Togo and supported by OMCT43 prompted the release of 1.048 detainees from 13 prisons across the country, including the release of 17 children deprived of liberty in the Brigade pour Mineurs in Lomé.44

In **Congo-Brazzaville**, Action des chrétiens pour l'abolition de la torture (ACAT) in Congo publicly demanded from authorities "the overcrowding relief in prisons … and respect for the judicial pledges of prisoners to fight against the coronavirus."45 Meetings with authorities resulted in some concrete changes in prison conditions, including improvements in hygiene and sanitary measures, installation of quarantine cells, and compulsory Covid-19 testing. Supplying information on promising Covid-19 responses from other countries also helped convince authorities to implement prison decongestion practices in the country.

In **Pakistan,** Justice Project Pakistan developed a vulnerability grading index tool, which enabled prison authorities to identify and protect the most vulnerable prisoners from contracting Covid-19, and offered guidance about certain levels and standards of care. Recommended measures included early or temporary release, in particular of pre-trial detainees and individuals convicted for minor or non-violent offences.46

In **Afghanistan,** in 2020, the International Legal Foundation launched an urgent call to action resulting in a special amnesty decree in line with their recommendations.47 This advocacy strategy, conducted in conjunction with litigation efforts, resulted in the release of 1.880 prisoners, including 137 women and 302 juveniles.

In **Kyrgyzstan,** the Coalition against Torture successfully advocated for adopting an Amnesty Act to reduce overcrowding by focusing on the release of those detained for minor or non-violent offences.48 This act contributed to the release of over 1.000 detainees in the country.

1.2.2.1 INFORMATION CAMPAIGNS AND AWARENESS RAISING INITIATIVES

Civil society organisations have produced and published reports, guides, legal briefs, briefing papers, public statements, press releases, and other relevant materials to disseminate accurate information regarding the risks and implications of the Covid-19 pandemic in places of detention, in line with guidance and recommendations issued by international bodies, including the World Health Organisation (WHO). Public information campaigns, including through social media, have been launched to draw attention to prison conditions, as well as the special vulnerability of persons deprived of liberty to Covid-19. Awareness raising campaigns have been developed to address stigma-related issues that impact public perceptions towards detainees as well as their prospects of release.

For example, **in the African region**, a regional joint statement entitled *"The spread of Covid-19 requires*

40. Fundación Comité de Solidaridad con Presos Políticos, Audiencia Pública Virtual, "Crisis Carcelaria en el marco de la pandemia por COVID-19", 6 April 2020.

41. CIDH & OEA, "La situación de los derechos humanos de las personas privadas de libertad en el contexto de la pandemia del COVID-19", webinar, 4 June 2020.

42. " Communiqué: Appel à la réduction de la population carcérale face à la pandémie du COVID-19", 19 March 2020.

43. See the urgent action call launched by OMCT and members of the SOS-Torture network in Africa: "COVID-19 and prisons in Africa: the risks of contamination are enormous", 26 March 2020.

44. OMCT & CACIT, "La libération de mineurs détenus en relation avec le Covid-19 doit être suivie de nouvelles mesures urgentes", press release, 6 October 2020.

45. See: Prison Insider, Africa: coronavirus, prison fever, Congo – Brazzaville, https://www.prison-insider.com/en/articles/afriquecoronavirus-la-fievre-des-prisons. For the press release see: https://www.prison-insider.com/files/baefd129/communique_de_presse_acat_congo_n_i_001.jpg

46. Justice Project Pakistan, "Pakistani Prisoners' Vulnerability to COVID-19", 25 March 2020.

47. International Legal Foundation Afghanistan, "The International Legal Foundation Afghanistan's Urgent Call to Action to Relevant Afghan Authorities on COVID-19 Justice Sector Response".

48. Coalition Against Torture in Kyrgyzstan, "The Coalition Against Torture Urges the Legal Community to Take Immediate Actions on the Situation With COVID 19".

urgent and immediate measures to be taken to protect the rights of detainees in Africa" was published by nearly 30 national and international actors, including ACAT49 and CACIT, calling for the action of Member States of the African Union.50

In **Tunisia,** to address the severe psychological impact for detainees and prison agents from the Covid-19 crisis and ensuing restrictions, the OMCT, in cooperation with the prison administration and its partner organisation Psychologues du Monde Tunisie, produced a video (in Arabic)51 to raise awareness of both prisoners and prison staff to Covid-19. Some 17.000 prisoners, as well as staff in 28 prisons and five juvenile detention centres, saw the 10-minute film featuring a well-known Tunisian actor.

Along with the SOS-Torture Litigators' Group in Africa, the OMCT published a report on the prisons in Central and West Africa,52 calling for the adoption of urgent measures at the judicial and institutional levels to mitigate the risk of Covid-19 spreading in overcrowded prisons with inhumane detention conditions.

In a similar effort, the OMCT, together with the members of the SOS-Torture Latin America Litigators' Group, published the report "Covid-19 and detention",53 pointing out the need to undertake structural prison reforms to address deeply rooted human rights concerns that the pandemic has further exacerbated.

In the **Philippines,** the Medical Action Group54 used TeleMedicine to coordinate with the Bureau of Jail and Management Penology to provide e-consultations with doctors for persons deprived of liberty. The Medical Action Group also conducted online seminars for those held in Manila City Jail Male Dorm and its staff on topics such as the nature of Covid-19 and its transmission route, protective measures that should be taken, possible symptoms and related mental health issues. Balay Rehabilitation Center55 also provided medical kits, protective equipment, and psychosocial support to persons deprived of liberty.

The International Legal Foundation published a tool for legal aid providers, which includes various actions to mitigate the severity of the impact of the Covid-19 pandemic on people in detention.56

The OMCT also prepared a guidance brief that provides good practices57 for members of the SOS-Torture Network; other organisations also use that.

OSJI published a legal brief that details the international legal framework governing the duty of States to protect the health and life of incarcerated persons during the Covid-19 pandemic. The brief aims to support legal practitioners and advocates fighting for and litigating the human rights of those in prison.58

Another example comes from **Mexico**, where Documents A.C., concerned about the lack of official data, created a new section within their online platform Observatorio de Prisiones (Prison Observatory) to promote transparency and disseminate information on the situation of the prison system across the country.59 The Observatory includes information on the number of Covid-19 infections and related deaths and preventive measures adopted by prison authorities to mitigate the impact of the pandemic.

1.3. MONITORING AND GATHERING DATA ABOUT PLACES OF DETENTION

In addition to litigation and advocacy efforts, the inspection and monitoring of detention facilities can serve as another important safeguarding tool against breaches of human rights. Conducting monitoring during the Covid-19 pandemic has been a major challenge. While regular monitoring visits of juvenile detention facilities and mental health institutions remain crucial, many civil society organisations have revisited their strategy by including virtual monitoring visits and communication via phone calls, e-mails, and videoconferences. In addition, some organisations have interviewed recently released individuals to collect information about detention conditions and measures related to Covid-19.

In **Colombia,** the civil society organisation Comité de Solidaridad con Presos Políticos (CSPP) established a practice of conducting online interviews with persons deprived of liberty via phone calls and video

49. ACAT / Benin, ACAT / Congo Brazzaville, ACAT / Chad, ACAT / Ivory Coast.

50. See: "The spread of COVID-19 requires urgent and immediate measures to be taken to protect the rights of detainees in Africa", Joint statement, 24 March 2020.

51. OMCT Tunisie, "Vidéo de sensibilisation COVID 19", 4 May 2020.

52. OMCT & CACIT, "Afrique et Covid-19 : Urgence sanitaire et urgence carcérale", December 2020.

53. SOS-Torture Latin America Litigators' Group, "Covid-19 y detención en América Latina", May 2020.

54. The Medical Action Group (MAG) is a non-profit organisation of physicians, nurses, dentists, psychologists, health students, and health workers established in 1982, see: https://magph.org/about

55. Balay Rehabilitation Center is a Philippine human rights NGO providing psychosocial services and rehabilitation to internally displaced persons and survivors of torture and organised violence, see: https://balayph.net

56. International Legal Foundation, "Coronavirus Pandemic: Guidance for Legal Aid Providers to Protect Health and Human Rights of Detainees".

57. OMCT, "Building our Response on COVID-19 and Detention - OMCT Guidance brief", April 2020.

58. Open Society Justice Initiative, "The Right to Health Care in Prison during the COVID-19 Pandemic", July 2020.

59. See: Documenta, "Observatorio de Prisiones".

conference tools to collect information on detention conditions. Since the outbreak of Covid-19, at least 36 of the 121 existing prisons in the country have been monitored remotely. CSPP and other civil society organisations composing the Comisión de Seguimiento (monitoring committee) of the Constitutional Court's T-388 ruling of 2013 also submitted petitions to the Constitutional Court that resulted in orders to grant access and monitoring of independent bodies in detention facilities.

In **Nepal,** human rights lawyers and civil society organisations have jointly monitored the country's eight juvenile detention facilities through telephone inquiries and field visits. The NGO Advocacy Forum published a briefing paper on the human rights situation of those institutions during the pandemic.60

In **Armenia,** a monitoring group composed of ten civil society organisations conducted visits to three psychiatric institutions to identify urgent health needs, promote access to alternative means of communication, and call on authorities to release some individuals.

In **Pakistan,** *Justice Project Pakistan* created a live global map tracking all reported cases of prisoners testing positive across the world.61 To collect information, Amnesty International, in collaboration with Justice Project Pakistan, conducted interviews with recently released prisoners detained during the pandemic. They deliberately sought interviews with former prisoners who were able to speak more freely about their experiences. In the analysis of the testimonies and for the presentation of the findings, statements of people currently in prison and released were systematically compared and, whenever possible, corroborated with other data available to present as accurate a picture as possible.62 Subsequently, they published a report titled "Prisoners of the Pandemic", which identified prisons as places where outbreaks were more likely and would require urgent government intervention.63

In some countries, civil society organisations and lawyers have also mobilised National Preventive Mechanisms (NPMs) and National Human Rights Institutions (NHRIs) to collect data on the treatment of prisoners to protect their fundamental rights. For example, in **Mexico,** *Documenta A.C.* called on the intervention of the National Human Rights Commission (CNDH) hosts the NPM to monitor the practice of transferring detainees without due process following the sudden closure of prisons (e.g., Puente Grande Prison), which enabled the documentation of ill-treatment during the mentioned transfers.64 In some countries, family members of persons deprived of liberty have also played a key role in gathering information on the conditions and challenges in places of detention. Civil society organisations have provided support and orientation to families in several countries to be able to effectively check on the well-being of detained relatives and collect information on human rights violations committed in detention settings. Also in **Mexico,** *Documenta A.C.* published the report "Covid out of the prisons"65, in May 2020, based on data collected via family members of persons deprived of liberty through a questionnaire.

Courtesy: OMCT

Full report available at: Report_Torture-and-Covid19_EN_240222.pdf (omct.org)

60. Advocacy Forum-Nepal, "Factsheet on COVID-19 and its effect on Juvenile Justice System in Nepal", June 2020.

61. See Justice Project Pakistan, Interactive map with the number of prisoners infected by and dead from COVID-19 worldwide: https://www.jpp.org.pk/covid19-prisoners/

62. Amnesty International & Justice Project Pakistan, "Prisoners of the Pandemic the Right to Health and COVID-19 in Pakistan's Detention Facilities", p. 7.

63. Ibid. Hasnaat Malik, "Prisoners and the pandemic", The Expressed Tribune, 14 February 2021.

64. Proceso, "ONG pide intervención de la CNDH en el traslado de internos de Puente Grande", 28 September 2020.

65. Documenta A.C., "Covid fuera de la cárcel", May 2020.

RESEARCH

Phenomenology of Metathesiophobia Experiences in Adults during COVID-19

Kinza Javed and Saadia Dildar

The COVID-19 pandemic has been global adversity for the past few years, affecting the world with its noxious symptoms, drastic changes, and extensive psychological impacts. The current study aimed to explore the lived experiences of Metathesiophobia or fear of change in the adult population of Pakistan during the COVID-19 pandemic. Participants were recruited within three categories, namely: i) participants who were themselves infected with COVID-19 (participants diagnosed; PD), ii) participants who were not infected themselves but their family members were infected with COVID-19 (participants with diagnosed family members; PDFM), and iii) participants who were neither themselves infected with COVID-19 nor their family members (participants not infected; PND); total six participants (two participants for each category) through purposive sampling technique were interviewed. Semi-structured interview approach was employed for data collection. Interpretative Phenomenological Analysis was undertaken to analyze the interviews. The super-ordinate themes that emerged from the analysis included: Challenges during COVID-19, fears during COVID-19 diagnosis, fears after recovery from COVID-19, and prospective concerns of trauma. The findings also revealed that lived experiences of people in the three categories of participants are almost the same. The implications of the study have been discussed.

Keywords: Fear of change, metathesis phobia, COVID-19 impacts, concerns after trauma, phenomenology

COVID-19 is a new, highly infectious coronavirus that has never been seen in humans before and causes potentially fatal respiratory problems (Rothan & Byrareddy, 2020). People's everyday lives have significantly and unexpectedly changed in a relatively brief time span during the COVID-19 pandemic. This has an impact on people's emotional and physical health (Schippers, 2020).

Like COVID-19, the pandemics of the past [Influenza A (H1N1; 2009), Avian Influenza A (H5N1; 2005-2006), and severe acute respiratory syndrome (SARS; 2003)] have triggered fears in people (Kelloway et al., 2012). Fear stems from a feeling of potential damage from an object, creature, or scenario (Oatley & Jenkins, 1996). According to Wenar and Kerig (2000), fear can be defined as "a normal reaction to an environmental threat. It is adaptive and even essential to survival because it warns the individual that a situation may be physically or psychologically harmful" (p.171). Metathesiophobia is the long-lasting, unusual, and unwarranted fear of change (Wordsense, 2020). Individuals naturally fear change, and when change is required, they sense a lack of control (Evans 2001). Eagle (1999) noticed that dread of the unknown significantly explains that people don't change at all, or else don't change rapidly. They are fearful about certain consequences of change, including threat, anxiety, and suffering. Senge and Kaeufer (2000) note that change initiatives can generate fear. Specifically, change processes that raise doubt about deep-rooted convictions, perspectives, and constant methods of conduct can be frightening. Uncertainty related to change can lead individuals to cling to old patterns of doing things (Kets de Vries & Balazs 1999).

People experienced changes regarding mental health (Brooks et al., 2020; Hawryluck et al., 2004; Mukhtar, 2020; Reynolds et al., 2008), physical health (Mao et al., 2020; Ren et al., 2020; Yang et al., 2020), daily lifestyle (Park et al., 2021), social life (Venuleo et al., 2020), personality traits (Brooks et al., 2020), financial status (Khan et al., 2021), occupation (Bai et al., 2004), and education (Okoloba et al., 2020), etc. during past pandemics and also during COVID-19 pandemic. Moreover, this research has highlighted that change initiatives can prompt fear. Specifically, change processes that raise doubt about deep-rooted convictions, perspectives, and constant methods of conduct can be frightening (Senge & Kaeufer, 2000). However, there is a lack of research on the fear of change that developed during or after the past pandemics or the COVID-19 pandemic as people experienced changes at different levels in different domains. Therefore, the current study aimed to explore the fear of change experiences of the people of Pakistan due to enormous changes during the COVID-19 pandemic.

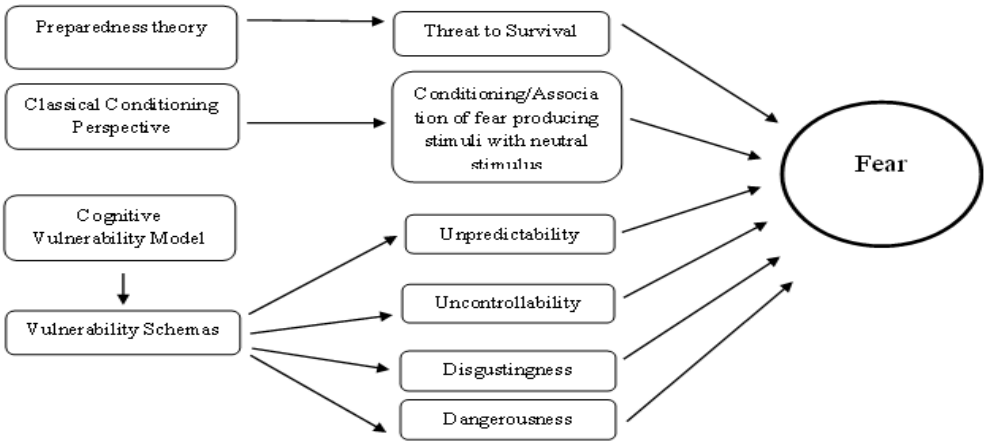
The development of fear in relation to changes brought about by COVID-19 can be explained by the collaboration of certain theories (see Figure1). The Preparedness Theory (Seligman, 1971) postulates that fear develops when specifically only source/traumatic incident of fear is a threat to the survival of the human species throughout evolutionary history. In the current study, the aim is to explore the fear of change experiences

during the COVID-19 pandemic, and it was evident in the literature that this big change of COVID-19 impacted the survival value of humans.

The classical conditioning perspective of behaviorism also guides through its assumptions that learning can occur by associating a neutral stimulus with a natural stimulus (Pavlov, 1927). In the case of the current study, the natural stimulus which provokes fear is the virus of COVID-19, and hence the change that was brought about by the situation of COVID-19 also became fearful for the individuals, which was otherwise a neutral stimulus. The Figure 1

cognitive Vulnerability Model (Armfield, 2006) also stated that fear could be linked to the vulnerability schemas, i.e., perception of unpredictability and uncontrollability of the event, which can result in an undesirable outcome, which can then lead to disgust and danger. In the current study context, fear can be understood by the unpredictability and uncontrollability of the changes brought about by the COVID-19 pandemic and the feeling of disgust due to not being able to control the changes and uncertainty about the recovery from the situation.

Schematic Presentation of Theoretical Framework



Method

The current study is qualitative research, and phenomenological research design was employed in the current study to explore the experiences of people regarding Metathesiophobia (fear of change) during COVID-19. Phenomenology is concerned with individuals' subjective interpretation and perception (Stan, 1999). The qualitative research method was chosen for this study because it is particularly significant in exploring the meanings people give to the events they experience (Merriam, 1998). The qualitative researcher's concern is discovering clarification, understanding and exploring experiences in similar situations rather than looking for cause-and-effect relationships, prediction and findings' generalization (Hoepfl, 1997). Particularly, the study aims:

1. Exploring the experiences regarding Metathesiophobia or fear of change during the COVID-19 pandemic.
2. Determining the differences in the Metathesiophobia (fear of change) experiences of people who directly and indirectly experienced COVID-19 virus

Participants

Six Participants with age ranged 20 to 39 years were recruited within three categories i) participants who were themselves infected with COVID-19 (participants diagnosed; PD), ii) participants who have not infected themselves but their family members were infected with COVID-19 (participants with diagnosed family members; PDFM), and iii) participants who were neither themselves infected with COVID-19 nor their family members (participants not infected; PND); the total number of six participants (two participants for each category) through purposive sampling technique. Literature provided evidence that this number of participants in studying the lived experiences in an emergent situation is appropriate (Pietkiewicz& Smith, 2014). In qualitative research, the sample size is usually small because the qualitative methods are mostly concerned with an in-depth exploration of the phenomenon or its meaning. Hence, an in-depth

interview aims not to generalize the population but to make categories from the data and explore their relationship to understand the participants' lived experiences (Charmaz, 1990, p. 1162). The inclusion criterion was set only as those individuals who fell within the three categories mentioned above and were adults.

Semi-Structured Interview Guideline

An interview guide was established for the purpose of data collection because interviews are significantly used for "studying people's understanding of the meaning in their lived world" (Kvale, 1996, p. 105). The interview guide consisted of 13 open-ended questions, which were formed based on the past literature and theoretical models and validated by Ph.D. experts in the relevant field. Probe questions were also included along with the main questions, as they seemed essential during the pilot study. A consent form and demographic sheet were attached with the interview guide to take consent from the participants and collect information about the participants, respectively.

The semi-structured interview approach was used to interact with the participant during interviews. The semi-structured interview consists of open-ended questions, giving participants more room to describe what they consider important (Strauss & Corbin, 1998) and partial control over the direction of the interview (Mishler, 1986). The interview started with more general questions and then moved toward specific questions related to the situation. The interview was opened with the question, "How do you generally view changes in your life?" Then the questions were included about the type of changes that the participants had experienced during the COVID-19 pandemic, such as "Have you noticed any changes in your daily life due to COVID-19?", "Have you noticed any changes in yourself during COVID-19?" as well as similar questions were added regarding occupation, education, social relations etc. Then questions were added inquiring about the feelings of transferring the virus, such as "If you yourself were infected with COVID-19, what were your feelings about the virus being passed on to someone else?" In the end, a future-oriented question was added, i.e. "When the COVID-19 situation gets better, would you like to live your life like it was before COVID-19, or do you want to continue the same life you are living right now?"

Procedure

At first, the interview guide was developed based on past literature and theories. After formulating the questions, their relevance was reviewed by two Ph.D. experts in the field of Psychology. Then a pilot study was conducted to assess the validity of the research instrument. Three participants, one for each of the three categories, were approached in the surroundings for the purpose of a pilot study. Based on the pilot study, some of the questions were removed, which seemed repetitive or irrelevant; also, some new questions were added, which seemed necessary while taking the interviews. After making these changes, again, the feedback was taken from the same Ph.D. experts in the field. Then the interview protocol was finalized in consultation with the supervisor; after that, permission was allotted to conduct interviews.

Interviews were taken face to face as well as on the phone, as some of the participants requested because they were uncomfortable in face-to-face interaction due to the COVID-19 pandemic. Initially, the participants were informed about the purpose and nature of the study as well as other ethical standards such as confidentiality, the right to withdraw, and permission for audio recording and then consent was taken from them. Additionally, their demographic information was collected. After that, the interview questions were asked of the participants. The interviews were almost 25-30 minutes long. At the end of the interview, the participant was appreciated for his/her participation in the current study. All the interviews were audio recorded with the permission of the participants.

Results

For the analysis of the results, the phenomenological method was used. This approach is useful in studying a small number of subjects, as in the current study, it is 6 participants to determine the core of their experiences regarding the phenomenon under study (Creswell, 2003; Pietkiewicz & Smith, 2014). The aim of interpretative phenomenological analysis (IPA) is to explore in detail how participants make sense of their personal and social world. The main currency for an IPA study is the meanings particular experiences, events, and states hold for participants. By following the Interpretative Phenomenological Analysis (IPA) method, the interviews were first transcribed, read again and again to gain an understanding of the verbatim, and then the participants' verbatim were given initial meanings by the researcher. In the next step, the initial meanings which appeared to give the same meanings were merged to form combined meanings. The combined meanings were then arranged based on their similarities to form subordinate themes from the data. Finally, the subordinate themes which appeared to fall under one perspective were joined to develop superordinate themes of the data. For establishing the validation of the themes, the study's participants were again contacted for their feedback regarding the interpretation done and themes developed by the researcher to match their relevancy with the participants' verbatim. This process is called respondent validation. The articles were then reviewed by the same Ph.D. experts who validated the interview guide (peer

review). The themes were then finalized in consultation with the supervisor.

Role of the Researcher

The researcher is the primary research instrument in qualitative research. As qualitative research requires the interpretation of data as part of the analysis, the researcher's biases, assumptions, and beliefs can interfere with the analysis of results (Strauss & Corbin, 1998). Hence, social researchers should take responsibility for disclosing their biasedness in the study to neutralize and distinguish its effects (Altheide & Johnson, 1994). The researcher of the present study acknowledged that her personal and work background could influence her interpretation of data. The researcher's experience of having family members infected with COVID-19, going through the situation of complete lockdown, and experiencing changes in life herself could bias her interpretation of the study results.

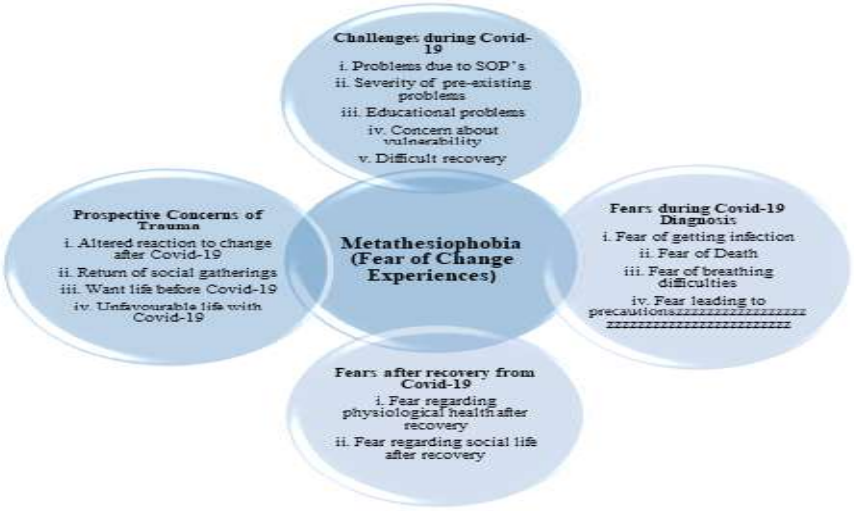
To minimize the researchers' bias regarding the results of the current study, the researcher constantly paraphrased and summarized the information to ensure accuracy. Then, the transcription and initial meanings of the interviews were rechecked by other fellow students. In addition, throughout the study, the researcher takes consultation from a supervisor, faculty advisors and other resources. The researcher developed the themes from the data with the help of the supervisor, who guided the researcher to focus on relevant details of the interviews and participants for this purpose.

Findings and Discussion

The analysis of adults' experiences regarding Metathesiophobia during COVID-19 yields various themes. Major or super-ordinate themes emerged from the analysis of experiences, including challenges during COVID-19, fears during cOVID-19 diagnosis, fears after recovery from COVID-19, and prospective concerns of trauma. These major themes further consist of various sub-themes which are clustered together based on similarity in domains (see Figure 2).

Figure 2

Figure Showing Major Themes Emerged from the Study



Challenges during COVID-19

The participants of the study reported that they experienced several challenges during the COVID-19 pandemic. Some of the significant challenges for people during COVID-19 were related to ***problems faced by people due to following SOPs*** as they have to be away from their friends, annoyed by wearing masks and sanitization, and concerned about ways of greeting others and maintaining a social distance. As one of the infected participants (PD1) stated:

"It was problematic that you can't go out with friends because of corona."

Also, one of the participants with a diagnosed family member (PDFM1) explained:

"It was always difficult to sanitize all the time. On top of it; its smell was so bad".

Another participant who was not infected (PND1) stated:

"When the situation got a little better, I started going out and was very concerned about

how to meet everyone, whether to shake hands or not."

"Despite that, I had a realization, but I still couldn't control myself because we weren't used to social distancing. It just happens unintentionally that we can't keep up."

These findings align with a previous study reported in Italy, which indicated that people experienced anxiety following the execution of lockdown measures (Rossi et al., 2020). A study also supported these findings of the study during COVID-19 by Fura and Negash (2020), which determined that people experienced detachment from social gatherings. A previous study concluded that the health care workers during the pandemic of Influenza were always affected by wearing protective kits (Corley et al., 2010). Social distancing, self-isolation, quarantine, and many other factors affect the psychological and mental health of the population (Banerjee & Rai, 2020; Mukhtar, 2020).

Another challenge for some people was the ***worsening of their pre-existing problems***. Such as a diagnosed participant (PD1) narrated:

"I had insomnia before COVID-19, but what is happening now is severe. Things are getting severe day by day".

Similar findings were reported by previous studies indicating that patients with a previous disorder, for example, anxiety, may worsen their symptoms during the pandemic (Bystritsky et al., 2020). Similarly, Varshney et al. (2020) concluded that individuals with previous physical illnesses were much affected by the COVID-19 pandemic in India.

Similarly, some people face **problems related to their education**. As one of the non-diagnosed participants (PND1) said:

"I had a hard time dealing with studies. I could not concentrate at all".

This current study's finding is in accordance with a study by (Fura & Negash, 2020), indicating that anxiety enhances in students due to the altered academic methods and activities.

Another significant challenge for people was their **concern about their vulnerability** to COVID-19 infection. The participant who was not diagnosed (with PND1) reported:

"When my father or someone at home had to go to the hospital, I was very worried that my family or I would not be infected."

Previous research also indicated that people reacted to epidemics with avoidance and safety behaviours, including avoiding going to crowded places, hospitals etc. (Lau et al., 2010).

Moreover, **recovery from the COVID-19** situation was also a challenge for people in Pakistan. The participant with diagnosed family member (PDFM2) stated:

"Then suddenly, they changed shifts and opened universities and colleges. When we went to school after a time, it became very difficult to teach children face to face."

This finding can be explained by the fact that people had feelings of uncertainty about recovery from the COVID-19 pandemic (Gunnell et al., 2020; Rahman et al., 2020) and its revival in the form of some new variants, and they found it difficult to repeatedly change their habits, so people want to be on the save side and did not make much effort to return to normal ways.

Fears during COVID-19 Diagnosis

People experienced certain fears during the COVID-19 diagnosis. The fear was not only experienced by the people who were infected but also by the people whose family members were infected and also by those who did not directly experience the situation of infection. The people were ***fearful about getting infected by COVID-19***. People were afraid of touching anything due to the fear of contracting the virus. Due to the fear of infection, people feared taking their masks off even when they felt suffocated. Moreover, people feared going to the hospital because they feared contracting the virus, as the hospital was the most vulnerable place during the pandemic. As one of the participants with a diagnosed family member (PDFM1) said:

"It is frightening to touch somewhere due to fear of getting infected."

The participant who was not diagnosed (PND1) stated:

"It was scary to take off the mask, so even if I took it off in a situation like I had suffocation, then it felt like I would get COVID virus, so I was very scared to go out."

"In the days of COVID-19, whenever someone went to the doctor, when he came back, there was a panic in the house because the hospital was a very vulnerable place."

These results are in line with previous research indicating that fear of being infected with COVID-19 infection and passing it on to other family members was the reason for people's poor well-being during the COVID-19 pandemic (Khan et al., 2021). Moreover, this current study finding is supported by the preparedness theory of phobia, which postulates that individuals develop a fear of objects and situations that threaten human survival (Seligman, 1971).

Some people also developed a **fear of death** during COVID-19. Also, people were afraid of breathing difficulties which were the symptoms of COVID-19

infection. One of the participants who was infected with COVID-19 reported:

"I was scared for my life. Before going to bed; I was afraid of whether I would wake up or not".

Another participant with diagnosed family member (PDFM1) stated:

"The breathing problems made me very scared."

In accordance with this finding, Gardener and Moallef (2015) concluded in their study that after the pandemic of SARS, the fear of survival was present among people, along with many other symptoms. Similarly, Bortel et al. (2016) explored the impacts of the Ebola virus and concluded that death anxiety among people affected them psychologically.

Some people were ***following SOPs only because of the fear of COVID-19*** infection. People developed the habit of hand washing and sanitizing because of the fear of COVID-19. People avoided going out even when necessary and limited their work due to this fear. As the participant with diagnosed family member (PDFM1) stated:

"There was a little bit of fear in everything inside me; I was scared, so these two habits have developed a lot, washing hands and sanitizing."

Similarly, one of the non-diagnosed participants (PND2) reported:

"Going out creates a generalized fear in me. We have limited the work for the same reason".

These findings of the current study are supported by the previous research of Balkhi et al. (2020), which indicated that the Coronavirus had caused psychological problems such as increased anxiety, fear and behavioral changes in order to maintain their safety.

Fear after Recovery from COVID-19

The people were not only afraid during the COVID-19 diagnosis but also fearful after recovery from it. After recovery from COVID-19, people were ***afraid of their changed physical states,*** energy level and stamina. People were concerned about their persisting weakness after COVID-19, as many people suffered from trembling and sweating even after recovery from COVID-19. The non-infected people also got fearful by seeing the physical conditions of infected others. Another significant fear of people after recovering from COVID-19 is related to long-lasting breathing problems. As one of the diagnosed participants (PD1) reported:

"Three-and-a-half months after recovery from COVID-19, I travelled for the first time outside the city to meet a friend, and I had to climb the stairs to the third floor, so by reaching the third floor, the pain started in my chest, and my breath was heavy. I used to enjoy cycling and to hike a lot - so I was very worried about whether I would be able to do it again."

Another diagnosed participant (PD 2) said:

"*I was afraid of what would happen if I kept breathing with this difficulty."*

Similarly, one of the participants with a diagnosed family member (PDFM 1) reported:

"The weakness that remains after that, I have never seen such weakness in my life."

"I was not afraid about myself, but it was painful to see others suffering physically."

Another participant with a diagnosed family member (PDFM 2) stated:

"Our mindset has changed totally that now we don't want to meet anyone and shake hands. So the eating is affected because of the fear of contracting COVID-19 as someone would have already touched our food and we would be infected if we eat that".

Previous studies also indicated that the people infected with COVID-19 experienced fatigue even after recovering from the infection (Carfì et al., 2020; Menges et al., 2021). Another research indicated that people experienced post-COVID-19 syndrome with symptoms including fatigue, chest pain, sleep, and memory problems and disturbed concentration (Mahmoud et al., 2021). Rachman's (1998) perspective of vicarious acquisition of fear states that fear of an object or situation can develop by only looking at other people's emotional reactions to the stimuli without having direct experience with it. This perspective is in accordance with the current study's finding that people were afraid of seeing the physical conditions of those affected with COVID-19 infection.

Moreover, people were also fearful about their changed social life and relationship patterns after recovery. People were fearful of the thought that they would never meet the people who were far away. People feared that social life would not be every day again and that they would all die like this without meeting others. Moreover, people now remain fearful of COVID-19 during travelling also. Such as a participant with a diagnosed family member (PDFM 1) narrated:

"It seemed to me that we can never meet those who are far away from us. It was as if those who were far away would always remain distant, and we had to die like this".

The participant who was not diagnosed with COVID-19 (PND 1) stated:

"Now we remain afraid of corona even during travelling."

A previous study by Alzueta et al. (2021) supported this finding by suggesting that separation from close friends and family members was anxiety provoking for individuals. Another research has revealed that the actions by the government concerning spatial distancing could cause psychological distress and fear (Ahorsu, 2020).

Prospective Concerns of Trauma

As COVID-19 was a traumatic situation for those who were infected as well as those who were not infected with it, so all people had various concerns about their way of living after the end of the COVID-19 traumatic situation. Different people have different concerns, but there were some issues which all the participants faced, such as after passing through the traumatic situation of COVID-19, the ***reaction or feelings of people regarding change got altered***. People become fearful of any negative change in future. People would not be able to survive any negative change in the future, and it would affect their mental health. According to participants, future positive changes would not be long-lasting due to experiencing negative changes during COVID-19.

Moreover, changes after COVID-19 would be depressing and anxiety provoking for some people. Any change after being infected with COVID-19 affects mood and temperament. As one of the diagnosed participants **(**PD 1) stated:

"If there is a big change and I can't contribute to it, or it's not in my control, then I try to ignore it. I used to do it before, but now the intensity is more".

Also, another diagnosed participant (PD2) mentioned:

"I have to be very defensive for any negative change that comes now. It gives depression and stress."

Similarly, a participant with a diagnosed family member (PDFM 1) also reported:

"To be very honest, we are so fed up with Covid that we do not have the courage to imagine another worst change. If something like this happens, then I don't think I will be able to survive."

The work on the alterations in reaction to change after trauma is scarce, but still, there are studies that can be supportive. Center for Substance Abuse Treatment (US; 2014) suggested that people's beliefs about their future get affected by trauma, such as losing hope, fear that life will end shortly, their expectations from life get limited, and expect that the normal way of life will not return etc.

Another perspective concern of people after COVID-19 trauma was about the ***return of social gatherings*.** The people want social gatherings to be part of their life again. They want to meet others without being afraid of getting infected with the COVID-19 virus. As the infected participant (PD 1) reported:

"Social gatherings are a very important part of life, and I think they should come back."

Also, one of the participants with a diagnosed family member (PDFM 1) stated:

"We want to meet others without fear."

This finding of the current study can possibly be explained by the fact that people could no longer follow the measures of restricting social gatherings, as it was indicated in the previous research that social alienation had impacted the psychological and mental health of the population (Mukhtar, 2020), so the people want to freely meet their loved ones to make their mental health better.

Another main concern of people had **their previous lives back**. People want to spend their lives as they used to before COVID-19. People wanted to have a life without fear of corona, in which they were energetic and social. As a diagnosed participant (PD 1) mentioned:

"I would like to return to my previous state."

Similarly, a participant with a diagnosed family member (PDFM 2) stated:

"I want the previous life to be returned. The self of mine, which was energetic, happy, and social, should come back."

Life with COVID-19 was not preferred by people. They consider ***life with COVID-19 as unfavorable***. People consider life with COVID-19 very different from the previous one. Life with COVID-19 had restrictions like jail. People wanted to eradicate COVID-19 time period from their lives. People want to live fear-free life again, which was not possible during the COVID-19 pandemic. As one of the participants with a diagnosed family member (PDFM 1) stated:

"*This life is like jail. It's very difficult to spend life like this".*

Another participant with a diagnosed family member (PDFM 2) narrated:

"I want to eradicate these two years of COVID-19 from my life".

These findings of the current study are in accordance with past research, which indicated that people are most likely to persevere in old patterns of thinking and behaviour because of the insecurity due to change (Kets de Vries & Balazs, 1999).

Comparison

The result of the current study shows that the three categories of participants, i.e., the diagnosed participants (PD), the participants with diagnosed family members (PDFM) and non-diagnosed participants (PND), reported different experiences in relation to the themes of the study.

The significant findings of the current study indicate that the challenges during COVID-19 were reported more by the participants whose family members were infected and those who were non-infected as compared to infected participants. Such as the educational problems faced by non-diagnosed participants and those with family members infected. Another significant finding of the current study indicates that only the non-diagnosed participants were concerned about their vulnerability to infection. Moreover, the difficulty in recovery was only reported by participants with diagnosed family members. A survey posted in South China Morning Post (Jen-siu Michael, 2003) indicated that people who have seen their friends or family members being infected with SARS infection and those who live in high-vulnerability areas were reported to have developed more problems. However, in the current study, the diagnosed participants only experienced the severity of previous illnesses.

Another significant difference between sample categories is that the fears during COVID-19 were reported most by the participants whose family members were infected and those who were non-infected as compared to infected participants. The fear of getting an infection was most prevalent in participants with diagnosed family members, followed by non-diagnosed and, as a result, followed precautions. Previous studies indicated that people who have acquaintances affected with COVID-19 reported more depression and anxiety (Mazza et al., 2020; Majeed et al., 2021; Passavant et al., 2021). However, the fear of death was only prevalent in participants who were infected with COVID-19 themselves. Previous research indicated that the people who were quarantined in the past pandemics and outbreaks reported to have experienced more depression, anxiety and other psychological problems as compared to non-quarantined people (Brooks et al., 2020, Hawryluck et al., 2004; Holmes et al., 2020; Jeong et al., 2016). Moreover, the breathing difficulties were fearful for the infected individuals as well as people with infected family members. Also, both the infected and non-infected participants were concerned for vulnerable populations in society.

Another significant finding of the current study indicated that infected people reported fear about changes in physiological state after COVID-19 but not about social life; however, the non-infected people were fearful about changed social life after COVID-19 and not the physiological conditions. This finding of the current study is supported by the fact that the infected people have gone through the physiological symptoms of COVID-19, which are persistent even after recovery. The non-infected people were concerned about the environmental and social conditions that were the consequences of the worldwide COVID-19 pandemic.

The participants of all categories reported altered or negative reactions toward future changes after passing through COVID-19 trauma. Participants of all the categories reported that life with COVID-19 was unfavorable, and they wanted their previous life back. However, unlike non-infected people, the people who have infected themselves and those with infected family members reported that they want the return of social gatherings in their lives.

Limitations and Suggestions

There are certain limitations of this study. The mode of the interview taking was not the same for all the participants. Interview with three of the participants was done face to face, but the other three participants did not allow to meet in person due to the prevailing situation of the COVID-19 virus. Additionally, the sample of the study consisted of participants living in the urban area of Pakistan and not from rural areas, as it was feasible for the researcher. So, future researchers should consider people from different areas of living in terms of Metathesiophobia experiences during COVID-19. Moreover, comparisons based on other demographics and cultural contexts can be carried out.

Furthermore, the research should also focus on the post-traumatic growth of people in reference to COVID-19, as it is evident through literature that people become more spiritual after surviving traumas. Also, COVID-19 is itself a traumatic experience, and people's attitudes and habits have changed a lot during this period.

Implications

The study yields very informative findings, which can be a basis for future research. This study will enhance the present body of literature on fear of change experiences during pandemics and compare the different categories of people. The study was required to better understand the psychological mechanism operating during COVID-19 i.e., how people were affected by this phenomenon and how they were dealing with it. This exploration will provide a proper direction to mental health professionals in developing the intervention plans that are required to deal with the issues faced by people during this pandemic and similar situation in future. It can help counsellors develop prevention strategies to psychologically protect people in case of future encounters with pandemics, outbreaks, and similar situations. The other unique aspect of this study is that it also provided information about the participants' concerns after the pandemic ended, which

can help the government policy-making process to ensure the type of living conditions that the members of society expected after the end of the COVID-19 pandemic.

Conclusion

People experienced several challenges and fears during and after the trauma of the COVID-19 pandemic. In the current study, people reported developing certain fears while passing through the period of COVID-19 as well as after this period ended. Moreover, people have also developed fear in relation to future negative changes after passing through the traumatic situation of the COVID-19 pandemic. People want to have their previous lives back without the changes brought about by the pandemic of COVID-19. Furthermore, there was little difference in the types of experiences of people who were directly infected with COVID-19 and of those who were indirectly affected by COVID-19 virus as having family members infected and those who have neither infected themselves nor their family members.

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Human Rights Cognizance Amongst Pakistani Youth: Historical Overview & an Evidence-Based Research

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Abstract

Human rights are the rights inherent to all human beings, irrespective of their place of residence, sex, nationality, ethnic origin, religion or language. All human beings are entitled to these rights without any discrimination. Post Universal Declaration of Human Rights and the evolution of institutional mechanisms at the United Nations, Regional and National levels and due to advocacy campaigns by INGOs, NGOs and media, Human Rights violations are being persuaded in a proactive way. Global politics and bilateral, regional and international trade and economy have also evolved direct linkages with human rights issues. Consequently, State parties, including Pakistan, have been receiving a higher number of queries about Human Rights violations from UN special procedures, rapporteurs, treaty implementation committees and other diplomatic channels through the Ministry of Foreign Affairs. It had been observed that the Human Rights Framework of Pakistan was not effective, as evident from concluding observations of the previous Universal Periodic Review (Donnelly, 1989). Pakistan is ranked 150 out of the 189 countries surveyed for human development, bracketing it alongside South Asian neighbors, including India, Bangladesh, Bhutan and Nepal. Although Pakistan's HDI stood at 0.562 in 2018 as against 0.525 in 2010 (UNDP, 2018), even with this progress, the rank is very low, which is a clear indicator of the meagre level of effectiveness of the human rights framework. Moreover, the Reports of Amnesty International (Amnesty International, 2017) and Human Rights Watch (2018) labelled Pakistan as a very volatile country for women, children and minorities.

Other than traditional development indicators, some other important aspects of Human Rights like the Gender Inequality Index (Human Rights Watch, 2017), Child Protection and Minorities Protection; in Pakistan is at the bottom line and facing severe criticism from United Nations Committees and International Institutions. The UN-based human rights paradigm is continuously evolving, and disciplinary boundaries are expanding and inculcating the elements of democracy, gender orientation and other third and fourth-generation rights over the last few years. Traditional standards and viewpoints about human rights continuously failed to answer the queries about modern human rights concerns. So it is required to investigate the issue in depth to understand the dynamics and complexities of the modern human rights paradigm through its historical evolution and its relationship with Pakistan, keeping in view the demand and expectation of the international community from Pakistan about the effectiveness of the human rights framework in its territorial boundaries. This article is an attempt to define the global development of the human rights framework and its implementation in Pakistan, especially with reference to constitutional guarantees and its effectiveness through a survey-based-knowledge amongst the youth of Islamabad Capital Territory (ICT).

Keywords: UN Human Rights Conventions, Human Rights, and Pakistani Youth.

Study Thesis/Question

Study Objective

Briefly describing the origin of the concept of human rights, which is embedded in theology, philosophy and law, the movement of human Rights played a significant role in history, politics and international relations (Leah, 2009). The history of Rights starts from the known origin of human civilizations in 539 B.C. The actions of Cyrus, the first king of Persia, made important advances for Man. He worked for non-discrimination and equality for all people, giving them the right to decide their religious matters. Thus, the inscription of Cyrus Cylinder is considered the world's first written document of human rights. Starting its journey from Persia, the concept of human rights spread out quickly to Italy, India and Greece (Ishay, 2009). This has been the beginning process of the evolution of the modern human rights paradigm. The idea of "natural law" arose, describing that people like to follow unwritten natural laws (Surinder Kaur, 2014).

Abrahamic religions, Judaism, Christianity, and Islam have been catalysts for ensuring human rights for common people. The ten commandments of the Old Testament, "Sermon on the Mount" (of Beatitudes) in the New Testament, and The Last Sermon of Prophet Muhammad (P.B.U.H) known as *Khutba, hajjatul-wida*and Madina pact are the key religious texts which emphasized the importance of human rights and equality of human beings before law.

Prophet Mohammad, in his Last Sermon, underlined the human rights framework, maintaining, "All mankind is from Adam and Eve, an Arab has no superiority over a non-Arab nor a non-Arab has any superiority over an Arab; also, a White has no superiority over a Black nor a Black has any superiority over a White except by piety and good action. Learn that every Muslim is a brother to every Muslim and that the Muslims constitute one brotherhood. Nothing should be legitimate to a Muslim who belongs to a fellow Muslim unless given freely and willingly."

"Do not do injustice to yourselves. Remember one day you will meet Allah and answer your deeds. So beware, do not astray from the path of righteousness after I am gone" (https://www.iium.edu.my/deed/articles/thelastsermon.html).

Islam specifically focuses on the equality of mankind and human dignity. Islam focuses on all basic rights regarding religion, economic, moral, political and social areas of life. The Holy Prophet Mohammad (PBUH) proclaimed the Human Rights Framework of Islam much before the modern Western concept. The declaration of human rights in Islam has been a very basic and fundamental concept since the beginning of Islam (Mahmood, 1993). Likewise, Hinduism, Buddhism, and Sikhism also provide a concept of human rights in several basic religious texts (Arvind, 2010; Kaur, 2014).

Magna Carta accelerated its pace in the modern paradigm. This contract restricts the monarch from exercising its power against basic human rights (Khan, 2016). The legal breakthrough in modern Western history is the constitutional law of the 17th century (Britannica, 1985). The struggle for Human Rights caused wars and revolutions. During the 17th and 18th centuries, Human rights were considered moral principles or norms which describe certain standards of human behavior and are regularly protected as a constitutional and legal right in local and international law (Nickel, 2007). In his research, Rajesh Kumar Srivastav (2011) has discussed in detail the concept, definition and historical evolution of Human Rights.

Whereas the 1stand 2ndWorld Wars set back the struggle and progress for human rights, especially after achieving the Habeas Corpus Act of 1679, the Bill of rights 1689(Ali Majid, 1993), "The Right of Man" in the USA (Kaur, 2014), and Europe, yet these wars also changed the geography and the provisions of basic rights through important bilateral and global treaties, including League of Nations (Donnelly, 1989), and 1948 Universal Declaration of Human Rights (Thomas, 1988).

The 10th of December is International Human Rights Day (UN, 2018). The Universal Declaration of Human Rights (UDHR) is a set of common principles from the UN framework of the modern human rights paradigm and has thirty non-binding articles. The UDHR creates an enabling environment for the presentation and ratification of International Covenants and Conventions to broaden the scope of international law and the responsibilities of states (Risse, Ropp & Sikkink, 1999). The international paradigm includes all rights given in UDHR and is followed by two basic Covenants, i.e. International Covenant on Civil and Political Rights (ICCPR) and the International Covenant of Economic, Social and Cultural Rights (ICESCR). The UDHR, ICESCR and ICCPR are collectively called the International Bill of Human Rights. These three HR Frameworks define the boundaries of the International paradigm of human rights. Following are the other six conventions, which further explore the subject-based rights of a specific group or humanity at large e.g. International Convention against Genocide, International Convention against Racial Discrimination, International Convention on Refugees, International Convention Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (CAT), International Convention Elimination of All forms of Discrimination Against Women (CEDAW), International Convention against Racial Discrimination (ICERD).

The protection and provision of Human Rights depend on the "enforcement system" and the ability of the UN to enforce these rights paradigms. The effectiveness of the UN system depends on the decisions of the Security Council. Article 45 of the UN Charter explains the conditions and intervention of the UN Security Council in case of violations. UN Charter empowers Security Counsel to use all means and power to induce the respect of human rights. The Security Council always remains in session to deal with emergencies or instant threats to global security or human rights. Covenants and Conventions inherited these Committees by virtue of internationally agreed contracts signed and ratified by the states through the long and well negotiated proves.

The Human Rights Council is a comparatively new body, which came into being in 2006 to fulfill the gaps of the Human Rights Commission. It follows the methods of the Commission along with some new and refined techniques. The United Nations, through the Human Rights Council, has evolved a new mechanism called "Complaint Procedure" since June 2007. This mechanism empowers the Human Rights Council to directly entertain the cases related to serious violations of human rights and fundamental freedoms but under certain conditions, including political motivations and consistency with the UN Charter.

Having the mandate since its inception to examine the cases brought by any State against another State, the European Commission of Human rights likewise has its own monitoring and enforcement system, which is at par and, in some cases, more efficient than that of the United Nations. So do Americans. The Charter of Bogota, conceived in the late 40s, is a new constitutional instrument recognized by the American States. Other than America and Europe, some other parts of the world also introduced their contracts regarding human rights. Whereas the Asia Pacific and ASEAN countries are one of those, Europe and America are far ahead of other regional setups; rather, they are better than the United Nations with reference to the human rights paradigm.

The disciplinary boundaries of Human Rights are not based on the United Nations, Europe, America, and other state parties; there are other major players without which we cannot understand the essence of the international human rights paradigm. Of these players are civil society, NGOs, INGOs and other human rights-led organizations such as Amnesty International, Human Rights Watch, International Committee of Red Cross, and The International Commission of Jurists, which watch the governments and pressure them to ensure human rights.

Human Rights Framework and Its Awareness amongst Pakistani Youth

Pakistan, being an Islamic Republic and an active member of the United Nations, has also been in the process of evolving, strengthening, and advocating its human rights framework for its people since its creation. The effectiveness of the human rights framework of any country depends on the availability of an enabling environment, i.e., consistent policies, legislation, institutional mechanisms, and awareness. Whereas these developments refer to supply-side push, without demand-side pull, rights effectiveness cannot be ensured. Understanding of awareness level and attitude of Pakistani youth about the human rights framework of Pakistan needs neutral and value-free assessment through clear and definite quantifiable tools to assess the demand side of the human rights framework. It may provide a lead towards some relationship and causation between the awareness level and attitude about human rights that would describe the effectiveness of this framework.

Based on the International Human Rights framework, different survey-based research has been conducted around the world. "A Study of Adolescents' Attitude towards Human Rights in Relation to their Academic Achievement," conducted by Srivastav (2011), used Human Rights attitude scale and academic achievements, and then empirically verified that high academic achievement of adolescent's boys and girls didn't differ significantly in their attitude regarding human rights. R.D. Padmavathy and Dr. Pratima (2015) investigated the human rights awareness of university students. They studied the information/awareness level of Himachal Pradesh students about human rights, which revealed that students of higher studies, irrespective of their gender and other variables, got an average level of awareness about human rights.

With the support of the Ministry of Human Rights of Yemen, UNDP conducted a comprehensive research study on the "Public Awareness Survey of Human Rights" in 2011. All stakeholders, including the United Nations, the Government of Yemen and civil society, actively took part in that research. A sample size of 2458 individuals was used for this survey involving all parts of Yemen. Scales to measure Human rights awareness level and attitude were developed. It is the largest research on human rights conducted in Yemen, and the whole population has been targeted to collect the data; after the completion of the survey, a complete report was published (Yemen Polling Centre, 2011). They collected data regarding awareness about human rights, Attitudes about Human Rights in general and perceptions about human rights institutions. This comprehensive survey on human rights is a catalyst and can potentially be used as one of the basic documents to design the human Rights survey; the same has been used in this study.

The Foundation of Human Rights has conducted another important research in this regard with the support of the Department of Justice and Constitutional Development (DO&CD) in a project called "Socio-Economic Justice for All, SEJA." After conducting a comprehensive survey, the Foundation published it as a report (Foundation for Human Rights, 2018). The target population for the SEJA Baseline Survey was the non-institutional population residing in private dwellings in the country. Data was collected from 24897 persons. This survey study, with the help of reliable empirical data supports understanding the nature, location and depth of the problems experienced by members of marginalized

segments and vulnerable groups with respect to understanding and asserting their rights.

The Ontario Human Rights Commission (OHRC) conducted a survey to know the people's attitudes in Ontario about human rights. The survey was held in 2017 with a sample of 1,501 adult people. To conduct this survey, a questionnaire was developed and used; OHRC conducted this survey in January/February 2017 (Decision Resource Group, 2017). With the support of UNDP, the National Human Rights Commission of Bangladesh conducted a baseline survey about people's awareness. The study's main objective was to determine the level of awareness and understanding of human rights. Through a strategic plan, the Commission wanted to devise a training/capacity-building program around awareness and advocacy. The Commission designed a tool and collected the data through a survey, and after completion, a comprehensive report was prepared. (National Human Rights Commission, n.d.)

Other research studies have also been conducted to gauge the awareness and attitude of human rights worldwide. All these studies used partially or fully the international framework of human rights keeping in view their scope and target of the study and population. Before proceeding further and designing the tool for Pakistani youth to collect the data, it is imperative to describe the Human rights framework of Pakistan. This framework will enable the researcher to develop the tool to study the effectiveness of the human rights framework of Pakistan.

Promulgation of the Objectives Resolution in March 1949 set basic thematic areas for human rights and ground regarding future development towards human rights in the country. The Resolution proclaimed basic principles & human rights. Afterwards, the Constitutions of 1956, 1962, and 1973 ensured the provision of human rights elements in the basic and legal documents of the country. The 1973 Constitution is the current functional Constitution of Pakistan. It's Chapter on Fundamental Rights (Articles 8-28) and Principles of Policy (Articles 31-40) declared explicitly to obligate the State organs the insurance of basic rights to its citizens (Khan, 2013). The government has facilitated the people of Pakistan through comprehensive domestic legislation. This domestic legislation covers all the areas of human rights mentioned in the Preamble, Chapter one and the chapter related to Principles of policy.

The Human Rights Framework of Pakistan includes international obligations, which come through the signature and ratification of international conventions and covenants. Pakistan is an active member of the international community and actively participates in human rights legislation and the preparation of drafts. Pakistan has signed and ratified seven out of nine international covenants and conventions of Human rights. The state of Pakistan also submits obligatory and follows up reports as per the timeline. The government of Pakistan has taken many fold policy steps/ initiatives for the effectiveness and implementation of the Human Rights Framework.

This article too, is an attempt to gauge Human Rights awareness amongst Pakistani youth, especially in Islamabad Capital Territory (ICT), through a questionnaire (Annex-I). Pakistan is a country with a youth bulge, and the population pyramid is heavily tilted toward the youth population (Pakistan Bureau of Statistics, 2022). Any public policy formation process cannot afford to ignore this most vibrant segment of the population and the statistic around it. The UN adopted a Youth and Human Rights resolution on 30th June 2016. This resolution emphasizes the importance of young people's political participation and calls for a comprehensive youth and human rights panel. Earlier on 25th to 26th July 2013, OHCHR organized a meeting including members of United Nations treaty bodies, monitoring mechanisms and regional organizations for the protection of the rights of youth (HRESIS/RRDD/18 September 2013.) Hence, their information level and attitude depict the real picture of the demand side of human rights. A well-conceived tool was adopted and was tailor-made per the study's requirement. Considering the study's needs, a mixed (both qualitative and quantitative) research method was adopted to achieve the study objective. The qualitative method was used to understand the historical development of the modern human rights paradigm, explore the discourse of the Human Rights framework of Pakistan and analyze the implementation of the human rights framework of Pakistan through constitutional guarantees, legislative, programmatic and administrative initiatives. However, the quantitative approach was adopted by using questionnaires to collect first-hand information from the Islamabad Capital Territory (ICT) youth regarding the understanding level and attitude toward the Human Rights framework of Pakistan.

There are several types of conceptual frameworks (Jabareen Yousef, 2009), which have been identified and are being used in different types of research. In this study, a basic model of exploratory research has been used. Youth studying in universities of ICT is the population of this study. The selected age group was from 18 to 30. A list of higher study institutions was acquired from the HEC website. After obtaining the list of universities, simple random sampling was used to select the universities.

1. Quaid e Azam University Islamabad
2. NUST University, Islamabad
3. Air University, Islamabad
4. Iqra University, Islamabad
5. Bahria University, Islamabad
6. NUML University, Islamabad

After the selection of these universities, by using a convenient sampling technique, data was collected from the university students. The sample was taken from the selected universe. Roscoe (1975) and Abramovic (1997) suggested that the sample size for such studies should be a minimum of 30 and a maximum of 500 respondents. Another simple way to calculate the sample size for a survey study is to use statistical software and calculators to obtain a suitable number for the sample. In this regard, the services of Creative Research Systems have been utilized; they have given online services (www.surveysystem.com/about.). Its products are used in over 50 countries. By using this software, a suitable sample size of 380 was selected.

A structured questionnaire was evolved for data collection. After considering other research studies in detail about the same subject and nature (mentioned in chapter 2) on the same issue in the region and other parts of the world, a sketch of the questionnaire was constructed. In the questionnaire, four categories, starting with "Yes" and ending with "Don't Know," having "somewhat and No" as middle points, were used for examining awareness levels about human rights. The modified scale consisted of five categories used for evaluating attitudes about human rights regarding their importance. It was constructed by keeping in view the principles given by Gavin Henning. Before conducting the survey, brief information was given to fill the questionnaire. Finally, the tool was developed, considering the following characteristics:

- Observation
- Clarity
- Time and money, and
- Return of questionnaire

The primary data was collected from the respondents, students studying in universities of ICT. Guidelines on its use were provided to each respondent while distributing the questionnaire for data collection so that the validity of the collected data could be ensured. Later, Data has been presented in figures and the tables' forms. Confidentiality, anonymity and privacy were ensured to all respondents, and thus their names and addresses were not mentioned anywhere.

Data Analysis and Results

Statistical Package for Social Science (SPSS) v.16. Was used for the data analysis in two sections; one is for empirical analysis and the other for descriptive analysis. The descriptive analysis basically interprets the data collected through surveys. It is useful in two ways, i.e. it explains the characteristics data and provides the description. It is important for the statistical results in descriptive form. It supports comprehending the findings of the study. To know the relationship and difference between different variables, an independent sample t-test and Pearson Product-Moment Correlation coefficients were used, and Cronbach's Alpha test was adopted to check the Reliability; for application of the above tests, basic assumptions were considered as random sampling drew sample, the dependent variable was continuous, all the observations were independent, and the population was normally distributed.

Following are the tabulated form of information on demographic characteristics of participants. Table 1 shows results on demographic variables, and table 2 depicts the responses of participants on each statement of questionnaire to measure the nature of human rights.

Demographic Information

Table 1. Frequencies and percentages of Demographic variables

Variables	***Categories***	***F***	***%***
Gender	Male	202	52.3
	Female	184	47.7
Academic Class	BA	9	1.6
	BBA	3	.5
	BE	4	.7
	BS	194	34.0
	BSC	17	3.0
	FSC	7	1.2
	MA	85	14.9
	MBA	44	7.7
	MS	7	1.2
	MSC	12	2.1
	Ph.D.	5	.9
University	Iqra University	59	15.2
	Behria University	76	19.6
	NUST	46	11.9
	Quaid-i-Azam	107	27.9
	NUML	42	10.9
	Air University	56	14.5
Department	Psychology	65	16.8
	Physics	25	5.9
	Mathematics	26	6.7
	English	78	20.2
	Mass Com	24	6.1
	Management	111	28.7
	IT	35	9.0
	Economics	22	5.6
Residence	Permanent	211	54.7
	Temporary	175	45.3

Table 1 depicts demographic characteristics of the participants of present study. Frequencies and percentages are shown for each category.

Awareness of Human Rights

Table below depicts gender-wise descriptive for each statement showing participants awareness of human rights.

Table 2 Gender-wise frequencies and percentages for response to question about awareness of human rights

	Statements	Yes		Somewhat		No		Don't Know	
		Male	Female	Male	Female	Male	Female	Male	Female
1	Have you ever read constitution of Pakistan?	75 (37.15%)	97 (52.7%)	54 (26.7%)	39 (21.1%)	73 (36.1%)	47 (25.5%)	0 (0%)	1 (0.5%)
2	Do you know right to life is protected in constitution/Law of Pakistan?	102 (26.4%)	81 (21.0%)	77 (19.9%)	80 (20.7%)	17 (4.4%)	20 (5.2%)	6 (1.6%)	3 (0.8%)
3	Do you know that fundamental human rights are protected in Constitution of Pakistan?	128 (33.2%)	103 (26.7%)	51 (13.2%)	57 (14.8%)	17 (4.4%)	10 (2.6%)	6 (1.6%)	14 (3.6%)
4	Do you know right to adequate/decent standard of living is protected in Constitution?	84 (21.8%)	65 (16.8%)	68 (17.6%)	68 (17.6%)	20 (5.2%)	25 (6.5%)	30 (7.8%)	26 (6.7%)
5	Do you know freedom of expression is protected in constitution?	87 (22.5%)	101 (26.2%)	60 (15.5%)	51 (13.2%)	27 (7.0%)	17 (4.4%)	28 (7.3%)	15 (3.9%)
6	Do you know access to education for all citizens is protected in Constitution?	123 (31.9%)	92 (23.8%)	50 (13.0%)	59 (15.3%)	6 (1.6%)	21 (5.4%)	23 (5.9%)	12 (3.1%)
7	Do you know access to health services are responsibility of the state?	108 (28.0%)	95 (24.6%)	51 (13.2%)	56 (14.5%)	21 (5.4%)	20 (5.2%)	22 (5.7%)	13 (3.4%)
8	Do you know citizens are protected from arbitrary arrest in constitution?	59 (15.3%)	71 (18.4%)	55 (14.2%)	64 (16.6%)	44 (11.4%)	20 (5.2%)	44 (11.4%)	29 (7.5%)
9	Do you know citizens have the right to elect their political leadership in constitution?	104 (26.9%)	99 (25.6%)	54 (14.0%)	56 (14.5%)	22 (5.7%)	9 (2.3%)	22 (5.7%)	20 (5.2%)
10	Do you know citizens have the right to form associations and trade unions in constitution?	86 (22.3%)	61 (15.8%)	51 (13.2%)	75 (19.4%)	19 (4.9%)	26 (6.7%)	46 (11.9%)	22 (5.7%)
11	Do you know citizens have the right to be protected from the torture and cruel treatment in constitution?	86 (22.3%)	66 (17.1%)	59 (15.3%	72 (18.7 %)	33 (8.5 %)	22 (5.7%)	20 (5.2%)	28 (7.2%)
12	Do you know all men and women are equal in all rights in constitution?	77 (19.9%)	101 (26.2%)	73 (18.9%)	52 (13.5%)	31 (8.0%)	20 (5.2%)	21 (5.4%)	11 (2.6%)
13	Is the right to free, fair, and public trail is available to the citizens in constitution?	100 (25.9%)	83 (21.5%)	43 (11.1%)	64 (16.6%)	33 (8.5%)	11 (2.8%)	26 (6.7%)	26 (6.7%)
14	Do the all citizens have right to be considered innocent until proven guilty in constitution	113 (29.3%)	93 (24.1%)	45 (11.7%)	62 (16.1%)	20 (5.2%)	8 (2.1%)	24 (6.2%)	21 (5.4%)
15	Do all citizens have freedom to assembly in constitution including the right to peacefully protest, demonstrate, or strike?	109 (28.2%)	95 (24.6%)	37 (9.6%)	51 (13.2%)	33 (8.5%)	18 (4.7%)	24 (6.3%)	19 (4.9%)
16	In constitution, citizens have right to assume a position in the government service including army?	79 (20.5%)	57 (14.8%)	84 (21.8%)	75 (19.4%)	25 (6.5%)	23 (6.0%)	14 (3.6%)	29 (7.5%)
17	Have all citizens have equal rights regardless of race, color, national or social origin and language, ethnicity, gender and birth place in constitution?	96 (24.9%)	70 (18.1%)	62 (16.1%)	76 (19.7%)	29 (7.5%)	20 (5.2%)	15 (3.8%)	17 (4.4%)
18	Have all citizens' freedom of religion including the right to join another religious groups in constitution?	84 (21.8%)	80 (20.7%)	80 (20.7%)	65 (16.8%)	18 (4.7%)	16 (4.1%)	20 (5.2%)	23 (6.0%)
19	Do you know that a child have right to be free from physical and mental harm?	106 (27.5%)	89 (23.1%)	66 (17.1%)	67 (17.4%)	17 (4.4%)	20 (5.2%)	13 (3.4%)	8 (2.1%)
20	Do you know that a woman has right to be free from physical and mental harm?	112 (29.0%)	88 (22.8%)	64 (16.6%)	70 (18.1%)	12 (3.1%)	14 (3.6%)	14 (3.6%)	12 (3.1%)

The study outcome was discussed based on the data obtained through investigation and study thesis. There seems to be an insignificant difference between male and female youth in regard to awareness on the rights scale.

The International Human rights paradigm started its journey from known history, the code of Hammurabi, who was king of ancient Mesopotamia, dated back to 1754 BC. Hammurabi enacted the code, which includes the laws and human rights, almost 4000 years ago. After that, Cyrus, king of old Persia, first time in history, released the slaves, and allowed the people to decide about their religion. After these developments, the message of human rights spread to Greece, India and eventually Rome. Abrahamic religions had been the catalyst for ensuring the human rights of common people. Ten commandants of the Old Testament, "Sermon on the Mount," and the Last Sermon of Prophet Muhammad (P.B.U.H) known as *'Khutba*, *hajjatul-Wida'* and Madina Pact are the key religious texts which emphasize human rights. Modern paradigm accelerated its pace with the historical event of the Magna Carta. This contract restricted the monarch, King John of England, from exercising its power against citizens' basic human rights. Recent developments started with UDHR, followed by ICCPR & ICESCR. Bills of Rights and other important Conventions like CEDAW and CRC. These legislative regimes and other policy key players, including INGOs, International Human Rights Organizations and Social Media, draw the disciplinary boundaries of the Global Human Rights Paradigm. The Human Rights Framework of Pakistan is not a revealed document rather, it is the extension of the International Human Rights Framework in the context of Pakistan, with the convergence of Islamic connotations. The Human Rights framework of Pakistan consists of chapters on Human Rights and Principals of Policy in the Constitution. The constitutional history of Pakistan starts with the objective resolution, from the Constitution of 1956 to the Constitution of Pakistan of 1973, which clearly depicts constitutional guarantees. Domestic legislation promulgated by the Parliament of Pakistan and provincial assemblies consisting of much pro- human rights legislation has been the catalyst to translate the guarantees into acts. International Covenants, Conventions and treated signed and ratified by Pakistan as a State Party in United Nations shows its commitment as a state party before the international community. Implementation of the ratified/signed Conventions and treaties is an obligation on the part of the Islamic Republic of Pakistan within its geographical boundaries. Constitutional guarantees and domestic legislation envisaged in the Constitution of 1973 have been considered as the basic framework of this research, being core elements of the Human Rights Framework of Pakistan and widely accepted by all the stakeholders, including government, constituent parts and civil society in Pakistan.

Conclusion: The information collected from ICT youth reveals a fair percentage of Pakistani youth have read or at least known about the principle tenets of the Constitution of Pakistan, i.e. 52.7% of females and 37.1% of male respondents; there is a mix response regarding awareness level though. Information level among ICT youth regarding different basic human rights ranges from 35 to 60 with an average of 47, which shows that less than 50 percent of respondents were aware of the basic human rights available to them as Constitutional guarantees. This implies that in case of a low level of information, one cannot claim his/her right in day-to-day life, which tends to undermine the effectiveness of the Human Rights Framework. More than half of the respondents knew to some extent or did not know absolutely anything about the rights available to them under the Constitution of Pakistan. The survey report in hand is a matter of concern regarding awareness of basic human rights when it comes to the literate, semi- literate and illiterate population living in marginalized areas of Pakistan.

These results also point out that male youth have less awareness of their rights in comparison to their female counterparts, but there is an insignificant difference between male and female youth on awareness on the rights scale. These findings align with a study by Pandey (2005), suggesting that male and female youth do not have much difference in their level of awareness.

The study has succeeded to a considerable extent in finding the information level and attitude of educated ICT youth about the human rights framework of Pakistan. The study findings suggest that students generally have an average level of awareness about the human rights framework. The data greatly represents the awareness level of the most educated community in Pakistan and, thus, the overall awareness of basic human rights of the Pakistani population. Given the semi or illiterate, marginalized and disadvantaged status of its significant segment, one can comprehend this level of human rights awareness among the Pakistan population. The study implies affirmative notation to qualify the observations of the United Nations and other human rights organizations which request Pakistan to extend its Human Rights Education for its institutions and the general public, for no state party can claim the effectiveness of its Human Rights Framework with this level of information.

Strengthening the supply side by enabling legislation and signing international conventions can create a good

image among the international community. However, an evolving and enabling environment for pro- human rights society is impossible without internalizing the human rights context through a formal education system, advocacy and demonstrated political will.

Recommendations: Guided by the findings of this piece of research, a few recommendations are being made for making the Human Rights Framework of Pakistan more effective for its implementation in institutions and academia.

The study reveals that the importance of the demand side of the Human Rights Framework should also be considered equally important by the state institutions. Since the educated Youth of ICT have an average awareness level regarding the human rights framework of Pakistan, it implies that the Constitution of Pakistan, especially its chapters related to human rights and principles of policy, need to be incorporated into the syllabi and curricula at primary & secondary and higher secondary levels of education to help students understand the Human Rights Framework of Pakistan.

The whole study revealed *inter alia* lack of education and awareness as the single most important reason in terms of the ineffectiveness of the Human Rights Framework.

Specific recommendations to this end are,

- Institutions & Teachers need to engage male students in awareness campaigns and seminars, as they are less informed about the Human Rights Framework.
- Special programs and projects may be launched to create awareness about human rights among students of all levels.
- A strong positive correlation exists between awareness level and attitude about human rights. It strongly indicates the importance of information and awareness regarding human rights. Both formal and informal approaches need to be adopted to educate the youth about human rights.
- Awareness seminars and workshops need to be arranged at a large scale with the support of civil society in schools, colleagues, and universities at the community level.
- Students may be given appreciation certificates to create awareness among the population through an informal approach, and assignments may be given as term papers.
- Academia needs to conduct more research studies on human rights in different aspects and in all areas of Pakistan.
- Education authorities, both at the federal and provincial level, need to include human rights in curricula/syllabi; students' awareness about basic human rights needs to be assessed during the term and annual examinations.

Further, literature and books about Human Rights need to be disseminated on at large scale, especially in school & college library.

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Role of Childhood Trauma in Fear of Happiness and Self-Concept of Young Adults

Saba Jamshaid, Faqiha Anjum

The present study was carried out to explore the relationship between childhood trauma, fear of happiness, and self-concept in young adults. A convenient sampling strategy was used to approach 200 young adults (men = 50 %, women = 50%). The Childhood Trauma Questionnaire (Bernstein et al., 1994), Fear of Happiness Scale (Joshanloo, 2013) and Robson Self-concept Questionnaire Scale (Robson, 1989) were used in the study. Findings indicated a significant positive correlation between childhood trauma and fear of happiness. A significant negative correlation was found between childhood trauma and self-concept and fear of happiness and self-concept. The results of multiple linear regression showed that childhood trauma and fear of happiness are significant negative predictors of self-concept. Furthermore, the Independent sample t-test indicated that women reported higher levels of childhood trauma, fear of happiness, and lower levels of self-concept than men. The study has wide implications in clinical, counselling and educational settings.

Keywords: Childhood trauma, fear of happiness, self-concept, young adults

Childhood is a unique time of psychological and cognitive development, and adults with a history of maltreatment during childhood are at increased risk for a range of psychiatric problems (Kessler & Davis, 1997). Santrock (2001) has confirmed that what we experience in childhood greatly impacts our whole life as it prepares us for physical and emotional adulthood. Approximately one in four children experience child abuse or neglect in their lifetime (Komori et al., 2019). Of maltreated children, 18% are abused physically, 78% are neglected, and 9% are abused sexually (Jawadi et al., 2019). The fatality rate for child maltreatment is 2.2 per 1000 children annually, making it the second leading cause of death in children younger than age one (McAnee et al., 2019). Globally, 500 million to 1.5 million children suffer violence every year. In the USA, there are more than 3 million reported cases of child abuse and neglect. More than 2,000 deaths and 18,000 permanent disabilities happen every year because of child abuse and neglect in the USA. In Pakistan, no official data exists on various types of childhood abuse. A local NGO named Sahil monitored 91 National and local newspapers in which a total of 3445 cases of child abuse were reported in the year 2017. According to an unofficial report by a news article in 2014, 15-25% of children are sexually abused in Pakistan. In Karachi, 88.7% of school children reported physical abuse; 17% of 300 school children in Rawalpindi/ Islamabad were sexually abused (1 in 5 boys and 1 in 7 girls); 72% of the victims/survivors who were abused were below the age of 13 years. In 80% of cases, the abuser is a close acquaintance (Kane, 1998).

Child maltreatment is a historically underappreciated social problem often compounded by the difficulty of accurately determining the validity of allegations of abuse (Allen & Tussey, 2012). This childhood trauma is an overwhelming tragedy in our world today, from physical and emotional abuse and neglect to sexual abuse. The term Childhood trauma is defined as the experience of single or multiple events by a child that is emotionally painful or distressful, which often leads to serious lifelong damage to physical and mental health (Pechtel, 2011). Commonly studied early childhood stressors include physical, sexual, emotional or verbal abuse, neglect, social deprivation, disaster or household dysfunctions (including witnessing violence, criminal activity, parental separation, parental death or illness, poverty, and substance abuse) (Brown et al. 2009).

Contemporary Trauma theory describes that childhood trauma "overwhelms the ordinary human adaptation to life" (Herman, 1992) and the person's sense of control, which may lead to maladaptive internalization of the event. Such maladaptive internalization may disturb bio-psychosocial functioning, healthy development, and brain performance in regions related to emotions, behavior, and executive functioning (Lizeretti et al., 2012). Contemporary Trauma Theory provides a theoretical framework for understanding the impact trauma has on a person's functioning and is based on the following central properties:

a) Dissociation: Dissociation in trauma "entails a division of an individual's personality, that is, of the dynamic, bio-psychosocial system as a whole that determines his or her characteristic mental and behavioral actions" (Nijenhuis & Van der Hart, 2011). Dissociation is the main defense mechanism used by a victim to negotiate and tolerate the horrific traumatic experience (Suleiman, 2008).

b) Attachment: Childhood trauma impacts a person's ability to develop healthful interpersonal relationships and establish trust, leading to impairment in the ability to form secure attachments with others and to interruptions in interpersonal relationships (O'Connor & Elklit, 2008).

c) Reenactment: A phenomenon in which victims seek relationships and display behaviours that reenact the original traumatic event (Courtois & Ford, 2016). Reenactment elicits an intense emotional state that releases tension or anxiety and provides the person with a sense of control and connectedness (Van der Kolk, 2014).

d) Long-term effect on later adulthood: Unresolved Childhood trauma may have devastating effects on functioning in adulthood (Becker-Blease & Freyd, 2005). Trauma that a child experiences inhibit appropriate development and predispose the child to negative recurrence later in life, including comorbidity in physical and mental health problems (Ross, 2000). In addition, CT diminishes the basic sense of self and destroys intrapersonal and interpersonal capacities (Courtois, 2008).

e) Impairment in emotional capacities: Emotional numbing and the breakdown of the self-regulatory system are direct impacts of trauma on the brain and on the adaptive functioning of the limbic system, the part of the brain that supports a variety of functions, including the emotional life (Badenoch, 2008). Traumatic events, and especially prolonged exposure to trauma, which is typical in childhood abuse or neglect, diminish the sense of baseline state of both emotional and physical calm or comfort, resulting in hyper-arousal symptoms that include hypervigilant, anxiety, agitation, night terror, and somatization (Van der Kolk et al., 2006). Victims of CT display compromised ability to regulate their moods and their emotional responses as adults, including the ability to identify emotions in self and others, to understand emotions, and to self-regulate, which may lead to dissociation and dissociative identity disorder in extreme cases of abuse (Salovey & Sluyter, 1997).

Trauma in childhood is a grave psychosocial, medical, and public policy problem that has serious consequences for its victims and for society (Michael, 2014). Although trauma in childhood can have many shapes, the most discussed dimensions of childhood trauma are six. They are named Emotional abuse, Physical abuse, Sexual abuse, Emotional neglect, Physical neglect and Minimization or Denial. Children who experience maltreatment have been shown to be at heightened risk for problems in all domains of development, i.e., emotional, cognitive, physical and behavioural (Schnoff & Phillips, 2000); these can also be referred to as the causes of childhood trauma for any person. The literature demonstrates that childhood trauma survivors are prone to some kind of psychological problems, ranging from minor to major ones. As fear of happiness is a type of phobia that lies under the category of anxiety disorders, it has been studied that childhood trauma can be a leading cause of fear of happiness. Moreover, an individual's self-concept is also affected by the trauma faced in childhood, which mostly inclines toward a negative self-concept.

Fear of Happiness

Fear of happiness is the belief that happiness may have negative consequences implying that it should be avoided (Joshanloo, 2014). The concept of fear of happiness constitutes a relatively stable normative belief domain constituted by the notion that certain personal relations with happiness should be avoided for one or more reasons. Fear of happiness is characterized as a relatively stable belief that experiencing different positive emotions may negatively affect individuals' well-being (Joshanloo, 2013). In order to prevent possible unpleasant consequences, individuals tend to suppress their authentic feelings, dampen the experience of positive affect or avoid any action that is associated with success, overexcitement and joy (Joshanloo, 2013).

Şar et al. (2019) conducted a research study on fear of happiness, childhood psychological trauma and dissociation among college students. A stepwise regression analysis revealed that depersonalization, childhood emotional neglect, and physical abuse predicted fear of happiness among women, which was predicted by absorption among men. Women had higher scores than men on childhood emotional abuse and fear of "cheerfulness ends up with bad faith." The results prove that there is a relationship between childhood psychological trauma, dissociation, and fear of happiness. Women seem to be more vulnerable in this path of obsessional thinking which affects different realms in male and female genders.

Self-Concept

The term self-concept is a general term used to refer to how someone thinks about, evaluates or perceives themselves. According to Baumeister (1999), self-concept is the individual's belief about himself or herself, including the person's attributes and who and what the self is. Self-concept is the value an individual places on his or her characteristics, qualities, abilities, and actions (Woolfolk 2001). The self-concept, a cognitive concept, appears and grows along with the development of all components of psychical life, developing in several phases (Allport, 1981). Self-concept is not inborn; its development is a process which evolves through one's entire lifespan as the individual discovers new possibilities and faces new experiences. A person always

builds his perception of self from the environment he grows up. Suppose an individual grew up in a situation where he faced maltreatment throughout his childhood years. In that case, it is possible that he will build a self-concept where he categorizes himself in the category of low achievers. If a person's balance between his real and ideal self is disrupted, it can also lead to the formation of a negative self-concept.

Self-concept is the perception a person has about himself/herself. A person's self-concept develops with many factors, including environmental, developmental, familial, social and other aspects. Self-concept can be positive as well as negative. A positive self-concept means an individual has self-confidence, believes in his abilities and capacities and deals with the outer world with an optimistic approach. On the other hand, a negative self-concept means a person is not confident in him or herself, doubts his abilities and potential and has a pessimistic approach toward the world as well as themselves. Self-concept is a trait that builds in the early years of a person's life. Thus, events that happen in childhood play a major role in the development of a certain type of self-concept. Childhood trauma is also known as one of the leading causes of fear of happiness. Fear of happiness, also known as Cherophobia, comes under the category of anxiety disorders, specifically phobias. A lot of individuals silently suffer from this phobia, not even knowing about it. The variable is understudied in the research field of psychology. However, studies have shown that childhood trauma is one of the potential causes of Cherophobia. Trauma that has its roots in an individual's childhood most likely affects one's self-concept negatively. It can lead to low confidence in oneself and their decisions. It can cause the formation of negative and pessimistic schemas of life and the outer world. Moreover, negative self-concept due to childhood trauma can lead to several psychological problems such as anxiety disorders, depression, PTSD and personality disorders.

The present study is all about exploring different aspects of childhood trauma and how it can lead to Cherophobia (fear of happiness) and how an individual's self-concept is affected by adverse childhood experiences and fear involved in experiencing happiness. Further studies ((Felitti, 2009; Slaninova & Stainerova, 2015; Wu et al., 2021) showed that psychological maltreatment was negatively associated with life satisfaction through self-esteem and through the pathway from self-esteem to self-compassion. Despite empirical evidence, the relationship between these adverse experiences with fear of happiness still remains understudied, specifically in the Pakistani context. Fear of happiness is a rather new construct that is scarcely studied in the field of psychology. Therefore, understanding the link between childhood trauma and fear of happiness and self-concept will provide valuable literature in this regard.

Method

Objectives

To investigate the relationship between childhood trauma, fear of happiness and self-concept in young adults.

To examine childhood trauma and fear of happiness as predictors of self-concept.

To find out the gender differences in terms of childhood trauma, fear of happiness and self-concept in young adults.

Hypotheses

Childhood trauma and fear of happiness will be negative predictors of self-concept in young adults.

There will be gender differences in terms of childhood trauma, fear of happiness and self-concept in young adults.

Sample

A sample (N = 200) of young adults aged 15-39 years, an equal number of males and females, was selected from Lahore (Pakistan). Through a convenient sampling strategy, participants included having a minimum of twelve years (Intermediate) education. The inclusion criteria for sample selection were participants with no physical disability and participants whose parents were alive during their early childhood years. The data was collected from the general population of young adults to assess whether they ever suffered from any kind of trauma because of the unavailability of any trauma centers from where the researcher could collect statistics about childhood trauma.

Instruments

Childhood Trauma Questionnaire

Childhood Trauma Questionnaire (Bernstein et al., 1994) is a screening tool for histories of abuse and neglect. This self-report measure includes 28 items which measure five types of maltreatment Emotional, Physical, and sexual abuse, emotional and physical neglect. A 5-point Likert scale is used for the responses, and the score ranges from 1 = Never True to 5 = Very Often True. Some items on the scale are, "People in my family said hurtful or insulting things to me." "I believe that I was emotionally abused." Cronbach's alpha coefficients for 28 items have been found highly satisfactory .95 (Bernstein 1994).

Fear of Happiness Scale

Fear of Happiness Scale (FOH; Joshanloo, 2013) is a 5-item scale which is used to assess a person's perceptions about fearing happiness. It is a 7-point Likert scale in which participants rate items ranging from 1 = "Strongly disagree" to 5 = "Strongly agree." Examples of items include "I prefer not to be too joyful because usually joy is followed by sadness" and "Having lots of joy and fun causes bad things to happen." The internal consistency reliability coefficient of the scale has been reported as satisfactory (Bülbül, 2018).

Robson Self-Concept Questionnaire

The Self-concept of the individuals was measured by Robson Self-concept Questionnaire (RSCQ; Robson, 1989). The scale consists of 30 items. Respondents endorsed each item on an 8-point Likert scale where 0 = Completely Disagree to 7 = Completely Agree. Examples of the items include, "I am not embarrassed to let people know my opinions." "I can usually make up my mind and stick to it." And "If I really try, I can overcome most of my problems." The original authors reported Cronbach's alpha estimates as satisfactory.

Demographic Sheet, The researcher, constructed it to gather information from the participants about their gender, age, education, occupation, marital status, and living status of parents.

Procedure

The research was carried out by following APA ethical standards of research; permission was taken from the authors to use instruments for data collection. Participants were approached by the researcher through convenient sampling, and written informed consent was taken. They were informed about the aims and objectives of the study and were assured about the voluntary nature of participation, confidentiality, anonymity, and right to quit. At the end of the data collection, the participants were thanked for their cooperation.

Results

For analyzing the results, descriptive and inferential statistics were applied. To determin the relationship of study variables, Pearson Product Moment Correlation and Regression analysis were used. An Independent sample t-test was used to examine the gender differences. All the analyses were conducted using SPSS 23.

Table 1

Psychometric Properties of Scales and Subscales (N=200)

Measures	K	A	M(SD)	Range Actual	Potential
Childhood-Trauma Questionnaire	28	.75	54.60(11.11)	28-89	28-140
Physical Abuse	5	.76	8.27(4.00)	2-21	5-25
Emotional Abuse	5	.79	12.76(8.27)	5-24	5-25
Sexual Abuse	5	.91	5.39(4.29)	0-24	5-25
Physical Neglect	5	.72	8.59(3.02)	1-16	5-25
Emotional Neglect	5	.45	12.85(3.92)	3-24	5-25
Denial	3	.34	8.67(2.15)	3-14	3-15
Fear of Happiness Scale	5	.74	21.44(8.17)	6-35	5-35
Self-concept Questionnaire	30	.83	144.43(26.97)	92-188	0-120

Table 1 shows the number of items, mean, standard deviation, alpha reliability and range of CTQ, FOH and RSCQ. The reliability of CTQ was good, i.e., .75, as well as its subscales, namely physical abuse, emotional abuse, sexual abuse, physical neglect, emotional neglect and denial, which were .76, .79, .91, .72, .45 and .34, respectively. The reliability of FOH was also good, i.e., .74. Reliability of RSCQ was very good, i.e., .83.

The mean values of CTQ show that participants of the study reported average childhood trauma and its subscales. The mean value of FOH shows that participants reported higher than average fear of happiness. Similarly, the mean value of RSCQ was 144.43, showing that participants experience self-concept at an average level.

Table 2

Correlation Analysis of Study Variables (N = 200)

Variables	1	2	3	4	5	6	7	8	9
1. CT	-	.12	.38**	.20**	.28**	.29**	.11	.43**	-.78**
2.PA		-	.17*	-.17*	-.03	-.02	-.33**	.22**	-.11
3. EA			-	.06	.21**	.43**	-.21**	-.02	-.42**
4.SA				-	.23**	.01	-.11	.29**	-.21**
5.PN					-	.37**	-.08	.18*	-.34**
6. EN						-	-.19**	-.09	-.28**
7. Denial							-	.23**	-.16*
8.FOH								-	-.56**
9. SC									-

**p<.01

Note. CT = Childhood Trauma; FOH = Fear of Happiness; SC = Self-concept; PA = Physical Abuse; EA = Emotional Abuse; SA = Sexual Abuse; PN = Physical Neglect; EN = Emotional Neglect; Denial.

Table 2 showed a significant moderate positive correlation between childhood trauma and fear of happiness. Moreover, a significant negative correlation was revealed between childhood trauma, its subscales and self-concept. A significant negative moderate correlation was found between fear of happiness and self-concept.

Table 3

Childhood Trauma and Fear of Happiness as the Predictors of Self-concept (N = 200)

Self-concept					
Variables	B	SE	B	t	p
CT	-1.38	.09	-.70	-14.13***	.000
FOH	-.60	.16	-.17	-3.64***	.000
R2	.61				
F	155.25				

Note. CT = Childhood Trauma; FOH = Fear of Happiness; β = Standardized coefficient.

***p < .001.

Findings in Table 3 show that childhood trauma and fear of happiness are significant negative predictors of self-concept (β = -.70, p < .001 and β = -.17, p < .001). The value of R2 explains 61% variance in self-concept, which indicates that 61% change in self-concept can be accounted for by the effects of childhood trauma and fear of happiness.

Table 4

Independent Sample t-test for Gender Difference in Study Variables (N = 200)

Measures	Men M(SD)	Women M(SD)	t	p	95% CI UL	LL	Cohen's d
CT	54.60(11.11)	59.30(15.17)	-2.50*	.013	-.99	-8.40	0.35
FOH	19.02(7.90)	23.86(7.52)	-4.43***	.000	1.28	-4.36	0.63
SC	148.41(26.59)	140.44(26.68)	2.12*	.036	15.40	.542	0.30

Note. CI= Confidence Interval; UL= Upper Limit; LL= Lower Limit; CT = Childhood Trauma; FOH = Fear of Happiness; SC = Self-concept.

The results indicated that there is a significant difference in childhood trauma in male and female young adults (t= -2.50*, p<.05). The means indicated that female young adults reported higher childhood trauma (M= 59.30(15.17) than young male adults (M=54.60(11.11). The results further showed a significant difference in fear of happiness in male and female young adults (t= -4.43***, p= .001), where the means revealed that female young adults reported more fear of happiness (M =23.86(7.52) than males (M=19.02(7.90). Moreover, the results indicated a significant gender difference in self-concept (t=2.12*, p=.03). The means reported that men possess better self-concept (M=148.41 (28.58) than women (M=140.44(28.68).

Discussion

The current research focused on examining the relationship between childhood trauma, fear of happiness and self-concept in young adults. The data were collected from Lahore. The present chapter contains discussions on the results obtained. The first hypothesis was to examine the relationship between the study variables, and the results provided support for the hypothesis. A significant positive relationship was found between childhood trauma and fear of happiness. Moreover, a significant negative relationship was found between childhood trauma and self-concept. It implies that when an individual suffers from childhood trauma, he/she is prone to build up a fear of happiness and his/her self-concept is also negatively affected by the consequences of the childhood trauma. Similar findings have been reported by Şar et al. (2019), who examined the relationship between fear of happiness, childhood psychological trauma and dissociation among college students, indicating a significant negative relationship between these variables.

Further continuing with the first hypothesis, the relationship between childhood trauma and self-concept was assessed. The results reflected a significant negative relationship between the said variables. The findings reported by Slaninova and Stainerova (2015), who explored trauma as a component of self-concept in undergraduate students, depict that trauma significantly impacts an individual's self-concept and causes lower self-acceptance, self-image, and self-esteem. Social identity theory by Tajfel and Turner (1986) explains that a person's perception of himself/herself is built upon several factors, i.e., social, environmental or familial. Trauma in early life can visibly shake up one's perception and effectively lead to a negative self-concept.

The second hypothesis in the present study was about childhood trauma and fear of happiness being the predictors of self-concept. The findings supported that childhood trauma and fear of happiness were significant negative predictors of self-concept. Bedwell and Hickman (2022) also found the effects of childhood trauma on an individual's self-image. His findings suggest that early childhood maltreatment victims are predicted to develop a negative self-concept later in life. Bowlby's attachment theory (1982) explains that insecure and avoidant attachment styles and unresolved traumas, either from childhood or adolescence, can lead to the development of anxiety issues. As phobias come under the category of anxiety disorders in DSM-V, cherophobia is also caused by the unresolved trauma of childhood. Henceforth, fear of happiness and childhood trauma can be significantly considered negative predictors of self-concept. Findings also showed significant gender differences where women reported higher childhood trauma as compared to men. Findings from several studies have highlighted similar gender differences (Xiang et al., 2018; Zhou, 2016).

Further, it was found that men and women differ significantly in terms of fear of happiness. Women were reported to have a greater fear of happiness than men. These findings can be explained by the theory of restrictive emotionality by Jansz (2000). According to

this theory, men tend to inhibit the expression of certain emotions and are unwilling to self-disclose themselves. It sometimes happens due to society's rigid mentality and standards towards men. On the other hand, women tend to express their feelings of happiness, sadness, anger or longing more easily. The reason is that women tend to be less restrictive of their expression of emotions. Moreover, women's hormonal cycles play an important role in feeling any certain emotion. Findings from the previous literature have also supported the results of the current study.

Moreover, it was revealed that women reported more negative self-concepts than men. Previous literature has also supported these findings, for instance, a study conducted by Delker and Freyd (2017), who worked on childhood trauma and its impacts on the self-concept of young adults. The results indicated that there were significant gender differences in men and women regarding self-concept who suffered from childhood trauma.

Overall, it is concluded from the findings of the present study that childhood trauma and fear of happiness have a significant positive relationship. At the same time, childhood trauma has a significant negative relationship with the self-concept of young adults. Additionally, childhood trauma and fear of happiness are significant predictors of self-concept. Gender differences were also found to be significant regarding study variables in the present study. The present study's findings contribute to creating awareness about the psychological and emotional issues of young adults suffering from childhood trauma. The study has wide implications in counselling, clinical and educational settings.

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CASE STUDIES

Voices for Justice: three change makers stand up against gender-based violence

Safiya Bashir

Over three years, one VSO project in Nepal changed the lives of 80,000 people by raising awareness of the harmful norms surrounding gender-based violence, sparking a national debate and helping women in Nepal access the justice they deserve. Safiya Bashir shares three stories of change.

Vidheha Ranjan
In an arranged marriage, a priest conducts the yagya fire ritual with Agni, the Fire God, as a witness and a carrier of gifts to the other gods.

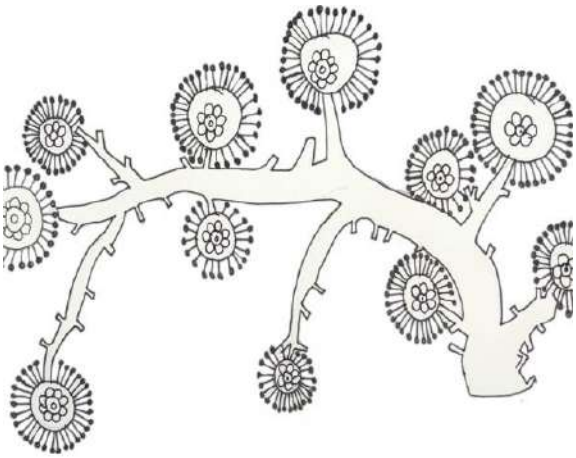
SUNITA

The day Sunita walked into court to file for a divorce from her abusive husband, she knew the neighbourhood was not on her side. She could hear their words in her head - "you're bringing shame on your family" - and their accusations of how she was destroying longstanding traditions.

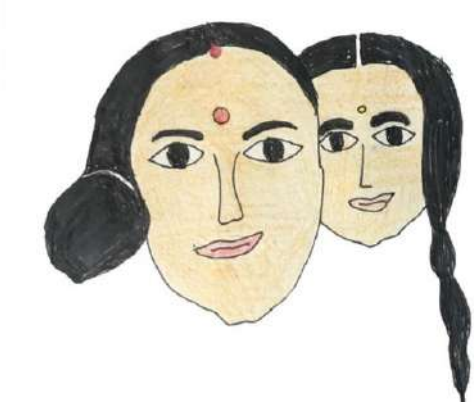
But she had to leave. After being forced to marry a 33-year-old man when she was just 16 years old, Sunita had already endured enough. Giving birth to two daughters, Sunita was shunned for not bearing a son and experienced years of mental and physical abuse at the hands of her husband and in-laws.

Others encouraged her to try and make her marriage work, but Sunita refused to back down. With seed funding from VSO to set up her own small business, alongside being freed from her marriage, Sunita became a seamstress. She grew in confidence and finally had money of her own.

Sunita is now a successful single mother able to provide financial stability to her two daughters, both of whom are excelling at school and is respected amongst those in her community. Sunita now shares advice on gender-based violence with young women in her community and urges survivors to speak out against their abusers.



Vidheha Ranjan
Winter fruit.



Vidheha Ranjan
A mother and her daughter.

MUNNI

As a community volunteer, Munni has seen a number of women like Sunita rise up and refuse to be defined by their circumstances or by other people. Munni has

supported women and girls who are going through discrimination, violence and abuse and says she has changed the lives of at least 80 people in her community. "This project has given me and others in the community hope."

However, Munni has also overcome her own challenges, suffering through bullying and exclusion as a child. Munni was a member of the only Dalit family in her village, meaning she was considered to be of a lower caste and, therefore, unable to visit her neighbours' homes or drink from the local well.

With the courage to stand up for women, she is now loved and respected in her village. "The community knows me better now. I know my community members better, too," she says.

Vidheha Ranjan

A VSO volunteer rides to individual homes in a village to provide service.

MATRIKA

Ready to carry the baton for future generations is Matrika, who, at just 16 years old, is unafraid to speak up against child marriage and gender-based violence. Through after-school clubs, Matrika and his classmates have learned, shared, rallied and debated.

These conversations prompted Matrika and her classmates to step in and offer their support when they heard of a man coming home drunk every evening and beating his wife. They shared with her what they knew of the law in Nepal, telling her, "It is not just outsiders who commit a crime." She decided to seek help, and the group waited with her while authorities came to speak to the man.

"I have learned the difference between right and wrong," said Matrika. "The older people, who are important in the area, do not like it. Why should it only be the youth that have to listen to the old? We are adamant that the old should also listen to the youth," says Matrika.

"I think about what we have done, the lives that we have protected, the thoughts that we have changed. Some are still angry with us.

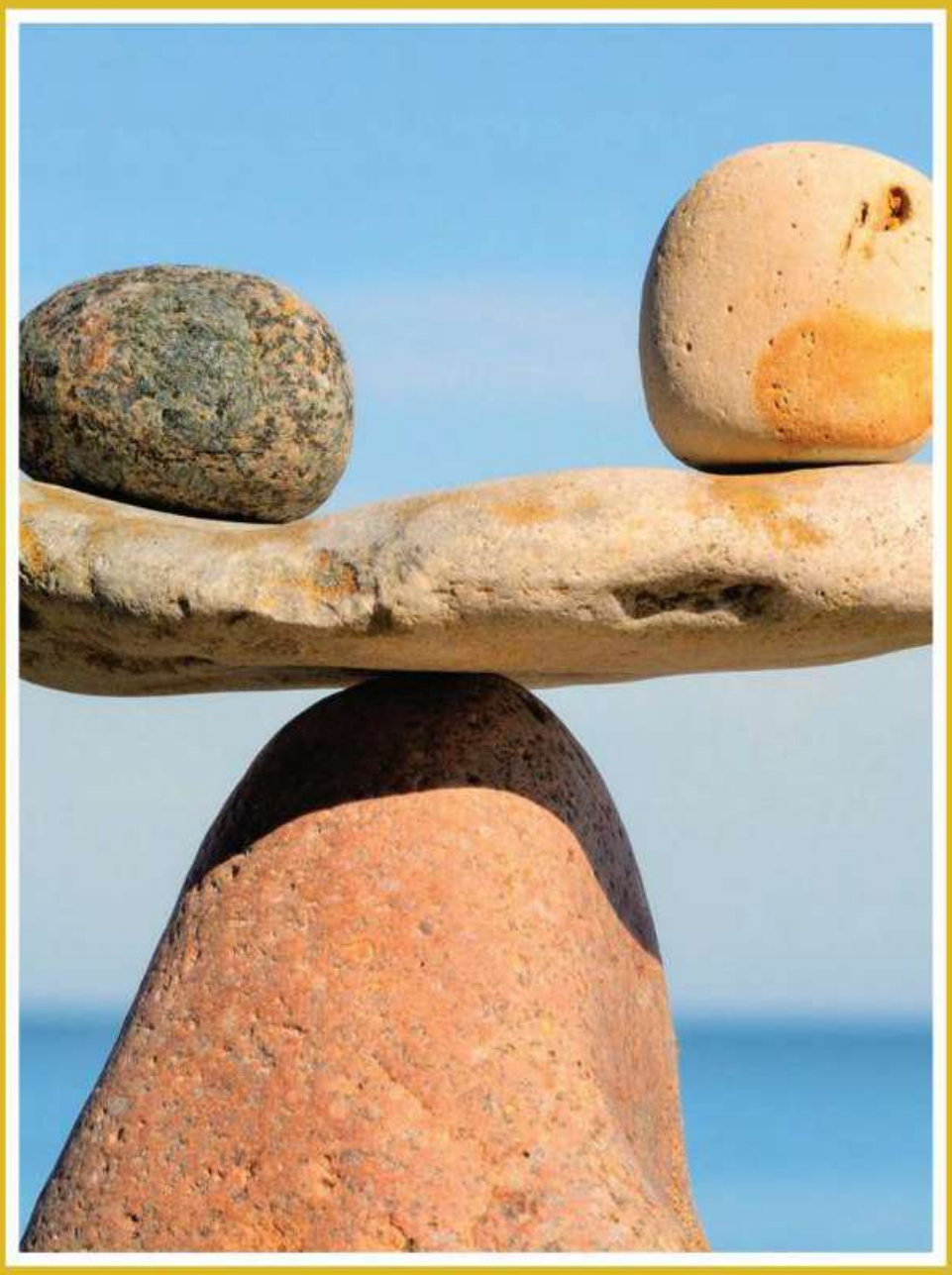
"They say we are destroying our history, our culture. I disagree. We follow the law and tell them the law does not allow underage marriage. We are the youth. We are the change."

Vidheha Ranjan.

Our illustrator

After reading these stories, eight-year-old artist and photographer Vidheha Ranjan from Kathmandu, Nepal, kindly sent us the beautiful drawings you can see featured on this page. She has been travelling across Nepal for quite a few years and has also been to the Terai plains, where the stories are set. Vidheha's mum shared the stories with her and let her do what she wanted.

Courtesy: VSO - https://www.vsointernational.org/news/blog/voices-for-justice-standing-up-against-gbv?utm_source=newsletter-tp&utm_medium=email



ART & SCIENCE OF HEALING

FEATURED ARTIST

Artist Enaya Kamran
Age 14 years old
City Rawalpindi, Pakistan
Education IGCSE 3 (ROOTS IVY INTERNATIONAL SCHOOL)

What inspires me to paint is the enthusiasm I behold and the desire to create which brings me ecstasy. The world harbors all kinds of injustice and accommodates unprivileged people. There is grief and inequity. I strive to bring forth these matters through my art. Everything holds a significance if seen from a different perspective. The driving force for me just seems to be abstract beauty and the pure artistic feeling itself!

Pablo Picasso is an ideal artist for me as his work revolutionizes the Principles of perspective
"Art is a lie that makes us realize the truth"

18x24 inches
VIVID- This painting turned out every way it was supposed to; Manifesting the light and dark schemes, the texture and color. It shows the work of my pallet knives and brushes also. I sought to create a Chiaroscuro piece which creates contrasts of a bold yet allure figure upon a dark matrix

18x24 inches
ETHNICITY- This painting is a generalization of color without much contrast except for the bold and defined lines that make up the figure. It abstractly depicts the idea of racial societies this world has.

24x36 inches
BEREFT- This piece can be interpreted in quite a few ways but the principle concept still lies in the fact that everyone has to depart this life at a point. It renders the ideology of people going aside leaving behind others gazing and seeking to grab a hold.

"ETHNICITY"(18x24 inches)
"VIVID" (18x24 inches)
"BEREFT"(18x24 inches)

Utilizing Polyvagal Theory Practices as a Resource for Compassion Fatigue

Mindy Levine

Introduction

In this article, I discuss my experience as a Trauma Center Trauma Sensitive Yoga (TCTSY) Facilitator and a volunteer crisis counsellor with Crisis Text Line (CTL) and my recommendation of using the Polyvagal Theory principle of co-regulation as a resource for compassion (empathy) fatigue, especially for those of us working and perhaps considered on the periphery of trauma care. In my work, I often bear witness to deep suffering endured and ongoing, without the cushions of support perhaps embedded in other mental health professional fields. Compassion fatigue deeply affects trauma care providers, and oftentimes, self-care practices are suggested. I also propose we-care practices, as a relational resource. We need to feel cared for as we care for others.

What is trauma, and who are considered trauma care providers:

As mentioned in SAMHSA's Trauma and Justice Strategic Initiative, "trauma results from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or threatening and that has lasting adverse effects on the individual's functioning and physical, social, emotional, or spiritual well-being." (Delphin-Rittmon, 2022) The impact of trauma on a person's life oftentimes leads a person to seek out support and care. Having access to care in the United States is difficult to navigate and costly. Mental health providers are often out of network, making out-of-pocket costs a barrier to entry. (*The Doctor Is Out*, n.d.)

In the western medical model, mental health providers include psychiatrists, psychologists, counselors, clinicians, therapists, social workers, mental health nurse practitioners, primary care physicians, peer specialists, and pastoral counselors to name a few. (*Types of Mental Health Professionals*, 2020) These professionals hold varying credentials, depending on the state. Access to these providers is dependent on insurance and the ability to pay high out-of-pocket costs. Therefore, many people are searching elsewhere for alternative care on their healing journey.

Complementary and Alternative Medicine (CAM) in the western medical model:

Complementary care is practices that are used alongside more traditional pathways of medical support and alternative care practice in lieu of those traditional supports. "The National Center for Complementary and Alternative Medicine (NCCAM) has proposed a five-category classification system for CAM therapies:1) natural products (e.g., herbal dietary supplements);2) mind-body medicine (e.g., meditation, acupuncture, yoga);3) manipulative and body-based practices (e.g., massage, spinal manipulation);4) other alternative practices (e.g., movement therapies, energy therapies); and 5) whole medicine systems (e.g., traditional Chinese medicine, Ayurvedic medicine)."(Strauss & Lang, 2012)66

Scope of Practice:

Within the healthcare field, a person's scope of practice describes the procedures, actions, and processes allowed with keeping within the terms of their professional license. (Scope of Practice Determinations for Health Professions, n.d.) I'm a TCTSY Facilitator, which is a 300-hour yoga teacher training accepted by Yoga Alliance (YA) certification standards. YA is the largest non-profit organization representing the yoga community. (*Yoga Alliance*, 2020) TCTSY also has its own good standing requirements as well as ongoing research utilizing this modality as a clinical intervention for complex trauma and chronic treatment-resistant PTSD.[67] In addition, I'm trained as a volunteer crisis counselor with Crisis Text Line, an organization providing 24/7 free mental health support and crisis intervention through texting. Both organizations provide continuing education and community-building

[66] These boundaries between conventional and alternative care is filtered through western power structures and would be classified differently in different cultures and populations.

[67] In 2021, Trauma Sensitive Yoga was further validated as an effective adjunct treatment for complex trauma and PTSD in a study involving women veterans and military sexual trauma-related PTSD. In a comparison with CPT (cognitive processing therapy), the gold standard in therapy treatments, TCTSY yielded quicker symptom improvement, higher participant retention, and an equally sustained effect. https://www.liebertpub.com/doi/10.1089/acm.2020.0417

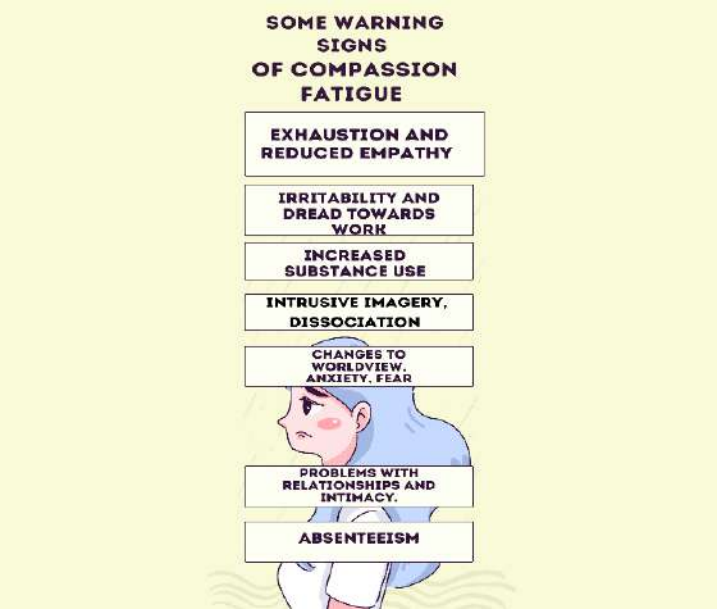
opportunities, supervision, and ways to give and receive feedback. Although I'm embedded in trauma care, I'm considered complementary or alternative care. My work is very often a solo enterprise and until I reach out for care, it would be hard for those in these organizations to notice when I'm suffering from compassion fatigue.

Compassion Fatigue (CF):

In 1992, Carla Joinson, a registered nurse, first coined the term Compassion Fatigue (CF) in response to the distress and isolation felt by some nurses in emergency care departments. (Lee et al., 2014) In 1995, Figley further described this phenomenon as a secondary traumatic stress disorder, a "cost of caring."(Boyle, 2011) It is helping that hurts. Research is often done with those mentioned above that are characterized as trauma care providers, those on the front lines in hospital and health settings, and even some will mention stay at home caregivers.

In a small study out of The University of Minnesota's Mind-Body Trauma Care Lab, TCTSY Facilitators participated in a study on compassion fatigue and coping.[68] In the presentation given to the TCTSY organization, there was an acknowledgment that TCTSY facilitators are under recognized as trauma care providers even though they provide trauma care and utilize knowledge like many trauma care providers. Utilizing as a reference point, the Adams, Figley study on social workers in New York City after the 9/11 terrorist attack (Adams et al., 2007) the results found that TCTSY Facilitators have similar to and much greater levels of compassion fatigue than the social workers in the study.

Figure 1:



Compassion Fatigue through the lens of Polyvagal Theory (PVT):

"Polyvagal Theory is a science-based theory that provides explanations of how our autonomic nervous state influences and is influenced by the dynamic challenges of life." (*PVT Background + Criticism*, n.d.)[69]

Through this lens perhaps we can reframe this phenomenon of the cost of caring. According to PVT, this "science of safety," when our system is overwhelmed, there is a predictable and hierarchical pathway of response that takes us out of our sense of the present moment of safe connection and regulation towards mobilization of flight or fight. If that doesn't resolve the moment and lead us back toward a sense of homeostasis, then we continue toward collapse and disconnection. This happens all in the service of survival.

[68] Smith, J., Nguyen-Feng, V. N., Wheeler, B., & Tola, A. (2021, October). *Trauma center trauma sensitive yoga study: Compassion fatigue and coping.* Center for Trauma and Embodiment at Justice Resource Institute, Needham, MA, United States.

[69] For a more in-depth discussion about the principles of PVT, please check out my article for Voices Against Torture edition 3 called, "Safe Connection Using Polyvagal Theory: Pathways of Self-Regulation & Co-regulation." https://bit.ly/3O0ZsGr

Our nervous system feeling the effects of compassion fatigue, will adapt to protect us, so some of the telltale signs of CF (as shown in figure 1) can be tenderly attributed to our bodies trying to adapt to the distress. On repeat, we become highly sensitive to these cues of danger.

The other two principles of PVT include neuroception, the safety or danger cues coming from our environment, internally, and between nervous systems (often below consciousness), and co-regulation, "the sending and receiving of safety signals."(*Infographic: The Organizing Principles of Polyvagal Theory*, n.d.) PVT is offering us a way to be in ally ship with our own nervous system, a system built for connection. CAM trauma care providers, oftentimes unrecognized in systems of care, are providing this connection for others without perhaps the deserved support, recognition, and connection.

Polyvagal Theory Practices for Compassion (Empathy) Fatigue: We-care

Steven Porges, the founder of PVT, in an article called, "Ancient Rituals, Contemplative Practices and Vagal Pathways," (Porges, 2017) writes about the difference between empathy and compassion. In this article, he discusses how although the words are often used interchangeably there is a difference on a neurophysiological level. Empathy is feeling someone else's pain which can mobilize us towards that sympathetic fight or flight state or dorsal collapse and despair state. Compassion is respecting and bearing witness to someone else's pain-that person owns their experience and perhaps they can feel deeply listened to without the agenda of opinion, fixing, and so forth. "Thus, compassion relies on a "neural" platform that enables an individual to maintain and express a physiological state of safety when confronted with the pain and suffering of others." (Porges, 2021) In this way, I propose that compassion fatigue is empathy fatigue, the distress felt when we have moved away from our own ventral vagal state and are, as the expression goes, "stepping into someone else's shoes."

If we are built for safe connection and co-regulation, the usual prescription of self-care practices may not provide the kind of lasting change our systems may need for the journey back towards a calmer, ventral vagal state. Trauma care providers may feel unrecognized and unsupported and self-care practices may be an unavailable resource when deep in the depths of empathy fatigue. I can spend hours online supporting TCTSY participants and on CTL communicating with texters who are in immediate crisis and danger. Continuing to stay alone and try and self-regulate doesn't always work. In fact, it can sometimes feel like an added burden or chore.

Even before the awareness that I need to self-regulate reaches cognition, I also need to be aware of my nervous system when first entering trauma care spaces. Understanding compassion as a planned resource can be useful. There is a type of pre-planning that can be done but can only be done when we are feeling that safe enough feeling. In that space, we can ask the question, as Deb Dana says, of how can I find my way back to this place when I'm feeling unmoored and pulled into sympathetic or dorsal? (*Accessing Self-Compassion During the Covid-19 Pandemic: Deb Dana, LCSW*, 2020) Self-care and self-regulating practices can be mapped out here but I would also like to add some we-care practices as well.

Patty Wipler, who created the Hand in Hand Parenting, talks about having an adult listening partner (connection as a form of we-care). Through the PVT lens, a listening partner can be an invaluable resource for compassionate care-the caring for the caregiver. Using her methodology, a listening partner shows respect by believing in the speaker's intelligence, staying focused on the speaker's thoughts and feelings, encouraging with support and without advice, and confidentiality. (Cynthia, 2014)

Connection to self and connection to others are two ways to find our way back to that safe enough feeling: self-care and we-care. There are two other avenues to mention, which are the environment around us (nature) and more contemplative practices, spirit. (Tami Simon, n.d.)

Conclusion:

People are seeking out the care they deserve, and those avenues are hard to navigate. Trauma care providers include unrecognized providers as well. As noted in the TCTSY study, facilitators are experiencing high amounts of compassion fatigue as well. One way to support and recognize providers could be in reimbursement with insurance companies, which can also be a way to lower those out-of-pocket costs. Other ways that we can support can be through we-care practices, which include co-regulation and connection. To feel alone in our caregiving is hard work and painful to sustain.

Listen with ears of tolerance.

See through the eye of compassion.

Speak with the language of love.

-Rumi

About Author
Mindy Levine is a yoga teacher, TCTSY Facilitator, and Crisis Counselor with Crisis Text Line.
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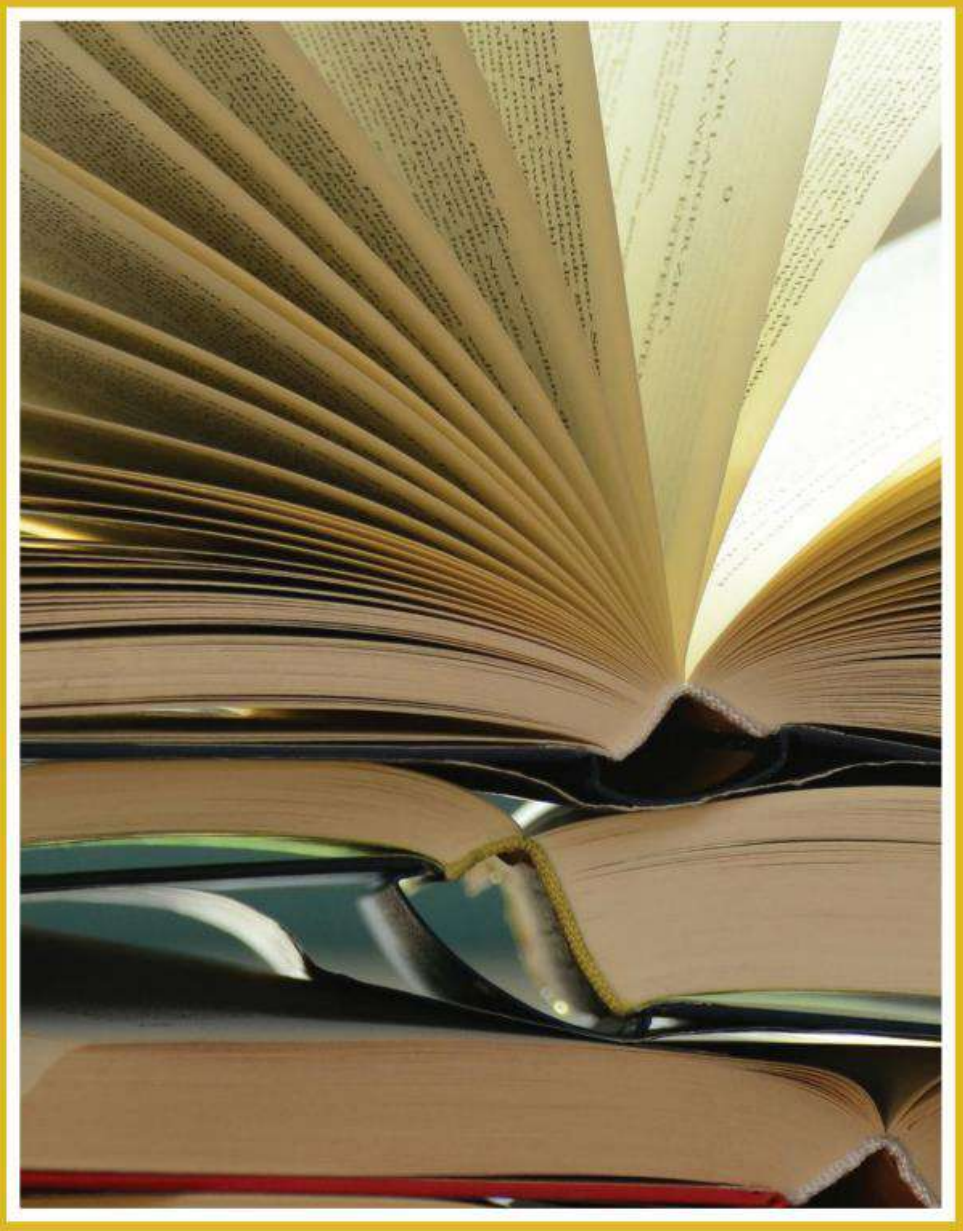
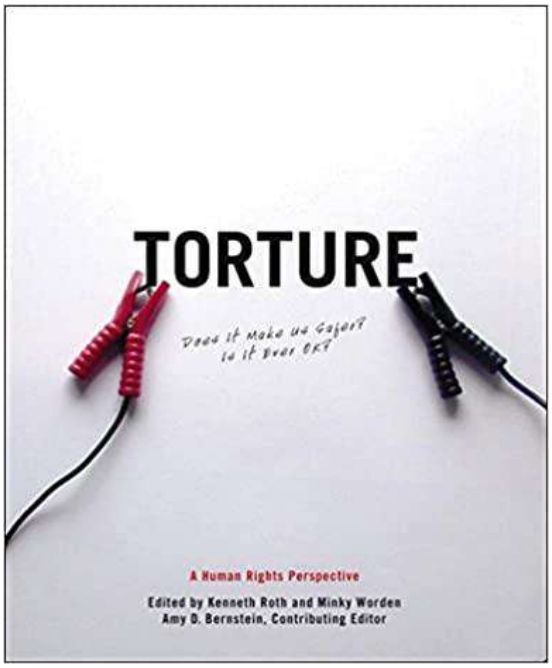


BOOK REVIEW

Torture: Does It Make Us Safer? Is It Ever OK? A Human Rights Perspective

Kenneth Roth, Minky Worden (Editors)



Of all the issues on the human rights agenda, Torture offered Americans the moral high ground until this year. With the abuses at Abu Ghraib that led to accusations of Torture within the domestic criminal justice system, the question of cruel and unusual treatment has taken on new urgency in the United States and elsewhere.

In Torture, twelve newly written essays by leading thinkers and experts range over history and continents, offering a nuanced, up-to-the-minute exploration of this wrenching but timely topic, including, among others, Reed Brody on the road to Abu Ghraib and "ghost detainees"; Eitan Felner on the Israeli experience; Tom Malinowski on violations of State Department "forbidden practices" at Abu Ghraib and in Afghanistan; Kenneth Roth on the U.S. government's shift from cover-up to justification; and Minky Worden on a global survey of torturing countries.

Intended for a general audience, some of the key questions addressed include how to define Torture, whether Torture is ever effective, and whether it is ever acceptable.

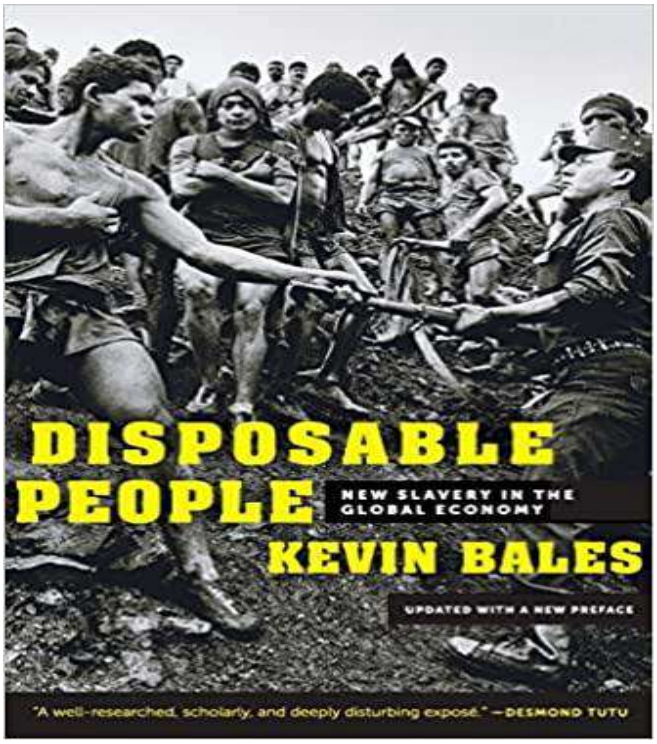
Disposable People: New Slavery in the Global Economy

Author: Kevin Bales

Publisher: University of California Press

Year of Publication: 2012

Pages: 335



Reviewer: Patrick Swanzy

Slavery is documented to have been abolished, but Bales's fascinating book timely awakens us from our slumber and brings to our attention that this is an illusion. The author highlights how slavery has metamorphosed and saliently taken a new form that requires critical observation and analysis to identify its existence in modern society. Bales deserves applause for this scholarly exercise and for his quest to see slavery in whatever form eradicated in modern times. Even though

Bales's book is not the first book to highlight slavery, what makes his work exceptional is that he focuses on new forms of slavery and how the new global order has helped facilitate this heinous crime. Instead of reiterating slavery as it were in the olden days, interestingly, he Captures the similarities between olden and modern slavery by showing the role violence plays in both endeavours.

The author argues throughout the book that slavery occupies the peak of human rights violation close to murder and prescribes political will and ability to protect the victim as the antidotes to solving this menace. With empirical data from Thailand, Ghana, Brazil, Pakistan, Mauritania, and India, the author accurately describes how the new form of slavery manifests in these contexts. Bales states that, in Thailand, prostitution is illegal, yet girls mostly from the rural regions, are lured into the vibrant sex industry and are tortured and enslaved in brothels. The author laments that religion assisted in

facilitating the sale of girls to the kingpins of these brothels. He states that even though these girls go through horror in plying their trade, faith compels them to accept that they have been destined to experience this menace. Bales makes a shocking revelation that state agencies are aware of the atrocities meted against the girls trapped in these brothels, but because they benefit in kind and or in cash, it has rendered them powerless, making this modern slavery a reality in the country.

Bales makes a shocking revelation about Mauritania in his book. The author states that Mauritania has rhetorically abolished slavery so many times, yet one can observe slavery in every facet of society in the country. He recounts how the status of Mauritania as a police state compelled him to go against the ethics of research in order for him to obtain empirical data to report on slavery in the country. He highlights how Mauritania's status as a police state assists her in covering up slavery. Bales sadly reports that the slavery practiced in Mauritania is unique, and an example exists nowhere in the world. The closers to what happens in Mauritania is the description of slavery in the Old Testament. This makes the situation in Mauritania highly resistant to change.

In Brazil, the author blames Europeans and, specifically, the Portuguese for introducing slavery to the country but was quick to argue that the new form of slavery emerges out of social chaos. The good news portrayed in the book is that the author tags the slavery in Brazil as temporary slavery because of the role the phenomenon plays in the degradation of the forest in the region. The author assumes that the destruction of the forest can occur once, and afterward, there is nothing left to be destroyed. What is sad about the Brazilian situation is that the people who live in the forest and rely on it are usually the ones forced to destroy it by the gatos, who are key players in the process of enslavement.

Modern slavery in Pakistan is also discussed in this book. This relates to children and the task they perform in a brick kiln. The author indicates that it may seem that the work environment the children find themselves may not necessarily pose a danger; however, most of the families making bricks are likely working against a debt owed to the owner of the kiln. He complains that the violent enforcement of debt bondage by the police in Pakistan is a key element of the new slavery perpetuated in the country, similar to Thailand and Brazilian police.

Bales tags India as the country with the possession of artifacts to help trace slavery in human history. According to the author, India can boost as the country with the highest number of slaves globally. The author argues that slavery is rampant in India, and this has been facilitated by the glaring poverty that stirs in the faces of most people in the country, but he shows astonishment at the progress India has made towards eradicating slavery in the country.

From the book's account, slavery is still visible in the countries reported in this book even though the International Community, Governments, Non-Governmental Agencies, and individuals are working hard to abolish it.

Bales's book is an excellent academic artifact for scholars and activists who are hungry for in-depth knowledge about modern slavery and want to see its demise in every part of the world. In the future, it will be interesting to see Bales's project on slavery report on the role colonization, trade deals between the North and South, austerity measures by the Bretton Woods institutions and China has played in plunging some countries, especially those in the South into perpetual debt bondage. This new form of slavery seems to manifest in these countries' debt stockpiling every day. The effect is the lack of development in these countries and the poor living conditions experienced by the citizens with no hope of any sign of improvement any time soon.

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TORTURE TODAY

How Torture and National Security Have Corrupted the Right to Fair Trial in the 9/11 Military Commissions

Kasey McCall-Smith

Now passing its tenth year of pre-trial, the 9/11 military commission involves five men on trial for war crimes and terrorism in relation to the attacks against the USA on 11 September 2001. This article examines specific issues regarding the relationship between the prohibition against torture, national security and the right to a fair trial that have arisen in the pre-trial phase of the case. The most obvious connection between the prohibition against torture and the right to a fair trial has traditionally played out in the context of the exclusion of evidence obtained through torture. However, the frenetic nature of engagement between the defense and the prosecution in the courtroom reinforces that the US government's efforts to hide the torture of the defendant victims diminishes the further range of protections that make up the right to fair trial, in particular this article examines various components of the right to an effective defense. In analysing these issues, the article contributes to the legal literature and understanding about the interrelated nature of torture and fair trial in the Guantánamo military commissions by demonstrating how efforts to conceal torture using the guise of national security prevents the defendants from fully engaging their rights to a fair trial in the 9/11 military commission.

Introduction

The military commissions taking place in Guantánamo are the culmination of numerous missteps taken by the USA in its post-11 September 2001 counterterrorism campaigns. In pursuit of national security objectives, the USA violated the prohibition against torture and cruel, inhuman or degrading treatment in contravention of international humanitarian law (IHL) and international human rights law (IHRL). The ongoing case of US v Khalid Shaikh Mohammed, et al. (9/11 case) highlights a key question about how, in pursuit of national security objectives, the US government's infliction of severe physical and mental suffering amounting to torture challenges the fundamental right to fair trial. It demonstrates how the breach of a fundamental norm of international human rights law—the prohibition against torture—leads to the violation of other human rights.

Now passing its tenth year of pre-trial, the 9/11 case involves five men on trial for war crimes and terrorism in relation to the attacks against the USA on 11 September 2001 (September 11).[1] Set against traditional doctrinal sources, this article examines specific issues regarding the relationship between the prohibition against torture and the right to fair trial that have arisen in the pre-trial phase of the case. The analysis relies heavily on the author's observations accumulated while observing 10 rounds of pre-trial proceedings and examination of the associated military court filings and transcripts. However, it is only in bearing witness to the live proceedings that the US government's persistent recourse to national security is recognized as an excuse for its failure to address the well-documented instances of torture against the defendants. The spectre of torture permeates every aspect of this military commission and, in turn, has corrupted the delivery of fair trial rights. The most obvious connection between the prohibition against torture and the right to fair trial has traditionally played out in the context of the exclusion of evidence obtained through torture. However, the scenes that unfold during each courtroom session reinforce that the US government's efforts to hide the torture of the defendant victims further diminish the range of protections that make up the right to fair trial. In analysing these issues, the article contributes to the legal literature and understanding about the interrelated nature of torture and fair trial in the Guantánamo military commissions by demonstrating how efforts to conceal torture using the guise of national security prevents the defendants from fully engaging their rights to fair trial in the 9/11 case. It also provides a window into the complexities associated with prosecuting alleged terrorists under the US military commission system in Guantánamo under the Military Commissions Act of 2009 (MCA).[2]

The US government's failure to directly address the issue of torture of the 9/11 case defendants undermines the capacity of the military commission to deliver justice in concert with accepted interpretations of the right to a fair trial. As will be revealed below, the enduring physical and psychological effects of torture impacts on these defendants in variable, insidious ways. To date, the government prosecutors and the military court have refused to consider how the systematic torture, and ongoing grievances stemming from torture, impact on the

defendants' fair trial rights. To develop this argument, Section 2 introduces the concise history that led to the 9/11 military commission in Guantánamo. Section 3 examines the general application of the right to fair trial in the military commissions and provides a brief overview of how the prohibition against torture was breached in relation to the five defendants whether applying customary international law, the Geneva Conventions,3 the International Covenant on Civil and Political Rights4 (ICCPR) or the Convention against Torture5 (UNCAT). Section 3 further explores the impact of the US torture programme on the Guantánamo military commissions in the context of select components of the right to a fair trial recognised in ICCPR Article 14. The prohibition of the use of evidence obtained through torture is addressed initially followed by three auxillary issues relating to ensuring the right to fair trial, all of which are shaped by the government's unremitting national security mantra. Specifically, the article directly engages with issues surrounding interference with the right to prepare an effective defense, including: the ability of the defense to gather and challenge evidence as part of the right to equality of arms; the ability of the defendants to participate in their own defense;6 and, finally, the repeated government intrusion into the lawyer–client relationship, ranging across the invasion of the lawyer–client privilege, harassing present and past defense team members and planting intelligence operatives on defense teams. The article concludes that the illegality of US actions in the torture of defendants, the consistent use of national security to impede the effectiveness of the defense teams and the lack of meaningful redress for such actions seriously impede the government's capacity to prosecute the defendants in line with fair trial standards.

Guantánamo, Torture and the Military Commissions

In the wake of the September 11 terror attacks on US soil the Bush Administration worked quickly to develop a two-tiered campaign using convoluted legal argumentation to dismantle the long-understood parameters of the prohibition against torture.7 First, the US disavowed the application of the prohibition by invoking exceptional circumstances cloaked in post-September 11 victimhood. Second, the US attempted to renegotiate its obligations under international treaties by redefining key legal terms and debates in both US law and international law relating to torture and heretofore unrecognised categorised adversaries ('alien unprivileged enemy belligerents').8 The rationalisation developed along the lines of what Cohen describes as 'implicatory denial'—that the use of torture was justified because those tortured were terrorists and poised to cause further imminent harm to the USA.9 The actions taken were consistently framed as necessary to national security. Alternatively, the USA also argued that 'enhanced interrogation techniques' (EITs) did not rise to the level of actions amounting to torture. The campaign to defend US national security was realised in part through extraordinary rendition, detention and interrogation (RDI) operations across the globe.10

Guantánamo Bay Naval Station, Cuba (Guantánamo), evolved from a little thought of naval station to an infamous counterterrorism detention facility in the midst of crisis law and policy responses following the September 11.11 Most of the men detained in Guantánamo suffered ill treatment and many were tortured on CIA black sites before or after their arrival in Guantánamo.12 This treatment had a profound effect on the way in which the USA began to decouple national security from the right to fair trial. As the months and years that followed the first arrivals in Guantánamo revealed, the attempted suspension of habeas rights was the beginning of a consolidated effort by the government to deny basic human rights to suspected terrorists. Through a series of cases13 the denial of habeas was determined a violation of the US Constitution as were subsequent legislative efforts to engage the Suspension Clause and suspend the writ of habeas corpus.14 What followed was an expanding legal and political narrative of the post-September 11 US engagement with torture. This included litigation against private contractors working on behalf of the US government15 and successful claims before the European Court of Human Rights against European countries facilitating the RDI programme.16 A number of complaints against the USA also were raised before UN human rights bodies.17 In 2014, the US Senate finalised a 6000 plus page summary report of the Senate Intelligence Committee Study on the CIA Detention and Interrogation Program18 (SSCI Report) documenting the CIA's systematic use of 'enhanced interrogation' techniques widely recognised as torture—the 'original sin' in its counter-terrorism campaign.19 Subsequently declassified memorandums clearly demonstrate that the US government anticipated that it would be using interrogation techniques the world would view as torture and, as a result, expended great efforts to develop a 'a novel application of the necessity defense to avoid prosecution of U.S. officials who tortured to obtain information that saved many lives'.20 Despite the documentation of government efforts to prepare for the backlash against government-sanctioned torture in the SSCI Report, the US government, particularly the US Congress, has maintained an exceptionalist approach to this period of malfeasance and denied redress to victims of torture and ill-treatment carried out through the RDI programme.21

A. The Torture of 9/11 Military Commission Defendants

Five Guantánamo detainees are being tried in the 9/11 military commission for variable charges in relation to the September 11 attacks.22 The case is governed by the MCA, which authorises the president to establish military commissions to try 'alien unprivileged enemy belligerents' for violations of the laws of war and other terrorism-related offences.23 Despite the reliance on the military offensive pursued outside US territory to capture these 'unprivileged belligerents', from the outset the USA denied the applicability of the Geneva Conventions to anyone associated with al Qaeda.24 The MCA attempts to amalgamate different aspects of the laws of war, military law and national criminal law while excluding any consideration of the many years of arbitrary detention, torture and ill-treatment of the individuals detained even before the MCA was enacted. The persistent refusal to consider redress for the torture and ill-treatment inflicted upon the defendants expressly violates the US's international legal obligations to ensure redress under the Geneva Conventions, ICCPR Article 2(3) and UNCAT Article 14.

Despite US assurances that it would 'treat [detainees] humanely … and in keeping with the principles of the Geneva Convention', detainees deemed of 'high value' experienced far different circumstances.25 Each of the five defendants was held incommunicado at various classified black sites for over two years prior to their transfer into the custody of the US Department of Defense in Guantánamo. During those years, the CIA—an agency of the US government—subjected each of the five men to a sustained programme of torture in direct violation of both USA and international law. Though the CIA and members of the US Department of Justice attempted to reframe their actions as something less than torture, the systematic treatment revealed by the SSCI Report supports a finding that regardless of the government's nuanced approach to terminology, the abuse against these men was torture.26 In the context of the 9/11 case the key question is whether acts amounting to severe pain or suffering, whether physical or mental, were intentionally inflicted for the purposes of obtaining information or a confession with the consent or acquiescence of a public official and how this impacts upon an ongoing trial. Although the ICCPR does not demand the element of specific intent, this dimension of UNCAT Article 2 has been an ongoing debate in the military commissions as the US reservations to the convention outline that 'to constitute torture, an act be specifically intended to inflict severe physical or mental pain or suffering'.27

From the SSCI Report, it is clear that the lead defendant in the 9/11 case, Khalid Shaikh Mohammed, was assaulted brutally by CIA operatives within minutes of his transfer into CIA custody in Afghanistan at the black site known as 'Cobalt' in March 2003.28 He was subjected to combinations of EITs equating to torture, such as stress positions, sleep deprivation, water dousing29 and rectal rehydration (while a recognised medical procedure, it was a much feared power exercise over detainees),30 producing physical stress and harm in contravention of the torture prohibition as interpreted in customary law or under the UNCAT, the ICCPR and the Geneva Conventions. Furthermore, capitalising on Mohammed's knowledge that two of his young sons had been taken into custody at the same time, an interrogator threatened that he would 'cut his son's throat' if he did not provide requested information in a timely manner.31 Geneva Convention III prohibits threats against a detainee for failure to provide information as does the US Torture Statute.32 The US reservations to the UNCAT further clarify that 'in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering and that mental pain or suffering refers to prolonged mental harm caused by or resulting from … the threat that another person will imminently be subjected to death, severe physical pain or suffering'.33 Examined individually, each of these EITs was designed to inflict severe physical or mental suffering in order to induce compliance and malleability to questioning. As noted in the SSCI Report, they were applied cumulatively in order to establish 'total control' over the victim.34 Mohammed was then transferred to black site 'Blue' in Poland35 and the techniques applied to him intensified as he was subjected to waterboarding, described as 'a series of near drownings', and periods of sleep deprivation lasting up to 180 hours.36 He was ultimately water boarded 183 times over 14 days,37 despite an early observation that it '[was] not working in gaining [Mohammed's] compliance'.38 He was transferred to Guantánamo on 4 September 2006 for the purposes of prosecution—over three years after the intense waterboarding sessions.39 The techniques applied by the CIA to Mohammed with the consent of the Bush Administration were unequivocally inflicted to cause severe physical pain and suffering or mental suffering for the purposes of obtaining information, as detailed over many pages of the SSCI Report.40 He has never been outside of US control since his capture in 2003.

The other four defendants were treated similarly. Ramzi Bin al Shibh was subjected to EITs for approximately 34 days and kept in social isolation for almost 2.5 years following his capture on 11 September 2002.41 He was moved around various classified detention facilities from his time of capture until his transfer to Guantánamo on 4 September 2006. As will be discussed below, the severe mental and physical pain he suffered has had enduring effects that impact his ability to engage with the military

commission process. Pakistani authorities arrested Khallad bin 'Attash and Ammar al Baluchi together in April 2003 and upon transfer to the CIA a few days later they were immediately subjected to EITs over a period of months.42 They were held on various black sites until their transfer to Guantánamo on 4 September 2006, again for the purpose of prosecution for terrorist activities.43 The CIA waterboarded Mustafa al-Hawsawi and further subjected him to rectal abuse to such a severe extent that he suffered irreparable physical damage.44 The Human Rights Committee (HRC) and the Committee against Torture (CAT) both recognise rape and other forms of sexual violence as a form of torture.45 The SSCI Report details of the abuse inflicted upon al-Hawsawi easily fit within the definition of rape whether under the current US definition or international definitions.46 Despite having been noted as being 'in good health' upon his arrival in Guantánamo, the physical scars of torture have impacted him every day since his transfer to the top-secret detention facility in 2006.47

Much of the evidence of what happened to the defendants on the black sites remains classified or has been destroyed by the government, despite defense efforts to preserve this crucial information. While the unavailable evidence is necessary to construct an accurate account of who perpetrated which illegal acts against their clients, the SSCI Report delivers enough of a picture of the treatment of the 9/11 defendants that the conclusion that torture as well as other cruel, inhuman and degrading treatment was committed is not difficult to reach.48 The testimony of James Mitchell, one of the 'architects' who both designed the RDI programme and administered EITs, confirmed many instances of torture documented in the SSCI Report.49 While the US legal definition of torture is not as expansive as the UNCAT definition, the USA has recognised its obligations under the UNCAT, stating that 'officials of all government agencies are prohibited from engaging in torture, at all times, and in all places, not only in territory under U.S. jurisdiction'.50 As discussed below, the US government continues to conceal evidence of its wrongdoing despite widespread acknowledgement of the treatment that occurred on black sites. None of the perpetrators of torture against these defendants have been prosecuted nor have the defendants been provided with rehabilitation pursuant to UNCAT Article 14 despite international calls for justice.51 Due to the documented abuse of the men detained in the RDI programme, this analysis acknowledges that not only instances of torture but also the widespread, prolonged use of lesser prohibited treatment recognised as falling outside the strictest definition of torture also contributes to the issues raised below in the context of the impact on fair trial. The next section turns to an examination of how the failure to redress violations of the torture prohibition has played out in the 9/11 military commission pre-trial proceedings.

The Right to Fair Trial in the 9/11 Military Commission 52

This section examines how the enduring effects of torture and ill-treatment of the alleged September 11 plotters have corrupted fundamental aspects of the right to fair trial in the 9/11 military commission. Despite the prohibition against torture's status as a jus cogens norm of customary international law, it is clear that torture continues to take place across the world. Impunity for torture has an undeniable impact on other human rights, the rule of law and the effective carriage of justice. Much like a house of cards, if a breach to a fundamental norm occurs, other human rights protections will often fall. This reflects the interrelatedness of human rights and reinforces the difficulty in limiting the collateral impact of a breach of the prohibition against torture.

Prosecution is an essential feature of the administration of justice. The administration of justice is the sine qua non for the rule of law. Therefore, it is necessary to consider what minimum standards are required to ensure prosecutions comply with the rule of law. The military commission is arguably not the correct forum for prosecution of the 9/11 case and exacerbates the risk to fair trial rights.53 However, despite the problems this extraordinary court raises, this issue is outside the scope of this article, which instead focuses on incremental interferences with the right to fair trial. The right to a fair trial and the range of guarantees that fall under this umbrella right are viewed as fundamental to the rule of law.54 It would not be possible to scrutinise every element of fair trial in the context of the 9/11 case in a single academic article. Therefore, the present analysis addresses a handful of the most visible fair trial issues raised as a direct result of the illegal torture of the defendants by US agents. This visibility is obscured in the thousands of black and white military commission filings. It is only in observing the live military commission proceedings that the string of incremental fair trial violations can be reconciled with the (often) mundane written word. The next subsection sets out the legal parameters of the right to fair trial. This is followed by an examination of the exclusion of evidence in the aftermath of torture. Next, three issues that interfere with the ability of the defendants to mount an effective defense will be explored, including: the lack of equality in arms between the prosecution and defense; the defendants' abilities to physically or mentally participate in their trials; and invasions of lawyer–client privilege.

A. Establishing the Right to Fair Trial in the Military Commission

In the 9/11 military commission, the right to a fair trial suffers in direct response to prosecuting defendants subjected to systematic torture in the CIA RDI programme. The effort of the US government to conceal the full story of the torture of the defendants while in CIA custody has generated the bulk of the 10 years of pre-trial litigation. The following analysis illustrates the connection between the breach of the torture prohibition and subsequent interferences with the right to fair trial using the pre-trial proceedings in the 9/11 case. Reflecting the reinterpretation of the torture prohibition by those that facilitated the legal basis for its use,[55] the following argues that the manipulation of the various components of the right to fair trial by the government in the military commissions is equally disingenuous. The implementation of fair trial standards varies across different national criminal, military and international criminal legal systems, with a large amount of the international literature focusing on variable international criminal trials, the Rome Statute of the International Criminal Court[56] and its practice. This article focuses on the Geneva Conventions and the ICCPR for the simple fact that the USA is not party to the Rome Statute. However, common standards or points of reference across the variable international agreements will be noted for the purpose of establishing a baseline international conception of fair trial guarantees.

Despite the military commission being an extraordinary court, the right to fair trial should still apply.[57] The MCA is a relatively untested legal framework that pieces together half-articulated military law, national law and international law, ultimately delivering incomplete responses to a range of procedural and substantive matters raised in the proceedings.[58] The MCA has been described as having 'more punitive legislative history' than any other law in history.[59] It exemplifies what happens when a State partially acknowledges it has breached human rights, in this instance the prohibition against torture as documented in the SSCI Report, but facilitates continued impunity. At the same time, the State must try to construct a response that will fulfil notions of justice for victims of the crimes charged in line with the law as understood prior to the breach. Unfortunately, the effort made with the MCA only thinly veils the illegalities that lay beneath. The difficultly in navigating such an incoherent maze of laws is demonstrated in the over 10,000 filings that exist in year 10 of the 9/11 case pre-trial hearings.[60]

The loss of the exigency that normally accompanies the extraordinary use of military commissions demands that another layer of legal norms be applied—that of IHRL. The right to fair trial is comprised of a mix of substantive and procedural guarantees, as outlined in ICCPR Article 14. The guarantees are designed to ensure that every individual charged with a criminal offense is able to operate equally within the law. The HRC has further refined the minimum fair trial standards through its jurisprudence and there is a range of literature on the broad concept.[61] Much of the literature that exists in the context of the Guantánamo military commissions focuses on the issue of habeas corpus,[62] though fair trial in the context of terrorism more broadly has also been given due attention.[63] In contrast, this article teases out the content of some aspects of the right to fair trial to demonstrate that even if habeas protections are preserved, there remains a host of other issues that can render a judicial process impotent when the defendants are also torture victims. Unlike much of the literature, this analysis focuses on the pre-trial proceedings in an ongoing case that is the largest criminal justice trial in US history.

Over a decade ago Schmid set out a method for determining the fundamental elements of the right to fair trial regardless of the defendant's status under international law in direct response to the growing number of individuals detained and charged with terrorism.[64] Relying on the principle of consistency, her method suggested looking across the different regimes, including IHL, IHRL and customary international law, to see what common minimum standards for due process exist. From a positivist perspective, the concept of fair trial, even in the context of armed conflict, is one that has been reiterated in a vast range of international agreements.[65] As prior to charges being rendered against the 9/11 defendants the USA argued their detention as of right under the laws of war, the Geneva Conventions offer a good starting point for this analysis. Geneva Conventions Article 3(1)(d) provides the basis for the right to fair trial in IHL: 'the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples' (emphasis added). Additional Protocol I to the Geneva Conventions (Protocol I) Article 75 defines the 'fundamental guarantees' necessary to protecting human rights during armed conflict which should be relevant to the 9/11 defendants in light of the US assertion that they 'are all law-of-war detainees (and have been so since their captures in 2002 and 2003)'.[66] Though the USA is not a party to Protocol I, this elaboration is instructive for determining which elements of the right to fair trial are 'indispensable' in the context of IHL. Arguably, the following Protocol I elements should be included: 'all necessary rights and means of defence' (Article

75(4)(a)); 'the right to attendance and examination of witnesses on his behalf' (Article 75(4)(g)); 'the [defendant's] right to be tried in his presence' (Article 75(4)(e)), each of which are discussed below.[67] Article 85(4)(e) of Protocol I further adds that depriving a person of fair trial is a 'grave breach' of the Conventions, not just the Protocol.[68] Notably, in 2011 the US confirmed that 'Article 75 is a provision of [Protocol I] that is consistent with our current policies and practice and is one that the United States has historically supported'.[69] Article 75 has also been argued to represent customary international law.[70] In light of the ratification of the Protocol I by 174 states, the US recognition of the applicability of Article 75 protections and the support for its rules representing customary international law, the combined guarantees of Common Article 3(1)(d) and Article 75 should be understood as forming the basis of the 'indispensable' elements of the right to fair trial in IHL.

After determining the IHL fair trial guarantees the analysis then must consider the core of ICCPR Article 14 in light of its quasi-derogable nature. The USA never formally derogated from the ICCPR, which reinforces the use of ICCPR Article 14 as a reference point. Formal derogation aside, it is worth considering the relationship between the States's right to derogate from the ICCPR and the right to fair trial in order to clarify a response to any departure from fair trial rights. The derogation provision of ICCPR Article 4 does not list fair trial as a non-derogable right. However, the right to derogate under Article 4 was developed with the idea that emergencies triggering a State's right to derogate could be predicated on some form of armed conflict or terrorism.[71] Therefore, 'any derogation must not circumvent the protection of non-derogable rights', such as the prohibition against torture.[72] When a government prosecutes an individual that it has subjected to torture in violation of its international obligations, it follows that the defendant has an extraordinary right to remedy in an attempt to rectify that illegality in order to ensure that fair trial guarantees are protected. In 2001, the HRC outlined that Article 14 is never derogable in death penalty trials, such as the 9/11 case.[73] More recently, the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism has explained that complete derogation from the right to fair trial could never pass the proportionality test.[74] The culmination of the IHRL interpretations of the right to fair trial leans heavily toward full adherence to ICCPR Article 14 in the 9/11 case where the defendants were tortured, have been detained by the USA for close to two decades and are facing the death penalty for their alleged crimes.

Due to the long duration between the initial detention (2002–2003) and charge of the defendants in the ongoing 9/11 case (2011) as well as recognition that human rights standards can be applied in concert with IHL standards,[75] particularly once a conflict has ended,[76] the right to fair trial will be examined predominantly through the lens of ICCPR Article 14. As de Londras notes, unlike national laws, IHRL appears to have resisted the panic response to September 11, thus fair trials standards have been more consistent in international forums.[77] Trials for terrorism in exceptional courts have been identified as a 'grave concern' by the Office of the High Commissioner for Human Rights, which gives further impetus to maintain a clear baseline for the consideration of fair trial rights.[78] Though the ICCPR is not directly applicable in US courts, each of the components of the right to fair trial is recognised as part of US law either directly or as derived through customary international law. This article demonstrates how claims that the military commission proceedings comply with basic elements of the right to a fair trial, particularly as it stood prior to September 11, ring extremely hollow. The remainder of this article details how variable components of the right to fair trial are immeasurably corrupted as the US Government fumbles with reconciling the right to fair trial with its well-documented breaches of the prohibition against torture.

The following sections explore the components of the right to a fair trial based upon a review of the case filings, trial transcripts and personal observations of the 9/11 case pre-trial proceedings. First, the most obvious link between torture and fair trial—the prohibition of evidence extracted through torture—will be considered in relation to UNCAT Article 15, which has also been recognised as part of the corpus of the ICCPR prohibition against torture. Next, the analysis turns to ICCPR Article 14 to develop a number of the 'indispensable' aspects of the overlapping fair trial protections offered by the Geneva Conventions. Under the multifaceted right to develop an effective defense, three issues will be examined: equality of arms between the prosecution and the defense; the ability of a defendant to participate in their own defense; and lawyer–client confidentiality. Ultimately, this work contributes to understanding the relationship between torture and the right to fair trial demonstrating that victims of systematic torture can never fully realise their right to fair trial when national security is consistently used as a lever to erode the rule of law.

B. The Prohibition of Evidence Obtained through Torture

The most obvious connection between torture and fair trial relates to the exclusion of evidence obtained through

torture against the torture victim, as reflected in UNCAT Article 15 and the combined reading of ICCPR Articles 14(3) and 7.[79] Recognition of this rule is so entrenched that its discussion here should seem a foregone conclusion, yet, the over 40 9/11 pre-trial hearing rounds have endured a tumultuous relationship with this essential element of the prohibition against torture.[80] This relationship is addressed first in light of the scene-setting value for the broader purposes of evaluating fair trial features in the Guantánamo military commissions. Section 948r of the MCA codifies UNCAT Article 15, the exclusion of evidence obtained through torture. In Rochin v California, the US Supreme Court opined that 'coerced confessions offend the community's sense of fair play and decency',[81] which supports the international position on the exclusion of confessions coerced through torture or other prohibited treatment. At first glance, the MCA appears to reinforce the commonly accepted prohibition against the admission of such evidence. However, there is a crucial exception codified in the MCA, which permits the military commission judge to admit statements gathered through or incident to torture of the accused if 'the totality of the circumstances renders the statement reliable and possessing sufficient probative value' and the statement was made incident to lawful conduct and the 'interests of justice would be best served by admission of the statement into evidence'.[82] This potential exception has been the focus of the HRC in its periodic review of the US as the Committee has reiterated that no statements or evidence 'obtained in violation of [the Article 7 prohibition against torture] may be invoked as evidence in any proceedings covered by article 14, including during a state of emergency'.[83] This exceptional US position is the focus of another military commission process that has yet to be settled at the time of writing.[84]

The ubiquitous interpretation of the prohibition firmly reinforces that torture can never be pursuant to 'lawful conduct' and the SSCI Report reiterates that CIA conduct during the RDI programme violated US and international law.[85] The MCA exception suggests that its drafters gave extensive consideration to the use of information extracted during the RDI programme using EITs, despite consistent findings that the extracted information was of little or no value in determining the existence of future terrorist attacks.[86] While the information extracted may have been of little intelligence value, for the purposes of prosecuting the conspiracy behind the September 11 attacks, confessions are extremely important since the actual perpetrators of the hijackings died alongside the victims. The MCA exception suggests coordination between the US legislative and executive branches of government to maximise statements not necessarily derived through torture on the black sites but that could be described as 'coerced' due to the defendants' inability to separate their continuous detention by the USA based on the different detaining arms of the US Government, the CIA or the Department of Defense. Pushback against the MCA exception is also necessary in light of the prolonged and uninterrupted nature of the US control of the defendants between their torture and statements they made following their transfer to Guantánamo. The allegedly incriminating statements made following their transfer are a key reason that torture is a constant theme of the proceedings.

In line with UNCAT Article 15 and MCA section 948r, the government has indicated in open court and in case filings that due to the coerced nature of statements made on black sites it would not introduce statements made by the defendants prior to their transfer into Department of Defense custody in Guantánamo.[87] Questions latterly arose about statements taken early in 2007 by the US Federal Bureau of Investigation (FBI) after the defendants were transferred to Guantánamo in order to obtain statements that were admissible for the purposes of prosecution. The government argued for several years that the statements were 'clean', in other words, no coercion was used to pressure the defendants to give false evidence and they were thereafter referred to as the 'Clean Team Statements'.[88] In light of the multiple years under complete control by the USA it is unlikely that any of the defendants would consider the simple fact that a different US agency was questioning him to be a definitive indicator that he would not be tortured again. Thus the suggestion that the statements were not a 'fruit of the poisonous tree' is a point of controversy despite the US government's complete eschewing of this line of reasoning. Furthermore, defense investigation, declassification of further documents and testimony by a small number of key witnesses have revealed glimpses of FBI collusion with the CIA during the period that EITs were applied. These revelations called into question the 'cleanliness' of the Clean Team Statements, which were subsequently referred to as 'Letterhead Memorandum Statements' so as to avoid preconceived determinations of admissibility. As defense teams continued to pursue the extent to which this relationship may have tainted the statements, increasing restrictions on their abilities to effectively investigate were placed on them at the bidding of the government in the name of national security.[89] In line with the prohibition on the use of evidence obtained through torture, in summer 2018 the Clean Team Statements were excluded by the original judge in the case as derivative evidence.[90] Suppression of the statements was a direct remedy to the narrowing investigatory powers requested by the government on the basis of national security rather than a remedy

acknowledging the years of torture and ill-treatment of the defendants.91

However, in the bizarre procedure and chronology of the 9/11 case, the ruling of the first judge was challenged through a motion for reconsideration when a second judge arrived in the autumn of 2018. Rule for Military Commissions 905(f) permits the military commission to reconsider any ruling prior to the authentication of the record of trial; this includes decisions by judges who leave the case.92 Almost immediately after the original judge's departure, the government petitioned for, and was granted, reconsideration of the suppression order with the second judge noting that suppression of the Clean Team Statements was premature.93 But, in the roller coaster of the military commissions, this was not the windfall anticipated by the government. A third judge was appointed after the nine-month temporary tour of the second military judge and in a bid to move the proceedings closer to an actual trial date, the new judge fast-tracked witness testimony on the relationship between the FBI and the CIA RDI programme, arguably not the outcome the government had intended in light of the many motions to curtail defense access to the very witnesses being called.

Testimony given in the autumn of 2019 and going back at least as far as December 2017 revealed that the FBI had been involved in the shaping of CIA interrogations performed on black sites and, inevitably, in conjunction with torture.94 Thus, defense counsel continues to argue that for the purposes of admissibility, the statements are intimately linked to the systematic torture endured by the defendants at the hands of the CIA.95 The only consistency on this particular trial issue is that the government refuses to consider that the defendants could never give testimony that is not coerced despite the compounding factors of torture, ill-treatment and incommunicado detention during the years they spent in US custody prior to the 2007 statements.

At the time of writing, this issue remains unresolved but demonstrates how the procedural rules and tenuous, reversible nature of military commission rulings under the MCA impede progress in the trial.96 As the 9/11 defendants were detained ostensibly in connection with the conduct of an armed conflict, the finite details of normal procedure in a US criminal case are not an equivalent comparison. However, for the purposes of adhering to the prohibition against torture recognised under any of the international legal regimes the details are important. The basic threshold notions of justice suggest that the multi-year duration of torture and black site detention of the defendants would imply that any statements by the defendants were coerced. Even if adopting the government's attenuation approach to the defendant's so-called Clean Team/Letterhead Memorandum Statements, which ignores the proposition that these defendants could never give voluntary statements, revelations about FBI involvement with the CIA interrogations result in insufficient attenuation between the EITs applied and any statements given outside the presence of their lawyers. The government's assertion of attenuation is further debased by revelations that the FBI was undoubtedly feeding into the interrogations of individuals on black sites even after its alleged parting of ways with the CIA in July 2002.97 It is also worth noting that the admission or suppression of the Clean Team/Letterhead Memorandum Statements links directly to a number of further exemplars that demonstrate how the failure to address the torture of the 9/11 defendants seriously impedes fundamental aspects of the right to fair trial.

C. Preparing an Effective Defense in the Aftermath of Torture

Adequate time and means for preparing a defense is a principle guarantee recognised in ICCPR Article 14(3)(b), Geneva Conventions Common Article 3(1)(d)98 and Protocol I Article 75(4)(a), which is equally part and parcel of US Constitutional protections.99 The HRC continues to reiterate the importance of adequate trial preparation in ensuring the guarantee of a fair trial.100 The five men charged with war crimes and terrorism under the MCA undoubtedly have received far less protection than individuals charged and tried in the US domestic legal system. This article does not argue that distinctions cannot be made across different legal regimes in terms of the application of fair trial rights. However, in line with the consistency principle espoused by Schmid, there are a number of fundamental legal protections that must never be breached regardless of the different applicable legal regime.101 Here I examine three aspects in the preparation of an accused's defense in the aftermath of torture that are intended to ensure the fundamental nature of the right to fair trial: equality of arms; the ability of the defendant to participate in the proceedings; and sanctity of the lawyer–client relationship. In terms of the ability of defense lawyers to actually be effective in their roles there are no doubt a number of further elements to consider but these are not examined here due to space limitations. The sections below highlight how these fair trial issues arise as a direct result of the CIA torture programme and the government's constant recourse to national security as a means of obfuscating fair trial guarantees. Torture happened but that is not the end of the story for the 9/11 defendants. In unpacking the elements of what protections constitute a fair trial, the intent is to query to what extent are breaches of individual components of the right recoverable in the context of a

prosecution. In other words, at what point do the weights of incremental infractions of variable significance accumulate to topple the scales of justice?

(i) There can be no equality of arms for torture victims

Essential to any democratic conception of the pursuit of justice in a trial proceeding is a level playing field or, at the very least, equality of arms between the opposing sides as well as the protection of the defendant's individual rights.[102] The HRC has detailed that equality of arms under ICCPR Article 14 demands 'that each side be given the opportunity to contest all arguments and evidence'.[103] The principle is also reflected in Protocol I Article 75(4)(a and g). In a criminal trial this requires an assessment of the defendant's physical and psychological wellbeing, particularly when they are known victims of systematic torture. For the 9/11 defendants, this determination demands access to their medical and detention history for the many years in which they have been held in US custody. Not only does this type of information help paint an accurate picture of treatment the defendants experienced in US custody, it also speaks to the complicity and accountability of multiple US sanctioned actors and agencies in post-September 11 counterterrorism efforts. Access to evidence relating to treatment of the defendants on black sites as well as to the defendants' continually developing medical records has been, for the many years of pre-trial, a one-sided access contest that was led by the government. This has made an appearance of 'equality of arms' difficult to achieve.

Despite all defense team members in the 9/11 case holding the requisite security clearance to access the classified documents necessary to defending their clients as well as to discuss the experiences of their clients while in CIA custody the government continues to withhold countless files and bits of information from defense teams on the basis that access would be detrimental to national security.[104] When the prosecution withholds information and testimony about activity that may have impacted the defendant's health, well-being or detention history, the defense is deprived of equality of arms with the prosecution. Trechsel notes that there is a comparative element in the determination of whether a defendant has been disadvantaged.[105] Assessing the physical and mental fitness of a defendant is crucial for developing the basis of the lawyer–client relationship, discussed below, but also for determining the defendant's ability to contribute to the development of their defense. On paper, the MCA reinforces '[t]he opportunity to obtain witnesses and evidence … comparable to the opportunity available to a criminal defendant in a court of the United States under article III of the Constitution'.[106] While the prosecution and defense examinations do not require 'mathematical equality', there must be some basic level of proportionality between the opportunities afforded both sides.[107] Nonetheless, in the Guantánamo military commissions the government wholly controls the defendants' access to materials that could aid them in preparing their defense therefore depriving them of equality of arms. The alleged complexities stemming from national security concerns are constantly working to derail justice due to the imbalance of power and access to information between the government and defense teams.

Lawyers have a duty to investigate the facts and evidence presented against their clients. However, a range of issues hamper the 9/11 defense lawyers' abilities to fulfil this obligation in a meaningful way. At the outset of the 9/11 case, the government sought and was granted a protective order to ensure that classified information was protected throughout the case for the purposes of ensuring national security.[108] The same protective order was subsequently amended four times and supplemented by increasingly restrictive guidance. The successive restrictions resulted in severe limitations on the opportunity for defense counsel to access witnesses or evidence relating to the RDI programme.[109] Much of this evidence relates to the physical condition of the defendants upon their arrival in Guantánamo as well as ongoing treatment administered, or not administered as the case may be, in the top secret detention facility where the defendants are held. Restrictions placed on defense teams in the name of national security have variously included: unilateral prohibitions on compelling interviews without government approval;[110] unilateral use of pseudonyms for medical personnel preventing corroboration of redacted medical records;[111] unilateral blanket prohibitions on interviews of any former personnel associated with the RDI programme without government consent,[112] and the list continues to expand. As a result, the gaps in information severely limit the ability of the defense to gain a complete account of what happened to their clients during the time they were disappeared into CIA custody and how that treatment impacts their physical and mental conditions today. In response to the government's unwillingness to produce medical witnesses, defense counsel repeatedly argues that the failure to produce the requested witnesses denies their clients' rights to the due process of law, to full and effective assistance of counsel, and to be free from cruel and unusual punishment, succinctly summarising the conclusion that all of these issues are comingled.

As discussed in the previous section, the flip-flopping approach to the Clean Team/Letterhead Memorandum Statements and the increasing restrictions imposed on defense investigatory powers will ultimately require some form of remedy to try and re-calibrate the inequality

of arms in this particular case. The remedies requested so far include dismissal of the case, removal of the death penalty and suppression of evidence. It is clear from the lengthy pre-trial phase of the litigation that each of the above issues, none of which has been resolved, is a long-running feature of the defense effort to develop a record for the actual trial. These particular instances of inequality of arms between the prosecution and the defense to challenge evidence are merely indicative and represent a small fraction of the examples that exist in the 9/11 case pre-trial litigation.

(ii) Participation in one's own defense with the scars of torture

This section considers how the psychological and physical effects of torture both hamper the ability of individual defendants to participate in the actual courtroom proceedings as well as their ability to engage with their lawyers in the preparation of their defense. The right to participate in one's defense is protected by the 6th Amendment to the US Constitution, ICCPR Article 14(3)(d), and Protocol I Article 75(4)(e) and is instrumental to the right to a fair trial. As a starting point, we must recognise that the defendants in the 9/11 case do not have a right to counsel of their own choosing, these defendants have government-assigned and military-detailed defense counsel pursuant to the MCA.113 This reality amplifies the need to ensure the security of the lawyer–client relationship and build a trust relationship between strangers. As this was the decision taken by the US Congress and is the status quo for the particular case under consideration, there is little value in examining this in detail here save to explain that this fact in many ways predetermines other substantial challenges to delivery of a fair trial. This is simply one further element adding to the multidimensional impediments to the fulfilment of the right to fair trial that beleaguers the long-running proceedings in Guantánamo.

It is well documented that torture creates both physical and psychological scarring.114 For this reason, UNCAT Article 14 demands that victims of torture be rehabilitated as part of a redress package. For the 9/11 defendants, each of whom suffered prolonged, systematic abuse in CIA custody, the failure of the US to acknowledge their status as torture victims or to rehabilitate the US-inflicted injuries prevents certain defendants from regularly attending court proceedings. The details of some of the abuse suffered are clearly presented in the SSCI Report and were briefly outlined above. It is sufficient to recall that the physical and psychological after effects of waterboarding, walling and forced rectal penetration variably impede the abilities of the defendants to meaningfully participate in their defense for a number of reasons.

As foreshadowed above, the psychological effects of torture come to bear on the ability of a defendant to participate in his own defense in that at least one of the 9/11 defendants believes he is still being tortured. In the case of Bin al Shibh, this has materialised as possible psychosis in the form of consistent complaints that he is still being tortured or, at the least, subjected to cruel and abusive mistreatment by military guards in the top-secret detention facility.115 He has argued that 'the use of sounds and vibrations' in his cell and frequent episodes where he has sensations of being bitten by insects in the night prevent him from sleeping.116 If true, the treatment would no doubt be a violation of the international prohibition against cruel, inhuman or degrading treatment codified in the Detainee Treatment Act and prohibited by the US Constitution, as well as in both IHL and IHRL.117 Resolving issues regarding Bin al Shibh's mental health is all but impossible due to the defense's inability to interview medical personnel about his medical records, discussed above, records which could contain information about the extent to which torture may have resulted in permanent physical (brain damage) and or psychological damage causing him to imagine cell vibrations and sharp pain sensations.118

Despite numerous court filings and arguments attempting to get to the bottom of this issue, it seems that he suffers from advanced paranoia or psychosis as a result of his years in black sites, a suggestion that he adamantly denies. His behaviour is not uncommon to torture survivors, as 'detainees who were subjected to the CIA's enhanced interrogation techniques and extended isolation exhibited psychological and behavioural issues, including hallucinations, paranoia, insomnia, and attempts at self-harm and self-mutilation'.119 The psychological after-effects of torture are compounded by the inability of the court or his lawyers to put an end to what he argues is 'intentional [sic] subject[ion] to cruel and abusive treatment through sounds introduced' by prison staff.120 This perpetual psychological torment puts constant strain on his relationship with his lawyers.121 This has manifested on multiple occasions as unwillingness to meet with his lawyers and the cessation of the alleged activity becoming his all-consuming focus. After over 10 years in this military commission process and with a trial date anticipated to be set in 2022, it will be difficult to deliver an effective defense where the client is unable or unwilling to participate. While Bin al Shibh's agitation is well-documented, an investigation into the possibility that he may be suffering hallucinations as a result of post-traumatic stress disorder following his torture on black sites has yet to be fully realised. This results from the illogical nature of the governing law and procedure of the military commission which is embodied in the reluctance

of the government to permit certain defense witnesses, its refusal to approve funding for experts and, not to be forgotten, the fact that the military judge actually has no power to enforce any of the rulings in the detention facility.122

A number of the 9/11 defendants have had brain scans intended to detect the extent to which beatings and the asphyxia caused by repeated walling and waterboarding during EIT sessions has damaged their brains. However, specialist technicians are required to read the scans and though early comment on the scans suggest variable levels of brain damage, at the time of writing, the government has refused to allocate funds to pay for qualified technicians to read the medical data. The cumulative effects of the half-measures and lack of enforcement of the military judge's orders have trapped Bin al Shibh in a vortex where physical and mental realities symptomatic of torture severely impair his ability to exercise his right to participate in his own defense.

In addition to possible brain damage, further physical indicia of torture prevent at least one defendant, al-Hawsawi, from consistently attending trial. He was subjected to 'rectal rehydration' to such a brutal extent that he suffers enduring physical symptoms that do not allow him to sit for prolonged periods. When he does attend trial, he must sit on a therapeutic pillow. It took numerous years of litigation for his lawyers to get the government to provide him with a very basic surgical procedure designed to offer him some relief; he finally underwent this procedure in October 2016. Five years after the operation, al-Hawsawi continues to suffer a myriad of health problems that his lawyers argue relate to the torture techniques applied to him.123 As of yet, however, the military commission seems unwilling to recognise the link between the torture he endured and his behaviour, nor does it seem willing to deliver any meaningful remedy.

(iii) Lawyer–client privilege, torture and trust relationships

The government's desire to protect further revelations about torture on the black-sites in the name of 'national security' is also undermining lawyer–client privilege, another key component to the right to fair trial. As explored above, in an adversarial system the demand to maintain an equal playing field is high. The ability to adequately prepare a defense for those accused of a crime must include prompt access to counsel and confidential lawyer-client communications.124 The exclusion of prompt access is something so foreign to the Guantánamo proceedings that for the purposes of this analysis it will not be considered. Defense lawyers are not permitted to speak with their clients using secure systems from the continental USA, they may only meet face to face at the detention facility on Guantánamo.125 This requires civilian and military counsel to travel to Guantánamo using the available military transport, which is neither straightforward nor reliable.126 Even when the lawyers are given access to the naval station, they have often been denied access to their clients.127 Without immediate communications systems available between counsel and their clients, they are at the mercy of detention facility go-betweens to ensure messages regarding lawyer-client visits are delivered and done so in an accurate and timely manner.

As noted by the HRC, lawyer–client privilege demands that 'lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter'.128 Even though not expressly outlined in ICCPR Article 14(3)(b) or Protocol I Article 75(4)(a), both of which speak to the right to counsel, the principle of confidentiality is a widely recognised feature of the lawyer–client relationship.129 Confidentiality exists not only to encourage a trust relationship but also to protect the client. In the 9/11 case, the defendants' only access to the outside world is through their legal teams, save the limited and irregular International Committee of the Red Cross facilitated interactions with family members through video recordings or letters.130 As a result, the lawyer–client relationship in the 9/11 case holds a heightened level of importance for the defendants as their legal teams are their only human contact aside from detention facility or commission personnel and one another.

Prohibiting both overt and covert interference with lawyers and other experts involved in the preparation of a defense is fundamental to the protection of the right to fair trial and goes directly to lawyer–client privilege. On numerous occasions, however, the issue of government invasion of the sacrosanct lawyer–client relationship has been raised in relation to hidden recording devices in the courtroom and meeting rooms,131 intrusion into defense team emails132 and potential intelligence gathering operatives on defense teams,133 among other things. This has resulted in countless defense motions seeking relief for inappropriate government activity in direct relation to the conduct of the 9/11 case. Notably, interference in the defense teams is not necessarily at the behest of the prosecution but so far has not been attributed to a specific US agency. It is thought that these invasions of privilege relate to the government's desire to know what information being exchanged between the defendants and their attorneys with respect to their treatment on black sites, much of which is classified and

speaks directly to mitigation of punishment in the event that any of them are convicted.

Interference with the lawyer–client privilege beleaguered the 9/11 case even prior to arraignment of the defendants and allegations of interference have been a common theme throughout the proceedings.134 On 28 January 2013, during open court, the audio and video feed of the proceeding was shut down by an unidentified source not in the courtroom. In all of the military commission proceedings, a Court Information Security Officer (CISO) is tasked with cutting the audio and video feed in order to prevent classified information from being released into the public domain but until then it was understood that only the CISO could trigger the transmission break. As no one in the courtroom was found to have triggered the break, it was deduced that an unidentified party outside the courtroom had the capacity to listen to the audio transmission and control the transmission feed. The possibility of an unidentified party having the capacity to monitor the audio in the courtroom was highly problematic as on many court days the lawyers meet with their clients to discuss their cases in the courtroom. Thus, the spectre of a potential external interference with the lawyer–client privilege raised the alert for the defense teams. Three days later the five defense teams jointly moved for abatement of the proceedings based on breach of the 'Fifth, Sixth, and Eighth Amendments to the US Constitution, Section 949 s of the Military Commissions Act of 2009, and Common Article 3 of the 1949 Geneva Conventions'135 because they had 'substantial reason to believe that the government [was] monitoring privileged communications consistent with the government's focus on gathering intelligence'.136 Subsequently, the existence of recording devices in attorney–client meeting rooms outside of the courtroom was put on record by counsel for Bin 'Attash.137 Regardless of whether the prosecution had knowledge of the monitoring capabilities, the US Government controls every aspect of the physical existence of the defendants as long-time Guantánamo detainees and is the ultimate duty-bearer in terms of ensuring adherence to the rule of law. Though the different agencies of the government may not brief one another on all movements, the US justice system has never permitted interference with the lawyer–client privilege in this way. But potential surreptitious recording is not the only way in which the government appears to have inserted itself into the lawyer–client relationships.

Intermittently, defense team members, hired by the government, have been discovered to be, or potentially be, informants for different US government agencies. While it sounds like something out of a spy novel, the reality is that it has happened in the 9/11 military commission. In April 2014, a defense team member was asked to feed information to the government138 and former team members have been monitored and questioned by counterintelligence agents.139 In another dramatic example, 9/11 defendant Bin al Shibh noted issues with participation in the process in court: 'I have some problem to get the translations, complete translations [of court documents], so I have my interpreter, [name redacted]. But the problem is I cannot trust him because he was working at the black site with the CIA … .'140 Bin al Shibh displays classic symptoms of a torture victim, as discussed in the previous section, and reintroducing one of the witnesses and co-conspirators to his torture has great potential to disrupt any meaningful engagement with the trial process and also instill the idea that those responsible for his torture are always nearby. Ultimately, this episode revealed that the government had placed a former CIA black site interpreter in what is meant to be a position of confidence with the defendant. As every member of the defense team, from the analyst or translator to the paralegal or Learned Counsel, has a role to play in developing the client relationship, this type of interference is a particular affront to fair trial guarantees and clear interference with lawyer–client privilege.141 In the same session, defendant Bin'Attash also 'relayed … that there is somebody in this courtroom who was participating in his illegal torture'.142 In both instances, this draws the defendants' torture experiences into their ongoing trial with the potential for reliving trauma since they have had no rehabilitation in their almost two decades in US captivity. As explained in court four years later, Bin al Shibh 'had relied upon that interpreter in translating attorney-client privileged documents' which represents a serious 'invasion into the [lawyer]-client privilege by a person who had formerly been employed by the CIA'.143 While these examples go against basic ethical standards it is unclear that the military commission is willing to contemplate any meaningful relief for the 'ongoing infiltration of the defense teams' either as individual or collective instances of breach of the lawyer–client privilege.144

D. Remedies for Breaches of Fundamental Rights

The torture of the five 9/11 case defendants is widely documented. In line with the negative obligation to not torture, there is a positive obligation incumbent on States to investigate and prosecute allegations of torture under the ICCPR and the UNCAT.145 The HRC has outlined that at a bare minimum an effective remedy demands that the State conduct a thorough, prompt and impartial investigation into allegations of torture and compensate victims of any human rights violations.146 As the CAT has explained, 'redress should cover all the harm suffered by the victim, including restitution, compensation,

rehabilitation of the victim and measures to guarantee that there is no recurrence of the violations'.147 Rehabilitation 'should be holistic and include medical and psychological care as well as legal and social services' and 'include acknowledgement of the facts and acceptance of responsibility'.148 The US has failed to deliver any form of remedy, redress or rehabilitation to these men over the almost two decades that they have been in US custody. The US government has not 'investigated' with any intention of redress despite the copious evidence of torture and ill-treatment documented in the SSCI Report nor has it provided any form of rehabilitation save the most basic medical care. All five men are charged with capital offenses carrying the maximum penalty of death. Yet, those individuals responsible for torturing these defendants enjoy impunity and are, in some circles, hailed as heroes. As long as the issue of torture of the defendants remains unaddressed, international standards of due process, fairness and impartiality cannot be achieved.149 Regardless of the defendants' alleged roles in the planning of September 11, the breach of the prohibition against torture and assault on that particular fundamental right cannot be undone.

This article concerns what happens after torture when the torture victims are tried in a criminal justice system that asserts adherence to the rule of law. The above discussion demonstrates that torture and blanket assertions of national security permeate many dimensions of the right to fair trial. It is, therefore, necessary to consider how these violations might be remedied. In line with the earliest articulation of the contemporary human rights system, fair trial guarantees were discussed and this unequivocally included the right to effective remedy and redress.150 Each of the individual infractions of the right to fair trial examined above typically attract some form of remedy in a national court setting.151 These remedies range from exclusion of evidence to directed jury instructions to dismissal of the case altogether.

Thus far, the remedies sought in the 9/11 case have been in response to restrictions on the defense designed to cover up evidence of the defendants' torture or government misconduct relating to invasion the lawyer–client relationship. The remedies requested have included striking out testimony, exclusion of evidence, taking the death penalty out of the potentially available sentences and dismissal of the charges.152 In the early pre-trial hearings, the latter two options seemed extremely unlikely. However, as the hearings progress and if further revelations about potential government interference arise, it is not far-fetched to speculate that extreme remedies may be necessary to avoid the dismantling any hope of a trial that is compliant with international fair trial standards as well as US law. Military commission judgments will lack legitimacy both at home and abroad if recognisable fair trial standards are ignored.153

If repeated government infractions are confirmed, even incrementally, what would it say about the rule of law in the USA if no remedy is provided? Particularly when the basis of prosecuting the 9/11 case is for breach of the laws that underpin American democracy. Though the 9/11 defendants have the right to be presumed innocent, due to the nature of the crimes against them the world may never know the truth about their innocence or guilt. It is clear they are not the de facto perpetrators of September 11, those men went down with the planes; however, the MCA casts a wide net in order to encompass all terrorism conspirators no matter how far removed. Some of the 9/11 defendants may yet be proven to be responsible for the planning and orchestration of the September 11 attacks. However, a legitimate judicial process that delivers the right to fair trial in accordance with the rule of law is the only way that the verdict, either way, can be delivered with some measure of justice.

Rights Fair Trial Requires Vindication of the Defendants'

Following the knee-jerk executive policy responses that saw hundreds of men rounded up, renditioned, detained and tortured on black sites in pursuit of national security, both the legislative and judicial branches of the US Government struggled to rectify mistakes made early in the post-September 11 landscape. Though the US federal judiciary ultimately preserved a limited right to habeas corpus, the strength of the constitutional checks and balances between the government branches has been unable to account for the most egregious of these mistakes—the 'original sin'—the torture of detainees, including the 9/11 defendants. In turn, their torture has had far-reaching ramifications for the conduct of the military commissions in accordance with the international rule of law. This article examined a small dimension of these ramifications as revealed through the distortion of the right to fair trial as a result of the torture of the defendants and the government's persistence in using national security to interfere with variable elements of the right to fair trial.

Surveying consistent features of the right to fair trial in both IHL and IHRL, the article first established the basis of the variable elements of the right to fair trial that were then examined through the pre-trial litigation of the 9/11 case. Consideration of the most common connection between torture and the right to fair trial—the prohibition of the use of evidence obtained through or incident to torture—illuminated some of the unique features of the Guantánamo military commission's laws cape. This was followed by three further issues relating to ensuring the right to fair trial, all of which are shaped

directly or indirectly by the government's persistent recourse to national security as an excuse for interfering with fair trial guarantees. The analysis explored how hindering the right to prepare an effective defense may yet be the undoing of the 9/11 military commission. Variable interferences with the ability of the defense to gather and challenge evidence as part of the right to equality of arms, obstacles to the ability of the defendants to participate in their own defense and the repeated intrusion into the lawyer–client relationship are steadily combining to distort any semblance of a fair trial. Coupling these repeated infractions with the lack of meaningful redress for the torture experienced by the 9/11 case defendants reinforces the constant paradox of the 9/11 case. This paradox sees both the prosecution and the defense lawyers defending alleged criminals. The key difference is that the widely available, anonymised evidence of wrongdoing by the prosecution's client, set out in the SSCI Report and witness testimony, is consistently ignored by the military commission under the guise of national security. At the same time, the alleged evidence of the defendants' wrongdoing is also shrouded by national security protections to the extent that government agents, both known and unknown, increasingly are chipping away at the fundamental right to fair trial and the ability of the 9/11 lawyers to raise an effective defense—once a cornerstone of the rule of law in American democracy.

In examining different aspects of interference with the right to fair trial arising across the years of pre-trial proceedings, this article reveals that while the Guantánamo military commissions may be unique, the litigation reinforces that the relationship between torture and fair trial goes beyond the admissibility of evidence obtained through, or incident to, prohibited treatment. It has demonstrated that torture, left unaddressed and continually shrouded in the cloak of national security, can undermine many aspects of the right to fair trial as it is understood in the traditional pursuit of justice according to IHRL. Continued monitoring of the pettifoggery going on in the Guantánamo military commissions is necessary if the negative impacts on the substantive law of the USA and the reverberations in the international rule of law are to be pre-empted. Much like the torture of the detainees by US operatives, analysis of the diminution of the right to a fair trial is 'but the beginning of the debate which must ultimately call into question not the Bush Administration [or subsequent US administrations] but the American people'.154 At what point will the USA account for its failure to maintain allegiance to fundamental human rights protections? As the pre-trial phase of the 9/11 military commission moves through its tenth year, this article highlights examples of how torture and national security have corrupted different aspects of the right to fair trial and demonstrates the cascading effect that comes with violating the fundamental prohibition against torture.

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Footnotes

1. See Sworn Charges against Khalid Sheikh Mohammed (10024), Walid (Khallad) Muhammad Salih Mubarek bin'Attash (10014), Ramzi Bin al Shibh (10013), Ali Abdu Aziz Ali (al Baluchi) (10018), Mustafa Ahmed Adam al Hawsawi (10011), 31 May 2011, at <www.therenditionproject.org.uk/pdf/PDF%20449%20[US%20v%20Khaled%20Sheikh%20Mohammad%20et%20al,%20Charge%20Sheet%20(15%20April%202008)].pdf> accessed 1 November 2021.

2. Military Commission Act 2009, Public Law No 111-84 s 1801-07, 10 USC s 948-50 (MCA). Notably, this law is a revised version of the Military Commissions Act 2006, which was repeatedly found to breach the US Constitution.

3. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85; Geneva Convention Relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21

October 1950) 75 UNTS 287 (collectively 'Geneva Conventions').
4. International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).
5. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (UNCAT).
6. Throughout the article the US spelling of 'defense' will be utilised to align with the military commission documents unless a direct quote.
7. See discussion by M Nowak, 'What Practices Constitute Torture: US and UN Standards' (2006) 28 Human Rights Quarterly 809.
8. A number of studies have examined this immediate post-September 11 discourse, see, eg L Hajjar, 'The Counterterrorism War Paradigm versus International Humanitarian Law: The Legal Contradictions and Global Consequences of the US "War on Terror"' (2019) 44 *Law & Social Inquiry* 922; M Duffy, *The Detention of Terrorism Suspects* (Hart Publishing 2018); F Johns, *Non-Legality in International Law* (CUP 2013) ch 2; D Luban, *Legal Ethics and Human Dignity* (CUP 2007) 174ff.
9. S Cohen, 'Government Responses to Human Rights Reports: Claims, Denials, and Counterclaims' (1996) 18 *Human Rights Quarterly* 517, 522; see Luban (n 8) 172 ff.
10. See Bush, Military Order of November 13, 2001—Detention, Treatment, and Trial of Certain Non-Citizens in the War on Terrorism, Federal Register 66:222, 57833, 16 November 2001 (November 2001 Military Order).
11. Notably, normal naval station operations are entirely separate from the detention operations, which operate under the auspices of Joint Task Force GTMO (JTF–GTMO).
12. It has been acknowledged that the CIA operated a black site in Guantánamo in addition to the Department of Defense detention facility. See Inter-American Commission on Human Rights, 'Towards the Closure of Guantanamo' (3 June 2015) OAS/Ser.L/V/II, Doc 20/15, paras 101–19.
13. *Rasul v Bush* (2004) 542 US 466; *Hamdan v Rumsfeld* (2006) 548 US 557; *Boumediene v Bush* (2008) 553 US 723.
14. US Constitution, art I s 9: 'The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.'

15. *Suleiman Abdullah Salim, et al., v James E Mitchell and John Jessen*, No CV-15-0286-JLQ, US District Court, Eastern District of Washington, based on the Alien Tort Statute, 28 USC section 1350. The case was eventually settled out of court.
16. eg *Husayn (Abu Zabaydah) v Poland*, App no 7511/13, Merits, (ECtHR, 24 July 2014); *Al Nashiri v Poland*, App no 28761/11, Merits, (ECtHR 16 February 2015); *Nasr and Ghali v Italy*, App no 44883/09, Merits, (ECtHR 23 February 2016); *Husayn (Abu Zabaydah) v Lithuania*, App no 46454/11, Merits, (ECtHR 8 December 2018).
17. eg Allegations concerning the situation of Mr Ammar al Baluchi, also known as Ali Abdul Aziz Ali, a detainee held in the custody of the Department of Defense on the US naval station at Guantánamo Bay, Cuba since September 2006, Case No USA 22/2017, 4 October 2017; Allegations concerning the failure to provide adequate medical care to Mr Mustafa al-Hawsawi, detainee at Guantánamo Bay, Case No USA/5/2016, 6 May 2016, all available on the Communications page of the Special Rapporteur on Torture, <https://spcommreports.ohchr.org/TmSearch/Results>.
18. US Senate Intelligence Committee Study on CIA Detention and Interrogation Program, Executive Summary (SSCI Report), (3 December 2014), at <www.feinstein.senate.gov/public/_cache/files/7/c/7c85429a-ec38-4bb5-968f-289799bf6d0e/D87288C34A6D9FF736F9459ABCF83210.sscistudy1.pdf> accessed 1 November 2021. The publicly available version is 566 pages, a small part of the 6700 page complete Study which distilled over 6 million pages of CIA documents that were determined classified by previous US administrations.
19. Ali Soufan, a former FBI agent, has described what happened to the first man tortured under the enhanced interrogation programme, Abu Zabaydah, as the 'original sin'. See C Rosenberg, 'Agent who interrogated Abu Zabaydah: "Where we went wrong as a nation"' (*The Miami Herald*, 1 June 2016) at <www.miamiherald.com/news/nation-world/world/americas/guantanamo/article81232607.html> accessed 1 November 2021.
20. CIA Office of General Counsel, Hostile Interrogations: Legal Considerations for CIA Officers, (26 November 2001), 6, at <https://s3.documentcloud.org/documents/21061065/leopold-cia-post-911-torture.pdf> accessed 1 November 2021. The redacted version of the memorandum was approved for release on 3 May 2018 and obtained through a FOI request by journalist Jason Leopold.
21. Eg see discussion of CIA's Office of General Counsel of 26 November 2001 regarding possible necessity defences to the use of torture 'when it resulted in saving thousands of lives.' SSCI Report (n 18) 19–22.

22. *US v Khalid Sheikh Mohammed, Walid bin 'Attash, Ramzi bin al Shibh, Ammar al Baluchi, and Mustafa Ahmad al Hawsawi* (US Office of Military Commissions) *(9/11* case*)*. <www.mc.mil/CASES.aspx> accessed 1 November 2021, see (n 52) below.
23. MCA s 948b (a).
24. Eg D Rumsfeld, US Department of Defense News Briefing, 8 February 2002, summary available at <https://2001-2009.state.gov/r/pa/ho/pubs/fs/33354.htm> but not the complete document. The US archive link is no longer active but a copy of the statement is on file with the author and can be found here <https://casebook.icrc.org/case-study/united-states-status-and-treatment-detainees-held-guantanamo-naval-base> accessed 1 November 2021. For an authoritative discussion of what amounts to torture and other prohibited ill-treatment see M Nowak, 'Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment' in A Clapham and P Gaeta (eds), *The Oxford Handbook of International law in Armed Conflict* (OUP 2014) 387ff.
25. Rumsfeld, ibid.
26. For an examination of the legal argumentation that contributed to redefining certain activities as non-torture for the purposes of justification, see J Dratel, 'The Legal Narrative' in

K Greenberg and J Dratel (Eds), *The Torture Papers: the Road to Abu Ghraib* (CUP 2005); Nowak (n 7); Luban (n 8) ch 5.
27. See US reservations to the UNCAT, 1(a) (emphasis added).
28. SSCI Report (n 18) 81–82; R Blakeley and S Raphael, 'Human Rights Fact-Finding and the CIA's Rendition, Detention and Interrogation Programme: A Response to Cordell' (2018) 21 *International Area Studies Review* 169, 175.
29. Water dousing was characterised as distinct from waterboarding by the CIA but the application of the technique can approximate waterboarding. See SSCI Report (n 18) 105–06 for a discussion and the description relating to Mustafa al-Hawsawi as outlined by one of his interrogators.
30. SSCI Report (n 18) 82, 83 and 100, fns 584, 680. Barnes has examined the fine line between force-feeding for health and force-feeding as torture, see J Barnes, 'Force-feeding and the Legacy of Torture in the "War on Terror"' (2019) 23 *The International Journal of Human Rights* 1074.
31. *9/11* case (n 22), Transcript, 27 January 2020 (merged) Part IV at 31362-4, testimony of James Mitchell indicating he 'conditionally' threatened to cut Mohammed's sons' throats.
32. Geneva Convention III art 17; US Torture Statute 18 USC s 2340(2) (d).
33. US reservations to the UNCAT, 1(a) (4).
34. SSCI Report (n 18) 81–83. See Luban (n 8) 181.
35 .S Raphael and others, 'Tracking Rendition Aircraft as a Way to Understand CIA Secret Detention and Torture in Europe' (2015) 20 *The International Journal of Human Rights* 78, 91.
36. SSCI Report (n 18) 86, 90.
37. Waterboarding took place from 10-24 March 2003, SSCI Report (n 18) 85–93.
38. This observation was made on 14 March 2003, though EITs were applied for a further 10 days, see SSCI Report (n 18) 88.
39.JTF–GTMO–CDR, Combatant Status Review Tribunal Input and Recommendation for Continued Detention under DoD Control (CD) For Guantánamo Detainee, ISN: US9KU-010024DP(S), 8 December 2006, 5 <www.therenditionproject.org.uk/documents/RDI/061208-DoD-JTF-Detainee-Assessment-Hawsawi.pdf> accessed 1 November 2021.
40. For an analysis of what amounts to 'severe' pain, see Nowak (n 7) 811 ff.
41. SSCI Report (n 18) 75, 80. For a timeline of detention and transfer see JTF-GTMO-CDR, Combatant Status Review Tribunal Input and Recommendation for Continued Detention under DOD Control (CD) For Guantánamo Detainee, ISN: US9YM-010013DP(S), 8 December 2006.
42. SSCI Report (n 18) 97, fn 557; 100, fn 584; 356–57; 387–88, fn 2190.
43. JTF–GTMO–CDR, Combatant Status Review Tribunal Input and Recommendation for Continued Detention under DOD Control (CD) For Guantánamo Detainee, ISN: US9YM-010011DP(S), 8 December 2006, p 3; JTF–GTMO–CDR, Combatant Status Review Tribunal Input and Recommendation for Continued Detention Under DoD Control (CD) For Guantánamo Detainee Ammar al Baluchi, ISN: US9PK-010018DP(S), 8 December 2006, 4.
44. SSCI Report (n 18) 100, fn 584.
45. eg UN Human Rights Committee (HRC), *Nyaya v Nepal*, Communication No 2556/2015, UN Doc CCPR/C/125/D/2556/2015 (11 June 2019) para 7.2; UN Committee Against Torture (CAT), *A v Bosnia and Herzegovina*, Communication No 854/2017, UN Doc CAT/C/67/D/854/2017 (11 September 2019) para 7.4. See also, Nigel Rodley and Matt Pollard, 'What Constitutes Torture and Other Ill-treatment?' in Nigel Rodley and Matt Pollard (eds), *The Treatment of Prisoners under International Law* (3rd edn, OUP 2015) 96–97.
46. The 2012 update to the US definition of rape expanded to include both male and female and to recognise sexual assaults with object, thus absorbing the previous distinct crime of sexual assault with an object. FBI, Uniform Crime Reporting, Rape Addendum, <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/resource-pages/rape_addendum-2015-_final> accessed 1 November 2021.

47. JTF–GTMO–CDR, Combatant Status Review Tribunal Input and Recommendation for Continued Detention under DoD Control (CD) For Guantánamo Detainee, ISN: US9SA-010018DP(S), 8 December 2006, 1, 4.
48. SSCI Report (n 18) 444, 451, 452, 455–56.
49. See, for example, *9/11* case (n 22) Transcript, 21-31 January 2020, testimony of James Mitchell.
50 .See USA report to the CAT, 'Third to fifth periodic reports of States parties due in 2011, United States of America' (4 December 2013) UN Doc CAT/C/USA/3-5, para 13.
51. For example, B Emmerson, 'Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Note by the Secretariat' (21 February 2017) UN Doc A/HRC/34/61, para 22.
52. Throughout the remainder of this article the military commission court filings are referenced. In commission parlance, all filings are referred to as Appellate Exhibits and carry an 'AE' precursor followed by the numeric motion series identifier. Where the filing is made by defense, the specific defendant is noted in parentheses, thus any of the following will be present in relation to the specific defendant: Mohammad (KSM), al Hawsawi (MAH), Bin al Shibh (RBS), bin'Attash (WAH), al Baluchi (AAA). Where relevant, the full title of the document is provided along with date filed, otherwise, the document identifier only is provided. All documents can be found on the military commissions website at <www.mc.mil/CASES.aspx> accessed 1 November 2021. Notably, the link is not always accessible outside the USA due to US Department of Defense firewalls.
53. For a discussion about the use of military courts to try civilians or any individual outside of war time, see F Ni Aoláin and O Gross (eds), *Guantánamo and Beyond: Exceptional Courts and Military Commissions in Comparative Perspective* (CUP 2013) part I; E Schmid, 'A Few Comments on a Comment: the UN Human Rights Committee's General Comment No. 32 on Article 14 of the ICCPR and the Question of Civilians Tried by Military Courts' (2010) 14 *International Journal of Human Rights* 1058, 1061 ff. For analysis of the early, ultimately dismantled US military commissions, see: B Ackerman, 'The Emergency Constitution' (2004) 113 *Yale Law Journal* 1029; HH Koh, 'The Case Against Military Commissions' (2002) 96 *American Journal of International Law* 337; LA Dickinson, 'Using Legal Process to Fight Terrorism: Detentions, Military Commissions, International

Tribunals and the Rule of Law' (2002) 75 *Southern California Law Review* 1407, 1415–21.
54. UN Commission on Human Rights, 'Situation of detainees at Guantánamo Bay. Joint Report by five holders of mandates of special procedures of the Commission on Human Rights' (27 February 2006) UN Doc E/CN.4/2006/120, paras 9, 30–40 (Joint Report on Situation of Detainees); Martin Scheinen, 'Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism' (6 August 2008) UN Doc A/63/223, paras 7, 9.
55. See Greenberg and Dratel (n 26) ch 5.
56. Rome Statute of the International Criminal Court (17 July 1998) 2187 UNTS 90.
57. See, eg D Weissbrodt and J Hansen, 'The Right to a Fair Trial in an Extraordinary Court' in Ni Aoláin and Gross (n 53); E Decaux, 'Report of the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights, Issue of the Administration of Justice through Military Tribunals' (13 January 2006) UN Doc E/CN.4/2006/58, para 15; J E Méndez, 'Report of the Special Rapporte0ur on torture and other cruel, inhuman or degrading treatment or punis0hment' (10 April 2014) UN Doc A/HRC/25/60, para 30.
58. At the time of writing, no cases have been fully concluded (sentence determined) under this version of the MCA.
59. *9/11* case (n 22) Transcript, 19 June 2019, 23319.
60. At the time of submission, November 2021, the 42nd round of hearings has concluded and there are approximately 10 069 filings in the case, representing substantive pleadings, procedural notifications, corrections to pleadings and other exhibits, such as power point files. Hearings were repeatedly cancelled due to the Covid-19 pandemic and the first round of hearings post-pandemic outbreak took place in September 2021.
61. A Clooney and P Webb, *The Right to Fair a Trial in International Law* (OUP 2021) offers the freshest examination of the subject. See also, D Weissbrodt, *The Right to a Fair Trial under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights: Articles 8, 10 and 11 of the Universal Declaration of Human Rights* (Brill 2001). Other relevant literature on international fair trial standards include: P Chenivesse and CJ Piranio, 'What Price Justice? On the Evolving Notion of "Right to Fair Trial"' from Nuremberg to The Hague' (2011) 24 *Cambridge Review of International Affairs* 403; Schmid (n 53). Notably these articles do not address the specific content of the right, but are more generally about its existence, its relationship to other norms and how to approach analysis of its components.
62. eg JA Geltzer, 'Of Suspension, Due Process, and Guantanamo: The Reach of the Fifth Amendment after *Boumediene* and the Relationship Between Habeas Corpus and Due Process' (2012) 14 *Journal of Constitutional Law* 719; F de Londras, 'Guantánamo Bay: Towards Legality?' (2008) 71 *Modern Law Review* 36; F Johns, 'Guantánamo Bay and the Annihilation of the Exception' (2005) 16 *European Journal of International Law* 613; E Metcalfe, 'Inequality of Arms: The Right to a Fair Trial in Guantánamo Bay' (2003) 6 *European Human Rights Law Review* 573.
63. eg E Schmid, 'The Right to a Fair Trial in Times of Terrorism: A Method to Identify the Non-Derogable Aspects of Article 14 of the International Covenant on Civil and Political Rights' (2009) 1 *Göttingen Journal of International Law* 29; J Davis, 'Uncloaking Secrecy: International Human Rights Law in Terrorism Cases' (2016) 38 *Human Rights Quarterly* 58; J Davis, 'Equality of Arms: Complying with International Human Rights Law in Cases against Alleged Terrorists' (2016) 21 *Journal of Conflict & Security Law* 69.
64. Schmid, ibid 35 ff.
65. S Trechsel, 'Why Must Trials Be Fair?' (1997) 31 *Israel Law Review* 94, 95; Nowak (n 24).
66. eg *9/11* case (n 22), AE693A(GOV), Government Response to Mr Ali's motion to Establish Protections against Pretrial Punishment, 10 January 2020, 1, 3ff. See Additional Protocol to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International and Non-international Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3 (Protocol I).
67. See discussion in International Committee of the Red Cross, Customary IHL Database, Rule 100. Fair Trial Guarantees at <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule100#refFn_3467CD3B_00053> accessed 1 November 2021.
68. ibid.
69. The White House, Press Release, 'Fact Sheet: New Actions on Guantánamo and Detainee Policy' (7 March 2011) at <https://obamawhitehouse.archives.gov/the-press-office/2011/03/07/fact-sheet-new-actions-guant-namo-and-detainee-policy> accessed 1 November 2021. See also, *Hamdan v Rumsfeld* (2006) 548 US 557, 633.
70. Joint Report on Situation of Detainees (n 54) para 9; ICRC (n 67).
71. Joint Report on Situation of Detainees (n 54) 34–35.
72. UNGA, 'Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism' (6 August 2008) UN Doc A/63/223, summary and para 12.
73. HRC, 'General Comment No 29. Article 4: Derogations during a State of Emergency' (31 August 2001) UN Doc CCPR/C/21/Rev.1/Add.11, para 15.
74. ibid, para 11; UN Human Rights Council, 'Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the human rights challenge of states of emergency in the context of countering terrorism' (1 March 2018) UN Doc A/HRC/37/52, para 42.
75. On the complementary applicability of IHL and IHRL, see: Schmid (n 63) 35 ff; E Salmon, 'Institutional Approach between IHL and IHRL: Current Trends in the Jurisprudence of the Inter-American Court of Human Rights' (2014) 5 *Journal of International Humanitarian Legal Studies* 152.
76. Both the start and cessation of the conflict with al Qaeda are issues being litigated in the *9/11* case (n 22), see, eg AE617D/AE620C, Order, 4 April 2019; AE617H/AE620G (RBS), Response on Issues of Law Regarding Proof of Hostilities between the USA and al Qaeda, the Existence and Duration of Hostilities as an Instructional Matter, the Existence of a Non-Justiciable Political Question, and Judicial Notice as a Matter of Legislative Fact (19 April 2019).
77. F de Londras, *Detention in the 'War on Terror'* (CUP 2011), ch 5.
78. UN Human Rights Council, 'Report of the United Nations High Commissioner for Human Rights on the protection of

human rights and fundamental freedoms while countering terrorism' (2 June 2008) UN Doc A/HRC/8/13, paras 40, 42–43.

79. See, eg HRC, 'General Comment No 20. Article 7: Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment' (10 March 1992) UN Doc HRI/GEN/1/Rev.7, para 12; HRC, 'General Comment No 32' (n 53) para 33; Juan E Méndez, 'Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment' (10 April 2014) UN Doc A/HRC/25/60 (focuses exclusively on the exclusion of evidence obtained through torture). For a comprehensive examination of the multiple confirmations of the exclusionary rule in relation to evidence obtained through torture, see Clooney and Webb (n 61) eg 619–23, 650–52 (also addressed at other points); N Rodley and M Pollard, *The Treatment of Prisoners under International* Law (OUP 2011) 162–66; Nowak (n 24) 391.

80. At the time of submission, the *9/11* case has completed its 42nd pre-trial session.

81. *Rochin v California* (1952) 342 US 165, para 173. See, also, *Mapp v Ohio* (1961) 367 US 643, 657.

82. MCA s 948r(c)(1), emphasis added.

83. HRC, 'General Comment No 32' (n 53) para 6; see also HRC, 'List of issues prior to submission of the fifth periodic report of the United States of America' (18 April 2019) UN Doc CCPR/C/USA/QPR/5, para 16.

84. *US v Abd al-Rahim Hussein Muhammed Abdu Al-Nashiri* (Military Commission) AE549, Defense Motion to Dismiss with prejudice Due to Outrageous Government Misconduct, 28 October 2021*; In re Abd al-Rahim Hussein Al-Nahiri, Petition for a Writ of Mandamus & Prohibition* in relation to Ruling AE353AA of 18 May 2021 (3 June 2021), at <https://int.nyt.com/data/documenttools/petition-for-a-writ-of-mandamus-and-prohibition/c4364a7fa545671f/full.pdf> accessed 1 November 2021.

85. SSCI Report (n 18) 2, 4.

86. ibid, Findings and Conclusions, 2.

87. eg *9/11* case (n 22) AE630Y (GOV) Government Response To Motion to Compel Witnesses Supporting Mr. Mohammad's Motion to Suppress Letterhead Memorandum Statements Because the Government Cannot Demonstrate by a Preponderance of the Evidence that They Were Voluntarily Given, 27 January 2020, 10.

88. The third judge decided to use the term 'Letterhead Memorandum Statements' so as to avoid preconceived determinations of admissibility.

89. There are multiple AE series dedicated to the increasing restrictions imposed pursuant to the current four protective orders, eg AE524. Many filings have also focused on the CIA-FBI relationship, eg *9/11* case (n 22) AE780 (AAA) Mr al Baluchi's Motion to Compel Documentation of CIA–FBI Coordination to Obtain Statements from Defendants, 12 March 2020; AE630 (KSM) Mr Mohammad's Motion to Suppress Letterhead Memorandum Statements Because the Government Cannot Demonstrate by a Preponderance of the Evidence that They Were Voluntarily Given, 27 January 2020.

90. AE524LL, Ruling, 17 August 2018 at 36: 'The FBI Clean Team Statements of the Accused are suppressed and the Government will not introduce the statements for any purpose.'

91. ibid.

92. Rule for Military Commissions 905(f) permits reconsider of rulings, including those of judges that have retired from the bench, such as the first judge, Col James Pohl, who retired in 2018 after over five years on the case.

93. *9/11* case (n 22), AE524LLL, Ruling on Government Motion to Reconsider and Clarify AE 524LL, Ruling, 3 April 2019 at 9.

94. eg *9/11* case (n 22), Transcript, 7 December 2017, 17930-31; Transcript, 23 July 2018, 19966-75; Transcript, 28 January 2020, 31413-14; Transcript, 19 February 2020, 32854.

95. See Amicus Curiae Submissions on Behalf of the Bar Human Rights Committee of England and Wales, AE524VV (AMI), 12 October 2018.

96. Witnesses are still scheduled to testify on the FBI-CIA relationship as as proceedings move into 2022.

97. *9/11* case (n 22) Transcript, 7 November 2019, 29764 ff.

98

US Constitution, 5th and 6th Amendments. See also, *Hamdan v Rumsfeld* (2006) 548 US 557, 633ff.

99. Geneva Convention III, art 3(1)(d) provides: 'the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.'

100. HRC, 'General Comment No 32'(n 53) paras 8, 32, 34; HRC, *Viktor Taran v Ukraine*, Communication No 2368/2014, UN Doc CCPR/C/128/D/2368/2014 (12 March 2020) para 7.7.

101. See Geneva Conventions (n 2) Common art 3; Weissbrodt and Hansen (n 57); Schmid (n 63).

102. HRC, 'General Comment No 32' (n 53) para 8; See Rule of Military Commission 701(j): 'Each party shall have adequate opportunity to prepare its case and no party may unreasonably impeded the access of another party to a witness or evidence.' at <www.mc.mil/LEGALRESOURCES/MilitaryCommissionsDocuments.aspx> accessed 1 November 2021. See discussion in S Trechsel, *Human Rights in Criminal Proceedings* (OUP 2006) 94 ff.

103. HRC, 'General Comment No 32' (n 53) para 13.

104. See MCA s 949(c)(3)(d) and relevant filings below, eg nn 108, 109.

105. Trechsel (n 65) 86.

106. MCA s 949(j).

107. Clooney and Webb (n 61) 753.

108. *9/11* case (n 22) AE013O, Ruling, Government Motion to Protect Against Disclosure of National Security Information, (6 December 2012) and AE013P, Protective Order #1, To Protect Against Disclosure of National Security Information, (6 December 2012). See also AE118M.

109. ibid, AE013AA, *Amended* Protective Order #1, To Protect Against Disclosure of National Security Information, 9 February 2013; AE013AA, *Second Amended* Protective Order#1, To Protect Against Disclosure of National Security Information, 16 December 2013; AE013AAAA, *Third Amended* Protective Order #1, To Protect Against Disclosure of National Security Information, 6 July 2015; AE524G (AAA) at 17.

110. ibid, AE200G (KSM, AAA), 4 October 2013; AE524GGG (AAA), 12 February 2019.

111. ibid, AE200M (KSM), 18 October 2013.

112. ibid, AE367 (MAH), Motion to Dismiss Because National Security Considerations Make a Fair Trial Impossible, 22 July 2015.
113. ICCPR art 14(3)(b); The 6th Amendment to the US Constitution provides that 'the accused shall … have the Assistance of Counsel for his defence' without specifying that counsel should be of their own choosing, as detailed in the ICCPR.
114. See, eg H McColl and others, 'Rehabilitation of Torture Survivors in Five Countries: Common Themes and Challenges' (2010) 4 *International Journal of Mental Health Systems* 1; D Forrest, 'Examination for the Late Physical after Effects of Torture' (1999) 6 *Journal of Clinical Forensic Medicine* 4.
115. *9/11* case (n 22) AE152 (RBS), Emergency Defense Motion to Order the Cessation of External Use of Sounds and Vibrations to Interfere with Mr Bin al Shibh's Confinement and with the Attorney–Client Relationship and to Allow Expert Inspections of his Cell, Substructure/Foundation, Surrounding Areas of the Cell, and the Cell Control Room, 3 April 2013, paras 5(b)–(c); see similar allegations by Bin al Shibh, AE108B (RBS), 18 January 2013.
116. ibid, AE152 (RBS) at paras 2 and 6; US Department of Defense, 'New Details about Torture of Guantanamo Bay Detainee', Press Release Issued by Defense Counsel for Mr. Ramzi bin al Shibh, (23 September 2019) (on file with author).
117. Detainee Treatment Act, 42 USC s 2000dd(a); US Constitution, 8th Amendment. Sleep deprivation was determined prohibited treatment in *Vance v Rumsfeld*, 701 F.3d 193 (7th Cir. 2012). In international law, the prohibition forms a component element of ICCPR art 7, UNCAT art 16 and Common art 3 of the Geneva Conventions.
118. *9/11* case (n 22), Transcript, (16 September 2019), 25339; Transcript, (17 June 2019), 23181.
119. SSCI Report (n 18), Findings and Conclusions, 4, see also Executive Summary, 109, 110, 132, 137, 139, 412, 416, 419, 422, 429, 495.
120. *9/11* case (n 22), AE152 (RBS) para 4.
121. ibid, AE152 (RBS) para 4.
122. ibid, Transcript, 20 December 2017, 18287-9.
123. ibid, Transcript, 5 December 2015, 14044-45.
124. HRC, 'General Comment No 32' (n 53) para 34. The more common European term 'lawyer' is used throughout instead of the American 'attorney'-client relationship but for the purposes of analysis refer to the same concept.
125. In response to Covid-19, some accommodation has been made but it has been far from perfect or a readily available option for all defense teams.
126. This assertion is based on both the author's multiple trips to the naval outpost as well as statements made by those directly involved with the military commissions. Notes on file with the author.
127. see, eg *9/11* case (n 22), AE133 (WBA Sup), MEMORANDUM, Order Governing Logistics of Defense Counsel Access to Detainees Involved in Military Commissions, 27 December 2011.
128. HRC, 'General Comment 32' (n 53) para 34.
129. Lawyer (Attorney)–client privilege features in the American Bar Association, Model Rules of Professional Conduct (ABA Model Rules), Rule 1.1, <www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/> accessed 1 November 2021.
130. Correspondence with family through the ICRC is litigated regularly in the military commissions due to the irregular or ineffective fulfilment of this Geneva Convention obligation. See UNGA, 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment, Addendum: Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention' (5 February 2010) UN Doc A/HRC/13/39/Add.5, paras 102–06, discussing how the right to counsel is compromised for those in detention and how this results in inequality of arms between the defense and prosecution (para 105).

131. eg see discussion in: *9/11* case (n 22), AE152 (RBS), para 5(h); AE133D, 5 February 2013.
132. ibid, Transcript, 16 June 2014, 7878.
133. See ibid, AE350 series; AE292W (MAH); Transcript, 16 June 2014, 7879-88.
134. ibid, AE008, Defense Supplemental Statement of Facts on Behalf of Mr Bin al Shibh in Support of Motion to Dismiss for Defective Referral, 20 April 2012, 5 ff.
135. ibid, AE133QQ, Ruling, 30 November 2016, 2. See original underlying motion, AE133 (KSM, MAH, RBS, WBA, AAA) Placeholder notice of Filing of Classified Motion: Emergency Defense Motion to remove sustained barrier to attorney-client communication and prohibit any electronic monitoring and recording of attorney-client communications in any location, including commission proceedings, holding cells, and meeting facilities and to abate proceedings, 31 January 2013. The event on which the motion was based can be found at Transcript, 28 January 2013, 1445-47.
136. ibid, AE133CCC (KSM et al), 3. See also, Transcript, 14 April 2014, 7759-60.
137. ibid, AE133 (WBA sup), 6 February 2013, para 5(g).
138. ibid, Transcript, 14 April 2014, 7757.
139. ibid, Transcript, 28 January 2019, 22106-10; Transcript, 14 April 2014, 7757-8.
140. ibid, Transcript, 9 February 2015, 8248.
141. See ABA Model Rules, (n 129) Rule 1.6 (a) and (c).
142 .*9/11* case (n 22), Transcript, 9 February 2015, 8250.
143. ibid, Transcript, 22 July 2019, 23901. See also from the same transcript comments by Bin al Shibh's counsel: 'this is part of a larger picture of intrusions into the defense team, intrusions involving the fake smoke detectors, spies being put on the defense teams, the red light in the courtroom, the microphones', among other things, including the disappearance of 7 gigabytes of data stored on Department of Defense servers.
144. ibid, Transcript, 9 February 2015, 8260.
145. ICCPR, art 2(3)(a), Right to an effective remedy; HRC, 'General Comment No 20' (n 79) para 14; HRC, 'General Comment No. 31: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant' (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13, para 18; HRC, *Viktor Taran v Ukraine* (n 100) para 7.3.
146. ICCPR Art 2(3); see eg HRC, *Viktor Taran v Ukraine* (n 100) para 9; HRC, 'Concluding Observations on the Fourth Periodic Report of the United States of America' (23 April 2014) UN Doc CCPR/C/USA/CO/4, para 5.

147. CAT, *Aarrass v Morocco*, Communication No 817/2017, UN Doc CAT/C/68/D/817/2017 (2 January 2020), para 8.6; CAT, *Saadia Ali v Tunisia*, Communication No 291/2006, UN Doc CAT/C/41/D/291/2006 (26 November 2008) para 15.8; CAT, *A v Bosnia and Herzegovina* (n 45) para 3.2–3.3; HRC, *Sendic v Uruguay*, Communication No R.14/63, UN Doc CCPR/C/14/D/63/1979 (28 October 1981) para 21.
148. CAT, *A v Bosnia and Herzegovina* (n 45) para 3.3.
149. ibid.
150. ICCPR art 2(3)(a), Right to effective remedy; D Weissbrodt and M Hallendorff, 'Fair Trial Provisions of the UDHR' (1999) 21 *Human Rights Quarterly* 1061, 1090–96.
151. See, eg on remedies for breach of the right to fair trial (specifically on the to be tried without undue delay), M Kuijer, 'The Right to a Fair Trial and the Council of Europe's Efforts to Ensure Effective Remedies on a Domestic Level for Excessively Lengthy Proceedings' (2013) 13 *Human Rights Law Review* 777.
152
eg *9/11* case (n 22), AE579 (KSM) Motion to Dismiss All Charges for Unlawful Influence by Director of CIA.
153. Weissbrodt and Hansen (n 57) 313–16.
154. K Greenberg, 'From Fear to Torture' in Greenberg and Dratel (n 26) xviii.

MEDICAL & CLINICAL SCIENCES

Canada's Colonial Genocide of Indigenous Peoples: A Review of the Psychological and Neurobiological Processes linking Trauma and Intergenerational Outcomes

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Abstract

The policies and actions that were enacted to colonize Indigenous Peoples in Canada have been described as constituting cultural genocide. When one considers the long-term consequences from the perspective of the social and environmental determinants of health framework, the impacts of such policies on the physical and mental health of Indigenous Peoples go well beyond cultural loss. This paper addresses the impacts of key historical and current Canadian federal policies in relation to the health and well-being of Indigenous Peoples. Far from constituting a mere lesson in history, the connections between colonialist policies and actions on present-day outcomes are evaluated in terms of transgenerational and intergenerational transmission processes, including psychosocial, developmental, environmental, and neurobiological mechanisms and trauma responses. In addition, while colonialist policies have created adverse living conditions for Indigenous Peoples, resilience and the perseverance of many aspects of culture may be maintained through intergenerational processes.

Keywords: Indigenous, colonization, historical trauma, intergenerational, early-life adversity, epigenetics, mental health, neurobiological, determinants of health

1. Introduction

'Our object is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic.'

Duncan Campbell Scott, 1920 [1]

'Yes, apocalypse. We've had that over and over. But we always survived. We're still here.'

Waubgeshig Rice, Moon of the Crusted Snow [2]

We often look to the past to learn about the impact of human atrocities, and of the collective trauma experienced by groups that have occurred across many generations (i.e., collective historical trauma). In the case of some groups (e.g., the attempted genocide of Jews during the Holocaust) considerable data have been collected showing the mental and physical health consequences of these experiences. Other instances, such as the wartime incarceration of Japanese Americans, have received far less attention. The evaluation of the Armenian genocide in which Ottoman (Turkey today) leaders were responsible for the deaths of more than a million people during World War I has hardly been acknowledged, let alone evaluated [3]. Data concerning the war in Bosnia and the mass killing of Tutsis by Hutus in Rwanda in 1994 are only now beginning to emerge [4]. Intergenerational consequences have been reported among the offspring of those who survived the Holodomor genocide of 1932–1933 when Ukraine experienced a famine instigated by Russia [5]. We can only guess the consequences of Putin's current brutal attack on the people of Ukraine.

It is impossible and inappropriate to compare collective traumas that have been experienced by different groups, especially given the pronounced differences that exist with respect to the magnitude, strategy, and duration of the events. Distinctions in the malign motivations that prompted these atrocities require consideration. Whereas some collective assaults were aimed at eradicating all people of specific groups by killing them, in other instances, the apparent goals focused on cultural genocide that comprised the dispossession of homelands and spiritual and cultural destruction, promoting the disappearance of a people over time. Indigenous Peoples worldwide, including in Canada and the U.S. have, over generations, experienced assaults on their very survival, along with their culture, land, and ways of life. The Truth and Reconciliation Commission of Canada, established to bring to light the experiences of survivors of the Indian Residential Schools, referred to this program as constituting cultural genocide [1]. Irrespective of the many differences in how genocide plays out, these events all inflicted severe and lasting harm to the survivors. The cumulative consequences of the historical traumas experienced by Indigenous Peoples have been described as causing a 'soul wound' that has profoundly affected individuals across generations [6].

Some have maintained that the experiences of Indigenous Peoples in Canada constitute more than just 'cultural' [7]. The term genocide was first introduced by Raphael Lemkin, who relentlessly pressured the United Nations to enact laws that recognized genocide as an international crime [8]. Particularly relevant to the discussion that follows is Article II of the 1948 'Convention on the Prevention and Punishment of the Crime of Genocide':

Article II: In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a)
Killing members of the group;
(b)
Causing serious bodily or mental harm to members of the group;
(c)
Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d)
Imposing measures intended to prevent births within the group;
(e)
Forcibly transferring children of the group to another group.

While there has been a focus on direct acts of genocide, less often has consideration been given to the indirect impacts involving trauma, poverty, food scarcity, forced migration, loss of homes and land, loss of cultural values and overall impacts on health and well-being. Yet, if genocide constitutes bodily or mental harm to members of a group, these impacts constitute well-documented social and environmental determinants of health. In this regard, numerous legislative policies in Canada have served to limit the capacity for Indigenous Peoples to maintain their relationship and connections to the land for physical and spiritual sustenance, and disrupted the transmission of knowledge and shared ways of life across generations to ultimately undermine health and well-being. The lands of First Nations were taken, and through the unilateral creation of paternalistic federal policies such as the Indian Act, First Nations Peoples were confined to reserves located in federally demarcated areas of their ancestral lands (typically areas that were viewed by the colonizers as lacking resources of interest). Treaties were negotiated that many First Nations Peoples understood to be about sharing resources (as the notion of land ownership was not part of Indigenous world views). These were acted on by the colonizers as though the lands had been surrendered.

The ongoing systemic neglect experienced by Indigenous Peoples has resulted in poor housing conditions, food insecurity, and the absence of potable water in some reserves. The bodily and mental harm of Indigenous Peoples was caused by policies that undermined birthing rights and maternal health, including the forcible removal of children. These historical and current conditions might further constitute acts of genocide by 'deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part' (Article IIc) by means of environmental, social, and cultural degradation.

In this paper, we review the intergenerational trauma that was instigated by the historical genocide and ongoing genocidal conditions that shape the lives of Indigenous Peoples in Canada. We are not legal scholars, but rather our analysis considers these actions from a psychosocial and developmental perspective, together with the biological sequelae of these policies and actions. Grounded by the determinants of health perspectives, as shown in Figure 1, we have organized our analysis to consider the macrolevel policies of the federal government, and the implications of these policies that affected key aspects of the cultural and social environment of Indigenous Peoples in Canada. This environment is proposed to have given rise to multiple processes that contributed to the transmission of trauma across generations. In our analysis, we address how these factors represent potential mechanisms that link the effects of colonization to well-being outcomes across generations. Despite devasting transgenerational outcomes, these same processes can serve as a basis for collective resilience, and we address the sources of strength that enable adaptation, perseverance, and resistance among Indigenous Peoples, despite the continued adverse conditions.

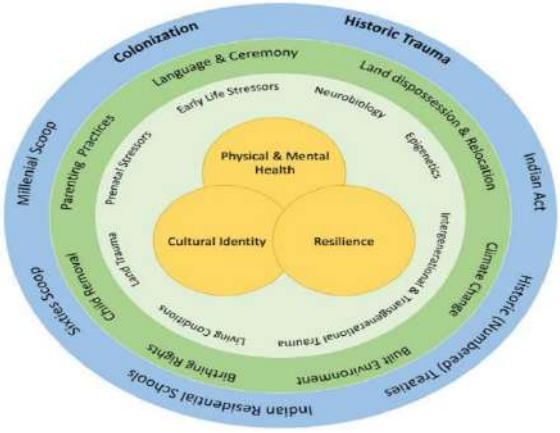

Figure 1

The determinants of health framework we are presenting to outline our understanding of the genocidal impacts of Canadian policies regarding Indigenous Peoples. The outer circle represents the federal policies and programs; the adjacent inner circle constitutes the targeted actions that were taken to achieve the goals of the policies, affecting the relational, cultural, and environmental context of Indigenous Peoples. As a result, these actions gave rise to processes (third inner circle) that have contributed to the health and well-being of Indigenous Peoples.

The research literature included in this review is selective, as in many instances direct research based on human experience, let alone the experiences of Indigenous Peoples, is lacking. Thus, to demonstrate the validity of particular mechanistic processes, at times we relied on research with animals (primarily rodents), and other human populations that were subjected to collective trauma. Where available, research conducted with Indigenous populations is described. We note in each section the limits to the existing research.

2. Historical Trauma: 500 Years of Colonization

Colonization has long been a way for some nations to gain wealth and influence. The African continent has experienced colonization for more than two millennia. The colonization of what was to become the Americas began in the early part of the 16th century, before which Indigenous Peoples had their own kinship and governance structures, ceremonies and belief systems, as well as knowledge developed over many generations regarding a balanced co-dependent relationship with the land. A degree of cooperation initially existed between Indigenous Peoples and the Europeans who arrived, including the sharing of skills and knowledge, as well as trade and military alliances. Thus, at the outset, relationships with Indigenous Peoples were greatly valued—until they were no longer needed and viewed as an encumbrance. As settler populations increased, their desire for land and wealth grew. The colonization of Indigenous Peoples over several centuries was achieved by guns and by old-world bioweapons that comprised the introduction of smallpox, tuberculosis, and influenza that killed more people than settler bullets did. In fact, in what is now Canada, the Indigenous population pre-colonization was estimated to have been between 350,000 and 500,000 (but some estimates have it as high as 2 million), but declined to just 125,000 by 1867.

In addition to the physical appropriation of land was the colonial effort to eliminate the transmission of cultural identity, traditional skills, and connection to the land. Beginning in 1883 (while this was the date of the first federally established church school, similar institutions existed as early as the 1830s, years before Canadian federation) Indian Residential Schools (IRSs) were established in Canada (as were American Indian Boarding Schools in 1862). Children were forcibly removed from their families and were institutionalized in IRSs with the explicit goal of 'taking the Indian out of the child'. These mandated church-run IRSs endeavoured to save the souls of the 'savages' by immersing them in Euro–Christian beliefs and eradicating access to traditional socialization values, language, practices and ways of life. By the 1930s, roughly 75% of First Nations children attended IRSs, as did many Métis and Inuit children. The last of the IRSs was closed in 1996, but by then several generations of children had experienced the mistreatment that abounded in these institutions.

While the treatment of children varied across the different IRSs, they frequently experienced harsh and denigrating conditions [1]. In addition to physical, emotional and sexual abuse and neglect, children were stripped of their identities, made to feel ashamed of themselves and their culture, and denied the use of their language, beliefs, and ways of being. Some IRSs were associated with Indian hospitals where sick children were transferred but, owing to poor isolation procedures, diseases such as tuberculosis were often acquired. Indian hospitals were not intended to administer treatment that incorporated traditional medicines, midwives or holistic strategies; rather, the hospitals' assimilationist goals were to replace traditional healing with Western biomedical procedures [9]. In the Indian hospitals, which treated Indigenous patients in addition to IRS students, non-consensual sterilization was commonly undertaken (such non-consensual operations were performed on Indigenous women even as recently as 2018). In some IRSs, nutritional experiments were conducted from 1942 to 1952 to determine whether vitamin supplements (riboflavin, thiamine, niacin, and bone meal) would limit the effects of purposefully introduced malnourishment. These experiments continued despite the deteriorating health and increased mortality of children, and the developmental delays that were produced [10]. Indeed, these experiments continued well after the UN Convention on genocide was signed. The consequences for IRS survivors resulted in marked and varied repercussions on health, which has been elucidated in detail in a tragically poignant report [11].

The trauma did not end for children once they were released from the IRSs. They were returned to reserves that had been subjugated into poverty, and where they felt disconnected from their families and communities. There was much discord between community members, often instigated by prior conflicts (bullying) brought about by a need to survive in the IRSs [12]. Moreover, on some reserves, divisions existed between members who had internalized the religious precepts imposed on them at the

IRSs, whereas others were intent on maintaining traditional Indigenous ways of life. Thus, where communities had operated as cohesive collectives, the IRS experience fostered divisions and conflicts over fundamental values. Further contributing to dysfunction in some communities, adult survivors frequently experienced shame and guilt owing to their powerlessness in protecting their children or siblings from the IRS experience, resulting in coping behaviors that were self-abusive or abusive of others.

Although the experiences of the children who attended the IRSs and the consequences that emerged are relatively well known, far less attention has been directed toward the Sixties Scoop. During the period from the 1950s to the 1990s, about 20,000 Indigenous children in Canada were removed from their families and communities by child welfare services. Indigenous children whose parents attended IRSs were at greater risk of experiencing childhood adversity in their homes, thus increasing the likelihood of their removal and placement with non-Indigenous foster parents, adoptive parents, and in group homes, often permanently separated from their families and from their cultural identity [13,14].

Even today, despite representing only 7.7% of the Canadian population, Indigenous children represent over half (52.2%) of children aged 14 and younger in foster care, described as the 'millennial scoop' [15]. Remarkably, there are currently more Indigenous children in the care of the child welfare system (CWS) than there were in IRSs at any single point in time [1]. In numerous regional jurisdictions in Canada, there remains a policy of putting expecting mothers, disproportionately those who are Indigenous, on 'birth alerts', with social workers being present to apprehend a newborn infant immediately following the birth without parental consent. Even in regions where birth alerts are no longer official policy, it has been suggested that the practice continues, largely due to systemic biases within the CWS. There is growing evidence that the overrepresentation of Indigenous children at risk of apprehension by the CWS can be ascribed to social and economic inequities [13,16,17], most of which are linked to the continued legacy of governmental forced assimilation policies [13]. Sadly, experiencing the child welfare system is predictive of poorer mental health outcomes, along with juvenile and adult incarceration in the criminal justice system. In addition to affecting the children taken, these experiences promoted profound mental health consequences in parents [18].

Colonialist actions involving policies such as the IRSs and the Sixties Scoop, along with forced relocations and the restricted movement of Indigenous community members, have contributed to the erosion of the knowledge of the land that was passed down through generations. Treaties were created that were regarded by settlers to represent a surrender of the land by First Nations. The Indian Act restricted First Nations Peoples to reserves and diminished access to the broad resources of their ancestral territories either by limiting practices, physical access, or by developments that destroyed the land, contaminated the water, or eradicated traditional ways of life and livelihoods. As with so many Indigenous populations globally, the land is not perceived as an object to be possessed. Instead, the plants, animals, and waters are viewed as 'life' and inter-connected relationships, as 'members of the larger other-than-human community' [19]. Thus, the systematic removal of Indigenous Peoples from their lands and the development (desecration) of traditional territories, ranging from clear-cutting to changes to waterways (hydro dams) to fracking and pipelines, to the toxic disposal of pollutants in the air and water systems, all constitute traumatic insults with incumbent consequences [20]. The Canadian determination to establish sovereignty in remote areas (e.g., the Arctic circle) involved the duplicitous relocation of Inuit families to thousands of kilometres from their home territories. Elders have recounted decreased physical, mental, and emotional health after experiencing dispossession from the land [21]. Spiritual impact and loss are felt related to the inability to pass on traditional Indigenous knowledge to younger generations; reduced access to the land preventing its use for ceremonies, traditional practices and sustenance; the reduced ability for water to give and support life; the loss of language that is essential to express their connection with; and lost knowledge of the land [21,22].

Beyond colonial exploitation of the land, environmental racism and climate change are impacting the health and well-being of Indigenous Peoples, especially in the north [23,24]. The most recent report of the Intergovernmental Panel on Climate Change [25] points to climate change as a contemporary manifestation of colonialism. In this regard, colonialism is implicated as both a driver of climate change and in exacerbating the vulnerability of Indigenous communities. When the land is the main source of sustenance, the inability to predict environmental phenomena or the lack of tools to contend with such changes can have particularly devastating effects on well-being at both the individual and community level. Many Indigenous communities have been contending with critical environmental issues, including the toxicity of local bodies of water and exposure to natural and human-made disasters, such as floods and forest fires. When such events force displacement, temporarily or permanently, there is the additional diminishment of the safety and security of displaced populations. Under these conditions, resources

(e.g., financial, along with basic needs such as water, food, and clean air) are stretched or no longer accessible, family and community members may be divided or lost, safety and security are undermined, and exposure to potential toxicants and disease are heightened. Warming temperatures, as well as changes in weather patterns and ice stability, have altered access to resources critical to community survival and created barriers to community members' participation in land-based practices and ways of life, resulting in diminished cultural identity and well-being [23,26]. These effects are occurring even though Indigenous Peoples' ways of life are least likely to be contributing to the human-made impact on the climate. On the contrary, many of the environmental disasters that have affected the lives and livelihoods of Indigenous Peoples in Canada have, at their roots, industrial developments by corporations with no or minimal Indigenous representation, consultation or benefit.

The built environment of Indigenous communities may further promote severe health issues. Government programs that control the building of homes and infrastructure in fly-in and northern communities apply standards that are not only inappropriate for the climate [27,28], but disregard the cultural and social needs associated with familial and community living. Homes were built with standard designs defined by government agencies ('Indian Houses Type 1–7'), all with similar floor plans. This strategy undermines traditional family structures and diminishes individuals' identification with their living spaces [27,28]. The houses in these communities are often built below acceptable quality standards, and without consideration of the high cost of transporting materials to remote communities, thereby limiting the number of new homes and extending the time needed to build.

A failure to include Indigenous perspectives in decision-making continues to severely limit progress for self-determination in housing [28]. The lack of reconciliation in housing policies combined with the substandard construction of homes on-reserve has resulted in statistics that have remained unchanged for decades; in 2006, 44% of on-reserve First Nations homes required major renovations and 36% reported living in overcrowded conditions, and these numbers were still evident in 2016 [29,30]. It has been noted that, 'The consequence of this crisis is that the home, which for First Nations people has traditionally been a place of pride and identity, instead today exacerbates many social and health problems' [27] (p. 2). Some of these social problems contribute to intergenerational trauma, including numbing the pain by substance misuse and other related negative coping mechanisms [31].

Colonization as it is recapitulated in current times meets the key criteria of Article II of the UN Convention on Genocide. The intergenerational effects of historic and ongoing systemic racism have had considerable implications for the health and well-being of Indigenous Peoples (Article IIb). Mental health problems are endemic among Indigenous populations; depressive disorders, anxiety, PTSD, and substance use disorders occur at inordinately high levels. In many First Nations and Inuit communities, the occurrence of suicide has been much higher than in the remainder of the Canadian population. The frequency of suicide varies across communities, ranging from 2 to 10 times that of non-Indigenous people, and it is especially disconcerting that over the last two decades suicide has occurred more frequently among young people. This is similarly apparent among American Indians and Alaskan Natives, in whom suicide occurs at 2.5 times the frequency of the population at large.

Understandably, a significant level of distrust between Indigenous Peoples and healthcare professionals exists. Given women's experiences of forced sterilization, birth alerts, and the removal of children as a result of various policies over generations, the fear of child apprehension is so deeply rooted that some mothers may refuse skin-to-skin contact, breastfeeding, and other bonding strategies because they expect their child to be taken from them (Articles IId, IIe). This learned distrust of healthcare professionals jeopardizes the willingness of expectant mothers to disclose their medical, physical, mental or substance use history. Such mistrust is particularly evident among Indigenous women in fly-in and northern communities. The medical and healthcare services offered in such communities are often limited, forcing expectant mothers to leave the community to deliver in larger, urban, mainstream hospital facilities, and those who experience pregnancy complications are sometimes away from home for extended periods of time. Forced obstetric evacuation is particularly stressful, as due to the nature of medical funding that is applied to Indigenous Peoples, women are typically separated from family and community support for the final weeks of pregnancy, putting a notable strain on the health and wellness of both mother and child. This may contribute to the increased risk of medical intervention during labor, as well as postpartum depression, along with the negative developmental consequences of stress on the fetus, and may even account for why the mortality rate of Indigenous infants is 2–7 times higher than non-Indigenous infants [32]. The loss of the birthing experience and related ceremonies in communities is perceived as a cultural loss and forced evacuation has been long associated with colonial practices.

Just as colonialism continues to influence Indigenous entrance into the world, it also influences death. The built environment hinders the palliative care that reflects the values of Indigenous Peoples. A lack of healthcare access on reserves and inadequate housing that does not allow for proper care necessitates aging individuals leaving their community to access care in a hospital setting [29,33,34]. While the majority of Indigenous people would prefer to pass away at home, many die in urban hospitals where the physical structure of the hospital building or prohibitive administrative policies can prevent end-of-life care that aligns with Indigenous values. In addition, this stage of life is often a time of sharing stories and passing on knowledge, and so death in urban hospitals is another form of systemic racism that further marginalizes Indigenous ways of knowing [29].

3. Examining the Intergenerational Effects of Trauma: The Mental and Physical Harm Perpetrated against Indigenous Peoples

In the next section of this paper, we will provide an understanding of how the diminished mental and physical health outcomes associated with colonization occur not only among the survivors of historical and ongoing traumas such as IRSs and involvement in the child welfare system, but how these experiences are felt across generations, including from parent to child (intergenerational) as well the historic trauma that affects multiple generations (transgenerational effects). It is, in part, for this reason, that the acts perpetrated as a result of the colonialist practices and policies ought to be viewed as constituting genocide. Even those actions that did not directly comprise 'killing members of the group' (although the recent uncovering of unmarked mass burial sites of children who died in the IRSs suggests otherwise), the transgenerational impacts on survivors have undermined the health expectancy and life expectancy of several generations. The heightened impact of stressors may be especially pronounced when superimposed on a background of ongoing distress, such as poverty, which itself may have arisen owing to the trauma experienced in an earlier generation, or from toxic living conditions. The social and financial consequences that emanated from earlier trauma as well as the psychological damage that had been inflicted on the parents may have hampered their parenting abilities, thereby contributing to the transmission of trauma effects [35]. Finally, dispossession from the land disrupts access to a way of life and life-sustaining resources, and undermines the capacity to cope with trauma in a way that might facilitate healing processes.

3.1. Impact of Early-Life Stressors

Stressful experiences at any stage of life can promote adverse health repercussions, but those encountered early in life may engender especially damaging effects. If parents encounter traumatic or chronic stressors or have mental health problems, including substance use disorders, their parenting abilities may be undermined. The poor parenting associated with distressing events may comprise disturbed parent–child interactions, neglectful behaviors, or disengagement from children, as well as hostility, coercion, or abusive behaviors, which may result in the child's psychological development being disturbed.

Young children typically have not developed effective coping strategies and their restricted social connections limit the help they can acquire from others [36]. Thus, adverse childhood experiences (ACEs) may disrupt school performance, foster the mistrust of others, undermine the ability to form and maintain close relationships, and self-regulation may be disturbed, culminating in the emergence of psychological disorders [37]. In the context of parental mistreatment, children may form self-damaging inferential attributions concerning the abusive or neglectful experiences happening to them. They may internalize the belief that these adverse events are justified, and attributable to aspects of themselves (i.e., self-blaming and self-criticizing). ACEs have been associated with an elevated risk of subsequent stressor encounters (stress proliferation) as well as revictimization (e.g., domestic abuse) [38]. The distress related to a sense of threat, as well as the uncertainty and unpredictability concerning future harm being experienced, may increase vulnerability to the development of anxiety and depression and may be a driving force in the development of PTSD following a subsequent traumatic experience [39]. The more frequently ACEs are encountered, the more likely it is that adult psychopathology will develop [40].

To a significant degree, cognitive disturbances linked to multiple brain changes act as mediators between early experiences and the emergence of psychopathology [41]. These features may become psychologically embedded and may carry through to adulthood; thus, cognitive distortions may develop such as a preoccupation with danger or exaggerated concerns of future harm [42], with these even being evident during old age [43]. These experiences are likewise more likely to disturb immune and inflammatory processes, thereby increasing the risk of numerous non-communicable illnesses, such as immune-related disorders, type 2 diabetes, and heart disease [44].

The present-day over-representation of Indigenous children in the child welfare system in Canada, including those apprehended at birth, is purported to reflect ongoing paternalistic attitudes and policies that

perpetuate and interact with the long-term consequences of the IRS system and the Sixties Scoop [13]. The sudden separation of pre-adolescent children from their parents can produce marked adverse effects, as witnessed among immigrants attempting to enter the US from Mexico [45]. It has been known for decades that raising infants within orphanages (within Romania) where contact comfort is limited may have multiple adverse developmental consequences [46], including pronounced brain electrophysiological alterations [47]. Indeed, the absence of skin-to-skin contact might have negative repercussions in infants, although the data within most studies comprise only a small number of participants and vary across the specific outcomes assessed [48]. The case has been made that skin-to-skin contact is essential for the development of the neurohormonal changes that limit stress reactivity. The absence of such contact during the initial hours following birth has been related to poor mother–infant interactions assessed one year later [49]. Mothers separated from children may experience lasting grief and the frequency of postpartum depression may be elevated [50].

Damaging effects of parental trauma may occur even in relatively well-adjusted families owing to the communication patterns between parents and their children. Having experienced severe trauma, such as among some survivors of the Holocaust or the IRSs, there may be a need to unburden themselves of the horrors they have experienced [51]. Among others, in contrast, there is a tendency to withhold any communication about their experiences, which has been dubbed a 'conspiracy of silence' [52], furthering their feelings of shame and isolation [53]. In fact, in many cases, the children of IRS survivors did not know that their parents had attended one of these institutions; it was not until the IRS Settlement Agreement in 2005 (which offered reparations to survivors) or the 2008 IRS apology from the government that many survivors began talking to their adult children [54]. In an astute analysis concerning the impact of the lack of communication among survivors of the Holocaust, Hirsch [55] described the creation of a 'postmemory' or a 'reclaiming of memory' in which children of survivors stitched together bits of information that they obtained, recreating narratives and images to form a memory of these experiences. Hirsch described these as 'so powerful, so monumental, as to constitute memories in their own right' [55] (p. 16). As much as Holocaust survivors might have wished to protect their children, those who experienced the silence were, unfortunately, more likely to be vulnerable to experiencing interpersonal distress [56].

It has been known for decades that children who experience poor parenting may subsequently model their own child-rearing behaviors based on their experiences: 'poor parenting begets later poor parenting' [35]. It has been estimated that child maltreatment occurs in about 30% of children whose parents have themselves been maltreated. Thus, the transmission of poor parenting may stem from abuse experienced by parents during their own childhood [57], adversity related to poverty, diverse traumas encountered, or impaired mental health [58]. Given the 'parenting' experienced by survivors of the IRSs, it is no wonder that their capacity to parent was undermined simply by virtue of the role models that they were provided. An extensive analysis that focused on the impacts of the IRSs revealed that relatively poor quality of parenting was reported by Indigenous youth who had one or both parents attend an IRS, and this was similarly experienced by individuals whose grandparents had attended Residential Schools. Moreover, First Nations adults who had a parent who attended IRS reported experiencing relatively frequent adverse childhood experiences and adult traumas. These individuals self-reported greater depressive symptoms and thoughts of suicide in comparison to adults whose parents did not attend an IRS. These psychological disturbances were evident in third-generation survivors and were particularly notable among individuals who had both a parent and grandparent attend an IRS [59].

All of the studies conducted looking at the processes associated with the intergenerational transmission of trauma are correlational using observational or self-reported data. Such data limit conclusions of causality, as many factors might contribute to effects over time and generations. Although studies in animals are not always generalizable to humans, it is nevertheless significant that research on multiple species has found that the behavior of parents toward their offspring can have intergenerational and transgenerational consequences. For example, numerous studies in rodents have demonstrated that, among pups separated from their mothers for short periods, maternal behaviors were altered and anxiety and erratic behaviors were subsequently apparent in the offspring [60,61].

3.2. Living Conditions: The Built Environment

Housing is a determinant of health, with poor housing being linked to a variety of negative health outcomes, including injuries and disease [62,63]. As well, inadequate housing is associated with psychological and social challenges, either as a direct cause or as an exacerbating factor of illness [63]. A clear example can be seen with tuberculosis. Though Canada currently ranks among the lowest rates of tuberculosis in the world, the incidence rate among Indigenous Peoples, particularly among Inuit, is 290 times higher than the Canadian non-Indigenous population [64]. This has been linked to the severe housing shortages in Nunavut [65],

where over half (52%) of the population lives in social housing [66]. As much as 72% of social housing tenants live in housing that is overcrowded; frequently, 20 people may be living in a four-bedroom home [65]. Crowding combined with mould and other housing inadequacies creates an ideal environment for the development and transmission of tuberculosis and other respiratory diseases.

Crowding itself is not necessarily the primary issue, as extended family living in single domiciles is not uncommon [28]. The problem fundamentally comes down to the lack of choice in housing design and fit for cultural and climatic conditions, along with siloed funding and housing development programs that are not community-led and fail to consider Indigenous family values [27,28]. This said, crowding can still contribute to psychological distress, particularly in the presence of poor parenting practices related to prior trauma [28,67,68]. Housing shortages that impose multigenerational cohabitation can enable the perpetuation of cycles of abuse [67,69]. Additionally, the prevalence of dilapidated housing functions as a direct reminder of the continued influence of colonial policies and forced relocation, which does not create an environment conducive to emotional healing [27].

Housing inadequacy contributes to children being taken from their homes at alarmingly high rates. Appearances of unsafe housing increase the risk of a family being investigated by child welfare services, even after controlling for other psychosocial and socioeconomic variables [69]. While the study by Hirsch and colleagues [69] did not specifically look at children from Indigenous families, other researchers have found that Indigenous children are more likely to be placed in care outside of their home due to housing difficulties compared with non-Indigenous children [70]. Furthermore, in some instances, the situation is exacerbated when a parent attempts to address their own mental health issues in an effort to create a better home environment for their child [71,72]. For example, if a parent enters a live-in substance rehabilitation program, this entails leaving children alone or in the care of others who may or may not act in the child's best interests. The parent may need to take time away from work which, due to diminished income, may cause further distress, including the possibility of eviction. A parent may be required to meet specific housing requirements based on Western standards, such as separate bedrooms for each child, in order to maintain custody of their children [73]. The severe housing shortage in communities can present a serious barrier for meeting child welfare system standards. Social assistance programs further contribute to housing precariousness when a child is taken into the child welfare system, as the family may lose the financial assistance that was helping them to pay for their home [73]. In the Northwest Territories specifically, a single parent living in social housing will be evicted from their home if they lose custody of their child, and there is limited housing available for single adults with no children [74]. These examples of government-mandated requirements that intensify the challenges families are already experiencing have been identified as institutional racism [72]. It has been suggested that 'institutional racism severed many First Nations' from their inherent right to the traditions and values' of culture and identity [75] (p. 84). Housing represents a key opportunity to address multiple pathways for reconciliation and cultural safety, as the home functions as a central point of convergence for the detrimental psychological, social, and environmental impacts of colonial genocide as well as the connections to family and community that are critical for resilience [74,76,77].

4. Neurobiological Consequences of Early-Life Trauma

Aside from the psychosocial and environmental factors associated with diminished outcomes emanating from traumatic experiences, numerous biological consequences of chronic and traumatic stressors can contribute to varied psychological and physical illnesses. These studies, primarily conducted in animal models, have indicated that stressful experiences profoundly affect numerous hormonal processes (e.g., CRH, ACTH, cortisol, estrogen, oxytocin, arginine vasopressin), brain neurotransmitters (e.g., monoamines, GABA, glutamate), neurotrophins (e.g., BDNF, FGF-2, VEGF), brain microglia functioning, and gut microbiota, as well as immune and inflammatory responses that may promote or exacerbate physical and psychological disturbances [44,78,79]. To a considerable extent, many of these effects are moderated by genetic and epigenetic factors, the organism's previous stressor experiences, and a constellation of psychosocial and environmental variables [80].

The neurobiological changes introduced by stressors are particularly pronounced when encountered early in life, varying with the nature and intensity of the stressors experienced. If early-life stressors are not intense (tolerable stressors), these experiences may teach children how to cope, and could thus serve in a protective capacity [81]. Severe adverse events (sometimes referred to as toxic stressors), in contrast, may result in the sensitization of biological processes so that the later reactions to diverse stressors may cause exaggerated behavioral and biological responses [80].

In addition to sensitized neurobiological responses, if stressor experiences are sufficiently protracted, biological systems (e.g., immune functioning) can be overly taxed, thereby influencing vulnerability to

immune and inflammatory disorders [44]. Likewise, chronic stressor exposure may promote hippocampal receptor loss owing to their sustained activation by glucocorticoids (allostatic overload), potentially influencing cognitive abilities [82]. From this perspective, early life stressful experiences may prime biological systems so that allostatic overload will be provoked more readily, thereby promoting specific disturbances. It is equally possible that the broad actions of adverse early-life events may engender a general susceptibility so that the risk of multiple physical and mental illnesses is elevated [83].

As informative as studies in rodents are in documenting the influence of chronic stressors and determining the processes governing these actions, their relevance in informing trauma-related pathologies in humans is limited. This is not only due to the vast species differences in diverse cognitive abilities, but because animal studies do not allow for the analysis of the complex appraisal processes and coping mechanisms that humans adopt to deal with stressors, and most often they cannot address the influence of other psychosocial factors on stress responses. Ironically, for obvious ethical reasons, the distress imposed on animals in laboratory studies comes nowhere near the trauma humans too often inflict on one another. These caveats notwithstanding, the data from animal studies have pointed to the importance of psychosocial stressors and adverse early-life experiences in the provocation of numerous long-term negative behavioral outcomes, particularly those that reflect anxiety and depression, as well as subsequent stress sensitivity and reactivity [84].

In humans, neurobiological changes associated with depression and forms of anxiety have been linked to adverse early-life experiences [85]. Among individuals who have experienced sexual, physical, or emotional abuse during early life, stress-related cortisol diurnal profiles are altered [86], and are predictive of disturbed executive functioning [87]. Moreover, such experiences have been associated with risk for various non-communicable diseases (e.g., heart disease, type II diabetes), as a result of elevated inflammatory processes in adulthood, reflected by increased C-reactive protein levels [88]. Effects such as these have appeared to vary with psychosocial factors and feelings of belonging to social groups. Relevant to our discussion of the mental health of Indigenous Peoples, among adults living on the Blackfeet reservation, childhood adverse experiences were related to elevated levels of a circulating inflammatory marker (i.e., C-reactive protein), occurring most prominently among individuals who self-reported low levels of belonging to the community [89].

Neuronal reactivity within the brain can be affected by adverse childhood experiences. For instance, among children that have experienced family violence and discord, the presentation of images comprising angry faces (but not sad faces) led to elevated neuronal activity in certain brain regions (the anterior cortex and amygdala), perhaps reflecting threat responses [90]. These brain changes might ordinarily be an adaptive response to a potential threat, but the magnitude of these neuronal responses points to the persistent effects of aversive experiences, which may signify elevated risk for further pathology in response to subsequent stressors.

Too often, the adverse experiences of childhood are not isolated events but reflect a pattern of repeated psychological or physical challenges that conspire to produce mental illnesses, such as PTSD. The experience of young people living in such conditions, as has so often been apparent in Indigenous children and youth, has been described as not simply reflecting an ‘event’ but instead is a ‘condition’ in which stressors are persistently present [91].

Intergenerational Consequences of Prenatal Stressors

Just as Indigenous children are more likely to encounter ACEs than those who are non-Indigenous, as noted earlier, prenatal challenges (stress experienced by pregnant mothers) are more likely to occur among Indigenous women, with implications for the fetus. In animal models, it has become increasingly apparent that prenatal stressful events may have physical and emotional repercussions that appear in offspring. Like the effects of early-life adverse experiences, it was found that stressors experienced by a pregnant dam influenced the neurotrophins that are fundamental for the neurodevelopment and memory processes, and could thereby promote behavioral disturbances [92]. In humans, stressors experienced during pregnancy may profoundly influence the well-being of offspring. The appearance of low birth weight (which is accompanied by the underdevelopment of brain and body functioning) has been apparent in response to diverse stressful experiences, including wartime conditions, domestic violence, and racial discrimination, as well as in the offspring of mothers that experienced PTSD during pregnancy [93]. Moreover, preterm birth is related to cumulative life stressor experiences, including those encountered prior to pregnancy [94]. The precipitation of preterm birth and low birth weight may occur owing to the provocation of numerous hormonal and inflammatory alterations introduced by stressors [95,96].

Individual stressor experiences (e.g., abuse) during pregnancy can have marked effects on the fetus that are manifested as far-reaching postnatal health disturbances. Developmental delays, including emotional and

cognitive disturbances associated with variations of limbic and frontotemporal neural networks, have been reported in the offspring of mothers that experience emotional, psychological, physical, or sexual violence during pregnancy [97,98]. Commensurate with these findings, such maternal experiences have been linked to altered hippocampal volume and poor social–emotional development in offspring [99]. Likewise, the stress of exposure to natural disasters could affect pregnant women and lead to offspring displaying poorer cognitive, emotional, and behavioral outcomes [100]. In addition to the psychological disturbances engendered by prenatal stressors, these experiences have been associated with childhood immune-related disorders, such as allergies and asthma, and increased susceptibility to infectious diseases [101]. Stressful events experienced prenatally are similarly accompanied by elevated levels of inflammatory factors [102] that favor the subsequent development of chronic diseases, such as type 2 diabetes, heart disease, and some forms of cancer [44].

It is not simply during pregnancy that maternal stress can affect fetal development. Stressors encountered by women prior to becoming pregnant can affect offspring birth weight [103], fetal brain development, and postnatal psychological disorders [104], which could potentially come about due to the distress related to persistent negative rumination. A prospective analysis similarly revealed that preconception PTSD was associated with elevated negativity when children were 3–5 years old, even after controlling for prenatal and postnatal depressive symptoms or sociodemographic factors [105].

5. Epigenetic Changes Related to Stressful Events

Based on reports that traumatic events could induce intergenerational epigenetic changes among survivors of the Holocaust, as well as those experienced by other groups, it has been suggested that similar actions may affect Indigenous Peoples in Canada and elsewhere [106]. However, data are not currently available that assess this possibility. In part, this lack of research is not surprising given the numerous instances in which Indigenous Peoples have been experimented on without consent, lied to about the goals of research [107], and over-researched while at the same time remaining invisible in research [108]. Moreover, there is a concern that genetic research might be used to undermine the responsibility of colonial governments to acknowledge the causal role of history in relation to health inequities. Thus, while understanding how intergenerational trauma and environmental toxicants can influence epigenetic processes, there is currently an absence of mutually beneficial research addressing these issues among Indigenous people in Canada.

Epigenetic research reflects an understanding that social challenges, environmental agents, and even dietary factors can alter the expression of a great number of genes, without altering the genome itself. Through various processes, the functioning of particular genes can be silenced or activated, which can promote multiple phenotypes [109]. Thus, a history of colonial trauma encountered by Indigenous Peoples may have altered gene expression, leading to elevated vulnerability to psychological and physical illnesses. At one time, it had been assumed that epigenetic actions were infrequent, but it is now known that epigenetic changes are exceedingly common, with some becoming fixed (permanent) whereas others are transient. Childhood abuse, for instance, is accompanied by a great many epigenetic marker beyond those evident among individuals who have not experienced early-life abuse [110]. In view of the numerous epigenetic changes that occur, it is difficult to determine the correspondence between specific changes and particular phenotypes. Moreover, finding such relationships does not imply causality.

The majority of the research assessing epigenetic changes has been conducted in animal models, particularly in relation to intergenerational outcomes. Studies in rodents have revealed that stressful events can promote epigenetic changes in genes that code for several hormones, neurotrophins and immune factors, which may favor the occurrence of psychological and physical disturbances [111]. Not unexpectedly, poor diet and nutrition similarly influence the expression of genes that can affect well-being. Specific nutrients (or lack of nutrients) may likewise influence the many bacterial species present within the gut and other parts of the body, and alterations of these ‘microbiota’ can produce epigenetic actions, which then promote the development of psychological disorders. Aside from nutrients, microbiota changes can be influenced by other lifestyle factors, stressors, and environmental toxicants, which can influence gene expression and their consequences.

Like other stressors, poor maternal care of pups during early development may promote epigenetic changes that have been linked to hormonal and neurotrophic processes. This includes neglect experienced by pups during early postnatal development, which can affect the epigenetic processes related to the gene regulation of glucocorticoid functioning, which is linked to elevated stressor reactivity [112]. As well, epigenetic actions stemming from early life adversity have been observed in genes associated with diverse behavioral disturbances. These include genes that influence serotonin processes [113], estrogen receptor functioning in the brain [114], as well as neurotrophin activity in several brain regions [115], all of which can affect normal behavioral functioning and the development of psychiatric

disorders. In addition to epigenetic changes being provoked by stressful events during early life, similar actions were provoked in rodents stressed during the juvenile period (the equivalent of adolescence in humans); these rodents subsequently displayed increased reactivity and anxiety. Intense stressors experienced in adulthood likewise promote epigenetic effects that influence neurobiological processes linked to depressive-like features [116,117].

Among humans, epigenetic changes stemming from ACEs may influence health outcomes. The epigenetic changes introduced by childhood stressors are not restricted to those related to brain processes, having been seen in relation to immune cell functioning and inflammatory factors that could potentially contribute to the appearance or progression of varied diseases [118]. Of course, numerous factors, including genes coding for an array of hormones and growth factors, may contribute to later health disturbances as might an array of experiential and environmental influences (e.g., parental behaviors, poverty).

5.1. Epigenetic Changes Associated with Prenatal Stressor Events

Just as stressors encountered during early life can have long-term ramifications, epidemiological studies have indicated that lifestyles of women during pregnancy (e.g., diet and obesity, tobacco and alcohol use), as well as stressful experiences and exposure to air pollutants, are accompanied by epigenetic changes that could affect offspring [119,120]. Likewise, psychological stressors experienced during pregnancy can elicit epigenetic changes that influence vulnerability to pathology in offspring, and these actions could be transmitted to subsequent generations [121]. A longitudinal analysis conducted among the offspring of women who were pregnant during Hurricane Sandy in 2012 indicated that when they were 3–4 years of age, they exhibited elevated levels of anxiety and aggressive behaviors, together with increased cortisol levels measured in hair samples. These behavioral and hormonal alterations were accompanied by placental mRNA changes that were tied to endocrine and immune processes [122]. It similarly appeared that, in the offspring of women who experienced a severe ice storm while they were pregnant, cognitive disturbances were subsequently apparent that seemed to be mediated by epigenetic changes linked to genes associated with the promotion of diabetes [123]. Indeed, reprogrammed gene expression within the fetus elicited by prenatal stressors resembled those associated with early-life adverse events [124]. These epigenetic effects could involve actions related to diverse biological processes, and particular attention has been devoted to those that influence or reflect stress reactivity (HPA functioning) and emotionality in offspring [125].

While the phenotypic changes associated with prenatal stressors might have been directly related to epigenetic actions stemming from stressful experiences, they could just as well reflect poor rearing conditions and parental distress and anxiety following a traumatic experience. Based on analyses of offspring that were born following in vitro fertilization, wherein they were biologically related or unrelated to their birth mothers, it was concluded that psychological and cognitive disturbances varied as a function of genetic factors, the prenatal environment, and post-natal maternal factors [126]. In effect, the stress experienced by the biological mother may have contributed to epigenetic changes in offspring, even in the absence of prenatal or postnatal stressors.

5.2. Transgenerational Transmission through Epigenetic Changes

While not diminishing the functional consequences of maternal and psychosocial factors, it has been clear from studies in animals that trauma-related epigenetic actions can affect the well-being of offspring across generations. The epigenetic changes brought about by stressors and other environmental exposures can be transmitted from parents to offspring if these alterations occur in germline cells (i.e., sperm or ova) and may occur across several generations, even if further stressors or other experience-dependent changes are not encountered [127,128]. Among other factors, exposure to stressors during pregnancy may promote sex-dependent transgenerational effects on anxiety-like behaviors, together with epigenetic changes within genes that code for or influence glucocorticoid receptor functioning and neurotrophins within particular brain regions [129,130].

Some of the transgenerational effects of the stressors discovered primarily occurred in males, whereas others were more evident in females. Sex-dependent effects have been assumed to be related to maternal influences, as mothers are the primary caregivers in most rodent species. Several studies, however, have suggested that epigenetic outcomes can occur through paternal transmission. Specifically, maternal separation from their male offspring resulted in the pups subsequently exhibiting depressive-like behaviors and increased reactivity to stressors as adults. In the offspring of these males, epigenetically related behavioral and neuroendocrine disturbances were evident, even though they had not come into contact with their male parent [131,132]. It was similarly reported that the impact of exposure to a stressor over 6 weeks prior to breeding led to paternal epigenetic effects [133]. Consistent with studies in animals, the paternal transmission of epigenetic changes stemming from ACEs in humans was linked to

attention problems apparent in their offspring [134]. The early-life stressful experiences of a male parent were similarly associated with altered brain development in neonates, even after controlling for multiple maternal factors [135].

It was similarly demonstrated that early-life paternal challenges that comprised a series of different stressors could engender behavioral disturbances that were evident up to the fourth generation of offspring [136]. Effects such as these have been attributed to epigenetic actions that are especially notable among stress-reactive mice, pointing to the fundamental importance of individual difference factors in predicting the transmission of stressor effects over generations. As well, the intergenerational effects of stressors are determined by the characteristics of the stressor experienced (e.g., social versus asocial stressors; acute versus chronic stressors) and the age of the animal at the time of stressor exposure [137].

Predictably, far fewer studies have assessed the intergenerational and transgenerational effects of stressful experiences in humans. The length of time for each generation to come to the age of having children has limited the research regarding the intergenerational effects of trauma. Even when studies were conducted to assess the transmission of stressor effects across generations, it was uncertain whether the effects observed were related to the trauma experiences, given that they were assessed retrospectively. Moreover, most complex psychological and physical disorders are mediated by multiple genes whose actions can be moderated by numerous psychosocial and experiential factors, making attributions to epigenetic changes and intergenerational outcomes tenuous. Nonetheless, an array of factors related to stressors have been identified that are subject to epigenetic changes, some of which might be relevant to intergenerational outcomes.

Epigenetic changes in genes associated with glucocorticoid functioning have been observed in relation to aging, as well as stressor experiences [138], and it has been found that aging and stressor actions are synergistically linked in affecting pathology and inflammatory processes [139]. Adverse childhood events are similarly tied to epigenetic changes that are associated with brain changes relevant to both executive functioning and adult depression [140]. Moreover, among individuals with a history of childhood abuse and neglect who had died by suicide, epigenetic changes were present within the genes of the glucocorticoid receptors within the hippocampus [141].

The intergenerational effects of traumatic events have been examined more extensively among survivors of the Holocaust than among other groups. The survivors frequently displayed elevated glucocorticoid functioning in response to stressors [142,143,144], and such effects were frequently apparent in the adult offspring of Holocaust survivors. These behavioral and hormonal alterations were, in many instances, accompanied by epigenetic changes in both the survivors and their children [145], varying in relation to whether one or both parents had been survivors, as well as whether one or both parents had developed PTSD [146]. These data imply neither causal nor direct connections between particular epigenetic effects and any specific phenotypic changes, especially as the latter may be mediated by parental mental health problems and disturbed parenting styles [147]. Importantly, offspring might not ordinarily present with disturbed day-to-day behaviors, but the actions of epigenetic changes might be most evident upon encounters with further adverse events [148].

As alluded to earlier, the intergenerational epigenetic changes associated with stressors were not unique to Holocaust survivors. Many women who experienced extreme abuse (sexual violence, torture) during the Kosovo war developed PTSD during pregnancy, and epigenetic changes were detected in their children, including those that coded for a glucocorticoid receptor and a serotonin receptor, as well as a neurotrophin [149]. Paralleling these findings, the children of pregnant women who developed PTSD during the 1994 Tutsi genocide subsequently displayed increased epigenetic changes tied to glucocorticoid receptor levels relative to those apparent in women that had not been exposed to the trauma [150]. The presence of an epigenetic marker related to the oxytocin receptor has also been associated with changes in discrete brain regions related to altered empathy in mothers [151], and could affect parent–offspring interactions.

Epigenetic changes do not only occur as a result of psychosocial stressors. Environmental toxicants and drugs consumed during pregnancy may promote teratogenic effects in a developing fetus, and epigenetic variations can similarly be engendered in the fetus by environmental challenges. Endocrine-disrupting compounds, such as phthalates and bisphenol-A, as well as pesticides and dioxins, can promote epigenetic changes that are transmitted to the next generation of rodents, thereby increasing health risk [152]. Pesticides and fungicides can similarly promote epigenetic changes that increase vulnerability to viral challenges, and these actions can be transmitted transgenerationally [153,154]. Paternal intergenerational effects have been implicated with epigenetic changes associated with nutrients consumed and with deficiencies in folic acid [155]. Likewise, epigenetically transmitted actions related to paternal diet (high fat or low protein) are associated with risk of disease in offspring [156]. Given that stressors can

affect nutrient intake, it can reasonably be expected that intergenerational effects can be transmitted indirectly by a male parent.

Lasting epigenetic changes have been reported among individuals that were born during severe famine conditions. Near the end of the Second World War, towns in the western parts of the Netherlands that had been occupied by Nazi forces were prevented from obtaining food or fuel, leading to misery and starvation. Children born during this period, referred to as the Dutch Hunger Winter, subsequently presented with elevated heart disease and the risk of type 2 diabetes. Psychiatric disturbances such as schizophrenia and depression occurred more often, and poor cognitive performance was apparent in later life [157]. The experience of the Dutch Hunger Winter was associated with genetic changes that influenced birth weight and subsequent LDL cholesterol levels [158]. Moreover, analyses conducted decades after this famine indicated that individuals who had prenatally experienced this condition expressed epigenetic changes related to factors that may have disposed individuals to type 2 diabetes [159,160].

Data collected in a different context are consistent with those obtained from studies of the Dutch Winter hunger. Specifically, among children born during the Great Chinese famine (1959–1961) the risk for adult type 2 diabetes was elevated and this outcome could have been transmitted across generations [161] (Li, 2017). Likewise, early-life differences in famine conditions within two regions of China revealed differences in epigenetic changes associated with neurotrophins, together with changes in cholesterol levels [162]. The intergenerational impact of the Holodomor genocide of 1932–1933, when Ukraine experienced a famine created by policies created by Stalin, is another case in point [5]. The constellation of behaviors associated with famine (or food insecurity) has been described as living in 'survival mode', including horror, fear, mistrust, sadness, shame, anger, stress and anxiety, decreased self-worth, stockpiling of food, reverence for food, overemphasis on food and overeating, inability to discard unneeded items, an indifference towards others, social hostility, and risky health behaviors. However, the imposition of such conditions and their implications have not been addressed in relation to Indigenous Peoples, despite the high levels of food insecurity in many Indigenous communities.

In view of the multiple epigenetic changes that have been associated with distressing events and with diverse psychological problems, as well as the influence of numerous psychosocial factors, it is premature to point to a single epigenetic alteration as being responsible for pathological outcomes stemming from adverse events. Many epigenetic actions have been identified among individuals who experienced stressful events during early life [117]. The involvement of these epigenetic changes in the intergenerational effect of stressors remains to be fully evaluated, but the findings are certainly in line with the view that actions other than, or in addition to, those associated with glucocorticoids may contribute to the persistent actions of early-life adversity. More extensive prospective analyses concerning the emergence of pathological conditions, together with whole epigenome analyses, could point to clusters of epigenetic markers relevant to the concatenation of factors that link generations of historical trauma exposure to illness occurrence.

6. Reversing Epigenetic Effects: Implications for Resilience

Being subjected to collective trauma has long-term intergenerational consequences that are instigated through multiple psychosocial and neurobiological mechanisms. Nonetheless, resilience in the aftermath of such challenges does occur. It has been suggested that resilience is fostered when the survivors of natural events are able to express and anticipate collective solidarity and cohesion, and to act cooperatively to draw on collective social support resources [163]. Processes that ground people in an identity, self-affirmation, belonging, and safety [164], and are further imbued with spirituality can serve to promote a continuity of relationships across generations [165]. In effect, intergenerational resilience can be derived from the symbiotic relationship to the land, encompassing physical and non-physical elements, such as the social, emotional and spiritual aspects that provide the foundation of identity, social connectedness, and a sense of community and belonging [166,167].

Likewise, although some epigenetic changes can be permanent, others can vary over lifetime. For example, treating rats with particular agents affected processes that resulted in the reversal of epigenetic changes introduced by early-life stressors [168]. It was similarly observed that environmental enrichment could reverse the epigenetic changes that had occurred after separating pups from their mothers (i.e., early-life adversity in the form of maternal separation) [169,170]. As well, the epigenetic changes produced by prenatal stressors that influenced glucocorticoid receptor sensitivity and the development of anxiety-related behaviors were diminished by environmental enrichment provided during adolescence [171,172]. Like the actions of stressors, the epigenetic effects engendered by toxicants and factors that increased inflammatory factors were modifiable by exercise and nutritional changes [173]. Together, these reports indicate that the profound and

lasting adverse effects of prenatal stressors and those experienced during early life do not necessarily doom offspring to negative outcomes. Resilience could still be promoted if given an opportunity to heal. In effect, the bell can be un-wrung. Taking appropriate measures to enhance postnatal environmental stimulation can attenuate some of the effects of prenatal challenges, and it is possible that interventions to diminish distress among pregnant women could be instrumental in diminishing the adverse effects on their offspring. However, to our knowledge there have not been any reports that have examined this possibility.

Typically, discussions of epigenetics have focused on the adverse outcomes created by various stressors, but this is likely too narrow a perspective. Natural selection involves advantageous gene mutations being passed on across generations, thereby enhancing resilience and increasing the fitness of successive generations. In a similar fashion, certain epigenetic effects may persist across generations because they promote resilience, enhancing adaptations that facilitate health and survival [174]. As we know, certain phenotypes linked to mutations are selected because they have survival advantages so that preferred genes can be passed on across generations. These phenotypic characteristics evolve in small, graded steps, but they can also develop as sudden large changes. Epigenetic changes that occur owing to environmental factors may similarly provide survival benefits, thereby driving natural selection, much as genetic mutations act in this capacity [175,176]. In essence, epigenetic changes introduced by stressors may produce evolutionary benefits that can facilitate adaptive responses to diverse environmental challenges that transcend generations [177] (Jablonka and Raz, 2009). Data supporting this view are only now emerging [178] but suggest that, in conjunction with cultural, social, and interpersonal factors, biological processes might contribute to the intergenerational connections that are foundational to resilience.

The epigenetic changes that occur within a fetus may similarly serve in a preparatory capacity so that offspring are more ready to deal with threats that may be present postnatally [179]. Of course, this would largely be dependent on the nature of the postnatal environment. For instance, the epigenetic changes associated with famine conditions may prepare the fetus to deal with a lack of postnatal nutrients. However, if conditions have changed so that famine conditions no longer exist, then the nutrient conservation and limited energy use that might be tied to epigenetic factors could render the offspring more likely to develop obesity and the illnesses that this condition fosters. In effect, the influence of prenatal stressful events linked to epigenetic changes and the advantages or disadvantages that occur are dependent on the match or mismatch between the prenatal and postnatal environments [180,181]. At the same time, it is equally possible that epigenetic changes that occur within the fetus may not appear postnatally unless environmental conditions are such that these are called for [147]. In this regard, some actions of negative prenatal experiences can have beneficial actions on offspring's ability to deal with later immunological threats. For example, among mice that encountered a prenatal bacterial or inflammatory challenge, epigenetic changes related to immune functioning appeared to provide them with enhanced protection against postnatal bacterial threats [182].

With the rapid environmental changes attributable to climate change, the psychological and biological changes that can magnify the effects of related stressors—such as food and water insecurity, the potential for socio-cultural instability, and the devastation created by (un)natural disasters that have been appearing increasingly more often—are apt to promote multiple health risks [183]. However, here, again, is where epigenetic changes might serve in an adaptive capacity. Under such environmental conditions, it is essential that biological changes occur quickly to avert exaggerated health risks, and epigenetic changes may be a way by which such adaptations can occur and be transmitted transgenerationally [184,185]. Of course, it is likely that these epigenetic changes can only go so far in diminishing the progressive consequence of climate change, and many epigenetic changes introduced by climate change may have adverse consequences [186].

The impact of traumatic events can be viewed through a different lens. It is inappropriate, for instance, to consider all Holocaust survivors or all IRS survivors as fitting neatly into a single package. Certainly, some survivors may carry the scars of the trauma with them throughout their lives [52]. Some survivors display psychological symptoms, such as survivor guilt, denial and mistrust, as well as intrusive thoughts, nightmares, anxiety and depression, even if these symptoms might appear at subsyndromal levels [187]. Other survivors, in contrast, may appear to have adjusted relatively well, although survivors and their children may nevertheless be more vulnerable to the negative neurobiological effects of further stressors and might thus be at an elevated risk of developing PTSD and depression (or subthreshold symptoms) [148]. In a large cohort that comprised more than 38,500 Holocaust survivors and almost 35,000 control participants, the survivors experienced many more serious illnesses, but many also lived longer [188]. It seemed that there were two sets of individuals; for the first, the Holocaust was aligned with future adverse outcomes, as might be expected in response to severe trauma, whereas the second set represented a group that

was uniquely hardy, perhaps reflecting their greater resilience which had allowed them to survive the Holocaust. Whether these differences were related to genetics, epigenetics, or other psychosocial factors is uncertain. Regardless, the children of survivors probably should not be viewed as being more vulnerable to pathology. For many, these occurrences might depend on the environmental and psychosocial conditions that follow that might disrupt their capacity to cope, but others may come out of such traumatic events more resilient.

7. Conclusions

As alluded to at the outset of this paper, across cultures and nations, numerous groups have not only experienced efforts to eliminate them but, in some instances, genocidal efforts have recurred over centuries. The descendants of historical trauma do not view these as isolated events, but see each as chapters in a compendium of threats to their very existence. This has been apparent among Indigenous Peoples within North America, as it has among Indigenous Peoples within the U.S., Australia, and New Zealand. Trauma across generations has likewise been experienced by the Alevi Kurds within Turkey [189], the Baha 'I' people within Iran [190], and among Jews who have experienced physical and cultural genocide across many countries for millennia [191]. Individuals may not think about these experiences on a day-to-day basis, but reminders, including implicit and explicit ongoing challenges to their culture, language, and identity, disputed land claims, class action suits and human rights tribunals, may elicit emotional and cognitive responses that can produce a strain on biological systems. However, these experiences may also evoke self-protective responses [106], especially when group members strongly identify with their culture [192].

There is no question that the legacy of cumulative historical trauma experienced by Indigenous Peoples in Canada and elsewhere has taken an enormous toll on well-being, with the IRSs (along with the Sixties Scoop and the continued movement of Indigenous children into the child welfare system) being among the relatively recent assaults that have undermined their physical and mental health. The scarring provoked by collective historical trauma experiences may be manifested at the family and community levels, promoting profound effects on social dynamics, processes, structures and functioning. Clearly, the numerous actions perpetrated against Indigenous Peoples not only affected those who directly experienced the transgressions but continues to evoke mental and bodily harm to current group members.

What this research has demonstrated is that the collective, historical trauma of IRSs and similar schools in the U.S. has promoted a cognitive framework that has fostered the development of diverse disturbances to well-being [193]. Adult offspring of those who have experienced traumatic events frequently have thoughts about the diverse historical losses that have been endured by their people. This includes the loss of traditional lands, the loss of language and culture, the loss of respect for traditional ways, and the loss attributed to many broken promises. Among American Indians, feelings of historical loss were accompanied by elevated blood pressure and circulating C-reactive protein, reflecting increased inflammation [194]. Moreover, as observed among First Nations people in Canada, American Indians experienced a range of cognitive and emotional disturbances. These comprised disturbed concentration, sleep problems, anxiety, and emotions such as anger, rage, shame, a fear/distrust of white people, and the avoidance of places that triggered reminders of collective losses. Much like Indigenous people in Canada, the prevalence of type 2 diabetes and heart disease was elevated by 50% among American Indians.

The Australian and Canadian governments have made efforts to cleanse themselves of the harms inflicted upon Indigenous Peoples, including offering apologies for the behaviors of their forebears. The Indigenous-led Truth and Reconciliation Commission was established in Canada to shed light on the experiences of Indigenous survivors of the Indian Residential Schools, culminating in 94 Calls to Action for the Canadian people and governments. Unfortunately, the Canadian government has been slow to address the Calls to Action and very few have been implemented [195]. Despite continued efforts to pressure the Canadian government to meet its responsibilities to address inequities and make legislative and policy changes, progress has been slow. As a result, new generations are being exposed to the continued betrayals of federal governments in meeting their responsibilities, thereby perpetuating the cycle of mistrust and resentment.

With so many factors playing into the compromised well-being of Indigenous Peoples, multiple issues need to be addressed concurrently to bring about meaningful change. The challenges that Indigenous Peoples continue to encounter, ranging from community infrastructure (housing, clean water) to food security and quality, along with access to appropriate health services, need to be addressed now. Rather than applying singular or isolated solutions emanating from Western mental health frameworks, what is needed is to enable Indigenous Peoples to identify and implement culturally relevant strategies that reflect the connections between individuals and their social, cultural and environmental contexts. As seen in other articles in this Special Issue, approaches to wellness that address collective functioning by means of Indigenous-led initiatives that

build on existing strengths and relationships are far more likely to be effective than the current Western interventions. These latter interventions typically focus on individual pathologies and, far from supporting the strengthening of cross-generational relationships, appear to be more intent on continuing the disruption of connections (and hence intergenerational trauma) by removing children so that they are raised within an alienating and underfunded child welfare system.

Western medicine has increasingly focused on the identification of biomarkers that could be used for precision (personalized) medical treatment. Among other things, these have included the identification of genetic and epigenetic factors tied to specific types of physical diseases, and efforts have been made to use this approach to address mental health disturbances. In theory, this could be achieved among Indigenous people as well but, given the lack of research (for many reasons noted earlier), the links between biological processes, health risks, and effective treatment strategies have yet to be realized. Mapping biological variations onto risks and mental health outcomes would necessarily gain the consideration of culturally defined strengths. In this regard, the protective factors that favor resilience likely vary with experiential, relational and environmental contexts, and there will be appreciable variation among Indigenous communities [196]. Accordingly, in considering a precision medicine approach to well-being, it is not sufficient to focus simply on biological mechanisms independent of historical and cultural context.

Despite continued resistance or purposeful apathy from colonial governments and organizations, Indigenous Peoples are reclaiming their inherent rights to self-determination and reconnecting to their cultural roots, including renewing land-based values, skills, and spiritual connections among the next generation of young people. Indigenous understandings of wellness are inherently holistic, with resilience emanating from the adaptive balance of protective and risk factors over time and space [197]. This may provide the perspective needed to counter the centuries of genocidal actions targeted against them. The adaptability of humans, socially, psychologically, spirituality and biologically (including through processes such as epigenetics) gives rise to hope for the future. Indigenous perseverance, despite genocidal colonialist policies, is not grounded in defeat, but in resistance. Identifying the core strengths that exist within communities, and acknowledging the complexity, contradictions and self-determination of Indigenous Peoples will be key to nurturing these roots to empower the Seventh Generation to enact an age of healing, wellness and connection.

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K.M. and H.A. wrote the original manuscript; A.S., J.L., K.V. and E.A. contributed substantive revisions and material for specific sections; A.S. is a registered member of Wiikwemkoong Unceded Territory and provided insights from the perspective of her own positionality. All authors have read and agreed to the published version of the manuscript.

Conflicts of Interest

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Call for Contributions and Peer Reviewers

Voices Against Torture - VAT journal is a semi-annual journal launched in 2020 as an organic extension of the education, advocacy, and community-building mandate of the Vancouver Association for the Survivors of Torture (VAST). VAT aligns with the values and vision of the VAST community and hopes to lift the voices of torture survivors further to support resilience and dignity.

VAT aims to provide a platform for discussing torture prevention, improving awareness of and support for refugee and immigrant mental health, and highlighting global human rights concerns.

As an interdisciplinary and transdisciplinary journal, VAT invites submissions from a wide range of academic disciplines and actively seeks collaboration and conversation across disciplines. This approach intends to link theory and lived experience to social change, bringing together academics, activists, educators, therapists, healers, and those directly and indirectly affected by torture.

The Journal will consist of the following sections:

- Research Articles (6,000 – 8,000 words)-our first publication will not have this section; the later publication will.
- Review Essays (<6,000 words)
- Notes from the Field (<4,000 words)
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- Letters to the editor(s)

Submission Requirements

- Typed in the English language and double spaced
- Font style: Times New Roman and Font Size:12
- Text submissions should be 500-700 words
- Manuscript only in MS-Word (*.doc or *.docx) format
- Image files (if any) in .jpg format, 300 dpi.
- References/bibliography need to be numbered if provided with the article.
- Follow APA 7th referencing and citation style consistently.

- Tables and figures should be inserted within the body of the text.

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Voices Against Torture journal invites experienced peer reviewers in the area of human rights and torture to join the journal peer review panel. Since promoting the cause of human rights is a public good, we encourage volunteers to join the panel. Their contribution in this regard shall be formally acknowledged.

To register your interest, kindly send your detailed CV along with your expression of interest to vrdc@vast-vancouver.ca

The editor, however, retains the right to suggest any change in style if required.

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Help Eliminate Torture: S.O.S. Appeal

Dear Patrons and Friends,

We, the Members of the Editorial Board of the Journal on VAT (Voices Against Torture- a newly incepted policy research communication organ of Vancouver Association of Torture Survivors (VAST), are gravely concerned over the worsening and deepening state of Torture in many parts of the world- Prohibition of Torture Index 2019-20

(Statista- https://www.statista.com/statistics/1131048/prohibition-of-torture-index-in-cis-by-country/)

As rightly maintained by World Organization against Torture, "Nothing can justify torture under any circumstances (OMCT- https://www.omct.org/), for it is tantamount to imprisoning both mind and souls. And not only that Torture leaves a lasting scar on the bodies and the minds of its victim(s), but as its psycho-social sequel, it also becomes a weeping wound for generations. In the recent past, an exodus of refugees (UNHCR -https://www.unhcr.org/figures-at-a-glance.html), from many countries; and violence perpetrated against women (BBC- https://www.bbc.com/news/av/world-53014211) and neglect and abuse of the elderly during the Contagion COVID pandemic (AGE Platform Europe- https://www.age-platform.eu/press-releases/elder-abuse-has-been-rise-during-covid-19-pandemic-it-high-time-take-it-seriously) signifies the emergent need to help arrest torture becoming endemic, as stipulated in humanitarian and human rights law, which has unfortunately taken a contagious proportion. In this backdrop, the emergent need for evidence-based/ informed policymaking & advocacy around human rights; and rehabilitation & mainstreaming of torture victims needs hardly any emphasis. VAST, being mindful of this emergent need to cultivate respect for human rights as an underpinning factor for human security and containment of Torture worldwide, has chosen to reach out to the global stakeholders through VAT Journal.

Alongside VAT Journal, we plan to hold international & regional workshop(s) via both in-person and online platforms. With this initiative, we aim to help spread awareness in trauma recovery and further educate in civil society, academia, and the public sector to help develop Human Rights advocates and empower practitioners to help lead from the front lines of eradicating Torture from our world.

We at VAT Journal Editorial Board, through these lines, seek the support of the international community to join their heads and hands in this noble and emergent cause for the public good.

Sincerely yours,

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Dr. Farooq Mehdi, Dr. Fizza Sabir, Dr. Wajid Pirzada, Leila Johnson, Dr. Patrick Swanzy, Dr. Rubina Hanif, Dr. Poulomee Datta, Dr. Hammad Ahmed Hashmi, Shazia Munir, Dr. Malik Hammad Ahmad

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