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INTRODUCTION

Rethinking human rights protection: lessons from survivors of torture and beyond?

Steffen Jensen and Tobias Kelly

Abstract: How can human rights mechanisms better protect victims of torture? The article serves as an introduction to a special issue on torture and human rights protection. It argues that human rights protection is often thought about in a way that is both too narrow and too broad to provide effective responses to the needs of survivors of torture, their families and communities. The article proposes an approach that looks at protection from the perspective of the security of survivors rather than formal norms and mechanisms. Such a perspective cannot act as a magic bullet for human rights work, but it does create space for reflection on the problems and challenges of protection from violence, and for identifying what does work, for whom, and in what ways.

Keywords: Torture, protection, human rights, violence, security.

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Introduction

How can human rights mechanisms better protect victims of torture? The connection between human rights and protection often seems self-evident. The 1948 *Universal Declaration of Human Rights* (UDHR), for example, declares in its preamble that: ‘human rights should be *protected* by the rule of law’ [emphasis added], and goes on to use the word ‘protection’ nine times. The *European Convention on Human Rights* (ECHR) took up the baton in 1950: its full name is the *Convention for the Protection of Human Rights and Fundamental Freedoms*. The word protection is then mentioned 19 times in the 1969 *American Convention on Human Rights* (ACHR) and 10 times in the 1986 *African Charter on Human and Peoples’ Rights* (ACHPR). Human rights organisations have also embraced protection as central to their mission. *Amnesty International*, for example declares its aim as being to: ‘Protect Human Rights’ and *Human Rights Watch* describes itself as ‘Protecting Rights, Saving Lives’.¹ The words ‘human rights’ and ‘protection’ seem to go hand in hand.

But what are we talking about when we talk about human rights protection? We argue below that human rights protection is often thought about in a way that is both too narrow and too broad to provide effective responses to the needs of survivors of torture, their families and communities. On the one hand, human rights protection is too narrow in that it refers to the protection of very particular rights enshrined in law, rather than the protection of the people who might hold those rights. When brought together, such specific rights—such as the right to bodily integrity, freedom from torture, or access to health—do not adequately add up in a way that captures the complexity of protection needs. On the other hand, human rights protection is too broad, in that it refers to the underlying principle human dignity that whilst still important, can be too abstract and not contextually specific enough to capture and respond to particular vulnerabilities. Lost in the middle of all this are the complex and overlapping ways in which people are rendered vulnerable to violence, as well as the diverse, creative and sometimes problematic practices through which survivors and their communities try to bring about a measure of safety and security for themselves.

In contrast to humanitarianism—where there have been widespread attempts to re-examine protection (Ferris 2011; Goodwin-Gill 2008; Walker & Purdin 2004)—the meanings of human rights protection have largely been taken for granted. This article, which serves as an introduction to the collection of articles that follow, constitutes an attempt to rethink human rights protection, by focusing on the specific issue of torture. Although the protection needs of survivors of torture have their own particularities—such as those linked with psychosocial concerns (Segal 2018)—many of the

¹ See, for example: <https://www.amnesty.org/en/get-involved/join/> and <https://www.hrw.org/about/about-us> (accessed 24 September 2021).

issues are also shared with other human rights violations and speak to the more general inaccessibility and inadequacy of formal human rights protection mechanisms, such as national human rights commissions and the branches of the UN human rights systems, in relation to survivors of violence.

We understand protection here as the practices used to avoid and prevent insecurity, in its multiple forms. Importantly, experiences of insecurity are wider than questions of violence and order, and include issues of livelihood and wellbeing (Goldstein 2016; Loader & Walker 2007). Protection can therefore include interdependent aspects of physical safety, shelter, income, health and social relations, amongst others. As such, protection needs and concerns—and the responses they produce—are always context specific. There are some cross overs with approaches to human security here (Marhia 2013; Paris 2001; Thomas 2001). Unlike some of the dominant frames in human security, we do not seek to root security concerns in the individual, but in wider sets of social relationships. In doing so, we do not want to define threat and insecurity in universal terms, but rather to ask, from their own perspective what threats and insecurities do people face and how do they go about seeking protection from these?

We start with the assumption that protection is a foundational principle in and of itself. Our approach is to look at protection from the perspective of survivors of torture, rather than formal norms and mechanisms. This means, in the first instance, stepping outside human rights frames and norms, to think about protection more broadly. In order to do so, we examine the threats faced by survivors and those closest to them, before asking how they understand their own protection concerns, the steps they take to remain safe and secure, and the roles, if any, of human rights norms and mechanisms in these processes. We use the words ‘survivors of torture’ to refer to people who have directly experienced torture *and* those who are under threat of torture, as well as their families and communities. Such a wide definition is important in order to avoid an individualised understand of torture and violence that ignores the wider social and cultural contexts within which people are both rendered vulnerable and attempt to live with its implications.

We do not think that thinking about protection from the perspective of survivors can act as a magic bullet for human rights work, and we note that protection practices can themselves be hierarchical, exclusionary and violent. Protection is not a binary issue: it is not that people are protected or not protected, protection is not good nor bad in and of itself. Instead, it is always a matter of relative degree and relationships. We also need to be careful not to spread the concept of protection too thinly. Over the past 30 years, the meanings of humanitarian protection, for example, have shifted and expanded, to the extent that they often overlap with forms of protection associated with human rights, child protection and domestic violence work, amongst others (Ferris 2011; Goodwin-Gill 2008; Walker & Purdin 2004). The broadening of humanitarian protection has not gone without criticism, in part for widening the concept of

protection so far that it becomes allegedly meaningless (Ferris 2011; Walker & Purdin 2004). However, focusing on protection issues from the perspective of survivors creates space for reflection on the problems and challenges of protection activities, and also for identifying what does work, for whom, and in what ways, in places where we might not always think to look. In doing so, this introduction and the articles in the rest of the collection, show the ways in which protection is both immediate and long term, and a matter of intimate relationships of care as much as institutional structures. In this situation, there remain significant gaps within formal human rights protection regimes, and although there is potential for human rights mechanisms to fill some of those gaps, they do not necessarily have the solution to all problems and challenges. We should also look to a wider range of community-based organisations that have developed the enduring relations of trust that enable a measure of protection.

The arguments presented here build on British Academy funded research, originally in Kenya and Sri Lanka with Wangui Kimari, Ermiza Tegal and Thiagi Piyadasa. The research involved participatory workshops, interviews with human rights actors and survivors, and ethnographic diaries. The research was then expanded to include Brazil, Tunisia and the Philippines. The case studies in the articles were chosen because they represent situations with long histories of human rights abuses, with torture particularly to the fore, but they are all also contexts with vibrant and diverse grassroots responses to violence. The case studies were chosen because they each bring something to an inductive conceptual reformulation of protection. Comparing cases through an iterative process of analysis and research allows for an in-depth examination of the multi-layered processes through which protection practices take effect and the ways in which they interact with human rights norms and institutions. These case studies are all in the global South, but in no way should this be taken to imply that torture is somehow uniquely a problem of the South.² The last 20 years, as well as a much longer history of colonial and other forms of violence, has shown the ways in which European and North American states have been complicit in multiple forms of torture—often framed as police violence—against their own populations as well as in global wars (Ralph 2020; Rejali 2009). As such, it is important to recognise the ways in which experiences in Sri Lanka, Kenya and the Philippines, for example, might not only have important lessons for each other, but also for contexts in the global North.

The rest of this special issue consists of two interviews with grassroots human rights practitioners, a legal analysis of international human rights norms and five country case studies. We begin with the interviews with Sarah Wangari and Amitha Priyanthi (2022), from Kenya and Sri Lanka respectively. Both women are survivors, grassroots human rights defenders and community activists, working on the frontline

² In large measure, our geographical focus is a result of the structure and restrictions of Overseas Development Assistance linked research funding that (perhaps problematically) requires a focus in Low and Middle Income Countries.

of the fight against torture. They are interviewed here as experts on the question of protection and we start with them in order to foreground the challenges and issues at stake. Shifting to a legal analysis, Towers' article (2022) examines the potential for a more expansive normative approach to protection within the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Towers shows how there is an emerging shift within human rights norms involving more contextually specific approaches. Hapal *et al.*'s article (2022) explores state and elite violence in the Philippine countryside, focusing on the ways in which land activists and trade unionists have responded to a long history of human rights violation, including torture, and in doing so have developed a range of protection strategies. Kimari's article examines the ways in which grass roots activists in urban Kenya tactically respond to the threat of police violence, constantly maneuvering between retreat and confrontation. Jesus *et al.*'s article (2022) examines the role of mothers' groups in Brazil in protecting their children from police and gang violence. Piyadasa and Tegal's article (2022) shows how family members seek to protect survivors of torture whilst engaging in attempts at legal accountability. Finally, El Ghali's article (2022) examines how undocumented sub-Saharan African migrants negotiate with the police and protect themselves through communal organising, including forming their own gangs in a context of endemic violence.

We organise the argument in the rest of this introductory article in four sections. We begin by exploring the threats faced by survivors of torture and their communities. We then contrast these experiences with the normative frameworks associated with human rights protection. The next section looks at human rights approaches to protection in practice and the gaps they produce. Drawing on the insights from the rest of the volume, we then look at some of the ways in which survivors and their communities attempt—successfully or not—to protect themselves, before concluding with a discussion of the ways in which human rights mechanisms might be able to work alongside and support such protection practices.

What do survivors of torture need protecting from?

Mama Akinyi is a 38-year-old mother of three living in Mathare Valley, one of Nairobi's oldest informal settlements. The valley has been neglected by city planning authorities and there is no water or sanitation. Her husband died after the 2013 elections from a police gunshot when he was protesting the outcome of the election. Akinyi's 19-year-old son disappeared after a run in with the police. She fears he was beaten, shot and killed but she is yet to receive any reports from the police or see his body despite her weekly visits to the police station. At night she is a waiter at a local

bar and sometimes engages in sex work when she cannot raise enough money to pay for school fees for her daughters, although this is often dangerous work.

On the other side of the Indian Ocean, Hassan Farook's family fled from Sri Lanka's Jaffna Peninsula in 1990 in the face of Liberation Tigers of Tamil Eelam (LTTE) violence, before settling on the coast near Batticaloa. Farook supported his family working in a small shop, which was destroyed by the 2004 tsunami. Ten years later Farook was beaten by the police after getting into a dispute with one of his neighbours. In 2019, too afraid to seek help from the police, his family hid in their homes out of fear of anti-Muslim violence following the Easter bombings.

Before thinking about human rights protection, it is important to examine the types of threats survivors of torture face and the things they fear. These two particular examples were collected during a series of participatory workshops in Nairobi, Kenya and in Colombo, Sri Lanka and are part of a wider pattern shown through the ethnographic research, interviews and workshops. For Mama Akinyi and Farook the events described above were not just simply separate incidents, but experiences that ran through and compounded one another. In both cases violence was layered upon violence, building on vulnerabilities that led to new vulnerabilities. Mama Akinyi and Farook both sought ways to make themselves and their families safe, whilst encountering new threats. These were threats that came from the police as well as members of the public and were rooted in conditions of poverty as well as endemic forms of violence. Violence and torture emerged as part of a much wider (and sometimes almost invisible) environment of insecurity.

There are six linked wider points that are important to make here, drawing on the wider case studies and other research.

First, torture is embedded in larger and endemic patterns of violence. In international human rights terms, if torture is defined as the deliberate infliction of severe pain or suffering at the instigation or acquiescence of a public official, from the perspective of survivors it is also important to embed such action in wider forms of violence.³ Torture is part of a continuum of violence. In Kenya, for example (Kimari 2022, this issue), many acts of violence can be described in terms of multiple human rights abuses. And whilst important from an international human rights perspective, when ill-treatment tips over into torture, it is not always the most immediately significant issue for survivors and their communities.

Second, violence might be considered 'everyday' rather than exceptional. In Brazil, for example, many of the urban poor routinely experience police supported home invasions, harassment, forced disappearances, extra judicial killings and torture (Jesus *et al.* 2022, this issue). These actions are part of a continuum of overlapping violence.

³ Article 1 of the 1984 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

As Jesus *et al.* suggest ‘groups of socially and economically vulnerable individuals tend to live with instability and the expectation that, at any moment, a shootout or a violent police intervention may disrupt their supposed tranquillity’ (this volume). In previous research (Jensen *et al.* 2018) we found that more than one quarter of the households in a specific squatter camp in Nairobi had been subjected to police violence (Jensen *et al.* 2018). State violence, including torture, can therefore be understood as part of routine life for many people.

Third, the state, or more particularly the police, are not the only threat people face. Gangs, militias, as well as political factions, can all deploy violence. In research we carried out in Kenya in 2015, gangs were said to account for over 25 per cent of the specific incidents of violence encountered by the residents of an informal settlement (Jensen *et al.* 2018). El Ghali’s account of migrant gangs and Tunisian neighbours illustrate this point well (El Ghali 2022, this issue). Importantly though, identifying exactly who is and who is not a gang member or public official is often far from self-evident when seen from the perspective of many people living in the most vulnerable of circumstances (Choudhury *et al.* 2018).

Fourth, the experience of violence cannot be separated from wider forms of economic precarity (Jefferson 2014, 2016; Oette 2021). Persons living in poverty are particularly vulnerable to torture and violence, as their livelihood strategies and places of residence are criminalised and subjected to violent forms of policing. Violence can be both a source of precarity, putting people’s livelihoods at stake, and a response to the ways in which people are forced to earn a living. Street hawkers in Nairobi, for example, are both routinely subjected to police violence because of their marginal economic position and have their ability to earn a living put at stake by constant raids and harassment (Dragsted 2021). The poor are often particularly vulnerable to extortion by the police, which can turn violent, when bribes are not paid (Jensen & Andersen 2017). In this process, it may not be possible to neatly distinguish between motivations for state violence and for instance, corruption-based exchange relationships.

Fifth, while torture and other human rights violations are condemned in the abstract, they are often condoned and supported in practice by state officials and the broader public. The war on drugs in the Philippines, for example, has caused the death of thousands, but has been supported by 80 per cent of the population (Social Weather Station 2017). Even those likely to be targeted have expressed understanding for the use of such violence (Kusaka 2017; Caldeira 2001). The deployment of violence is often seen as the legitimate defence of threatened moral orders: drug and crime free societies; religiously-based societies; peaceful and prosperous, capitalist economies; socially and culturally coherent communities; families with intact moral values. The attempted preservation of each of these moral orders can victimise populations along intersecting lines of race, class, gender, sexually, generation or religion (Jensen *et al.* 2021).

Sixth, and finally, torture is not evenly distributed. Whilst torture is inflicted on individuals, not all people are equally vulnerable to torture. Some populations are far more likely to be tortured than others (compare [Fassin 2017](#)). There is an increasing realisation amongst researchers and practitioners that the vast majority of survivors of torture are members of already vulnerable groups and that vulnerability does not start or end with the act of torture ([Choudhury et al. 2018](#); [Perez-Sales & Zraly 2018](#)). Torture is therefore not simply a matter of specific individual perpetrators and survivors, but is rooted in wider histories of domination, discrimination and inequality. This has important implications for how we might think about where protection needs to both start and end.

In sum, for survivors of torture, the fear and implications of torture cannot be reduced to singular violent events, but are folded into wider social relations of vulnerability, where forms of violence are overlapping and come from multiple sources. The protection needs of torture survivors therefore extend beyond specific incidents. As such, in the course of marginalised lives, the experience of violence does not fit into discrete, self-evident blocks, but rather is part of multi-layered processes ([Jensen 2015](#); [Krause 2009](#)). Protection needs therefore do not easily break down in distinct human rights categories and normative frameworks, such as torture, extra-judicial killings etc., but cut across and transcend such categories. In the next two sections we therefore examine the relationship between the threats faced by survivors of torture and current formal human rights protection mechanisms, starting with normative approaches before moving on to examine human rights practices.

Human rights protection: normative approaches

If protection often appears synonymous with human rights, what and who exactly is being protected by international and national human rights mechanisms? One approach is to say that it is very specific legal rights that are being protected. The UDHR—widely understood as having the status of customary international law—for example, sets out protection from discrimination (Article 7), from interference in private life (Article 12), against unemployment (Article 23) and ‘of the moral and material interests resulting from any scientific, literary or artistic production’ (Article 27).⁴

⁴ The ECHR, similarly states that ‘everyone’s right to life shall be protected by law’ (Article 1), and mentions both the protection of ‘private life’ (Article 6), and ‘the right to form and join a trade union’ (Article 11), whilst the supplementary *Protocol* declares the ‘protection of property’ (Article 1). The ACHR talks of the protection of the right to private life (Article 11), the family (Article 17) and the rights of a child (Article 19). Interestingly, and importantly, the language of protection is also used as a reason to limit rights, for example for the ‘protection of public order, health, or morals’ (Articles 9 and 10 of the ECHR) and to ‘prevent crime or to protect national security, public safety, public order’ (Article 22 ACHR).

Importantly though, the language of protection is seldom explicitly used in direct relation to torture. Where it does appear is in relation to torture is in the form of protection from reprisals if a victim decides to report abuse to legal authorities (Towers 2022, this issue). The 1984 *UN Convention Against Torture* (UNCAT), for example, states that ‘Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given’ (Article 13). There is a wider sense here in which it is not people being protected but their specific rights, and that these are protected through the law. We might see this, in part as the difference between protecting survivors of torture and protecting their specific legal rights not to be tortured. Such, a focus on protecting rights rather than the holders of those rights, can result in a piecemeal approach to protection, which leaves significant gaps. Stacked up alongside one another, such rights supposedly simply add up to the ‘whole’ of protection issues. To separate off one form of abuse from the other might make sense in narrow legal terms, but it also prevents us from fully grappling with the diverse ways that such abuses play themselves out in people’s lives and the ways in which they respond. Most importantly, it provides what might be called a surface level form of protection, focused on after the fact symptoms rather than causes, and fails to grapple with underlying drivers that make people vulnerable. As Towers (2022) shows in this issue, whilst there is considerable potential within international human rights norms to take a more contextual approach to protection, and some movement has been made, there is still a long way to go. In particular she notes there is very little specific guidance from international mechanisms about the scope and nature of protection.

A more holistic approach to human rights protection has been to focus on the concept of dignity, as a way to foreground the *human* in human rights, rather than the specific rights they might hold. In the words of the UDHR: ‘All human beings are born free and equal in dignity and rights’ (Article 1). This is a form of dignity that is seen to come from the inherent worth and value of every human being (Agamben 2002: 66; Sangiovanni 2017; Waldron 2012; Webster 2018). This formulation though still leaves the question of what are we talking about when we are talking about dignity? As Eleni Coundouriotis notes, ‘Although dignity is a foundational concept of human rights, it rarely elicits a critical examination. As a result, dignity is pushed to the margins; it is seen either as synonymous with humanity and hence a starting point for elaborating a theory of rights, or as the ultimate expression of rights realized’ (2006: 844). For its critics the concept of dignity is too amorphous and undefined to have much purchase in real world problems (McCrudeen 2008; Moyn 2014; Riley 2018). Dignity can matter deeply to people, but as a category it risks being too abstract to guide specific interventions. To talk about dignity does not immediately tell us about the particular indignities that people might face and how to remedy them. Coundouriotis suggests instead that it is more productive to focus on *indignity*. Rather than starting with

specific rights or the broader concept of dignity, the implication is that we should therefore start by asking what threats people face and what they think they need protecting from. We will return to this issue in the final section. Before that though we will examine how human rights mechanisms approach protection in practice.

Human rights protection: practices

In practice, international human rights mechanisms tend to leave the specific question of protection from torture in the background, and instead emphasise three related approaches: prevention, accountability and reparation; preventing torture from happening through legal change and training; holding perpetrators to account through civil, constitutional and criminal procedures or national human rights commissions, for example; and providing a measure of reparations through psychosocial interventions, compensation and guarantees of non-repetition.⁵ Criminal prosecution, for example, can be seen as a protection strategy in so far as it acts as a possible deterrent for perpetrators and takes abusers off the street, but the implicit assumption is that protection is best dealt with indirectly; if we get the rest in line, protection will follow.

A focus on protection for survivors of torture from reprisals when making legal complaints raises several challenges. There is considerable evidence to show that in the first instance, survivors want to feel safe and secure and are extremely unlikely to report their experiences to human rights mechanisms until they do so. Protection mechanisms therefore fall at the first hurdle, before they are even accessed. In many, if not all places in the world, the chances of a successful prosecution against a perpetrator of torture are very small. In the Philippines, there has only been one conviction for torture, despite thousands of cases being reported by human rights organisations (Hapal *et al.* 2022). In Kenya, despite the Independent Police Complaints Authority receiving over 5,000 complaints against the police between 2012 and 2019, there were only six convictions of police officers.⁶ In Sri Lanka, there have only ever been nine convictions for torture and cases can take up to 17 years in the courts (Tegal & Piyadasa 2022). Over 99 per cent of cases taken to the Sri Lanka Human Rights Commission are not prosecuted.⁷ In Tunisia, for the few cases that are taken forward, conviction rates remain almost non-existent.⁸ The situation is worse in the global

⁵ UN Committee Against Torture, General Comment 3 on Article 14, available at: https://www2.ohchr.org/english/bodies/cat/docs/gc/cat-c-gc-3_en.pdf

⁶ Independent Police Oversight Authority: Annual Report and Financial Statements for the year ended 30 June 2019, Annex B. Available at: <http://www.ipoa.go.ke/wp-content/uploads/2021/02/IPOA-Annual-Report-2018-2019-Web.pdf>

⁷ Law and Society Trust, Policy Brief, January 2021.

⁸ ASF, LTDH, OCTT, OMCT, Alternative Report to the UN Human Rights Committee for its 128th session (March 2020). Available at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/TUN/INT_CCPR_CSS_TUN_41543_E.pdf

North. For instance in Britain, only one person has ever been convicted of torture and that was an Afghan warlord convicted of torture in Afghanistan (Kelly 2012). The combined effect of reprisals and an unresponsive legal system means that few survivors feel secure enough to report their experiences.

Rather than accountability creating protection, it can sometimes end up doing exactly the opposite: adding to the threats people face. In 2014–2017, for example, we carried out research into the experience of torture in Nairobi, Kathmandu and Dhaka (Jensen *et al.* 2018; Choudhury, Jensen & Kelly 2018).⁹ Many survey participants reported that they would not choose or had already chosen not to report an incident of torture, due to fear of being subjected to further violence. More broadly, even when survivors—often assisted and prompted by human rights organisations—do agree to take part in legal procedures, they often abandon it because of the risks and the costs in money and time (Christensen *et al.* 2020). The reluctance to report experiences is particularly the case for survivors who are already socially, economically and politically marginalised. In Sri Lanka, for example, already vulnerable groups, whether for reasons of ethnicity, sexuality or means of employment, are particularly unlikely to report experiences of torture (Tegal & Piyadasa 2022). Across the board, people are only likely to come forward if they already feel acknowledged as full citizens by the state. For too many people this is not the case. As Tegal & Piyadasa show, torture is often so taken for granted that it seldom occurs to people to report it as taking place. It is also hard for survivors to sustain a complaint over time, given the long delays and the emotional, social and economic costs involved. Finally, there is also a level of social shame combined with disbelief associated with speaking about torture, which can make survivors particularly uncomfortable in coming forward.

The focus on protection mechanisms in relation to reprisals and the criminal justice process is repeated across the globe. However, as Towers (2022) shows in this issue, international human rights norms, as well as national practice in the area is often very restrictive, narrowing the scope of protection. These protection mechanisms are largely inaccessible to all but a small minority (DIGNITY 2016). Those that do exist often have very limited admissions criteria, requiring a high level of threat to a person's life and the critical value of the witness to a particular legal case. In Kenya, the 2017 *Prevention of Torture Act* obliges the state to protect complainants and witnesses from reprisals and intimidation, but only during the course of the investigation (Article 13(9), Kimari 2022). The Witness Protection Agency is underfunded, and civil society organisations report that by the time it makes contact with vulnerable witnesses, it is often too late.¹⁰ In the Philippines, the 1991 *Witness Protection, Security and Benefit*

⁹ For a full account of this research, see <https://torturedocumentationproject.wordpress.com/>

¹⁰ Amnesty International, Kenya, 'Witnesses should be given state protection', 8 February 2021. Available at: <https://www.amnestykenya.org/witnesses-should-be-given-state-protection/>

Act formally supports people at risk when involved in criminal prosecutions through secure housing, livelihood assistance and escort protection.¹¹ However, the system is widely mistrusted and seldom used.¹² In Sri Lanka, the National Authority for the Protection of Victims and Crime and Witnesses was established in 2015, but again limits support to those involved in judicial proceedings (Tegal & Piyadasa 2022, this volume). Even if survivors are able to access formal protection mechanisms, their related social costs are high. In Brazil, access to the State Program for the Protection of Victims and Witnesses (PROVITA) can see survivors' lives seriously disrupted through relocation, and as a result, as Jesus *et al.* argue, there is widespread resistance to enter into these programs (this volume). These social costs for victims of police harassment in Sri Lanka similarly render relocation almost impossible because people rely on their social networks for survival (Piyadasa & Tegal, this volume).

There has also been considerable attention on protection issues from the international human rights field in relation to the specific protection of human rights defenders. The establishment of the *UN Special Rapporteur on the Situation of Human Rights Defenders* in 2000 is indicative of the profile of the issue. Human rights organisations have also developed systems of protection for human rights defenders (Towers 2022; Nah 2020). The OHCHR defines human rights defenders by, saying that they 'must accept the universality of human rights as defined in the Universal Declaration' and 'must be peaceful' (OHCHR 2004: 9–10), but this approach excludes many people who are caught up in often violent struggles (Nah 2020: 11). An alternative approach is to focus on the 'right of everyone to defend human rights' (Nah 2020: 164), not focusing on a distinct category of people (human rights defenders), but the act of defending human rights. Whilst this spreads the question of protection more broadly, it still focuses on human rights as the object of protection, not addressing those people, who for whatever reason, do not focus on advancing human rights issues.

Across the board, perhaps the biggest obstacle to protection mechanisms for survivors of torture is that the body that is often asked to provide protection is also often related to the perpetrator of the abuse. In human rights terms, the state has the duty to protect, but it is also the violator. Torture, under the Article 1 definition of the UN Convention Against Torture, includes the direct or indirect involvement of the state, and the state is therefore, at best, an awkward provider of security, and is deeply distrusted by many survivors. If torture is carried out by the police, the police—even another branch of the police—are unlikely to be viewed as a straightforward source

¹¹ Republic of the Philippines, Department of Justice, Witness Protection, Security and Benefit Program. Available at: <https://www.doj.gov.ph/witness-protection,-security-and-benefit-program.html>

¹² CAT/C/PHL/CO/3 (2016), paragraphs 25–26. UN HRC, Concluding observations on the fourth periodic report of the Philippines, CCPR/C/PHL/CO/4, 13 November 2012, paragraph 16. CAT, Concluding observations: the Philippines, CAT/C/PHL/CO/2, 29 May 2009, paragraph 21.

of protection. If the state is not to provide protection, it is often assumed that human rights organisations are the next best place to start. Under Brazil's PROVITA, NGOs are directly involved in providing protection, allowing the state to be kept at a distance (Jesus *et al.* 2022, this issue). However, at the same time, PROVITA has also faced severe budgetary constraints and is only available to survivors willing or able to take part in criminal proceedings. More generally, international and national human rights organisations are not necessarily the best place to start when looking for protection strategies for many survivors of torture. Our previous research has shown that many human rights organisations are too geographically and socially distant, as well as being too stretched for resources, to have a comprehensive and holistic picture of needs on the ground (Jensen *et al.* 2018). International and national human rights organisations often only come into contact with the survivors who are willing and able to report their experiences. This group of survivors constitutes only the tip of the iceberg, and they also, by definition, represent a very particular and unrepresentative set of aspirations and concerns that does not necessarily reflect those of the wider population.

There are therefore serious problems in current international human rights approach to protection: a focus on particular rights fails to take into account overlapping violations; a focus on dignity is too abstract; a focus on accountability and prevention risks not paying enough attention to immediate risks; existing protections mechanisms are unreachable; strategies around human rights defenders focus on too narrow a group of people, and human rights groups are often too distant from many survivors. Importantly, these problems with human rights protection are not simply questions of implementation or resources, but matters of fundamental aims and objectives. The point here is not to point fingers at formal mechanisms, treaty bodies or human rights organisations. Human rights organisations will often be the first to acknowledge the gap between our present protective mechanisms and the lived realities of vulnerable populations. But human rights approaches to protection need to be rethought if they are to adequately respond to the needs of survivors and those closest to them. To see this, we need to consider violations from the point of view of survivors.

Protection from the perspective of survivors?

Conceptualising protection from the perspective of survivors allows us to appreciate the multiple and overlapping forms that protection needs and practices take, as they are embedded in particular social, economic and political contexts. This approach involves paying attention to how people perceive both threats and security in ways that might exceed current legal and organisational frameworks, whilst acknowledging

that these practices can also be counter-productive and exclusionary. The related move within humanitarianism over the last decade to rethink protection has often included human rights concerns, and these developments might be instructive, but also offer some possible warnings (Ferris 2011; Goodwin-Gill 2008; Walker & Purdin 2004). Most particularly, the humanitarian turn to ‘community’ or ‘self-protection’ was an attempt to move away from top down, even paternalistic forms of protection by rooting its concerns in the practices of vulnerable communities, but has resulted in accusations that protection responsibilities are being placed on the shoulders of already vulnerable populations (Duffield 2012; ICRC 2018; Sphere 2011). Furthermore, in thinking through such issues in relation to human rights, it is also crucial not to reveal too much about the protection strategies that people use. They work because they are clandestine, unknown and under the radar. Taking this into account then, in this final section, we examine some of the general ways survivors try to find a measure of protection.

In the face of the threat of torture and related forms of violence, survivors are forced to find creative ways to simply stay safe in their day-to-day lives. In such situations, protection strategies are rarely an after the event response—although they might sometimes be that too—as by then it is often, almost by definition, too late. For many people there is a not one violent singular event, a human rights abuse, to which they might then seek redress or reparation, but a series of abuses. Favela dwellers in Brazil, for example, face ongoing and intersecting forms of gang and police violence (Jesus *et al.* 2022, this issue). In Nairobi, risks of state and gang violence permeate everyday life in urban slums (Kimari 2022, this issue). Migrants in Tunisia experience ongoing violence from a host of human traffickers, border control agents and local gangs (El Ghali, this issue). This means that protection breaks down the boundary between the before and the after, between prevention and response (Agier 2019). Protection can be poised, sometimes awkwardly, between long-term concerns and short-term imperatives.

Above all, protection strategies are embedded in intimate relationships—they are as much about the need to look after family members, loved ones and others, as they are protecting the rights of lone individuals. In doing so, protection practices are linked to ties of knowledge, trust and obligation. They are about giving shelter, passing on knowledge and warnings, or providing sustenance to those that you care for (see also Nah 2020: 163). Deep relations of trust and responsibility are therefore a crucial resource in situations of high level insecurity. As Tegal & Piyadasa (2022, this issue) show in Sri Lanka, it is family members, and mothers in particular, who lead on the protection of survivors, as they try to negotiate systems of legal redress, providing moral, psychological and social support. Similarly, as Jesus *et al.* (2022, this issue) show in Brazil, it is the mothers of victims who play a leading role in protecting their children, negotiating with state officials and making public demonstrations, whilst

utilising cultural tropes around maternal sacrifice and responsibility. Whilst [Kimari \(2022, this issue\)](#) argues that, in Kenya, close personal friendships and relations of solidarity, not just kinship, are an essential part of the tactics that people develop to avoid state violence. Kimari also shows how children can be used as part of protection strategies, by, for example, being used as lookouts. It is through such relationships that people develop knowledge about the threats that they face, the sense of responsibility to help, and the trusting relationships that allow them to do so. In this process, protection and care often run into one another.

Given the embeddedness of protection concerns and strategies within intimate relationships and obligations, human rights strategies that focus particularly on civil and political rights alone can be less effective, as they fail to grapple with the interacting and multi-dimensional concerns of survivors. As [Hapal *et al.* \(2022, this issue\)](#) illustrate, worker and land organisations provide safe houses and sanctuaries, but the tactic can mean that survivors find it difficult to earn a living and support their families while seeking shelter. In Sri Lanka, there are very few, if any, organisations that provide more rounded forms of support, and what does exist frequently focus on medical or psychosocial support, which was not necessarily prioritised by survivors due to time it took and the risk of losing a daily wage ([Tegal & Piyadasa 2022, this issue](#)). Without the ability to earn a living, provide for their families or have shelter, more specific protection strategies that focus on physical safety will fall short. Yet, at the same time, our research in both Kenya and the Philippines suggest that it is often these same social relations that perpetrators prey on when they hold children in detention waiting for relatives to come up with the bribe to set them free ([Jensen & Hapal 2022](#); [Gudmundsen *et al.* 2017](#)).

Maneuvering between social roles and labels is another of the significant ways in which people seek to protect themselves, as the ways in which survivors are classified is a crucial part of their vulnerability. Being labelled a criminal, terrorist, or drug addict can serve to legitimise violence. In Brazil mothers are often particularly concerned to fight against their children being labelled as gang members as a way to provide protection. In Sri Lanka, survivors are similarly concerned with maintaining a sense of social standing, of fighting accusations of criminal activities for example, fearful that once their status is eroded, their vulnerability to abuse increases. But some labels can—in the right circumstances—create their own forms of protection. Philippine land activists struggle to be seen as land activists or human rights defenders, due to the protection, although limited, that this might provide, to escape the ever-possible label of communist insurgent. Perceived vulnerability, in so far as it is linked to innocence, can also be a possible source of protection, hence the involvement of children and mothers in many protection strategies. This is a difficult tightrope to walk—as trade unionists and human rights defenders can themselves be targeted, or children can be abused themselves.

Protection is not all warm and welcoming; it can involve integrating oneself in vertical relations of patronage, where protection is given in exchange for loyalty and even payment. Protection from the police by gangs, political groups, or even other police officers comes at a price. Protection is itself, double edged. The very word protection can imply both care and support, and a more malignant and threatening embrace. It evokes both the sense of a comforting presence providing shelter against enemies and images of criminal rackets, whereby the locally powerful demand tribute in order to stave off their own violence (Dua 2019; Kelly & Shah 2006; Tilly 1985). We can see the double edge of protection in the link between police corruption and torture, as people feel compelled, for example to negotiate their release from police detention for their own safety (Dragsted 2019). In the Philippines (Jensen & Hapal 2022), often highly intimate exchange relations play a central role in how people protect themselves against torture and extra-judicial killings. Violence is often the immediate way to gain a measure of protection from violence, creating both security and insecurity. The Philippine war on drugs is an evident example, as is the policing in the *favelas* that Jesus *et al.* (2022, this issue) explore in Brazil. In Tunis, migrants create gangs to protect themselves, but who also demand protection payments and become involved in violence (El Ghali 2022, this issue). Protection can itself be hierarchical, violent and exclusionary.

Conclusion

Protection can be seen as the foundation upon which successful human rights work may build. Without protection, prevention, accountability and reparation necessarily rest on unstable foundations. But current human rights approaches to the protection of survivors of torture are not fit for purpose. If human rights interventions are to respond effectively to the needs of survivors it is important that they work with and not against the grain of the ways in which vulnerable populations live. In making this argument, we do not want to imply that protection should replace other human rights approaches, such as prevention, accountability and reparation. Neither is it to make vulnerable populations responsible for their own protection. Protection organised primarily by survivors has important limits. Such protection practices seldom deal with the structural causes of domination that produced the violence in the first place. They often respond to the world around them and seek to work at its edges, looking for crevices and opportunities in which to work. What they do less often is grapple with the structural causes of domination that produced the violence in the first place. Where they might help someone feel safe and secure in the immediate term, they do not confront the long-term causes of insecurity and always start from the position of relative disempowerment. It is this disempowerment that land activists in the

Philippines, for instance, address when they advocate for land reform as a long-term strategy of protection that relies on short-term protection and survival (Hapal *et al.* 2022, this issue). We argue though that a cross-cutting focus on protection from the perspective of survivors may yield new and complementary insights and interventions.

Looking at protection from the perspective of survivors does not inherently assume that protection needs to be organised from the ground. It is crucial not to let the state ‘off the hook’ from its primary responsibility to protect its citizens and residents. The involvement of other groups—including NGOs, religious institutions, families or friends—can only ever be filling a gap. The question of how human rights protection is best delivered and by whom is therefore left as an open question, where local, national, regional and international institutions and laws may sometimes be both desired by populations in need, and the most effective form of intervention. Survivors can seldom stay safe alone, and must rely on other organisations and relationships to help.

The protection strategies of survivors and their communities might sometimes sit awkwardly with the norms and objectives of formal human rights organisations, and the key challenge is therefore to make them meet in a productive manner. At the moment, they all too often talk past one another. One key place to start is the actions of survivors who themselves become human rights defenders, such as the examples of Mama Alex and Amitha Priynathi that follow this introductory article. And even if human rights organisations are not necessarily the best place to start when thinking about protection, this does not mean though that there are not plenty of actors and groups on the ground who seek to support survivors around protection. Often they will not formally carry the name human rights—although sometimes they will. They might be churches, youth groups, or public health organisations, amongst others, but the important point is that these are people who have developed relationships of trust with affected communities and are often best placed to respond to the immediate needs and concerns. Often they will not involve ‘professional’ forms of expertise, but will combine political mobilisation with gendered notions of care to find shelter and provide support, sometimes inviting reprisals from the police.

Where does this analysis leave human rights scholars and activists? What are the ways forward? Our first and main task is to reveal, to some extent celebrate and always support the practices of protection that people are engaged in. As Towers (2022, this issue) suggests, to take one example, the UN Committee Against Torture should be much more precise in their recommendations to States. By reflecting on and potentially shifting international norms, we may provide people and organisations on the ground with means to question and protest against state violence. We may contribute to an emerging language of rights that allows for the experiences of people to find their ways to international and national forums. Supporting these strategies is also

about realising the limitations and sometimes counter-productive forms of protection practices, such as when gangs of migrants begin to ‘protect’ their communities against the Tunisian state and citizens (El Ghali 2022, this issue) or when mothers pay police in money or sexual favours to release their sons (Gudmundsen, Hansen & Jensen 2017). Such work may entail human rights activists and scholars engaging with organisations even if they do not speak the language of human rights.

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