

IIHR

Inter-American Institute
of Human Rights

Comprehensive Attention to Victims of Torture in Cases under Litigation

Psychosocial contributions



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Comprehensive Attention to Victims of Torture in Cases under Litigation

Psychosocial contributions

2009

Inter-American Institute of Human Rights

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Inter-American Institute of Human Rights

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THE TREE OF LIFE

This age-old symbol is shared by the most diverse regions of our planet. In our hemisphere, indigenous peoples see in it the continuity of life and the rebirth of hope. It is, thus, being employed as the symbol of the project "Psychological attention to the victims of torture in the inter-American system," as a way of representing the capacity to survive, to reconstruct daily existence and to exercise solidarity, which is born and grows in the victims and their families in spite of the horrors and the injustice.

This is a tree that flowers so that there is no oblivion; its fruits lead to the unceasing search for truth, justice and reparation and in its boughs the birds of freedom make their nests. It is firmly rooted in the essential struggle to build a world based on respect for human rights and the dignity of each individual.

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Foreword

As Executive Director of the Inter-American Institute of Human Rights (IIHR), I am honored to present *Comprehensive Attention to Victims of Torture in Cases under Litigation - Psychosocial contributions* to the human rights community of the Americas. This publication systematizes different points of view in the field of psychology with a view to fostering a dialogue among the legal and mental health professionals who provide comprehensive attention to persons who have been affected by the crime of torture.

Torture has been one of the most abominable expressions of human evil, of hate due to differences and a lack of tolerance. Fortunately, torture has also touched the deep conscience of humanity and nations have sought, through the adoption of international instruments, to combat and eradicate it. There also exists a commitment to attend to the victims and their families in order to lessen the individual harm and repercussions caused by torture.

I must regretfully recognize that both psychology and law have sometimes turned torture into a tolerated, and even encouraged, practice. Law, for its part, built an axiological system that evolved into rules of procedure that were used to create a strict evidentiary system that made confession “the king of evidence.” If confessions, as evidence, were more valuable than reasonable means, obtaining a confession thus became a priority and an end in itself. Torture was, therefore, turned into a basic tool for “criminal justice,” while at the same time it was a preparatory stage in the criminal process where the accused went to trial to “confess” their crimes.

Under this concept, technology has been used to develop methods of torture. The most serious problem, however, is not so much torture’s legality at that time, but its persistence even today. Despite its prohibition and the progressive humanization of the administration of justice, the reality of the world in general, and of the Americas in particular, is that torture remains a method of intimidation, punishment and repression. Experiences that are now coming to light in several Latin American countries show that torture, although legally banned, continues to be practiced.

It would be interesting to know, if a confession is not legally valid when obtained through the aforementioned mechanisms, what is the purpose of torture? The answer lies in a perverse application of knowledge of the human mind, integrated and developed during many years of investigation in the areas of psychology and psychiatry. Certain trends in these professional fields in conjunction with repressive States were responsible for implementing techniques of annihilating the personality and of punishing that were no longer only used to produce legal effects, but also to affect the psyche in an almost irreversible manner.

Beginning as a technique of crime investigation, torture became a method of political repression. While its original purpose might have been to obtain confessions and to win cases in court, torture, in addition to providing information that would neutralize political and social movements, was now becoming a punishment *per se*, a means of repressing a way of thinking that was not in line with the *status quo*.

Therefore, not only because of its intrinsically inhuman nature but also as an expression of intolerance to political diversity, torture may be thought of as the antithesis of democracy, which always implies inclusion and tolerance. Torture is thus a collection of anti-values, which is what makes it execrable. But the reason that it must be especially rejected is that it is the perverse application of human knowledge, as in the fields of law and psychology, which should be developed solely towards the well-being of individuals; law towards the attainment of justice and psychology towards seeking the highest possible level of mental health.

This publication contains an important collection of specialized articles that presents an in-depth study of the effects of torture and similar practices, but it also, and very promisingly, presents the basis for psycho-juridical strategies of intervention that are necessary for the practical comprehensive attention to the victims. The professionals who have participated in the preparation of this book are well recognized for their contributions in this area. With their comments they have nobly and exemplarily vindicated the other role that psychology must play in healing this harm, emphasizing not only the legal repercussions always well identified by lawyers and judges- but also in translating it into psychological processes that turn these practices of terror into an experience for victims that is not only a reminder the past, but a continuing source of pain.

There is no more worthy task than that of being strongly committed to serve victims of human rights violations, victims of torture. In his last homily, Monsignor Oscar Romero uttered an immortal phrase that today comes to mind when writing

this foreword: “No one is forced to comply with an immoral law... The Church, defender of the human dignity of individuals, cannot remain silent before such abomination.”

In conclusion, I have the pleasure of noting that this volume forms part of a series of five publications of the project *Psychological Assistance to Victims of Torture in the Inter-American System*.¹ I wish to take this opportunity to thank the Swedish Agency of International Development Cooperation for its support and the United States Agency for International Development for its sponsorship. I also wish to thank the IIHR team for its dedication and superb effort and Gilda Pacheco, Deputy Director, for her wise leadership, her high degree of sensitivity in the subject and her dedication in coordinating the academic area of this project.

San José, Costa Rica, August 2007

Roberto Cuéllar M.
Executive Director, IIHR

1 In addition to this publication, the collection, under the general title *Comprehensive attention to victims of torture in cases under litigation*, includes *Jurisprudencia en el sistema interamericano*, *Propuesta psicojurídica*, *Capacitaciones nacionales y subregionales* and *Impacto en el sistema interamericano*, which was a joint production with CEJIL.

Introduction

This publication is the result of profound and original reflections regarding the following challenge: How do we deal with the issue of victims of torture so that litigation is a healing process *per se*? How do we provide comprehensive support in their search for justice and truth?

Answering these questions is an objective of this book, which presents a review of the question of torture and its consequences with respect to litigation before the inter-American system for the protection of human rights. Our intention, on the one hand, is to emphasize the psychological and social dimensions of acts of torture and, on the other, to foster an interdisciplinary dialogue that would promote a broad perspective that captures the different aspects of this painful and complex reality.

In the case of torture, why emphasize this psychological point of view? Why do we believe that an interdisciplinary approach to the litigation of such cases cannot be postponed? This book confirms that we do not have a choice. Torture, in all its forms, including its characterization as a crime against humanity when it is systematic, in addition to the pain, disappearance or death that it causes, means the annihilation of the subjectivity of victims and their families, the destruction of the symbolic image, the intimidation of persons and communities, and rupture of the rule of law as a pact of social coexistence.

As has been correctly stated by Professor Elías Días of Spain, the rule of law is one of the most important advances in political doctrine and is based on four fundamental principles: respect for human rights, separation of powers, submission of power to the free and collective will of individuals expressed in laws and the judicial control of acts of government. A legitimate State is not one *with* rights, but one that makes respect for rights and their judicial protection the essential elements of its form of government and its acts.

Thus, the mere existence of a victim of torture denies one of the basic elements of the rule of law and impunity is the reaffirmation of that denial. In that sense, the diverse articles in this book reflect the specific and wide-ranging repercussions that

this practice has on men and women the direct victims of those arbitrary acts, as well as on their families and on their most immediate surroundings, affecting society as a whole to a greater or lesser degree.

Each victim reports feeling helpless and frustrated by the manner in which local justice is administered. Added to this is the emotional burden that comes from realizing that in these cases of abuse of power, it is their own States that do not have the political will to investigate the facts and punish the offenders.

As a matter of fact, in the cases mentioned in this publication, when there is an exception to the exhaustion of domestic remedies it has been possible to present those cases to the inter-American system more expeditiously. We must, however, recognize that the victims also have to endure a long process between the admissibility and the resolution of their cases in the inter-American system, which often means employing all available personal and psychosocial resources. Generally, in these types of violations the direct victim dies and his closest family members also considered victims by the Court are the ones who bring the case. During this exhausting process they have to relive the events, they have no closure and, regretfully, in some cases they are condemned never to see justice served.

An interdisciplinary view

The effort to broaden the interdisciplinary view of both disciplines -law and psychology emerged from the team of lawyers of one of the most experienced organizations in litigating cases before the inter-American system, the Center for Justice and International Law (CEJIL), specifically from its Director, Viviana Krsticevic.

We have sometimes wondered about the aptness and solidity of the legal strategies presented by the lawyers, but at the same time we acknowledged the legitimate concern not to affect once more the victims while implementing their strategies and their efforts to handle appropriately specific situations, as reflected in the following questions:

How can we avoid that the repetition of the victims' testimony causes additional harm?

How can we meet the need to present good legal briefs without failing to recognize the needs of the victims themselves, accentuated by their participation in the process?

How can we conciliate the real possibility of success of the case from the point of view of the lawyers and the subjective expectations of the victims?

How can we guarantee that reparations will be comprehensive and will include those psychosocial aspects that have also been affected by this type of violation of human rights?

Confronting these questions has resulted in more questions than answers, which prompted the formulation and implementation of the “Psychological Assistance to Victims of Torture in the Inter-American System” project.¹ Implementing it meant fixing the limits of the mandates of each institution.

The IIHR was responsible for forming and monitoring a team of mental health professionals, who, during the four years of the project, offered support to victims and prepared and presented psychological evaluations to the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights in cases of torture brought by CEJIL.

The challenge in forming the team was more than simply convoking a group of experts on the subject; it required creating a permanent work team and a space for discussion. What became known as the Network Team was composed of ten well-known specialists, from different countries of Latin America, in the areas of human rights and attention to victims. This was a new experience in the region.

It is interesting to note that the articles included in this book are not a group of individual contributions conceived separately, but rather are the result of a collective reflection and exchange. An effort has been made to conciliate the expertise of the authors from a psychological point of view in each topic with the interests of the IIHR team to develop and emphasize the link between those areas and the peculiarities of a specific scenario: international litigation.

To meet this objective, the IIHR convoked two meetings. The first was held in San José, Costa Rica in October 2003 with representatives of CEJIL and the experts who were invited to form part of the Network Team. The main objectives of the meeting were to define strategies in three directions: implementing a comprehensive approach for victims of torture who presented cases before the organs of the inter-American human rights system; consolidating the process of integration of the group and establishing strategies of communication and coordination between the Network Team and the team of lawyers.

1 Among the five books in the collection, this one is specifically dedicated to the systematization of the experience of the Network-Team.

An initial methodological approach was developed, which was constantly improved by exchanges and contributions on an electronic network, which has become one of the most specialized on this subject.²

One of the most important elements during this stage was the need to draw up a system of interdisciplinary work for professionals from the fields of law and psychology. More than a simple choice, it was an imperative because of the complexity of the cases involving victims of torture and other crimes against humanity. Mention has already been made of the serious consequences of those violations, which the victims and the teams of professionals that offer their support find difficult to manage.

A legal strategy was sought that would enable selecting the cases that had the greatest possibilities of success, while at the same time offering conditions that would best serve the affected persons when appearing before the Commission and the Court. The different languages used during the meetings that were held to place the finishing touches on the strategy brought out the discrepancies and the mutual lack of understanding. It was therefore decided to attempt to integrate the underlying concepts of each discipline or perhaps create a common language that would be accessible to all of the professionals involved. This would in itself be an achievement that would even transcend the project. The need therefore arose to rethink from a psychosocial standpoint the topics inherent in these types of violations.

A second meeting took place in San José, in March 2005, the purpose of which was to analyze and discuss the preliminary versions of the specialized articles assigned to each member of the Network Team. These suggestions, collected and systematized, would be an input for a second version of the articles, which would include the following: recommendations made by the IIHR technical team; those arising from the working sessions of the Network Team taking into account the objective established by the technical team that the articles be consistent with the strategic vision of the project- and the incorporation of examples of the jurisprudence of the inter-American system that arose during the implementation of the project and examples of the Latin American context.

A final stage took place the following year and consisted of reviewing the adaptation by the IIHR team of the versions presented by the Network Team. This process involved reading together as a team and making comments and observations that were later incorporated into the documents. Interest was always centered on the adaptation and pertinence of the contributions in light of the psycho-juridical strategy and the jurisprudence of the inter-American system.

2 May be consulted in Spanish at <http://www.iidh.ed.cr>, specialized sections: "For a life without torture."

This long process concluded with the publication that you hold in your hands. It contains the work of many individuals who participated at different times and who contributed their knowledge and sensitivity towards improving the understanding of such an important topic: the search for justice by victims of serious violations of human rights, plus the need for comprehensive attention to those victims. There follows some of the challenges presented in the ten articles.

Without a doubt, as sciences of human conduct -the first from a psychological perspective and the other from a normative perspective- psychology and law have more points in common than we might imagine. These points are however buried under a complex theoretical-conceptual construction that makes them difficult to detect. That is why, when two professionals use the same word, we can ask ourselves if they are saying the same thing.

Every science or discipline constructs its own language based on the categories that it employs in analyzing and explaining reality. Unfortunately, this often presents obstacles to mutual understanding. The first step to achieve an interdisciplinary approach is to clarify the terms and define the meanings that are common to both. In our case, this involves not only communication among professionals, but also communication between them and the affected persons who seek justice. Do the words “justice,” “victim” and “forgiveness” have the same meaning for the organs of protection? This uncertainty is presented in the first article “An interdisciplinary approach to the terminology and legal procedures used in litigation before the inter-American system,” by Alicia Neuburger and Víctor Rodríguez. This is obviously part of the construction of a comprehensive strategy for supporting victims during the litigation of their cases.

This strategy requires lawyers to understand the contribution that psychology can make to these types of cases. There will obviously be many occasions in which legal briefs related to the evaluation of damages will be questioned; on more than one occasion criminal trials of torture cases will be “lost” because the most important element of evidence -the victim of torture contradicts him/herself in his/her statement or is not able to maintain a coherent version of the facts. These elements are essential from a legal standpoint, but from a psychological one they may be explained as originating in fear, evasions, confusion, etc., without it necessarily meaning that the victim is lying or making up his own reality or, to put it in legal terms, without the evidence being convincing. The need to provide psychological support to the victims before and during litigation is the essence of the psycho-juridical strategy presented in this book.

An interdisciplinary approach, aside from proving violations to rights, goes deeper in its psychosocial implications. By providing support to the affected persons, their role as social actors, which requires justice and reparation, becomes stronger than their condition of victims. The conditions are thus set for the litigation to become a healing process *per se* for the victim. But, is psychological support the same as psychological therapy? Should the State be made responsible for providing psychological therapy as part of the reparations? Is it possible to repair social damage at a strictly individual level? A detailed study showing what each of these types of support signifies and when it must be provided is presented in the article “Psychological support and therapy,” by Pilar Raffo and her collaborators.

Another article is devoted specifically to torture and offers a brief historical panorama of its evolution, objectives, modalities, context and effects. It analyzes torture as a phenomenon associated with power and its consequences, at a personal and family level, as well as socially.

This article leads us to analyze some issues regarding the subject in question: Is physical torture possible without psychological repercussions? What is the cost of these types of violations to society? Can succeeding generations be freed of the traumatic effects suffered by their families? Are there any social contexts or political conditions that promote the appearance or existence of acts of torture? Are democracies exempt from torture? The article “Consequences of torture on individuals, their families and society” by Ana Deutsch deals with all these issues.

A family that has lost one or more of its members to torture is also the victim of a traumatic event, aggravated when agents of the State who should protect their rights are responsible for the event. It is even worse when, as a result of a massacre, the event has also destroyed the social networks that could provide support in the community or when loved ones have disappeared and the unending search for them causes increasing fear and anguish, constituting a form of prolonged torture.

How to believe that someone who has disappeared is still alive when reason argues that the cold hard truth is that it is not possible? How to abandon hope that the person will be found alive without feeling that love and family ties are being betrayed? How to bury the person without having a corpse? How to live with the disappeared person without that person being present? And what if during all this time important decisions have not been made, waiting for the disappeared person's return? These are some of the toughest questions that on a daily basis must be confronted by thousands of Latin Americans, families of the many thousands who are missing. This issue is dealt with in “Forced disappearance as a political strategy of

terror” by Débora Munczek with the contributions of Graciela Guillis and Gervasio Noailles, defining the complex psychological processes that persons affected by this interminable crime must undergo.

The history of Latin America, past and present, appears throughout this book. The new millennium presents different characteristics than those of the repressive dictatorships that were responsible for atrocious violations of human rights. Democratically elected governments offer conditions that are more suitable for the consolidation of democracy. This is a basic step towards effective human rights and towards the decrease of torture as a systematic practice.

Nevertheless, there remain individual and group consequences for victims and their families, as well as for societies that have emerged from politically repressive periods. Amnesties have played a decisive role by promoting the prescription of criminal acts and the exemption from responsibility, by not investigating or punishing those responsible for serious violations of human rights -torture, summary or arbitrary executions and forced disappearance- that violate rights that are non-derogable *per se*. But the problem of amnesties is not only political nor can it be analyzed from the cold perspective of the rule of law and the right to due process. The problem with amnesties ultimately is that the impunity that they generate has faces, realities, families and projects. Impunity does not happen in the abstract. It affects real persons who, in addition to having been humiliated, hurt and denigrated, have to confront a political decision by which what happened must be accepted in silence “for the benefit of national reconciliation,” as if it did not have true and detectable repercussions on their mental health. Are those repercussions not also a type of harm that must be repaired?

Impunity prolongs the victims’ suffering, which thus never ends. Are justice and impunity compatible? What does it do to one’s future when those responsible for so much pain have not been subjected to the scrutiny of the courts? Can forgiveness and forgetting be ordered by decree? Cristina Bottinelli and her collaborators analyze this problem, as well as its consequences for victims and society in “Impunity as a crime against humanity.”

Although mourning is a psychological process that enables one to overcome the loss of a loved one and is thus individual and private, it is determined by the social context. In cases such as those that have been analyzed, this context involves danger and threats and does not offer any possibility of finding an adequate response because of the constant feeling of being defenseless, making it impossible to turn to

individual defense mechanisms. In the great majority of cases, this prevents or limits family members and survivors from reconstructing their lives.

This raises the question of the importance of thinking about certain aspects. What do we refer to when we speak of a process of mourning? What are the additional difficulties in this process in the context of systematic violations of human rights? What type of losses are we facing? Is it possible, when not being certain of the death of loved ones, to mourn in their absence without feeling as an accomplice to their disappearance? How does one overcome the emotion of the first moment, if impunity is forever present? Is it possible to continue on without the conditions necessary to accept the loss and the elaboration of the experience? The article "Mourning as a result of violations of human rights in Latin America," by Carlos Portillo, Graciela Guillis and Gervasio Noailles, answers these questions.

The granting of reparations to a victim is not only a financial matter, as could be concluded from the custom of setting a monetary sum for damages. A vision from the psychological point of view has been necessary to demonstrate the overall extent of the harm, its impact on the subjectivity of the individual. A family that loses one of its members due to forced disappearance has not only suffered "moral damage," which can be financially compensated, or lost its source of income that enables the family to claim "material damage," it has lost a reality that is not economic and can only be evaluated from a psycho-juridical perspective.

This perspective raises several questions. What is the exact meaning of the term "reparations?" Is reparation possible in situations of serious violations of human rights? Does justice *per se* represent reparation? Does testifying, by telling the truth, serve as a form of reparation for victims or their families? How have reparations been conceived in the inter-American system? What have been the most significant advances regarding reparations in that system? What are the contributions of psychology to the construction of legal and symbolic reparations? Is the search for memory the only guarantee of having truly forgotten? These issues are the basis for the article "Reparations: a judicial and symbolic act," coordinated by Graciela Guillis.

Violence inflicted by State agents upon entire communities naturally affects not only individuals and their families, but also destroys the social fabric on which coexistence, tradition and trust are built.

This practice, used as a method to create terror and social silencing, raises several questions. What is the reason for these massive violations of human rights? Are the psychological repercussions the same in victims of inevitable accidents as in actions

in which the State is an accomplice? Is it possible to repair said damages individually or at a community level without identifying and punishing those responsible? What type of support can be offered to victims-survivors of said events? What are the most frequent psychosocial effects? How do we give individual reparations to the victim while at the same time restoring the social fabric? These questions are analyzed in “Survivors of massacres: psychosocial damage and strategies of reparation,” by Nieves Gómez.

Families of victims of State violence who are also victims, in addition to the suffering caused by the disappearance, torture or death of their loved ones, must face the insurmountable barrier of impunity as well as the consequences of social stigmatization. The long and extenuating road to justice requires a degree of strength that turns them into social actors; that is, into individuals who carry the torch to inspire and motivate all society and that gives them access to international bodies to seek reparations that in some way may compensate for the human rights violations.

Speaking of families, it is interesting to ponder: What psychosocial factors influence the transition of a victim into a social actor? What have been the strategies of resistance used by family groups when confronted with human rights violations and abuse of power? What has been their role in the construction of the historical memory? What contributions have these groups made to democracy? The article “From victims to social actors: the role of families in overcoming impunity” by Jorge Buitrago makes an analysis on the basis of experiences that are made into paradigms for this transformation.

An example of attention to victims of human rights violations is presented in the final article. It is the particular experience of Chile during and after the dictatorship of Augusto Pinochet. It ranges from the clandestine assistance provided exclusively by organizations of civil society to the different types of attention by the State to the victims during the process of democratization.

This experience is based on the following premise: if the State has been the violator, it, as a democratic institution, must repair that damage. Nevertheless, given the limitations of budgetary and human resources existing in public services in the areas of physical and mental health, some questions arise. Who is responsible for treating the physical and psychological damage to victims of repression? How to guarantee public policies that promote responsible processes and guarantee high-quality comprehensive attention? Would it not be more effective for the NGOs that are more experienced and credible in this type of attention to continue to be in charge of the psychosocial reparation? How to achieve the social commitment

and public responsibility required to repair the individual harm produced by State abuse? Does this type of attention represent assistance or a policy of reparation? Is it possible to recognize social damage in victims in the absence of truth and justice? How to guarantee that it is the victim who always decides who offers assistance and when, without the State escaping its responsibility?

This article, written by María Isabel Castillo and her collaborators, reveals the obstacles and vicissitudes that have been faced and the actions that are pending in this singular experience.

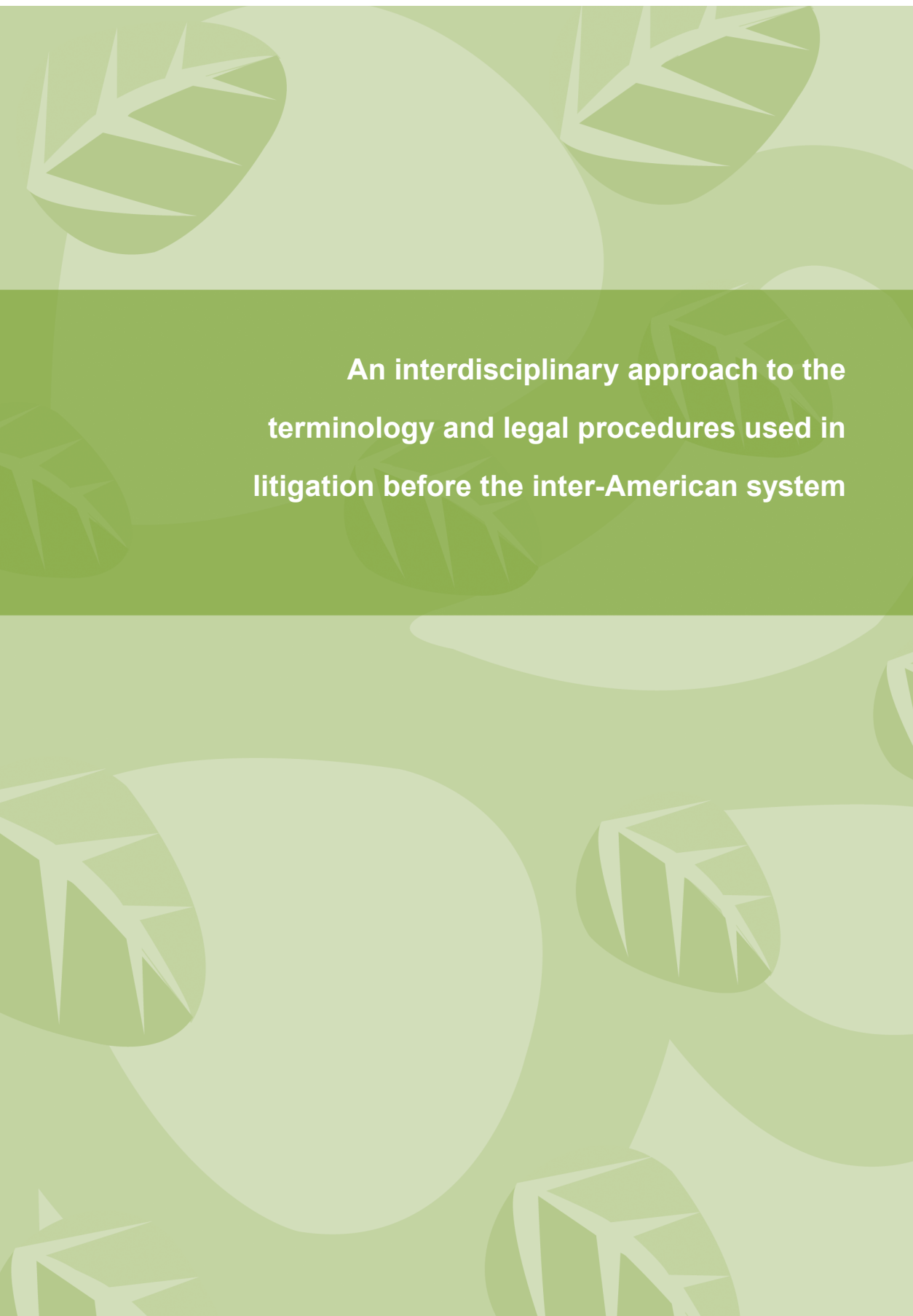
Finally, it is important to mention a common denominator in every article in this book -the important role of the organs of the inter-American system for the protection of human rights. In addition to seeing that justice is done that the States comply with their duty to rectify acts of abuse of power; that the victims and their families exercise their right to reparation and that jurisprudence is created- in cases of torture, massacres and forced disappearance, these bodies play a decisive symbolic role. By imparting justice and in many cases by making it possible for the first time for the victims to have a voice in establishing reparations, the Court restores to those individuals, their families and communities, and to society as a whole, their faith in humanity and in the social contract that serves as the basis for coexistence. Arguments are presented throughout this book on the potential of these bodies to repair by offering reconstruction opportunities to individuals and to the collectivity, helping once again to create a new social contract.

This publication seeks to contribute to the search for justice that has been delayed for victims and their families. The appearance of victims in cases before the inter-American system is an opportunity for the affected persons, as actors in these cases, to become aware that their motivation generally personal and individual to start out on this long road of searching for justice transcends them and becomes a contribution to restoring a collective, social and political hope, since their specific situation will be heard. Overcoming their fear and desperation will be aided by other similar cases and will, in turn, benefit future cases.

Although this book does not seek to provide definitive answers or solutions to the problem of providing attention to victims of torture involved in international litigation, we are certain that reading it will allow further study of the problem. Its interdisciplinary approach will enable the readers, especially professionals in law and psychology, to have a tool that gives a comprehensive vision that will permit them to increase their commitment to those who have suffered human rights violations, as well as to the construction of a society that defends, on a sustainable and long-

term basis, A LIFE WITHOUT TORTURE, the theme that has inspired and accompanied the entire Project.

Gilda Pacheco
Project Coordinator
*Psychological Assistance to Victims of Torture
in the Inter-American System*

The background of the entire page is a light green color with a pattern of stylized, overlapping leaves and circles. The leaves are depicted with white outlines and are scattered across the page. The circles are solid light green and vary in size, creating a layered, organic effect.

**An interdisciplinary approach to the
terminology and legal procedures used in
litigation before the inter-American system**

This article was prepared by Alicia Neuburger, a psychologist and psychoanalyst with broad clinical experience, who has worked to help victims of violations of human rights and has served as an expert in her field in cases before the Inter-American Court of Human Rights, and by Víctor Rodríguez-Rescia, an attorney who has specialized in the inter-American system. The article also includes contributions from the interdisciplinary team of the IIHR Project “Comprehensive Attention to Victims of Torture” as well as from the editors of the publication.

Introduction

Litigation of cases of torture and other serious human rights violations before the inter-American system involves, *inter alia*, issues with legal, procedural and psychological aspects. Therefore, the litigation requires, above all, a great conceptual clarity and an approach that is not simply legal.

From the Inter-American Court's first judgment in 1989 in the Velásquez Rodríguez case, the inter-American system has evolved towards a more interdisciplinary vision of human rights and towards the development of reparations that are more in line with the victims' needs. The system's two main organs, the Commission and the Court, as well as petitioners and human rights organizations from throughout the hemisphere, have been articulating, year after year, their knowledge and experience on concepts pertaining to different disciplines and have produced valuable jurisprudence on human rights and violations of human rights.

The advances made by the Inter-American Court has turned it into one of the most progressive systems of human rights protection. From a juridical perspective, however, this progress has not necessarily been translated into benefits for the victims, according to the latter. Efforts must thus continue to incorporate new ideas to create an awareness of the procedures before the inter-American bodies and their different facets so that they become more accessible to victims and users and thus ensure an appropriate result.

An interdisciplinary approach from a psycho-juridical perspective challenges each discipline to master the language most commonly employed in their respective fields and to arrive at a mutual understanding of the implications that their interpretations may have for the victim. We must remember that this technical or specialized language is not used exclusively among the specialists participating in the litigation, but that it also involves communication with the victims.

If this linguistic dimension is not taken into account a re-victimization may occur, especially through the use of legal language, which frequently employs Latin phrases to condense an entire doctrine. For example, *non bis in idem* is a phrase

that condenses an entire book and that means that a second legal action may not be instituted for the same cause of action. It needs no further explanation. From a legal standpoint it is very useful but from the victim's point of view, or from the point of view of other professionals involved in the case, it is meaningless.

A similar situation occurs with respect to psychosocial language. For example, it is often taken for granted that a particular audience is prepared to understand terms frequently used to summarize situations or to diagnose behavior.

Law and psychology, like all disciplines, must take into account those who are not specialists and must be humble enough to explain, and not monopolize, the strategies used in litigation and must work interdisciplinarily.

The analysis of several cases of serious human rights violations before the Inter-American Court demonstrates that society in general needs to reflect on and systematize concepts, approaches and practices so that the cases are better handled in order better to benefit the victims and their families. More than the search for justice, the litigation itself must be one of reparation for the victims.

Psychosocial focus and legal language

In human rights litigation –especially in cases of families of executed or disappeared persons and those individuals who have directly or indirectly suffered torture or cruel, inhuman or degrading treatment or punishment– a strategic imperative in the search for justice is the need for an integrated approach, at least with respect to law and psychology, that would enable understanding those realities, their implications and consequences. From a descriptive viewpoint, we will call this approach a *psycho-judicial strategy for litigation*.

This approach is justified primarily by the fact that these types of cases require counseling that is especially sensitive to the victims, their families and communities and is capable of understanding and dealing with their human emotions during the litigation. It is of the utmost importance to identify the deep emotional wounds that may be revived by the litigation; to recognize how some concepts or categories of the juridical discourse, as well as its procedural aspects, may be experienced by the victims with uncertainty, frustration and at times confusion, even though they have been informed of the importance of this type of language in international courts.

From the point of view of psychology, which attempts to understand the laws of the internal world in order to deal with their expression in human behavior, juridical discourse is not univocal but may be interpreted and processed differently. Juridical

concepts acquire a different meaning depending on the degree and type of suffering, the personal and family history, the culture of the community and the circumstances of the lives of those involved. All life experiences leave permanent marks; they remain registered in the individual and collective unconscious. What is forgotten is not lost; it reappears at some point, transformed into dreams, nightmares and physical and psychological symptoms such as insomnia, depression, pain and disease. The mind does not distinguish between the rights that have been violated and reparations of those violations; pain and suffering are living proof of the violations suffered and adequate reparations are those that provide relief.

The changing meaning of words depending on the actors in the litigation

Language is a social convention, which implies that the meaning of words is arbitrary; things could be called something else if this were the social convention at a given time. When human beings are born, their language is already constituted and the meanings of words established. Nevertheless, linguistic formulations, words, phrases or entire texts, may have different meanings or aspects, including the very opposite, depending on the specific situation of the speaker and the interpreter.

Similarly, it is important to bear in mind that in addition to its descriptive function, language has a symbolic function that allows different interpretations depending on how it is represented during the litigation, which brings together a variety of actors.

The victim. He/she who reports violations of his/her human rights and asks for help in order to obtain full reparation. The victims' language is generally emotional and testimonial about the abuse suffered by them and their families. In denouncing the acts that have caused the suffering, victims are calling out for help to repair, to the extent possible, the effects of the harm.

Lawyers. Lawyers are charged with translating the traumatic experiences narrated by the victim, as well as the psychosocial effects of those experiences, into legal briefs. When a case is submitted to the inter-American system, a relationship must be established between the reported violations and the rights protected by the American Convention. This process implies transforming the victim's experience

into a document that is admissible in a case before the system by linking the victim's testimony to specific articles of the Convention so that the allegations benefit the victim in the most comprehensive manner possible.

Commissioners and Judges of the Inter-American System. The words of the Commissioners and Judges symbolize justice and equity, restore human rights protection, put legal limits on human actions and combat impunity and its devastating effects on individuals and on the social fabric.

Experts in the fields of psychology and psychiatry. These professionals evaluate the repercussions that the damage has produced on the victims, taking into account their individuality, culture and history, as well as the validity, at the present time and in all facets, of the effects of the harm. The words of these experts are oriented towards translating the victims' subjective language into an objective language that transmits to the juridical world that individuality and explains the victims' suffering, their capacity to recover and the consequences of the harm that must be repaired.

It is clear that if language symbolically reproduces reality, it also enables the specific speaker, from his/her particular circumstance, to introduce order into that reality, selecting part of it and introducing priorities and evaluations. As a matter of fact, the existence of different evaluative connotations assigned to a specific term or expression may frequently cause misunderstandings. Recognizing the conventional nature of language –accepting that there is no single or correct meaning of a word that would be the same for all speakers– as well as examining terms in different contexts provides an important basis for interdisciplinary dialogue.

The challenge is to discover how to build bridges in the language of the discipline that enables a comprehensive understanding of the multidimensional reality of the litigation; how to understand the origin of the terms used and the requirements of the juridical world with respect to their use. In other words, which terms or expressions must be preserved because of legal requirements and which may be modified or, if they cannot be modified, how they can be handled so that the terms or words have a lesser impact on the victims.

In fact, the purpose of this article is to systematize, from a psycho-juridical standpoint, some of the most important legal concepts used in the proceedings of cases of torture and other violations before the inter-American system for the protection of human rights. The object is to point out the psychosocial and subjective

implications of the legal concepts that have a profound impact on those who take part in international litigation. In this way we hope to stimulate discussion and reflection of these concepts since they are intimately related to achieving the healing objective of the legal action and of the comprehensive dimension of human rights.

The terms chosen respond to the following criteria:

- They form part of the customary juridical language.
- The interpretation of the term may be distorted by cultural representations that naturalize its use, closing the door to other interpretations.
- The meaning of the term, viewed from a different discipline or culture, may be understood differently.
- The term provokes mixed feelings in victims, witnesses, family members and even experts, thus demonstrating the need to rethink and find a complementary approach to make it possible to manage the psychosocial impact of the juridical language.

Each concept is directly derived from the most important instruments of the inter-American human rights system and from the doctrine and jurisprudence of its organs of protection.

The order of presentation of the terms and concepts to be developed is not alphabetical but follows the course of the litigation process, responding to different criteria: substantive, procedural and psychological.

Victim

Juridical focus

Article 2.31 of the Rules of Procedure of the Inter-American Court defines “victim” as a “person whose human rights have been violated, according to a judgment pronounced by the Court.” This definition is also valid for the resolutions and reports issued by the Inter-American Commission.

The concept of victim is quite familiar to lawyers and is clear since it refers to the process, be it a criminal or a human rights case. From a legal perspective,

the concept of victim is important because of its substantive application since it identifies the passive subject of the harm and the holder of the violated rights. It is also important because of its procedural consequences as it enables a clear definition of the legitimatization and the correlative capacity to take action in the process.

The inter-American system, in employing the term “victim,” directs the procedural force and weight of the meaning of the word to making the State and its agents the “victimizers.” The victim may thus present a claim before the inter-American system that directly seeks comprehensive reparations for the harm from a “strong” position in the litigation.

The State is going to be sued; therefore to be the victim is to turn the table of the human rights violation by placing the injured party in a relatively favorable legal position. The idea is to consider the victim the primary subject of the litigation.

The etymology

The word “victim” has its origins in Latin. It may either come from the verb *vincere*, meaning “defeated,” or from *vincire*, related to animals that were tied down and sacrificed to the gods. Both connotations allude to something that has suffered harm caused by others; but it may also refer to the weak and defenseless, that which has been abused and requires protection.

Psychosocial considerations

“Victim” is probably not the most accurate term because it implies an image of vulnerability and extreme dependence.

From a psychological point of view, one must first understand the consequences for a person who is a victim. It may mean being defenseless, helpless and abandoned, which harkens back to childhood situations and stages. Torture survivors have given innumerable testimonies in this regard. In addition, the subjective impact on a person caused by the long-lasting feeling of being a victim, condemns him/her to a constant reminder of the tragedy and to the power exerted by the victimizers. Victims who have presented their cases before the Inter-American Commission or Court have had to undergo a long period of waiting, frustrations, unfair domestic procedures, hostility, humiliation, threats and often exile. And before that they had to endure suffering and torture and go on living in order to become claimants and accuse their countries and their agents and demand justice.

From a psychosocial approach, individuals who have had their rights violated must be seen and regarded as subjects of their own lives and as social actors and not only as objects of the harm done by those who violate their rights. Failure to respect that right to be considered a person of value *per se* before being regarded as a victim by those who are there to defend him/her during the litigation could result in a re-victimization.

Cataloguing someone as a victim opens the possibility for that person to perceive that his/her identity as a whole is being harmed. It must be taken into account that these persons have been through a long ordeal in their search for justice, an ordeal that requires courage, endurance and the internal strength to struggle against adversity. If, at the end of the last stage of the litigation, the person is still called “the victim,” he/she runs the risk of feeling that his/her internal process is disqualified and that the inner self is reduced to an extremely painful event that is out of his/her control.

Psychologists have chosen to call these persons and their families the “affected” rather than the “victims.” A clearly illustrative example might be the statement by a victim’s family member, who before testifying, stated the following: “I don’t want to be a victim any more, that’s why I’m here.”

This demonstrates the need for an interdisciplinary team supporting a case brought before the inter-American system to explain to the affected person the meaning, scope and limitations of “victim” since this juridical-procedural concept cannot be modified.

Although the inter-American system insists on the word “victim” for procedural reasons, in order for the State to repair the totality of the harm the psychosocial meaning of the term is necessary because it has other implications for the affected person.

Psycho-judicial proposal

Given the legal implications of the term “victim,” its use becomes unavoidable. Nevertheless, it is possible to use other and more comprehensive terms without juridical effect. As a matter of fact, the American Convention itself, when referring to the right to request reparations, speaks of the “injured party.”

Regardless of the decision made in this respect, what is of the utmost importance is to inform the victim of the meaning of this word before the litigation because it may be too late during the litigation.

Even if it were possible to find a word that could synthesize both visions, it is not a matter of conciliating the interests of professionals in different fields but rather a question of understanding that the ordinary person who has been subjected to torture is also subjected to a vocabulary that he/she does not understand, one that harms and assaults him/her, in addition to alienating him/her from the process.

Integrating an interdisciplinary approach demonstrates that the complex and long process implied in bringing a case before the Commission and the Court mobilizes at the subjective level –individual, family and social- conflicts that are inherent to the process itself and to others related to the victim's expectations, which might change during the process. Taking this reality into consideration opens the possibility for the system to become more permeable and sensitive to victims and may enrich the legal arguments. For example, since the victim controls most of the evidence starting with the expert testimony, bringing up the psychosocial dimension of the harm, may offer a creative strategy for obtaining additional tools so that the case is admissible and that it is decided favorably.

The human capacity to respond creatively to traumatic situations is immense. The process of giving new meaning to life must contemplate the individual meaning that each person confers on the symptoms and general consequences of the trauma in the psychic development of the traumatic experience. A greater or lesser capacity to overcome an extreme trauma caused by other human beings is linked to factors such as subjective resources, differences in gender, possibility of identification with socio-political projects, habits and cultural rules, religious beliefs, socio-educational resources, and networks and social and family ties for support and restraint.

It is thus proposed, in first place, that the process of psychological support taking place before, during and after litigation explain and develop the legal meaning of "victim" and reveal its psychological repercussions. This would foster subjective resources for the affected parties to:

- Present their testimonies.
- Psychologically deal with their pain.
- Understand their social contribution to the combat against impunity.

- Not remain anchored in the role of victim and enable the construction of a new project of life.
- Turn the litigation process into a healing experience.

The second proposal is directed towards discovering how an affected person, instead of feeling that he/she is a victim, may play a part in the litigation. In order to achieve this, he/she should be aware that the inter-American system of human rights protection was established for individuals, for those persons whose human rights are to be protected. In other words, victims are the *raison d'être* for the system. In addition, the inter-American system, in interpreting and applying those rights, in case of doubt and in view of the evidence, should always tend to favor the victim, as in criminal law with *in dubio pro reo* or in labor law with *in dubio pro operario*.

Our third proposal is to familiarize the Commission and the Court with the term in question, so that their decisions refer to the reason for preferring the use of “injured party” instead of “victim.” This would emphasize the intention to humanize and sensitize the terms of international procedural law.

This broader understanding may increase the resources of victims so that they might present their testimony more solidly, ease their mourning and understand their contribution not only as the search for personal justice, but also as an element to combat impunity. The litigation would thus be turned into a situation that we could call one of reparation, for it would confer more power on the victim, instead of stigmatizing him/her.

Re-victimization

The juridical approach

“Re-victimization” may take place when the legal process itself results in new and important offenses to the victim. From a legal standpoint, litigation *per se* inevitably creates situations, such as interrogation and testimony, that present the risk of re-victimization.

It is also true that persons who have had their rights violated must be seen, and considered, as subjects of their own life and as social actors. Not respecting the right of persons taking part in the litigation to be considered as persons of value before

being regarded as victims could result in a re-victimization of those persons who have been subjected to torture or other serious violations.

Re-victimization is an expression that is the equivalent of “secondary victimization” and is used in the criminal study of victims. Landrove Díaz, as quoted by Tomás Valladolid Bueno, has defined it as an expression that “is derived from the relationship of the victim to the juridical-penal system, together with the repressive State machinery, and ultimately the frustrating clash between the victim’s legitimate expectations and institutional reality.”¹

Psychosocial considerations

Re-victimization is linked to the direct or indirect consequences of events that cause additional frustration or suffering to victims of human rights violations, specifically with respect to their international litigation.

The following are some examples of the above:

- Unjustified delay in the evolution and final decision of the case presented before the Commission or the Court.
- Decisions that do not follow existing jurisprudence.
- Failure to recognize violated rights due to lack of evidence.
- Lack of attention to psychological aspects during the examination of the case.
- Behavior and attitude of the State during the litigation.
- Delay or failure to comply with the decision.

Psycho-juridical proposal

A proposal for an interdisciplinary approach would include not only the rights violations, but also their psychosocial implications. This would enable the victims to become stronger in their social roles, rather than as victims; fostering personal

1 Valladolid Bueno, T. (2003). “Los derechos de las víctimas.” In Mardones J. and Reyes M. *La ética ante las víctimas*, 1st ed., p. 156, Spain: Ed. Ánthropos.

resources to confront frustrations that are inherent to these long and complex litigations, offering conditions that turn the litigation into a healing process.

There have been some interesting experiences in which the affected persons have come to understand that they were not only representing their individual situations, but also those of the collectivity, thus making it possible to combat impunity. This fostered a process of strengthening of identity that has become evident in a change of attitude and in the arguments of the affected persons.

Sexual violence

Juridical focus

The general term “sexual violence” refers to physical and mental abuse, regardless of gender. Due to its serious implications, sexual violence has been included as a modality of torture.

International criminal law has elevated sexual violence, when massive, to a crime against humanity, thus making it non-prescriptive and capable of being prosecuted universally.

There are precedents in *ad hoc* international human rights courts, such as those for Rwanda and the former Yugoslavia, that have advanced the definition of sexual violence. This jurisprudence has questioned the ancient concept that rape implied penetration. Today the introduction of objects in general, not only of the penis, is considered rape. Similarly and alarmingly, other types of violence that transcend sexual desire have been defined, such as impregnating women for ethnic cleansing, as was the case in the Yugoslav conflict where one of the State’s policies was to “cleanse” Serbian blood.

Psychosocial considerations

It is important to use the best possible procedure to handle the subject of sexual violence not only with respect to women, but also with regard to men, considering its psychosocial connotations. Cases of sexual violence are those that most frequently re-victimize victims. Subjecting a person who has been subject to sexual violence to reiterated interrogations is not recommended.

From a psychosocial perspective, it is important to emphasize the difficulty of documenting acts of sexual violence in situations of massacres and other human

rights violations. We believe that this responds to the fear of legal teams to make in-depth investigations of these types of crimes because they are linked to the sexuality of victims and there is a fear of violating the victims' privacy.

We understand that this is not an easy topic. It requires a different kind of investigation than that developed for violations involving cultural aspects and it presents challenges regarding the manner in which the interrogation should be approached.

Victims, who are mostly women, generally refuse to report this type of crime. In addition, these women also fear being exposed to a second victimization by the repudiation of their closest relatives and members of their communities, often as a result of the verification of these acts.

Psycho-juridical proposal

From an interdisciplinary approach, it is necessary to develop a methodology and to create favorable conditions in order that this type of crime is brought out in the litigation.

An interdisciplinary approach makes it possible to explore different methods to identify and document this type of violation, to help reconstruct the facts, to propose different options for offering testimony and to formulate specific reparations.

Petition

Juridical focus

Under Article 44 of the American Convention, a petition is the presentation of an international claim, which includes a denunciation or complaint, to the Inter-American Commission for Human Rights for the investigation and determination of a violation of a human right set forth in that treaty. The system for presenting petitions to the Commission is the broadest of any international protection system since the petitioner may be "any person" or "group of persons." The petitioner does not necessarily have to be the victim of the violation or a family member, as is the case in all other international bodies.

In conjunction with Article 44, Article 23 of the Commission's Rules of Procedure describes the broad scope of human rights protection offered by the inter-American system. The latter article authorizes "any person or group of persons or

nongovernmental entity legally recognized in one or more Member States of the OAS (to) submit petitions to the Commission, on their own behalf or on behalf of third persons, concerning alleged violations of a human right” recognized in such international instruments as the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention on Forced Disappearance of Persons, among others.

In addition, under Article 24 of its Rules, the Commission may, “*motu proprio*, initiate the processing of a petition which, in its view, meets the necessary requirements.” This reconfirms that the scope of protection of the inter-American system is the broadest of any international system of protection, which generally requires the victims or their families to file the petitions.

This broad scope means, as has occurred, that victims of a human rights violation or their families may not be aware that someone or some group has filed a petition related to their case. This occurs most often in situations of general or systematic torture since the inter-American system protects human rights from a perspective of public interest that transcends even the victims themselves.

Psychosocial considerations

This broad protection expresses the willingness of the inter-American system to benefit victims. The petition is a culmination and a beginning: the culmination of a long domestic process of frustration and impunity and the beginning of expectations and hope. Being individually and collectively accepted as subjects of rights enables victims to trust institutions and other human beings; the petition thus initiates a potential process of healing.

Therefore, given the amplitude of the inter-American system, victims may choose not to participate in the process, in which case there will not be any significant implications for them. From a psychosocial perspective and in view of the juridical strategy, it may be necessary to investigate the extent to which victims do not wish to participate.

From a psychological standpoint and for the mental health of the affected persons, their involvement is desired and recommended because it potentially results in healing. Nevertheless, when the victim does not agree to present the case before the inter-American system, his/her wish must prevail. Among the many reasons for the victim to not wish to become involved are: political aspects and fear due to

threats or harassment; economic, family, cultural or gender issues; subjective reasons, exhaustion and being worn-down or depressed; lack of affection and support.

Here the juridical interest must be subjected to the personal interest due to the serious emotional *sequelae* that might be produced, but it is difficult for lawyers alone to decide in these situations.

Psycho-juridical proposal

The cases and factors that determine why victims do not wish to participate should be identified. It is, therefore, important to prepare a comprehensive study that facilitates, on one hand, the understanding required for a psychosocial evaluation of the individual and of his/her willingness to participate in the process and, on the other, an evaluation of the importance of the victim's participation.

It is important to ensure that the victim is clearly informed from the beginning that when a case is presented to the inter-American system, the matter becomes public. If the victim participates, he/she must believe that he/she is the subject of the process and not the object.

Our proposal, from a mental health perspective, is oriented towards generating the conditions that would reduce the victim's fears and difficulties so that his/her participation is a healing experience.

Friendly settlement

Juridical focus

A friendly settlement is a procedure that enables an accelerated solution of a conflict by mutual consent of the parties involved. In this procedure, the Inter-American Commission consults with the parties regarding the possibility of arriving at a settlement within a certain period, which might be two months rather than the several years that the normal process usually takes.

Parties involved in the case conduct broad and unconditional discussions. Under this alternative, the State may recognize its responsibility for the alleged violations.

After a settlement is reached, it is evaluated by the Commission or by the Inter-American Court to confirm that it is not contrary to the human rights of the affected persons.

If a friendly settlement is approved, the case is closed and does not go to Court. In a juridical sense, this procedure is optimal because it is fast and it saves resources.

Etymology

The Spanish for friendly settlement is *solución amistosa*. Like the English, these two words have positive connotations. In the first place, the word *solución* has its origin in the Latin *solutio*, which alludes to the act of dissolving in the sense of a substance that is dissolved in a liquid but remains joined to it in a way that its particles are no longer perceptible. It also means to free, to give freedom and to resolve or terminate a matter.

For its part, *amistosa* comes from the Latin *amicitia*, which refers to familiarity, affection and reciprocal confidence. The dictionary of the Real Academia Española defines it as personal, pure and disinterested affection.

Psychosocial considerations

Persons affected by violations give the term “friendly” a different meaning when applied to resolving a case involving serious violations of human rights.

This meaning may create conflict and resistance in victims if they see the settlement is an alliance with the perpetrators of the violations or as a betrayal of their dead or living family members.

There are some who believe that it is not possible to reach a friendly settlement in cases of human rights violations. The Inter-American Court has even stated that it cannot be employed for serious violations, such as the forced disappearance of persons.

Psycho-juridical proposal

When using an interdisciplinary approach, the victim must be fully informed regarding a friendly settlement. He/she must know that the case will end more quickly, but that it will not go to the Court.

An evaluation must also be made on how significant it is for the victim to continue or not to continue with the case; how the victim perceives the fact that his/her testimony will not be heard in the Court; what the victim's fears are, the financial

possibilities and the emotional and support resources that will be available in case of continuing.

Finally, the psychological effect on the victim who decides not to go to Court must be weighed.

Acquiescence

Juridical focus

In the context of the inter-American system, “acquiescence” occurs when the respondent State acknowledges the events denounced, its international responsibility and the corresponding legal consequences. Upon acquiescence by the State, the case is filed.

As in a friendly settlement, acquiescence is recognized as a way to accelerate the juridical process since the respondent State recognizes its responsibility for the acts denounced. The Court then determines the reparations that the State must make to the victim and the corresponding costs.

In any event, the Court, which must always consider how best to protect the victim’s human rights, may acknowledge the State’s acquiescence or may continue to hear the case.

If acquiescence is acknowledged, the Court will nonetheless ensure that the acts denounced are elucidated and that they are given a legal qualification.

Psychosocial considerations

The fact that the State accepts and recognizes its responsibility may be of great satisfaction to the victims or, on the contrary, they may not give it any credence. Political context is very important in that respect.

For example, the transitional government of President Paniagua in Peru showed the political will and commitment to resolve the pending cases involving reparation, enabling them to be settled by the Inter-American Court. These were circumstances that improved the process.

In the *Molina Theissen* case,² acquiescence by the State led to skepticism on the part of the victim's family because, after such a long process, it was not convinced that the State would comply with the terms of the judgment.

In a certain sense, there is a concern because more and more States are using the alternative of acquiescence. In other words, the States recognize the events in question and their corresponding responsibilities; they accept them but do not discuss them publicly. Victims are not able to witness the State, which has caused so much pain, sitting in the defendant's dock, which might constitute a healing action for them. Nevertheless, acquiescence should lead to a renewal of the victims' hopes of achieving a comprehensive healing process and to recognize that acquiescence by the State is a procedural victory.

Psycho-juridical proposal

The implications for the victims of a State's acquiescence must be borne in mind because, although this procedure accelerates the process, it is also necessary to ensure that, after so many years, there are no issues pending.

We propose informing the victims of the conditions of acquiescence and their implications, validating its potential effects at a psychosocial level, evaluating the feelings generated in victims and directing them towards a healing process. New strategies that would increasingly guarantee compliance of the judgment must also be considered.

Measures of protection: precautionary and provisional measures

Juridical focus

In extremely serious and urgent cases, and whenever necessary to prevent irreparable physical and psychological harm to persons, either the Commission or the Court may adopt the provisional measures that it deems necessary. The Court may, at the request of the Commission, take action in matters that have not yet been brought to its attention.

2 I/A Court H.R., *Molina Theissen vs. Guatemala*, Judgment of May 4, 2004. Series C No. 106, para. 31.

These precautionary measures may be granted in favor of victims and their families, as well as petitioners, witnesses and expert witnesses. This protection may even be extended to groups, such as indigenous peoples.

Measures adopted by the Commission are known as “precautionary measures,” while those adopted by the Court are called “provisional measures.” In any event, there is no substantive difference between them, including their juridical basis; the only difference is in the organ that issues the measure.

Psychosocial considerations

In the event of a request to a State for protective measures and if those in charge of providing the measures are agents of the respondent State, the effects that said measures might have on the affected persons must be taken into account. It is not easy for victims to trust agents of the State who violated their rights. In addition, these protective measures might give agents greater access to the victims’ daily activities and routines. In such cases, precautionary or provisional measures could result in a greater threat and could be rejected by those affected.

Psycho-juridical proposal

Experts can inform the lawyers of the need to take such measures, but they must also explain the manner in which a threat may make the victims and their families fear going to trial. On the other hand, a psychological intervention could detect the true magnitude of the threats and the extent of victims’ exposure to situations of risk. For example, it frequently occurs that the exposure of human rights activists, consciously or unconsciously, is greater.

In conclusion

The goal of achieving justice in cases of human rights violations, such as forced disappearance, summary execution and torture, implies defining a new approach of strategies that favor a comprehensive understanding of reality. In this article we have attempted to encourage an approach to a comprehensive understanding that is limited to certain human rights violations that due to their connotation –and in the absence of a better term– may be classified as very serious.

In reality, what is behind all of this is an ethical need to integrate human knowledge, rather than fragmenting or artificially dismembering it. Other types of human rights violations will also require formulating interdisciplinary and comprehensive strategies that may be successful in the litigation that has as its purpose healing the victims of the violations. We hope that this proposal and its implementation will promote and strengthen more comprehensive responses by the bodies of international human rights justice.

The background is a solid green color with a repeating pattern of stylized, light green leaves and circular shapes. The leaves have a central vein and several smaller veins branching off. The circular shapes are simple, rounded forms. The pattern is distributed across the entire page, with a darker green horizontal band in the center where the text is located.

Psychological support and therapy

This article was prepared by Pilar Raffo, a psychotherapist with broad experience in psychological attention to persons affected by political violence in Peru, who has submitted an affidavit to the Inter-American Court of Human Rights. Carmen Wurst, Pilar Aguilar, the team of the Psychosocial Attention Center (CAPS) and María Ángela Cánepa also participated in the article. It also contains contributions from the interdisciplinary team of the IIHR Project “Comprehensive Attention to Victims of Torture” as well as from the editors of the publication.

Introduction

The objective of this article is to help lawyers working within the inter-American human rights system to understand the importance of providing psychological support to victims of serious human rights violations who present their cases before the organs of the system. It is also directed to psychologists by affirming the need to adopt an interdisciplinary vision that harmonizes legal strategy with psychological support.

The intent is to go deeper into two modalities of psychological support (accompaniment and psychotherapy) and their relation to crucial moments in the search for international justice: litigation and compliance with the judgment.

It is important to mention that through expert testimony it is possible to make multidisciplinary contributions to international litigation. In the case of psychology, expert testimony attempts to uncover specific information regarding the psychological harm suffered by the victim in order to present it as evidence when the Court decides on reparations.

However, experience with victims and their families during litigation has shown that this approach is not sufficient. In effect, victims of State terrorism have suffered harm that, in addition to the violation of their rights, has attacked their identity and subjectivity.

This is the principal objective behind the project “Comprehensive attention to victims of torture in the inter-American system.” It is intended that the psychological testimony, in addition to supporting the legal allegations regarding the evaluation of the harm and its effects, offers the victims the possibility that the litigation, in general, and the testimony, in particular, become a healing process.

This new approach –defined in the project as testimony/accompaniment– requires a longer and more intense relationship so that the effects of these serious violations might be investigated and the different emotions, fears and concerns of the victims and their families caused by the juridical process be controlled.

Within the framework of the project, this article aims to define what is understood by psychological accompaniment and by psychotherapy: the differences between the two, their objectives and when these types of aid are offered to victims.

The first seeks to control the emotions and feelings of the victims during the process of evaluation as well as during the hearings.

The second is a specialized treatment that the Court may contemplate as an alternative to providing psychological reparation when so requested by victims and may have an individual, group or community scope.

Differences between these two concepts will be emphasized, as they belong to two different areas and have different objectives, so that individuals who are not familiar with the psychological perspective are able to understand their specificities. The former provides support to the litigation and in itself is important in preventing the affected persons from being re-victimized during the process. After the painful experience of impunity during the years that it took to exhaust the various domestic remedies, victims are forced to relive traumatic events during interviews conducted for the expert testimony and during the litigation before the Court. That accounts for the importance of psychological support of accompaniment.

Nevertheless, this must not lead one to think that accompaniment is sufficient to fulfill all the victims' requirements for reparation because, once the litigation is concluded, the victims face the challenge of reconstructing their lives. The latter type of support, which covers a wider range and is more far-reaching, will often be required and will have to be legitimated based on the Court's judgments on reparations. This article, therefore, also intends to offer data to the Commissioners and the Judges on the importance of including psychotherapy and psychosocial support as measures of reparation.

The intent is not to offer formulas or technical instructions that would work as standard prescriptions for every individual, group or community. The object is to share the knowledge and training acquired through the professional practice of expert testimony and by accompanying victims of human rights violations at the domestic and international levels.

Psychological accompaniment

Concept

To accompany is “to be at the side of,” to offer human support that is comforting and soothing. It means not leaving the person alone with a problem but rather sharing his/her pain. It encompasses being a careful listener, allowing the person to speak and allowing silence to be part of those problems, situations and questions that become indescribable when having to confront pain and sorrow. The provider of accompaniment offers him/herself as an equal who is supporting another human being, in the sense of offering an involved and committed presence.

Psychological accompaniment is that which is directed towards psychological, emotional and spiritual problems. In the case of victims of torture, this accompaniment must be specialized, bearing especially in mind the social nature of torture due to political repression.

It must be made clear that we are not referring in this context to therapeutic accompaniment, which is usually offered to patients suffering from severe individual disturbances and who need clinical treatment. Rather we are referring to a specific type of professional presence, one that accompanies individuals who have suffered the effects of violence due to the abuse of power, individuals whose suffering arises mainly from the socio-political environment. The latter will be called “psychological accompaniment” in order to distinguish it from the traditional “therapeutic accompaniment.”

The main goal of accompaniment is first to lend emotional support and to sustain, which means helping the victim to control his/her impulses and feelings, turning the inner world into one that is more manageable, in order to regulate physical and psychological emotions when participating in the litigation. Secondly, it means enabling the victims to become stronger, including reassuring them of their worth and rights as a human being in an effort to recover their self-esteem and trust in their own resources. The vulnerable condition of the affected persons must be recognized and accepted and one must adapt to the unique pace of each individual and to his/her specific needs. It also implies creating a favorable context for difficult moments in the future and making it possible for those moments to be lived with the least amount of pain and harm possible. Minimizing pain caused by the re-creation of traumatic events contributes to aiding the process of reparation of the individual.

Objectives of psychological accompaniment

- Accompany the individual regarding his/her emotions and experiences when confronting the proximity of an important event (exhumation, judicial hearing, friendly settlement meeting, etc.) as well as in groups, on a short- or long-term basis, in order to avoid the intimate experiences of loneliness of those who are exposed to traumatic experiences.
- Establish comforting and available human contact.
- Provide assistance during mourning caused by multiple losses (loved ones, dignity, integrity, identity, different abilities, etc.)
- Control the fears, anguish and anxiety of the person being accompanied.
- Build bridges between family members, lawyers, institutions, community, etc.
- Transmit appropriately to the victim the information that clarifies the situation that he/she is living.
- Assume some of the roles that the fragile accompanied individual cannot.
- Perceive and reinforce the resources of the person being accompanied, encouraging development of his/her capabilities.
- Provide a framework of safety and trust based on unconditional accompaniment.
- Support and offer practical suggestions, such as becoming familiar with the format of the hearings; speaking with family members about subjects that in the past have gone unspoken and attempting to give a mental sequence to his/her story.

Historical background of psychological accompaniment

The continual presence of political violence¹ in recent Latin American history has resulted in solidarity with the suffering of victims and their families, such as the creation of groups to provide the diverse and necessary kinds of support and social, medical and psychological attention. Initially, these groups consisted of church institutions and human rights NGOs, which were later gradually integrated into mental health teams that had to find methods to confront the problems in each country, since their professional training had not included those matters.

One of the methods adopted was to provide psychological accompaniment to victims of political violence, after identifying the need that individuals and groups have for speaking about their experiences, communicating their emotions and feelings, and looking for the recognition and social validation of their particular experience of pain. In communities where the victims live, accompaniment has generally been provided in the offices of the institutions. The project now offers the challenge of also providing this psychological support in the context of international courts; primarily seeking that the process be one of healing and not one that re-victimizes those who have already been exposed to the effects of impunity.

Experience of psychological accompaniment at a national level

Although the experience of psychological accompaniment in the inter-American system is new, victims of torture have been provided attention at the national level. Experts, when making the initial contact with the victims to prepare their testimony, should use these experiences as references.

These experiences must, however, be adapted to the cultural and social realities, to the demands of the population and to the nature of the trauma experienced by the victims. These are collective experiences that serve to share suffering and to offer ways to build the social network damaged by violence. These different modalities of accompaniment are not rigid and may be combined.

1 We refer to the political repression exercised by the State, also called "State terrorism," that had as its purpose the destruction of those who were identified as opponents or de-stabilizers of the system intent on destroying the social collective as well as to the internal armed conflict in which the repressive forces of the State battled insurgent groups, with both sides violating the human rights of the civilian population through violence.

**Chart 1. Modalities of accompaniment
in cases prior to the hearing or after the judgment**

Type of intervention	Conceptualization
Workshops	Spaces for accompaniment, meeting and reflection on a shared reality. They may be held when, in a case presented before the Inter-American Court, human rights violations have taken place with respect to collectivities (peasants, community leaders, women) within a community. Techniques used should include elements that are characteristic to each group.
Group dynamics	Accompaniment provided both to persons affected by violence and to their families. Its purpose is to support the elaboration of the traumatic experience within a group context so that it serve as emotional support, enable socialization and promote mutual support. The importance of the emotional support of the group, the scant professional resources and the growing number of affected persons who require support make group work preferable to individual work.
Sessions of accompaniment to organizations of affected persons	Spaces for individuals who work with victims to enable an exchange of emotional conditions and institutional strengthening. This type of involvement is considered to be very important for human rights and similar organizations to understand the problems of victims, their families and their communities and permanently work for their causes, which sometimes overwhelm and emotionally burden them.
Accompaniment to families	Experiences in providing psychological accompaniment to families that are filing the cases. Consists of preparing victims and their families, legally and psychologically, to present their cases to international courts, such as the Inter-American Court of Human Rights. It is a question of controlling the emotional outbursts produced by confronting the juridical truth since it leads to a delayed process of mourning. One of the challenges of this modality is to develop the relationships that had emerged as a form of defense and protection against trauma, making it possible for families to deal with the pain and the absences, enabling a comprehensive development of family members. ² Sometimes families reveal secrets that have been kept in the family for a long time. They are also made aware of the importance that the judgment may have on similar cases.

2 Mental Health Team of the Corporation for the Defense of the Peoples' Rights (CODEPU), Chile.

Type of intervention	Conceptualization
Accompaniment in the communities	In this type of involvement, the mental health team may be permanently involved in the community over a long period (i.e., one year), while also offering support to other groups that make periodic visits. In the context of the international litigation of cases of torture and other serious human rights violations, the main objective is to inform communities of the judgments and to speak of the potential that the judgment of a single case has for their communities and for similar cases.
Accompaniment in exhumations	Psychosocial accompaniment during the difficult work in exhumations. It consists of offering individual and group support to families of victims, developing group dynamics with community representatives at the morgue and providing accompaniment during funerals. This type of accompaniment may be offered before, during and after exhumations. Part of the support may consist of different forms of involvement during the crisis. Here it is important to work with the community in order to clarify the rumors and distortions of information present on these occasions.
Accompaniment in the context of Truth Commissions	Involvement consists of establishing a relationship that will help the claimants and their families to be emotionally ready before, during and after the hearing. Interviews held before the hearing enable individuals to express themselves and to feel relief, as well as to construct the traumatic event to a certain extent. The same therapists accompany the persons during their testimonies. After the testimony, accompaniment provides relief and the healing role of the hearing. The involvement ends with whatever is necessary to conclude matters. ³

Accompaniment in public hearings of the inter-American system

At the beginning of the project, a modality of psychological accompaniment, which included four basic functions to be developed by the same professional, was presented:

- Support to the victims
- Coordination with the juridical area
- Preparation of reports
- Preparation of the expert testimony

During the project’s implementation, however, the complexity and particulars of each individual case presented the challenge of making that modality more flexible, as well as finding other possibilities for psychological involvement. A series

3 Psychotherapists of the Center for Psychosocial Care (CAPS), Peru.

of psychological accompaniment modalities thus began to be developed, responding specifically to the needs of victims, to the legal strategy and to the specific requirements of each of the case's three stages.

The first stage contemplates accompaniment during the preparation of the expert testimony, generally in the victims' country of origin. The second stage includes the preparation and presentation of the testimonies of the victims or their families in the public hearings before the Court. Lastly, the third stage covers the conclusion of the hearings and compliance with the judgment.

First stage of accompaniment: preparation of the expert's testimony⁴

The expert's testimony is the evidence presented by a specialist on the subject in question, the purpose of which is to help the judges evaluate the nature of the facts. The expert may be appointed by the Court or may be requested by one of the parties. Traditionally, the expert offers his/her expertise and must be neutral, in the sense of not having a direct or indirect interest in the subject in question. The person presenting the psychological expert testimony before the Court is an expert who can differentiate between the characteristics of the victim's personality structure and the effects of the traumatic experience. Nevertheless, within the framework of this project it is proposed that the expert be not only the one who defines the consequences of the traumatic experience, but also the one who provides the necessary psychological accompaniment.

During this stage of accompaniment several strategies have been used for assigning the specialists who will prepare the expert testimony and provide psychological accompaniment. The modalities used to date are summarized in the following chart.

4 Additional information on this topic may be found in *Perspectiva integral sobre el peritaje y el acompañamiento psicológico*, a chapter in *Propuesta psicojurídico*, one of the books included in this collection.

Chart 2. Modalities of accompaniment during the preparation of the expert’s evaluation

Modality	Functions	Cases
One professional: Expert/ person who accompanies	Person preparing the expert testimony also provides accompaniment. In this case, it must be clarified that the expert does not place at risk the neutrality of his/her professional expertise when damages are evaluated.	Bulacio Juan Humberto Sánchez
Two professionals: one expert and one person who accompanies	A second professional is selected to provide accompaniment when the individual preparing the expert testimony is not part of the cultural context of the victim or does not share his/her language. When victims have had previous psychological support, the strategy has been to continue with the same person during the hearing.	Serrano Cruz Sisters “Panchito López” Reeducation Center Mapiripán Massacre
Two professionals: one expert/person who accompanies and one consultant	This modality has been implemented when the assigned expert is not part of the Network Team. In that case, a member of the team provides advice on the methodology of the expert’s testimony/accompaniment.	Wagner dos Santos FEBEM
One professional: person who accompanies	There is no expert testimony. This modality may be present when the State opportunely accepts responsibility, regarding both the substance of the case and reparations. The pertinence of only providing accompaniment to the victims is also evaluated.	Four Cardinal Points

The interview

The interview is one of the basic tools used by the interdisciplinary team to prepare expert testimony. It should, however, be pointed out that the expectations, as well as the technique of the interview, will vary greatly according to the professional conducting the interview, as summarized in the following chart:

Law Professional	Psychology Professional
<p>Seeks information, investigates.</p> <p>Looks for congruity and coherence in the events.</p> <p>Questions are directed towards specific acts, dates, persons; the where and how, looking for precise answers.</p> <p>Creates a story with questions about the events and the violence suffered by the victim.</p> <p>Using external elements and factors, places in context the reality of the victim: "What did he/she study," "What are his/her ideological beliefs," etc.</p> <p>Uses interview to collect the information necessary to develop the legal brief.</p> <p>Generally does not ask questions, unless already knows the answer.</p> <p>Uses mind and ears to listen and collect pertinent and coherent data.</p> <p>Recognizes that the affected person knows his/her own life and is prepared to provide information on it.</p> <p>Oral message of the witness is the most important.</p> <p>Is not prepared to handle anxiety during an interview; the emotional changes of the witness may affect the litigation strategy.</p>	<p>Seeks to identify the harm and provide support to the individual.</p> <p>Tries to learn about the impact of the trauma on the person's life, feelings, affection and relationships.</p> <p>Interview is used to evaluate the effects of traumatic events on the person's subjectivity.</p> <p>Observes more the psychic reality, which is not necessarily the factual reality of the patient.</p> <p>Interview is an instrument that helps to learn about personality.</p> <p>Questions are not planned in advanced. More open interview so that affected person may lead it.</p> <p>Will receive all information to understand better the person.</p> <p>Role is not only to listen, but also to experience and observe, knowing that every human being has organized a personal and subjective story.</p> <p>Pays attention to other forms of expression besides words, because expression emerging from body language also provides important information: gestures, attitude, tone of voice, etc.</p> <p>Is prepared to confront anxiety and is able to conduct the interview when the anxiety exceeds certain limits.</p>

Interaction between the victim and the interdisciplinary team

Although it is well understood, it should be pointed out that the quality of interaction between affected persons and professionals in charge of providing accompaniment –or therapy after judgment– is a key factor for the success of the intervention. There follows an analysis of a series of factors that affect, positively or negatively, said interaction.

Attitudes that promote interaction

Several elements and attitudes that enable interaction must be taken into account with respect to the person being accompanied, who generally has a place within the framework of the interview:

- **Non-structured interview.** It is important for the interview to be open and not based on questions and answers since that would tend to limit free expression. If the person feels accepted and respected, he/she may speak freely of his/her suffering.
- **Appropriate mental attitude.** It is that adopted with the individual, knowing beforehand that he/she has been tortured or mistreated and being able to deal with the emotions and feelings related to the traumatic situation. The person providing the accompaniment must be willing to share the victim's suffering and terror.
- **Knowing how to listen.** Paying attention to every aspect: interest in spoken messages as well as in non-verbal messages such as posture, fast or slow movements, appearance, tone of voice, eye contact, all of which are very important signs.
- **Understanding the person's nature.** It is always important in approaching individuals to consider their nature, thus making it possible to adapt and adopt individual strategies of accompaniment for each person or group. Hearing and understanding how events affect the life of the victim and his/her family include paying attention to his/her perception of the real world and cultural fantasy.
- **Respecting the person's account of the events.** Sometimes individuals affected by political violence have a temporary need to resort to fantasy due to their present lack of capacity to tolerate reality. Those who provide accompaniment must respect this, but the professional who prepares the expert testimony must decide whether it is necessary to confront the person with reality in order to help him/her face the events in question.
- **Taking the place of the other.** It is important to share the feelings of the other person. "Empathy" is the term generally used for "being in the other person's shoes," understanding the person and sharing the person's feelings.
- **Managing silence.** Most persons have difficulty in handling silence, especially those who have been victims of violence. Silence may communicate several feelings: hostility, desire to be accepted, to be understood without a need to speak, desire to become one with the other person, or to originate in the other

a feeling of interest or concern. In cases of persons who have been tortured, silence is generally taken as an aggression, for they are individuals who have been isolated and treated more as objects than as subjects; thus silence may revive memories of the traumatic event.

Expectations of professionals of the interdisciplinary team

Professionals of the interdisciplinary team, when interacting with the victim, should likewise comply with the following guidelines, among others:

- **Respond realistically to the victim's multiple demands.** The team of professionals must handle the numerous demands that the victim of torture who takes his/her case to the inter-American system normally makes on those around him/her. The specialized professional who is in charge of the accompaniment must provide an adequate space for the victim to speak about his/her needs. His/her role will consist of controlling those demands and explaining to the victims the true possibilities of the system to meet them, so as not to create expectations that cannot be met and that might lead to a greater sense of frustration. The professional must be able to recognize what he/she can offer and what part of the teamwork is his/her responsibility. In this way, the person who accompanies will help the legal professional so that the latter does not have to deal with the victim's demands and may be better able to concentrate on the litigation. Psychological accompaniment thus contributes to legal strategy and seeks to strengthen the entire process.
- **Professional psychological work must go beyond good intentions.** Those who offers accompaniment know that their job goes much further than a "pat on the back," something that could be done by anyone offering solidarity and good intentions. They must offer victims the possibility of "unloading" their emotions. This has consequences and implications that professionals, as the experts they are, must be able to handle; as a matter of fact, these implications explain the emotional saturation seen in lawyers, the general public and even judges. Similarly, in accompanying a victim of torture, the professional must resort to all his/her professional education and training in order not to allow re-victimization, which may often occur in non-specialized accompaniment. In general, persons affected by traumas provoked by political violence require a constant active role by the person who listens; that the listener in some way

takes care of them because they feel fragile. When meeting these demands, it is important that the accompanying person knows how to distinguish the extent to which his/her responses will be helpful to the victim and the extent to which they will satisfy his/her own personal need to serve.

- **Being tolerant, but setting limits.** The professionals must be kind and tolerant based on their ability to recognize and bear the feelings of the person being accompanied but, at the same time, they must not excuse aggressive conduct. It is proper to point out internal and external difficulties and sometimes it is necessary to set limits to the victim's hostility.
- **Theoretical knowledge and empathy.** Theoretical knowledge and experience will enable the professional to organize data and understand how a person functions psychologically but, at the same time, he/she must accept that this is not sufficient to understand the victim of serious violations who presents his/her case before the inter-American system. In applying theories, it must always be remembered that no two persons are alike, thus every case is an individual challenge and demands concentrating actions on the person being accompanied.

Capabilities of the person who accompanies

Professionals providing accompaniment to victims of torture must have a broad background in psychosocial work with victims of serious human rights violations; preferably as part of, or having worked with, recognized organizations and having experience in coordinating with legal teams. They should have an approach that enables them to link the implications of State terrorism with their professional work.

In order to provide this accompaniment it must be remembered that those who seek justice before the Inter-American Court have already exhausted all domestic legal remedies. Generally, there are several years of painful and frustrating experiences before the case may be presented to the Court. Upon reaching that point, tension grows and anxiety intensifies; the victims may appear more disturbed or more defensive. The responsibility of the professional who receives them at this point is great, so he/she must combine his/her experience with the needs, which include the following capabilities:

- Commit to provide a stable presence that strengthens the relationship. It is essential for the person who accompanies to have the good will to understand the feelings of those accompanied, to be willing to listen to and respect them as persons having a unique personality.
- Know and be clear on the socio-political context in which the affected persons have been involved.
- Provide accompaniment in line with the cultural reality of the victim, being able to leave aside his/her own cultural codes.
- Provide support to the persons involved, without labeling the situation as pathological or judging the victim in any aspect of his/her life.
- Place the accompanied person in the center of his/her individual story; make this person become the main character and give sense to the traumatic experiences.
- Capacity to see affected persons in their true dimension: they have suffered a traumatic experience and although, in the dynamics of the process, they are called victims, they are actors in a process that seeks to recognize the unlawful nature of the violations that they have suffered and the comprehensive reparations to which they have a right.
- Have the tools necessary to assume the risk of becoming identified with victims and the implications of that identification. Maintaining professional neutrality, especially if the one providing accompaniment has to present a report or give expert testimony.
- Serve as a control, helping the person handle different feelings –anger, helplessness, guilt, depression, anguish and pain– through solicitous care and tolerance. Capacity to control the suffering of others –basis of accompaniment and therapy– is what enables the accompanied person to recover his/her ability to understand, elaborate and integrate the situation in order to regulate and normalize physical and psychological reactions and inadequate methods of defense.

- The person who accompanies must be able not to be overwhelmed by the emotions of pain and terror of the victim so that the role of providing emotional support, or in other words of being able to accept the victim's feelings of anguish, may regulate the victim's anxiety and turn his/her world into a more manageable and stable one. Without denying the terror, it is a question of giving it a new dimension, offering tools so that the victim may think, clarify and differentiate and give a name to the confusing feelings. It is turning unbearable anguish into something more definite and specific, so that it is seen as something that is not so dangerous.
- Manage the victim's guilt. Traumatic events frequently originate in the individual's feelings of anger, confusion or guilt. Sometimes he/she does not tolerate his/her own feelings since these feelings generate a lot of pain and therefore he/she tends to transfer them to the person who accompanies him/her or to the therapist. Guilt is a feeling associated with self-recriminating thoughts and emotions that have to do with feeling responsible for the events that took place. Family members and/or the community may induce this guilt.
- In addition to understanding physical symptoms as the body's expression of suffering, the professional must have the capacity to deal with them immediately. To be able to do this, it is highly recommended that a physician and the person who accompanies be present during the hearing. The latter, in addition to his/her common sense, must know when to act since prompt and correct decisions often have to be made in unexpected situations.
- The professional should be able to tolerate doubts and despair related to a lengthy legal process that requires large doses of patience and tolerance. On the other hand, it is vitally important to be able to recognize –in spite of his/her immediate difficulties– that the individual being accompanied is also capable of assuming “adult” attitudes and responsibilities and must create an alliance with his/her more mature aspects and help him/her to integrate these mature aspects to his/her weaker aspects.
- The persons who accompany, as well as the therapists, must be supervised by more experienced colleagues who can protect them from becoming over-identified with patients/accompanied persons and that such supervision allow for a review

of the process. In addition, teamwork will protect the therapists and the persons who accompany from isolation and will serve as a framework for their work. On the other hand, they must know and accept their own limitations in handling the case, being able to refer the patient/accompanied person to other professionals, if necessary.

Second stage of accompaniment: preparation and presentation of the victims testimony

From a mental health perspective, hearings are an opportunity to testify on the painful experiences. Testimony given at the Court or the Commission should be an experience that dignifies and relieves victims by having their pain recognized by an external entity that they recognize as an authority, that represents an act of healing that culminates their process of seeking the truth and having access to justice. In that sense, their participation is also taken as an act of responsibility towards their community since their role is perceived as that of being bearers of a story that is often ignored or silenced. They are also a source of encouragement for victims of serious violations and that encouragement lessens the paralyzing sensation of isolation, which is why it is often said that hearings have a symbolic healing nature.

This experience of psychological support during public hearings before an international court, promoted by the project, has also taken place before national bodies such as the Truth Commissions in South Africa and Peru, where psychologists accompanied victims before, during and after their testimony before the Commissions, the press and the general public.

Objectives of psychological accompaniment for hearings

The general objectives of psychological accompaniment to victims or witnesses who testify in hearings are the following:

- To emotionally accompany each of the victims or their families, bearing in mind the aspects identified in a prior psychological evaluation.
- To support the lawyers handling the case when dealing with sensitive situations arising from the phase of the hearing when testimony is received.

- To favor group or individual spaces, before and after the hearing, to enable the expression of emotion and mutual support.

Strategy of accompaniment during the hearings

Intervention is oriented towards three specific moments of the hearing, each one having defined intervention objectives:

Chart 3. Strategy of accompaniment to victims

Before the hearing	During the hearing ⁵	After the hearing
<ul style="list-style-type: none"> • Provide a private space where the victims or their families are able to express their feelings: fears, shame, fury, anger, sadness, hopelessness, doubts and expectations as the hearing approaches. • Enable the person testifying to place him/herself mentally in the situation of a public hearing, that is, that he/she is able to anticipate what will happen, working on the so-called “worst-case scenarios,” rehearsing the hearing. • Work with the person on the situation and the hearing format so as to enable him/her to make decisions regarding his/her presentation. 	<ul style="list-style-type: none"> • Emotionally accompany the person testifying, paying attention to any anxiety, fear, or nervousness, improving the oral expression so that he/she testifies optimal conditions. Issues regarding previous sessions may be studied to relate them to the present situation. • Remind the person of where he/she, as well as the person who accompanies, will be physically located. • Enable persons having difficulty to focus on the process to do so. • Support the person who will testify by physical contact during moments when great emotional fragility is perceived. 	<ul style="list-style-type: none"> • Accompany the person when leaving the premises. • Show approval of the testimony; emphasize the courage to continue fighting and on maintaining trust in international justice. • Provide emotional support, through words and physical contact. • Be prepared to listen to the person who testified as he/she expresses the feelings arising from the experience of testifying at the public hearing. • Help to control emotions after the testimony. • Offer a space for “digesting” the events by making use of planned follow-up interviews after the public hearing.

Fears of the victims

The fact that victims have to face the Court’s judges and the representatives of the respondent State, institutions that they recognize and regard as powerful, creates in them strong feelings of anxiety. When providing accompaniment, psychologists

5 The “hearing” should not be confused with the “testimony.” The witnesses in a case are kept isolated before giving their testimony. It is during this isolation that a certain degree of accompaniment is possible.

and other members of the interdisciplinary team may be faced with some of the most common fears of victims:

- **Fear of the interrogation.** Victims fear breaking down, losing control or becoming paralyzed during the interrogations to which they will be exposed in the hearing. They fear not being able to make a precise account in the time allotted. Families frequently fear that a family member whom they feel is especially vulnerable will lose control. We must not forget that these are persons who have been traumatized and have memory lapses that affect their capacity to recount the events and to feel that their experience makes sense. Forgetfulness, remaining silent and not finding appropriate words are all symptoms of trauma; in extreme situations of rupture and confusion, it is impossible to find words to express and represent the events, consequently the testimony often omits memories and words and only includes painful traces of events and intervals of silence.
- **Fear of pain and desire for self-protection.** Trauma produces external and internal chaos, as well as confusion and alterations in the temporality of other psychological processes; memory cannot recover, transmit or communicate events experienced. Some individuals relate part of their horrendous experiences in a distant manner, without showing emotion, as if their subjectivity had been killed (Van Alphen, 1999). In others, it is possible to perceive ritualized repetitions of suffering and the listener may feel estranged and distant. As Jelin (2001) states, "Traumatic suffering may deprive the victim of his language resource, of his communication, and this may prevent the possibility of testifying or cause the testimony to lack subjectivity." It must be remembered that organized violence has the objective of controlling and subjugating through fear, turning silence into the result and triumph of the violence suffered. Fear moves us to take on contradictory attitudes, to become paralyzed and to have a sense of detachment; often the indecision, fears and doubts of victims and witnesses regarding whether to testify have to do with dealing with certain issues about which they are afraid to speak in public. Other times this indecision is overcome by a feeling that testifying is their duty to the disappeared person or to anyone else who may benefit from it.

- **Fear of being blamed.** The request to speak of humiliating memories and the difficulty to do so may easily create a feeling of being forced to testify and to justify him/herself regarding the events in question, to have to demonstrate the harm suffered and consequently to feel not as a witness, but as the accused (Pollack, 1990). The victim often fears being criticized about family problems or the external world and may also carry the burden of multiple self-recriminations. Fear or anxiety produced by the sensation of being subjected to moral judgment may lead the victim to hide important information or to blame someone else. This occurs especially with persons who have been arrested or tortured since they unconsciously feel that they could, in some way, have avoided the form of torture to which they were subjected.
- **Fear of the unknown.** Attending hearings implies that those who testify have to travel from their homes to where the hearings take place. This necessarily means having to deal with places that are new and even threatening to those who, with some exceptions, have never before left their hometowns. These are individuals who mostly have never left their country so the support must also include orientation and administrative formalities, as well as instructions on where to go. Air travel may be an extremely strange and intimidating experience.
- **Fear of failure.** Individuals frequently fear the results of the trial. They think of the long road ahead and of their enormous sacrifice and they are skeptical that the truth will be revealed and the guilty parties convicted.

All these fears of those who have to face different aspects of litigation in an international court confirm the importance of receiving psychological accompaniment and even of receiving therapy while the litigation is taking place.

Expectations of victims regarding the litigation and the judgment

When presenting their cases before the Court, victims have a series of expectations that need to be worked out with the person who provides accompaniment during the process. Those who do not receive positive results must undergo a psychotherapeutic process after the hearing. The existence of those expectations must be taken into account when assessing the possibility of providing professional accompaniment; the expectations are important aspects of the process that must be dealt with in order

for it to be a healing rather than a traumatizing experience. Some of the expectations referred to are:

- Receiving information on procedures at the Court and the Commission, particularly once the process has concluded and the victim is awaiting the decision.
- Relieving pain: the victim will expect concrete actions that he/she believes will enable him/her to mitigate the violation suffered and to relieve his/her pain.
- Finding someone who will listen and who will be available to hear his/her story each time he/she so requires and who will also help him/her.
- Being accepted and understood by persons involved in the process, even after they have told their story.
- Belief in his/her story. Individuals who have undergone situations of violence and who have sought justice have generally been exposed to indifference, denial or lack of credibility on the part of authorities and their demands have not been heard; thus they look for someone who will believe their stories.
- Being “emotionally” healed. Victims expect that those aspects of their internal world that have been harmed be restored, such as the capacity to trust others and to enjoy work and relationships.
- Obtaining positive results from the trial. It is important that victims have a clear understanding of what can be achieved, what will not be immediate or what has little probability of becoming a reality.
- That their social context return to being safe; that the violations are not repeated.

Methodology of the intervention

There follows a summary of the most significant recommendations regarding accompaniment, depending on who is involved at different stages of the hearing.

The process that is summarized in the chart on the following pages is extremely complex. The recommendations on activities and tasks are based on experiences in the fields of accompaniment and litigation. It is important that new experiences in those fields provide data that might improve these recommendations in order that the process of accompaniment be better known and its relevance better understood.

Psychological implications for the actors involved in the hearings

Although accompaniment has been centered on the victims, it should be noted that it is important to provide psychological support to those who form part of the teams involved in the hearings.

Victims, together with the attorneys and psychologists in charge of their cases and providing accompaniment, are not the only actors in this process. Judges and the general public are affected in different ways by the testimonies to such an extent that they may become highly saturated. Humans have a limited capacity to be exposed to pain and listening to testimony during public hearings means being exposed for hours or days to painful stories that affect their emotions. In that respect, it is wise to know when the capacity to listen has reached its limit. It would also be advisable to have trained personnel available for cases in which those emotions need to be contained.

It is important to state that leaving, temporarily or permanently, a public hearing is not an act of weakness, but rather a sign of being aware of one's limitations, thus making the withdrawal an act of mental health. As a direct result of the testimony, it is possible to feel intensely sad, to cry, to be skeptical, tired or sleepy. There may also be reactions such as irritability, hypersensitivity or indifference with respect to their family members or close friends. Similarly, some physical symptoms of anxiety may be experienced and it is common to be confronted with feelings of frustration, pessimism, a desire to be distant, skeptical or in a state of denial about the testimony.

Chart 4. Recommendations regarding the methodology of the intervention

With the legal team	
<p>Before the hearing</p> <ul style="list-style-type: none"> • Define and coordinate the roles of each professional responsible for the case during and after the hearing. 	<p>After the hearing</p> <ul style="list-style-type: none"> • Open a discussion and analysis of the process. Review the lessons learned and document them to strengthen future processes.
<p>Durante la audiencia</p> <ul style="list-style-type: none"> • Psychological support to design a legal strategy: what questions to ask and not to ask and the proper amount of time for each witness. This joint preparation is fundamental for the accompaniment between the teams and the psychological accompaniment to the affected persons, offering an environment of control and support. • Take into consideration the petitions formulated to the Court before the hearing. 	
With the victims	
<p>Before the hearing</p> <ul style="list-style-type: none"> • A few days before the public hearing, arrange individual and group interviews with the individuals who will testify. To the extent possible, the interviews should be centered on the hearing. • Provide the necessary information. • Explore the fears, doubts and emotions of witnesses with respect to the hearing without them recounting the traumatic experience (which is rather difficult since the victims and the witnesses become repetitive, for which the emotional support of the person who accompanies is indispensable). • Visit and learn about the hearing room and where everyone is to sit 	<p>After the hearing</p> <ul style="list-style-type: none"> • After the hearing, the intervention should be directed to controlling the emotional outburst produced by confronting the juridical truth, since it unleashes a psychosomatic symptomatology. • The strong impact implied when a person recalls very emotional and painful events often requires physical contact, listening and approval of the testimony. Many express doubts –that they have forgotten important facts- and it is necessary to calm and accompany them. • Gather the statements of the witnesses who feel relief: “as if they had taken a load off my back,” “at last, I have been listened to, for so long I have felt shame.”
<p>During the hearing</p> <ul style="list-style-type: none"> • Know the best way to arrive at the Court. • Have a private space for the accompaniment. • Have separate spaces for the witnesses who have not yet testified and those who have testified. 	

With the victims (continuation)

Antes de la audiencia

- Los días previos a la audiencia pública, concertar entrevistas individuales y en grupo con las personas que van a declarar. En lo posible, las entrevistas deben focalizarse en la situación de la audiencia.
- Brindar la información necesaria.
- Explorar temores, dudas, sentimientos, respecto a la audiencia sin propiciar que se relate la vivencia traumática (lo que resulta bastante difícil ya que las víctimas y testigos se toman repetitivos por lo que la contención del acompañante es indispensable).
- Visitar y reconocer la sala de audiencias y la disposición de los espacios.

6 In one of the cases—"Juvenile Reeducation Institute" v. Paraguay - the father of one of the dead victims suffered an attack of severe hypertension during his testimony. In addition to his emotional state, the witness could not easily express himself in Spanish. This required the presence, accompaniment and interpretation from Guarani, the mother tongue of the witness, in order that the testimony could be offered.

7 Women tend to remember the events of daily life with more details and with greater references to the ties of intimacy and relationships, while men tend to be more terse and rational.

8 In some cases, however, it is thought to be counter-productive for the victim to hear expert testimony, without having already knowing it, since it might affect the processes of emotional recuperation. We recommend that the victim, if he/she decides to be present, know beforehand what the expert will state in court.

During the hearing

- Perceive any anxiety, fear, nervousness, anger, shame, sadness or other emotion; talk about them before the hearing so that the witness enters the hearing in the best condition to testify. The intervention helps the intense emotion to be attenuated, so that there is a "decompression" that allows the witness to organize better what he/she is going to say and to testify with less anguish.
- Have the person who accompanies/psychologist present during the testimony.
- Have medical services available for those who need attention due to the impact of the testimony on their health.⁶
- Have a trained interpreter available if the witness does not speak Spanish.
- Take into account the impact that the difference in gender might have on the testimony.⁷
- During the hearing the expert should testify on the effect on the victims of the sequelae of the traumatic event. The witnesses have the option of listening to the testimony of the expert, which comforts the witnesses since it validates their experience.⁸

9 In some cases, it may spontaneously happen that groups of the victims' next of kin, after the hearing and during the return trip to their homes, might speak and share their experiences, expectations and fears as well as what they have learned while at the hearing.

After the hearing

- Support the willingness to return to a normal life, the respective projects of life and give a sense of healing to the experience.
- The testimony at the hearing becomes a process to confront the loss, to recognize that the loss will not be recovered, but this time with the feeling that one is not alone, that there is someone accompanying, someone who says "I am your witness" (Jelin, 2001).
- The follow-up after the public hearings is very important since the emotions that they cause must be controlled by the person who accompanies/psychologist who has achieved a good rapport with the witness. It is, therefore, necessary to convene a meeting that will allow the witnesses to review the hearing.
- Strengthen the value of the experience and take advantage of its healing effects.
- Analyze the possibilities of continuing with psychotherapy and evaluate its limits.
- An effort should be made to change the fact that sometimes accompaniment after the hearings is not possible since the victims, after testifying, consider the case closed and no longer wish to speak of the matter.⁹
- return home, they normally request security and protection, which demonstrates new fears of reprisals, threats or harassment. The person who accompanies them at this stage plays an important role in coordinating the protection of the witnesses.

Certain types of reparation, such as offering money, promises and food after the testimony, may be a form of offering immediate help to the deponent. Nevertheless, these types of actions are discouraged because some of the fundamental objectives of the hearings might be lost, such as dignifying the affected individuals and may cause re-victimization.

Aside from the support of trained personnel, relationships that provide emotional support, such as family, friends and those that are spiritual and religious, are ways to channel the impact of the testimonies. Continuous physical and psychological discomfort is sometimes an indication that the discharge and elaboration of the emotional impact suffered have been insufficient. In such cases, it is important to consider using the timely and confidential assistance of the psychological team.

Before concluding with the matter of hearings before the inter-American system, it is important to emphasize that there is a need to offer, in the majority of cases, in addition to the accompaniment to victims after taking part in the hearings, the possibility of receiving psychotherapy as part of the reparations for the harm suffered.

Closing stage of the hearing: accompaniment and follow-up to the judgment

After the litigation is concluded, the stage of the victims' seeking healing also closes and a new one commences, which should also include the appropriate psychological attention. The process is no longer defined by the litigation, but is focused on the expectations regarding the judgment and the issues that must be confronted once the Court rules and the case is closed.

The conclusion of the case is very important because it represents the victim's readjustment to his/her daily life; a clear example may be found in the victim's relationship to the political activism that moved him/her to file the case before the Court. It is evident that the struggle for justice and against impunity, as well as the creation of organizations of family members and the search for missing individuals, is a healing process for victims. But the conclusion of the litigation stage may affect them because that energy must be directed towards the creation of new projects of internal healing. Those who invoke the Court have spent several years seeking justice; in certain cases this struggle gave them a reason to live. Some become politically active and display unsuspected resources. After obtaining a judgment, there is a sense of loss of a way of life, which makes it necessary to help them to redirect their resources and their psychological energy, their personal projects, and to work with

the feeling of guilt that might arise from being relieved of their sadness in spite of the suffering of their families.

These individuals should be accompanied during these new processes and the restructuring of their daily and internal lives. A specialized therapy may contribute to the new projects so that they may continue to be healing and the energy formerly invested in preparing their cases may be focused on actions that contribute to their mental well being. It is important to acknowledge that a case that is successful in legal terms is not necessarily so in psychological terms. In cases of forced disappearance, where there are no burial rites, it is very improbable that there will be relief in spite of the judgment. It is also true in cases of torture where sexual violence has taken place, for the harm is chronic. Thus, psychological accompaniment or therapy, as the case may be, should continue, individually or collectively, in families or in communities. What is important is that it be far-reaching and that it make use of specialized personnel.

Based on the project's experience in cases of torture presented before the inter-American system, it is recommended that the Court's judgments grant victims the option of receiving psychotherapy paid by the State. This psychotherapy must be on a completely voluntary basis and provided by specialized personnel. The issue of the specialization of the individual or individuals providing psychotherapy to the victim is basic, for professionals must be very sensitive to cases of victims of political repression and therefore must be able to give a social orientation to psychotherapy. This may guarantee that the process does not lead to re-victimization and that it is truly healing, not in theory but from the perspective of the individual and his/her community. What is most important is for the psychotherapy to revolve around the needs of the victims, their cultural aspects and idiosyncrasies.

Psychotherapy: differences and similarities to psychological accompaniment

Concept

The formal development of psychotherapy is only 200 years old, during which time it has been improved by the contributions of different theories related to the evolution of ideas and culture. It has also been nourished by the infinitely varied experience of interpersonal relationships established by psychotherapists themselves. Thus, mental health professionals, depending on the theoretical framework to which

they adhere, practice different types of psychotherapy.

It may be generally stated that “psychotherapy” refers to a variety of methods using psychological techniques for the treatment of psychological and psychosomatic disorders. Psychotherapy requires specialized help to relieve different forms of psychological suffering, therefore the need for trained professionals. In the context of the inter-American system, these professionals are trained in clinical and in social, political and legal aspects that are joined in the case of victims of State terrorism. Valuable examples of decisions that incorporate the State’s obligation to respond to the victims’ psychotherapeutic demands already exist in the inter-American system.

It is important to reiterate that accompaniment is not sufficient to restore fully the state of mind of the person who has been severely damaged psychologically so that he/she might develop his/her own tools to enable him/her to continue with his/her project of life or to create a new one, as the case may be. For most individuals, therapy is fundamental as a form of support in order to be able to face the repercussions of the human rights violations suffered.

It is thus always recommended that in cases of torture, the reparations imposed on the State seek not only to compensate expenses of the medical and psychological treatment of victims and their families, but also to provide a compensation that guarantees the availability of resources to continue the treatment with trusted, trained and specialized professionals. In any case, it must be remembered that psychotherapy must be voluntary in order for it to be effective.

Differences between both types of psychological support

When speaking of accompaniment, it is always done within the framework of the hearing since it takes place before, during and after the hearing. Psychotherapy, on the other hand, deals with the area of reparations.

Accompaniment during the hearing is not a process that continues over time, as is the case of psychotherapy, but is a very specific accompaniment, without limits or defined schedules, which means a relationship between the person who is accompanied and the person who accompanies is more symmetrical than the relationship developed between therapist and patient.

Chart 5. Differences between accompaniment and psychotherapy

<p style="text-align: center;">Accompaniment (before, during and after the hearing)</p>	<p style="text-align: center;">Psychotherapy (post-judgment)</p>
<p>The goal of accompaniment is generally to accompany, inform, clarify, sustain, control, listen and support.</p> <p>Painful experiences are necessarily revived when the past is invoked, weakening the personal resources of the affected person. The role of accompaniment is thus to support this vulnerability.</p> <p>Accompaniment will improve the personal resources of the affected person so that he/she can testify adequately.</p>	<p>The main goal of therapy is the recovery of the psychological function of the affected person, attempting to re-establish levels existing prior to the trauma.</p> <p>Contribute to the psychological elaboration of mourning and the traumatic experiences produced by the impact of political violence and relived by the trial.</p> <p>Contribute to lessen painful experiences, working with the effects caused by the traumatic experience.</p> <p>Enable recovery and development of the personal resources of the affected person, resources that lost their structure due to the traumatic experience, preventing development of a future project.</p>
<p>The relationship between the person who accompanies and the person accompanied is reciprocal, meaning a greater symmetry in the relationship.</p>	<p>The relationship between the psychotherapist and the patient is asymmetrical. The therapist and the patient have very defined roles.</p>
<p>Accompaniment may take place anywhere that offers privacy. It is not necessary that it always take place at the same location. Each meeting may have a different duration, different degrees of communication, quality and results. The process of accompaniment may be reduced to one or two sessions, as might be the case of those who testify in public hearings; in this case, accompaniment is very precise.</p>	<p>Conditions for psychotherapy are of vital importance, among which are: stable location, schedule and duration of work defined and detailed in the initial contract. What sets the pace for therapy is precisely firmness and rigidity in complying with the contract. For example, psychotherapy rarely takes place outside previously agreed upon times.</p>
<p>The duration of accompaniment is previously defined, as in therapy, but it may be prolonged for several hours each time.</p>	<p>Therapy sessions usually last 45 to 50 minutes. The period between sessions varies from a few months to up to two years, depending on the case.</p>

Accompaniment (before, during and after the hearing)	Psychotherapy (post-judgment)
<p>The person who accompanies has greater freedom to speak. After spending so many hours with victims, dialogues sometimes include the private lives of both, something that is generally left out in the patient-therapist relationship. Nevertheless, the person who accompanies must think of what he/she says and does, always acting with caution in order not to increase the level of anxiety and uncertainty in the person accompanied. The person who accompanies is usually more active in his/her interventions.</p>	<p>In psychotherapy, speaking must be limited to aspects of the therapy itself and it is not proper to have conversations regarding the personal life of the therapist. Restraint by the therapist is characteristic of his/her way of communicating with the patient.</p>
<p>Accompaniment is generally given for a limited amount of time, so at certain times the person who accompanies must decide not to bring up subjects that may put the victim in a fragile and vulnerable position. Instead, for example before a hearing, it is important to mention the resources of the patient him/herself, his/her fortitude and manner of confronting painful events of the past.</p>	<p>In psychotherapy, it is very important to work with, and speak of, the issues that are painful to the patient and deal with them, even if this means that the affected person might become momentarily fragile, but this is necessary for the process.</p>
<p>The person who accompanies may take specific actions that help the person to resolve immediate problems, for example, refer him/her to health or legal services.</p>	<p>The therapist attempts to have the person look after him/herself and will not act according to the specific demands of the patient.</p>
<p>Accompaniment is the first step of reparations in the inter-American system.</p>	<p>Psychotherapy is the last step of reparations in the litigation.</p>
<p>Family members, or lawyers in the case may also take part in the accompaniment.</p>	<p>Psychotherapy always implies a one-on-one relationship, although it is possible for a couple or a stable group to participate.</p>

Need for therapy after a hearing in the inter-American system

When speaking of psychotherapy in the inter-American system, it is important to emphasize that there must be a possibility for providing psychotherapy after the judgment.

Notwithstanding how difficult it must be for the victims to resort to international justice and thus relive their trauma, the affected persons and their families are in some way protected during the litigation. They are living an experience that they had struggled with for years, one in which they had placed their hopes and that might be said to have served to postpone the mourning of numerous losses. When the hearing ends, a stage of their lives that has been almost completely centered on

the search for justice is closed. They must now find a new reason to live, look to the future and build a new project.

Accompaniment has allowed them to get over this stage of confrontation with those who violated their rights and who caused so much pain in their lives. But many will face an extraordinary feeling of emptiness, an intense sensation of the absurd and a lack of sense when they return to their communities and are compelled to accept the fact that their loved ones were in fact tortured, have disappeared and will never come back.

Specifically, the goals that psychotherapy intends to meet are as follows:

- Contribute to the psychological elaboration of mourning and the traumatic experiences produced by the impact of political violence, which have been revived by the trial.
- Contribute to lessening the experiences of pain, working with the effects that have been produced by the traumatic experience.
- Enable the recovery and development of those personal resources of the affected person that the traumatic experience disrupted.
- Promote insertion into social organizations as local resources in order to become involved in opportunities to improve the quality of life and mental health.

Additionally, individuals may benefit from diverse interventions that supplement psychotherapeutic treatment and that are indicated according to the particular case and its needs.

- **Psychiatric treatment.** In cases in which the traumatic event can bring about pathologies that have not yet emerged, some persons will require, depending on the individual case, a psycho-pharmacological treatment.
- **Physiotherapy.** Physiotherapeutic treatment is an approach to the body that has been affected, for torture leaves physical consequences that require a prolonged treatment.
- **Social orientation.** Consists of providing information, guidelines, contacts with institutions and options for taking different steps leading to obtaining services and benefits for the solution of their problems. The goal is to lead victims towards

reinsertion into the natural spaces of society because those who have been affected by political violence not only have had their internal world disturbed, but also their public space, partly by the accompanying stigmatization but also because those social support networks that in the past provided support no longer exist. This is why the victims tend to isolate themselves, especially those who are displaced from their homeland. In these cases, self-help groups become a very important factor of accompaniment by restoring relationships with other individuals. Since affected persons generally lack economic resources, they are offered support in establishing local groups of productive self-management and offered guidance regarding housing, health, education and social welfare.

- **Promotion of affected groups.** Several different modalities may be used in community interventions: meditation groups, social organization, exchange of experiences and self-help. This is a very important task in the recovery process because the group:
 - Creates fraternal ties, a sense of belonging, dialogue; makes it possible to define common ideas and solutions by identifying oneself with common problems.
 - Provides emotional support, understanding, diminishes the importance of feelings of loneliness, creates ties of solidarity and capabilities for autonomous performance that lead individuals to take decisive action for their well-being with respect to the future.
 - Neutralizes isolation and the feeling of being incapable of facing life.
 - Makes it possible to give meaning to pain, to channel anger more adequately and to vindicate the victims.
- **Focal dynamics in small groups.** This alternative is developed in small groups that average ten persons, preferably once everyone has shared his/her story of the violations suffered. During weekly meetings –32 sessions of 1 1/2 hours each– the object is to speak of the difficulties experienced. As the sessions progress, conflicts and problems are identified; family structures that were developed after the traumatic events took place are examined. What has been unsaid is verbalized, and internal tension-producing family conflicts, dysfunctions and

crises are analyzed. The group's strengths and resources are gradually discovered in order to establish a treatment plan that will enable healing.

- **Re-establishment of ties.** Accompaniment after a judgment is an excellent pathway of intervention in its possible interaction with community networks and with existing work and educational resources. These networks must be recreated in each particular case in a way that the accompaniment allows freedom to coordinate issues related to the person accompanied, such as social, educational, medical, legal and political issues (Rossi, 1997).

Limitations of interdisciplinary work

Finally, some limitations of interdisciplinary work between the mental health and the legal teams should be mentioned. Two different languages with different codes are used in these two professions. The lawyer's language is a formal and objective code that seeks to translate traumatic experiences into legal language in order that the decisions benefit the victims. On the other hand, the language used by mental health professionals is subjective, without a formal logic, as it alludes to the logic of the unconscious that is timeless and accepts the existence of contradictions. Its role is to account for the subjectivity and suffering of victims, as well as for the *sequelae* originated in the victim's mind by the violent events.

This difference can be a limitation if both professionals do not give themselves the time, flexibility and openness to understand and respect the other's language. If they are able to do so, they may be able to complement each other's work to benefit the victim.

The lawyer, because of the logic of his/her way of thinking and the requirements of the case, may impose a rhythm and activities that are incompatible with the rhythm and needs of the patient/accompanied person. For their part, the mental health professionals, focused on the affective and emotional aspects of the accompanied person/patient, may ignore or overlook the strict legal requirements of the litigation. This is why it is necessary to work together.

Attorneys who are the petitioners of the claim in the country of origin sometimes feel that they have more rights than the person accompanying/expert, especially if there is a previous relationship implying better knowledge and more time spent with the witness. This may generate conflict and what the affected person really needs is peace, support and understanding, instead of a heightened anguish and insecurity.

Both professionals must consider the needs of victims and witnesses, avoiding the possible urge to be the lead player, which often happens.

Psychotherapy as a form of reparation for persons affected by political violence

Specificity of the trauma

Trauma is generally understood as an event that is beyond the control of the person and that threatens his/her life and the life of others, provoking intense fear, without him/her being able to do anything about it or to respond adequately. This causes lasting pathogenic effects in the organization of the psyche. Trauma is, above all, “a personal event in the person’s history with the possibility of establishing accurately the date of said event, and that event being subjectively important due to the troubling effects it can set off. Traumatic events cannot be spoken of unconditionally, without considering the person’s own ‘susceptibility’...” (Laplanche and Pontalis, 1967).

In the specific case of torture, it is not a question of individualized trauma because it also has a social and political etiology; it is moreover a trauma induced by other human beings. Considering these characteristics, some authors prefer to speak of *extreme traumatizing*, referring to the specific nature of trauma that therefore has particular consequences and symptoms, in addition to social-political implications. Therefore, this concept is understood as

a process in the life of individuals belonging to a society that is characterized by its intensity, by the lack of capability of the individuals themselves and of society to respond appropriately to this process because of its disturbances and pathogenic effects on the social and psychic organization. Extreme traumatizing is marked by a form of exercising power in a society where the political structure is based on breaking down the structure and exterminating some of the members of this society by other of its members (Becker and Castillo, 1990).

On the other hand, considering other particulars of torture cases, trauma is categorized as primary, secondary and tertiary:

In primary trauma, victims have had a direct experience, such as rape and torture, forced exile; those exposed to secondary trauma are family members or close friends of victims of primary trauma; and tertiary trauma apparently is present in those who have contact with the previous groups, such as witnesses, neighbors, emergency workers and therapists (Summerfield, 1998).

Therefore, cases that reach the inter-American system are very particular because not only do human beings cause them,¹⁰ but they respond to a system of political repression by the State, which should protect its citizens instead of torturing and killing them; this constitutes, as previously mentioned, an extreme trauma.

In this sense, several professionals working in the mental health area coincide in assigning a status of psychosocial trauma to the *sequelae* of political trauma because the degree of damage is present at both individual and social levels and because it disrupts habitat, family, job, social networks and ties. "The sensation of helplessness is not solely related to the loss of family members or possessions, the people also felt that those institutions that had to protect them and guarantee justice failed it" (Truth Commission, Peru, 2003).

Filing a case before the inter-American system implies that the claimant has given some meaning to what has occurred and has directed his/her emotions towards seeking justice. There are many different ways to carry out the mourning caused by these serious human rights violations; the search for justice and the struggle against impunity are two of the most frequent processes of healing. Therefore, litigating a case before the Inter-American Court must continue the idea of reparation, both at the time of the judgment and throughout the process that validates the experiences and struggles of the individuals.

Goals of psychotherapy

There follows a brief review of the goals that serve as guidelines for psychotherapy, particularly when working with victims of human rights violations.

- Make it possible for what has been kept silent to be heard through an encounter that is seen as non-destructive. This is of vital importance in cases in which torture was used to silence political activists.

10 Several studies show that the effects provoked are more severe if a human being causes the trauma.

- Relate all their untold or denied events, allowing the construction of feelings of self-respect, as well as improving their self-confidence and confidence in others.
- Possibility for others to know their true stories. The therapist places him/herself as a symbol of fellow human beings, becoming a link in the chain of re-socialization, reinsertion and recovery of hope. The therapist emerges from a group of people that is willing to provide support to the life of the person in question.
- Overcome feelings of anger, pain, hate and impotency and direct them towards productive and creative pathways, such as filing the case with the Court.
- Once again become a positive part of one's normal environment and be open to new forms of human relationships.
- Manage the frustration of everyday life, the difficulties brought about by social reinsertion, accept the fear of being arrested, confront reality after having suffered and having lost years of productive life.
- Recognize the stigmatization that may be present at different levels, starting in one's own family that reproaches the arrest and includes even social relationships.
- Support a change at a family level that integrates the pain and what is lacking, enabling him/her to become a recognized individual and to develop, casting off prejudicial forms of relating to others that began as a defense and protection against trauma.
- Restore the capacity to support oneself and one's family financially.
- Regain social abilities and the capacity to achieve goals.
- Regain the feeling of identity. Identity must not be constructed on the traumatic past, which may lead to victimizing and eliminating the possibility of resuming the previous way of life.

- Distinguish past, present and future. The present is sometimes lived by being nostalgic about the past and it becomes difficult to have a perspective of life looking to the future because the mind is set on memories.
- Work on the process of mourning, which means that the energy of the person who is “imprisoned” by pain and memories of traumatic events frees him/herself in order to serve other more productive and creative purposes, accepting the satisfaction of being alive.
- Finally, it is clear that taking the case to the inter-American system may mean that the State assumes its responsibility and agrees to repairing to some degree the harm. This process does not, however, necessarily mean that the persons who violated human rights will be brought to trial, for this is sometimes determined by a complex network of variables that will very likely be impossible to overcome. In therapy, it is vital to work on this issue because it may cause feelings of great frustration.

Important considerations regarding the scope of psychotherapy

- **Desire to get well.** In order for therapy to be successful, the individual must have the motivation and desire to get well; therefore, the opportunity must be left open until the affected person feels the need to participate either in an individual or in a group intervention. It must be remembered that there are also individuals who, in order to go on living, are not willing to recount their experience because they do not wish to suffer pain once again and prefer to escape from their memories, although they present symptoms, (Semprun, 1997). Psychotherapy is not a gift that cures, but rather work done by the individual him/herself and he/she must have a spark of an instinct for life and the will and desire to heal the wounds. In this respect, Jelin (2002) states that psychotherapy is the work of memory that places the affected person in an active and productive place, for each individual is an agent of his/her own transformation, transforming him/herself, as well as the world, in that process.
- **The paradox of repairing an irreparable damage.** Psychological reparation is reparation at a symbolic level because it is not possible to restore things to how they were before the traumatizing event took place. The idea of offering reparation to victims of political violence implies recognizing that irreparable

harm exists, but that if the harm is sufficiently shared with the rest of society, the victims will not have to confront it on their own. This also implies that justice is being done.

- **Individual psychotherapy for the victim does not ignore the social dimension of the damage.** Psychotherapy is not a condemnation but an opportunity. It is not a question of reducing the political dimension of the situation to a private event since it is a case of suffering caused by the social system. Neither is it a matter of believing that it is a case of abnormalities or individual or private foolishness, but of normal reactions to abnormal events that endanger the physical and psychological integrity of individuals. Victims are not “sick” persons who need therapy. It must be clear that these are not sick people in the ordinary way of thinking, but that psychological *sequelae* are the result of disrupting his/her life by real events of such dimensions that the person’s mind cannot manage.
- **Different psychosocial interventions.** Psychotherapy is one of the most important methods used for the subject’s recovery, but it is not the only one. It is important to bear in mind that there are several other types of group or community psychosocial interventions, such as group dynamics and self-help groups. As stated by Jelin (2002), “The personal and individual importance of speaking and finding someone to listen must not replace, hide or omit other levels of the work of memories. There is an urgent need for political, institutional and legal responses to past conflicts, other than personal, symbolic and moral ones.” The fact that the collective body is unable to get over the trauma if the truth is not revealed and if justice is not done, just as no legal process is complete if the person is not given the opportunity to recover at least a minimum of his/her parts that have been harmed by the traumatic event.

Psychotherapy as a measure of reparation: decisions of the Inter-American Court

There follows a summary of cases of torture and forced disappearance in which the Inter-American Court has included psychological support among the measures of reparation.

In the *Durán and Ugarte* case, the Court recognized that the State was compelled to grant health benefits that included psychological support to beneficiaries of reparations during their lives.¹¹

11 I/A Court H.R., *Durán and Ugarte v. Peru. Reparations*, Judgment of December 3, 2001. Series C No. 109, para. 36 and operative para. 3.

In the following cases the Court has ordered psychological treatment for victims (if they are survivors) or for their family members: *19 Merchants*,¹² “*Juvenile Reeducation Institute*,”¹³ *Plan de Sánchez Massacre*,¹⁴ *Serrano Cruz Sisters*,¹⁵ *Caesar*,¹⁶ *Gutiérrez Soler*,¹⁷ and *Mapiripán Massacre*.¹⁸ In its judgments, the Court ordered that psychological treatment must be free for those victims for whom the State must create a specialized program that considers the special circumstances of each individual, as well as his/her needs, so as to offer group, family and individual treatment, which must have the consent of the recipients.

The Court has also ordered that future expenses for psychological treatment be paid by the State, as in the *Cantoral Benavides*,¹⁹ *Bulacio*,²⁰ *Molina Theissen*,²¹ *Gómez Paquiyauri Brothers*²² and *Tibi*²³ cases.

There are also cases in which the State has been obligated to pay the expenses of previous psychological treatment of family members because of human rights

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- 12 I/A Court H.R., *19 Merchants v. Colombia*, Judgment of July 5, 2004. Series C No. 109, para. 278.
 - 13 I/A Court H.R., “*Juvenile Reeducation Institute*” v. *Paraguay*, Judgment of September 2, 2004. Series C No. 112, para. 319.
 - 14 I/A Court H.R., *Plan de Sánchez Massacre v. Guatemala. Reparations*, Judgment of November 19, 2004. Series C No. 116, paras. 106-108.
 - 15 I/A Court H.R., *Serrano Cruz Sisters v. El Salvador*, Judgment of March 1, 2005. Series C No. 120, para. 198.
 - 16 I/A Court H.R., *Caesar v. Trinidad and Tobago*, Judgment of March 11, 2005. Series C No. 123, para. 131.
 - 17 I/A Court H.R., *Gutiérrez Soler v. Colombia*, Judgment of September 12, 2005. Series C No. 132, paras. 101-102.
 - 18 I/A Court H.R., *Mapiripán Massacre v. Colombia*, Judgment of September 15, 2005. Series C No. 134, para. 312.
 - 19 I/A Court H.R., *Cantoral Benavides v. Peru. Reparations*, Judgment of December 3, 2001. Series C No. 88, para. 51f.
 - 20 I/A Court H.R., *Bulacio v. Argentina*, Judgment of September 18, 2003. Series C No. 100, para. 100.
 - 21 I/A Court H.R., *Molina Theissen v. Guatemala. Reparations*, Judgment of July 3, 2004. Series C No. 108, para. 71.
 - 22 I/A Court H.R., *Gómez Paquiyauri Brothers v. Peru*, Judgment of July 8, 2004. Series C No. 110, para. 207.
 - 23 I/A Court H.R., *Tibi v. Ecuador*, Judgment of September 7, 2004. Series C No. 114, para. 249.

violations. Examples of these cases are *Bámaca Velásquez*,²⁴ *Juan Humberto Sánchez*,²⁵ *Gómez Paquiyauri Brothers*,²⁶ *Carpio Nicolle et al.*,²⁷ *Myrna Mack Chang*²⁸ and *Blanco Romero et al.*²⁹

To date it may be seen that compensation for non-material damages has been authorized to repair harm resulting from violence. The *sequelae* of torture, forced disappearance and other violations, also and specifically, cause psychological damage—not to mention social and community aspects—. Therefore, reparations are sought under this title.

Satisfaction and guarantees of non-repetition are among the Court's decisions on reparations. These refer to forms of reparations that are not pecuniary and to measures of a “public scope or repercussion,” such as public apologies, training programs on human rights for State agents, or commemorations of victims in streets, plazas or schools. These are collective forms of symbolic reparation in community environments that enable recognition and acceptance by the State of its responsibility for the harm and as a way to make amends to the victims. For example, in one case the reparation consisted of holding a public act in the victims' village recognizing the harm, both in Spanish and in the mother tongue of the victims, with State authorities, leaders of affected communities and family members present.³⁰

Approach for decisions on reparations

Several means have been used in Latin America to approach victims of political violence. During dictatorships, it was done clandestinely due to the threatening political context. Terror and social silencing caused affected individuals to fear

24 I/A Court H.R., *Bámaca Velásquez v. Guatemala. Reparations*, Judgment of February 22, 2002. Series C No. 91, para. 54.b.

25 I/A Court H.R., *Juan Humberto Sánchez v. Honduras*, Judgment of June 7, 2003. Series C No. 99, para. 166c.

26 *Gómez Paquiyauri Brothers v. Peru*, *supra* 22, para. 207.

27 I/A Court H.R., *Carpio Nicolle et al. v. Guatemala*, Judgment of November 22, 2004. Series C No. 117, paras. 111-113.

28 I/A Court H.R., *Myrna Mack Chang v. Guatemala*, Judgment of November 25, 2003. Series C No. 101, para. 253.2.

29 I/A Court H.R., *Blanco Romero et al. v. Peru*, Judgment of November 28, 2005. Series C No. 138, paras. 81-82.

30 *Plan de Sánchez Massacre v. Guatemala. Reparations*, *supra* 14, paras. 100-101.

going to official institutions, so assistance was provided outside the State's health mechanisms in order to guarantee trust. Analytically oriented individual and family treatments were provided, which were, upon the return to democracy, transformed into group approaches so as to enable the creation of self-help groups. Comprehensive medical-psychological programs were designed later, which included individual psychotherapy (analytical and systemic) that took into account psychological, physical and social effects. The need to create psychosocial actions that went further than individual actions was perceived later. In other historical experiences, the creation of social networks of control and assistance linked to government and non-government institutions was promoted.

The type of approach presented in the following section is based on the experience of the Center of Psychosocial Treatment (CAPS), which has worked for more than a dozen years with those affected by political violence in Peru.

Psychotherapy with a social approach

We have already seen the manner in which political violence has been planted in an individual's internal and rational world, leaving permanent marks that remain latent. The expert testimony and the hearings before the Commission and Court result in the affected persons reliving the pain of the traumatic event, making it important to enable the process of analysis and elaboration of testimonies, as well as of the traumatic experience.

We, therefore, propose that the judgment on reparations include professional attention to treat the psychological harm mentioned above.

A psychosocial approach means that:

- Depending on the needs of victims and/or witnesses, in addition to the individual clinical intervention, there be medical, social, group and community actions that will complement the psychotherapy.
- The psychosocial focus may articulate the psychotherapy by integrating social and community psychology, social work, physiotherapy and medical-psychiatric interventions and it will offer the individual an environment that adapts to his/her special needs.

- A position of neutrality is relative when working in the field of human rights since the therapist is in an *a priori* position when offering therapy within the context of an institution that defends those rights. Two levels of reparation are offered in this respect: the first is through the relationship with the therapist and the second through the relationship with the institution that will operate as the psychosocial organizer by making itself “a third party” that protects the patient from the part of external reality that acted with impunity.
- In these types of cases the “external world” variable is a key factor because disorders presented by affected persons have a psychosocial origin in which the disturbing agent bursts in from the outside during the life of the subject. Emotional responses to these events cannot be typified as a subject’s pathology, but as foreseeable reactions to very intense events that fill the mind with horror and cause diverse disorders that create a responsibility for reparation by the State. If the State caused the harm, it is the State that must provide the resources and services required. The State, however, does not often offer this specific type of attention, so it would have to be coordinated with organizations that do.³¹
- Time required for persons to restore their emotional stability varies and depends both on the previous emotional integration and on vulnerability when confronting the intensity of the traumatic event.
- Psychotherapy has better results if it is accompanied by recognition of the State of its responsibility and of the right of affected persons to reparations.

On the other hand, the gravity of the situation may be evaluated by taking into account the following: type of violence suffered, frequency and duration of symptoms, magnitude of suffering, social conditions to which the victim or the witness are exposed –for example if their physical or psychological integrity is at risk–, victim’s resources, history before the traumatic event, structure of personality before the trauma, age and circumstances in which the traumatic violence took place.

31 This is the case of Chile where the PRAIS program convoked mental health and human rights organizations and professionals to implement a program of reparations in the area of health.

Objectives of psychotherapy after a hearing in the inter-American system

In the inter-American system, psychotherapy after a hearing forms part of the objective of promoting the recovery of mental health and quality of life of those affected by political violence as part of the reparation for the harm suffered and thus it seeks to:

- Contribute to the psychological elaboration of the mourning and the traumatic experiences produced by the impact of political violence and relived in the trial.
- Contribute to enabling the painful experiences to be reduced, working with those effects that have been produced as a result of the traumatic event.
- Enable recovery and development of the personal resources of the affected person, which the traumatic experience disrupted.
- Promote insertion into social organizations so that they may be a local resource for opportunities to improve the quality of life and mental health.

By way of conclusion...

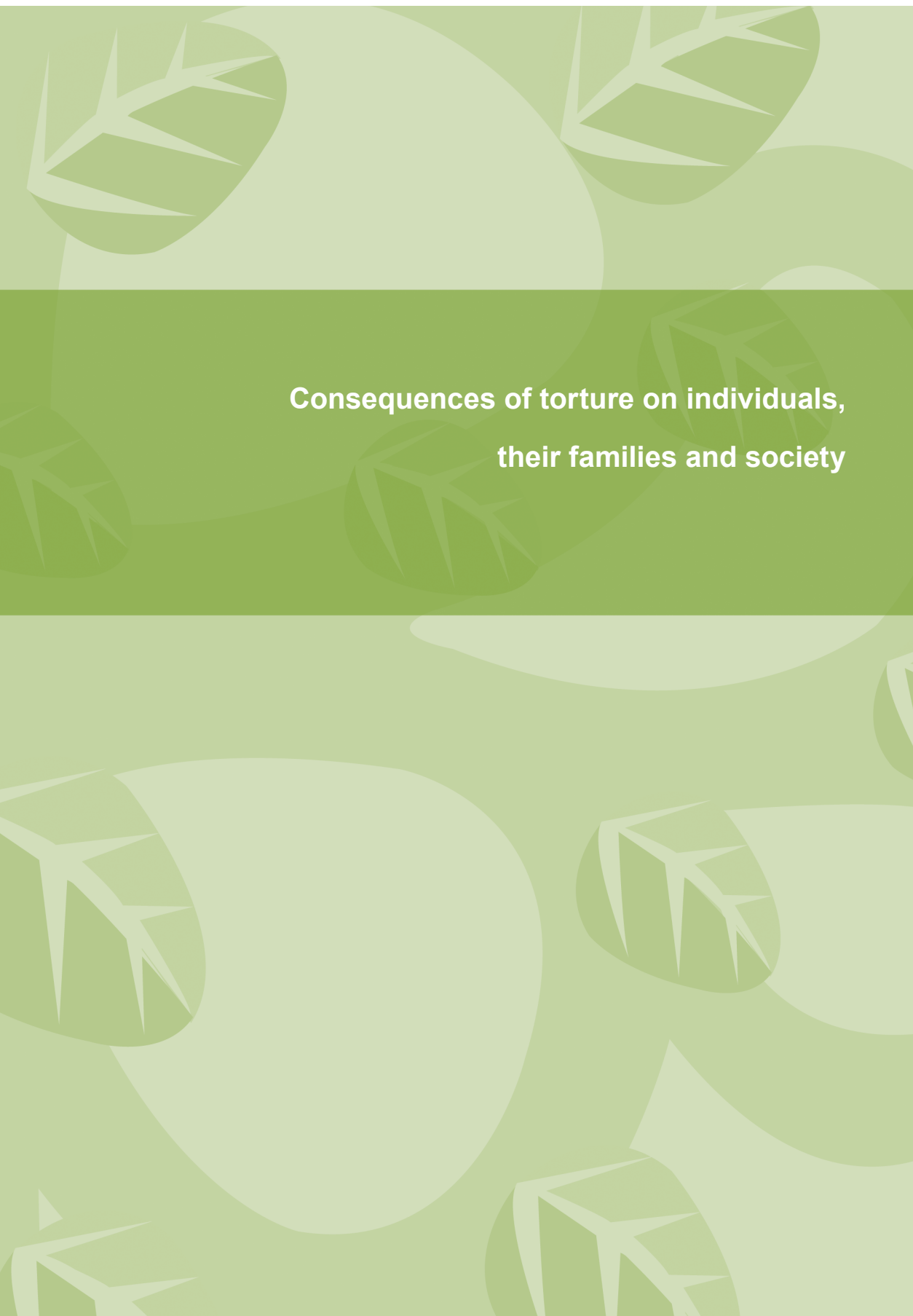
This effort, which has been implemented both in national and international settings, demonstrates the need to rethink the judicial scenarios. The victim at different times generally needs and requires both accompaniment and psychological treatment. Traditionally, the judicial setting has consisted of a space monopolized by legal minds. There is no doubt that it must be a space essentially dedicated to the search for justice by making use of a legal methodology that is sustained by arguments and evidence; but that dynamic cannot omit the needs of the victims and their families. This presents and gives a new dimension to the interaction between lawyers and psychologists, making it necessary to consolidate integrated strategies.

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**Consequences of torture on individuals,
their families and society**

This article was prepared by Ana Deutsch, psychologist and co-founder of the Program for Torture Victims (PTV) in Los Angeles, the first program of its kind in the United States. Ms. Deutsch has been the clinical director of PTV since its inception. She specializes in the evaluation and treatment of torture survivors and has been an expert witness in asylum hearings in the U.S. Immigration Court on numerous occasions. She has conducted psychological evaluations for the Inter-American Court of Human Rights. This article also contains contributions from the interdisciplinary team of the Inter-American Institute of Human Rights (IIHR) Project “Comprehensive Attention to Victims of Torture” as well from as the editors of this publication.

Introduction

Historically, torture has been associated with the juridical system. In Antiquity, the Middle Ages and until the end of the 18th century, *judicial torture* was a standard procedure of criminal investigation. Those times had their own rules, supported by treatises and prominent legal experts (Langbein, 1976; Foucault, 1979). It was a public spectacle used to discourage crime and to reaffirm the absolute power of the ruler. At the time, there was a clear link between its application and crimes committed against the sovereign or the State, a link that persists to the present day. As Pierre Vidal-Naquet has indicated, “torture is nothing other than an immediate form of domination of one man over another, which is the essence of politics.”

In the 13th century, the jurist Romano Azo wrote that “torture is the search for the truth through torment” (Peters, 1985). In Greece and in the Roman Empire, for example, the testimony of a slave was admissible *only* if it was obtained through torture under the assumption that a slave would never reveal the truth voluntarily. Then, as well as now, the use of torture was associated in some way with the need to obtain “the truth,” according to the torturer’s interpretation of it.

During Antiquity, this method was also utilized in a religious context: the first Christians were tortured so that they would abandon their faith, a purpose that resonates even today. In countries where the government is under the control of a specific religion, opposition is interpreted as a threat to power and is thus subject to repression, which usually involves torture.

According to Langbein, the abolition of judicial torture was due to changes in criminal laws that no longer required a confession, but rather evidence at the time of sentencing. Others, like Foucault, have stated that it was the writings of liberal writers –Voltaire and Beccaria, for example– that revealed torture’s deficiencies and condemned its use. These opinions, together with society’s reaction to the public spectacle of torture, contributed to its disappearance from the judicial system beginning in the 18th and 19th centuries.

The Declaration of the Rights of Man in France, which had a decisive influence throughout the rest of Europe and the world, abolished the practice of torture. Practices such as mutilation and other horrendous corporal punishments were eliminated, becoming relics of a barbaric past (Amnesty International, 1975). At the end of the 19th century and the beginning of the 20th, a will to prohibit, with certain exceptions, torture and punish those who used it already existed since it was considered a criminal act.

Nevertheless, after World War I Nazi Germany's extermination camps appeared, in which the cruelest and most unimaginable torture was renewed. They had begun as camps for political prisoners, but from the beginning torture chambers were installed and then ovens to implement the "final solution." Once again, torture acquired an almost legal status since it was practiced under orders given by superiors. Mankind reacted with horror and concluded that "never again" would such atrocities occur. The Universal Declaration of Human Rights, adopted by the UN General Assembly on December 10, 1948, clearly establishes in Article 5 that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

After World War II, the balance of powers was reconfigured and the colonial struggles of the "third world countries" emerged. Imperialist powers sought to crush struggles for independence and resorted to torture to obtain information about rebel organizations opposed to imperialist occupation. A notable case is that of France, a democratic country, which implemented the use of systematic torture in Algeria during Algeria's war for independence. Although France had already used torture during its occupation of Viet Nam, the resistance of the Algerian people generated interest in French society and the use of torture was revealed, provoking strong condemnations by the public and by intellectuals, such as in *The Manifesto of the 121* in 1960, the books by Franz Fanon in 1961 and the denunciations of Pierre Vidal-Naquet, Henri Alleg, Jean-Paul Sartre and others in 1962. These documents accused and named those responsible for torture against the insurgents.

History shows that all nations have resorted to torture at some point and, once its use is found acceptable, a logical system of arguments is constructed to justify it. Thus the Roman Catholic Church, alarmed by the increase in heresies, began an investigation (*Inquisitio*) to suppress them. The underlying logic that supported the Inquisition was that if the masses were burning and torturing presumed heretics, the Church's logic in supporting the Inquisition recognized that the Church should take control to minimize torture. However, throughout the course of history, once

torture is permitted and justified, the limitations and regulations are easily by-passed and ultimately ignored.

This is precisely what is happening today. After the attack on the New York City Twin Towers in September 2001, the so-called “war on terror” made way for the renewed use of torture and the topic itself, as well as the legitimacy of its use in certain cases, has returned to public discourse through academic debates and in newspapers. At the same time, the concept of torture has been subjected to semantics: “the use of force” in an interrogation to extract information has supplanted the word “torture,” since the measure and the scope of “force” are arbitrary; consequently, it is a way of legitimizing torture.

The apologists resort to the “time bomb” scenario. According to this argument, torturing a captured terrorist who has information regarding a bomb that could explode and kill thousands of people is justified. Thus, torture means sacrificing a person to save the lives of hundreds of innocent citizens. In similar situations, democratic States justify its use in order to dismantle insurgent organizations in their colonies or occupied countries, such as the case of France in Algeria and the most recent example of the United States in Iraq.

In Latin America, dictatorships justified the use of torture as an instrument to crush organizations that threatened their regimes. They created an internal war, a “dirty war” that they presented as actions against subversion and the guerrillas. Thus, States themselves became terrorists that sacrificed the population until the dictatorships were forced to abandon power. The terror created and the permanence of the apparatus, organizations and personnel even after being dismantled, contributed to impunity. Years of struggle were necessary for Latin American countries to fashion measures against impunity and to bring to justice those responsible for torture and other human rights violations. This is a process that is only beginning and there are still strong impediments that make its implementation difficult in societies such as those in Central America.

Intense physical pain and psychological torture are applied to obtain information; the pain, however, also affects the mental ability of the individual to think and to produce relevant information or to tell the truth. Some studies have confirmed that most of the information obtained under torture has scant value for the torturer or reveals information that is already known (Rejali, 2004). Arrigo mentions a comparative historical study, which studied 625 files of cases of judicial torture in France between 1500 and mid-1700, that concluded that in a range fluctuating between 67% and 95% of cases, the accused did not confess even if he/she were

submitted to incredible torments. Of course, the number of those accused who were in fact innocent remained unknown, which may now be happening with individuals suspected of terrorism (Arrigo, 2004).

Nevertheless, the torturer does not stop; the question of power is at stake. The torturers know that they can take vengeance if they are unable to elicit cooperation from the victim; the torturers feel that their pride is put to the test and the objectives of torture are broadened to include the torturers' personal or "professional" motives. It is also known that to gain time, the victim may provide incorrect information and that torture and cruelty can infuriate victims making them even more determined to refuse to talk.

The physical capacity to resist pain is inscribed in the victim's mind. The loyalty to principles and to companions enormously increases the capacity to resist torture. There are astonishing examples of martyrs and heroes who have preferred death rather than succumb to torment or who have established a capacity to resist physical pain by entering into mystical or spiritual states. The cultural or religious interpretation given to pain is also an aspect that contributes to resistance. Furthermore, under acute stress and torment, the victim may recur to *dissociation*, which is experiencing the torture by temporarily interposing a distance as a defense to suffering and in order not to cede to the torturer's demands. Finally, the capacity to resist pain is also determined by how the individual interprets torture.

History shows that torture fails as an anti-terrorist tactic to create public security. Instead, it produces long-term negative social effects and it generates corruption in the institution that applies it (Arrigo, 2004). Its use eventually becomes known to the public, which at a certain moment felt terrorized, but which later rejects and delegitimizes the institutions that were traditionally responsible for implementing the state of terror, such as the military.

Arguments such as the protection of national security do not relieve health professionals –whose participation is required– from respecting the code of ethics that governs their actions. Various international organizations such as the World Medical Association, the World Psychiatric Organization, the International Council of Nurses and organizations such as the United Nations have established ethical standards for health professionals that specifically mention the prohibition to torture.

Such prohibition also appears in the codes of professional ethics of different organizations and associations of psychologists in Latin America. These professionals must base their actions on clear principles that emphasize that the only possible

relationship with a patient is that which leads to an improvement in health and welfare. Nevertheless, during the 1980s, survivors from El Salvador revealed the participation of psychologists in the interrogations of political prisoners. They assumed the role of the “good” officials who wanted to help and prevent the torture from continuing; they attempted to persuade the tortured to abandon their resistance and to convince them to talk, under the promise of freedom, money, or secret and secure transfer to the United States.

In the case of doctors, their role in coercive interrogations was made evident and scandalized the international community during the 1970s when their participation in the cases of torture in Greece and Chile was denounced. Subsequently, during the 1980s and 1990s, similar activities in other countries of the Southern Cone and the rest of Latin America were revealed. Their participation took different forms: medical evaluations of detainees to determine their tolerance; recommendations regarding effective interrogation; observation and supervision during the torture and medical care to prevent death to allow the torture to continue. Another of their roles was to provide medical treatment before, during or after torture at the request of the torturer and keep it a secret by hiding evidence in autopsies and in death certificates.

But these professionals were not only directly involved. In order to uphold their ethical mandate, doctors and psychologists avoided being present in the torture chamber. Thus, their collaboration had a different slant: psychologists were hired as consultants and medical doctors were asked to provide clinical information on detainees and possible victims. They were thus not part of the medical/psychological team for the inmates and they avoided –or at least they believed that they avoided– their ethical responsibility while remaining loyal to their employers.

Definitions

The term torture has been defined in different ways depending on the purpose at hand. The definition provided by the Declaration of Tokyo, issued by the World Medical Association in 1975, has been accepted throughout the world since it refers to the ethical and professional standards found in the Hippocratic Oath, whose mission is to alleviate human pain. It states:

Torture is defined as the deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make a confession, or for any other reason.

In the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations proposes the following definition:

For the purposes of this Convention, 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.

Finally, the definition in the Inter-American Convention to Prevent and Punish Torture is:

For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish. The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.

The definition provided by Amnesty International is perhaps the simplest: “Torture is the systematic and deliberate application of acute pain in any form, on

the part of one person to another, or a third person, with the purpose of achieving its purpose against the will of the other.”

The UN definition specifies that the person or persons who inflict physical or psychological pain do so from the sphere of officialdom, instigated or with the consent of a public official. For its part, Article 3 of the Inter-American Convention defines who is “guilty of the crime of torture.” Such a provision is not included in Amnesty International’s definition, which would thus allow the inclusion of situations that occur in the private domain such as domestic violence between spouses, the abuse of children and female genital mutilation as cases of torture.

The Inter-American Convention, in turn, includes a clarification: “Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.” In other words, the Convention considers as acts of torture, those that meet the definition even if from the subjective perception of the victim –for whatever reason– no suffering is claimed or reported. These are the cases that we have designated “cultural torture,” which will be discussed later.

Torture in diverse contexts

The first point of reference is the political context in which it is necessary to differentiate between dictatorships and democracies. There was an “epidemic” of torture in Latin America during the dictatorial regimes but it is not exclusive to dictatorships where it is obviously utilized for political purposes. In democracies, torture occurs in different settings, public as well as private. Concern, of course, is taken to employ methods that leave no visible physical traces and, if they exist or if it is feared that they exist, that they not be obvious to control or monitoring mechanisms. “There is a disconcerting affinity between civic power and undetectable or hidden violence” (Rejali, 2005).

In the context of warfare, torture has been a strategy to obtain information, to intimidate or as a symbolic and tangible expression of an attack against the beliefs or cultural patterns of prisoners and the civilian population. An armed conflict often presents a difficult context that has also allowed pseudo-justifications of this practice as a “weapon of war.”

The distinction between democracies and dictatorships is, however, not a determining factor in analyzing or understanding the reasons for resorting to torture.

Countries like Colombia, which describes itself as democratic, register a very high number of human rights violations of all types, including torture and massacres.

Cases of torture in jail and police contexts, among others, are still being reported in Latin American countries that have passed from dictatorships to democracies. The reasons are complex and are related to the social consequences of years of repression, to social damage, to the impunity that generally continues for a long time after a dictatorship, to the absence of policies of reparation, to the lack of spaces or forums where society can conduct a healing process and to other factors, such as the vacuum produced because no one assumes responsibility for the acts and the harm.

Political context

Even if acts of torture are always, in a certain sense, political, what is referred to here is the torture of individuals, social activists and individuals involved in civic, ethnic or religious conflicts, who are opposed to a specific governing regime.

In the political context, the objective in using torture is clear: to suppress dissidence in order to reaffirm power and to eliminate obstacles to implementing social, and/or economic plans that are unpopular. In that context, torture serves: 1) to break down the victim in order to manipulate him/her and to obtain collaboration to identify other possible victims; 2) to obtain more information regarding the activities of opposition groups or any other similar purpose that will serve to defeat and dismantle the opposition; 3) at the individual level, to instill terror, frighten, intimidate and dissuade activism; 4) at the social level, to send a warning to the population to keep it subdued; and 5) to propitiate an atmosphere of fear and permanent threat over the population, to reinforce power.

One of the preferred methods, due to its scope and social impact, is the forced disappearance of persons, which is considered a modality of torture.

Jails and detention centers

Violence is unfortunately a phenomenon that has been extended to places of imprisonment. The need to identify a criminal or destroy a band of narcotics traffickers (see *Tibi v. Ecuador*) makes the use of torture easier during the interrogation of an individual who has been arrested for having committed or suspected of having committed a crime. Illegal detentions are a relatively common practice in Latin America. Of more than thirty cases found in the Digital Library, more than half are

identified as “arbitrary detention” (IIHR Network Team). The authorities responsible for those detentions feel the pressing need to locate the criminals in order to restore trust and social tranquility when public security is at stake. Under such urgency and with such justification, the police and/or official agents abuse the victims.

There is, however, another aspect to the problem and that is the deplorable condition of jails in many countries: uninhabitable spaces, crowding, lack of hygiene, poor nutrition or inedible food, mistreatment of inmates, unfair punishments, deprivations and lack of medical attention. These are all factors that constitute emotional and physical abuse and are a form of torture. Punishments that are applied include being placed in a fixed position for a long time, which is clearly defined as torture. Inmates who are considered “dangerous” are held “incommunicado,” in which they are not allowed to communicate with their families, are isolated from the other inmates and are forced to live in a very small physical space, which is dark for most of the day. These are all conditions that, together or individually, are considered torture. It must be added that this provokes rebellious reactions that result in even more serious punishments or even death. This is what occurred at the Juvenile Re-education Institute, which was actually a jail and which had an area where inmates were subjected to torture; in addition, during their daily lives they were victims of “inhuman and cruel treatments,” as defined by the Convention Against Torture. This is only one example of a reality that has been repeated in numerous institutions for minors and the aged in many of our countries (See *Juvenile Re-education Institute v. Paraguay*).

Police violence

Police violence may reach such a degree that it can be qualified as torture. When actions to subdue and detain an individual who resists exceed the force necessary to subdue him and excessive violence is used upon that person, who is defenseless, it may be said that these situations constitute torture. Violence, the act of inflicting pain on a person who is defenseless, for a purpose –submission or punishment– are conditions that fall under the UN definition of torture: “any act by which severe pain or suffering...is intentionally inflicted on a person for such purposes as...punishing him for an act that he...has committed...when such pain or suffering is inflicted by...a public official or other person acting in an official capacity.” This description, which, as has been pointed out, is included in various definitions of torture, also alludes precisely to police conduct during the arrest of suspects.

Violence in the private sphere of action

There is an increasing consensus among human rights activists and organizations to consider domestic violence as a form of intimate terror, which is equivalent to torture. From an analysis of the elements that are common to all the definitions of torture, it may be said that they are also present in acts of domestic violence. These include blows, physical attacks, humiliation, sexual abuse and rape. In other words, they are the acts of violence that are present in the definition of torture: “any act intentionally performed whereby physical pain or mental suffering is inflicted on a person...as a means of intimidation, as personal punishment...or for any other purpose.”

Each Latin American country has signed the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Belém do Pará Convention of 1994). All have enacted laws against domestic violence that have declared it a crime. Nevertheless, domestic violence continues to occur at an alarming rate. “The numbers of women who have been victims of domestic violence exceed the number of victims in the most brutal of dictatorships,” according to Rhonda Copelon (1994). It is evident that the State does not implement those laws and protect women, which renders it an accomplice, for omission if not for its direct responsibility.

Hospitals for mental patients

There are also situations where personnel of mental institutions resort to violence to subdue dangerous mental patients. Some of these methods include applying excessive physical force, isolation in extremely small cells, prohibition to go outside to the yard and straightjackets to prevent episodes during which the patient may hurt him/herself or others. Those restrictive measures limit or impede movement and they expose the patient to cruel, inhuman or degrading treatments, which are forms of torture.

Cultural practices

Lastly, it is worth noting the existence of cultural practices that, in certain circumstances, may be considered forms of torture. For instance, female genital mutilation is practiced in several countries, especially in Africa. According to custom,

a girl may be subjected to such mutilation as a baby, at the age of five, or during puberty; older women are also mutilated, if it has not already been done, in order to marry. The mutilation is performed by the tribe's matron with a knife or blade, overcoming the girl's resistance, without anesthesia, without hygienic precautions and at the risk of severe infectious consequences that may lead to death. It may also lead to serious problems during subsequent sexual relations or while giving birth.

Other examples are practices in indigenous communities. In an ethnic group in Ecuador, the use of whips and cold water baths have been reported (Ruiz Chiriboga 2003). According to Ruiz, such practices are not considered forms of torture because they are not "degrading" or "humiliating" for the victim and they are accepted by the community. On the other hand, similar whippings are applied to Muslim women who will not use the *hijab*, or veil, to cover their head and face, which is the case in Iran, Sudan and other Muslim countries. Nevertheless, the latter are cases that, due to the way in which they are applied, the humiliation involved and the intention to rebel against specific conduct predetermined by the State may be considered forms of torture as opposed to those of the ethnic group mentioned by Ruiz.

His comments are interesting, because they lead to the following thoughts:

- Many articles and books on torture do not discuss practices in indigenous communities of the Americas. This observation includes the Istanbul Protocol (United Nations, 2001), in which the differentiation between Occidental and non-Occidental cultures is frequently used as the only reference to cultural diversity, thus ignoring the indigenous cultures whose practices differ from the rest of the Occidental culture.
- Cases of punishment and torture that appear in specific cultural contexts require a detailed evaluation since it is essential to distinguish between two factors: a) criminal conduct (cruel and degrading punishment or torture), which is condemned under international norms and b) the emotional effects on the victim, which may vary according to the culture and vision as to what is punishment. As pointed out by Ruiz, certain punishments in the community that he studied are not considered degrading or humiliating, but this does not prevent an evaluation of the reasons and the forms in which they were inflicted. These could still violate the norms established to regulate their application.

Torture and trauma

In order to understand the psychological and medical consequences of torture, it is necessary to begin with its definitions, which describe torture and explain the formation of symptoms, the emotional and psychological suffering and the physical incapacities that are produced as a result of having experienced it.

Factors that cause trauma in the realm of torture

There are two essential characteristics attributed to trauma in all the definitions of torture:

- Infliction of physical and psychological pain in a situation where the person is trapped, defenseless and unable to escape the situation, that is, it is impossible for the person to avoid the attack and violence.
- An asymmetric situation or one in which there is an unbalanced control of the situation: the perpetrator acts from a situation of power and the victim is impotent.

Regarding the former, it should be stated that any physical attack perpetrated in the context of torture implies a *psychological component*. Even if there are certain manifestations of torture that have been specifically designed to produce a psychological and emotional effect, it is evident that physical torture also implies psychological torture, since the practice itself includes components of such a nature. These are, for example, the treatment given to a victim when abducted, captured or arrested. It entails a lack of respect, degradation, intimidation, humiliation, a situation of submission and violent enslavement, unfair distribution of forces, subjugation and an overbearing manner of arrest. Of course, threats are made during the time of arrest if the victim resists and tries to fight or defend him/herself; threats against the victim's life or that of his/her family are among the multiple forms of coercion. Such implications were already observed in Antiquity as revealed by the saying "Punishment must be a blow to the spirit (or the soul) above all, instead of to the body" (Foucault 1979).

Accounts of victims, in different parts of the world, tend to be similar, not only with respect to methods of torture, but also to the modalities of abduction or arrest, as preliminary circumstances. While there is diversity due to historical, social

and cultural variables, in general terms the victim is abducted or arrested without a judicial warrant by individuals who do not identify themselves. This ritual of abduction or clandestine arrest is probably conceived to function as an *anticipation* of what is to come in order to begin breaking down the victims' spirit. In invading the victims' subjectivity, their inner world, values and defenses begin to weaken and become confused. In short, the context that *precedes* torture is in itself a generator of trauma.

Gurr and Quiroga (2001, p. 8) provide new contributions to the characterization of torture:

- There is a dynamic, which is described as a *perverse* form of interaction, since it implies the degradation, humiliation and extreme dehumanization sought by the torturer.
- Torture operates in an *asymmetrical* relationship since the torturer exerts physical control over the victim who is defenseless. Such a structure in the relationship allows the infliction of physical pain with no possibility of resistance on the part of the victim –generally blindfolded, with hands and feet bound– and allows manipulation to take place since the victim is physically and psychologically weakened.
- The relationship is *anonymous and non-personal* since the victim is unable to see his/her torturers because he/she is blindfolded or because the captors cover their faces to prevent them from being identified.
- The victim feels and thinks that he/she is going to die either as a result of the threat of being killed if he/she does not cooperate or because of the belief that it will be impossible to resist the pain produced by the physical attacks.

This is all part of a *macabre* context due to the gloomy setting and the possibility of a horrendous death. It is also *sinister* because of the frightful and anguish-laden situation in which the victim is placed from the moment of apprehension.

In such circumstances, the victim, totally defenseless, feels the emotional reaction but understands that there is no possibility to express him/herself except by screaming but sometimes not even that because the scream or call for help is silenced with blows, threats or even worse forms of punishment.

Methods of torture

All types of torture *also* involve a psychological component as a result of the consequences that they cause. Torture affects the victim psychologically and emotionally; it alters the capacity to think, memory and the capability to judge. It ultimately produces an imbalance in all of the intellectual faculties. At the same time, it alters the affective and emotional areas, generating strong sentiments such as fear, sadness and suffering, which will be described *infra*.

When torturing physically, the torturer also intends to destroy the person psychologically and emotionally. Physical scars sometimes remain during the victim's life and they can be a *permanent reminder*. There is a constant presence of the past in the present. Torture is always directed to the most vulnerable points of the person, physically and physiologically, and that is why experts in designing methods of torture incorporate elements extracted from the culture to make the pain more profound.

It is impossible to classify a list of methods of torture since their variety constantly increases. There are certain *classical methods* that continue to be applied in different countries, according to the testimony of survivors. This is an indication that training centers transmit practices and aid in the implementation of new methods that take advantage of technological advances. The export of those techniques has also become known. To mention only one example, Klaus Barbie, known as "the butcher of Lyon," was in charge of that region of France during the Nazi occupation. After the war, he remained in hiding until he reappeared in Bolivia where he obtained citizenship in 1957. There, he trained torturers for the dictatorships of that country and of Peru until he was repatriated to France in 1987 to be tried for the torture and death of 26,000 persons in Lyon during the occupation. Barbie's trainings were disseminated throughout Latin America. Techniques that have been commonly used in our hemisphere had already been applied by the Gestapo to obtain information.¹ In 1942, Barbie's boss, Heinrich Mueller, authorized "making the interrogation of

1 The case of Klaus Barbie is an early example of the training of torturers and of the "transmission" of techniques. The best-known current center is the School of the Americas, later called the Western Hemisphere Institute for Security Cooperation, which is the Infantry school for Latin American officers and soldiers, located at Fort Benning, Georgia. It teaches counter-insurgency tactics, psychological warfare, military intelligence and methods of interrogation. The latter include some that human rights organizations consider to be torture since they easily cross the line of interrogation and allow the application of cruel methods.

individuals more acute,” by employing sleep and food deprivation, beatings and isolation in dark and small cells. When Werner Best, the Nazi governor in Denmark, was confronted at the Nuremberg Trials, he objected to what he considered to be hypocritical criticism on the part of the American investigator. “Similar methods are used in other countries,” Best claimed (Rejali 2005).

Methods of physical torture

- Cattle prod: It is applied to all parts of the body, particularly orifices like the ears, nose, rectum, vagina and it reaches the stomach through the mouth. This is the true realization of the objectives of torture: the invasion of subjectivity and of intimacy by means of the explosion of the body from the inside. Survivors recall frightful and apocalyptic experiences and sensations even more sinister than the sensation of living with death.
- Grille: It is a variety of the prod; the victim is tied to the grille of a metal bed through which electrical shocks are applied.
- Beatings: They are carried out with wooden or rubber rods to prevent permanent marks or else they are done with the hands.
- Water torture: Consists of immersing the person until close to asphyxiation (water-boarding) or implosion of water through the mouth until the body is filled and then it is expelled through the orifices of the eyes, nose and ears.
- Cigarette burns.
- Burns with metallic instruments.
- Removal of skin from the soles of the feet with a knife; then the victim is forced to walk on rock salt. (This was told by a Guatemalan survivor.)
- Extraction of nails with pincers.
- Prolonged standing: This can include keeping a person standing during prolonged periods, prohibiting him/her from moving under the threat of death, as well as suspending a person by the hair or by the arms from the roof without allowing the feet to touch the floor.

- Telephone: It consists of strong and simultaneous blows on both ears, done with the hands in a cupped position. One type of electric shock applied simultaneously to the ears and mouth is also identified under this name.
- Sexual torture: It may include vaginal or anal penetration by a man or by objects, the forcing of animals to violate sexually a person or forcing someone to rape a family member. It includes a woman's sexual manipulation of an Islamic man that may include exhibiting underwear with menstrual blood, which is difficult for Islamic men to tolerate. This latter was used in the Guantánamo prison, as reported in newspapers (July 2005). In some cultures, women who have been raped are punished by their family and society, regardless of who raped them or how it happened, which results in a second victimization. Some women commit suicide in desperation after being faced with the grave social consequences of rape ("War Crimes in Bosnia," *Newsweek*. January 1993).

Sexual torture is also employed as a war strategy by actors in armed conflicts who, in their struggle to take control of territories and communities, rely on diverse forms of physical, psychological and sexual violence that especially affect women. That is how they are able to break the victims' personality and weaken their family nucleus, which are optimum conditions to control regions and resources.

- Religious torture: This refers to the destruction of religious texts, which implies intense moral and psychological suffering in believers who cannot tolerate the sacrilege of their sacred texts. This also includes being forced to swear oaths that are contrary to their beliefs, which is generally done in combination with other tortures.
- Environmental torture: This is the name utilized when environmental elements are used for torture. The use of poisonous vines has been reported in Africa as having the double effect of pain due to the whipping and a rash as a result of contact with the skin. Another manifestation includes the immersion of the body into a nest of red ants and the use of bamboo shoots where they are abundant, or the use of a lake next to the place of detention to implement the technique known as "water-boarding," which includes the immersion of the whole body and not only the head.

- Perpetual torture: Disappearance of persons:

“The phenomenon of disappearances is a complex form of human rights violation that must be understood and confronted in an integral fashion.”
(Judgment in the Velázquez Rodríguez case, I/A Court H.R., July 1998, para. 150).

“A disappeared person is one who has been detained or kidnapped by agents of the State and his whereabouts and destination are kept hidden and his detention is denied by the authorities.”
(Amnesty International).

The disappearance of persons originated in Nazi Germany, where the infamous tactic known as *Nacht und Nebel* (Night and Fog) was implemented. During the 1960s, it began to be used in Guatemala and from there it extended to most of Latin America (Amnesty International, 1994). The authorities maintain secrecy to guarantee impunity: nobody assumes responsibility for the act. Families have no access to any information and they do not know where and how to look for the disappeared person. This situation transforms disappearance into an agony that is prolonged for years and in certain cases forever. Disappearances are generally accompanied by extra-judicial assassinations. Family members live in a state of constant anguish, thinking of the suffering that must have been inflicted on the victim, how the death must have occurred and the impossibility of providing a proper burial. These circumstances cause the mourning for the loss to be prolonged or impossible to digest. The disappearance of more than one member of the same family has been documented; the extreme case is that of a Guatemalan family where sixteen members were disappeared (Testimony of one of the survivors of that family.) Social repercussions are immense, which is the reason why disappearances are considered a form of *social torture*. The Inter-American Court has clearly held that “The purpose of this practice was to dismantle movements or organizations that the State identified as having ‘insurgency’ tendencies and to instill fear in the population” (*Molina Theissen v. Guatemala*, I/A Court H.R., May 2004, para. 40.1).

Methods of psychological torture

As has been pointed out, the objective is to break the victim’s resistance and integrity. The methods that are applied are multiple.

- Exhaustion and weakness induced through the deprivation of water, food and sleep; the victim can lose control and reveal information in a semi-unconscious state. Isolation: eyes blindfolded, in small cells, incommunicado.
- Monopolization of perception: an acute sound or blinding light or total darkness 24 hours a day.
- Threats: death to the victim or his family members. Simulated executions.
- Witnessing the torture of others: it may be a member of the immediate family or another prisoner. A Salvadoran survivor related that he was forced to witness how they opened the stomach of a pregnant woman. He explained that it was the cruelest and most painful torture in spite of the fact that those applied to him had also been horrendous.²

Symptoms of trauma

According to the *Diccionario de Psicoanálisis*, trauma is an event characterized by its intensity, the inability of the subject –due to impossibility– to respond adequately to the aggression because of the upheaval and pathogenic lasting effects that are provoked in the organization of the psyche (Laplanche and Portales, 1971, p. 467). The individual receives an excessive amount of stimulation, which cannot be controlled since it is coming from the outside, from the aggressor, that is, the torturer. The victim reacts with emotions such as pain, rage, hate, sadness, desperation, anguish and with personal thoughts, although it is not always possible to think when being tortured. However, sometimes it is possible to think about trying to know, for example, how one was detained and by whom. One thinks of the family, how to communicate with them and how to respond during questioning. Evasion and dissociative fantasies are utilized, a wish that everything will end soon, of death and of a response to the violence. All this is accompanied by a component of intense pain and suffering.

None of these reactions can express itself. The individual is left defenseless and solitary since there is no one to go to. On the one hand, it is impossible to react since

² A rather complete list of the forms of torture may be found in “La tortura en el Sistema Interamericano, el peritaje psicológico como medio de prueba,” by Víctor Rodríguez Rescia. Mimeo, Inter-America Institute of Human Rights, 2003.

one is under the dominion and control of the torturer: the hands and feet are bound and the eyes are blindfolded. On the other hand, if the person tries to react to the blows or to run away, he/she is immediately returned to a position of defenselessness and submission.

Perhaps the only possible expression is to scream. The physical pain unleashes that reaction, which is prior to language (Scarry, 1985). In addition, language fails since even long after the torture the individual is unable to find words to explain or describe what was felt. The act of torture also resists language because it is impossible to describe, as pointed out by John Conroy (2000).

Human reaction in the face of pain is complex. A threat of physical attack, for example, evokes intense sentiments of fear and rage, which are translated into an excitement that creates the impulse to defend or to escape, which are normal adaptive defense reactions. When those emotional reactions have no escape, there is chaos in the organization of the psyche, which is later manifested in symptoms. "When neither resistance nor escape is possible, the human system of auto-defense feels over-saturated and becomes disorganized" (Herman, 1972, p. 34). As the response to danger or to attack is useless in the precise moment, it produces profound and lasting effects. It alters the composition and harmony of the different functions of the psyche: cognitive capacity, memory and affections, which will be analyzed *infra*.

Affective reactions unleashed at the moment of torture tend to last and their effect is prolonged even beyond the span of time required to heal the physical wounds.

The symptoms may be classified into three categories: intrusion, over- agitation and restriction of affections.

Intrusion

The most disturbing reaction suffered by a torture survivor is the intrusive memory of the episode. This is called a *flashback* and its duration and intensity depends on factors such as personality, prior experiences, personal history and the circumstances of the torture. The individual *relives* the act as if it were happening again in the present. Memories reappear spontaneously and intrusively. Even though the individual may be concentrated on some task, reading or involved in a recreational activity, there is a sudden invasion of thoughts or images of the torture. When this occurs, the memory is so vivid that the person shakes and relives intense feelings similar to those experienced when he/she was being tortured.

This is disturbing for several reasons. On the one hand, this phenomenon interferes with daily life because it distracts and interrupts concentration. On the other, memories are accompanied by intense sensations of suffering: the pain renews itself. The victim feels unable to put the experience of torture in the past: it is always in the present, like something crystallized, encrusted or frozen, which provokes a feeling of impotence for not being able to handle and control memories, which in turn increases the pain.

The memories usually occur with isolated images generally dissociated from the context in which the torture originated. Depending on the intensity of the suffering and the personality of the victim, these may be so vivid as to generate a state of *dissociation*, which causes lapses of varying lengths and produces feelings and actions as if the torture were occurring. They are manifested through screams, movements or by addressing persons who are not present. Naturally, this produces consternation and fear in those near the victim because they do not know what to do.

The memories may appear during wakefulness or sleep, in which case they cause nightmares that disturb rest. If the victim awakens, it is hard for him/her to fall asleep again. Insomnia could also appear as a defensive and unconscious mechanism to avoid the traumatizing moments.

Either awake or asleep, the individual is destabilized by these memories. In addition to the renewed pain, they produce a malaise that remains for long periods and continues to interfere with the individual's functioning even if the malaise had been previously eliminated or chased away. The memories may also cause sadness, anxiety, nervousness or intense anguish.

The memories are also reawakened by stimuli from the surroundings of daily life: the sight of a person in uniform, hearing news related to violence or perceiving a smell or a color associated with the circumstances of torture.

That is the case of M.M. who was never again able to use orange underwear because it was the color of the walls at the entrance to the jail where she was held for three years. Her cell had dirty walls, which at some point had been white, but when she was detained for the first time they removed her blindfold. Upon entering the jail she saw the orange walls in the office area and she suffered a reaction of pain and terror that became associated with that color

Memories can also awaken *somatic* and *physiological* reactions. The victim may develop an intense headache or sudden pains in the body even if the beatings took place many years ago. *Chronic* pain is frequently reported. Gastric disorders, palpitations, perspiration in the hands or other parts of the body, gasping for air or other manifestations may also occur.

While in prison, A.K. developed an allergic skin reaction on her legs. She thought it was a consequence of the lack of hygienic conditions in her cell where there were fleas and other insects. She first described her experience to her therapist two years after being liberated. Once she was home, she noticed that her legs were again red and full of welts similar to what she had in jail.

Psychosomatic disorders may last a long time and become chronic. If they are not treated, they will become permanent. Victims of torture try to forget their traumatic experience, precisely due to the pain that it evokes and that is renewed when they remember. Paradoxically, memories become recurrent and uncontrollable. When, after the passage of time, the person is able to get rid of them, it is possible that they may be “re-activated”; it is as if they were imprinted somewhere and provoke conduct that the person no longer associates with the trauma.

This is a permanent challenge to mental health professionals and to those attempting to help heal the effects of torture since it is one of the most persistent and difficult symptoms to eliminate. Apparently, this is linked to Freud’s theory on the complex phenomenon of *compulsion to repeat*: whatever remains misunderstood returns “like a wandering soul that will not rest until it has found solution and liberation” (Laplanche and Pontalis, 1974, p. 72). It is the insistence of the symptom trying to make sense of an experience that interrupts reality and cannot find meaning in the symbolic order.

Over-agitation

Long after the traumatic event, the person remains in a permanent state of alert as if the trauma were about to repeat itself and he/she acts in response to a sensation that he/she is in imminent danger. In such a state of over-excitement, the traumatized person is easily irritable, has an exaggerated reaction to minimum stimuli and suffers from sleep disorders. Such a state is usually accompanied by automatic reactions of the nervous system and sets in motion neurophysiologic disorders, such as tachycardia, an extreme anxiety that affects the ability to breathe, produces digestive disorders, perspiration of the hands and other parts of the body, heightened blood pressure, etc. These reactions may become chronic and persist as health disorders that the individual does not associate with the trauma; one such example is gastric disorders. This may also affect a person’s character, making him/her more irritable, which will affect his/her interpersonal relationships.

Restriction of affections

When a person is defenseless, at the mercy of the torturer, an effort is made to *suppress* emotions and to attempt to ignore what is happening, recurring to dissociation between oneself and the act. When the pain is extreme and unbearable, one of the defense mechanisms may be precisely to try thinking that the body is not one's own and nothing is really happening, but that it is a bad dream or that it is happening to another person. The person intentionally *paralyzes or freezes* emotions since it is not possible to control what is being done during the act of torture; the person's perception is similar to that of an observer of that experience. It is a defense mechanism to attempt to control the pain.

This reaction during torture may create a pattern of affective responses that are later repeated once the situation has ended. The person may become cold towards his/her loved ones and show indifference and distance with regard to others. There is thus a tendency to isolate oneself socially, including from one's own family.

He was very sociable and loved being with people, telling jokes, chatting. Now, when someone comes to the house, he locks himself up in his room, listens to music and would rather not be disturbed. (Comments from the mother of a young Salvadoran who was tortured by guards of a Texas ranch when he entered the private property during his illegal entry into the USA.)

There is a dialectic relationship between the aforementioned three categories, which reveals the symptoms that manifest themselves in the cognitive, affective, somatic and social areas.

- **Cognitive area:** difficulty in concentrating, in processing new knowledge (in other words, learning) and in memorizing.
- **Affective area:** irritability and explosions of anger, mood changes, depression, anxiety, phobias, isolation and other reactions.
- **Somatic area:** intestinal problems, ulcers, neuralgia, migraines, skeletal and muscular pains (pains that end up being chronic). What we call *chronic physical pain* has no medical explanation, but exists for the individual and is, in fact, very real. It is thought that this type of pain is psychological. It generally begins at the time of the physical torture. The bruises and wounds may be healed, but the pain persists. The victim was damaged and the harm, perceived or experienced,

goes beyond the specific wounds. The perception of permanent damage causes the pain to persist and to resist medical care or analgesics.

- **Social area:** isolation causes difficulties in interpersonal relations; there is an inability to connect with his/her own children, spouse or parents.

The effects in these areas are manifested in the symptoms that have been grouped under the name of “post-traumatic stress,” the description of which may be found in all the current literature on the subject. It is worth noting that the effects of torture on the individual plane are conceptualized precisely as “effects” that do not conform to a psychiatric pathology, but rather are considered normal reactions to an abnormal situation. The “abnormality” refers to the torture, which is a deed that should not re-occur, but which remains protected by impunity. The fact that these reactions are equivalent or similar to symptoms in psychiatric profiles has resulted in placing the effects of torture in the realm of pathological or psychiatric medicine. While it has been said that torture is an “epidemic,” this is nothing more than a metaphorical expression.

Effects of torture

“Torture happens once, but it lasts a lifetime”.

Survivor of the Naval Mechanics School of Argentina (ESMA)

In the personal and family realm

Torture is an experience of horror and suffering that produces a profound modification of the victim’s personality as well as his/her perception of the world and of other human beings. A listing of symptoms and a diagnosis cannot express the tragedy in which the victim is immersed since the effects of torture alter the entire order of existence, including relationships with family and society.

Everyday life is full of situations that elicit memories of torture. The mere effort of going to the dentist may be terrifying because it brings out insufferable memories. These not only appear when recalled directly, but may also manifest themselves with other personal associations. A survivor of the ESMA tells of his intolerance to a baby’s cries, which caused anguish because of his feelings of defenselessness, causing him to identify with the baby. It reminded him of his own state of defenselessness at the hands of his torturers (Actis *et al.*, 2001, p. 71). This is also the case of many

survivors who must remind themselves that they are no longer being tortured. That is to say, it is necessary to work hard to overcome the feeling. A mental effort is necessary to prevent the massive flow of painful memories and even then it is not always possible to overcome completely the memories of torture.

Survivors with scars produced by torture have an additional element to remember it by: the scars are a permanent testimony. The victim needs special strategies to handle the inescapable flow of memories each time the scar is seen. As pointed out by a survivor in Peru, "I cannot wear low cut dresses because the scars (of torture) are visible on my back and each time I undress, I cannot help but see the scars on my belly."

During torture, not only is the victim totally defenseless but he/she can do nothing to escape the situation or avoid it. Resistance is useless and the victim feels weakened. Such a circumstance facilitates the creation of a pattern of conduct that may endure and may alter the victim's personality. The consequences are perceived when the victim returns to his/her previous life and to his/her normal activities. He/she then feels unable to do what he/she could do before. He/she is not able to resolve problems and situations of crisis may appear inescapable. Having been in a state of total defenselessness results in the belief that "doing anything is useless because it is impossible to escape this." In other words, a passive and fatalist attitude may perpetuate itself or provoke a personality change, or may even create a tendency of dependence (Herman, 1992, p. 83).

As stated, one of the objectives of torture is to break the individual's will in order to obtain a confession or information. To achieve this, torturers use different methods and practices that cause confusion and provoke a feeling of *unpredictability* that increase the anguish. The victim often develops a strong ambivalence and many years after release, these feelings will be projected and the victim may interpret the conduct of others as arbitrary.

The victim takes to his/her family a whole arsenal of contradictory feelings. If he/she has been unable to seek or to obtain psychological assistance, the most likely result is that the symptoms will be long lasting. There will probably be a feeling that nothing can be done to obtain help and that the harm cannot be repaired. The person may appear to reject any affective approach or retract into and isolate him/herself. This especially affects the family, which sees itself as incapable of alleviating the suffering.

This isolation causes the victim pain and depression. If the victim is a father or mother, it will be difficult for him/her to connect emotionally with his/her children.

This brings up the topic of the *generational transmission of trauma*. This concept was developed by psychoanalysts during the 1960s as a result of the clinical analysis of surviving children of victims of the Holocaust. Innumerable articles and books are devoted to this topic. The observations led to the conclusion that the victim retracts into his/her memories, his/her depression and runs the risk of paying little attention to the emotional needs of his/her children since he/she has become an “absent” father or mother (Levine, 1982).

A tendency towards depressive disorders has been encountered during the adult lives of the children of torture survivors. Some authors suggest that some of them could be having a *repairing* attitude toward their parents even if they themselves do not think of it that way. This is manifested by the amount of time that many of them devote to working for human rights, either in the mental health area or in organizations working within civil society.

The experiences collected by the Program for Torture Victims (Los Angeles, California) for the past 25 years shows that the survivors are inclined to silence. In some cases, their attitude is not to talk about the experiences of torture and thus avoid those memories. Family members “collaborate” with that silence since they understand it is a painful and sensitive topic for the affected person. Even though this tendency to prefer silence has been documented in the literature and has been verified through work experiences, the uniqueness of each case should not be ignored and recognition should be given to the specific strategies of each person and his/her family group to handle the psychological and emotional *sequelae* of a traumatic event associated with torture.

Los Angeles is home to hundreds of thousands Central American refugees who have arrived since the 1980s when the wars in the region were at their bloodiest. Many of them had been in jail and had been tortured and yet they did not seek help to overcome the *sequelae*.

In general, the experience of torture is considered a problem linked to politics and, in spite of its implications at the personal level, it is not perceived as something requiring help. Many express their desire to “forget” as the best way of handling the *sequelae*. The clinical consequences of this attitude may be grave: an unresolved trauma may reappear in the future in different forms or through diverse symptomatic expressions that are generally not associated with a history of torture. Certain events that are difficult in one’s life—the loss of a loved one, unemployment, normal illnesses, children reaching adult age and the resulting separation of the nuclear family— may unleash a stage of depression, acute anxiety or a psychosomatic illness.

Furthermore, the very legal processes that victims undertake in seeking justice may also become catalysts of such sentiments. For example, the act of preparing testimony and appearing at a hearing means reliving the traumatic events. It should, therefore, be borne in mind that the dynamics and complexity of a legal process require a special willingness on the part of the professionals in charge of the case to work within the framework of an interdisciplinary group. The joint action of the lawyers and the mental health professionals allows for a comprehensive approach of attention to the victims and their family members in such a way that the judicial process is not only a means of seeking reparation for an injustice and to combat impunity but also a cathartic-therapeutic process that is not traumatizing.

In the social realm

Torture, even when applied in the anonymity of a clandestine detention center, nevertheless sends a clear message: it intimidates and terrorizes, thereby keeping society under control. In most cases, it is part of a governmental strategy; the habitual “Laws of State Security” (Amnesty International, 1984), even if they do not mention torture explicitly, facilitate its use to intimidate certain social sectors and to prevent opposition. When an individual is captured, family members, friends and acquaintances feel at risk because the detainee may succumb to the violence and give the names of others who might then be detained and perhaps tortured. Nevertheless, torture is also carried out in places of detention that are not clandestine and in jails under the protection of democratic governments.

When people lose their sense of security and feel vulnerable, because fear is accompanied by distrust, they become afraid to express their opinions due to the possible repercussions. Generally, such distrust in the population is orchestrated by the system as part of State *security*.

In countries with nationalist or religious conflicts, members of discriminated groups are threatened by the authorities, detained for insignificant reasons and tortured with the purpose of making them abandon their faith or their territory. This encourages members of majority groups to instigate attacks, threats and harassment of the minorities under the assumption that they have the backing of the government, which will not act to protect the minorities.

Torture also generates a fear of freedom of speech. Creative expressions, artists and intellectuals are persecuted. The country itself becomes a threat. Melancholy and social discouragement result and the very foundations of society -trust, mutual

support and a sense of belonging- are undermined. By entering into the individual's subjectivity, torture undoubtedly implies a clear message of destruction for society, which is reinforced by impunity. There have, of course, been efforts to combat this, as in the case in Argentina with the June 2005 decision that held the Due Obedience and Full Stop (Punto Final) laws unconstitutional, which opened the way to justice and the punishment of those responsible for crimes against humanity, including torture.

It is to be expected that justice will bring about a change in the individuals affected by pain, as well as in society in general. Justice may be too late for individuals, but its social need persists even after the death of the victim or the survivor. In the case of the Serrano sisters, who disappeared during the civil war in El Salvador and whose case was taken to the Inter-American Court, the judgment on reparations was handed down in 2004, a few months after the death of the girls' mother. When cases such as these of torture and/or forced disappearance occur in which the State was responsible, the trauma is intensified inasmuch as it was caused by the entity that is supposed to ensure the security of society. As a result, the victims or their family members occasionally tend to blame themselves, since the State has attempted to silence or minimize the facts.

The only possible way to repair the damage produced by the traumatic event is the intervention of the law and access to truth. The role of the State should therefore be mandatory because if the State does not comply with its role, it perpetuates the conditions necessary for the permanence of pain in the lives of the victims and their families as well as in the social fabric where the serious violation of rights has occurred.

Torture and memory

There are several possible scenarios in which to place the topic of torture and memory: social, political and individual. Each refers to the issue of "keeping the memory alive." That is particularly relevant in the political scenario, precisely when referring to repressive historical periods during which there was State violence. The will to remember and to keep alive the human rights violations is intended to safeguard the "lessons of the past" as a political lesson that will help confront the uncertainties of the transition (Jelin, 2002). The phrase "remember in order not to repeat" that was instituted by Freud in his psychoanalysis (Freud, 1973) is apt for historical-political situations. The will to construct a future based on democracy

and on the guarantee of not repeating the horror and suffering inflicted on the population is supported by living memory. Political forces, however, foster silence or act to favor forgetfulness.

But living memory is also *active memory*. It may remain in a latent state, but it can eventually be reactivated. “When new actors or new circumstances come onto the stage, the past is re-signified and it often takes on a public projection” (Jelin, 2002, p. 74). In the Southern Cone countries of South America –Argentina, Uruguay, Chile and Brazil– after the dictatorships and during the 1980s and 1990s, the groups in power claimed to have reached a sort of equilibrium in society, which maintained the *appearance* of a peaceful coexistence.

In Argentina, for example, with the return to democracy in 1984, there was a sense of hope for justice for the victims of the dictatorship, particularly after the publication of the report known as *Never More* (Nunca Mas) of the National Commission for Disappeared Persons and the trial of members of the Military Juntas. However, in 1986 society was forced to accept the Punto Final Law and, shortly thereafter, in 1987, the Due Obedience legislation in the name of a purported “national reconciliation.” Those laws in reality paved the way for the amnesty of 1990, which was maintained until 2005 when the Supreme Court declared both laws to be unconstitutional.

The wounds inflicted by the dictatorships upon the societies of those countries have remained open. Years later, there are still incidents that reopen the wounds and lead to new investigations and trials that seek to punish the perpetrators and persons responsible for human rights violations. This is how cases were opened against Pinochet in Chile, as well as the Trials for Historic Truth in Argentina. They prevented forgetfulness and even if they did not necessarily lead to the punishment of those held responsible, they opened a path that resulted in the repeal of the aforementioned laws and permitted trying those who violated human rights during the dictatorship.

In a political context, after overthrowing the repressive regime, the struggle against impunity in cases of torture begins and the population denounces and creates strategies to identify those responsible, who should eventually be tried and punished. These efforts and actions against impunity may be found not only in the countries of Latin America but also in others that, with the help of human rights organizations, receive refugees or grant political asylum. Two examples of this joint effort are the organizations known as Redress, located in London, and the Center for Justice and Accountability (CJA), located in San Francisco, California. The latter identifies and

locates the torturers who have sought asylum in the United States and brings them to justice through laws such as the Alien Tort Claims Act of 1789. This law marked a milestone in the legal history of the United States when it was reactivated in a case involving Paraguay (*Filártiga v. Peña*) in 1980, establishing that the US courts have international jurisdiction to judge cases of human rights violations (White, 2004). Torturers from all over the world have found refuge in that country where they live a life of luxury while the atrocities they committed are ignored or forgotten. CJA, together with other agencies, is dedicated to finding those responsible for torture and other human rights violations and to trying them in civil actions. With the help of those who seek its assistance, the Program for Torture Victims (PTV) in Los Angeles, California seeks to find torturers residing in the United States in order to bring them to justice.

Socially, the role of memory serves a healing function of society towards the survivors of torture as well as towards those who did not survive.

If torture, as has been pointed out, is intended to destroy the bond between society and the individual, memory seeks to restore the connection that torture attempted to sever. Memory seeks to establish bonds of solidarity with the affected persons.

“The restoration of the social bond begins with the realization that one is not alone” (Herman, 1997, p. 215). There is no experience that is more immediate, powerful and convincing than the sense of belonging that each individual feels with regard to society. Therapeutic groups formed by survivors of diverse types of trauma have proven to be a very effective means of emotional recuperation since they help develop a feeling of cohesion and intimacy, which is precisely what was destroyed by the experience of torture, where the person feels absolutely alone, isolated and disconnected from the rest of the world. A therapeutic group is able to reverse that feeling. When society as a whole operates as a support group, the therapeutic effect is all the more powerful. This is only possible, from a social perspective, when the experience of torture can be shared through a testimony that will somehow be registered in the collective memory.

The sharing of these testimonies may occur through certain acts, such as memorials. The wall containing the names of those who died in the war in El Salvador from 1980 to 1992 is an act of social recognition to the victims. Flowers are left there, especially for those who were disappeared and do not have a grave where loved ones may pay their respects and maintain the memory of their lives. The wall helps the families and society to remember their own, to mourn and to

confront their loss. It is a social expression that somehow facilitates the process of social mourning.

It is clear that this process is inscribed in a political framework and has been promoted by human rights organizations dedicated to maintaining an active memory. These efforts may also encourage certain governments to begin to prosecute those responsible for acts that had remained under impunity or had hoped to be forgotten. One such example was the civil suit in the United States for the murder of Monsignor Oscar Romero in El Salvador (Fresno, California, 2004). When the El Salvador peace accords were signed, they included a clause stipulating that no one could be brought to justice, including members of the armed forces, death squads and the guerilla movement. As a result of this suit the combat against impunity was strengthened and the efforts of human rights organizations were renewed to try in El Salvador those responsible for the death of Monsignor Romero, which would pave the way to re-opening many other cases of human rights violations and for the massacres of entire communities. This is an example of the actions of social movements seeking to obtain reparations for society and its most affected members. These efforts, however, turn out to be risky due to the climate of impunity that pervades in that country and to the resistance in political circles. The Truth Commission in El Salvador gathered testimonies and issued recommendations. However, justice was not served. "The offenders ... gave themselves amnesty to avoid paying the debt they had and still have with society" (Institute for Human Rights of the José Simeón Cañas Central American University, 1997).

In the individual context, three aspects may be considered with respect to the relationship between torture and memory: the first refers to the personal significance of preserving memories; the second refers to the narration of the situation of torture, which is part of the process of preserving memories and the third alludes to the process by which the details of torture and the sequence of related events are registered in the memory.

How the memory of political violence and torture is registered and how these memories forge the narration of those experiences are questions to which psychology must respond. Why is the narration of the events given a place of importance? In the 1980s, Elizabeth Lira (Chile) and her team caused a revolution in the therapeutic approach for victims of torture when they proposed that testimony was an appropriate tool. When it is told, recorded, listened to and reviewed by the victim, it may accomplish several objectives: catharsis, because telling the story of the trauma and sharing it with the therapist produces a feeling of relief and relaxation, which

anticipates or prepares the way to resolve the symptoms; as a document, which makes the facts known to human rights organizations and helps to denounce them, particularly in the case of repressive regimes where these facts are denied, and as a personal document to share with the family an experience that has also affected them, serving as a sort of catharsis to the entire family group.

This approach makes the act of telling the story and hearing it an opportunity to give another meaning to the pain. The possibility of talking and sharing memories of torture marks a triumph for the victim. From that perspective, silence and forgetfulness may, on the other hand, be considered a triumph for the torturers and for the system that supports them. Narrative helps to recuperate some sense of coherence in subjectivity and in the inner world where subjectivity has been shattered and where the trauma is always present and refuses to be silenced.

In psychology as well as in literature, authors and victims insist that the torture experienced is “impossible to relate,” “unspeakable” and “indescribable.” There is a consensus that would describe it as “ineffable.” Victims are not able to find words nor can they find a point of reference to describe such an aggressive invasion, which makes it impossible to add to the memory bank normally as may be done with any other experience.

Torture has a deconstructive impact on all the cultural and personal assumptions that govern our lives and it may result in a cognitive and affective paralysis that obliterates or destroys memory. The trauma is overwhelming and may destroy the capacity to organize and describe memories or recollections. Such an experience presupposes a massive trauma and defies the individual’s ability to formulate it. Victims express their testimonies in a language that they themselves admit to being inadequate, which is paradoxical, as pointed out by Pumla Gobodo-Madikiezele, a South African psychologist who participated in the process conducted by the Truth Commission in South Africa. Language communicates, but at the same time it sets us apart from the traumatic event and how it was lived. Pumla explains that we cannot understand what the victim went through because the impact of the traumatic experience will not allow it to be adequately expressed by means of language. It is impossible to comprehend what the victim had to undergo; thus, “the participation in the act of remembering by the other (the victim) is limited” (Pumla Gobodo-Madikiezele, 2003, p. 85).

Nevertheless, as mentioned, victims feel the need to talk and tell what they lived through. The many written testimonies of victims and witnesses demonstrate their need to preserve their memories with all the consequences: personal, social and

political. It took fifty years for Spanish writer Jorge Semprún, who was interned in the Buchenwald concentration camp, to write about his experience; he speaks not of the “untold” but rather of the “unlivable” (Semprún, 1995, p. 25). Time had to pass before he was able to “tell” the unlivable.

Memories open up a torrent of emotions that are sometimes difficult to control: pain and resentment and rage towards those who caused it –the torturers– and the system or regime that allowed or incited the torture, especially if there was no justice. These feelings can be very powerful and they may become an obstacle to the emotional recovery of the victim who needs to go on with his/her life; that is why psychological accompaniment is required.

Tragedy and suffering are perpetual and they are always there because memory keeps them present or ready to emerge at the prompting of any stimulus, minimal though it may be. In truth, there is no end. That is why the Punto Final law in Argentina was a massive offense; it produced a re-trauma in the victims who were seeking justice. There can be no “final point” and no closing until the perpetrators of abuse, those responsible for torture, are brought to justice; in other words, as long as there is impunity.

The process of registering the details of torture is particularly relevant for the trials, especially when the victim faces difficulties in narrating the experience since it may generate contradictions.

The emotional intensity and the psychological impact are so severe that they make a coherent recounting more difficult. It is important to keep in mind that the victim is blindfolded to prevent any possibility of seeing the torturers and also to cause confusion. In addition, it is customary to carry out a ritual to increase the level of terror through the use of threats or mentioning the pain that is about to be inflicted. This may, for example, include manipulation of the time of day, which induces confusion. The victim is isolated, unable to communicate and the state of confusion increases since there is no contact with others. The climate of terror that is created generates levels of anxiety and panic that alter the functions of thinking and registering the events in a sequence.

Even though the testimony may not be coherent due to the intense traumatic nature, care should be taken not to make its value useless. The victim has undoubtedly been able to register certain data and perhaps may be capable of remembering sounds and sensations that will help to make the narration of the experience more truthful. The uncertainty of the future and of how the events will develop make it necessary that, in reliving such a painful experience, the victim have adequate psycho-juridical accompaniment that will help reconstruct an accurate registry of the facts.

The victim, on the other hand, attempts to forget, which contributes to the loss of a chronological sequence and the omission of some details; the torture victims often manifest memory problems in their daily lives as well. The loss of memory could be due to the fact that all of the individual's mental energy is devoted to trying to forget the pain or it is immersed in intrusive remembrances, which induce distraction and a lack of concentration in routine activities.

Another paradox then presents itself: either the person will maintain vivid memories, including flashbacks of the torture, or it may be impossible to remember the episode sequentially and completely. These are relevant factors regarding the issue of credibility, which will be developed *infra*. Finally, memories of torture may become part of the family patrimony, since in fact they are part of the family's history. In sharing them, the survivor seeks to transmit the events that led up to the incident; looks for support and understanding from the family and attempts to share with his/her children and grandchildren a vision of what happened and the historical context in which the experience occurred.

Secondary trauma

Trauma is "contagious." Working with victims of trauma is stressful and demanding. Bearing witness, listening to stories of atrocities committed by one human being on another may turn out to be overwhelming and unbearable. Those working with victims may experience—obviously to a greater or lesser degree—terror, rage and desperation in the same way that they were felt and in the same way that they are transmitted. This phenomenon is known as *traumatic counter-transference* or *vicarious transference* (McCann and Perlman, 1990, pp. 131-150).

Narratives induce those who listen to them into reliving traumatic experiences (Herman, 1997). Recognizing this requires a certain degree of introspection and insight to associate what is being listened to with one's own experiences, creating a situation where there may be varying degrees of gravity that may never reach the magnitude of torture even though it might be important to the listeners. The presence of an authoritarian parent who is prone to punishing, a humiliating experience in school, an accident, a loss in the family, unexpected deaths of loved ones and other traumatic experiences may all be awakened by memories or by sensations of malaise.

In these cases, it is best to consult a professional or talk to a colleague, but never to ignore these reactions. They may be so intense as to affect the emotional

well being of the sufferer. Repeatedly listening to tales of abuse may interfere with sleep, provoke nightmares or cause depression. Such manifestations have to be understood and kept in check since they also provoke opposite reactions, which may be counterproductive in the relationship with the victim. An excessive identification with the victim risks the appearance of sensations of pity, thus perpetuating the role of victim and freezing the dynamics of the relationship. Sentiments of guilt and pity could lead to accepting responsibility for the victim's life by an overprotective role. Attempts at gratifying and consoling the victim are typical attitudes that may result in weakness rather than empowerment. It is also not proper to adopt a defensive and distant attitude to avoid feeling overwhelmed by the traumatic stories since such an attitude deprives the victim of the profound empathy that in fact is needed to create a bond of confidence and a feeling of being understood (Fischman, 1991).

Professionals of any discipline should be alert to their own reactions and should consider sharing them with their colleagues, discussing them and taking the appropriate measures to preserve the emotional health that is required for this type of work.

Torture and credibility

Preparing a torture case requires the participation of an interdisciplinary team so as to maintain a close relationship between the legal and psychosocial aspects of these cases.

Evaluating the credibility of torture victims is crucially important in litigation before the Inter-American Court and in petitions for political asylum in countries that allow it. This section will only cover two contexts even though obviously there are others around the world where the topic of credibility is extremely important for the victims' future.

The States parties to the American Convention on Human Rights that have recognized the contentious jurisdiction of the Court that face claims of violating the right to personal integrity or non-compliance with the prohibition to torture tend to deny that they have resorted to such practices (*Tibi v. Ecuador*, 2004 and *Wilson Gutiérrez v. Colombia*, 2005). During the first stages of the latter case, Colombia denied using torture but later reconsidered and accepted its responsibility for the events.

On the other hand, immigration authorities around the world that are responsible for deciding asylum requests frequently question statements made by the petitioners

to the effect that they have been tortured. There are several reasons for such an attitude: policies to reject exiles, discrimination and frequent attempts by petitioners to commit fraud. In any event, a psychological-medical evaluation can verify the existence of torture.

As mentioned, in many cases of torture the physical wounds and their *sequelae* are cured and disappear with time. In addition, since torture is generally secret, but is practiced in countries that ratify treaties that prohibit it, the use of modern methods permits the elimination of physical traces. Technological developments in different venues of human activity have also served to create new torments that leave no visible scars. There are types of torture whose scars on the human body are unmistakable; for example, cigarette burns or lashes from a whip that produce deep scars on the back. But there are scars produced by torture that are very similar to those produced by accidents or surgery, among other causes.

Although the physical wounds are cured and thus become invisible, the psychological trauma endures and is manifested in certain psychological conditions through symptoms and chronic emotional malaise. The emotional and psychological symptomatology presented by torture victims may also be found under other circumstances. People who suffer other tragedies, such as sudden deaths in the family and natural disasters like hurricanes or earthquakes that produce material damage and losses, have similar symptoms. That is why a clinical evaluation must begin with a differentiated diagnosis, which eliminates other causes that might be considered responsible for the symptoms presented by the victim (Rogers, 1995). The history and narration of the events thus take on a very important role in the establishment of such a diagnosis.

When speaking of the torture, the victim reacts emotionally with respect to recollections. Such reactions may be detected in facial or oral expressions, both reaffirming the difficulty of talking about the experience, and in other non-verbal forms such as pauses, profound or uneven breathing. Not even a trained actor could reproduce those expressions with the precision and conviction of the victim. We have mentioned how the victim will also try to prevent reliving the suffering; therefore, emotions that flourish when the experience is retold may frequently be blocked. The victim narrates horrendous events coldly as if talking about something totally apart from the experience. Both reactions are legitimate and clinical capability is required to perceive and analyze them and provide an explanation regarding one or the other.

Another clue for evaluating credibility may be found in whatever the victim describes as emotional malaise and suffering. The victim refers to malaise with words that coincide with the descriptions of symptoms found in textbooks on the subject. It may be said without risk of being wrong that victims are not sufficiently familiar with psychological or psychiatric literature to know what symptoms to report in order to make their narration of torture more credible. The descriptions of what they experienced are generally authentic. It is difficult to fake. It is usually not common that the victim exaggerates or over-dramatizes the symptoms, trying to impress the interviewer. Nevertheless, the latter should be attentive because the victim might in fact be exaggerating. Caution is recommended at this point since there are cultural, temperamental or personality differences that affect the way in which pain and suffering are expressed (Deutsch, 2002).

The victim is usually *consistent* during the different moments of speaking about the experience. Some gaps may arise in recalling the facts or difficulties in narrating them chronologically; some details may have been forgotten, but what is remembered and how it is remembered are always narrated in the same way, that is, consistently. Nevertheless, as stated, the difficulties that the memory encounters in narrating the trauma should not be forgotten.

These are some of the elements to be used for exploring and evaluating credibility –some clues to the veracity in the narration of the victim’s experience. How those clues are discovered and evaluated is beyond the purpose of this chapter. It must be pointed out, however, that the advice of a professional in the field of psychology is fundamental for evaluating credibility in a judicial process.

Torture: rehabilitation and reparation

Torture is ultimately an activity that is planned and intentional. It is a ferocious attack on a person’s integrity, mainly used to cause humiliation and to destroy the person’s identity, will power, social, political or religious commitments and finally to induce weakness. Its objective is to destructure an individual’s personality and to send a message of terror to the entire population. Torture entails physical and emotional pain that requires professional intervention (Bustos, 1992).

There has been a proliferation of literature on psychotherapy for survivors of torture during the past few years, but there is still much to be developed. Some people reject the words “treatment” or “cure,” arguing that the survivor is not a sick person but someone who has normal reactions to an abnormal situation of human

rights violations. In spite of everything, the survivor presents symptoms that produce suffering and that situation must be resolved. The survivors are therefore at a juncture between human rights and the area of mental health. There is a possibility that they may go from being victims to being social actors who denounce the atrocities to which they have been subjected. Total reparation of the damage caused by torture is impossible and the experience cannot be erased. Nevertheless, the fact of entering the public forum through a judicial process has signified in many cases an option for finding the truth and for carrying out reparation strategies that will allow, insofar as possible, the reconstruction of a new project of life.

The torture survivor lost a large part of him/herself during torture and needs to recover what was intended to be taken away. The victim survives, albeit pained, weakened, deceived, frustrated and hopeless, at least temporarily. Those who have been fingered, detained and tortured endured it because they had the courage and the strength to fight for what they believed in and they must be allowed to feel as they did before. What must they do to achieve that? The survivors themselves have the answer and they are the ones who must look within themselves for the way that leads them to recover what has been lost.

The victim faces a challenge: remaining depressed, impotent and angry, which was how he/she was left, would be to admit the sought-after victory of the torturers. The victim is the one who has the task of recuperating his/her vitality and hope. The physical and mental health workers may help them to resolve the symptoms that impede that process, in addition to giving professional accompaniment to recover the strategies to construct a new project of life and to re-establish the social bonds that were lost as a consequence of the trauma. The survivors show an enormous capacity to recover, defined by the term “resilience.”

One must of course understand that what these professionals are offering is a framework of understanding, comprehension and acceptance that enables the victim to give a new meaning to the experience. This process may be initiated in a therapeutic relationship, but it is a task in which the community must assume a responsibility and a commitment. The individual relationship with these health workers is intertwined with the commitment of society to its victims, who need to give meaning to the experience and feel that their sacrifice was not in vain. This is a task that transcends the contribution of the health worker.

The victim also needs recognition in the area of justice. The clearest way of recognizing the sacrifice and the pain is to bring those who perpetrated the abuse to justice. That is a way of re-installing the values of society and of indicating who are the

criminals. The recognition of the suffering caused by the torturers and the fact that they assume their responsibility are part of the process of justice and recuperation. There is a healing component in the act of justice even if it cannot undo or reverse what has been done. But the mere recognition of what happened will open the way to a potential transformation of the victim. The act of listening to the torturer when he assumes responsibility for his deeds makes the victim feel empowered again.

These statements imply a consequence regarding the task of health workers. Their work will always be limited as long as it is carried out in a framework of impunity. That is why those who aid the victims of torture can do no less than fight for justice and for the end of impunity.

Istanbul Protocol

At the end of the 1990s, a group of professionals composed of doctors, psychologists, forensic doctors, human rights activists and jurists representing 40 organizations and institutions working in 15 countries, set out to draft a manual for the investigation and proper documentation of torture and other cruel, inhuman or degrading treatment. The task was supported by numerous human rights institutions, including the United Nations Voluntary Fund for Victims of Torture. The final document was drafted in Istanbul, Turkey, hence the manual was named the Istanbul Protocol.

One of the factors that prevents an effective protection against torture is impunity. Torturers are rarely brought to justice or punished for their crimes and seldom do victims receive reparations and compensation for their suffering. In this context, the Istanbul Protocol represents an indispensable tool with internationally accepted standards and procedures for the recognition and documentation of symptoms of torture so that they may be used as evidence in courts of law.

This manual is in the process of being corrected, improved and expanded. Under the coordination of the International Rehabilitation Council for Torture Victims of Copenhagen (IRCT), the second version of the Protocol includes the experiences acquired since the publication of the first version. It also includes countries that did not participate in the first phase and it seeks to promote its dissemination together with sharing the experiences of those who have used it. It is a collection of information on the topic of torture and it offers guidance on how to conduct an investigation and document the process. The Protocol has been digitalized and is on the UN human rights Web page (http://www.unhchr.ch/pdf/8istprot_spa.pdf).

Conclusion

Torture is a horrendous crime and, as a serious human rights violation, it is clearly prohibited. There has been throughout the world an awakening of conscience regarding this problem since World War II. Many organizations have been created to protect and promote human rights and to propitiate detection and early denunciation that permits a quick and timely intervention.

These are invaluable conquests for humanity. Regrettably, torture persists and new manifestations of it have appeared in the framework of the war against terrorism, racial tensions and political and social conflicts. Sadly, it also persists in the private sphere, in the intimacy of homes. Nevertheless, the number of instruments that are available to combat it is increasing every day and they are conducive to a more efficient prevention.

Torture is condemned by international humanitarian law and by the universal juridical conscience. "This is a definitive attainment of civilization, one that admits no regression," wrote Judge Cançado Trindade in his separate opinion in *Tibi v. Ecuador*. It is also an effort to construct a better world. As stated by Tatal Asad (1997), "The modern history of torture is not only a registry of the progressive prohibition of torture and other cruel, inhuman and degrading practices but also a more complex history of what it means to be truly *human*."

While torture is committed against individuals, it is really an aggression against the collective society. It is necessary to keep in mind that even if these cases are often found within the contexts of political repression, such as dictatorships and armed conflicts, some democracies of Latin America and other regions of the world have not fulfilled their role of guaranteeing the security and welfare of their citizens. Human rights violations have thus been committed under their aegis in contexts and spaces that are not clandestine, such as jails and detention centers.

The search for truth regarding the events, the judicial processes seeking recognition, responsibility and justice for the guilty are necessary so that the victims and their families might find themselves in environments where reparation is possible. These elements, as well as the recuperation of memory, allow the victim and society to confront the experience and the harm caused by a deed that can never truly be justified.

As mentioned, torture becomes an act that cannot be described since words are insufficient to relate the intensity of the trauma that was endured. It is fair to say that torture transcends the dimension of what is human and the limits of reason, which

must be considered by every professional who becomes involved in judicial processes with victims who are seeking justice. A clear idea of the magnitude of the facts will allow the legal and mental health professionals to carry out a more humane strategy and a real accompaniment for the sake of the welfare of the victim and the success of the judicial process.

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**Forced disappearance
as a political strategy of terror**

This article was written by Débora Munczek, a clinical psychologist who has specialized in treating the effects of violence and human rights violations and who has given expert psychological testimony before the Inter-American Court of Human Rights. It was later complemented by the contribution of Graciela Guilis, a psychoanalyst specializing in mental health and human rights who has worked with victims of torture, in collaboration with Gervasio Noailles, psychologist of the Mental Health Team of the Center for Legal and Social Studies (CELS) of Argentina. This article also contains contributions from the interdisciplinary team of the IIHR Project “Comprehensive Attention to Victims of Torture” as well as from the editors of this publication.

Introduction

A comparative analysis of recent Latin American political history would confirm that in recent decades the same strategies of domination, discipline and social control have been applied in different countries of the region. The fact that contemporaneous dictatorships had the goal of imposing similar political and economic models, as well as the fact that a large number of the region's dictators were trained in the School of the Americas,¹ is an indication that the repressive policies, far from being a mere coincidence, were planned. The context of this plan was the Cold War that for decades after World War II existed between the former Soviet Union and the Allies.

“Operation Condor”² in the Southern Cone is a clear example of international coordination among the dictatorships that had as its goal the imposition of economic policies that today are classified as neo-liberal, using State terrorism to dismantle all opposition to that model. In order to succeed, the dictatorships had no problem killing thousands of men, women and children, as well as violating every human right achieved during the past century. Forced disappearance appeared in this setting as a systematic political strategy developed by the totalitarian regimes of different countries in the region.

This article seeks to contribute elements from a multidisciplinary perspective, psychological and legal, that would enable an analysis and an understanding of the forced disappearance of persons. In order to achieve this, an attempt will be made to explain the following:

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- 1 The School of the Americas operated between 1946 and 1984 in Panama as a training and indoctrination center for the military and the police of 23 Latin American countries.
 - 2 Additional information on “Plan Condor” may be found *infra*.

- Main characteristics of forced disappearance as a political strategy of the State.
- Historical-political conditions that have enabled its appearance, development and systematization to the point of its becoming highly technical.
- Reasons why, for years, it was one of the main tools to terrorize and frighten entire populations.
- Psychosocial effects of its systematic use on individuals affected directly or indirectly.
- Ways in which the strategy continues to be implemented.
- Importance and difficulties that psycho-juridical strategies of reparation face.

A historical and psycho-juridical approach will be used to explain the aforementioned. Cases of forced disappearance before the Inter-American Court of Human Rights will be presented and the pertinent jurisprudence will be analyzed to demonstrate the complexity of the legal and psychosocial problems.

Forced disappearance

Definition

We begin by defining the phenomenon of forced disappearance. There follows the definitions of several international and non-governmental organizations. For example, the International Convention for the Protection of All Persons from Enforced Disappearance of the United Nations adopted in 2006, in its Article 2 states:

For the purposes of this Convention, “enforced disappearance” is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

This definition –the most recent– had as an important source the definition in the Rome Statute of the International Criminal Court, for which the crime of forced disappearance of persons is defined as:

...the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

There already existed a definition in a UN document; in 1992 the General Assembly approved the Declaration on the Protection of all Persons from Enforced Disappearance, which in “considering that enforced disappearance undermines the deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms, and that the systematic practice of such acts is of the nature of a crime against humanity,” describes disappearance as the situation in which

persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.

For its part, Article II of the Inter-American Convention on Enforced Disappearance of Persons (Organization of American States, 1994) states that:

For the purposes of this Convention, forced disappearance is considered to be the act of depriving a person or persons of his, or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.

It is important to bear in mind that the above definition was a response to the extraordinary decision of the Inter-American Court of Human Rights in its first contentious cases (Velásquez Rodríguez, 1988, paras. 149-158; Godínez Cruz, 1989, paras. 157-167), where in the absence of a treaty or a declaration on the subject, very clearly developing its historical role the Court constructed from the American Convention on Human Rights, an instrument that recognizes rights generally, a definition of the phenomenon of forced disappearance of persons that may be summarized as follows:

A systematic and repeated phenomenon that is used not only to cause the momentary or permanent disappearance of certain individuals, but also a general state of anguish, insecurity and fear; it is a complex form of violation of human rights and is a multiple and continuous violation of many rights; in this sense, it is an arbitrary deprivation of liberty and an infringement of the detainee's right to be taken without delay before a judge and to invoke the appropriate procedures to review the legality of the arrest; also the prolonged isolation and deprivation of communication to which the victim is subjected are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his physical integrity, including all types of indignities, torture and other cruel, inhuman or degrading treatment and that often involves secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible, which is a flagrant violation of the right to life. It is a crime against humanity.

To complement the above, the Asociación de Familiares de Detenidos Desaparecidos of Colombia (ASFADDES) defines forced disappearance as

concealing the whereabouts of a political opponent or dissident (whose fate remains unknown to family members, friends and supporters) for a specific purpose: to repress, prevent and delay his or her opposition. This crime is committed by persons in government positions, public agents or organized groups of private citizens supported by governmental bodies.

According to the Federación de Familiares de Detenidos Desaparecidos de América Latina (FEDEFAM), forced disappearance

is an abduction by State agents or organized groups of private citizens acting with their support or tolerance, in which the victim “disappears.” The authorities do not accept any responsibility whatsoever for the act and do not account for the victim. Petitions for habeas corpus or for a constitutional guarantee for the protection of rights—legal mechanisms designed to ensure the freedom and integrity of the citizen—are ineffective and the perpetrators at all times attempt to remain anonymous.

Some publications of Amnesty International indicate that its definition alludes to a military or paramilitary strategy approved by the government, designed to abduct, and clandestinely, imprison, torture and, in the majority of cases, murder individuals regarded as opponents of the regime, refusing at the same time to accept the existence of these abductions, imprisonments or murders, as well as their corresponding responsibility (Amnesty International, 1994).

International norms now consider forced disappearance to be a crime against humanity, which means that it is not subject to a statute of limitations. It is also a continuous crime: the crime endures as long as the person is disappeared.

The word “disappeared” alludes to an imprecise figure and setting, it is a *nowhere* between life and death. J.R. Videla, *de facto* President of Argentina, in 1966 maliciously defined the figure of the disappeared person by stating: “They are neither alive nor dead, they are disappeared.”

Characteristics and purpose

Forced disappearance is a political crime with defined characteristics. In the first place, the victim is abducted and deprived of his freedom. State agents such as police or soldiers, who later deny their actions, carry out the abduction and the deprivation of liberty; on other occasions they insist that the victim was released or escaped. They are normally members of intelligence services or security forces, often dressed as civilians, who refuse to identify themselves. They may also be paramilitary agents, members of groups linked to the authorities.

Secondly, there is a systematic lack of information, for no information is given on the whereabouts and fate of the victim; the authorities deny that they are holding the victim. Victims are almost never recorded as being detained (Amnesty International, 1994).

Similarly, in a forced disappearance the victim is reduced to an inhuman condition in which he/she is deprived of personhood through physical and

psychological mistreatment such as shackles, gags, blindfolds, simulated executions and other forms of torture, including sexual abuse.

The phenomenon of forced disappearance represents physical, psychological and social violence against the victim, "...in removing the victim from ordinary life and transferring him/her to a clandestine world in which arbitrariness and crime rule and where the laws of human and social coexistence appear never to have existed" (Molina Theissen, 1998, p. 12). As a matter of fact, from a legal point of view forced disappearance has the purpose of removing the victim from the protection of the law, violating his/her human rights.

Different types of forced disappearance

Different modalities of forced disappearance may be identified according to the way perpetrators act and to the consequences for victims.

- Persons who have definitively disappeared are those about whom, after being abducted, no information on their whereabouts is ever received
- Persons who have temporarily disappeared are those who are not recorded in official criminal records, but who thanks to the investigations of their family members, lawyers and human rights activists are found alive and are freed.
- Murdered and identified disappeared persons are those who, after being abducted, are killed. In some cases, their mutilated bodies are abandoned as means to frighten the rest of the community. In other cases, they are buried in common graves or clandestine cemeteries and later identified, most often as a result of investigations performed by teams of forensic anthropologists.
- Murdered and unidentified disappeared persons are those who have been murdered after their abduction, but their bodies have not been identified because they were buried.
- Unidentified surviving disappeared persons. This group includes children of disappeared persons, abducted with their parents or born in captivity and later given up for adoption, mostly registered with false identities and adopted illegally; there are indications that these children have survived, but their identities are

unknown. Organizations of families of disappeared persons, established in several Latin American countries, have occasionally been able to discover the whereabouts of these surviving children and establish contact with them. Some democratic governments have offered support by enacting laws and by creating banks of genetic information (for example in Argentina, Law No. 23511). When the identity of a child is suspicious, banks of genetic data are used to cross-check data with that in the possession of relatives searching for them. Science is thus able to provide true information so that these children can be reunited with their families of origin through the intervention of the courts. In Argentina, for example, stealing the identity and illegal appropriation of minors has been declared a non-prescriptive crime.

General characteristics of the method of forced disappearance

Organizational methods used by the perpetrators

In analyzing the main characteristics of forced disappearance and based on information provided by Amnesty International (1983), Molina Theissen (1998) describes two different organizational methods used in forced disappearances, depending on whether paramilitary groups have been used. In Guatemala and Honduras, for example, the army incorporated paramilitary groups that operated outside the law but within networks of national security. In contrast, forced disappearance in Argentina was a State policy, under the complete control of the armed forces. Death squads and other paramilitary groups were used to abduct and disappear individuals, especially during the period prior to the military coup d'état of 1976.

Molina Theissen states that in both cases, with or without the integration of paramilitary groups into the armed forces, the practice of forced disappearance has several general characteristics:

- Disappearances are planned and carried out by military intelligence services, with the participation of the armed forces high command and the State security forces.
- Disappearance is a clandestine practice that uses a wide-spread logistics apparatus comprised of operative groups, detention centers, vehicles, communication

networks, weapons and doctors and psychiatrists who participate in the interrogations.

The practice is implemented simultaneously with strategies of disinformation to give false and distorted data to justify impunity and to foster acceptance of the method among the population.

Disappearance, torture and summary executions

A 1994 investigation by Amnesty International on disappearances and summary executions around the world shows that disappearance, torture and summary executions are frequently links in a chain. The victim is arrested or abducted, tortured to obtain information and then most often executed. In some cases, the body is left in a public place and it is impossible to identify the perpetrators and the circumstances of the act. In other cases, bodies are mutilated until they are impossible to recognize, buried in common graves or thrown in the ocean, as happened in the “flights of death” in Argentina. Under these circumstances, the fate and whereabouts of the victim remain unknown. “Disappearance covers up the summary execution and perpetuates the state of disappearance.... It may thus be possible for perpetrators to eliminate the disappeared persons, but for family members, disappearance has no end” (Amnesty International, 1994, p. 85).

Clandestinity and impunity

Forced disappearance is an aspect of State terrorism and the doctrine of national security that is utilized to increase fear, intimidate and cause uncertainty in the population; also to dismantle and immobilize not only the political opposition but also, and especially, organized civil society.

Managing information is a fundamental element in this strategy. Since disappearances are illegal acts and the purpose is to “disappear” dissidents and to increase fear, those responsible for these actions—who plan, order, execute orders and collaborate in different forms—go to great efforts to conceal them. Repressive forces thus usually act secretly and clandestinely: they carry out raids in the middle of the night, use armed and non-identifiable elements and vehicles without license plates, they make death threats to anyone who might have been a witness to an abduction or other act of violence and they take the abducted persons to secret detention centers. While repressive forces often state that the disappearance in reality is due to

confrontations between armed groups, it is only on few occasions that victims are able to defend themselves.

The clandestine nature of the process, as described in the *Nach und Nebel*, (Night and Fog) order,³ covers the victim's tracks, confusing and neutralizing the efforts of those who attempt to fight or denounce these situations, thus guaranteeing impunity. "Disappearances not only seek to erase the tracks of the perpetrators, but also to make it impossible that justice be done" (ASFADDES, 2005).

This clandestinity has several advantages for the terrorist State. Authorities not only deny the crime, but they lie regarding the victim's behavior and whereabouts. They attempt to create in the minds of the victim's family and friends, as well as society, the idea that there are no disappeared persons and that it is simply an invention of political opponents; that the disappeared are not only not in the hands of the police or the armed forces but that they must be members or victims of the guerrilla or irresponsible persons who have abandoned their families; that they are in hiding or in a Socialist country or working as "wetbacks" in the United States (Montes *et al.*, 1999; Munczek, 1996), therefore tears should not be shed for them because they do not deserve them. Families are led to think that they should be ashamed of this problematic member of their family and that they should keep silent about his/her absence.

Contrarily and paradoxically, on the one hand the State insinuates that missing persons have left on their own account and, on the other, it asks society to accept the disappearance of these persons as a fact for which no one can be made responsible.

Denying the existence of abducted persons is a form of guaranteeing the impunity of repressive forces and, at the same time, it is a strategy used to generate fear and distrust among civilians. An environment is created in which it is dangerous to be related to someone who has a missing relative, where fear is generalized and privatized, leading to a fragmented society and to isolated individuals, subject to and overcome by pain and bitterness (Munczek, 1996).

Similarities between forced disappearance and other forms of political repression

Political repression affects society as a whole, but those who are most affected are the most vulnerable groups such as youth and the poor, as well as anyone opposing the regime.

3 Other aspects of "Night and Fog" may be found *infra*.

Agger and Jensen (1996), based on a 1989 CODEPU study, describe two types of State violence and repression: indirect and direct repression. Indirect repression is being fired from a job, losing the house, health and food, disruption of social, political and labor organizations, censorship, distortion of facts and systematic manipulation of information, limitations to or the loss of the right to due process, partial or total loss of the collective freedom of speech that is sometimes imposed under the pretense of legality and that other times is due to self-censorship caused by fear (Agger and Jensen, 1996, pp. 219-220).

Direct repression refers to detention, abduction, torture, disappearance, exile, searches, isolation, imprisonment and every type of intimidation such as threats and persecutions.

Persons who have suffered direct or indirect repression, or who have family members who have suffered the consequences of State violence, must often face a dual suffering. First the experience itself or suffering the loss and then the repeated denial of the events, in addition to the segregation, social marginalizing and isolation imposed upon victims and their families (Fariña, 1987).

When a natural or technological catastrophe occurs, social support and rituals lead to mourning the dead, but in the case of a political catastrophe, such as disappearances, torture, extra-judicial executions and other types of political violence, the denial of these events by society compels family members to “privatize” their loss, which causes feelings of stigmatization, shame and confusion. Nevertheless, when an individual is faced with a reality that denies the existence of the individual and family trauma and blames the victim for what has happened, mourning and handling the consequences of the experience become very difficult. Suffering, which must be considered as part of a healthy process when facing the loss of a loved one, sets in as a feeling from which the victims cannot detach themselves. Victims of State terrorism are thus re-victimized by a society that does not accompany and support the mourning required to get over the loss. Suffering becomes a state instead of a process (Neumann, Monreal and Macchiavello, 1990).

State terrorism and psychological war

General characteristics

State terrorism has been mentioned, when discussing the subject of clandestinity, as one of the characteristics of the methodology of forced disappearance. Further

comments are necessary on this concept, given the extended –and sometimes confusing– use that has been given to *terrorism* after the terrorist attacks of September 11, 2001 in the United States.

State terrorism is mentioned when terror is the result of acts by forces of the State: it includes the use of threats as well as the use of violence by the State against individuals, groups or sectors of the population that are regarded as opponents or dissidents, as well as against the population in general. It also refers to physical, psychological and social methods used to reinforce State control. Its purpose is to silence any opposition to the policies imposed by the government, generally those of a social, economic or political *de facto* nature.

It is important to point out that State violence is not the same as a situation of war. In the opinion of Ludmila da Silva Catela, there is a “fundamental difference between persons who have disappeared and those who have died in wars, where the State usually assumes the ‘obligation’ of informing families and the population in general of the fate of those who ‘sacrificed’ themselves in and for the country” (da Silva Catela, 2001, p. 124). On the other hand, war is the confrontation of two regular armies under international laws, which, if broken, could result in trials in international courts. In internal armed conflicts, as in some Central American countries, in addition to the conflict and the resulting deaths, the phenomenon of forced disappearance has gone hand-in-hand with the repression of civilians, especially academics, professionals, laborers and peasants, usually linked to opposition and/or revolutionary groups having ideological-political interests.

One of the methods to achieve State terrorism is through the use of psychological strategies that include the introduction of fear and silence by creating and distributing lists of individuals marked for death, as well as by forced disappearances and the discovery of mutilated bodies and clandestine graves, so that these events are present in the minds of the collectivity as a warning of the possible consequences of opposing the repression. The use of terrorist methods “within the logic of ‘preventive war,’ which removes possible internal enemies from society” is combined with more subtle methods. Systematic campaigns of ideological control utilize propaganda and the manipulation of social awareness, creating disinformation through the mass media (Montes *et al.*, 1999). This psychological methodology aims to obtain the support of the population for the commission of the abuses and the dismantling of every type of organized opposition.

Dunayevich (1986) analyzes the demagogic and authoritarian methods used by the Argentine dictatorships to suppress independent and critical thinking. He believes that the authoritarian discourse of the national security doctrine is “prescriptive, imperative and valorative.” These dictatorial governments try to convince the population that they are the only legitimate representatives of the people and that they are defending the internal security of the country, preventing chaos. They are able to achieve this by using hypnotizing, repetitive, tautological and distorted messages and slogans, omitting and falsifying information in the media.

Demagogical propaganda is supported by words and phrases such as “we,” “the common interest” or “the country’s heroes,” as well as by popular phrases and slogans that reach the people and avoid confronting the deep differences existing between the interests of the repressive State and the needs of the people. The government defines itself as the representative of order, country and unity, and of everything that represents good and God. Brutal actions by security forces are legitimized, as in Argentina, when they were given names such as “Operation Liberty” or “Operation Independence.”

The State apparatus attributes to itself everything that is good, decent and positive; everything that is negative, destructive and threatening is attributed to its critics and opponents, whether real or potential. Any questioning of the government leads to being labeled as “foreigner,” someone who is dominated by foreign influences, a conspirator, an enemy, without morals and ethics, someone who is dehumanized (Kordon and Edelman, 1986). Any ideology other than the official one is considered unpatriotic and national identity is defined according to political position. Anyone who questions, criticizes or opposes the government becomes unpatriotic, which justifies imprisonment, disappearance and murder because the individual is a threat to society (Dunayevich, 1986).

Distorted and transformed aggression

Zukerfeld (1986) states that the population undergoes a process of identification with the terrorist State, partially due to a transformation, distortion and projection of the aggression. Resorting to a pre-existing feeling of guilt in every individual, repressors try to avoid identifying the State as the aggressor by arguing that they are responding to an aggression.

At a certain level of thought, this distortion tends to be accepted by the population, even when it is the true victim. Once the State has been able to redefine

itself as the offended party, it obtains justification for every violent action, qualifying them as acts of self-defense, thus acquiring the capacity to act protected by impunity. The lack of a social response to the victims of State aggression is thus a product not only of a feeling of impotency in the face of brutal force or of a feeling of guilt, but also because the capacity to respond has been weakened by cognitive and perceptive distortions, carefully and fully planned.

Another distorting message that dictatorships have used consists of identifying political dissidence as a form of social deviation, as a psychological pathology incapable of adapting to social reality. In Argentina, from 1974 to 1983, public opinion was manipulated to the point of implanting the belief that all opposition to the government was indicative of a psychological disturbance. One of the goals of these campaigns was to discourage the families of the thousands of disappeared persons from publicly demanding their return. By means of messages such as “How did you bring up your children?” and “Do you know where your children are right now?” it was intended to translate the responsibility for repressive actions to the abducted persons themselves, as well as to their families. These campaigns presented the message that the political activities of these persons, as well as their later murder or disappearance, occurred because they were not brought up correctly by the family or because of a lack of parental discipline (Kordon and Edelman, 1986; Riquelme, 1990). It was also intended that the population be torn by a false dichotomy between good and evil: the good parents who had good children and the bad parents who got what they deserved. Therefore, those who had not been affected by repression felt relieved, identified with the repressors and felt free of guilt with respect to what might have happened to their fellow citizens. This also operated as a type of social justification in some sectors regarding the fate of the disappeared.

Not only the disappeared persons, but also their families, were accused of being psychologically disturbed. One of the groups that was subjected to special campaigns to identify political opposition as a psychological disturbance was the Madres de la Plaza de Mayo. This group, comprised of families of disappeared Argentines, held a weekly protest march in front of the House of Government; these women were called the Crazy Women of the Plaza de Mayo. “Paradoxically, the crazy person is one who denounces contradictory, strange and veiled messages, one who does not adhere to the social denial” (Kordon and Edelman 1986, p. 35).

Effects of forced disappearance

Psychosocial effects

“*Dead*” without a body or grave would be the figure that is closest to the concept of *disappeared*. Several considerations are derived from this:

- Throughout the history of humanity, burial rites have always been a fundamental part of the culture of every society. Is it possible to assume that a member of the family is dead, if there is no body to prove it, without being able to undergo a grieving process and without community practices (condolences, rites of passage, etc.)?
- How can a family member of the disappeared person integrate the notion of disappeared into his/her symbolic universe?
- Without legal sanctions for forced disappearance, what is the role of the law as the regulator of social relationships and as the organizer of the psyche at the individual level?

Military dictatorships in the hemisphere, by means of forced disappearances, seek to produce, collectively and individually, the combined effect of terror, paralysis and consensus in order to guarantee success of their projects. This effect has dreadful consequences on the social dynamic as well as on the psyche of each family member of the missing person. From the perspective of the functioning of the psyche, nothing is more devastating than living in eternal uncertainty regarding the fate of a loved one. Painful certainty is more bearable than the de-structuring caused by the eternal waiting.

Families of the disappeared therefore needed to find alternate ways to mitigate the pain produced by the lack of corpses and of rituals, so they created ceremonies that replaced the traditional manner in which loved ones were mourned. According to da Silva Catela:

Families who are faced with a disappearance, due to the nebulous meaning of the word “disappeared,” decry the lack of a corpse, the difficulty of mourning, the need for a place to weep for the dead, of a space and time to remember, of memory

and justice. At the same time, they wish to maintain the word “disappeared” as an efficient symbol, to be used as a referent for communication, joining the past with the present, and for transmitting memories to the future; in other words, to construct an identity. This ambiguous game offers a means to channel pain and it creates alternate mourning rites and familiar forms of appropriation, rejection and participation.... Beyond the frontiers of intimacy, the brutality of what was suffered is progressively transformed into group actions that are able to impact collective memories. Thus, the continuous presence of “family members” resulted in the establishment of rites and commemorations that, when reproduced, leave indelible marks on the urban cultural scenario: monuments, plaques, museums (da Silva Catela, 2001, pp. 158-159).

These forms of physical and mental violation undermine the relationship that individuals have with the State as the guarantor and protector of their rights. When the State does not fulfill its role, the social contract that is vital for coexistence in a democracy is broken; without it, individuals have no legal protection and therefore have no psychological protection. The role of the State is inalienable because it is the authority that must act as guarantor of the social contract between citizens and the State institutions.

We may think of the “social contract” in two dimensions:

- Symbolic: ensures the citizens that the State, as the “super authority” is a third party that governs the relationships of the parties to the contract.
- Formal: implies that the rights and duties of individuals are established by legal and constitutional norms.

It is of the utmost importance that both dimensions are fully operational for the social contract to be effective. When the State or justice does not fulfill its role, the conditions for the grief and pain caused by the disappearance are perpetuated, causing them to be constantly present in their lives.

Families of victims of political repression encounter serious difficulties to reconstruct their psychological and family story line. It is common to hear that “family life was never the same” after the disappearance. Their identity and their personal and family projects are affected; the meaning of life suffers a drastic change that makes their existence melancholy. The family group as a whole is caught up in

unfortunate circumstances; the psychic aspect is deprived of the notion of past and future; where a memory should exist, there is only senseless emptiness, a death and the legal impunity that often accompanies the injustice of the death.

When confronting the experience of extreme institutional violence, as is the case of the forced disappearance of a family member, suffering and vulnerability inevitably follow, producing severe damage to the psyche of the person living the experience. The entire social fabric is also affected, producing fragmentation, loss of ideals and projects and the rupture of ties of solidarity.

In addition, the ideological campaign will have had, and will continue to have, destructive and paralyzing effects on the victim's family. In raising suspicions about the missing person, he/she takes the place of aggressor and thus loses every right, even the most basic; the purpose is to justify every repressive action against the victim and the family members find that the social legitimacy of their demands faces serious obstacles. In Argentina, spokespersons of the regime, in an attempt to discredit the demand of the victims' families, repeatedly asked why the Madres de la Plaza de Mayo had not been interested in what their children were doing. Family members were thus made responsible for not having looked after their children and were accused of whatever happened to them, thus justifying the actions of State forces. The guilt of being responsible for the disappearance is thus added to the loss of the loved one.

Legal effects

As stated, abductions and forced disappearances enable those who perpetrate them to act outside the law since they have full control over the victims. The disappearance of bodies has the purpose of erasing all traces to insure impunity for those responsible of the human rights violations. Destruction or remodeling of clandestine detention camps has similar objectives.

In the absence of material proof –the tortured body or the corpse– there is the option of circumstantial evidence, evaluated in the context of other evidentiary elements and from a perspective of healthy criticism (*sana crítica*). This type of evidence is especially important in cases of claims of forced disappearance, because every element that would lead to proving the abduction, torture or final destination of the victims has been eliminated. Nevertheless, this was the case until teams of forensic anthropologists in different countries were able to identify bodies, which were usually found in common graves. The findings of this valuable teamwork made

it possible in several cases to reconstruct what happened to the victims and, at the same time, served as testimonial proof in the trials to find the truth regarding what occurred in several countries in the region.

Carlo Ginsburg in *Mitos, Emblemas e Indicios* presented the circumstantial evidence paradigm as a theoretical construct to prove his point that testimonies may be considered part of the documentary evidence in order to reconstruct the story.

In this regard, one of the members of CONADEP (National Commission on Disappearance of Persons) in Argentina stated the following:

We received the accusations and then organized them in order to establish relationships among them and to extract all the information that could contribute to the investigation. Our job was not to verify if the accusations were true or not. Those of us who worked on them, for example, at the Permanent Assembly of Human Rights received, as of March 1977, thousands of accusations, so we were acquainted with many of them and also with the accusers. It is a matter of persistence to find the truth. It is very difficult to doubt people who travel from all over and who for eight or nine years repeat the same facts, without contradictions, and who present witnesses. It is also impossible to believe that people from different social conditions, without anything in common, not even belonging to the same political party, and coming from Ushuaia, Jujuy or Buenos Aires could agree to speak using the same methodology (*Diario del Juicio*, Number 1, 1985, III).

The paradigm of circumstantial evidence prevents the lack of concrete evidence from being an obstacle to reconstructing the violations. This allows, depending on the circumstances, the lack of the corpse to being evidence to incriminate those responsible for human rights violations (it must be remembered, as stated, that the deceit surrounding acts of forced disappearance sometimes implies concealing all the evidence, including the body; it would be inappropriate for justice to try to prove what does not exist). The paradigm would thus become the theoretical support of the legal strategy that permits annulling the effect of impunity that forced disappearance as a strategy of terror seeks.

The practice of forced disappearance

Background information on the universal level

As of the mid-1900s a method of political persecution that was hitherto unknown and that is characteristic of totalitarian regimes is systematized: the forced

disappearance of persons and, in the majority of cases, the subsequent murder of those individuals.

It is possible that phenomena similar to forced disappearance have taken place since ancient times during wars and invasions. In this respect, the emotional scene in one of the earliest pieces of world literature, *The Iliad*, is brought to mind when King Priam himself, father of the Trojan hero Hector, anonymously crawls across to the enemy camp to beg Achilles to return his son's body.

In more recent times, examples may be found in the genocide of the Armenian people during World War I. Between 1915 and 1916, the Ottoman Empire implemented the programmed murder of over one million Armenians, including murders, disappearances and exile. During the war of independence in Algeria, from 1954 to 1962, the French Army employed these same practices of disappearance, torture and extra-judicial executions. The number of people who disappeared due to State violence increased to unimaginable levels with the institutionalization and perfection of the "production of death." During the Nazi genocide, by means of concentration camps,⁴ as well as due to the fierce repression triggered by Stalin, the sinister modality of systematic extermination was instituted in several countries of the world. With the component of forced disappearance, these massacres went beyond trying to erase every trace; memory itself also disappeared (ASFADDES, 2004).

The strategy of making opponents "disappear" and terrorizing people finds its most precise antecedent in Nazi practices, described in the official documents of Field Marshall Keitel, which reveal the origin and nature of this ominous strategy. In December 1941, Field Marshal Keitel, Commander in Chief of the Central Command of the German Army, issued the first of a series of guidelines that implemented Hitler's *Nach und Nebel* (Night and Fog) decree. "The decree introduces a fundamental innovation," wrote Keitel, stating that offenses against the German State in occupied countries would be tried in local military courts, but only in those cases in which culpability without extenuating circumstances could be established and in which the death sentence could be pronounced within eight days following the prisoner's arrest.

In those cases in which culpability could not be expeditiously established—which happened in most cases—the application of this "death penalty" had to be hidden "at night and in the fog." These secret moves could achieve the "necessary dissuasive

4 There were more than 450 concentration camps in Argentina.

effect” because “prisoners will disappear without a trace...no information will be given regarding their whereabouts or fate.” Efficient intimidation, concluded Keitel, could be obtained only by means of this combined strategy of local executions and secret transfers.

The culpability of these “criminals” could not be demonstrated; that the victims were secretly deported and that the “transfer” was a euphemism for the execution were truths barely disguised by the guidelines of Keitel.

What prevailed in this type of methodology was, on the one hand, the intent to punish the suspect with the same punishment as if he/she were guilty, in other words, the death penalty and, on the other hand, implement it so mysteriously so that by making these victims disappear, sufficient terror would result to paralyze the occupied country’s opposition (Graziano, 1992). Another reason to use this method was to avoid opponents from being turned into martyrs by their own people if they were tried and executed. Nearly seven thousand people were captured, secretly moved and murdered using this procedure (Molina Theissen, 1998).

Forced disappearance at the present time

During the last decades of the past century, forced disappearance became a global phenomenon, a practice carried out by various dictatorships, authoritarian regimes and occupation forces in different parts of the world. In the January 21, 2004 Report of the Working Group on Forced or Involuntary Disappearances, established by the UN Commission of Human Rights, new cases of forced disappearances were reported in 22 countries. Human rights bodies have denounced a minimum of 7,000 “disappeared” persons in Algeria in 2003 (Human Rights Watch, 2003); many tortured, murdered and disappeared persons by Russian forces in the “dirty war” in Chechnya (Human Rights Watch, 2001) and hundreds of disappeared persons in Nepal (Amnesty International, 2004; Human Rights Watch, 2004). The Swiss delegation to the Convention of Enforced Disappearances of the International Service for Human Rights declared that there were 50,000 forced disappearances around the world during the 1990s (International Service for Human Rights, 2000).

When reference is now made to the strategy of forced disappearance, it is impossible to avoid mentioning the numerous cases of persons who have been illegally abducted and detained in the prison of Guantánamo –a United States naval base in Eastern Cuba– and Abu Ghraib, Iraq. According to the report of Amnesty International,

Over 85% of the individuals imprisoned at Guantánamo Bay were not captured on the battlefield by United States forces, but by the Afghan Northern Alliance and in Pakistan, when rewards of up to \$5,000 were paid for every “terrorist” delivered to the United States. On several occasions, the only basis for keeping these individuals in jail as “enemy combatants” was the scant and little-reliable evidence presented by their captors (Amnesty International, 2006, pp. 6-7).

Amnesty International states that the clandestine nature of the “war against terror” makes it impossible to establish “the number of persons who have been arbitrarily captured and held prisoner or who have been victims of forced disappearance, torture and mistreatment or extra-judicial execution” (Amnesty International, 2006, p. 4).

The case of an Australian citizen, Mamdouh Habib, illustrates how in the war against terror there exist practices condemned by international norms, such as forced disappearance. The report of Amnesty International describes the manner in which Habib was captured on October 5, 2001 in Pakistan by several men dressed as civilians as he was riding a bus.

Habib was taken –together with two Germans who were captured with him– in handcuffs and blindfolded to a house where the three remained for three days. They were later moved to a detention center. Twelve days later Habib was flown to Islamabad, where he was tortured and beaten. Two weeks later he was shackled, blindfolded and handed to U.S. officials who removed his clothes, gave him a sedative and flew him to Egypt. “In a prison in Cairo he was hung from hooks in the ceiling, he was given electric shocks and threatened that he could be electrocuted. After six months he was taken to Afghanistan and later to Guantánamo. He was freed without having been charged in January 2005” (Amnesty International, 2006, p. 4).

Forced disappearance in Latin America

According to data of Amnesty International (2004) and of other human rights organizations, some 90,000 persons “disappeared” between 1966 and 1986 in countries such as Guatemala, El Salvador, Honduras, Mexico, Colombia, Peru, Bolivia, Brazil, Chile, Argentina, Uruguay and Haiti. This number includes children abducted with their parents and babies born while their mothers were detained, in countries such as Argentina, El Salvador, Guatemala and Uruguay (AI, 2004). The UN Working Group on Forced and Involuntary Disappearances mentions

Argentina, Bolivia, Brazil, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Paraguay, Peru, United States, Uruguay and Venezuela among the countries where cases of disappearances were reported between 1980 and 2003 (UN, 2004).

Although this practice has decreased in the hemisphere, there are still documented cases in several Latin American countries such as Mexico, Colombia and Peru. There is also a troubling tendency in some countries (for example, Brazil and Honduras) to make greater use of this practice on alleged common delinquents, gang members, “maras” (gangs of tattooed teens and young men) and street children than against political opponents (Dalton, 2005).

The fact that the practice of forced disappearance continues in democratic countries demonstrates that these methods have not yet been eradicated from the political culture of some countries. The difference between current practices of forced disappearance in democratic regimes in the region and those that took place under totalitarian regimes during past decades is that in the former they are applied to marginal populations who are homeless and jobless, in other words, to those excluded from the system and not to political opponents.

In the recent past, the Latin American military, following in the steps of the Nazis in Germany, began to practice forced disappearance as a repressive method. At the time, they “believed they had discovered the perfect crime: in their inhuman logic, there are no victims, therefore there are no victims and no crimes” (Molina Theissen, 1998). The ideological framework that served to justify the use of forced disappearance against “enemies of the State” goes back to 1947, at the beginning of the Cold War, when countries in the Western Hemisphere signed the Treaty of Rio de Janeiro. This was an agreement of mutual defense against “external threats,” concretely against the Socialist block and its followers in different countries in the Americas (Schoultz, 1987).

Thus, the practice of forced disappearance in the region emerged in the mid-1960s, when the Guatemalan military began to use it to “cleanse” rural areas where the guerrilla had followers among the peasants. There were over 45,000 disappearances and close to 150,000 murders (Molina Theissen, 1998) and more than 450 indigenous communities were leveled during the decades of State terrorism in Guatemala (Carmack, 1988). Haiti is also among the first American countries to used forced disappearance systematically.

In 1964, during the military coup in Brazil, the armed forces perfected not only the methods for making people disappear in urban areas, but also perfected the sophisticated forms of coercion and torture required to extract information from detainees. During the 1970s, the method was extended to Chile, Uruguay, Argentina, Colombia, El Salvador, Peru, Honduras, Bolivia and Mexico. In Argentina, from 1974 to 1983, forced disappearance became the preferred method for silencing political opponents. At the time, political repression almost exclusively used illegal and violent methods, causing a profound rupture of the values of coexistence and of the civic institutions that previously protected citizens from the abuse of State power (Corradi *et al.*, 1992; Molina Theissen, 1998).

The collaboration between the military and security forces of different countries was a key factor in this process, among them the Consejo de Defensa Centroamericana (CONDECA), which grouped the high commands of the Central American armies (Isacson, 1997). Another example was Operation Condor, a secret agreement among the South American military forces by which they shared information on political refugees living in exile in neighboring countries and developed joint operations directed against citizens living abroad (Kornbluh, 1998).

It is important to mention that military regimes were not the only ones to use forced disappearance as a method for social and political control. Several constitutionally elected governments have also committed these crimes against humanity, among them Mexico, Colombia and Peru. In some cases, as in Guatemala, El Salvador and Honduras, since the 1980s the State has had a formal structure of democratic and legal institutions, but the influence of the military has been such that some disappearances have been carried out without the civilian authorities having the capacity or the will to prevent or investigate them. During the 1980s, the practice of forced disappearance became part of the tactical repertory of the new military doctrine of “low intensity” war, which became the main theoretical and practical framework of the armed forces in El Salvador and in other countries where the military, advised and trained by the United States, fought against Marxist guerrillas.

Cases of forced disappearance in the Inter-American Court

This section presents several cases of forced disappearance that have been brought before the Inter-American Court of Human Rights.

A comparative analysis of the characteristics of these cases demonstrates that a failure to purge repressive forces has resulted in forced disappearance, which began as an illegal practice used to persecute and murder political enemies and was subsequently used to persecute and murder persons with very different characteristics: political activists, youth, university students, union leaders or common delinquents, basically persons outside the system. An analysis of these cases also shows that the practice of forced disappearance is a methodology that has not been fully eliminated in some countries. In the following cases, in chronological order, the Inter-American Court has recognized practices of forced disappearance:

VELÁSQUEZ RODRÍGUEZ V. HONDURAS

The petition presented to the Inter-American Commission on Human Rights states that on the afternoon of September 12, 1981 in Tegucigalpa Angel Manfredo Velásquez Rodríguez, a student at the Universidad Nacional Autónoma de Honduras, “was violently detained without a warrant for his arrest by members of the Dirección Nacional de Investigación (DNI) and G-2 of the Armed Forces of Honduras” (*Velásquez Rodríguez v. Honduras. Preliminary Objections*. June 26, 1987).

Eyewitnesses to the abduction of Manfredo Velásquez informed his sister that he was detained between 4:30 and 5:00 pm in a parking lot in downtown Tegucigalpa by seven heavily-armed men, dressed as civilians, who used a white Ford without license plates.

Several eyewitnesses reported that he was taken to the cells of the Public Security Forces Station No. 2, where he was subjected to torture and accused of political crimes. On September 17, 1981, he was moved to the First Infantry Battalion, where the interrogation continued. The police and security forces denied that he had been detained. Since that time, he remains disappeared.

Clippings from the Honduran press of that time confirm that this is not an isolated case. There are reports that the disappearance of at least 64 persons was apparently due to ideological, political or trade union-related reasons. Six of those individuals, after their release, complained of torture and other cruel, inhuman and degrading treatment. The clippings also mentioned clandestine cemeteries (*Rodríguez Velásquez v. Honduras*. Judgment of July 29, 1988).

With respect to the acts denounced, during its 61st Session the Inter-American Commission on Human Rights adopted a resolution whose operative parts state,

inter alia, that it presumed as true “the allegations contained in the communication of October 7, 1981, concerning the detention and disappearance of Angel Manfredo Velásquez Rodríguez in the Republic of Honduras” (*Rodríguez Velásquez v. Honduras. Preliminary Objections*. Judgment of June 26, 1987).

CABALLERO DELGADO AND SANTANA V. COLOMBIA

The judgment of the Court of January 21, 1994 states that it was alleged that on February 7, 1989, in a locality known as Guaduas, under the jurisdiction of the Municipality of San Alberto, Department of César, Colombia, Isidro Caballero Delgado and María del Carmen Santana were detained by a military patrol composed of units of the Colombian Army.

Isidro Caballero Delgado was a leader of a teachers' union. Because of his activities he had already been held in the Model Prison of Bucaramanga, charged with being a member of “Movimiento 19 de Abril.” He was released in 1986.

María del Carmen Santana was enlisting participation for the Meeting for the Coexistence and Normalization, which was to be held on February 16, 1989 in the Municipality of San Alberto. This activity was being organized by Regional Dialogue Committee and involved in “organizing meetings, fora and debates in various regions in an effort to find a political solution to the armed conflict.”

The family of Isidro Caballero and various union and human rights organizations began to search for the couple at military facilities, where it was denied that Isidro Caballero and María del Carmen Santana had been detained. Legal and administrative actions were taken in an attempt to establish the whereabouts of the couple and to punish those who were directly responsible, all to no avail. No reparations were obtained for the harm caused.

On February 9, 1989, María Nodelia Parra Rodríguez, the companion of Isidro Caballero, filed a writ of habeas corpus in the First Superior Court of the District of Bucaramanga with respect to the disappearance of Caballero Delgado, for allegedly having been unlawfully detained by military authorities.

The judge requested information from State institutions where a person could be held in detention for various reasons; namely, the Model Prison, the police force and the Administrative Security Department (DAS). As stated in the judgment of the Inter-American Court, the request was also made to the Fifth Brigade, the place where the petitioner asserted the detainees were. The authorities always reported that the persons being sought were not in any of those places and that there was no

order of arrest or judgments against them. The judge therefore declared the petition unfounded because it had not been proved that Isidro Caballero had been deprived of his freedom (*Caballero Delgado v. Colombia*. Judgment of January 21, 1994). It must be mentioned that the Government of Colombia accepted the above-mentioned events and recognized that Colombian military authorities took part in them.

GARRIDO AND BAIGORRIA V. ARGENTINA

On April 28, 1990, at approximately 4 pm, agents of the Mendoza police stopped the car of Adolfo Argentino Garrido and Raúl Baigorria Balmaceda. According to witnesses, they were detained by at least four police agents, wearing the uniform of the mobile division of the Mendoza police.

When the family of Mr. Garrido learned of the detention, it immediately initiated the search. In spite of the fact that the car the victims had been driving was parked at the Fifth Precinct of Mendoza, the only explanation it received was that the car had been abandoned and brought there.

On April 30, 1990, a writ for habeas corpus was filed on behalf of Mr. Garrido and on May 3, the same was done for Mr. Baigorria. Both petitions were rejected for failure to prove that they had been deprived of their freedom.

On May 2, 1990, the Garrido family filed a formal complaint on the forced disappearance with the Public Prosecutor on duty and before the Committee on Rights and Guarantees of the Congress and on May 11 with the Senators. No answers were received.

On April 29, 1992, the Inter-American Commission received a petition on this case. On December 1, 1994, the Commission forwarded its Report on the case to Argentina. The operative part of the Report states that Argentina was responsible for the disappearances of Baigorria and Garrido, in accordance with Article 1.1. of the Convention and that, as a result, Argentina was accused of violating the right to life, the right to respect of physical, mental and moral integrity and the right to personal liberty (*Garrido and Baigorria v. Argentina*. Judgment of February 2, 1996).

On September 11, 1995, Argentina accepted the facts presented in the complaint and its international responsibility.

CASTILLO PAÉZ V. PERU

Ernesto Rafael Castillo Páez left his home on October 21, 1990, on the same day the subversive group Sendero Luminoso detonated explosives near the Monumento a la Mujer in the Villa El Salvador District of Lima, Peru; shortly after the explosions, Peruvian security forces organized an operation to detain those responsible. During that action, a white patrol vehicle approached Castillo Páez in the vicinity of the Central Park of Group 17, Second Two, Zone Two of the District of Villa El Salvador. Mr. Castillo Páez was dressed in dark pants, white shirt, and was carrying a beige jacket and was identified by several witnesses. Two policemen, wearing green uniforms and red berets, stepped out of the vehicle. One of them detained Castillo Páez, who did not resist, and a few minutes later he was placed in the trunk of the patrol car. Shortly thereafter, another police car arrived at the scene and the policemen exchanged words. The second vehicle left, followed by the vehicle carrying Castillo Páez to an unknown destination. All of these events took approximately ten minutes.

The parents of Castillo Páez began the search and, when they were unable to find him at several police stations, they instituted the appropriate judicial measures to locate him. On October 25, 1990, Castillo Páez' father filed writs of habeas corpus on his son's behalf on the basis of the evidence and on a series of irregularities in the procedures that obstructed the investigation. The Public Prosecutor for Terrorism appealed the decision in favor of the victim. On November 27, 1990, the Court of Appeals denied the appeal and confirmed the decision of the lower court and ordered the remission of the documents required for presenting the criminal accusation; based on the evidence in the petition for habeas corpus, several police officers who were allegedly involved in the disappearance of Castillo Páez were sued for abuse of authority. On August 19, 1991, the Criminal Court concluded that from the records of the case, it was clear that Castillo Páez disappeared after he was arrested by members of the National Police of Peru, during the morning of October 21, 1990 and since that date his whereabouts are unknown. The decision held however that there was no evidence that proved the responsibility of the accused, so the case was closed without punishing anyone or compensating the Castillo Páez' family. This decision was appealed to the First Criminal Court, which confirmed it. Since his disappearance, although a legal process was instituted to ascertain his whereabouts and to secure his release, the police have not released him nor has any information about him been provided (*Castillo Páez v. Peru*. Judgment of November 3, 1997).

“WHITE PANEL” (PANIAGUA MORALES ET AL.) V. GUATEMALA

The Inter-American Commission filed this case before the Inter-American Court to determine the responsibility of acts of abduction, arbitrary arrest, inhuman treatment, torture and murder committed by agents of Guatemala against Ana Elizabeth Paniagua Morales, Julián Salomón Gómez Ayala, William Otilio González Rivera, Pablo Corado Barrientos, Manuel de Jesús González López and Erik Leonardo Chinchilla. This case is referred to as the “Panel Blanca” (White Van) case because of the type of vehicle that was used as part of the *modus operandi*.

According to the allegations, between the end of December 1987 and February 1988 –except for one case that occurred in June 1987– heavily armed members of the Guatemalan Treasury Police forcibly detained persons without a court order and forced them into a van. Some of the abducted persons were tortured at the Treasury Police headquarters. Others were killed and their bodies were dumped in the streets or outskirts of Guatemala City a few days after the detentions.

The Commission also requested the Court to require the Guatemalan Government to identify and punish those responsible for the abductions and compensate the victims or their families.

As an indication that the Treasury Police continues to act with impunity, it is sufficient to state that “Oscar Vásquez, who was a victim and witness in this case and his son were murdered on September 11, 1994, five days before the final public hearing of the case was to be held before the Commission” (“*White Van*” (*Paniagua Morales et al.*) v. *Guatemala*. Judgment of January 25, 1996).

TRUJILLO OROZA V. BOLIVIA

A case of forced disappearance in Bolivia that was filed with the Inter-American Court is that of José Carlos Trujillo Oroza, a college student who was 21 at the time he disappeared.

Mr. Trujillo was arrested without a court order on December 23, 1971 in Santa Cruz and taken to the El Pari prison.

Between January 15 and February 2, 1972, his mother, Gladis Oroza, paid daily visits to her son in the prison, confirming that he had been tortured.

On February 3, the Head of the El Pari Police Commissariat informed Ms. Oroza that her son had been transferred with two other prisoners, Carlos López Adrián and Alfonso Toledo Rosales, to the Central Police Station for questioning. There

Ms. Oroza was informed that her son and the others who had been arrested had been taken to Montero, a nearby town.

After much searching, the head of the Department of Political Order, Ernesto Morant, presented a radiogram signed by the Deputy Secretary of the Ministry of the Interior ordering the release of López Adrián, Toledo Rosales and Trujillo Oroza. Nevertheless, none of them were found alive.

Ms. Oroza was unable to file a complaint before the courts due to the political instability in the country. It was not until January 8, 1999 that Bolivia initiated an official judicial investigation, although it had been apprised of the facts immediately, particularly with respect to the degree to which its own agents were responsible for the acts.

The Ministry of Foreign Affairs in a communication of December 16, 1996 to the mother of the victim, Bolivia acknowledged the arrest, torture and forced disappearance of the victim. It also recognized that the “alleged masterminds and perpetrators worked as civilian agents of the agencies of repression of that government and, under international legislation recognized by the Republic of Bolivia, this entails the responsibility of the Bolivian State” (*Trujillo Oroza v. Bolivia*. Judgment of January 26, 2000).

SERRANO CRUZ SISTERS V. EL SALVADOR

In its application, the Inter-American Commission stated that from May 27 until June 9, 1982, the Atlacatl Battalion of the Salvadoran Army carried out a military operation known as *Operación Limpieza* in the Municipality of San Antonio de la Cruz, Department of Chalatenango. During that operation, on June 2, sisters Ernestina (age 7) and Erlinda Serrano Cruz (age 3) were abducted and disappeared.

During the operation, Dionisio Serrano and his children Enrique, Suyapa, Ernestina and Erlinda escaped, together with a group of villagers, into the mountains towards the settlement of “Los Alvarenga” where they hid. One day when Dionisio Serrano and his son Enrique went to get water at a nearby river, the girls Ernestina and Erlinda began to cry and were discovered by the military patrols. According to the Commission’s report, Suyapa Serrano Cruz is certain that the soldiers took her sisters, since she heard the soldiers say that they would take them and not kill them (*Serrano Cruz Sisters v. El Salvador. Preliminary Exceptions*. Judgment of November 23, 2004).

Information collected by the Inter-American Commission shows that Ernestina and Erlinda Serrano Cruz were last seen 21 years ago when a Salvadoran Armed Forces helicopter transported them from the scene to a place called La Sierpe in the city of Chalatenango. After these events, the mother of the girls, María Victoria Cruz Franco, lived in Honduras in a refugee camp.

Because the events took place at a time when there were no legal domestic remedies, it was only one month after the publication of the report of the UN Truth Commission on April 30, 1993 that Ms. Cruz Franco presented a complaint before the Court of First Instance of Chalatenango for the alleged disappearance of Ernestina and Erlinda.

To this day Ernestina and Erlinda have not been found and those responsible have not been identified or punished (*Cruz Serrano Sisters v. El Salvador. Preliminary Exceptions*. Judgment of November 23, 2004).

BLANCO ROMERO ET AL. V. VENEZUELA

In July 2004, the Inter-American Commission filed an application in which it requested the Court to determine whether Venezuela had violated the rights to life, to humane treatment, to personal liberty, to a fair trial and to judicial protection set forth in the American Convention to the detriment of Oscar José Blanco Romero, Roberto Javier Hernández Paz and José Francisco Rivas Fernández.

The complaint of the Commission states that on December 15, 16 and 17, 1999, it rained heavily in the State of Vargas, Venezuela, causing mudslides in the Ávila foothills. While humanitarian aid was being provided, members of the National Army and of the Intelligence and Preventive Services Sector (DISIP) committed human rights violations. The illegal detentions of Blanco Romero, Hernández Paz and Rivas Fernández took place in this context and they later disappeared.

The Inter-American Commission argued that on December 21, 1999, members of the Army forcibly entered the house of Mr. Blanco Romero. After beating him, he was taken prisoner and to this day his family has not had any information regarding his whereabouts. On December 23, 1999, Mr. Hernández Paz was at his uncle's home when, supposedly DISIP officials, entered the house without a search warrant. Mr. Hernández Paz was introduced into a vehicle and taken to an unknown location. Since that date, Hernández Paz' whereabouts are unknown.

Finally, the Commission argued that on December 21, 1999, Rivas Fernández was

in a shelter for flood victims in the State of Vargas, when he was arrested and beaten by policemen. Since then, his whereabouts are unknown

At the time the petition was presented to the Commission, more than four years had gone by without learning the victims' fate or whereabouts.

The Commission also stated that victims were allegedly held incommunicado in isolated and clandestine detention, which are strong indications that the Venezuelan authorities tortured them. In addition, it indicated that family members may be considered victims of cruel, inhuman and degrading treatment, because the authorities allegedly concealed information about the victims' whereabouts from their loved ones.

The Commission also indicated that Venezuela is responsible for the alleged "ineffectiveness of the writ of habeas corpus aimed at determining the whereabouts of the [alleged] victims and the [allegedly] erroneous interpretation by judicial authorities of the object and purpose of said guarantee remedy." For this reason, the Commission affirmed that Venezuela was responsible for "obstruction of justice and lack of diligence in the investigation of the events [allegedly] by the ... Intelligence and Preventive Services Bureau, as well as the irregular actions [allegedly] taken by the judicial authority charged with the criminal inquiry against the defendants accused by the Public Prosecutor, all of which [allegedly] contributed to absolute impunity in the cases under analysis." (*Blanco Romero et al. v. Venezuela*. Judgment of November 28, 1995).

Conclusions and recommendations

As has been seen, forced disappearance has been a political strategy used regularly with great similarities in methodology and goals in most Latin American countries. Unlike the strategy to defend persons responsible for abductions, murders, tortures, disappearances and robberies, it is not a question of excesses committed by a small criminal band inside institutions that do respect the constitutional norms. In fact, it was a systematic plan to sow terror in the population.

The genocidal plan to disappear persons sought to attack the entire social fabric, not only its present but also its future, inasmuch as it attacks the lives of "real and present" individuals and the "symbolical chain that is their genealogy and to dissociate them from the human order, to deprive them of every possibility to have descendants, as much for the dead as for the survivors" (Piralian, 1994, p. 20).

The Latin American experience shows that in a sensitive international context –a cold war among world powers and the triumph of revolutionary movements in Cuba and Nicaragua– the strategy of exercising discipline through biopower as stated by Foucault (2006), was replaced by State terrorism.

If biopower disciplines and produces functional populations, State terrorism paralyzes, abducts and murders all the *undisciplined* population. The effects on the surviving population and on succeeding generations can become devastating.

Within a theoretical psychoanalytical framework, there are differences between terror, fear and anguish (Freud, 1997). Anguish appears when one is faced with an unknown threat and its purpose is to prepare the psychic apparatus to confront it. Fear operates similarly, but concerns a specific danger. Terror, on the other hand, occurs when facing a situation that the individual is not prepared to confront. There is terror when danger takes the individual by surprise and therefore without psychological defenses to confront a traumatic event. A terrorist attack is therefore one which affects a population that is taken by surprise and is thus without psychic defenses when confronted with a traumatic event.

In the Latin American experience, forced disappearance as a political strategy of State terrorism, in its most straightforward form, seeks to devastate individuals and populations that are “undisciplined” for the system that is to be imposed.

The trauma of forced disappearance and of impunity, as a second trauma, devastated the psyches of survivors of concentration camps and the families of disappeared persons. If the lack of justice has re-traumatizing effects, the restoration of the legal order has reparative effects.

It should be pointed out, however, that State terrorism also affected the collective social fabric. The political context of the 1990s must be understood as a symptom of post-dictatorial effects on democratic governments. This is the only way to understand the resignation of the populace when the indices of poverty and unemployment characteristic of the neo-liberal model increased. That is why the repairing effects of justice go much beyond the persons directly affected. The search for justice must be thought of as the search for a more just society, with fewer people excluded from the economic scene and more indices of political participation; in the end, a healthier and more harmonious society.

Reparation of damages

With respect to granting reparation of the damages caused by State violence at the personal and the collective levels, it must not be forgotten that the effects caused by forced disappearance, both for the family group and for the community to which the victim belonged, are multiple and to understand them fully requires an interdisciplinary approach: juridical, social and psychological. Thus, the following is required:

- The intervention of justice as a condition to initiate the reparation of damages caused by the political violence of the State.
- The commitment of society to review its own history, to demand the truth regarding the facts and to construct memory, to restore the social fabric.
- The psychological support that enables the elaboration of the subjective trauma on the part of the families.

In cases of crimes against humanity, such as forced disappearance, the aforementioned combined actions must be thought of within the framework of the impossibility of *full* reparation, for the harm produced leaves marks that cannot and should not be erased, but that become part of the collective memory. Nevertheless, it is fundamental that these actions be developed so that they can become part of the social and public memory and not circulate silently and symptomatically in society. If we say that the intention of the strategy of forced disappearance was to erase every trace, to prohibit memory and to make it impossible to identify those responsible, today's task is to recover those traces through juridical, social and subjective action. An ethical responsibility is thus assumed, both with the past and the present, as a condition for the construction of future projects.

It is the State's responsibility, and that of all citizens, to ensure that future generations are able to inscribe themselves in a genealogy that is not affected by horror and impunity. A transmission that articulates social ties and creates memory, together with the establishment of justice, is the only possible reparation for forced disappearance, the paradigm of political violence. Therefore, establishing bridges that connect family narrative and collective stories regarding traumatic events makes it possible to permeate the boundaries between the public and the private, which are necessarily interconnected.

As stated by Kaufman;

Public spaces, as environments of legitimacy, political action and scenarios of social change, are receptors and mirror images of individual versions. At the same time, they install and reinstall meanings that the environments of experience maintain in a permanent dialectic between what is private and what is public (Kaufman, 2006, p. 69).

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Impunity as a crime against humanity

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Introduction

Within the general framework of the project “Psychological attention to victims of torture in the inter-American system for the protection of human rights,” this article proposes to redefine the way in which the topic of impunity should be considered and, at the same time, to adopt an interdisciplinary perspective that includes juridical and psychosocial points of view. It is important to bear in mind that a theoretical approach to impunity from a psychological perspective may give a viewpoint that is not accessible to or, worse yet, not translatable to other areas, thus compromising its specificity compared to other social, human and health disciplines.

While impunity affects citizens in their daily lives because of the constant insecurity that it fosters, this article is limited to the issue of impunity exercised by the State, particularly political repression in cases of crimes against humanity. Therefore, of its multiple facets only two of the most obvious manifestations of the perverse use of power will be singled out: forced disappearance and torture, which are crimes against humanity committed by a State.

This article has the specific objective to:

- Attempt to define the complex act of impunity as a crime against humanity.
- Provide the historical background of impunity and its transmission to succeeding generations.
- Examine some of the psychosocial aspects of impunity, such as the lust for and exercise of absolute power, as well as the transgression of the law from a juridical and psychological point of view.
- Point out the far-reaching effects of impunity at various levels (subjective, inter-subjective and macro-social) in contexts that make those effects possible due to

the exercise of power, with emphasis on its impact in the field of international litigation.

- Present arguments regarding oblivion, which leads to fragmented and alienated subjectivities within a vision of the cosmos that denigrates the memory of the victims.
- Stimulate thinking on the impact of impunity.
- Provide elements, from the conceptualization of controversies in formulating and applying the law and from a review of the role of its agents (in the juridical and mental health areas), for constructing a methodology regarding victims of human rights violations who present their claims before the inter-American system.

In order to make impunity visible, it is necessary enter into a maze of relationships that interact in different degrees of complexity. Its normal opacity makes it impossible to delineate clearly its design and execution. Practices such as clandestine detention, the forced disappearance of persons and torture are allowed in the context of impunity. Of those, torture is used as a “natural and necessary” element to obtain confessions from victims and others who are arbitrarily accused of committing crimes.

An intrinsic part of impunity is that its psychosocial effect goes beyond the direct victims –transformed into living examples of a lesson to be learned– to reach families, sympathizers and communities that are threatened with being singled out as suspect or responsible for the same types of crimes.

Impunity, while it sustains and is sustained through the imposition of a solid, homogenous and unquestionable regime of power, forces the population to remain fragmented and isolated. This is how it employs its power to prevent formal or informal groups –associations, collectives, NGOs, independent parties, etc.– from organizing in order to prevent victims from being transformed into social actors who combat impunity.

The technical capability of the bureaucracy supporting the power structure that exercises impunity contributes to the dilution over time of the evidence of the material and non-material harm suffered by the victims while they attempt to exhaust domestic remedies necessary to accede to the international bodies in their efforts to obtain justice.

This temporary delay benefits the power exercising impunity since it contributes to individual and social re-victimization. Similarly, by preventing psycho-judicial accompaniment, independent experts from organizing and the promotion and defense of the law and its procedures at the national and international levels, such dilation frequently and alarmingly fosters the abandonment of the protective function of the State with respect to the citizens placed under its care.

Similarly, impunity erodes trust in State institutions and impedes collective actions by the citizenry to put an end to illegal enrichment from the tills of impunity, which is suggested by changes in the laws of immunity regarding the perpetrators, those who prosecute and punish those found responsible and the subsequent repeal of impunity laws, as occurred in Chile and Argentina, which are the paradigmatic examples. The Truth Commissions in countries such as Peru, Guatemala and Argentina, as well as the Special Public Prosecutors in Mexico, have not been fully able to comply with their mandate when it is implemented by their own institutions. Although those States are not dictatorial, they are incipient and fragile democracies - States undergoing a transition to justice- which leaves the door open for impunity.

The fact that impunity exists after serious human rights violations is an obstacle to the healing of the psychic wounds and the multiple losses suffered by the victims; this is particularly the case with regard to mourning, since it alters the victims' projects of life and those of their descendants.

When summarized as the absence of punishment for crimes committed on behalf of the State, impunity is based on the non-compliance of the essential function of the judiciary and therefore has a consubstantial psychosocial impact. In fact, by threatening the founding symbolic elements that sustain the social fabric, it affects the subjective structure of society. These reasons all point to the vital importance of making impunity a visible act for the sake of communities and individuals.

It is important to point out, with regard to this article, that there is at present no methodology with its own focus and psycho-judicial language that expresses the sanction to impunity issued by a "third well-known party" -the Inter-American Court of Human Rights- to decide and act on the aspects of the damage and the psychosocial reparation.

Anatomy of impunity

Crimes against humanity within the policies of impunity

The concept of impunity is directly related to the flowering of international humanitarian law as well as with other juridical tenets, such as the rule of law, justice and legality. In the context of the Americas, and specifically the inter-American human rights system, impunity has been associated, more than with juridical theories, with historical situations that have left a profound mark on Latin American communities. Impunity in Latin America is more than a concept; it is a historical reality that continues to affect our societies and it may be that its reach has yet to be properly determined.

The *de facto* impunity of dictatorial and military governments from the 1950s to the beginning of the 1980s –and the exceptional cases of the 1990s and 2000– was opposed by an incipient human rights movement that has grown progressively. Although a network of civic and religious organizations supported the movement, it was the victims' families who created an opposition movement against impunity in each of the countries.

Impunity, as well as crimes against humanity, took place in the Americas in a historical period that was marked by a series of ideological, political and economic transformations. The unfortunate situations that occurred, particularly during the decade of the 1970s, in North, Central and South America cannot be ignored.

These crimes have been elevated to the category of crimes against humanity because they represent a universal generic damage that violates human dignity. The moral initiative in the field of international law has not only led to a recognition of crimes by the State, but also to questioning the order that gives legitimacy to states of emergency, incipient or fragile democracies, where these types of crimes are committed, either openly or clandestinely, due to the absence, complicity or acquiescence of institutions, norms or persons associated with the State.

Crimes against humanity are clandestine detention, forced disappearance and torture, which are crimes related to the phenomenon of impunity in its various forms, stages and procedures. They constitute an interdependent triad in which, if one leg is withdrawn the others fall, which is what the repressive States attempt when victims demand juridical processes.

It may be said that impunity is a process that has a longer reach and historical breadth than crimes against humanity because in a way it precedes, absorbs and

enables them. To prove this affirmation it is necessary to relate the term “crime against humanity” to the body of norms of international human rights law, particularly the Rome Statute of the International Criminal Court, which provides juridical and institutional support to the study of impunity. In addition, defining the term enhances its interpretative capacity in international forums, including the Inter-American Court of Human Rights. On the other hand, considering impunity as a *process* in some way relates it to the category of crimes against humanity.

In cases of crimes against humanity, impunity is connected to the power structure since it does not operate under the legitimacy of an institutional and social mandate but rather at the discretion and convenience of the group in power and its particular interests. This instrumental consequence, *ex post facto*, has been pointed out from the moral sphere of human rights not only as simply not applying justice, but also as an act of violence *per se*. In other words, *ex post facto* impunity as a cause, as a voluntary act, must also be typified as a crime against humanity.

The foregoing may aid in classifying the polyvalence of impunity with respect to crimes against humanity. This characteristic of impunity contrasts with the unequivocal status of crimes against humanity (this affirmation should not diminish the historical complexity of the term). Article 7 of the Rome Statute considers that crimes against humanity are

any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity...and enforced disappearance of persons.

It is important to emphasize a strategic element of crimes against humanity in the foregoing definition: they are not so much *per se* an autonomous crime, but rather part of a general policy. Once this is established, it is reasonable to assume that such a strategy or generalized policy coincides precisely with the accepted definition of impunity in that it may be re-considered as a sphere of action that allows the perpetration of a series of crimes, in this case crimes against humanity.

The difference that was pointed out between crimes against humanity and impunity as a process now makes sense. In other words, crimes like torture and

enforced disappearance are crimes against humanity only if they are part of a generalized strategy against a population and such strategy may be denominated a policy of impunity. Crimes against humanity are made possible by policies of impunity as long as the State incurs in an act or omission that weakens its powers to prosecute and investigate crimes.

In the inter-American human rights system, the States Parties to the American Convention have the fundamental duty to respect and to ensure human rights. Thus any impairment of the rights recognized by the Convention may be attributed to the act or omission of any public authority, in accordance with the rules of international law, and as such is an act imputable to the State and makes the latter responsible for it under the provisions of the Convention.¹ The exercise of the public function has limitations imposed by the requirement of observing human rights, which are inherent to the concept of human dignity and are thus beyond the power of the State.²

As a parallel obligation, a State Party must guarantee the free and full exercise of the rights consecrated in the Convention to all persons under its jurisdiction. This obligation implies the duty to organize the government apparatus in a way that enables it to ensure juridically the free and full exercise of human rights. Thus a State must prevent, investigate and punish every violation of human rights, as defined in the Convention, and make every effort to re-establish the infringed rights and repair the damages resulting from the violation. This duty to ensure requires the existence of a structure and a legal framework that makes it possible to comply with this parallel obligation and to provide the necessary mechanisms to ensure the enjoyment of each and every one of the human rights.

There follows the Inter-American's Court definition of the limits of public power when referring to human rights:

the protection of human rights, particularly the civil and political rights set forth in the Convention, is in effect based on the affirmation of the existence of certain inviolable attributes of the individual that cannot be legitimately restricted through the exercise of governmental power. There are individual domains that are beyond

1 I/A Court H.R., *Velásquez Rodríguez v. Honduras*, Judgment of July 29, 1988. Series C No. 4, para. 164.

2 As has been well described in I/A Court H. R., *The word "laws" in Article 30 of the American Convention on Human Rights*, Advisory Opinion OC-6/86 of May 9, 1986, para. 21.

the reach of the State or to which the State has but limited access. Thus, the protection of human rights must necessarily comprise the concept of the restriction of the exercise of state power.³

A definition of impunity

In general terms, impunity means not punishing the author of a crime. In other words, it is a way of evading, impeding or escaping penal action. In political contexts, particularly concerning crimes against humanity, impunity is linked to the power structure. In this regard, Amnesty International has stated that impunity consists in not prosecuting or punishing those responsible for serious violations of human rights and international humanitarian law.

In attempting to arrive at an understanding of impunity in connection with serious human rights violations, its many variables must be borne in mind, of which mention may be made of the following:

- The temptation of absolute power
- The violation of juridical and psychological norms
- Oblivion and de-memorizing society
- Obstacles to access to national and international organizations that promote justice

Similarly, impunity must be addressed from the angle of its multiple functionalities:

- As an act *per se*, it represents a human rights violation
- As a causal factor, it implies a context of the possibility of repetition
- As a perpetuating factor of the *status quo*, through culturalization
- As a power strategy through threats and fear, it imposes social control

We may thus arrive at understanding that impunity is a multi-factored psychosocial process that facilitates the commission of crimes against humanity as part of a generalized policy or strategy against a group of civilians on the part of the State or under its aegis.

To those factors may be added the economic characteristics that pervade the

3 *Velásquez Rodríguez v. Honduras*, *supra* 1, para. 165.

policies of impunity, with their corollary of norms and institutions within the realm of public administration. In most cases, impunity is transmitted over time and space to succeeding generations. When speaking of its impact on the economy, it may be seen as a situation of social disaster that is comparable to a humanitarian crisis in the context of international humanitarian law.

Jurisprudence of the Inter-American Court regarding impunity

The Court's jurisprudence has attacked both pillars of impunity: normative and structural.⁴

Normative Impunity

Normative impunity has its source in a juridical norm that implies an express renunciation or refusal by the State to exercise its punitive power with respect to sanctions (García Ramírez, 2003).

The renunciation or refusal by the State of *ius puniendi* may have a double origin: a law enacted after the commission of the crime, which is the case of amnesty and self-amnesty laws, or a law enacted before the punishable act, as may be seen in cases of the prescription of penal and non-penal actions.

With regard to normative impunity, the Court, in its judgment of March 14, 2001 in the Barrios Altos case, held that the self-amnesty law violated the American Convention. In this case, the Peruvian Army violently broke into an apartment where university students were gathered. The meeting ended with the illegal execution of fifteen students and the wounding of four others.

Once the judicial investigations had begun, the Peruvian legislature adopted an amnesty law that exonerated the members of the military, the police and the civilian participants from any responsibility for the acts committed or for having taken part in actions that violated human rights during the period 1980 to 1995. In addition, this amnesty was excluded from review by judicial authorities and its application was mandatory.

4 Additional information may be found in the article by Pablo Saavedra Alessandri, Secretary of the Inter-American Court of Human Rights: "La respuesta de la jurisprudencia de la Corte Interamericana a las diversas formas de impunidad en casos de graves violaciones de derechos humanos y sus consecuencias." In *La Corte Interamericana de Derechos Humanos. Un cuarto siglo: 1979-2004*. San José, Costa Rica, 2005.

Faced with this scenario, the Court not only attacked this law but also any procedural attempt to exonerate from justice a person or group of persons responsible for human rights violations. The Court considered that

all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law.

...the amnesty laws adopted by Peru prevented the victims' next of kin and the surviving victims in this case from being heard by a judge, as established in Article 8(1) of the Convention; they violated the right to judicial protection embodied in Article 25 of the Convention; they prevented the investigation, capture, prosecution and conviction of those responsible for the events that occurred in Barrios Altos, thus failing to comply with Article 1(1) of the Convention, and they obstructed clarification of the facts of this case. Finally, the adoption of self-amnesty laws that are incompatible with the Convention meant that Peru failed to comply with the obligation to adapt internal legislation that is embodied in Article 2 of the Convention.

Owing to the manifest incompatibility of self-amnesty laws and the American Convention on Human Rights, the said laws lack legal effect and may not continue to obstruct the investigation of the grounds on which this case is based or the investigation and punishment of those responsible, nor can they have the same or a similar impact with regard to other cases that have occurred in Peru, where the rights established in the American Convention have been violated (*Barrios Altos v. Peru*. Judgment of March 14, 2001, paras. 41-44).

This jurisprudence is considered to be applicable to all cases of self-amnesty laws inasmuch as the "enactment of a law that is manifestly incompatible with the obligations undertaken by a State Party to the Convention is *per se* a violation of the Convention for which the State incurs international responsibility" (*Barrios Altos v. Peru. Interpretation of the Judgment on the Merits*. Judgment of September 3, 2001, para. 18).

- Combat against impunity: Inter-American Court

The Inter-American Court has reacted to criminal laws, such as self-amnesty, prescription and other mechanisms to avoid penal responsibility that prevent the States from fulfilling their obligation to comply with and implement criminal justice by investigating acts that constitute serious human rights violations and by punishing those responsible, in a way that impunity ceases to demean human dignity.⁵ This is an expression of respect for the victims' dignity because they were not only harmed by a terrible act of the State but they must also live with the indifference and ignorance surrounding such act.

Structural Impunity

Structural impunity arises from a series of endogenous or exogenous factors that affects compliance with the obligations of criminal justice in spite of the existence of a legal system that can react to crimes or properly exercise *ius puniendi*. These factors contribute to the adoption of State conduct that leads to omission or is evasive or negligent in investigating and punishing those responsible for serious human rights violations.

There follows some of the endogenous factors:

- Special legislation to judge specific crimes

This is applicable in the Castillo Petruzzi case,⁶ which concerns the prosecution in a military jurisdiction of several Chilean citizens accused of treason –aggravated terrorism– in which the Court held the following:

Transferring jurisdiction from civilian courts to military courts, thus allowing military courts to try civilians accused of treason, means that the competent, independent and impartial tribunal previously established by law is precluded from hearing these cases. In effect, military tribunals are not the tribunals previously established by law for civilians. Having no military functions or duties, civilians cannot engage in behaviors that violate military duties. When a military court takes jurisdiction over a matter that regular courts should hear, the individual's right to a

5 *Ibid.*

6 I/A Court H.R., *Castillo Petruzzi et al. v. Peru*, Judgment of May 30, 1999. Series C No. 52.

hearing by a competent, independent and impartial tribunal previously established by law and, *a fortiori*, his right to due process are violated. That right to due process, in turn, is intimately linked to the very right of access to the courts.

A basic principle of the independence of the judiciary is that every person has the right to be heard by regular courts, following procedures previously established by law. States are not to create 'tribunals that do not use the duly established procedures of the legal process... to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.'⁷

Under Article 8(1) of the American Convention, a presiding judge must be competent, independent and impartial. In the case under study, the armed forces, fully engaged in the counter-insurgency struggle, are also prosecuting persons associated with insurgency groups.⁸

- Insufficient investigation in cases of human rights violations and lack of cooperation of the authorities to clarify the cases

The Court has indicated that in every instance of a violation of a human right protected by the Convention, the duty to investigate "must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government."⁹

7 Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan from August 26 to September 6, 1985, and ratified by the UN General Assembly in its Resolutions 40/32 of November 29, 1985 and 40/146 of December 13, 1985.

8 *Castillo Petruzzi et al. v. Peru*, *supra* 6, paras. 128-129.

9 I/A Court H.R., *Godínez Cruz v. Honduras*, Judgment of January 20, 1989. Series C No. 5, para. 188.

Psychosocial depiction of types of impunity

Impunity is what makes one ill

Survivor of a concentration camp in a Southern Cone country under dictatorship

Torture happens once, but it lasts forever

Survivor of a concentration camp in a Southern Cone country under dictatorship

*All that pleading that they be found alive and when they arrived we did not what to do
with them*

An exile in Europe during the dictatorships

*Those of us who survived are the deferred dead,
with a suspended death sentence, hoping that justice will give us back our existence*

A Latin American exile

The psychosocial classification of impunity acquires significant importance in the area of reparations under the inter-American system since it establishes the symbolic context in which the victims and their societies come before the Court.

If those responsible for serious human rights violations have not been prosecuted or punished, the victim lives under the constant threat of being abandoned, at the level of personal and social subjectivity, which has a destructuring impact on the psyche. The State, as symbolic representative of the social contract and the law, has proven to be ineffectual, producing a crumbling of trust on a personal level, which allows the social insertion of individuals, and on the social level, which permits social coexistence among individuals.

The classification of types of impunity presented in the following chart has been prepared in accordance with the five characteristics/functions of impunity already mentioned: etymological (absence of punishment); as an act (which violates human rights); as a causal factor (enabling context); as a perpetuating factor (culturization); and as a strategy of power (social control).

Functions and Characteristics of Impunity

Impunity as absence of punishment	The absence of punishment has three dimensions or settings; failure to prosecute; lack of moral condemnation (moral impunity) and ignoring the truth (historical impunity). From such a perspective, moral condemnation and memory are also considered as forms of punishment, which broaden the limits of the exercise of criminal proceedings and the privation of liberty.
Impunity as an act of violence	Impunity is not only the absence of punishment; it is an act of omission or negligence on the part of the system of the administration of justice. Penal, moral and historical impunity is an act of violence: direct, visible, rational, instrumental and carried out with an interest. Impunity is therefore not a result of violence mediated by an omission, but an act of violence in its own right, both as an act and as a mode of behavior.
Impunity as context	In addition to being an act, impunity is a situation, a micro-context that allows the commission of crimes and human rights violations by the State. Thus, impunity requires a context, which is not external; but rather the very context in which impunity is carried out is also impunity in such a way that the act cannot be separated from its context.
Impunity as culture	Impunity is also an aggregate of institutions, habits, beliefs, attitudes and forms of a behavior that perpetuate injustice, crime, human rights violations and crimes against humanity. It is also the realm of the law, of the internalized social prohibition, which leads us to assume that if impunity is culture, its introjection becomes necessary, turning it into a psychic mechanism of power and control.
Impunity as social control	Impunity has a political function. It sends a message that no matter what happens, the perpetrators will never be tried, judged or punished and is thus a means of inducing collective fear, immobility and social apathy. Impunity is therefore a mechanism for social cohesion, an obscene law that serves to differentiate violators by debasing them with the purpose of eliminating “the other” as an opponent of the hegemonic power. This is how impunity serves a political role, in terms of the hegemonic discourse that dictates and delineates the forms of social organization.

There follows a more thorough explanation of these concepts of the different functions and characteristics of impunity, within what could be considered a broad definition of impunity.

Impunity as the lack of punishment

When it is defined as a lack of punishment, impunity implies that there has been no responsibility for serious acts within the framework of due process. Due process implies the opportunity of verifying and punishing those actions juridically. In psychosocial terms, it signifies the possibility of renewed credibility in the social system. Impunity, therefore, has repercussions that threaten the very structure of the psyche, by making a lack of protection a constant way of life since no one has been made responsible for the violence that has been suffered.

Considering impunity as the lack of punishment, three different types of impunity may be identified: criminal, moral and historical, each of which, given the power of the State and its institutions, has a series of mechanisms that makes it operational at the level of social symbology.

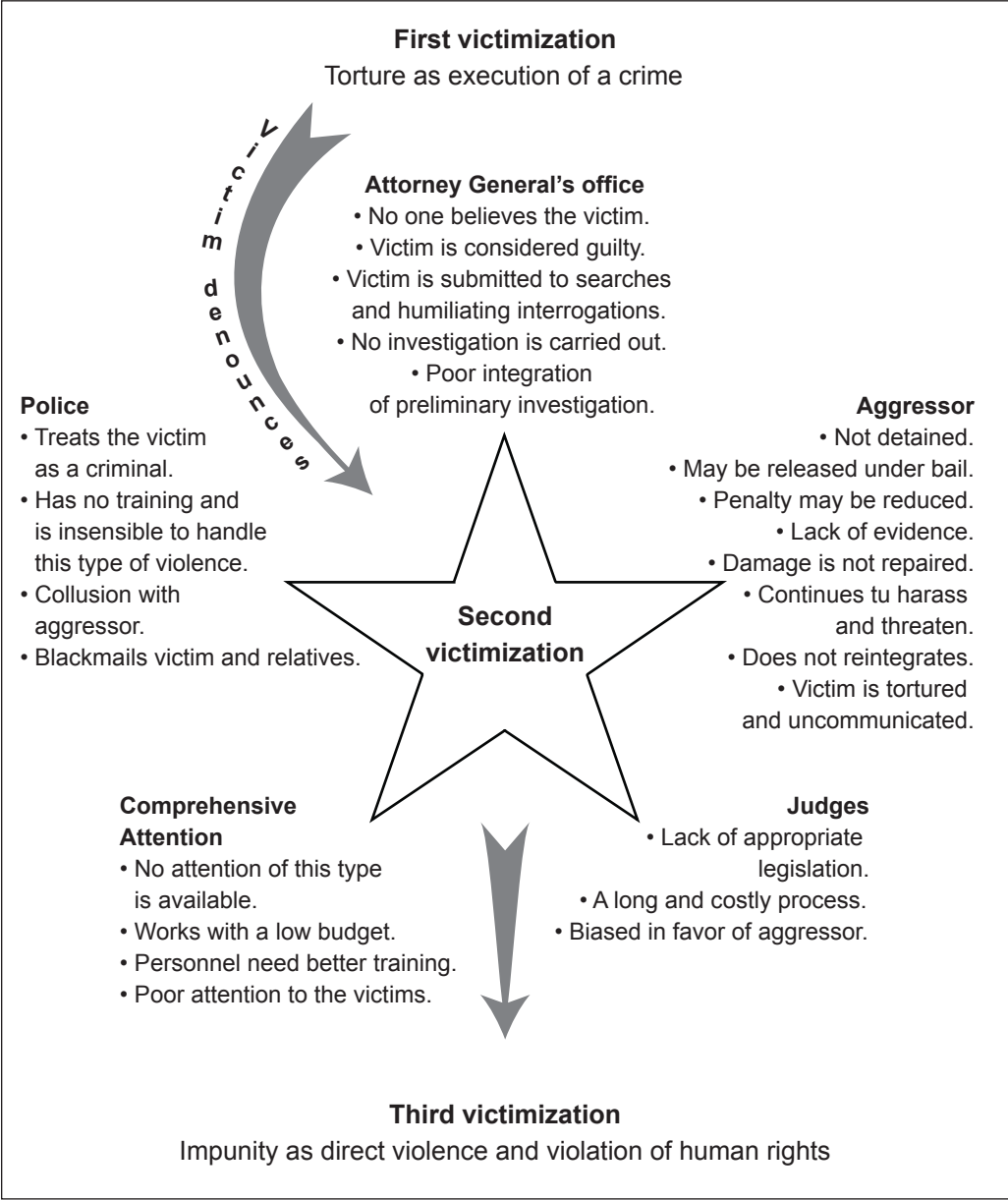
There follows an analysis of these three types of impunity and their characteristics in the context of access to justice for persons and communities that have been victims of crimes against humanity.

Criminal impunity

Criminal impunity is the continuation of a situation of injustice in the domestic system of the administration of justice for those who have been victims of crimes against humanity, such as inappropriate norms, lack of investigation, failure to prosecute, deficient initial inquiry, biased judges.

As mentioned, criminal impunity is the paradigm of impunity, since it occurs within the administration of justice by the State institutions. In this type of impunity, access to institutional resources for obtaining justice is restrained or altered. There is, therefore, a denial of both access to a legal procedure to protect individual rights and to the re-establishment of the right to justice through rectification and its corresponding criminal punishment through judicial proceedings of those responsible.

Impunity is sustained through a series of mechanisms that make access to justice impossible and render ineffective the application of the law. This is the framework within which we may identify the critical route that must be traversed by the affected persons, where they may be victimized for a second and perhaps a third time.



The star of criminal impunity is characterized by five points of violence and three processes of victimization¹⁰:

10 Other scenarios of victimization, for example, through the mass media, could be mentioned.

- The first process of victimization includes torture as the commission of a crime by the perpetrator or perpetrators.
- The second process includes the State institutions.
 - The police, where the victim goes to make the accusation. The police treat the victim as a criminal. They have not been trained or taught to be sensitive when handling this type of violence. They are in collusion with the perpetrator. They blackmail the victims and their families.
 - Office of the Prosecutor. It does not believe the victim. It considers the victim guilty. The victim is submitted to searches and humiliating questioning. Nothing is investigated. The initial inquiry is deficient.
 - The perpetrator. The person is not arrested. He/she may be allowed to go free without bail. The initial punishment may be reduced. Lack of proof. The damage is not repaired. The perpetrator continues to harass and threaten.
 - The judiciary. Lack of adequate legislation. A long and expensive process, which is biased in favor of the perpetrators.
 - Institutions that provide comprehensive attention. No such assistance is available. If it exists, it operates on a small budget. Their personnel need more training. Victims not attended appropriately.
- Impunity is found in the third victimization. Impunity as a form of direct violence and a violation of human rights.

Each of the above practices some form of violence, depending on its quota of power and its place within the process. This dynamic can expose the affected persons to a situation of extreme vulnerability (legal, psychological, social and physical) since what was presented as an institutional process of access to justice is frustrated. In these circumstances, the inter-American system provides a new recourse to access to justice, not only for the victim but also to rectify those institutions for the benefit of the victim. This rectification and strengthening of institutional justice would require on the part of the State a review of these critical routes to impunity by reforming

their systems of the administration of justice, as well as by adapting its laws to internationally established norms, covenants and treaties.

It is important to emphasize the relevance of this type of impunity since there is a line of psychosocial research that compares the effects produced by this impunity to the damage caused by torture. This explains the gravity of the damage, not only to the persons who have been victimized but also to their families, thus becoming a setting of psychosocial affectation that must be added to the original violation.

Moral Impunity

Social complicity is produced by the absence of moral punishment, which occurs through the silence, negation and minimization of the deed and the blaming of the victims.

Moral impunity complements the scenario of criminal impunity. Beckerman (2000) explains it as follows:

It also includes a typical element, which is the public ostentation of the crime committed, while at the same time denying that it occurred, thus making its importance relative, or its existence may be directly denied. In other words, from a legal standpoint there is a crime that is not punished and from the moral perspective a new component is added, which is mockery and public delight before the eyes of a social body that has been transformed into a mere spectator with regard to this prerogative of impunity.

Moral impunity is characterized by the following psychosocial elements:

- There is no moral punishment against violence (enabling social norms).
- There is silence and complicity on the part of the community (no denunciations are made and cases are individualized).
- The victim is considered guilty and stigmatized (“he/she deserved it,” “for being a Communist,” “they are surely criminals,” “they must have done something”).

Silence, negation and the sense of guilt experienced by the population are the result of a process of the *ad hoc* bonding construction of the social subjectivity:

Impunity undoubtedly has a direct effect on the daily life of individuals since it intervenes in the structuring of the way of being, thinking and feeling, as well as in the formation of ethical and evaluative codes, which is to say that impunity produces subjectivity. We are also witnesses to the very grave consequences that it produces within the social body and we must stress the action of impunity as a second traumatic stimulus that affects open wounds... extending its effects onto succeeding generations (Beckerman, 2000).

Moral impunity may be placed in the psychosocial category since it is part of a broad and well-diffused strategy of control that is directed to the social norms that regulate behavior, as well as to the criteria of evaluation and social perception of the population regarding the victims. This is accomplished through stigmatization, the objective of which is to isolate and discredit the victims. This phenomenon has been widely researched and documented in the case of populations that have lived under states of exception (dictatorships, civil wars) where they have been called "the silent majority." Moral impunity thus imposes a social pact based on guilt, social polarization, radicalization and confrontation, as well as collective distrust, leading to episodes of collective paranoia (observe, denounce, punish).

The subjectivity arising from moral impunity leads to forming cynics for whom violating the law is no longer a subversive act against the established order, but rather an accepted part of the mandate of a new law with a symbolic character, which might be qualified as obscene: the mandate to commit atrocities without any consequences, of having access to the benefits at any cost and without remorse. Within this symbolic dimension, the cynic places him/herself as the moral operator of impunity or as the violator of everything that might limit his/her desire for power and material goods.

This is how moral impunity promotes a moral that does not punish violence, that has a destructive impact on the social fabric through the imposition of new values, codes and symbolisms to coexistence and that enables the persistence of impunity itself.

The transgression replaces the social bonds in a way that presupposes a shared guilt, a fraternity in the crime. Constructing this social bond serves the totalitarian power, which needs a subjectivity and a series of ideological apparatuses that reiterate the social mandates of fraternity in the guilt of the crimes committed, both through discourse and symbolism. This is how the community is turned into an accomplice, which is the ideological objective that legitimizes the power of impunity.

Historical impunity

Historical impunity is presented as an act of the symbolic erasure of a crime against humanity committed by the State through discourses and institutionalized myths (the official truth). It is accomplished through oblivion, misrepresentation of the facts, denial and institutionalized lies.

From a psychosocial point of view, historical impunity conceals and distorts the facts and enables the discourse of the perpetrators to prevail, denying the victims their right to be heard, ignoring them and submitting them to oblivion. In this type of impunity, oblivion and cover-up are key factors for the generation-perpetuation of crimes against humanity. Oblivion is presented as a policy that operates through discourses that minimize or distort the actions or simply refuse to recognize them. Paradoxically, however, repression of the traumatic act promotes its “eternal return.” Even worse, the cover-up is crystallized through the erasure of symbolic reality, that is, of the exclusion of every trace that may be used to give favorable testimony, which in psychosocial terms would not only constitute a denial of the facts, but an *existential denial of the victims-witnesses themselves*.

It is important to establish the political component of historical impunity. The State apparatus that sustains impunity uses the forced articulation of history and the identities of peoples in the interests of those who hold power. Ignacio Martín Baró has long studied this psychosocial dilemma, which transcends oblivion and leads to the internalization of official history, the discourse, interests and a version of the facts that have been distorted as if they were true, as if they belonged to the oppressed peoples. This is a history that is deceitful, mutilated, and full of empty spaces and ghosts that ends up being taught and repeated in schools, where the population is unable to find one another or understand each other, only to be condemned to repeat the impunity.

The following psychosocial elements of historical impunity are worthy of mention:

- Concealment and distortion of the facts by the State
- Prevalence of the ideological discourse of the perpetrators
- Denial of the affected persons to be heard
- Denial and oblivion of the victims
- Crystallization through all the agents of socialization, which is the vehicle to achieve invisibility

From the perspective of future generations, historical impunity represents a crime against humanity inasmuch as it annuls the symbolic existence –a sort of symbolic genocide– of a group, culture or ideological movement, with respect to the collective *imaginario* and traditions. This symbolic annulment has a material efficacy, since it presupposes the erasure of all records that might confirm its existence, such as destruction of monuments and documents, prohibition to use a language, etc. This means not only that the violent act never existed but also that the persons themselves never existed; this could be called the paradigm of amnesia, exile and banishment.

An example of the foregoing may be found in the *Moiwana* case that was filed before the Inter-American Court. On November 29, 1986 a military operation was carried out in the village of *Moiwana*, Suriname during which Government agents and their collaborators murdered at least 39 defenseless members of the community, among them children, women and the aged, and wounded others. As a result of the operation, the properties of the community were burned down and the survivors were forced to flee. Several villagers escaped into the forest, where they survived under difficult conditions until they were able to reach refugee camps in French Guiana. Others were internally displaced; some went to larger cities in the interior of Suriname or to Paramaribo, the capital. All those displaced, in both French Guiana and in Suriname, suffered conditions of privation and poverty since they were unable to practice their traditional forms of subsistence. The survivors found it impossible to recover the remains of their family members who had died during the attack and thus were unable to provide the appropriate burial rites required by the basic principles of their N'djuka culture.

The Court held that the deficient investigation of the attack on the *Moiwana* village, the violent obstruction of justice by the State and the prolonged period of time that transpired –more than 18 years– without a clarification of the facts and the punishment of those responsible violated the standards of access to justice and due process established in the American Convention. The Court ruled that it was a case of impunity due to the lack of investigation, arrest, prosecution and conviction of those responsible for violations of the rights protected by the Convention.¹¹ The State was ordered to combat impunity by all available legal means, since its practice fosters the chronic repetition of human rights violations and renders the victims and their families totally defenseless.¹²

11 I/A Court H.R., *Moiwana Community v. Suriname*, Judgment of June 15, 2005. Series C No. 124, paras. 202-203.

12 I/A Court H.R., *Carpio Nicolle et al. v. Guatemala*, Judgment of November 22, 2004. Series C No. 117, para. 126.

The issue of historical truth and institutionalized lies may be one of the most debated topics in the recent history of Latin America, particularly with respect to the policies of “forgive and forget” and their corresponding ideology. Those policies are based on an ideologically perverse vision of reconciliation, pardon and oblivion, inasmuch as the symbolic efficacy of those policies requires the legalization of injustice and the legitimization of impunity. In any case, it is a question of the lie as a myth that is part of an unjust social order, such as the erasure or effective oblivion of those who claim and demand the truth.

This has resulted in a movement in the region that has been created to bring about recognition of symbolic reparations as a fundamental human right. A series of civilian, governmental and international initiatives therefore began to consider the formation of truth commissions. The recognition of truth, aside from being an act of judicial reparation, is also an act to re-establish justice, inasmuch as the truth should become the moral pillar of transitional democracy as well as a basis for a more appropriate development of a culture of legality and respect for human rights.

Impunity as a violation of human rights

Impunity is also an act that violates human rights and, as such, is a crime against humanity. Impunity means not only refraining from doing something or letting it pass, but a rational and deliberate act of violence and a violation of human rights. This concept is extremely important because it is based on the recognition of the idea of third victimization, which results from prolonged impunity and which affects the permanent physical, psychological and legal integrity of the victims and their families, as well as society in general. Not only is it a human rights violation but it also entails problems of public health, civilian security and the administration of justice.

An example of this conceptualization within the legal framework is provided by the case of Chile:

The appearance of this new and grave symptomatology, which presented psychodynamisms unlike those of the crimes, allowed the hypothesis that over time impunity induces mechanisms of intra-psychic perturbations that can produce mental disorders equal to those of torture or even worse. From a medical and psychological standpoint, we can thus state that impunity is in and of itself a human rights violation (Rojas, 2000).

This proposition was presented to the international courts and was alleged in the Pinochet case:

In addition, it was reiterated that the 1,198 cases of forced disappearances should be included in the proceedings against Pinochet, citing as evidence a judgment of the European Court of Human Rights in Strasbourg that condemned Turkey and held that the mother of a disappeared Turkish citizen had suffered inhuman and degrading treatment similar to torture during the absence of her son.

(...) the proposition that considers the suffering of the families of detained and disappeared persons as psychic torture was used to grant the extradition of the former dictator to Spain (Brinkmann, 1999, p. 184).

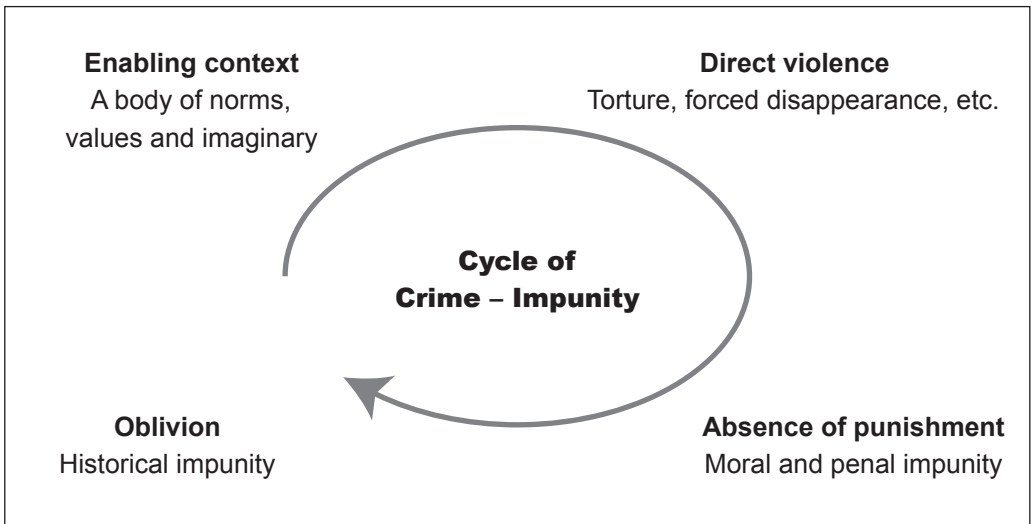
This is how a precedent was established to consider impunity comparable to the crime of torture in psychosocial terms and, therefore, a crime against humanity.

The importance of this conceptualization has given rise to the creation of commissions, working groups and *ad hoc* rapporteurs in the universal and inter-American human rights systems. This recognition was also made evident by the creation of the International Criminal Court, as well as by various UN resolutions. The issue of impunity as a crime against humanity acquires international relevance since, in a globalized world, impunity is not limited to one country or region but rather it represents a problem of international security because of the creation of regional conflicts and political and economic instability. While the psychosocial impact of impunity is global, the inter-American human rights system is faced with a hemispheric challenge, particularly with respect to extraordinary mechanisms of access to justice, non-jurisdictional and symbolic mechanisms, penal reform and the attainment of justice, all of which go hand in hand with the processes of democratization, as mentioned.

Impunity as a facilitating culture

Impunity also generates a context, psychosocial conditions that enable the abuse of power and the existence of a generalized policy of human rights violations. In fact, crimes such as torture and forced disappearance would not be possible in the absence of the context of impunity, which is at the same time a consequence of its culture, nourishing once again the cycle of crime-impunity. The cycle of this

relationship begins with the enabling context (impunity as a context since it is *per se* a form of violence), followed by an act of direct violence, then immediately comes the lack of punishment (moral and penal impunity), followed by oblivion (historical impunity), which in turn nourishes impunity as a context (enabling context). There follows a diagram that shows this cycle:



Within the concept of impunity as a crime-enabling micro-context, several cascading psychosocial factors are found:

- **Stimuli in the surroundings.** These are “behavioral scenarios,” for example jails and clandestine detention centers.
- **Situations of power.** One factor that can easily trigger violent behavior is the possibility of carrying it out. This happens, for instance, when the torturer is part of a police body, a paramilitary group or has been given power by a superior command.
- **Peer pressure.** One of the most influential elements for the adoption of violent conduct is peer pressure. For instance, when a peasant is part of a civil self-defense or paramilitary group, he may be forced by peer pressure to take part in violent actions, such as ambushes, massacres and torture.

The possibility that “normal” persons take part in criminal actions in the context of impunity does not depend exclusively on extraordinary circumstances such as states of exception or wars. It is possible to find these same micro-contextual elements with a socio-cognitive character in situations of “democratic normalcy” that facilitate and justify this type of behavior.

Research on common situations related to the social influence on the justification of abuses of power in micro-contexts has produced the following conclusions:

- Persons carry out their tasks with more of an administrative than a moral sense.
- Individuals make a distinction between killing others as a matter of complying with duties versus killing as a result of personal feelings.
- What people experience as the moral demands of loyalty, responsibility and discipline is really nothing more than technical demands to maintain the system.
- Language is frequently modified in such a way that the actions do not conflict with words or moral concepts instilled during the educational process (Calveiro, 2004).
- Invariably, a subordinate will transfer responsibility to higher levels of authority.
- Actions are always justified by constructive intentions and are eventually seen as noble, in the light of some ideological objective.

It should be noted that this context of impunity has a special effect on persons, groups and populations, which has been called psychosocial trauma. The Ibero-American social psychologist Ignacio Martín Baró (1990) addresses the concept of psychosocial trauma:

The term psychosocial trauma, which is quite unusual, is used here to emphasize the essentially dialectic character of the harm caused by the prolonged experience of a war. This does not mean that there is a uniform or common effect on the

entire population or that the experience of the war can be presumed to produce an undetermined impact on persons; the mention of the dialectic character of psychosocial trauma is done precisely to underline the fact that the harm or the effect will depend on the specific experience of each individual, which is conditioned by his/her social origin, the degree of participation in the conflict and other characteristics of personality and personal experience.

However, when speaking of psychosocial trauma we want to emphasize two other aspects as well, which frequently tend to be forgotten: a) the harm inflicted on the person has been socially produced, which is to say that its roots are not to be found inside the individual but rather in society, and b) that its very nature thrives and sustains itself on the relationship between the individual and society, through diverse institutional and group involvements, as well as individual ones. The foregoing has obvious and important consequences when determining what must be done to overcome these traumas.¹³

This position understands a traumatic experience as a process with several stages. According to Martín Baró, the traumatic event is solidly identified as a socio-historic event that accepts as part of its genesis the determinant role of social relations. This leads to the conclusion that trauma is necessarily a process that is developed over time, affecting all of society but in different ways depending on the groups and social classes in opposition, in such a way that it is possible to identify specific forms of damage as a result of that social dependence. The latter results in a social psychology that is not uniform across the entire social body.

It is not possible to reduce the relationship between a traumatic event and the affected person to a dyadic figure where the isolated individual suffers mentally from a disturbing event that is meaningful only to that person. The traumatic event is a specific disruption of the human psyche, but it extends its internal mechanisms beyond the minds of the isolated individuals. Its full explanation is thus to be found

13 Additional information on these concepts may be found in *Migración y salud mental. Manual para promotores y capacitadores*. Coord. Cristina Bottinelli. ILEF, Mexico, 2005; *Psychological Impacts of Exile: Salvadoran and Guatemalan Families in Mexico*. Hemispheric Migration Project, Center for Immigration Policy and Refugee Assistance, Georgetown University, 1990; Cristina Bottinelli, "La pertenencia a dos culturas: un aprendizaje para la vida," in Gail Mummert (ed.), *Fronteras fragmentadas*, Morelia, Colegio de Michoacán, pp. 375-390 and Cristina Bottinelli, *Herederos y protagonistas de relaciones violentas*. Ed. Lumen, Argentina, 2000.

exclusively in the collective trauma, since it is a recourse of domination and social extermination that has as its purpose the confirmation of a specific model of society. The psychic trauma that we are dealing with has therefore come to be known as a psychosocial trauma, as suggested by Martín Baró.

The trauma is much better explained if analyzed from the perspective of psychosocial and sociopolitical phenomena. The structural causes of impunity place this problem far beyond biomedical, psychiatric and psychological practices, in such a way that the psychosocial trauma may only be truly resolved within the framework of social relations.

Impunity as a perpetuating culture

It is a known fact that, from the logic of power, a state of direct oppression requires social legitimatization, which has been a classic topic in social and political theory and has been addressed by great thinkers—Rousseau, Weber and Habermas—as well as by studies and research conducted in the field of social psychology, especially political psychology. There is much empirical evidence on social mechanisms—social influence, normalization, social perception, comparativeness, conformity, categorization, opinion and attitudes, rational choice, cognitive dissonance, collective action—that provides data on the processes that enable the permanence and perpetuation of specific symbolic contents that progressively become a part of a particular society; this is what we call culturization.

Authoritarian regimes—and the colonizers before them—are distinguished by their explicit intent to remain in power. The conservative vision of the *status quo* is assured by developing an apparatus intended to guarantee the continuity in power of a person, group or system. It is thus obvious that an authoritarian or colonial system is not compatible with democracy. Historically, impunity has been a factor of sociopolitical instability; wherever there is a vacuum of power, a totalitarian system is imposed. We could say that impunity is the Petri dish for an authoritarian system, which in turn needs an apparatus to uphold the continuity of the system and the structures that support it.

It is important to give a place to this conceptualization in analyzing the national and regional contexts where a policy of reparative justice for victims, families and communities is being constructed, since the perpetuating factors and ideological mechanisms are difficult to visualize, eradicate or transform. In fact, a policy of justice oriented to the dissolution or transformation of the structures of impunity

should entail the design of strategies that will last for several decades. The objective should not only be centered on legal or institutional reforms but on changing the structures for the symbolic production of social subjectivities, as well as for fostering profound changes in the formation of democratic culturization and human rights.

Some of the ideological mechanisms that form the culture of impunity are institutionalization, legalization, familiarization, normalization, ritualization, socialization, introjections and valorization. While we will not delve deeper into these mechanisms, we should emphasize that they are the bases for the symbolic production of subjectivity within the context of impunity.

Impunity as social control

Impunity as a form of social control has two branches: one acts through collective fear and the other creates social resentment and the fragmentation of the communitarian fabric or social bond.

Forming a culture of fear as part of impunity permits social control. The culture of fear, like the culture of terror, is based on the exercise of violence as a form of social regulation in the face of “unease.”

We have already stated that when violence ceases to be an accident it becomes a habit and a custom; it also becomes a cultural fact. The most infamous acts of violence slowly become a part of normal everyday life and as a result the level of tolerance toward them also begins to increase (Figueroa, 2000).

In concrete terms the culture of fear and terror is reflected in the victims’ silence, guilt and paralysis. It constitutes a form of social control since it dismantles subjectivity and subjects it to a new mandate: Thou shall not speak! This forced silence is sometimes a way of psychological survival. Silence isolates the victim and produces feelings of guilt, removing responsibility from the perpetrator, thus contributing to the organization of a form of social and cultural oppression.

Silence and fear are inherited and assigned socially in such a way as to integrate them into the identity and characteristics of the communities to which the threat is directed, which then react with submission and obedience. It is a social fear that is not only manifested vis-à-vis the State but also vis-à-vis the community itself. The silencing acts in the social fabric as an accomplice of impunity; history has shown how it acts as a form of pressure to prevent the verification of abuse in the administration of extreme power.

This is why a lack of justice (criminal, moral, historical) begets social resentment and, through it, to the decomposition of the community's fabric by disintegrating the bonds and ties of solidarity and trust. This leads to the second branch of the social control exercised by impunity.

Trust is not only important for the optimal development of the psychological development of human beings, particularly in the first stages of their lives, but it is also fundamental for social development. In this sense, every social bond is sustained by a portion of trust, without which it would not exist. Impunity, since it is a form of social control and an enabling concept, alters the bonds of trust and solidarity and replaces them with relationships pervaded by exclusion and subordination, aided by social resentment, hate and fear (social polarization).

Martín Baró explains this when he cites Castilla del Pino:

The term resentment is well known and is commonly used in a negative sense: it implies a rejection of an event or person without a sufficient basis or justification, a gratuitous social hatred. This is, however, a simplistic understanding of resentment, which makes clear the devaluative ideology of everything that implies opposition to the dominating social interests (1983).

Martín Baró continues by stating that, in the context of everyday social violence, "it is possible that being conscious of inequality is the starting point" of social resentment. "Resentment has given rise in every concrete historical situation to a further and better step over the previous estimation of the human being." Thus, while resentment is a situation of conflict, confrontation and social polarization, it also implies becoming conscious of injustice to the degree that the subjects feel affected and harmed. At the same time, it provides the opportunity for such resentment and attitude to give rise to expectations of hope.

Nevertheless, resentment most often entails entering into a vicious cycle of violence and vengeance, which leads to a rending of the social fabric and the bonds of solidarity, rather than aiding a process of transformation and acquisition of consciousness. It thus facilitates the stigmatization of these social sectors as poorly adapted or antisocial groups and it enables a form of social control in the social *imaginarios*, primarily through processes such as social prejudice. The dynamics of impunity are based on the key factor of individualizing and de-legitimizing those manifestations of resentment that oppose the public discourse and the control of power.

Impunity: Desire and exercise of absolute power

A brief review of impunity

*Impunity is the context that facilitates crime.
Impunity grows, is nourished and receives feedback from and in impunity.*

Impunity has existed during history's different epochs and contexts. It is like a biography about its specific victims. But its substantial bond with the social and political context makes it impossible to convert or dilute it into a fragmented and timeless phenomenon. Loewe states that "Only from a historical perspective may one see that torture is not an act produced out of 'wickedness,' but rather out of the exercise of power" (Loewe, 2002).

Since Antiquity, those in power have used impunity to bend the will of the oppressed. According to Loewe, paradigmatic examples range from the Roman Empire to the Inquisition, from the persecution and killing of witches to the practice of femicide, from Nazism to the genocidal massacres of dictatorships. In each, torture was used as an example to perpetuate absolute power upon those being dominated and to dissuade them from insurrection. Thus, murder by torture was used in the Roman Empire as an example to all the oppressed and, as Loewe points out, even though thousands of subjects were sacrificed, it was impossible to kill all the dissidents through the use of torture. With the crucifixion of personages like Jesus Christ two unequivocal messages were sent: "rebel and you will suffer" and "you the people choose who is going to suffer while I, the State, wash my hands."

With the fall of the Roman Empire the feudal system, protected by Christianity, continued to use torture as a tool of domination over the people. The Inquisition was created in 1184 by groups in power, the State and the Church, to uphold their hegemony. Subsequently, the torture techniques were exported to the European colonies under the pretext of "evangelization and civilization" and they served the objective of domination and control of the indigenous populations. Later, with the advent of the bourgeoisie in the mid-18th century, the Inquisition was no longer legal and the Republic once again hid its torturing hand, though that did not mean that the practice had been abolished. Worse yet, it remained in use as a frequent recourse in the Colonies.

In all those cases, it may be observed that violence is exercised by the State to dominate the oppressed, either directly or as an exemplary punishment under the

cloak of impunity, which was the only way of giving the use of force a self-conferred “legality.”

Between December 1946 and July 1947 the Nuremberg trials against twenty-three Nazi criminals, among them twenty doctors, unraveled the complicity between torture and medicine, which was part of the genocidal project perpetrated not only against the Jews but also against Roms and prisoners of concentration camps in general, which included many Socialists and dissidents (Loewe, 1999).

Torture still survives, albeit clandestinely, as a method of social control. Furthermore, the penal system is often based on confessions produced by torture or threats. Repressive structures generate terror through the threat of torture –in spite of its illegal nature– as in the case of the Latin American dictatorships and the so-called “dirty war.”

In this context, “the message of terror is directed specifically to those sectors of the population that are potentially subversive, maintaining the façade of ‘justice’ in all the other areas, especially the international.” The “filtration” of information about the terrible nature of the methods of torture is used as an element of domination by the power structures.

In order that the exercise of power through the use of torture function

it is necessary to count on the widest possible participation of the judicial apparatus. Policemen, agents of the Public Prosecutor’s Office and judges act in collusion through a dense network of loyalties in imparting not justice but torture ... The torturers know beforehand that they will be protected for their evil practices by impunity, even in those few cases in which investigations advance and they are punished, because the benevolence of the system that protects and covers for them will immediately provide them with a pardon or it will compensate them with promotions in their careers (Loewe, 2002).

The nucleus of impunity lies not in the fact that all this violence exists, but rather in that it does indeed exist and nothing is done. It is also important to point out that, although the question of torture has been widely explained as an expression of impunity, it is not the only example. Other serious human rights violations, for instance the lack of justice, are also part of the problematic of impunity for our peoples.

An example would be the judgment of the Inter-American Court in *Molina Theissen vs. Guatemala* in which there was a 23-year delay, between the events

(1981) and the judgment (2004), in obtaining justice. The sociopolitical situation of Guatemala at the time was one of war with a wave of extreme violence that permitted the commission of crimes against humanity, such as forced disappearance, torture, homicide and massacres, as well as human rights violations such as forced exodus, mobilizations and mass exile.

It is important to emphasize that this delay in obtaining justice was not only due to a situation of open and declared war, but also to other variables within which State terrorism is generally able to operate, such as occurred in Mexico during 1968 and 1971, in which impunity was the common element to the clarification of crimes committed in the past. This leads us to think about the structural characteristics of impunity in Latin America, where it can be instituted both in dictatorial regimes and in so-called democratic ones, but that share a totalitarian structure.

The adjudication of the so-called re-victimization may be seen as a consequence of silencing and impunity, thus re-affirming this article's position on impunity that it permits crimes against humanity within the framework of a global Latin American strategy.

Impunity is tied to the exercise of power.¹⁴ It operates with the objective of winning over the hearts and minds of people, in the same way as the so-called "low intensity war." It pretends to validate its actions and nature in the collective conscience of impunity and its related practice, which is torture, as if it were a necessary, habitual and accepted part in attaining justice. The microphysics of power strengthens and fertilizes the territory of impunity. The crimes committed in the past and the fact that they are not resolved produce consequences for democracy and its peoples who are undertaking the difficult task of reconstructing their social fabrics.

Paradoxes and controversies regarding impunity

The formulation and application of laws

The possibility of committing human rights violations and at the same time being an administrator of the different stages of justice (simultaneously being a judge and an affected party) is a violation of the principles of impartiality and the separation

14 The FIDH (International Federation of Human Rights) report on the human rights situation in Mexico in 2003 could well be extended to the situation in Latin America in general with respect to minority and vulnerable groups.

of powers, which is considered to be essential in the different international norms that have been collected, emphasized and systematized in the operating manual of the Istanbul Protocol (2004).

At the same time, this issue presents the following paradoxical message:

- Macro-social: it is a message specifically directed to the juridical sphere, which reduces credibility in the judicial system and weakens the rule of law in incipient or transitional democracies, while at the same time fragmenting the social fabric.
- Micro-social: it affects families, groups and communities. The actions, omissions and consequences of impunity lead to a perverse situation with confusing characteristics that nurture the repetition and perpetuation of impunity. At the same time, it increases the degree of violence toward oneself (illness, suicide) or against others (desiring to or taking justice into one's own hands).

Lastly, the exercise and practice of impunity may promote the defense of the principle of the right of insurrection, which is included in national Constitutions to defend a territory –local/national– and particularly the entire global community.

The medical-legal implications in attaining justice

There follows a mention of some of the information and research on the role of health and its agents involved in the demands of power. These agents are generating practices, a rationalization and a discourse devoted to justifying the arbitrary actions of such power.

It should not be surprising that the State utilizes some medical sectors as allies since they can provide it with knowledge of the most effective methods and practices of torture and of maintaining victims alive as long as they are useful for its objectives. Fuerth states that:

How long can a human being undergo beatings with a steel bar, a leather strap or a rubber club? How can one prevent the victim from kicking the bucket too soon? How can one torment a prisoner without leaving scars or other traces that could be discovered later? What are the most sensible parts of the human body and what can be done to provoke the most intense pain? The executioners of the Third Reich were able to obtain replies to these questions from the doctors who instructed them in anatomy and general medicine (Loewe, 1999).

During an investigation conducted in Uruguay in 1985, Maxwell Gregg explained that doctors aided in torturing by:

1) Revealing to military personnel the results of clinical examinations of detainees in order that the former could use the information in planning the torture; 2) Issuing medical and pathological reports that covered up acts of brutality; 3) Acting carelessly, sometimes deliberately and sometimes negligently, with respect to the care required by sick and wounded persons; 4) Taking part occasionally in interrogations with a political character. Other accusations were specifically related to the psychiatrists and psychologists working in the Libertad prison, among which were 5) Actively collaborating in planning modifications to the rules and routines with the purpose of undermining the mental health of the detainees and 6) Deliberately abusing the use of narcoleptic medications (Ugalde and Zwi, 1994).

On the other hand, doctors are used as informants, thus violating their professional oath, as related by Fanon (Loewe, 1999) in the case of doctors treating Algerians, who were told that any suspicious wound required taking the name and address of the patient and the names and addresses of the persons accompanying the patient and reporting them to the authorities, under threat of punishment. Also mentioned were cases of other mental health professionals, such as psychologists, who acted as agents of the power structure.

Faced with this scenario, it is necessary to propose another role for health professionals and specifically those devoted to mental health. It is not simply a question of under no circumstances will a doctor be allowed to “weaken the physical or mental resistance of a human being” (Ugalde and Zwi, 1994) that was established by the 1949 World Assembly of the World Medical Association in Geneva. On the one hand, it is necessary that doctors serve as instruments of justice -they are now an impartial third party in the international human rights tribunals- by providing the elements that may be useful for the clarification and resolution of the cases that they are treating through the use of their techniques and scientific knowledge. On the other hand, they must actively contribute to the reparation of the damage on the individual, family and social levels.

A series of tasks to be carried out by professionals in medicine and mental health –doctors, psychologists, social workers– have been planned in the area of international justice so that they may, as experts, contribute to reconstructing the facts, estimating the damage and give psychological accompaniment before, during

and after the hearings, thus providing significant contributions from the point of view of social psychology to sustain and attend to the victims.

For its part, the Istanbul Protocol establishes that the duty to provide medical assistance is to be done by recognizing the rights of the patients. Similarly, the Lisbon Declaration recognizes that every person has a right to appropriate health care without discrimination and it reiterates that doctors must act in the best interests of patients at all times. According to the latter, patients must be guaranteed autonomy and justice and both doctors and providers of medical care must respect the patient's rights. It also points out that they have

a general duty to society to ensure that justice is done and violations of human rights prevented.... Doctors have a duty to monitor and speak out when services in which they are involved are unethical, abusive, inadequate or pose a potential threat to patients' health.... They should report the matter to the appropriate authorities or international agencies who can investigate, but without exposing patients, their families or themselves to foreseeable serious risk of harm (Protocol of Istanbul).

Elements that constitute impunity and help to differentiate it

The following elements are to be found in the characteristics that constitute the nucleus of impunity, regardless of when or how it is produced:

- An illusory temptation of absolute power, which by placing itself above the law, can demonize anything that is different.
- Practices of torture in which:
 - the assertion that “the end (which is considered superior) justifies the means” prevails.
 - the use of mechanisms of terror to spread intimidation and discourage dissidence within society.
 - the consolidation of impunity is manifested through the destruction of the social fabric.

- power groups are formed that are stronger than or in collusion with those in power, thereby weakening the attempts of other power groups or sectors that might be considered democratic.
- there is no possibility of a peace with justice and dignity, rights and duties, without discrimination or submission.

Thus, if one accepts as a paradigm the possibility of an absolute power, transgressing the law in juridical and psychological settings (personal, communitarian and social) is justified when it is a matter of defending that power and its sole school of thought.

The following differentiating elements that characterize impunity in modern times may be mentioned:

- More sophisticated methods to establish impunity, such as seeking methods of torture that leave no traces and making the victims invisible.
- Greater influence on the mass media to strengthen the formation of consensual and banal opinions.
- The open promotion of life styles, cultural patterns and values that relate to lower levels of tolerance that tend to stigmatize what is different: opposition to the established order, difference in gender, race, social class and cultural niches with pluralized value systems and beliefs.

Torture does not pretend in the first instance to annihilate physically another person, but to erase the differences with that individual, that is, to co-opt, incorporate, alienate, brainwash, attack and transform the identity and psychically kill him/her. No matter the cause being defended or what has been done, it could be a political dissident, a social activist, delinquent or someone belonging to groups or minorities who are different than what is socially accepted by the majorities that support the system.

Impunity and torture interact inclusively, they feed off, justify and validate each other. Sometimes they are “legal” but not legitimate. From a psychological perspective, it could be stated that *neurosis needs accomplices and so does impunity*.

Memory and impunity

It is important to mention at this point that the complex transitions to democracy in Latin America, in countries like Chile and Argentina, has meant paying an enormous social price to allow such a transition within the space available for collective negotiation, since the amnesty laws that were enacted perpetuated the climate of impunity. This presents an immense challenge to the building of democracy after long periods of silencing, terror and denial of reality. Ending impunity is a step that cannot be skipped historically, since peoples, societies or individuals cannot erase a past of which they are a product and they live facing its consequences.

From the psychosocial point of view, oblivion is linked to denial mechanisms: terror and horror as a lesson, resignation and hopelessness, submission, alienation and obedience to the *status quo*. The seeds of repetition are sown in the terrain of impunity.

Several research projects have coincided in finding that what is forgotten – individually and collectively– is repeated. From a psychological point of view it could be called a compulsion to repeat, in addition to the possibility of generational transmission within the inter- and trans-subjective social space. *The recovery of memory* thus acts inversely to the perpetuation of impunity.

The lack of justice contributes to the creation of a traumatic memory, that is, a social trauma that originates in a context of institutionalized violence legitimized by the State as a privileged form of power, seeking to destroy the subject as well as the body and the social fabric (Becker and Castillo, 1990).

Keilson states that the *sequelae* to the trauma continue to exist long after the end of a war, a dictatorship or a state of political repression. Thus, if the expectations of reparation, recognition and social validation of the damage are frustrated by silence and the lack of justice, that would be one more traumatic sequence, albeit more intense, because it deepens the sensation of impotence, the lack of protection and the marginality in terms of social belonging.

From a psychoanalytical view and within the inter-subjective model, Ferenczi, Winnicott and lately Stolorow submit that trauma is produced when the expected response is not received from the medium that reflects and recognizes the alteration. The frustration produced by such an expectation of an emotional support system (*contención*) encapsulates painful sensations that are converted into a sort of special vulnerability to states of trauma. In this respect, Margarita Díaz, of ILAS, states that

Among the types of observed social fractures, it is seen that children as well as many adults perceive that their reactive feelings of pain are considered harmful and not welcome, so they tend to hide them defensively as a way of protecting the bond with others that they direly need. These entrapped feelings are converted into a source of internal conflicts and sensations of vulnerability to states of trauma. It may thus be said that therapy has faced and faces severe limitations in the absence of a social space that fully recognizes the damage to a society where there are systematic human rights violations. Without such integration, there can be no reparation and those directly affected are those where the damage is concentrated and there is an express dissociation between those affected and those not affected, between those who want to forget in order to build peace and those who need to remember to avoid repetition. If such dissociation continues, the victims are left out of the social process in a context that attempts to forget the past. The damage thus becomes chronic and is transmitted to future generations through a series of family mandates, some explicit and others left unsaid.

This leads to an accumulation of trauma, which is passed on to future generations because of the amount of free aggression that produces a predisposition to conflicts. Added to this is the fact that every traumatic situation activates the compulsion to repeat. New defensive measures may also arise to prevent the trauma from being remembered and repeated.

If, in addition, the perpetrators are protected by impunity, they continue to exert repressive power. As Amati (1998) reminds us, fear, which is most often unconscious, leads us to approve what we disapprove. That is why, in actual practice, each new political or juridical measure that facilitates impunity worsens the symptomatology (persistence of fear and memories of prosecution, lowering of social ideals, increase in aggressive conduct within the social sphere, taking justice into one's own hands), which once more expresses what is social through what is individual.

In cases of disappearance, there is uncertainty regarding the whereabouts of the disappeared person. The situation of simultaneous presence-absence, the lack of information about what happened and what will happen next create a psychotic zone of ambiguity that is reinforced by the impunity of the "disappearers." Ambiguity interferes with the use of the principle of reality to provide psyches with a precise direction to carry out the task of elaboration. It is so much so that mourning does not begin until the principle of reality is recognized, because it ultimately imposes itself even if it was initially rejected.

When no one is punished, history tends to erase the existence of victims. The murderers run free and function socially, which is a double denial of the existence of crimes against humanity.

The demand for justice, which ensures the existence of the symbolic order, and even more the inscription of the demand for justice in the broad social movement constitute an internal aspect to the subjectivity to overcome the trauma.

In any case, according to Halbwachs the collective memory is a social reconstruction of a past that was lived and experienced by a specific group, community or society. This living past differs from what is recorded in history, which registers a series of dates and events, such as facts and events, regardless of whether they were felt and experienced by someone. While history pretends to give an account of transformations in society, collective memory insists on ensuring the permanence of time and the homogeneousness of life as an attempt to demonstrate that the past remains, that nothing has changed within the group and therefore the group's identity and their projects, together with the past, also remain. While history is informative, memory is communicative because it is not interested in verifiable data, but rather in actual life experiences.

Memories, including individual ones, are created and sustained by the thoughts and communications of the group: everyone is sure that the personal memories exist because everyone else also shares them. The temporal framework of the collective memory has been built with all the dates and epochs that are considered to be socially significant; there is always a constructed memory.

Memories are deposited in time, as if they were objects and time was a place and if those places do not exist the memories that they contained cannot be recovered. Space is fundamental to the collective memory because unlike time, it is built upon conventions; the former is made of lifeless stone, which is more stable and durable and can sustain memory longer.

As the popular saying goes "things beget memories." The importance of space is magnified with regard to memory since even if a building is destroyed, it will always be possible to say that "it once existed," since in fact the architectural drawings and the setting are the last things to be erased.

Psychological perspective of impunity as a transgression of the law

This section deals with the possibilities of articulating the psychological and juridical points of view on impunity as a transgression of the law during the exercise of power. In that sense it is worth asking: What is the law from a psychological point of view? Why is the law important to the intra-psychic? What effects do the law, its compliance and punishment for its non-compliance produce on what is intra-psychic and what is social?

The law as a basic element of social and psychic life

Passage from a natural to a cultured state was based on a prohibition. In the Judeo-Christian civilization that organizing and fundamental prohibition is the incest law (prohibition of having sex with women of the same family). According to Levi-Strauss, different types of prohibitions exist in all cultures and they spawn others that subsequently become the laws that provide the basis for living together with its principal institutions, from the smallest –the family– to the largest –the State– and each exercises power and accomplishes a specific type of function.

The law is, thus, the basis of social and psychic life. The law, as pointed out by René Kaës (Edelman *et al.*, 1995), is the testimony of a social contract that is defined through language. The law mediates to resolve conflicts, which would otherwise be resolved through physical violence. According to psychoanalytical Freudian research, this requires renouncing the direct satisfaction arising from individual impulses –and desires– and their transfer to socially accepted objects in order to create a culture and to establish a community. The law thus represents the external basis of the intra-subjective symbolic function –internal representation of the law and what is forbidden– and consequently, from a Freudian point of view, it is related to the functions of the super ego –the moral conscience. Kaës states that:

One of the two principal functions of the super-ego is repressive and the other is structural, but the latter only acts under certain conditions imposed by the former. It may be explained thusly: what is prohibited and the repression that punishes its transgression is a vehicle to structural effects only if they give the individual the possibility of thinking as an individual with desires. In this movement, which provides the individual with access to the representation of what constitutes the

relationship with another, with others, the individual will have to mourn the omnipotence: only in that way may he/she may create history. The repression that takes place within the individual under the double effect of intra-psychic needs and what is transmitted of what has been repressed by the other gives access to memory and the capacity to remember. Repression acts thus against profound oblivion, which creates cleavage (dissociation). If repression is necessary to engender memory, the safeguard of the future, impunity makes that operation impossible. There is no future when oblivion prevails (Edelman *et al.*, 1995, p. 17).

The psychic structure is formed by interaction with others, as well as with the law; having a memory of the law enables the repression of desire and the creation of the psychic structure –super-ego. Oblivion of the original situation, on the contrary, may be manifested as the conscious or unconscious repetition of the unresolved situation –aggression, violation of the law– or it may be resolved intra-psychically with different degrees of conformity. Both what is forbidden and the punishment brought on if it is transgressed are indispensable to structure the psyche of the individual and his/her desire, at the same time allowing for a resolution of the latter within the law. In the absence of that lack of compliance with the initial desire and the feeling of repentance, there is no possibility at the intra-psychic level of recognizing legality and illegality (Botinelli and Remesar, 2004).

This is how memory and punishment have to be understood, as necessary to ensure the formation of the psyche; if that basic and fundamental rule of what is social and what is intra-psychic is not followed, some punishment will result. What is social and what is psychological depend on memory and on compliance with a common law; that is the basic rule for the constitution of what is social, enunciated by sociologists and recognized in the cultural setting by sayings such as “don’t do unto others what you would not want others do unto you,” which implies repression of desire as a constituent of the intra-psychic. Punishment, as a memory of sanctions received for being disrespectful to the law –in contrast to impunity as oblivion of what was fundamental– is thus a meta-psychic condition (above and beyond the individual psyche) that is necessary for the psychic life of the individual.

Psychic and social effects of transgressing the law and the lack of punishment

The impunity of those in power, seen as the failure to punish for having broken the law, attacks the symbolic order and threatens the foundations of the community.

Kaës adds that impunity associated with crime not only destroys the distinction between what is legal and what it is not, but also what is ethical and the difference between what is moral and what is immoral; “that is why it will destructure the individual’s psyche since it makes it impossible to differentiate what is forbidden from what are desires. Desires cannot be structured without prohibition and the punishment that results from transgression. When such distinctions are suppressed, the sense cannot be constituted or transmitted” (Edelman *et al.*, 1995, p. 18).

When referring to the importance of truth and justice for the sake of mental health, Dr. Paz Rojas states the following (1996):

Like crimes, impunity is a human decision, an attempt to conceal and, what is more, an obligation to arrive at oblivion. Oblivion that, in the case of crimes against humanity, is impossible since they were forever recorded in the minds of those who were directly affected, as well as by society, in the collective *imaginario*, which will transmit it to succeeding generations.

All of this, however, is or remains unknown, which causes the crime to penetrate the human mind as an absence, which is horribly present, or as a confusion that nevertheless is an inexorable truth, lived and denied at the same time. This is what now transforms the historical questions that mankind has posed regarding how, when, who and why, which are normal to finding an answer to the questions of life, into dramatically persevering questions, since no answer is forthcoming. If the crimes were committed during a stage of State terrorism, impunity will persist in times of democracy.

The existence of victims of grave violations, such as torture, is an example to others since they function as “emissaries,” announcing: this victim is an example of what might happen to any of us, but it happened to him/her; the others have not been “touched.” This is how trauma produces effects of guilt and shame for the victim, but also toward the victim, sustained by the naturalization or denial of what is sinister and illegitimate in those actions and reinforced by impunity. Impunity also reinforces the fear of the reappearance of the situation that caused the trauma.

It should be emphasized that extreme abandonment, as the final rung of social existence, condemns people to solitude and returns them to primary and atavistic levels in which danger and unforeseen events reign supreme. A cycle of being condemned to repeat is created, which is characterized by the lack of consequences, constantly threatening to destruct the entire psychic, individual and social apparatus whose

only secure foundation is trust. As a subjective act, trust requires a real possibility of depositing on another parts beyond one's self-control: other individuals, the community, the social fabric. What happens in a subjective space whose foundations have been lost? People are forced to re-live continuously the experience of distrust in a system and in a society. Impunity is a sentence to have to re-live repeatedly the trauma of abandonment.

Sheltered by a pseudo-legality that justifies it, impunity impedes the punishment of crimes and the possibility of rationally defining what is socially permitted and what is forbidden, what is lawful and what is unlawful, thus affecting the proper functioning of the principle of reality, even subjectively, which shows the individual how to preserve the ability to adapt to the demands of reality (Lagos and Kordon, p. 84).

Impunity makes it possible to repeat what has been done before, because it sustains the power that carries out the transgressions and reinforces its continuity. "In our country torture has become" –wrote Bird– "an efficient way of sustaining an omni-modal power, a holder of life and death, a generator of individual and social terror, whose predominant objective was domination by attempting to stop all opposing reactions or struggles" (Edelman *et al.*, 1995, p. 125). This means that impunity pretends to establish the principle that power is untouchable, no matter what is done. As a consequence, it imprints, consciously and unconsciously, the certainty that there is an omnipotent power, the law of the strongest, placed at a level of legality that is different than the one that embraces the rest and, therefore, the possibility of survival depends upon its decisions and not on general respect to a law that is common to all.

Such a circumstance means that the resolution of a conflict will be physical, except that this time it is under the purported exercise of the law –it employs a legal procedure but it is unlawful in itself– (Edelman *et al.*, 1995, p. 28), which simultaneously de-structures the individual psyche and the social network. It is therefore necessary to re-instate a third party as an impartial mediator between the two interested parties;¹⁵ a law that mediates those conflicts fairly, based on the

15 According to the Diccionario de Psicoanálisis of Laplanche and Pontalis, "Intermediation is the construction of a space for a third party, the symbolic space of which the Law is the basic organizer. It should not be confused with any of the parties but rather, again quoting Kaës, should be a 'bridge over the rupture... of the point, of the transforming repetition, of creation.' Intermediation implies the building of a bridge

compliance of both parties to a common law and not on the subjection of one party by the other.

Differential impact of a State that transgresses the law

There is a consensus that full reparation of a psychic damage is not possible. This is particularly serious when the State, which has violated the law and does not accept responsibility for the damage caused, assumes no commitment to repair and does not punish the perpetrators.

Graciela Guilis (2000) has pointed out the importance of inter- disciplinary training in the areas of law and mental health, particularly in cases of human rights. She explains that in working with those who have been affected by violations of the law by an assassin State, the effects on the subjectivity of those persons and society in general are not exactly comparable to the traumatic effects borne by persons affected by any other type of trauma.

The author emphasizes the following differential effects:

- The State is responsible for the crimes, while it denies such participation until the degree of evidence is such that it cannot continue the denials.
- They are the result of a systematic plan, but the State presents the crimes as isolated events, thus concealing its guilt.
- Those who are guilty are not punished and the State does not have the will to investigate.
- Those who denounce the crimes are threatened and in some cases they must leave the country to save their lives.

Guilis also states that the tragedy is lived as something personal and not social. Thus, the paths of the proceedings cross the guilt in a paradigmatic way because those affected are isolated socially, alone in their suffering, while a plan of social

to a new logical space that is not disjunctive (one or the other) but conjunctive (one and the other). The fundamental objective of intermediation is the creation of a space for a third party that permits overcoming narcissistic rivalries to achieve a symbolic order based on the Law. Legality represented by the judge through a judgment halts the tanatic repetitions and put the differences in order, when it is accepted as such.”

fragmentation is consolidated. Some of the manifestations expressed at the individual and family levels in various testimonies and cases are: depression, re-living the loss of a loved one as an amputation of a part of oneself; perception of the event as a landmark that re-creates pain in their lives and alterations in future generations, since the trauma affects the family as a whole and is passed from generation to generation, not only in cases of death, massacres and disappearances, but also in cases of exile and mass exodus.

As pointed out by various authors, impunity is thus not only a juridical and political matter but also includes psychosocial effects that require campaigns of psychological action similar to those of the power that created them, except that now they are more or less covered up and disseminated by public opinion (Edelman *et al.*, 1995).

As Beristain reminds us, impunity is not inevitable. Healthier societies can and must be constructed to face the future, but that task will only be possible if sustained by knowledge of the horrible acts that occurred in the past; ultimately, uncovering the truth that is concealed by impunity is the only way for the social and political system to foster its own evolution. The dialectic between truth and justice, on the one hand, and impunity, on the other, will provide the dynamics for the ethical development of society. The way in which that contradiction is resolved will determine the orientation of the vector of development.

According to Freud, the transgression of certain taboo prohibitions carries with it a social danger and constitutes a crime that must be punished or atoned by all members of society, if they want to avoid suffering all its consequences.

The effect of memory on impunity

One of the effects sought by a power that clothes itself in impunity is the erasure of the transgression, either by denial of the truth or by elimination of the memory of the victims. The two pillars that support impunity are denial of the truth about the facts and concealment of those responsible and the partial or total lack of justice. That is why memory is an antidote to impunity. To testify is to give life to juridical evidence, as well as to the construction of memory. This is why it is necessary to re-establish the meaning of a trial as a process of reconstruction of justice and truth that allows the victim and society to reconstruct the framework that is concealed by impunity.

Even though a re-telling the facts is not in itself an act of reparation –it is often a victimizing one– if it is not accompanied by a recognition of the harm, punishment of the guilty, reparation and restitution (for example, the case of children born in captivity and kidnapped from their families), the possibility of writing history, of *constructing the collective memory*, implies a certain positioning –theoretical, political and ideological– that is decisively necessary to re-appropriate the past and enable the building a future as a person and a society.

This is how it must be done and not through amnesia, as proposed by amnesty and impunity. This is emphasized by Paz Rojas when she states that attempts have been made to utilize the Truth Commissions “to turn the page, to cancel memory and to look only to the future.” This interminable impunity increases the individual, social and cultural damage.

When it is not possible to write history, the sense of continuity is broken and projects are destroyed. Thus, in addition to no longer believing in laws and institutions, people also lose strength and security in their own projects, since it is known that growth implies the need to investigate the past. Each individual and every society are heirs and transmitters of one history, but which history? Which memories will be used to construct such history and transmit it? M. Enríquez (1987) emphasizes that individual memory mechanisms interact with those of the collective memory and that the former could not function without the latter.

Attempting to recuperate history, solidarity and trust in a common law –since a vacuum of justice is intolerable– requires recognition of the injustice that has been committed and re-vindication of the victims and their families as persons whose dignity is in danger of being taken away each day. The possibility of identifying them as such restores the dignity that has long been denied them and it is a way to rescue them from the daily horror produced by the void caused the absence of loved ones, in addition to the burden represented by suppositions in the absence of the historical truth about what really happened. Memory also plays the part of social remembrance by asserting that something did happen and thereby accepting that those who are not present today did exist in the past. National identities, as well as collective historical recounts, are edifices built with memories. As stated by Toni Gomila, in no case is memory a mere archive to recuperate what is past, but rather a process of elaboration.

On the other hand we believe that having an ideological position, as well as the possibility of remembering, are values that are inherent not only to individuals but also to societies, which are called upon to watch over that common and collective asset.

The fundamental task consists in replacing the silence resulting from an experience that cannot be represented and the constant repetition caused by the burden of the traumatic experience, the reinstatement of memories and the consent to silence: because the catastrophic drama is left without enunciation. It is only at that point, going beyond the repetition and the silence of death, that the external memory, the collective memory, the search of history to find its meaning are able to protect against the resurgence of horror and to offer some support by telling a little of its own truth with borrowed words.... One of the functions of a trial is to suppress the resistance to remember and to speak (Edelman *et al.*, 1995).

To summarize, we may conclude that articulation is possible and fruitful both juridically and psychologically. The following thoughts are relevant:

- Intra-subjectively, the law and its consequences regarding compliance and non-compliance are the foundation of the psychic structure (incest law, sublimation of desires, Oedipus complex, possibility of making future choices within the realm of the law), but such foundation, held together by the paternal and maternal *imago*, is also the basis of what is social, inasmuch as it submits every individual to the same law. The law, as a social structure, thus mediates the need to reaffirm through language the legislation that determines the renunciation of individual desires in order to sustain what is social. The State as the model imprints a “pattern” of regulating the law institutionally, subjectively, consciously and unconsciously. In the same way that parents (paternal and maternal *imagos*) become models, supporters, appliers or transgressors of the rules that they themselves imposed or had imposed, the State behaves analogically as a model of social relations and respect for the law. Thus the need arises to punish explicit and implicit transgressions that may have been legalized many times but are illegitimate in order to recover the psychological integrity at the individual and family levels, not only of those affected but of the entire citizenry, thus avoiding social anomie.
- Unpunished crimes prevent justice and respect for the law from accomplishing their function of symbolic, normative and social cohesion reparation (Edelman *et al.*, 1995). The psychosocial effects of impunity may therefore be displaced

into situations that are far from the original ones. Impunity continues to be sustained by different mechanisms, such as re-denial (denying denial, for example by means of providing information outside the proper context, avoiding personalization, having only the winner's side of the story); pre-judging the victim as guilty ("there must be a reason for it"); psychological classification of dissidents (disqualifying the victims and invalidating their claims); dilution of responsibilities ("we were all involved, we were all accomplices"); creation of false situations of dilemma that conceal the real problem. These mechanisms to conceal events and render them as socially natural cause psychosocial effects that are often inter-dependent or nourish one another, such as: fear, insecurity and defenselessness; demolition of social models and pre-eminence of the model of impunity; increase in aggressive conduct; taking justice into one's own hands; elevation of repressive personages (self-proclaimed torturers) as possible protectors of the "common good"; proposals and petitions to establish the death penalty; re-instatement of repressive models in health institutions. Some social movements with varying degrees of organization, power of convocation and public recognition have opposed these processes, attempting to repudiate the traumatic events by combating impunity and demanding justice (through demonstrations, public petitions, acts of homage, denunciation of cases in national and international news media (Edelman and Kordon, 1995).

The impact of measures of reparation in the fight against impunity. Considerations and recommendations

Psychosocial policies of reparation

Based on the foregoing analysis, from a psychosocial perspective it is necessary to formulate proposals for reparation that respond to the complexity presented by the practice of impunity in Latin America. Although the concept of symbolic reparation has been developed in another chapter of the book, there follows some proposals as final considerations.

The first is re-thinking the concept of reparative justice in the inter-American human rights system, specifically with regard to judgments of the Inter-American Court of Human Rights, by proposing that measures of reparation should not only involve one person, group or community, but rather they should be part of a global strategy to combat impunity.

The experience of the Inter-American Court, from a comprehensive point of view, clearly emphasizes its psychosocial impact, the key to which is jurisprudence that may be used to combat impunity. Symbolically, it is a process of re-building the structures of the individual and social subjective fabric, so profoundly and violently damaged by impunity. With respect to measures of psychosocial reparation, it means accepting that the truth is a form of historical reparation. In this regard, the acceptance of a case by the Inter-American Commission as well as by the Court implies a form of symbolic reparation. The inter-American system presents itself as a “third party” capable of reinstating the existential status of the victims, providing them a new opportunity to validate their testimony/truth as a historical fact.

Passing from a vision of “measures of psychosocial reparation” to one of “policies of reparations” requires a theoretical-methodological baggage that can articulate a comprehensive strategy beyond what is penal and jurisdictional and implies initiating processes of democratization, justice, citizenship and the structural reforms that will dismantle the symbolic support given to impunity.

The second proposes creating a series of categories that may be useful as references in formulating the types of reparation that the Inter-American Court could impose on States as part of its decisions. Such categories would be based on the following concepts: reparative justice, renovated justice and justice by anamnesis. The analysis of the foundations behind these three ideas of justice contributes to the articulation of a proposal that reflects the potential of the measures of reparation ordered by the Inter-American Court in its efforts to eradicate impunity.

In reparative justice:

- As a way of reconstructing social bonds beginning with those of an ethical and political nature.
- As a form of restoring, replacing and providing reparation to victims of crimes against humanity.
- As a form of judging the perpetrators morally.

In renovated justice:

At this point it is important to clarify that, even if these principles do not correspond directly to the actions that occur at the Inter-American Court, they

do represent the impact of its decisions beyond the specific actors involved. This is an act of reverberation and possible psychosocial transformation that is implicit in juridical action to defend human rights; it is its spirit.

- As a way to set in motion renewed social bonding.
- As a possibility of building a culture of peace, non-violence and respect for human rights.
- As a form of instituting a different moral and juridical order that makes it impossible to repeat violations of human rights.

In justice by anamnesis:

- As historical justice, through the possibility of reconstructing the historical memories of the people and communities that were traumatized.
- As a form of recognizing the injustices that permitted the occurrence of violent conflicts so that they will not be repeated.
- As a form of elaborating the trauma and achieving reconciliation with history.
- As a possibility of arriving at a moral pardon based on justice, truth, dignity and memory.

Reparatory measures operate in the environment of the concept of harm that has occurred due to an “injury,” be it material or moral. This assumes that both the team performing the analysis and the degree of intervention are centered on the individual and perhaps on the family as well; in the case of a community, attention would be centered on an entire group of individuals and their families.

In addition to providing reparation for the affected persons, policies of reparation should include the design of a comprehensive strategy that takes into account reparative justice, renovated justice and justice by anamnesis, as well as criminal justice. However, since this type of justice cannot be applied to the individual who has suffered harm –the object of the reparatory measures– the Court could use its power to determine the spheres, processes and structures in which the policies

of impunity are crystallized to suggest, recommend or require a series of political and symbolic measures that constitute a strategy oriented to the construction of democracy, plurality and respect for human rights; one based on a culture of legality and transparency, among other measures of an economic, cultural and social nature.

Reparations should not be understood as an element that has been tacked on to the Court's judgments or as a "complementary" action after penal measures have been adopted. Reparations must be understood as a form of justice *per se*. That is when we can refer to reparative justice, that is, a justice that goes beyond the trial and punishment of the perpetrators and is addressed to the victim and to the circumstances that made the victimizing possible, in other words to structural situations of injustice and impunity.

In addition to measures of restitution, indemnity, satisfaction and guarantee of non-repetition, reparatory measures could be classified within the framework of a policy that might include some of the measures that will be cited below, as proposed by Carlos Martín-Beristain

- Recognize the truth and the suffering. Support the recognition of the suffering of the victims. Promote the investigation of some of the events that took place in the past. Clarify some of the cases specifically demanded by the family members.
- Create mechanisms of truth and attention to victims. Promote the creation of laws and mechanisms oriented to transparency and accountability. Create national systems of attention to victims.
- Dignify the victims and their families. Accept the facts. Hold ceremonies of pardon for the harm caused. Hold public commemorations.
- Listen to and accompany the victims. Gather testimonies and provide emotional support. Create mechanisms of protection and accompaniment before the courts. Make public the testimonies of the affected persons.
- Provide security and confidence. Request precautionary measures. Promote peace agreements and mediation or "cooling off" alternatives. Construct spaces for debate on alternatives to violence. Foster participation of the citizenry in the design of policies related to security and justice.

- Assist people with their needs. Implement measures of indemnification. Provide economic assistance. Design and develop policies of social development.
- Take preventive actions so that past events are not repeated. Publicly recognize the injustice of suffering. Ensure that highly victimized groups feel that their pain has been recognized and that their rights are respected. See to it that the mechanisms that made the violence possible are divulged and dismantled.
- Propose whatever changes may be necessary to achieve peace, justice and democracy. Prepare a version of history that is inclusive. Promote education for peace and respect for human rights.
- Re-establish family ties and communal ties. Allow the truth to be a new way of social bonding. Promote reconciliation and the end of hostilities. Favor cooperation, solidarity and social trust. Collectively give new meaning to psychosocial traumas. Facilitate citizen organization and participation.
- Find support in organizations and groups of civil society. Invite different sectors of civil society to participate in forming a policy of reparative justice.

As may be seen from this form of justice, the measures that are taken are not necessarily jurisdictional nor are they the sole responsibility of the State, but also involve other social actors. In this sense, the Court's judgments may help to delineate general orientations within the framework of a policy of reparative justice without a jurisdictional character, symbolically endorsing the actions of citizen's groups.

Justice by anamnesis is one of the forms of symbolic justice that has long enjoyed cultural support since it concerns memory, which is a fundamental weapon for all actions of cultural resistance. The most diverse communities around the globe have practiced this type of justice; it has been represented through the arts, oral histories, rituals, literature, music, monuments and oral family histories. The objective of justice by anamnesis has been to preserve through generations the memory of traumatic events that, confronted with the threat of amnesty or oblivion or with the imposition of a version of the truth by those who have been victorious, has resorted to memory as a form of symbolic survival, as a way to guarantee identity, cohesion and to make sense of a present experience.

Some psychosocial measures that may be employed within the framework of a policy of justice by anamnesis are the following:

- Create processes on a national scale that aim to rescue historical memory regarding a traumatic event that has not been recognized.
- Establish commissions of truth and historical clarification.
- Rescue testimonies of victims and witnesses.
- Incorporate the events and the versions of the affected persons into the public education system.
- Build memory museums and promote artistic and cultural projects aimed at preserving memory.
- Re-establish the moral conscience of society, based on public recognition of the offenses suffered by the victims, as well as on the adoption and implementation of legislation intended to repair memory and prevent future occurrences of crimes and human rights violations.

As its name suggests, renovated justice is oriented toward instituting a new order, that is, a new socio-political pact and a new moral order in which crimes against humanity or human rights violations are “never again” repeated. Designing a program or an agenda to achieve reforms that facilitate a consensual transition to the democratic and civilian exercise of power represents an act that goes beyond “reparation” and institutes a new order. In this concept the installation of a new order must begin with a national political debate in which all actors must be able to enjoy a space for a plurality of opinions regarding the new project.

These considerations on the issue of renovated justice seek to show that injustice is not an act of chance in which impunity represents an isolated case, but that it arises from a structural order; it therefore requires a series of political, social, economic, cultural, moral and psychosocial reforms. Renovated justice is committed to building new structures to ensure the free exercise of human rights, socio-political liberties, universally recognized legal guarantees and social, economic and cultural rights, as well as the re-establishment of constitutional rights.

Some measures of a policy of renovated justice are:

- Construct an inclusive political agenda.
- Negotiate a peaceful transition to a new political order.
- Abolish laws that support privileges, inequality and impunity.
- Create processes of civic participation and construction.
- Enact laws that limit the abuse of power by the State.
- Return of the military, the public security apparatus and the administration of justice to civilian rule.
- Carry out penal reforms as required by international treaties and human rights norms.
- Promote a new culture of reconciliation based on truth, memory, justice and respect for diversity.

These measures could be included in the judgments handed down by the Inter-American Court as part of a proposal for international cooperation between the Inter-American Commission and the State Party in such a way that the recommendations might be part of institutionalized policies of technical accompaniment for these processes of regional democratization.

Strategies of a system of emotional support

We should consider various aspects related to strategies of a system of emotional support. In principle, if trust –in the law, in justice, in institutions and in others– and the references –macro-social, institutional, psychosocial and subjective– have been lost, it is important to build and sustain these two aspects during the process. That is why we should keep in mind the following aspects (Bottinelli, 2003):

- Professional strategies of emotional support for those who have been affected exceed what is considered normal in formal professional interventions. Accompanying the claimant during the waiting period; listening attentively to his/her story, even if repeated several times; listening to his/her criticisms and fears regarding habitual procedures (given previous experiences of fear that may stimulate such feelings); sitting in silence during waiting periods; sharing anecdotes and asking questions about ordinary life are often in themselves forms of accompaniment and emotional support.
- It is important to avoid re-traumatization, re-living the traumatic situation with no solution in sight, which is common during a long judicial process. It is often possible to foresee and evaluate the need to review a topic in front of the victims or re-subject them to stressful situations.
- The language that is used to receive evidence and testimony, as well as when and how it is done, must also be taken into account since it may make the affected persons more vulnerable or it may re-victimize them. Those moments of trauma may be reviewed in the company of professional psychologists during the most conflictive moments of the process, before asking the patient to re-live them again.
- Given the diversity of persons, professionals, organizations and institutions that are involved in each judicial process, a number of differences, controversies and misunderstandings may occur due to the language used and the interests and diversity of objectives of those involved. That is why special emphasis should be given to the ethics of behavior so as to ensure that justice and care for the affected person prevail. It might be advisable to be attentive to this issue, or, if necessary, to use an external mediator during moments of conflict between the teams of professionals.
- Various “feelings of guilt” on the part of those involved may arise during the judicial process: for wanting to have a good feeling and not being able to do so; for feeling well and believing that they are betraying the past with such emotions; for dragging their families and loved ones into the process and making them re-live it; for ultimately feeling guilty for what happened; for not being able to shut out the past and having to talk about it again; for not being

able to take the place of the person who suffered most; for not being able to anticipate what happened or avoid its occurrence; etc. Such feelings of guilt are often hidden or accompanied by explicit expressions of “wanting to put an end to this,” or “abandon everything”; forgetting, abandoning the process, stopping re-living it, stopping suffering or making their families suffer. Sometimes these are accompanied by justifications or arguments such as “in any case, they will never be able to give me back ...” or “they are also part of the system” or “the others are very powerful and in the end, I am no one,” etc.

- Since isolation is a common characteristic, it is important to detect, reinforce and establish support networks that might serve as a reference and assist in the emotional support required on several fronts by the situation: family support networks, networks of professionals who may be called upon for consultation, networks of institutions available for assistance; social networks; networks of persons with similar experiences or needs or available during different moments of the process. This is why it is necessary to think, identify and explicitly explain to those involved in different internal aspects of the system –lawyers, psychologists, social workers, or other instances that may serve as a reference– and others who are external to the process –who already exist in the community and to the potential or local networks that may be counted on as trustworthy– that the required neutrality in the valuation process must be ensured and that they should seek to act as a network of emotional support to help the affected.

There are different types of impact caused by the traumatic situations experienced by persons and their effects are felt at different levels:

- Types of damage suffered: life-death; physical or mental health related to a project of life; moral and patrimonial damage.
- Levels of affectation: individual; family; in the organization (community, ethnic group); macro-social (social fabric).
- The state of affectation: conscious, subconscious, unconscious.

Due to the foregoing, as mentioned the effects of unpunished crimes not only concern the individual but also the social community. It is therefore suggested that

the following aspects be considered in every hearing before the Commission and the Court:

- Ensure that protection is provided to the claimants, witnesses, internal and external professionals participating in the process.
- Ensure that legal and psychosocial emotional support (affective and social) is provided to the claimants, their families and the witnesses during the entire process, given the subjective implications of re-living and denouncing actions that took place in the past (as described in the corresponding sections) since they place physical and mental health at risk.
- Ensure that all levels of damage and affectation are taken into account, without omitting or neglecting any of them, in order to arrive at a just verdict, because the person may receive reparations but will never be able to return to the situation that existed prior to the traumatic event.
- Ensure that the claimant receives explanations regarding the possible implications of the judicial process that will entail being submerged into a complex level of legal practices (length of time involved, requirements for deposition of evidence and witnesses, repetition of evaluations, legal requirements, legal instances, possible results) and at a psychosocial level (personal, family and external anxieties, symptoms, stress, threats).
- Ensure that places, institutions and denunciation and assessment procedures are well known to the affected persons or witnesses to the events.
- Promote the active participation of those affected and their community: have them participate in the moments, decisions and alternatives of the process by supporting their initiatives and achievements. This includes support for self-sustained social movements combating impunity by providing them with information regarding legislation, organizations, procedures and existing networks.
- Ensure that those affected and society are informed of the results in order to sustain trust in the system of justice and its institutions.

- Promote feelings of an active, explicit, egalitarian and impartial justice, over and above impunity.
- Denounce the situation of those affected as victims and fight against their stigmatization in order to permit mourning at the individual, family and social levels.

The role of the inter-American system and its potential in the struggle against impunity is *per se* a reparation for the victims. The inter-American system contributes fundamentally in two ways: at the individual level it combats impunity to the extent that the State has not responded and the organs of protection offer another opportunity for justice to be done and for reparations. Through its jurisprudence, it can impact on other countries that are part of the inter-American system by promoting collective actions of reparation through concrete standards, such as monuments for the victims, the naming of schools, establishing genetic banks, etc. In this way it can also contribute to emphasizing and promoting collective memory and to complying with its role as a third party, a foundation of the community, that acknowledges the crime and punishes appropriately.

Justice should be for all. For those affected, justice will be done; for the perpetrators, they will be punished for their actions; for the social aggregate, the basic rules of the community will not be broken. Justice will enforce compliance with the law by all under equal conditions so that crimes are not repeated, so that there is no impunity and so that there is justice.

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The background is a light green color with a repeating pattern of stylized, overlapping leaf shapes in a slightly darker shade of green. A solid, medium-dark green horizontal band runs across the middle of the page, containing the title text in white.

**Mourning as a result of violations of
human rights in Latin America**

This article was prepared by Carlos Portillo, a psychiatrist who is the Director of the Program to aid persons affected by human rights violations of the Center for Mental Health Alternatives (ATYHA) of Paraguay. He has provided expert psychological testimony before the Inter-American Court of Human Rights. The article was subsequently complemented by contributions from Graciela Guilis, a psychoanalyst specializing in mental health and human rights with experience in aiding victims of torture, assisted by Gervasio Noailles, a psychologist who is a member of the Mental Health Team of the Center for Legal and Social Studies (CELS) of Argentina. This article also includes contributions from the interdisciplinary team of the IIHR Project “Comprehensive Attention to Victims of Torture,” as well as from the editors of this publication.

Introduction

The objective of this article is to provide readers from diverse fields with a study of the mourning processes of families of victims of serious human rights violations in Latin America. The collective effort to gather and systematize these experiences has used a psycho-juridical approach, the aim of which is to strengthen actions that foster the observance and respect for human rights.

The article begins by pointing out the obstacles and difficulties in the mourning experience in the context of systematic human rights violations. The history of pre-Columbian cultures shows that, from that time to the present day, the peoples of Latin America have endured multiple acts of violence. Even today in some countries of the region, there is an unpaid social debt: to clarify and expose recent acts that remain under impunity as a result of the systematic refusal of the persons intellectually and materially responsible to inform on those actions, but more fundamentally due to a lack of political decisions by the States concerned.

The theoretical background for the concepts of *trauma* and *mourning* may be found in the annals of psychoanalysis. During the 1970s some Latin American governments—the majority of them *de facto* regimes—were responsible for grave and traumatic acts against their own citizens. As a result, it became necessary to redefine those concepts in order to understand better the effect of massive human rights violations on individuals and on society.

Mental health professionals who defended human rights were often forced to work clandestinely not only because their work was obviously related to State security, but also because they were in imminent danger of meeting the same fate as the victims they were treating with care and solidarity.

The experiences of the mental health professionals who aided victims of political repression and the testimonies and archives from that era have been used to reformulate the concept of mourning—which, as explained, has its origin in psychoanalytical theory—and they are indispensable for interpreting the effects of those traumatic experiences and for proposing the most suitable individual and collective reparatory mechanisms.

The article commences with a definition of the concept of mourning. An explanation of its unique characteristics is then provided in the context of systematic human rights violations, particularly when the lack of legal sanctions for those responsible for massacres makes the process more difficult than when analyzing the loss of a loved one due to natural causes. Finally, some thoughts will be offered on the effect of legal sanctions, or the lack thereof, on mourning.

Definition of concepts

The word *mourning*, according to the Dictionary of the Royal Spanish Academy, has two meanings: 1. *A combat or fight between two persons, subsequent to a threat or challenge.* 2. *Pain, pity, affliction. A manifestation of sentiments experienced as a result of someone's death. A reunion of family members or friends who attend the funeral or burial of a person.*

Mourning represents a period of pain and suffering due to the loss of a beloved object—be it the death of a loved one or the loss of a beloved object, a job, ideals, values or a way of life—by means of which the sufferers are progressively enabled to separate themselves from that object. The importance given to the loss is determined by the mourner's culture, which inscribes on each subject a particular system of ideals and values that provides the framework to formalize mourning.

Mourning implies moments of introspection or self-absorption and results in a significant depletion of the mourner's psychic energy. Due to its complexity, it also requires a certain degree of maturity of the psyche. Once the process has been undertaken and completed, the lost and beloved object remains in the mourner's mind as a memory that may be invoked without interrupting present or future projects. The three stages of subjectivity are thus preserved.

In psychoanalysis, mourning is a process to handle the loss of an object in which there has been a libidinous investment. Libido—a term introduced by Freud—represents the psychic energy utilized by subjects to invest libido on beloved objects (libido of the object) or on the person itself (libido of the ego) (Laplanche and Pontalis, 1974).

According to this concept, the loss of a beloved object makes it necessary to recuperate the libido that had been placed on the representation that had been constructed of the object in order to give it to new objects. The period of mourning is from the moment of loss of the beloved object to the recovery of the libido.

From that perspective, the period of mourning must be understood as that

during which a subject is constructing the loss. This is characterized by the time spent on remembrances and representations of the lost object, which is why subjects manifest a libidinous retraction regarding other objects and persons around them.

Freud points out that upon the loss of an object

It is normal that obedience to reality will prevail. But this cannot be done immediately. It is accomplished little by little with a great depletion of time and energy and, in the meantime, the lost object remains in the psyche. Each memory and each expectation that the libido had regarding the object are foreclosed, reinvested and consumed until the libido is worn out. Why is compliance with the order to accept reality little by little so extraordinarily painful? This is something that cannot be explained easily in economic terms. What is worthy of note is that such painful displeasure seems to be so natural. But, in fact, once mourning has been completed, the ego is free again and uninhibited (Freud, 1979, p. 242).

Mourning is a normal process that enables a person to overcome a loss. But the fact that it is normal does not mean that it is not painful. In truth, suffering must be seen as an element that is natural to the process. The concept of “mourning labor” is frequently heard among health professionals.

Thus, it is important to point out that it is extremely difficult to initiate the process of libidinous introjection when there is no certainty that the loss of the object has occurred. In cases in which the loss of a loved one is uncertain –due to the lack of a corpse– and it has not been possible to hold funeral services, mourning is impeded because to mourn someone without being certain of the person’s death is the equivalent of killing that person, which in turn provokes a profound feeling of guilt.

Stages of mourning

Mourning is initiated by a loss. How it is done is determined by the possibilities of adapting to new conditions of life. Unlike a natural catastrophe, political violence, since it is produced by other human beings and directed at a specific group, implies the introduction of terror, thereby rending the social fabric and installing ideal conditions for fearing and distrusting other human beings.

In the groups and families that have been affected by political violence of the State, there are often certain ambivalent and contradictory attitudes, which in some cases are frankly hostile and distrustful towards persons outside the group. This may be explained by the extremely fragile conditions of the individuals and by the social

connections that remain as a consequence of the trauma suffered.

According to the clinical experience and the research of Slaikou (1998), the stages of mourning have certain specific characteristics, ranging from the initial *impact* to the final resolution, if the surrounding conditions permit it. The characteristics are:

- **Stage of impact, commotion or shock.** Characterized by confusion, disorientation and partial lack of contact with reality. Emotions, ideas and memories prevail, leading to intense emotional states, such as anger, fury, crying or melancholy. Memories and images of the lost object appear, as attempts are made to recover it. Other sentiments of guilt, pain, resentment and aggression appear, as well as fantasizing that the loss has not occurred. Certain attitudes as defense mechanisms, such as negation as an attempt to deny the loss and recreating the image of the lost person in order to mitigate the pain, may arise at this stage.
- **Stage of introspection and self-absorption.** Self-imposed punishment and penitence are frequently found at this stage in an attempt to mitigate the guilt that arises from feelings of not having done enough to prevent the death. Rational explanations, information and reconstructions are sought in an effort to explain the loss.
- **Stage of acceptance of the events that led to the loss.** During this stage, in addition to the feelings of pain, other attitudes arise seeking toleration and acceptance of the loss, thus leading to feelings of relief.
- **Stage of the consolidation of the experience.** This is the moment in which it is possible for the subjects to reintegrate themselves into their normal lives. Reaching this stage implies that the subjects have successively passed through the previous stages of a journey that require a certain degree of mental maturity, as explained.

Unlike mourning caused by State terrorism, normal mourning experiences occur when the events have been accepted and there is an understanding that everything had a purpose. It also makes it possible incorporate the experience into the subject's memory as an event that will not impede the normal development of his/her potential. Reaching the end of the process enables the subject to overcome his/her feelings of abandonment and to open his/her time and space for new projects.

Mourning in the context of human rights violations in Latin America

It is possible, in broad terms, to identify various moments in history in which violations of civil and political, as well as economic, social and cultural, rights were committed. This article concentrates on the institutionalized grave and systematic violations of civil and political rights in Latin America under military, or sometimes civilian-military, dictatorships. Beginning in the 1970s, those regimes imposed generalized conditions of terror under the pretext of a doctrine of national security that was considered necessary. It is thus important to understand the true character of that doctrine and its impact upon the violation of human rights, as well as on the mourning of the victims and their families.

The doctrine of national security as a traumatic context

The Latin American countries that have suffered through long periods of dictatorial governments –from those in the Southern Cone (Argentina, Chile, Uruguay, Brazil, Paraguay and Bolivia) to those in Central America and the Caribbean (Guatemala, Nicaragua, El Salvador, the Dominican Republic and Haiti)- have adopted similar measures to maintain social control, utilizing the doctrine of national security as the basis for their actions.

This has been a theoretical concept, drawn from an eminently military point of view, utilized by the armed forces as a justification to participate directly in domestic politics. This participation does not have the necessary political legitimization, since political control in a State that respects the rights of citizens is legitimized through free elections to choose the heads of state and legislative representatives, without a need for widespread repression, as was the case in all of those dictatorships.

It is possible to describe the common characteristics of the application of the doctrine in the region:

- The creation of the concepts of “internal enemy” and “low-intensity dirty war,” which were used to justify the persecution and brutal massive repression of the citizenry by the police, military and paramilitary forces.
- The human rights violations committed by representatives of the State in countries with internal armed conflicts –such as El Salvador, more recently

Peru and currently Colombia— and in countries without such conflicts —such as Argentina, Chile, etc.— are significantly more serious, since the possibility of appealing to domestic juridical institutions for justice has generally been obstructed.

- Dictatorships sustain and, at the same time, are sustained by profound inequalities, since they grant or facilitate privileges and powers that promote an unfair distribution of national resources.
- Human rights violations are perpetrated in State institutions, such as police headquarters, military installations, jails and even psychiatric hospitals.

Detention and torture degrade not only the physical but also the psychological integrity of the individual. In the relationship victim-victimizer, the torturers act as members of a system that is supported by the power of the State. The perpetrators confront the other person as someone who does not belong to the same group, as a stranger or enemy: someone who is “not like us,” or someone “who doesn’t exist.” The victim is thereby reduced to the condition of an object upon which any type of torment may be applied.

Torture may be seen as the opposite of compassion, in terms of ethics and solidarity. Raul Páramo, a well-know Mexican psychoanalyst, states that torture “is the impossibility of accepting the otherness of the other person, while impunity contributes to destroying any possibility of reparation of damages, of undergoing mourning or reconstructing the social fabric or contract.”¹

In disappearances, the purpose is to destroy the social identity of the victims, erase them from the collective memory and from the memories of their loved ones. To accomplish this objective, personal records are removed from the public registry and the police identification archives so as to eliminate any trace of the existence of the person prior to detention. Frequently, the identity documents of detainees who were released would not be returned to them, which would undoubtedly mean their civil death.

1 Lecture: “La tortura como antípoda de la compassion: una lectura en el contexto de los Derechos Humanos.” Friday, June 3, 2005. Auditorium of the Inter-American Court of Human Rights. IIDH, Centro de Estudios Psiconalíticos de Aspas, Escuela de Psicología y Doctorado de Sociedad y Cultura de la Universidad de Costa Rica and the Universidad Independiente. Cápsulas Informativas. Monday, June 13, 2005.

Special characteristics of mourning in the context of historical catastrophes

The experiences of victims of grave human rights violations have special characteristics that must be taken into account when analyzing the difficulties of undergoing mourning. In this context, it is possible to speak of *special mourning* in order to refer to *frozen mourning* and *interminable mourning*.

As a static concept, frozen mourning occurs when a traumatic experience has taken place and it cannot be overcome; consequently, it is re-lived permanently by the subject.

From a dynamic perspective, interminable mourning occurs when the lost person is idealized and it is impossible to replace him/her. This situation makes it impossible to accept the death and mourning becomes an unending experience, thus prolonging the psychic pain.

Both cases thus refer to unfinished processes, implying a fixation of the trauma. They respond to a traumatic experience that exceeds the possibilities of the psyche to deal with it satisfactorily.

In cases of human rights violations, the context is determined by a historical catastrophe, marked by terror, repression and political violence, which propitiate the fixation of a frozen mourning and impede the development of a new project of life because the traumatic experience and the pain are re-lived over and over.

Unable to undergo mourning, the subject is trapped in a repetition of time that is reinforced by impunity. The failure to punish legally those responsible is one of the main obstacles to the completion of mourning by the victims and their families. It is even possible to speak of a generational transmission of mourning, by which a life experience is inherited by the descendants of the initial mourners.

The many forms of human rights violations take place in a common scenario, wherein the victim is submitted to an escalated degree of violence that leaves him/her completely defenseless.

When perpetrated by official or semi-official State institutions, the objective of such acts is not only to obtain information or confessions by violent means but also to break the victim's physical and mental strength. That is why the symbolic elements that give a person his/her identity –for instance, sexual aggression against women due to their feminine condition- are attacked. While they target direct victims, they also send hidden or explicit messages to the entire population regarding what might happen to it should it decide to oppose the regime.

Under totalitarianism, it is impossible for victims to receive immediate assistance to carry out their mourning and hence alleviate the wounds caused by the trauma and its psychological consequences. The absence of prompt assistance determines whether the traumatic state will be continuous and persistent. Subsequent and successive attempts to overcome the loss sometimes fail due to the frustration and impotence of the wounds that have remained open or are re-opened, until the State acts in a way that will permit their healing.

Another re-traumatizing effect that makes the pain persistent is the “stink syndrome,” meaning that the victims’ relatives are often separated and socially isolated, as if they were suddenly no longer citizens with full rights. This condition is worsened when mourning is impeded by a lack of justice and reparation, as well as by the impossibility of performing the mourning rites.

With the return of democratic governments, by not proposing therapeutic measures for the victims’ benefit and by not creating the necessary spaces the States did not assume the fundamental role of aiding victims of political violence. Opportunities were sometimes later created to provide reparations, but due to the magnitude, duration and type of traumatic experiences it was very difficult to undertake and complete mourning. For example, the effects of traumatic situations experienced by soldiers during armed conflicts cannot be compared to those resulting from human rights violations, since soldiers are trained to defend themselves from danger and both the State and society offer them the possibility of elaborating the danger, threat and loss process.

Human beings have the capacity to create defense mechanisms in the face of danger, but we are unable to resort to them when forced to confront the unknown, the immeasurable and fundamentally “unimaginable horror.” It is impossible to fight against ghosts, particularly those created from a sinister and inexplicable past and all that the human mind cannot explain becomes part of the trauma.

Mourning in the case of forced disappearance

The most radical expression of the impossibility of carrying out mourning is to be found in cases of the forced disappearance of persons. This is part of a strategy of domination and political control by State security forces. The disappearance of a loved one raises unanswerable questions, at least until such time as the person or his/

her remains appear or until the truth is known. In his book, *Asedios de la Memoria*, Horacio Riquelme states that

During the past twenty years, the disappearance of more than 30,000 persons in South America has been formally recognized. However, the system of forced disappearance of persons opposed to a regime was not the “genial invention” of any member of those repressive State apparatuses, but rather a massive application of a methodology already used in psychological wars, which probably originated in the experiences of the American theoreticians during the war in Indo-China (Watson, 1982). One of the most relevant historical episodes is found in the “night and fog” activities (Keitel Decree of 1942) in the Nazi-occupied territories intended to break the national resistance movements of the various countries, (Shirer, 1990, p. 875): an effective and long-lasting terrorizing (of the opposing forces) may only be achieved through the application of the death penalty or other measures directed at the survivors and the population, so as to create uncertainty regarding the fate of the “doers” (Riquelme, 2001, p.13).

More recent experiences were those that occurred during the Vietnam War. Some American social psychologists and anthropologists whose mission was to give scientific advice to the armed forces made important findings about the morale of the Vietnamese people: what most affected them psychologically was not the possibility of the death of their loved ones, but rather the fear of not being able to hold their traditional ceremonies, to express their feelings of mourning in a farewell ritual. The lack of mourning ceremonies broke the delicate cultural bond that tied the living to the dead; the family and the community would feel profoundly insecure, as if they had violated some taboo. The tactic of disappearance that was employed after obtaining that information was called “wandering souls” and it proved to be a determining factor in the psychological war that was being fought (Watson, 1978).

In South and Central America, the forced disappearance of persons began to be systematically utilized under the pretext of having to fight against guerilla movements. Nevertheless, it should be mentioned that most of the abducted and disappeared persons were members of labor unions and not armed organizations. Forced disappearance was used as strategy to break up popular movements and to impose economic plans.

The disappearances generated situations of affection and contradictory behavior: it was a known fact that the forces of repression tortured their captives. Their families

experienced feelings of impotent compassion: "I hope he dies soon, to relieve him from so much suffering" while other uttered irrational hopes: "I hope that he is alive and will soon return to us" (Ulloa, 1986).

Faced with thousands of disappearances, various organizations of families were formed and assumed the political responsibility of demanding that their loved ones reappear alive. The slogan of "that they appear alive," while politically powerful, interfered with mourning because it is impossible to mourn someone who is hoped to be found alive.

That slogan placed the families of the disappeared at risk of entering into the aforementioned stage of commotion or shock during which there is denial of the loss.

Mourning family members described their state of permanent shock as a latent and continuous crisis during which the sadness and pain caused by the absence of the loved ones were prolonged. There was no mourning as such, but only a sensation of absence without any possible solution. But absence and loss cannot be synonymous because mourning and suffering are indispensable to assimilate the loss. It is by mourning that one learns to accept the change that follows every loss of a loved one. When the mourning is not carried out in full (when it is not concluded), it is rare that there is a healthy adaptation to the loss (Kavanaugh, 1982, p. 177).

Mourning by the families of the deceased faces the huge difficulty of not being able to ascertain if the loved one is really dead. In the previously mentioned situations, when relatives and friends attempted to find out what had happened, any and all information was denied them. It was difficult, if not impossible, for a family member of a disappeared person to learn the circumstances of the kidnapping, including the place of detention, the type of torture or murder and ultimately the location of the body.

It must be stated that special mourning processes are not exclusive to cases of disappeared persons. Insecurity, uncertainty and inability to process traumatic experiences also occur in cases of arbitrary detentions for indefinite periods of time, in situations of torture and other cruel, inhuman or degrading treatment or punishment, as well as in cases of forced exile. All generate feelings of fear, vulnerability and irrationality, which are typical of a condition of terror, the purpose of which is to break resistance and the ability to defend oneself.

The strategy of forced disappearance has been repeated, with small variations, in various Latin American dictatorships. The psychological effects caused by this type of instrument of political terror have been similar. That is why only one example will

be cited here, as an illustration of the difficulties to be encountered in mourning: the *Serrano Cruz Sisters v. El Salvador* case that was presented before the Inter-American Court of Human Rights.

Two girls, Ernestina and Erlinda Serrano Cruz, aged seven and three, were abducted by the Atacatl Battalion of the Salvadoran Army during a military offensive in 1982. The military operation caused a massive exodus and confusion. One of the girls' sisters heard a soldier saying that they would be taken alive and they were last seen when a helicopter of the Armed Forces was transporting them to the city of Chalatenango. According to a report issued by the Inter-American Commission on Human Rights, it was impossible to determine whether the soldiers who had captured the girls had turned them over to the International Red Cross or to the Red Cross of El Salvador. The Commission's report also indicated that this type of act was part of a pattern of forced disappearances in the context of the armed conflict and they were "perpetrated or tolerated by the State."

The girls' mother escaped to Honduras, where she lived in a refugee camp. According to the Court's judgment, the presentation of the denunciation of the disappearances had to wait until the proper political context permitted it, which was in 1993.

The Court held that El Salvador had violated its international commitments "whose effects are extended over time as a result of the forced disappearance of the (presumed) victims on June 2, 1982 and specifically after June 6, 1995, when the State accepted the contentious jurisdiction of the ... Court" (p. 3). From a psycho-juridical point of view, the Court stated that the duration of the effects over a prolonged time was due to the impossibility to mourn the girls, whose deaths were never confirmed. The lack of information on the fate of the girls became an obstacle for mourning by the mother.

The effects of the juridical discourse on mourning

As stated, mourning is a psychological occurrence that is strongly influenced by the cultural, historical, political and social context. Under normal conditions, accompaniment provided by others during mourning accomplishes an important social function for the mourner, since it is based on a network of solidarity provided by the family and the community. This support, as well as the material and subjective resources that are offered through symbolic rituals, provides opportunities to process the suffering caused by the loss.

Everyone has a right to receive support from his/her social environment to process his/her sorrow; that is, the right –in the extremely disorganized circumstances of the psyche during mourning– to fulfill his/her needs regarding protection, affection, understanding and inscription in a lineage. In addition, mourning in a traumatic context also requires conditions that allow processing it; this implies opening spaces for reparation, social re-insertion, recuperation of biographic memory and social acceptance.

Toward the end of the dictatorships in Latin America, the political weakness of the emerging democratic governments quickly became a juridical weakness. Therefore, in some countries the juridical processes to find and punish those responsible for serious human rights violations were never launched or were initiated very late. In some cases, the persons responsible were actually rewarded with political appointments created specifically for them. Such is the case of the Chilean dictator, Augusto Pinochet, who had himself appointed Senator for Life, thus preventing the domestic justice from acting on the claims presented against him.

Trials were initiated in other countries to punish those responsible for massacres, but the political weakness of the systems and the threat of new coup d'états resulted in the enactment of amnesty laws, such as the Due Obedience and Final Point laws of Argentina and the presidential pardons in other countries.

In cases like El Salvador, the weakness of the judiciary systematically impeded thorough and complete investigations of human rights violations during the armed conflict. Once the conflict ended, an amnesty law buried the possibility of obtaining justice, in the name of “consolidation of the peace process.”

The lack of legal sanctions produced overwhelming effects on the subjectivity of the victims of State terrorism. With respect to mourning, the adoption of laws on impunity and amnesty, as well as the granting of pardons, renewed the traumas and became an obstacle to mourning.

In the same spirit of Sophocles' *Antigone*, when King Creonte proclaimed from his seat of power “there will be no mourning here” (Butler, 2006, p. 63), those who held power in the region believed that once the legal processes were completed, mourning should also end. The tragic ending of *Antigone* enables one to predict the effects of any attempt to impose oblivion from the hierarchy of power and abort the need for mourning.

It was erroneous to think that the adoption of impunity laws would put an end to the claims for justice of the victims and their families. It was also an error to believe that those claims originated in a need for retaliation or revenge, rather than a

plea for reparations for the victims' deaths. It is therefore important to consider that the claims for truth and justice, in addition to their juridical worth, have a symbolic and fundamental value, which is to construct a story that will enable mourning.

Memory and oblivion are opposing concepts, but paradoxically they intertwine in such a way so as to seek the manner in which each concept should function in societies that were scourged by terror. If memory is an essential condition to construct history, we must be able to understand that oblivion is not an absence but rather a "presence," so that it will not become an interminable present that prevents us from thinking about the future. That would be similar to the effect caused when there is impunity or when a blanket of oblivion is used to cover up the violations, which is the case of amnesty without justice. Nicole Loraux (1998) ponders those effects and reminds us that the word amnesty comes from the Greek *amnestia*, which means a *prohibition to remember disgraces*:

What would you like then, an amnesty proclamation? An erasure with no return and no footprint? A grossly scarred remnant of an amputation of the facts that otherwise would be remembered, as long as the object is irreversibly lost? Or is it the allowance of a time for mourning and the construction of history? (Loraux, 1998, p. 27).

This last question paves the way to plan for reparations, individual and collective, for the social traumas inflicted upon the population by dictatorships. That is unavoidably for the States, which must identify those responsible for the violations and submit them to justice. That is the reason why human rights organizations in the region have concentrated their struggle on claims for truth and justice.

The experience of organizing victims and their families from Argentina to Mexico, taking into account the differences that exist among the countries and the types of situations as well as the increasing tide of exiles and refugees from the region and from throughout the world that has suffered internal armed conflicts and the endless number of maimed and incapacitated persons, constitutes the most vehement testimony of a segment of humanity that continues to cry out for justice and peace. The international dimension of the problems of collective remembrance is an element that must be considered in any introspective process regarding the attitude of societies faced with a traumatized past because what is at stake in this confrontation with the legacy of the dictatorships far supersedes the national framework: it is not only a problem in Argentina, Chile, El Salvador or Guatemala, but a problem that involves all countries (Groppo, 2001).

The reparative role of memory

Memory has an essential function in mourning, related to the need to create history and, therefore, to the temporal nature of things that permits thinking about the individual and collective ways to process traumatic experiences. Historical memory allows losses to be accompanied by a reparative effect that not only can explain what happened but also, more deeply, can incorporate it as part of identity and, therefore, of this singular history that is also social in the cases of historical traumas. The transition to democracy faced the enormous challenge of executing an act of reparation by constructing a collective memory: a painful return (to reality) from what had been denied, censured and made invisible to the rest of society by repressive governmental action. A historical truth cannot, however, be constructed only from such foundations; a reparatory process that guarantees a future with no repetition is only possible by reconstructing the historical truth. In cases where grave violations of human rights have occurred, such a result cannot be obtained without prosecuting and punishing those who were responsible in order to restore the credibility of the social fabric in State institutions.

Different nations, through their own cultures, have created myths and legends that have been used to re-write part of their history. Apart from those spontaneous expressions, nations must, however, establish clear policies designed to prevent oblivion, such as policies in education, institutional actions and stimulus for the creation of opportunities for expressions of collective memory and acts of reparation.

Historical catastrophes and the resulting human rights violations have had a demolishing effect and only a series of actions designed to recover the collective memory, together with acts of justice, will enable a process of reparation.

In addition to a State's role in the construction of memory, the community also plays a decisive role in its capacity to transmit, include and put together what had been cut away from its history. The building of such a bridge is a symbolic debt that if not repaid will multiply the traumatic effects. The three dimensions of State, community and family are indispensable to achieving the recording of memory in the juridical, political and subjective fields.

In a passage from a book by Jacques Hassoun (1996), the author reminds us of the effects of de-memorizing that he experienced in his clinical practice with survivors of European genocides:

Children of executioners ... children of victims ... each one of them –albeit differently– is the victim of a secret with a perturbed origin, of an interrupted family story, shaken by historical events. Orphans, they suffer in their own flesh from a mourning that cannot be carried out and from a family novel that cannot be constructed to insert them into the future. This tragic break with transmission demands that the parents –even if it is very painful– must put into words what has happened (suicides, violent deaths or brutal raid upon History) in order to make peace with their own biological trajectory and reconstruct for their kin a story that their family or social history had deeply and profoundly destroyed (Hassoun, 1996, p. 33).

In every society, memory and oblivion constitute a privileged battlefield in which each group attempts to have its interpretation of the past prevail, since there is no single social memory. In this regard, the Italian philosopher Ramo Bodei states:

Memory and oblivion do not represent neutral grounds but are true battlefields where identities are decided, modeled and legitimized, particularly the collective identity. Through a series of struggles, different adversaries appropriate to themselves a quota of symbolic inheritance of the past, condemning others to ostracism or emphasizing specific traits at their expense, creating a chiaroscuro that responds to the intense demands of the moment (Bodei, 1995).

The task of historians is to reconstruct and interpret the past with scientific criteria, which are the means to limit the tendency of those in power to impose an official hegemonic history. Dictatorial regimes seek to establish absolute control over memory and over the past.

We work and operate with memory, what emerges from it and what lies beneath it. The unconscious and what flourishes from the construction of conscience. Art and culture in all their different expressions allow *symbolization*, the creation and permanence of past and present *signs*. We have all been actors and authors, witnessing and/or living through historical events, which tend to be told in fragments, both over time as well as transversally by members of a nation. Expressions and abstractions that emerge and re-appear through different forms of speech are the normal way of creating the continuous biographic and historical process and they become the bridge between past and future. Dreams, utopias and fantasies are signs that are

created and re-created through symbols and through their permanence they offer, today, the perspective of the future (Portillo, 2000).

So memory is, in effect, a *battlefield*. In our countries we have lived, at the end of each dictatorship, through true battles for the symbolic ownership of the past. The battles have a political content and even though they concern the past, they are directed to the future. Mario Sznajder, points out in his book *Memoria y política en el Chile redemocratizado* that the civilian governments that followed the dictatorship attempted to broaden and consolidate the democratic political arena through symbolic gestures in the field of memory, attributing to the past a different meaning than the dictatorship had intended to impose (Riquelme, 2001).

“The identity of a people is built with the materials that were meant to be forgotten,” stated Jorge Semprún during a congress on collective memory in May 2000 in Hamburg.

It is the obligation of each member of civil society to support the collective initiatives of groups of victims and their families, as well as human rights organizations, in rescuing what the victimizers meant to be forgotten. It is also a responsibility of the present to stimulate those conditions that will allow completion of mourning, re-establishment of dignity, restoration of full civil rights and reconstruction of individual and collective identities from fragments. It is essential to prevent supposedly forgotten memories from re-occurring and causing renewed suffering, when they should be transformed into symbols that re-edify and return to the victims their sense of life and justice.

Efforts should also be made to orient governments towards the full respect of the civil rights of each member of society and to ensure that reconstruction is a shared responsibility. Actions of denial, concealment or oblivion will only propitiate repetition.

The elaboration of mourning caused by human rights violations perpetrated by the State can therefore not be resolved simply at the individual level. It is imperative that States implement measures designed to assume responsibility for the damage that was inflicted upon the social fabric, granting reparations not only to the direct victims, but also to their social groups and society in general. The construction of new personal and social future projects is only possible if there are comprehensive reparations.

Miguel de Unamuno stated that “Ultimately, our spiritual life is simply the effort that we make to perpetuate our memories, turning them into hopes, so that our past becomes our future.”

Reparations in the inter-American system

It has already been stated that mourning is not only an individual life experience but also a collective happening where there is always tension because the collective dimension may become a universal symbol that annuls the individuality of each case. The risk may also be the opposite: the individual dimension may prevent recognition of the strength of the cultural aspect in the production of subjectivity. It is thus important to pay attention not only to the event itself, but also to certain categories that may contribute to its interpretation. As a result, when both dimensions are examined, each under its own specificity, it will be possible to design more effective reparatory policies and construct the collective memory more efficiently.

Judicial decisions have a strong symbolic value in restoring the meaning of the past and in constructing the present; nevertheless, the construction of a specific version of history may act as an obstacle to the establishment of mourning or it may facilitate it.

Although many years have passed since the end of the dictatorships in the region and we may speak of strengthened democratic institutions, there are still pending debts to be paid regarding the trial and punishment of those responsible for crimes against humanity. That is the point from which an international body such as the Inter-American Court of Human Rights can rise above and beyond national political confrontations and the possible effects of impunity. Its casuistic and judicial technique, based on the analysis of concrete facts under norms that were in effect before the occurrence of those events, offers a sense of objectivity that allows a ray of hope. At the same time, it provides the necessary elements to remove politics from the discussion; the victim and/or the family will have a judicial decision supported by indispensable norms that are based on universal values that transcend the bounds of a country's history.

Thus, an accused State is obligated to assume its responsibility for the violation of a norm that is beyond its national jurisdiction and it must respond to its duty to repair and cease the *sequelae* of the violation.

In the inter-American system, this principle is found in Article 63.1 of the American Convention, which states that:

If the Court finds that there has been a violation of a right of freedom..., the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences

of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

The Inter-American Court has granted reparation for the damages inflicted by imposing upon the State the obligation to restore fully the *status quo ante* –*restitutio in integrum*– including the payment of an indemnification as compensation for the damages caused, thereby repairing the consequences that were produced.²

Specifically, in the matter of mourning by the victims' families the Court has successfully and positively intervened by mandating reparations proportionate to the material and non-material damages. It should be noted that identifying the damages has been the result of integration and interaction between psychology and law. These types of cases are best decided by constructing psycho-juridical strategies that, depending on the circumstances, include not only an interaction designed to result in better justice, but benefits for the victim as well as accompaniment during the various stages required by the methodical search for justice.

In cases of mourning, it is necessary to consider non-material damages, which include the suffering and afflictions inflicted directly upon the victims and their loved ones –the objective of any reparation should be to lessen the damage caused by the circumstances that resulted in a human rights violation– the depreciation of values that are highly significant to the individuals and non-pecuniary alterations in the victims' living conditions. It is impossible to evaluate non-material damages in economic terms, even though it is customary to grant them a pecuniary value as a form of compensation. So that the victims be fully repaired, reparations may take the form of the following:

- Payment of specific sum of money that the Court determines as a result of the reasonable application of judicial arbitration in terms of equity or the assignation of other forms of economic compensation, such as granting free services or goods.
- Granting a *symbolic reparation*, such as public acts or works with a public repercussion –broadcasting a message condemning the violation of human

2 I/A Court H.R., “*Street Children*” (*Villagrán Morales et al.*) *v. Guatemala*. *Reparations*, Judgment of May 26, 2001. Series C No. 77, para. 60. It should be pointed out that *restitutio in integrum* can never be complete in the case of grave human rights violations, such as torture and forced disappearance.

rights and manifesting a commitment to do whatever is necessary to prevent its re-occurrence— all of which will have the effect of *recovering the memory of the victims, giving recognition to their dignity and consoling the aggrieved families.*

It is important to emphasize the latter. In such cases, the Court has shown sensitivity toward those who have lost a loved one in a massacre, in an extra-judicial execution or a forced disappearance and in other cases of human rights violations in an attempt to console them through reparation and aid them in their present or future mourning. Although the Court has not identified those responsible for the violations –since it does not have the required means to do so and it is not its responsibility since that is a matter for the penal jurisdiction– the process may produce, through a symbolic reparation of non-material damages, a reduction of the families' suffering or affliction and it may aid in the initiation of mourning.

As an example, the Court ordered a State to determine the whereabouts of the victims so that the family might commence their mourning. Those were the terms mandated in the Blanco Romero case, which is one of many in which it was necessary to obligate the State, in which it stated that:³

In case they be found dead, such steps shall be geared towards delivering the mortal remains to their next of kin, for them to be buried in the manner the latter may consider proper. ...the State must afford the necessary conditions to convey the remains to the place the next of kin may choose, and must provide an appropriate burial, at no cost for the... next of kin.

In the Maparipán case, the Court ordered that the victims of the massacre be individually identified, as well as their next of kin, because of the particular circumstances of the case.⁴ It also ordered that when the mortal remains were found and identified that the State deliver them to the next of kin as soon as possible, once the family nexus was genetically proven so that they might be honored in accordance with their respective beliefs. If the remains were not claimed within two years, the State was ordered to bury them individually in a clearly identified

3 I/A Court H.R., *Blanco Romero et al. v. Venezuela*, Judgment of November 28, 2005. Series C No. 138, para. 99.

4 I/A Court H.R., *Mapiriplán Massacre v. Colombia*, Judgment of September 15, 2005. Series C No. 134, para. 305.

cemetery, indicating that they were the unidentified or unclaimed victims of the Mapiripán massacre.⁵

Final comments

As stated, mourning is a psychological mechanism by which a loss is elaborated. It is strongly influenced by the social context in which it is enveloped. Even though it is an individual, personal process, the way it unfolds allows a vision of how a society relates to its past and to its history.

Having the genetic content to become a human being is not enough to become one; it is essential that the “human puppy” incorporate itself into the surrounding culture by acquiring a collection of symbols that humanizes it (Cassirer, 1995). Thus, it is not enough to be born human to then become a human; the capacity to construct a system of symbols is precisely what differentiates us from the rest of the animals.

To simply stop breathing is not enough to result in the death of a human being. It is necessary to comply with rituals –symbolic and particular to each culture– for a dead body to become a dead human being. Funeral rites are part of a mourning process that every cultured subject needs to perform in order to accept and elaborate the death of a loved one. When it becomes impossible to hold those rites, mourning becomes all the more difficult.

In the case of the next of kin of abducted and disappeared persons, mourning is hampered by the uncertainty of what really happened: the family has no information regarding the conditions surrounding the detention, confinement, torture and method of assassination, or the location of the body. These doubts make mourning more difficult, since it must be performed based on suppositions and not on realities. In addition, the absence of the corpse makes it impossible to hold funeral rites to bid farewell to the departed loved one and, therefore, to begin mourning.

To this complex setting must be added the context of impunity that surrounded the majority of the systematic violations of human rights. The political and institutional weakness that characterized the return to democracy in the majority of the Latin American countries created conditions in which it was extremely difficult to prosecute the material and intellectual authors of the abductions, murders and tortures.

5 *Ibid.*, para. 310.

It must also be pointed out that a judicial decision has two functions. On the one hand, it serves to condemn or absolve and, on the other, it creates history. A judgment issued by the judiciary of a country is recorded as official history. The lack of judicial sanctions, therefore, becomes an obstacle to mourning, since the version of history that has been written denies the disappearances, tortures and deaths that occurred. That is why the struggle of organizations of families of disappeared and detained persons, as well as that of human rights organizations, cannot be viewed as an effort to seek vengeance; in the first place, because their claims for justice are made through legal channels while the acts of repression were illegal and, secondly, because the claims for justice attempt to produce a version of history that allows the completion of mourning for the departed loved one.

In the same way that a judicial sanction may produce subjective effects that enable history to be rewritten, thereby creating the appropriate subjective conditions for mourning, so it is important to emphasize the symbolic value of the different types of reparations as a way of inscribing the disappeared persons in history: through monuments, commemorative plaques or names of streets. Such acts of homage are a social necessity for the collective memory and to enable mourning.

In countries where systematic human rights violations took place, trials were held with the purpose of seeking justice; some were successful and others not as much. However, the persistent political weakness—which in many cases generated impunity—has rendered such efforts insufficient. Thus the actions of the Inter-American Court become more relevant.

The possibilities of a more encompassing mourning are enhanced when grave cases of human rights violations are brought before the inter-American human rights system. Victims are given the opportunity to be heard in an international setting that is free of political and domestic contamination and that affords the possibility that their cases receive due process and a definitive judgment. The victims may also recover the dignity that had been lost as a result of acts of violence through a reconstruction of a traumatic experience that can produce profound healing, compared to a solitary absorption of pain.

Mourning requires resources to foster the victims' personal and social integration and, in that sense, the inter-American system plays a determinant role. It is, however, necessary to consider that the required approach has an unavoidable judicial dimension that complementarily requires the emotional support implied by psychological accompaniment. The judicial action also has a direct impact upon the victims, as well as on their communities and societies. This not only justifies, but

also demands, the creation of a psycho-juridical strategy of intervention to provide the victim with needed accompaniment, a holistic vision of the event and a judicial decision that results in truly comprehensive reparations. It is a complex effect since the victims are emerging from their own environment and social processes, which are also the focus of the Court's actions. Out of the deep tearing of the social fabric caused by human rights violations arises a potential for recovery, precisely at the moment when the credibility of justice is regained and the construction of democracy is advanced.

In attempting to understand mourning as a process of reparation, of social reinsertion, of the complete rescue of civil rights in cases of human rights violations, an inter-disciplinary approach, which would encompass the utilization of communal resources as open spaces for expressions of pain and the construction of subjectivities and the administration of justice, is necessary since in the majority of cases impunity is the constant and not the exception. We must also consider the need to provide psychological accompaniment and access to the emerging democratic political culture.

Mourning cannot be compensated with measures of reparation that only include medical, psychological or economic aspects. Schenquerman proposes a two-tiered approach for these cases: one is "assistance to elaborate psychic wounds produced by a traumatic event and to contribute to the creation of symbols around the persons affected by the elaboration process, individually and collectively" (Schenquerman, 1991). The other is "generating modes of communal intervention designed to contribute, from the specific field of psychology, to inactivate the terror and segregation mechanisms that place the social fabric of the population, as a whole, at risk" (*ibid.*).

The construction of democracy requires integrating the exercise of memory. That is the guarantee of non-repetition, of putting an end to impunity and of recovering the credibility of the social fabric in its institutions.

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The background is a solid green color with a repeating pattern of stylized, light green leaves and circular shapes. The leaves have a central vein and several smaller veins branching out. The circular shapes are of varying sizes and are scattered across the page. The overall design is clean and modern.

Reparations: a judicial and symbolic act

This article was prepared by the Mental Health Team of the Center for Legal and Social Studies (CELS) of Argentina, comprised of Roxana Amendolaro, Laura Conte, Adelqui Del Do, Luciana González, Roberto Gutman, Elena Lenhardtson, Marcela Marmer, Maximiliano Peverelli, Laura Sobredo, Mariana Wikinski and Graciela Guilis, the team coordinator and a psychoanalyst specializing in mental health and human rights with experience in providing attention to victims of torture and, at the time, Director of the Mental Health Program of CELS. She has given expert testimony before the Inter-American Court of Human Rights. This article also includes contributions from the interdisciplinary team of the IIHR Project “Comprehensive Attention to Victims of Torture,” as well as from the editors of this publication.

Introduction

When an historical event leaves an open wound in large sectors of the population, the wound calls forth ghosts, making it impossible to perceive reality and to make constructive progress. The wound is a persistent testimony to the “failure” of justice and to the juridical solitude in which the victim finds him/herself when a crime remains unpunished. To heal the wound, justice must provide reparations that are the suture that can halt impunity.

International law provides that victims of human rights violations have the right to an effective remedy and to obtain fair compensation for the harm inflicted, one of the objectives of which is to return the victim to the *status quo ante*.¹

The word “repair” comes from the Latin *reparare*, which means “to renew, rebuild, to have once more.” It is understood as mending the harm or restoring what was broken or had deteriorated. In cases of victims of serious human rights violations, it is a question of rebuilding their existence, far from terror and impunity, through a legal and symbolic act.

Although one speaks of “mending” or “restoring what was broken or had deteriorated,” it is clear that the affected persons are not able to erase the aggression that has violated the structure of subjectivity itself and to return to the condition

1 “On an individual basis, victims –including relatives and dependents- must have an effective remedy. The procedures applicable must be publicized as widely as possible. The right to reparation should cover all injuries suffered by victims. According to the Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law, drawn up by Theo van Boven, Special Rapporteur for the Sub-Committee (E/CN.4/Sub.2/1996/17), this right embraces three kinds of action: a) Measures of restitution (seeking to restore the victims to their previous state); b) Compensation (for physical or mental injury, including lost opportunities, physical damages, defamation and legal aid costs); c) Rehabilitation (medical care, including psychological and psychiatric treatment)” (E/CN.4/Sub.2/1997/20:10).

existing before the harm. Redress of crimes against humanity must therefore be thought of in terms of something that is irreparable, non-compensational; something impossible to repay. Once the impossibility of returning to the condition that existed prior to the violations is acknowledged, it is possible to begin thinking of offering redress, not true, but symbolic redress with respect to the alternatives that justice provides for those involved: the guilty, the victims and their community.

One can then speak of a wound that, while not being capable of being erased as if it never existed, may be redressed symbolically, enabling a reorganization of the psychological and social life of all who suffered some type of human rights violation. That redress makes new remedies available to repair the harm and to allow the victims, the community and society as a whole to begin to rebuild and to rebuild oneself.

It is also important to emphasize that punishment of the crime allows the community and the victims to emerge from the damaging injustice caused by impunity, because, although it is true that the punishment does not annul the crime, it does put a stop to it and prevents its effects from continuing during the fraudulent times of impunity. When truth and justice exist simultaneously, it is possible to state that a criminal is a criminal, that the State responsible for the act is responsible and that the victim is a victim. This task of calling everything by its name, clarifying the scope of each one, has an indispensable symbolic reparatory power.

Although psychosocially it is impossible to speak of “repairing a wound,” a trial and reparations ordered by an international tribunal have the potential to become a symbolic cure for the harm by proposing something new that can reach the violated subjectivity. In terms of satisfaction and non-repetition, reparation is seen as a symbol, not only by victims, but also by their communities and the broader social environment.

The objective of this article, which uses concepts shared with those of a legal nature, is to explain from a psychological and psychoanalytical perspective an articulation between the concept of reparation and the manner in which this concept is understood by victims and how it affects their subjectivity. The article intends to make a contribution so that the judges in the inter-American system in ordering reparations better approach the victim’s subjectivity, which needs to be repaired, especially in cases of human rights violations as serious as torture and cruel, inhuman and degrading treatment.

Juridical reparation from a historical perspective

As in the ancient law of “an eye for an eye,” according to which the harm suffered should be repaid by inflicting a similar harm, in modern States in which crime appears to be the exercise of one of the freedoms that had *been contractually and freely relinquished*, punishment is intended as *repairing the harm caused by the breach of that contract*. Under civil law, the breach of a contract creates the obligation to repair. Non-compliance with that obligation is translated into an embargo of part of the patrimony of the person who committed the breach. The patrimony is sold and the earnings go to the affected person in the form of indemnification.

It should be clarified that all reparations, as perceived from the establishment of the social contract when the “eye for an eye and a tooth for a tooth” is no longer demanded, are *metaphorical per se*. Zaffaroni has stated that: “in the English disciplinary criminology ... punishments require the imposition of a share of pain that should be commensurate to the pain caused; in other words, a type of disciplinary ‘eye for an eye’” (Zaffaroni, 1988, p. 113).

By being metaphorical and by having many meanings, it may also become, in some way, a source of mistakes. The meaning of the word *indemne* in Spanish, according to the Diccionario de la Real Academia, is “exempt or free from damage” and, the word *indemnización*, means “action and effect of compensating.”² Both these words are good examples of the misunderstanding found in some terms. No act of justice can return to someone the condition that he/she was in before suffering the harm, a condition that is “free of harm” after a traumatic event, as in cases of human rights violations.

Furthermore, the original concept of reparation is based on the existence of a social contract among “free and equal” individuals in which both parties are autonomous. The idea of a juridical entity being equal to a person suggests that justice must endeavor to return things to where they were: restoration of the contract between two equal parties that has been breached. There are, however, no *equal parties* in cases in which the State has violated the rights of a citizen. The victim in these situations is not a free and equal subject who is able to establish a contractual relationship as the owner of something valuable. Between the citizen –as legal subject– and the

2 We thank Delly Beller for the suggestion to review the etymological origin and definition of these terms. We also recommend the article “Enfoque interdisciplinario de la terminología...,” that appears in the same book and goes deeper into the topic of the meanings of the terms of the language.

State, the balance of power is completely asymmetrical. When the State is the one in “breach of contract,” the effects are devastating and, if massive, systematic and willful, the term to describe the act is “a crime against humanity.”

The manner to conceive the concept of reparations must necessarily arise from a dialectic between the singular and the collective; between the subject or affected community and the legitimate authorities; in the realm of creation and historical construction. If we start from the conviction that it is impossible to recover what is lost, that the harm caused is of such magnitude that the “*status quo*” can never be recovered, that the victim will never recover his/her previous condition, we must then conclude that all reparation, even financial, is symbolic. This idea, which favors an interdisciplinary approach, clearly demonstrates psychology’s pertinence and contribution to international litigation and shows how a comprehensive approach enriches its vision and relevance.

Juridical reparation from a psychoanalytical perspective

In order to approach the concept of reparation from a psychoanalytical point of view, we should think of three different concepts: Father, Authority and Law, which are the key to the constitution of the psyche and which also enable sketching the logic that makes social order possible.

Throughout Western history and from our patriarchal ancestry, the concept of the “name of the father” has had important repercussions when thinking of the figure of the State and its effects on subjectivity. *Father* (*pitar* in Sanskrit; *hayr* in Armenian; *pater* in Greek and in Latin; *fadar* in Gothic) was a term originally used in mythology to refer to the supreme God. This term did not include the biological father-son relationship; it was a name that had religious connotations and no human being occupied that place. *Pater* later became father and had two different dimensions: that of the biological father and that of the paternal function as representative of the Law.

The State, which in theocratic antiquity was seen as descending from divinity, figures in subjectivity as the representative of that paternal role in social terms.

The term Law, going all the way back to ancient Greek, has two meanings: as order and as justice, both sustained by the State. For individuals, however, the Law is not thought of so much as the legal texts, but the authority that orders the social environment and enables it to be livable. Its place is not the written text, but subjectivity itself. That is how Kant expressed it when he stated that our interior

awareness of the law is a known fact, like the fact that there is a starry sky above our heads.

From a subjective perspective, the important thing is for the Law to exist and that everyone, including the State, be subject to it. The Law thus not only governs social relationships, but it is also an authority that produces a subjective order.

As long as the State represents the Law and fulfills its paternal role with regard to society and to the citizens, the order and the survival of the social contract is possible and trust in the State as the organizing authority is possible. But when the State intends to be, and to occupy the place of, the Law, as in dictatorships, when the State breaks the Law that it supposedly must guarantee and is not held accountable for doing so, the conditions for chaos in subjective and social terms are created.³

Therefore, in judgments on reparations, what is redressed, as a last resort, is the symbolic force of the Law in its dual dimension of justice and order. Thus, the act of justice, the definition of responsibilities and the application of the appropriate punishment are acts of reparation *per se*.

Limits of reparation and its symbolic dimension

Symbolic reparation

The adjective “symbolic,” applied to reparations ordered through legal procedures, may be understood in two different ways:

As representing losses and damages

In first place, reparation is “symbolic” because what is lost is not restored, but replaced by something that represents it. As mentioned, reparations can never

3 We should also consider that the juridical-social chaos that reigned in Argentina in the past 20 years of democracy has its roots in the laws known as Due Obedience and Final Stop. When the democratic governments began to try the crimes committed by the representatives of the terrorist State (1976-1983), that same State that should have punished the transgressions, two laws were enacted that introduced to the world the idea of the lack of punishment for breaking the law. This has affected all of us who are touched by these laws, since they legalize a lack of punishment for breaking the law and thus the law legitimizes corruption. The Supreme Court of Argentina has recently declared the so-called “pardon laws” unconstitutional.

cover the full damages suffered by the victim, because the harm is irreparable. Re-establishing the *status quo ante* does not repair, but constructs something different (Laplanche, 1984). In this case, “something different” is closer to the act of justice than to the restitution of what is lost. Nobody has ever believed that compensation could give the next of kin of victims of State terrorism the feeling that they were recovering their lost loved ones. What encourages the victim to ask for reparations is the need to make a claim for justice, which means acknowledging the harm suffered, the end of the solitude that living the loss causes.

Reparation is symbolic because it offers a compensation that always implies going from the real harm to an act of justice; it intends to be a qualitative and quantitative cure for the harm, but the victim in no way is able to return to his/her condition prior to the violation, even when the compensation is fair and contributes to a public acknowledgement of responsibility by the State and the “duty of memory” is assumed.

On depending on the subjectivity of the victim

Reparation is symbolic because, as a reparatory act on the part of justice, its meaning depends on the subjectivity of the victim. In other words, it alone establishes the absolutely singular relationship between what reparation offers and what has been lost. The common expression “to the victim’s satisfaction” means that the reparatory act must be considered to be intensely related to the personal characteristics of the victim, to his/her context and beliefs. The affected person performs a “work of symbolization” between what is lost and what is restored, which is absolutely intimate and personal. It, therefore, does not depend on the acts of justice, nor is it defined by them. This is another example of how a psychological perspective makes it possible to account for the true impact of a legal event.

Every person has a world of references, marked by culture, race, sex and age, *inter alia*, which provides a repertory of senses to interpret reality and the most relevant events according to his/her particular lens. For example, an indigenous people that carefully guards its cultural memory, a displaced peasant community, or a threatened middle class could give subjective interpretations to the loss and to the potential for symbolic reparation. Therefore, a specific view containing the conditions and characteristics of the victims’ psychosocial context is useful for understanding how they experience reparation and the meaning they give it. According to Castoriadis,

For the “procedural” vision, humans (or a sufficient part of them) should be made up of pure juridical understanding. But each individual is something very different. One is forced to accept them as they are, already molded by society, with their histories, their passions, their particular belongings of every type; just as the historical-social process and society’s institutions has made them (Castoriadis, 1997a, p. 280).

Reparation is not and cannot be equivalent to the loss, but this impossibility also expresses its symbolic nature; given what is truly granted, the victim can go further and open the door to other implications, making it possible to somewhat lessen the enduring trauma of the harm. What is truly important is not the reparation itself that justice offers, but what the mind can reconstruct with it.

To think otherwise would not only mean that justice truly intends to “repair” the harm as if it had never happened, but also that in some way it attempts to determine the psychological process that the reparation may have on the victim, supplanting the reparation by giving a name to the psychological operation that “must” be produced by its acts.

While, as indicated, litigation has undeniable effects on the psyche of the affected, it must not be assumed that this act and its consequences will lead to a complete recovery of the trauma (CELS, 2000).

This is the basic difference between reparation and a reparatory act. Justice produces, fosters and forces the guilty party to perform a reparatory act. The possibility that this act will be an effective reparation, from a psychological point of view, will depend on the victim, in the full exercise of his/her psychological autonomy, as choosing something that has not been previously ordered. Therefore, the question of reparation, from a psychosocial perspective, must be considered from the victim’s perspective. Believing that the issue is “already repaired” by the mere fact that there has been a legal decision and reparation has been set denies a central dimension in the reality of victims, showing once again the need for an interdisciplinary approach.

The good and the fair

The responsible party for the reparation –in this case the State– never loses what the party receiving reparation has lost. There is no possible equivalence between what the party ordered to repair delivers and what the victim has lost.

The idea of equality related to justice could presuppose the assertion that justice returns things to their proper place. If we understand that “equality is not related to things, but to relationships” (Ricoeur, 2000), we see that justice can only intervene by forcing the defendant to be subjected to *the same* as the claimant in presenting arguments and later a judicial decision. That is something, but that is the extent of the possibility of equality. After that, even when the defendant is punished and must present some type of good—in many cases pecuniary—there will be no restitution of equality because persons are not exchangeable for goods.

For acts of justice to produce the effect of restitution for victims, they cannot be presented as a purely procedural action, as if it were a case of defining what would be a fair trade between the interests in question of each party. It is neither a question of going back to an “eye for eye” type of punishment in which no authority is in charge of the law nor one of imposing a share of pain, term for term, proportionate to the pain.

Recognizing and emphasizing the inalienable responsibility of States to ensure that human rights are respected, we must think about the position that the person directly affected occupies in the definition of the harm suffered; what type of symbolic reparation can be offered and what type of indemnification can be perceived, bearing in mind that financial compensation is only one of the possible methods of reparation. This alludes to what the victim may wish for according to his/her context and his/her particular subjective experience.

For the act of justice to be truly reparatory, it must be intimately related to the idea of *good*, of *doing good*, and not only of what is fair. Only this perspective, which is profoundly ethical and not limited by procedure, can produce in the subjectivity of the victim the idea that the conditions that produced the trauma are starting to disintegrate.

If we accept the fact that justice must produce reparatory acts that contribute to lessening the victim’s pain, without this meaning that it will define the significance that reparation will have for the victim, we will be able to assume that justice will have the role that Castoriadis assigns to the creation of a policy of autonomy: establishing institutions that, when internalized by individuals, enable as much as possible their autonomy and their possibility for effective participation in every explicit form of power existing in society (Castoriadis, 1997b. p. 90).

Psychological and moral damage

When speaking of human rights violations in their most aberrant practices, such as torture and the disappearance of persons by the State, it is a question of harm affecting persons integrally, both physically and psychosocially.

This type of effect is part of the juridical figures of “moral damage” and “psychological damage.” For Brebbia, moral damage is a

part of the generic concept of damages –with respect to the violation of one or several subjective rights that comprise the Juridical Personality of an individual– produced by a voluntary act that grants the affected person the right to obtain reparation from the subject to whom the law imputes the referred event, considered unlawful... Personal goods (physical life, honor, feelings, etc.) are extra-patrimonial rights, for they are impossible to translate adequately into money.⁴

According to Sudarovich and Bressan, moral damages “give content to the position of psychological damage, linked tangentially to the legal concept of Juridical Personality.”⁵ Nevertheless, it is possible to establish some significant differences between them. Moral damages are damages inflicted on a legal entity, in a generic sense; they have a more universal than individual nature. On the other hand, psychological damage takes into account the subjective dimension of the victim because it affects the unfolding of potentialities and resources, affective as well as emotional, intellectual and relationships, etc., which are unique for every individual and are related to the particular history of each one. In this case, it is not only a question of the legal entity, of law, but also of the singularity of the mind of the individual.

With respect to reparation, in the case of moral damages it is possible to respond through figures such as compensation, rehabilitation, guarantees of non-repetition and restitution. In the case of psychological damage, the limits of reparation are narrower; when the psychological scheme has been broken, the subject presents symptoms whose evolution will depend on, as stated, personal history and the

4 Quoted in Sudarovich, A. and Bressan, D. (1993) “Daño psíquico. Una aproximación interrogativa.” In *El sujeto y la ley*. Argentina, Ed. Homo Sapiens, pp. 117-118.

5 *Ibid.*, p. 118.

subjective constellation of each subject, on how the individual is able to register the reparatory act in his mind and on the possibility of receiving assistance and therapeutic accompaniment.

An interdisciplinary approach that involves legal and psychological aspects would include this lack of continuity as a challenge that must be met. From a strictly juridical viewpoint, the apparent “measurability” of the injury is necessary and is a requisite for effective legal protection; from a psychosocial perspective, this aspect is too complex to be reduced to a quantification of the harm suffered. It is a question of a sudden violent traumatic event in the psychological mechanism, which produces a destructuring that is impossible to measure. Nevertheless, it is feasible to accept that public recognition and acts of justice, that is, the passage of private and intimate suffering to the public arena, restores to a certain degree the mechanism that was damaged by the trauma.

The concept of dignity

It is possible to build a bridge between moral and psychological damages through the concept of dignity. Although it is a relatively confusing concept because it is invoked from very different fields, all coincide in that the State has the duty to preserve the dignity of citizens. Referring to this duty, Article 1 of the Universal Declaration of Human Rights states that “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

The concept of human dignity has always existed in Western culture, from Christian principles, Kantian ethics, to the Declaration of Independence of the United States and the French Revolution, when the dignity of man becomes the foundation of human rights. As early as 1787, the German poet Schiller presented in his work *Don Carlos* the idea that the State has the duty to ensure the dignity of men, “Only in political freedom –says Schiller– can man maintain his feeling of dignity.”⁶ Freedom is a condition of dignity.

The Diccionario de la Real Academia defines *digno* as that “which deserves something.” This deserving is enunciated in a positive way for the person who deserves it: what is deserved is, in some way, good. When speaking in terms of human

6 It is obvious that this reference to “man,” normal at the time, has been changed to “humanity,” to take gender into account.

dignity, it certifies that something, something positive, is inherent and belongs to the human being. In this line of reasoning on the subjective content that is violated by State terrorism, it may be said that acts directed towards destroying the dignity of individuals are a symbolic removal of characteristics of the human spirit, from which arises an immense trauma.

Rodríguez Rescia, in referring to the practice of torture, defines it as “one of the worst ways to destroy the dignity of the human being by using repugnant and cowardly methods, taking advantage of the complete defenselessness of the victim” (Rodríguez Rescia, 2003). Torture, as an act of State terrorism, is linked the victim and essentially seeks to destroy human dignity, his/her dignity as a person.

It is important to remember that Freud developed the idea that two different moments are necessary for a trauma to exist. The first goes beyond the capacity of the subject to account for him/herself and the second in which the first retroactively acquires traumatic value. In social traumas produced by State terrorism, speaking in general terms and schematically, it could be said, for example, that the first moment responds to the torture or disappearance and the second to the impunity of the State with respect to said acts when the Law does not act. The first is a specific and devastating event. The second is a period of time that may be years, which may leave irreparable *sequelae* in victims of impunity. These are two complementary methods that result in psychological harm: torture, disappearance or murder of a loved one and the “disappearance of the disappearance” caused by impunity.

It is evident that impunity with its intent to make things invisible, to deny an act of extreme violence and State terrorism such as disappearance has a paradoxical psychosocial effect because what has been denied or made invisible returns and its consequences affect the persons directly involved and also affect all of society leading to concealment, those “dark” spaces that are silenced, threatening the symbolic integrity of society as a whole. In which evaluative referent of the psychosocial structure is it possible to believe or to speak of justice when it is accompanied by concealment?

Establishment of justice as an act of reparation

When so much evil has been produced, so much pain in the victims, their families, the environment and the community, the basis for being able to maintain the “belief” that the world offers certain guarantees and is livable is inevitably affected; in other words, the veil that protects the victims and is necessary in order

to find a meaning for their acts has been torn. Justice requires prosecuting and punishing the guilty parties, acknowledging the harm, repairing part of the harm and easing the pain caused by impunity.

The calming effect of justice for those who have experienced a traumatic event is undeniable, especially if the harm has been caused by the State or by its agents because in such cases it is a known fact that the harm suffered is added to feeling of absolute solitude and impotence due to the true abandonment of the victim. The victim's suffering is thus doubled: suffering the specific harm and the unbearable suffering of not being heard or recognized by an authority that has the power to do justice. In the words of Tonglet, it is a question of "those whose lives have been destroyed to which History adds the insult of oblivion" (Tonglet, 1998, p. 55). Recurring to the inter-American system, the ultimate authority, could offer the victim the justice that was denied in national courts.

When the crime is punished and the victim is symbolically repaired, public and social recognition of the harm, in addition to being an act of justice, has the potential of considerably reducing the degree of suffering. This suffering would never be reduced and reparation would not be possible if justice did not have the purpose of discovering the truth and if the responsible party is not punished. As defined by the Mental Health Team of CELS:

Reparation in legal terms, inasmuch as it is a public act, may enable the appearance of a subjective repositioning of the affected persons, for we know the importance to the public of mourning. We must pay attention to the particularity of each case, the effects of reparation (CELS, 2000).

Re-establishment of truth and justice effectively opens the possibility of another symbolic reparation: that of mourning, which may only be initiated with a degree of normality when that re-establishment occurs because impunity makes this process impossible by keeping the victim trapped between the two moments of the trauma. When an end is put to impunity, the victim recovers his/her dignity –because the victim deserved justice– and he/she can now direct his/her personal energy towards mourning, towards the re-establishment of emotional, social and work relationships; towards the construction of a new project of life. We, therefore, believe that establishing justice, as well as the process that leads to it, is an act of reparation.

The multiple dimensions of testimony

By recovering dignity, which in some way is always related to others because the victim deserves this dignity and others must provide it, both moral and psychological harm is repaired. Due to its social dimension, this restored truth must be made public, removing it from the scope of private pain. The truth about social traumas must be heard and shared; it must be socialized in order to relieve the pain. But in order for the truth to be reparatory, it must be accompanied by justice, which is why a hearing at the Inter-American Court is fundamental as, in addition to allowing the private truth to become public, it does justice to that truth.

A public hearing before the Court is an opportunity for the victim to speak and to ask for redress and, through that, to be able to recover his/her dignity. By means of his/her participation the victim may be able to relocate socially and to establish a line between a “before” and an “after”; if not, the victim is condemned to repeat the trauma over and over. Garapon comments on this issue: “Isn’t the fact of being able to speak before authorities inherent to dignity?” (Garapon, 1998, p. 228).

This reflection on the reparatory and restructuring potential that the context of a public hearing symbolically has for victims—speaking and being heard by authorities—leads to consideration of an important and delicate topic. Occasionally, due to procedural aspects of a case, there arises the possibility, which is frequently accepted by the victim in order to accelerate the process, of not reaching the stage of a public hearing. It is, therefore, possible for the process to go more rapidly, which is a relief to the victim, but it also means that he/she will not testify, will not be heard and will not obtain the aforementioned reparatory benefits. It is, therefore, important to remember that from an interdisciplinary approach, the victim’s interest must prevail, but a comprehensive, not short-term, vision of the future is necessary.

R. Kosseleck has enumerated, with respect to testifying, a series of reasons for which the telling of the story may become indispensable:

First, is the relationship with death, which is not reduced to the simple fact that each of us has to die some day; it also implies the possibility of deliberately causing the death of someone else, a violent death. Violent death is a source of history. Second, is the inter-generational relationship and third is the belonging to closed communities, which leads to the idea of being alien. Finally, the incapacity to govern a collectivity in equal conditions, which leads to a relationship of hierarchy in which

some command and the rest obey. Every great tragedy brings together these four causes of conflict, which at the same time present four different opportunities for the narration, in other words, histories that can be told, in which something takes place that we can either forget or remember.⁷

It is easy to recognize that these are precisely the different aspects involved in a narration before the courts; these are the tragedies to which the witness must refer. All the subjects mentioned are present simultaneously in these collective tragedies brought before the courts in cases of human rights violations and the “right to remember or forget” may be exercised before the courts.

There is a difficulty inherent to psychological illness when it is produced by a social trauma: finding the relationship between a social trauma and the effects that it provokes individually. The psychological drama released by a social trauma is formulated by the subject through language as the only link between the universal and the individual. Language is the vehicle through which private issues are made public and it enables the individual to pass from the social (traumatic event) to the uniqueness of the private experience. This would be one reason for the victim to value the hearing.

Speech in the context of a public hearing before the Court has a huge symbolic potential: establishing the relationship between the psychological harm and the social harm; the personal subjective event acquires a social dimension through its impact: the breaking of impunity and the silence, punishment and reconfiguration of a framework of trust and justice.

Even when the victim’s experience is so tragic that he/she often feels that it is impossible to communicate it, he/she must understand that the possibility of testifying, for passing from the private to the public through speech, is his/her right. In addition, the testimony, which occurs in reality, with witnesses present, demonstrates who is the true guilty party and enables the victim to achieve a psychological reordering and a functioning of a principle of reality that in turn allows the establishment of the difference between the feeling of guilt and true guilt, for it is the law that is acting.

According to Paul Ricoeur (Ricoeur, 2000, p. 141), the confrontation of arguments before a court establishes a dialogue by means of language, emphasizing

7 R. Kosseleck, quoted by Paul Ricoeur, (1998) “Definición de la memoria desde un punto de vista psicológico,” pp. 82-83. In *Por qué recordar?* Spain. Ed. Granica.

how important it is for the victim to speak and to be heard in the context of a hearing. The possibility of speaking that has been taken away from the victim is recovered through his/her testimony. Language as a tool of communication is not legitimized if there is no one to listen and to give meaning to what is being said, being what Ricoeur calls “a communicative act of society.” It is also a communicative activity *before* society. That is one of the roles of justice and for the victim the confirmation that he/she has been heard means the acknowledgement of the pain and the hope that the responsible party will be punished. Ricoeur writes that

When the witness says ‘that really happened’ he or she is saying three different things at the same time. First, that he or she ‘was there’; this is the heart of memory’s ambition. ... but the witness says something more... ‘believe me,’ that is, the witness appeals to others’ trust, turning memory into a fiduciary relationship, into a trustworthy relationship, while at the same time the question of the faithfulness of the testimony arises. It may be said that at that moment memory is shared: memories of an individual are offered to someone else and that someone else receives them. That is when the witness expresses a third thing: I wasn’t ‘the only one there’ and ‘believe me’ and ‘if you don’t, ask someone else’... The testimony translates events witnessed into events told, into things that are placed in the trust that one has for the word of the other (Ricoeur, 1998, p. 27).

It is at this point where the additional value of testifying may be seen: it not only enables the victim to be heard, it not only lessens the victim’s pain by offering him/her a social space for expressing it, it not only enables a psychological reordering between the collective trauma and individual pain, but it also makes it possible for the story to be written. Because of its documentary nature, it enables the construction of a collective memory composed of a group of individual memories.

Historical memory cannot ignore, in addition to “objective” documents, the irreplaceable experience of the testimony of those who experienced the events. Those witnesses, complying with the duty to remember, cannot ignore the imperative of truthfulness that is the essence of the historian’s task; only under this double condition will social memory be able to do its work of joining with the past, avoiding mythology, but without falling into oblivion (Vernant, 1998, p. 24).

The victim's testimony in court is a fundamental document for the judges who, based on it, in their judgment write history and construct memories. This is one of the most important reparatory effects of justice.

History is written and collective memories are constructed through the following processes, *inter alia*:

- Judgments put an end to a certain manner of relating the events that ignores the story of those involved. They put things back in place and the story of submission and pain is no longer an individual story, but becomes legitimized and is inscribed as true in the collective to which the victim belongs, so that the victim is able to tell 'his/her own story' definitively.
- Hearings are probably the only space in which the victim can be heard. The courts receive the testimony about the history that has been silenced, which from that moment on will never be unknown.
- Judgments transmit history to future generations. This transmission terminates the need to rely on the oral story or testimony, which is always fragmentary. It is transformed into a written, public and legitimate story. It will be the community, through acts of justice and supported by the judgment, that validates this story.

From that moment and by means of the Court's judgment, the respondent party receives an order of reparation. An example may be the duty to ensure that the conditions that led to the human rights violation, the object of the litigation, cease. This is a form of giving justice back to the community as an act of reparation, for reparation no longer depends on the responsibility or the good will of the victim, of his feelings for the community or his/her altruism, but strictly on the place that all litigation assigns to the victim: representing the community. That representation takes place by testifying on his/her individual suffering, not because it transcends the victim or because someone has granted the victim the condition of representative, but because his/her suffering reflects the true or potential suffering of the entire community.

These reflections lead to the need to consider what occurs during the litigation if the State acknowledges its international responsibility and a settlement is reached.

In that case a public hearing might not be held or it might not contemplate all of the individual and expert testimony presented by the parties.⁸ The State that settles clearly indicates whether the settlement resolves only the issue in question or if it also includes reparations and court costs. If the settlement only resolves the issue in question, the Court may evaluate and decide whether to continue to the stage of defining reparations and costs, making it possible that certain facts will not be brought out in a public hearing. This, from a psychosocial point of view, decreases the potential of reparation for the victim.

In order to be able to define the diverse effects of a settlement, it is important to mention that this procedure takes place even though the Court has the obligation to take into account the requests of the parties (the Inter-American Commission and representatives of the victim's next of kin) because the parties request reparations, measures of satisfaction, guarantees of non-repetition, *inter alia*, that are very specific and very important for the State to grant and comply with.

Testimony of silenced victims

H. Memel Fotê has written:

Preserved slave testimonies register, without exception, a feeling of shame that conditions the psychological attitude of the narrator, which is expressed, with respect to the author, with a lack of self-confidence, distrust towards others, doubts and concealing of himself and for the readers a need to resort to the statements made by the family, administrative, political or literary authorities in order to make credible the oral or written testimony (Fotê, 1988, p. 150).

The task of history is to bring to mind what was forgotten, to publicize what has been ignored and, for being ignored, is given impunity or is silenced. The speech of silenced victims, of the excluded, provides an opportunity before the Court that has historically been denied. Judges therefore write history when issuing their judgments and, by interpreting the testimony, they not only give it credibility, but also grant it the value of truth. Who writes the history of women, Negroes, marginalized

8 This depends on when the acquiescence is given, since no specific time is established. I/A Court H.R., *Myrna Mack Chang v. Guatemala*, Judgment of November 25, 2003. Series C No. 101, para. 108.

communities, the indigenous and the poor? How do they legitimize their story? How can they identify the different impacts that violations have on each person with regard to gender, race, ethnic group, culture and social class?

The concept of gender, for example, enables us to understand the importance of offering a party that has been silenced in history the possibility to be heard. For a long time, biological differences between men and women were translated into differences in capabilities, skills and abilities in order to control and to treat unequally. How many women's cases effectively reach court? Is the perspective of gender present in the definitions regarding the policy of reparations? It has been only recently that women and their struggles have begun to gain social spaces that were denied them in the past and the whole structure of exclusion and silencing is beginning to change. Inequalities in gender relationships are shown as a group of practices, values, norms and discriminatory discourse and not only as a group of roles or one more statistic.

Judges write history and construct memories and this constitutes the main reparatory effect of justice. It should be added that upon receiving the testimony of history that has been silenced, the judges must necessarily deal with the complexity of the silenced aspects:

- The voice of the person directly affected.
- The voices of the relationships of power and authority as they are specifically immersed within the framework of the community.
- The voices of women, children, the mentally disturbed, the elderly, the physically impaired....

As stated, judges are able to offer perhaps the only space possible for those directly affected to be heard. Silenced voices offer testimony that denounces not only the violation of the victim's rights on an individual level at a specific time but they also express the voices of the social context, the story of the relationship of power and control that created the conditions necessary for the violations to take place. We could say that every judgment is written in, by and with the community to the extent that it retakes the history of the relationships that gave way to submission and exclusion.

In this respect M. Perrot has written that

This silence presents the question of how history is conceived. What is worthy of being included? What must the story consist of? What deserves to be transmitted to the memory of future generations? The selection of the objects of history illustrates very significantly the direction in which its vision is directed. The silence of history surrounds the life of the humble, of the defeated. Forgetting them is a form of denying them or a manner of explaining their legitimate desire to be remembered and their need to be part of history.... Denying history is a form of denial. What is not told does not exist. What has never been the object of a tale, of a story, does not exist. Tyrants know that very well and that is why they erase the tracks of those whom they intend to reduce to nothingness.... [The demand of history] is translated into a search for the truth, into the will to incorporate a complementary and corrective vision of the discourse on power (Perrot, 1988, paras. 58-60).

Reparations in the inter-American system of human rights

There follows a study of the concept of reparation as defined in the jurisprudence of the Inter-American Court of Human Rights, as well as the different types of measures of reparation that have been included in its judgments. This section conforms with the greatest possible degree of fidelity to the judgments issued by the Court, for it is precisely on those legal texts and around the representatives of the Court who conduct the litigation that a dialogue and articulation between the legal and psychosocial fields must occur. In fact, that is the general purpose of this article.

When an unlawful act occurs that results in a violation of an international norm that can be attributed to the State, it “gives rise immediately to its international responsibility for violating the international norm, with the consequent obligation to cause the consequences of the violation to cease and to repair the damage caused.”⁹

9 I/A Court H.R., *Serrano Cruz Sisters v. El Salvador*, Judgment of March 1, 2005. Series C No. 120, para. 134 and I/A Court H.R., *Plan of Sánchez Massacre v. Guatemala. Reparations*, Judgment of November 19, 2004. Series C No. 116, para. 52, among others.

This is a basic principle of international law: "...any violation of an international obligation that has caused damage gives rise to the obligation to remedy it adequately."¹⁰

In the inter-American system, this principle is enunciated in Article 63.1 of the American Convention.

If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

The jurisprudence of the Inter-American Court has resulted in the harm being repaired by imposing on the State the obligation to re-establish fully the *status quo ante* by making "reparation for the consequences of the violations, and ... also order(ing) the payment of an indemnity as compensation for the damages caused."¹¹

Regarding full restitution, or *restitutio in integrum*, it is important to point out that it may be calculated only to the extent that it is possible to re-establish the *status quo ante*. However, as indicated in the first part of this article, full restitution may be impossible due to the nature of the violation and the damage caused to the very structure of the victim's subjectivity. The Court must therefore define measures that are capable of somehow remedying and ensuring the rights that have been violated. The State must also ensure that the violations not be repeated.¹² In addition, the

10 I/A Court H.R., *19 Merchants v. Colombia*, Judgment of July 5, 2004. Series C No. 109, para. 219; I/A Court H.R., *Maritza Urrutia v. Guatemala*, Judgment of November 27, 2003. Series C No. 103, para. 141 and I/A Court H.R., *Bulacio v. Argentina*, Judgment of September 18, 2003. Series C No. 100, para. 70, among others.

11 I/A Court H.R., "*Street Children*" (*Villagrán Morales et al.*) *v. Guatemala. Reparations*, Judgment of May 26, 2001. Series C No. 77, para. 60.

12 I/A Court H.R., *Fermín Ramírez v. Guatemala*, Judgment of June 30, 2005. Series C No. 126; *Serrano Cruz Sisters v. El Salvador*, *supra* 9; I/A Court H.R., *Carpio Nicolle et al. v. Guatemala*, Judgment of November 22, 2004. Series C No. 117; I/A Court H.R., "*Juvenile Reeducation Institute*" *v. Paraguay*, Judgment of September 2, 2004. Series C No. 112; *19 Merchants v. Colombia*, *supra* 10; *Bulacio v. Argentina*, *supra* 10, among others no less worthy of mention.

State may not invoke domestic law in order not to comply with its obligation to make reparation.¹³

In cases of violations for which it is impossible to determine *restitutio in integrum* due to the nature of the affected good, reparation may be in the form of a fair indemnification or pecuniary compensation. The Inter-American Court seeks alternative forms of reparation for the victim, his/her next of kin and other dependants so that the “compensation refers primarily to actual damages inflicted which...comprise both material and moral damages.”¹⁴

It is important to remember that the nature and amount of reparation must never be taken as an opportunity for the victim and other beneficiaries to enrich or impoverish themselves. The reparations should be proportionate to the violation committed and should depend on its characteristics and on the harm caused, translated into pecuniary and non-pecuniary damages.¹⁵

The inter-American system has classified reparations according to the different types of damages suffered by the victim and included reparations for pecuniary damage as well as for non-pecuniary or moral damage, plus other forms such as measures of satisfaction and guarantees of non-repetition.

Criteria that are most often used by the Inter-American Court for reparations are:

Reparation of pecuniary damage¹⁶

Pecuniary damage implies the loss of, or harm to the victim’s income, “expenditures incurred as a result of the events and the pecuniary consequences that have a causal link to the facts of the case *sub judice*.”

This reparation consists of determining an amount of indemnification that seeks to compensate the patrimonial consequences of the violations that have been found

13 *Fermín Ramírez v. Guatemala*, *supra* 12, para. 123.

14 I/A Court H.R., *El Amparo v. Venezuela. Reparations*, Judgment of September 14, 1996. Series C No. 28, para. 16.

15 *Serrano Cruz Sisters v. El Salvador*, *supra* 9, para. 136; *Carpio Nicolle et al. v. Guatemala*, *supra* 12, para. 89; I/A Court H.R., *Tibi v. Ecuador*, Judgment of September 7, 2004. Series C No. 114, para. 225; *19 Merchants v. Colombia*, *supra* 10, para. 223, among others.

16 *Serrano Cruz Sisters v. El Salvador*, *supra* 9, para. 150.

in the judgment. In order to decide claims related to pecuniary damage, the Court takes into account the evidence in each specific case, its own jurisprudence and the arguments of the parties.

When *restitutio in integrum* is not possible, an indemnification is set that takes into account the pecuniary damage suffered, which in turn includes expenditures and loss of income.

It is important to state that the Court, in defining the beneficiaries of the pecuniary damage, not only considers the family ties with the victim, but also includes all those persons who have established an important personal relationship with the victim and have suffered as a consequence of the events.

Loss of income¹⁷

This includes the victim's loss of income or the income that he/she could have earned during his/her working life, but that due to the events was impossible to earn, as in the case of murder,¹⁸ disappearance or other form of serious violation.

In order to determine the indemnification, the Court considers the following elements:

- Employment of the victim¹⁹
- Life expectancy where the events took place²⁰
- Professional profile and work experience²¹

17 In the areas of loss of income and expenses, which are pecuniary damages, no case is cited giving an exact amount of the indemnification.

18 I/A Court H.R., *Aloeboetoe et al. v. Suriname. Reparations*, Judgment of September 10, 1993, Series C No. 16, para. 88.

19 I/A Court H.R., *Castillo Paéz v. Peru. Reparations*, Judgment of November 27, 1998. Series C No. 43, para. 71a.

20 I/A Court H.R., *Velásquez Rodríguez v. Honduras. Reparations and Costs*, Judgment of July 21, 1989. Series C No. 7, paras. 46-47.

21 I/A Court H.R., *García Asto and Ramírez Rojas v. Peru*, Judgment of November 25, 2005. Series C No. 137, para. 257,II,b.

- Time of detention²²
- Victim's income from his/her activities at the time of the events²³
- Whether the victim was studying and the evidence that he/she would finish his/her studies.²⁴

After the Court has studied elements such as the foregoing, it determines the amount of the compensation by making a "reasonable evaluation of damages" and by acting according to the "principles of equity," which does not mean that the Court can act discretionally. In addition, the Court uses its jurisprudence to determine the appropriate amount.²⁵

Expenditures

These include the expenses of the victim or the victim's next of kin in shedding light on the event. These expenses²⁶ may include the following only to the extent that they are related to the case:

- Visits to police institutions or detention centers²⁷
- Expenses in searching for the victim in case of an extrajudicial execution or a forced disappearance²⁸

22 *Ibid.*, para. 257,II,c.

23 *Ibid.*, para. 261.

24 *Castillo Paéz v. Peru. Reparations, supra* 19.

25 *Aloeboetoe et al. v. Suriname. Reparations, supra* 18, para. 87.

26 I/A Court H.R., *Bámaca Velásquez v. Guatemala. Reparations*, Judgment of February 22, 2002. Series C No. 91, para. 54; I/A Court H.R., *Cantoral Benevides. Reparations*, Judgment of December 3, 2001. Series C No. 88, para. 51; I/A Court H.R., "White Panel" (*Paniagua Morales et al. v. Guatemala. Reparations*, Judgment of May 25, 2001. Series C No. 76, para. 138, among others no less worthy of mention.

27 *Velásquez Rodríguez v. Honduras. Reparations and Costs, supra* 20, paras. 41-42.

28 *Aloeboetoe et al. v. Suriname. Reparations, supra* 18, paras. 79 and 94.

- Income no longer received by next of kin due to the local search, to attend hearings at an international court or to take the case before an international authority²⁹
- Burial expenses³⁰
- Expenses for medical treatment of the victim or his/her next of kin³¹
- Expenses for the next of kin being displaced to other communities as a consequence of harassment.³²

Reparation of non-pecuniary or moral damage

Non-pecuniary or moral damage includes the hardship and suffering caused to direct victims and to their loved ones, the loss of the value of objects that are very significant to individuals, as well as non-pecuniary changes in the living conditions of the victim or his/her next of kin. As it is impossible to assign a precise monetary equivalent to non-pecuniary damage, integral compensation may only be compensated in two ways.

One is by payment of a sum of money or by handing over goods or services for which it is possible to assign a monetary value that the Court determines by the reasonable exercise of judicial discretion and by a sense of equity. The second is by performing acts or implementing projects with public acknowledgement or repercussion, such as broadcasting a message that officially condemns the human rights violations in question, undertakes efforts designed to ensure that such events do not reoccur and, as a result, the victim's dignity is acknowledged.³³

29 *Bámaca Velásquez v. Guatemala. Reparations, supra* 26, para. 54.

30 *Bulacio v. Argentina, supra* 10, para. 87.

31 I/A Court H.R., *Juan Humberto Sánchez v. Honduras*, Judgment of June 7, 2003. Series C No. 99, para.166c.

32 I/A Court H.R., *Gutiérrez Soler v. Colombia*, Judgment of September 12, 2005. Series C No. 132, para. 78.

33 *Plan of Sánchez Massacre v. Guatemala. Reparations, supra* 9, paras. 80-81; I/A Court H.R., *De la Cruz Flores v. Peru. Reparations*, Judgment of November 18, 2004. Series C No. 115, para. 155; *Tibi v. Ecuador, supra* 15, para. 242.

Although a judgment is *per se* a form of reparation, the Court's jurisprudence and international jurisprudence in general choose to repair non-pecuniary damage by paying compensation, taking into account the principle of equity.³⁴

For example, in *Caesar v. Trinidad and Tobago*³⁵ in order to determine the compensation for moral damage to the victim, the Court took into account the aggravating circumstance of the imposition of corporal punishment,³⁶ as well as the anguish, fear and humiliation suffered by the victim prior to and during the flogging.

Other forms of reparation: measures of satisfaction and guarantee of non-repetition

It is necessary to reiterate that reparations are not exhausted with indemnification or compensation since there are other forms of reparation. To explain them, we will repeat some elements pertaining to the concept of symbolic reparation.

Symbolic reparation may be defined as the effect that the Court's judgment has on the subjectivity of the victims, their community and their social environment. A judgment, for the mere fact of being such, recognizes the harm, whether it was intended and who was responsible, for it exerts a very important impact at a psychosocial level. If the human rights violation attacks the very structure of personal and social subjectivity, inter-American justice is acting symbolically at that level because it is a message that appeals to processes of personal and social reconstruction.

It is a question of rescuing and reconfiguring meanings that were profoundly affected by the human rights violation. This new subjective issue—capacity to believe once more in a social contract; the possibility of going back to living and hoping for the future, as a person, as a family, as the human race; the ability to trust others without becoming paralyzed by fear, for example—has the potential of becoming the psychological foundation for the construction of a new personal and social project. Like every other symbol, it has a potential for generating new meanings. It is a

34 I/A Court H.R., *Lori Berenson Mejía v. Peru. Reparations*, Judgment of June 23, 2005. Series C No. 128, para. 235 and *Carpio Nicolle et al. v. Guatemala*, *supra* 12, para. 177.

35 I/A Court H.R., *Caesar v. Trinidad and Tobago*, Judgment of March 11, 2005. Series C No. 123, para.127.

36 The punishment was inflicted with a cat o' nine tails.

paradox: the dimension of the subjective damage is intangible and not measurable. Since it is not possible to speak of an equitable reparation of the damage, the judgment and the ensuing reparations are symbols of that impossible reparation.

As mentioned, reparations are not exhausted by the granting of pecuniary and non-pecuniary damages,³⁷ as there are other forms of reparation in the inter-American system. In this area, the Court determines those measures of satisfaction that seek to repair the non-pecuniary damage, which are not monetary, as well as measures of a public recognition or repercussion.³⁸ These measures primarily seek to:

- Order the investigation and punishment of those responsible
- Recognize the victim's dignity
- Avoid the repetition of violations

Depending on the circumstances of the case, the Court orders the reparations that enable the greatest compensation for the violated rights. Measures usually issued by the Court are as follows:

Duty to investigate

In *Gómez-Paquiyaury Brothers v. Peru*, the Court ordered the following:

... to redress this aspect of the violations, the State must effectively investigate the facts of the instant case, with the aim of identifying, trying and punishing all the masterminds and other persons responsible for the detention, torture, and extrajudicial execution of (the victims). For this, it must take such judicial and administrative steps as may be necessary **to reopen the investigation of the facts of the instant case and locate, try, and punish the mastermind or masterminds of said facts.** The next of kin of the victims must have full access and the ability to act in all stages and instances of said investigations.... The State must also ensure effective compliance with the decision reached by the domestic courts to fulfill this

37 *Plan of Sánchez Massacre v. Guatemala. Reparations, supra* 9, para. 61.

38 *Ibid.*, para. 93; *De la Cruz Flores v. Peru. Reparations, supra* 33, para. 164 and “*Juvenile Reeducation Institute v. Paraguay, supra* 12, para. 314.

obligation. The outcome of the proceeding must be made known to the public, for Peruvian society to know the truth.³⁹ (Emphasis added.)

Establishment of a national commission to trace the young people who disappeared during the armed conflict while they were children

In *Serrano-Cruz Sisters v. El Salvador*,⁴⁰ a commission was created

... to collaborate, together with the public institutions involved or responsible for the protection of children, in tracing children who were separated involuntarily from their next of kin.... the independence and impartiality of the members of the national tracing commission must be ensured, and it must have the necessary human, financial, logistic, scientific and other resources to be able to **investigate and trace the whereabouts of young people who disappeared during the armed conflict when they were children.** (Emphasis added.)

Creation of a search web page

In the same case, the Court ordered the creation of an Internet page in the following terms:

(The) Court considers that a database should be established by creating a web page for tracing the disappeared children. The database should be set up with the given names and surnames, possible physical characteristics and any other existing information about the Serrano Cruz sisters and their next of kin. The web page should include the addresses and telephone numbers of several State institutions ... the State should adopt the necessary measures to coordinate national links with the different governmental and non-governmental authorities and institutions ... in order to **promote, participate and collaborate in the establishment and development of an international search network.** (Emphasis added.)

39 I/A Court H.R., *Gómez Paquiyauri Brothers v. Peru*, Judgment of July 8, 2004. Series C No. 110, para. 231.

40 *Serrano Cruz Sisters v. El Salvador*, *supra* 9, paras. 185 and 187.

Public act as a means of acknowledging international responsibility and making amends to the victim's relatives

The purpose of these measures is that the State acknowledge, by means of a public act, its responsibility for the events in question and publicly make amends to the victims. A request is generally made for this act to take place in the presence of the victim's next of kin and the Court may even order the participation of the highest authorities of the State.⁴¹

Creation of a system of genetic information

The Court has used science to identify disappeared persons and their next of kin to determine the relationships and to establish contacts among those who are searching for missing persons and those who have been involuntarily separated from their families and are seeking them. The Court has held that "the State must adopt all necessary measures to create a system of genetic information that allows genetic data that can contribute to determining and clarifying the relationships and identification of the disappeared children and their next of kin to be obtained and conserved."⁴²

Official monitoring mechanism of compliance with the reparations ordered

It is not only a question of ordering reparations since the Court may also impose measures by which the State is obligated to create an official mechanism that enables the victims' next of kin to participate and to be able to monitor the full compliance of each of the reparations.⁴³

In "*Mapiripán Massacre*" *v. Colombia*, the reparations consisted of:

- i. ensuring effective payment of the compensation and indemnification ordered in favor of the next of kin of the victims;

41 *Myrna Mack Chang v. Guatemala*, *supra* 8, para. 278.

42 I/A Court H.R., *Mapiripán Massacre v. Colombia*, Judgment of September 15, 2005. Series C No. 134, para. 308; *Serrano Cruz Sisters v. El Salvador*, *supra* 9, para. 193 and I/A Court H.R., *Molina Theissen v. Guatemala. Reparations*, Judgment of July 3, 2004. Series C No. 108, para. 91b.

43 *Mapiripán Massacre v. Colombia*, *supra* 42, para. 311.

- ii. following up on State actions to search and individually identify the victims and their next of kin and to ensure that payment was made, keeping a registry of the next of kin as they are identified and maintaining permanent contact with them to ensure that they are not threatened, especially after they had received the respective compensation;
- iii. taking the necessary steps to ensure that victims' next of kin receive adequate treatment;
- iv. coordinating the necessary actions for victims' next of kin, as well as for past residents of Mapiripán, who had been displaced, to be able to return safely to Mapiripán, if they wish to do so.

Medical and psychological treatment

Given the subject and scope of this article, this type of reparation is very important. Due to the nature of the events –torture and other serious human rights violations– it is not possible that the victims and their next of kin do not require medical and psychological treatment.

Since *Gutiérrez Soler v. Colombia*,⁴⁴ the Court has been ordering this type of reparation. In *Plan of Sánchez Massacre v. Guatemala*,⁴⁵ the decision on reparation is very symbolic:

The victims who have given testimony before the Court or by affidavit have stated that they suffer from physical and psychological problems as a result of the facts of this case. Also, the expert witness, Nieves Gómez Dupuis, stated during the public hearing that the surviving victims of the massacre have mental health injuries and psychosomatic ailments. The Court notes that it should order a measure designed to reduce the physical and mental sufferings of the victims in this case... resulting from the violations, if they so wish. To help repair this damage, the Court decides that the State shall provide, free of charge, through its specialized health institutions, the medical treatment that the victims require, including, *inter alia*, any necessary

44 *Gutiérrez Soler v. Colombia*, *supra* 32, paras. 101-103.

45 *Plan of Sánchez Massacre v. Guatemala. Reparations*, *supra* 9, paras. 105-108.

medication. The State shall also create a specialized program of psychological and psychiatric treatment, which should also be provided free of charge. When providing the psychological and psychiatric treatment, the special circumstances and needs of each person must be taken into account, in order to provide collective, family and individual treatment. This treatment should be implemented following an assessment of each individual, as agreed with each of them...the State must set up a committee to evaluate the physical and mental condition of the victims, and also the treatment that each one requires. ...medical and psychological treatment, ... should be started immediately after the constitution of the committee for a period of five years.⁴⁶

Honoring the memory of victims

Examples of this form of reparation would be to dedicate memorials, name an educational institution in honor of the victim or place a commemorative plaque.⁴⁷

Searching for the mortal remains

The Inter-American Court, as a form of reparation, has ordered the State to establish the whereabouts of the victims so that their next of kin may complete their mourning for the disappearance of their loved ones. An example would be *Blanco Romero et al. v. Venezuela*,⁴⁸ in which the Court held that “In case they be found dead, said steps are to be geared towards delivering the mortal remains to their next of kin, for them to be buried in the manner the latter may consider proper. ...the State must afford the necessary conditions to convey the remains to the place the next of kin may choose, and must provide an appropriate burial, at no cost for the ... next of kin.”

46 *Ibid.*

47 “*Street Children*” (*Villagrán Morales et al.*) *v. Guatemala. Reparations, supra* 11, para. 103 and *Molina Theissen v. Guatemala. Reparations, supra* 42, para. 88.

48 I/A Court H.R., *Blanco Romero et al. v. Venezuela*, Judgment of November 28, 2005. Series C No. 138, para. 99.

Publication of the judgment

This measure is included to repair the harm suffered by the victims and their next of kin and to avoid the repetition of events that violated human rights. The State must publicize the pertinent parts of the judgment and must publish them in the Official Gazette and in the newspaper of greatest circulation in the country.

Public apology and acknowledgement of international responsibility

A public apology to the victims and their next of kin is always important and the Court must evaluate and decide if the State must acknowledge its international responsibility, if pertinent.

Training for government employees

The Court may also obligate the State to implement educational and training courses for its employees regarding the principles and norms of the protection of human rights, as well as specific educational and training programs on the issues of forced disappearance, torture and the disproportionate use of force.

Reparation for damage to the project of life

Damage to the project of life may be repaired by granting scholarships that offer financial resources for the duration of the studies in officially recognized institutions or by restoring the victim to his/her previous job and providing professional updating.⁴⁹

As may be seen in this section, the Inter-American Court has been able to define those measures that are most beneficial for the victims and their next of kin or, if pertinent, for the survivors. The panorama offered in this section on reparations included in the Court's judgments must be taken as declaratory or as a proposal and not as exhaustive. The effort and rigor in trying to determine the damage to projects of life, indemnification, concern for ensuring specialized treatment for physical and psychological effects or consequences, memorials, the search for mortal remains, a website on disappearances, public apologies may in no way may be considered, at

49 *De la Cruz Flores v. Peru. Reparations, supra* 33, para. 170.

a psychosocial level, as “repairing” the harm. It is a symbol of acknowledgement of human dignity that has been profoundly violated.

Economic reparation

It may be said that reparation involving financial resources is very controversial and that there are different opinions, sometimes contradictory, about such reparation. We must start with the premise that today money is a value of general exchange. Thus, a monetary indemnification could seem like something that promises to substitute for a lost object or the annulment of a loss. When a State indemnifies, it runs the risk of assuming that it seeks to erase the effects of the traumatic event.

Once again we must remember that a decision of justice, which enables the appearance of a subjective feeling or emotion in the victim, is not the same as the effective appearance of that feeling. A certain subjective preparation may be required in order to receive an indemnification in these cases. The law offers it and those affected must decide when they are in a condition to receive it without feeling they are being re-victimized and at the same time recover their dignity and their place in the world.

So that economic reparation is not imposed upon the victim subjectively as a type of “bribe” in exchange for the failure to punish the guilty parties or in exchange for silence and so that it is not seen as an act of reconciliation, it must be accompanied by the re-establishment of effective justice and the punishment of the guilty parties. It is not sufficient for the State to give up a good in order for the harm to be repaired. The victim can only accept the idea of reparation, especially when it is monetary, if at the same time there is a demand for justice to be served. It must be clear and obvious that justice is not being “exchanged” for financial reparation. This delicate situation once again shows the importance of a psychosocial reading that includes the personal and social subjective meanings of juridical acts.

If this requisite is not met, the victim is once again left on his/her own, returning to the community after having only obtained an individual benefit for the loss, a benefit that the community is unable to appreciate in its collective nature, because only the individual harm is acknowledged. The victim often finds it very difficult to be reinserted into the community and feels that there is a suspicion that he/she has only attempted to obtain an individual financial benefit. This sometimes causes victims to refuse the financial compensation because it gives them the feeling that they are receiving “money stained with the blood of their next of kin.”

Financial reparation implies that there is a State that is capable of losing, of sacrificing a good (money) and that act causes it to lose its omnipotence, which led to impunity. This act provides reparation for affected persons but it does not, *per se*, promote change if it is not accompanied by institutional changes, which occur when, for example, the State publicly acknowledges its responsibility and commits itself to investigate and punish the guilty parties.

A case of the insufficiency of the financial reparation

An example of insufficient reparations, when they are solely financial, took place in Argentina. In December 1998, human rights organizations issued a document that emphasized the importance of enacting two laws concerning reparations: a law exempting children and siblings of missing persons from obligatory military service and Law 23.466/86, which established a pension equal to the minimum retirement sum for the next of kin of missing persons and in which members of Congress were obliged to “assume the protection of underage children of missing persons, their spouses and other family members.” This law was followed by the enactment of the declaration of “Absence due to forced disappearance” (Law 24.321/94), which changed the declarations of absence due to the presumption of death –which many next of kin had been forced to use– into declarations due to forced disappearance.

In Argentina, financial reparation in cases of forced disappearance is legally assigned to the missing person, in his name and not in the name of his next of kin; it is thus a symbolic reparation since it acknowledges that it is a question of a missing person. The next of kin thus perceive themselves as the victim’s successors. Therefore, the law of reparation does not define what is granted as inheritance and the procedure under the law is not one of succession. Nevertheless, the next of kin must follow very difficult procedures to make the request, when it is the State that, in its inherent responsibility as representative of the law, should recognize this right with the sole accreditation of a blood relationship, so that the person does not have to face the difficult situation of declaring that his/her loved one is “dead.”

Law 24.411, enacted in 1994, established a special benefit for persons who disappeared or died as a result of actions of the armed forces, security forces or the paramilitary occurring prior to December 10, 1983.

This law –as well as Law 24.043, which established compensation for former political prisoners– is the result of Resolution 28/92 of the Inter-American Commission on Human Rights, which in its point 2 recommended that the

government grant the claimants fair compensation for the violations referred to.

Law 24.411 compensates the disappeared person for his/her disappearance. In this respect, a document regarding Family Members of Missing and Detained Persons for Political Reasons states:

Neither it nor any other State provision contemplates suffering comparable to torture that we, the victims' next of kin, have undergone for over twenty years. The terrible uncertainty over time of not knowing the whereabouts of our loved ones; the impossibility to mourn; the absence of a partner for the wives and husbands and of a father and/or mother for the children who had to be sometimes raised by their grandparents or aunts and uncles because they were missing both parents and, finally, children who were raised in homes other than those of their family, with different traditions and ideologies, because they were abducted and kept in the hands of the perpetrators. Neither do they provide for the re-establishment of the situation existing prior to the violent events, nor for the loss of opportunities, pecuniary damages, damages to reputation and dignity nor for the impossibility of legal, medical and psychological assistance.

Compensation is not limited to mere financial reparation. There must be measures of restitution, satisfaction and, above all, guarantees of non-repetition.

A guarantee of non-repetition includes: halting existing violations; verifying events and the public and broad dissemination of what really took place; applying legal and/or administrative sanctions; commemorations of and tributes to the victims, including a "true" version of the violations, plus instructions in manuals used for education on human rights on how to prevent new violations.

Trying and punishing those responsible for the terrorism. We continue to make efforts to achieve this, so that reparation is comprehensive and not merely financial.

We, therefore, state that the only possible answers to our claims are Truth and Justice.

Truth regarding what happened to each missing person. How, when, where, who and why their destiny was decided on.⁵⁰

Measures of financial reparation are part of the essential acts of justice owed to the victims by a democracy and include: acknowledgement of the disappearances,

50 Document of the Familiares de Desaparecidos y Detenidos por Razones Políticos (undated).

crimes, tortures and humiliations suffered; access to the facts, judgments and the application of the appropriate punishments for crimes against humanity; keeping the memory of the events alive and the symbolic reparation of the violated rights.

In addition to financial reparations, it should be emphasized that all institutional, social and clinical interventions that enable victims to appear and to speak have a reparatory effect –in the sense of decreasing the suffering produced by the trauma– and are a means that enable mourning and the reconstruction of their own lives.

Methods for symbolic reparation. The roles of the State and the victims

The following issues are included as objectives of reparation in different decisions of the Inter-American Court:

- Compliance with the law
- Financial compensation
- Publication of the measures
- Investigation of the facts
- Handing over the bodies, if there are any, of the victims

We must think of symbolic reparation beginning with these measures, but also beyond them, within the framework of the subjective effects that they produce, as described in the first part of this article.

Aloeboetoe et al. v. Suriname,⁵¹ summarized in the following paragraphs, provides a good example since an attempt was made to understand the personal and unique culture of the Saramaca tribe, to understand family structures, material conditions of existence and conditions of education and health. Based on this unique constellation of factors, a *novel proposal* was conceived by *once again making use* of the aforementioned definition of reparation by thinking of what could be repaired in that specific case of victims and their community and by understanding that what is reparatory in one case is not necessarily so in another case.

On December 31, 1987, in Ajtoni, more than twenty men of the Saramaca tribe were beaten by soldiers who detained them on suspicion of belonging to the

51 I/A Court H.R., *Aloeboetoe et al. v. Suriname*, Judgment of December 4, 1991. Series C No. 11 and *Aloeboetoe et al. v. Suriname Reparations*, *supra* 18.

Comando de la Selva, an accusation that they all denied. Seven of them, including a 15-year old boy, were forced to dig their own graves before being executed.

The Inter-American Court held that the community itself had directly suffered. Reparations included reopening a school and providing it with teachers and administrative personnel so that it could operate permanently and opening a community clinic. This judgment goes beyond the direct victims, extending the reparations to the community. According to the Court, this extension includes the children of the victims, for whom the State had to provide an education.

We must remember that the indigenous peoples of Latin America, mired in poverty, are a vulnerable group that is often subjected to violence by State institutions. Therefore, taking into consideration the particular characteristics of a community is a fundamental requisite in granting reparations. Each individual, in addition to being a member of a family, is also a member of a community.

On the other hand, there exists the problem of finding a way to verify compliance with symbolic measures, which means that proposals of symbolic reparation must be the result of the analysis of each case, of the individual characteristics of the victims and of their communities. It is a known fact, as pointed out in this article, that financial reparation is absolutely insufficient and could even be harmful if not accompanied by acts of symbolic reparation. The specific acts will depend on the absolutely particular characteristics of the community.

It is a question of developing the performative practice⁵² of the word-act, a method by means of which something related to the law is re-inscribed through the re-establishment of the law, which is a way for public justice to replace private revenge. Legal institutions offer the only possible guarantee for having a third party intercede between the victimizer and the victim, breaking the old circle of the law of retaliation or of taking justice into one's own hands.

The concept of reparation in the legal field emerges as a response to the harm caused at individual, family, social and cultural levels. The reports of the different Truth Commissions of several countries show that true reparation begins through access to truth and to justice.

The research of Paz Rojas in Latin American countries and in South Africa shows that everyone interviewed coincided in stating that the majority of reparatory measures were not enforced and, when they were, it was solely the financial and

52 Performative: applies to a verb whose enunciation provokes the action that it means or of an utterance that implies the simultaneous carrying out of the action by the person uttering it: *I swear*.

social welfare aspects, which were absolutely insufficient. Instead, human rights organizations and associations of victims and their families have engaged in some degree of symbolic reparation. Paz Rojas states in her investigation that victims agree that State does not fully comply with reparations (Paz Rojas, 2002).

Most of those interviewed considered it unacceptable that lists with the names of those responsible for human rights violations are not made public. Since there is nothing more individual than one's name, these lists are necessary to de-serialize due obedience, according to which everyone in the series is exempted from one's most tremendous responsibility: lending his/her name to his/her every action. It is not an institution in the abstract, such as the State or the military; it is an institution composed of individuals. Guilt and responsibility are not only collective; they cannot be transferred to the institution that shelters individuals, annulling the value of the truth that justice seeks. Unfortunately, as can often be confirmed, it is easier for States to comply with financial reparations than with reparations related to combating impunity.

Collective acts necessarily require collective reparations in which the affected parties and different sectors of society, such as non-governmental organizations, directly participate. Participating in selecting the measures of reparation makes it possible to differentiate clearly between a repressor State and a reparatory State, so that the reparation does not remain as something unfamiliar or imposed from the outside.

R. Kaës (1991) has written that it is not sufficient to acknowledge the nature and origin of the atrocity, subjective elaboration requires collective recognition and elaboration. Thus, the Inter-American Court should pay more attention to the psychosocial needs and the impact of reparation on the victims.

Symbolic reparations must be thought of beginning with the measures found in the different judgments (compliance with the law, indemnification, investigation, handing over the victim's remains, publication of the judgments), but also beyond those measures, within the framework of the subjective effects that they produce.

It is this need to integrate the history itself that has led societies to use diverse methods to transmit memory. That is also why the Court has sometimes recommended that States publish its judgment on reparations in the Official Gazette and in the newspapers of greatest circulation of the country.

An example of the clear reparatory effect of the judgment and its corresponding publication may be seen in "*White Van*" (*Paniagua-Morales et al.*) *v. Guatemala*. During 1987 and 1988, eleven peasants were abducted and unlawfully detained

by the State, they were tortured and murdered and their disfigured bodies were abandoned in the middle of a public street. Guatemala was held responsible for committing serious human rights violations. The State did not carry out the investigations required to identify those responsible for the crimes. It thus created the condition of impunity and increased the devastating psychological effects on the victims' next of kin and their communities. The Court ordered the appropriate investigation to identify those responsible and declared that the State was obligated to repair the consequences of these violations. Twelve years of impunity had caused family members to feel responsible for the death of their next of kin and made it impossible for them to mourn. A social and political event was limited to a private circle and there was an increased negative effect of impunity on the entire population. This allowed similar events to occur.

Graciela Guilis of the Mental Health Team of the Center for Legal and Social Studies participated as an expert in the hearing on reparations. Her testimony on the negative psychological effects exerted on the victims led the Court to order the State to provide moral reparations for the harm. The law is present here in the figure of the Inter-American Court, publishing the facts, offering the possibility of a fair trial and of sanctioning the State. The Court, as a superior judicial body, made it possible that the mourning process of the next of kin not be interminable.

The trial not only produced psychological effects on the affected individuals, but also impacted the entire society (CELS, 2001, p. 66). It must be remembered that Latin American governments with a tradition of denying history try to condemn large sectors of the population to suffering persistent traumatic events.

Another example of collective reparation, in this case by the Government of Argentina with the participation of the directly affected persons, as well as of human rights organizations, associations of the victims' families and social organizations, is that of the Espacio de la Memoria in the Escuela de Mecánica de la Armada. The Naval Mechanics School operated as a clandestine detention center during the last military dictatorship.⁵³ It was probably the concentration camp with the largest number of victims,⁵⁴ where torture, forced disappearance and "flights of death" (abducted individuals were thrown out alive from airplanes after being drugged) were everyday practices.

53 Since 1924 the Ministry of the Navy utilizes the site for the educational purposes of that branch.

54 It is estimated that more than 5,000 persons were detained and/or disappeared at that site.

On March 24, 2004, Néstor Kirchner, President of Argentina, responding to a proposal that had been presented several years previously by family members and human rights organizations, turned this symbol of the repression implemented by State terrorism into a historical cultural patrimony for future generations. The Espacio de la Memoria is thus transformed into a reality of great importance to transmit to future generations what happened, since a country's memory is made into a social and collective product that includes everyone, a construction that enables us to look at and recognize ourselves as a society. Collective memory insures the identity of a nation. Historical memory is built on collective memory. If this were not true, victims of State terrorism –the disappeared and tortured– would not be included in history. From this day forward, new generations will be able to visit this space and build their memory, a necessary condition so that these events of terror not be repeated and for teaching those generations to live democratically.

The Espacio de Memoria is a clear example of how to make it impossible to apply so-called “policies of reparation” by governments of “reconciliation” or “national conciliation,” which are based mainly on impunity for the guilty parties and which only partially investigate the events or completely deny them.

Another paradigmatic example is the emergence of the Madres de Plaza de Mayo as a reparatory act that is ethical and creative. This group of mothers was formed as a result of State terrorism and opened the possibility of fighting terror, as well as denouncing and searching for their children. The so-called “crazy old women” defined a “before” and an “after” in their struggle for human rights. Their slogans “trial and punishment of the guilty” and “that they appear alive” became the slogans of the entire population. From being mothers of their own children they became mothers of an entire social group; a social maternity that suffered the effects of laws “Final Stop” (Punto Final) and “Due Obedience” (Obediencia Debida). Their white handkerchiefs became a symbol of the fight against totalitarian policies of States.

At the same time, their appearance enabled other victims' next of kin to create human rights organizations, such as H.I.J.O.S., “Grandmothers” (Abuelas), “Siblings” (Hermanos) and “Mothers of Sorrow” (Madres del Dolor); their influence went beyond their country's borders and became a reference for many mothers who had lost their children as a consequence of State terrorism. Mothers have become a basic part of history and of the struggle for justice, building memory together with society and creating the conditions so that atrocities are not repeated.

Victims are not looking for public catharsis or the psychological purge of the sins committed by violators, instead they are seeking a method to recover memory

by way of truly being able to forget. When victims are able to find in legal and public authorities an acknowledgement of their suffering and these authorities obligate the guilty parties to repair the harm inflicted, then, and only then, will they also find their “right to forget” or will they find the right that every human being has of living free of pain.

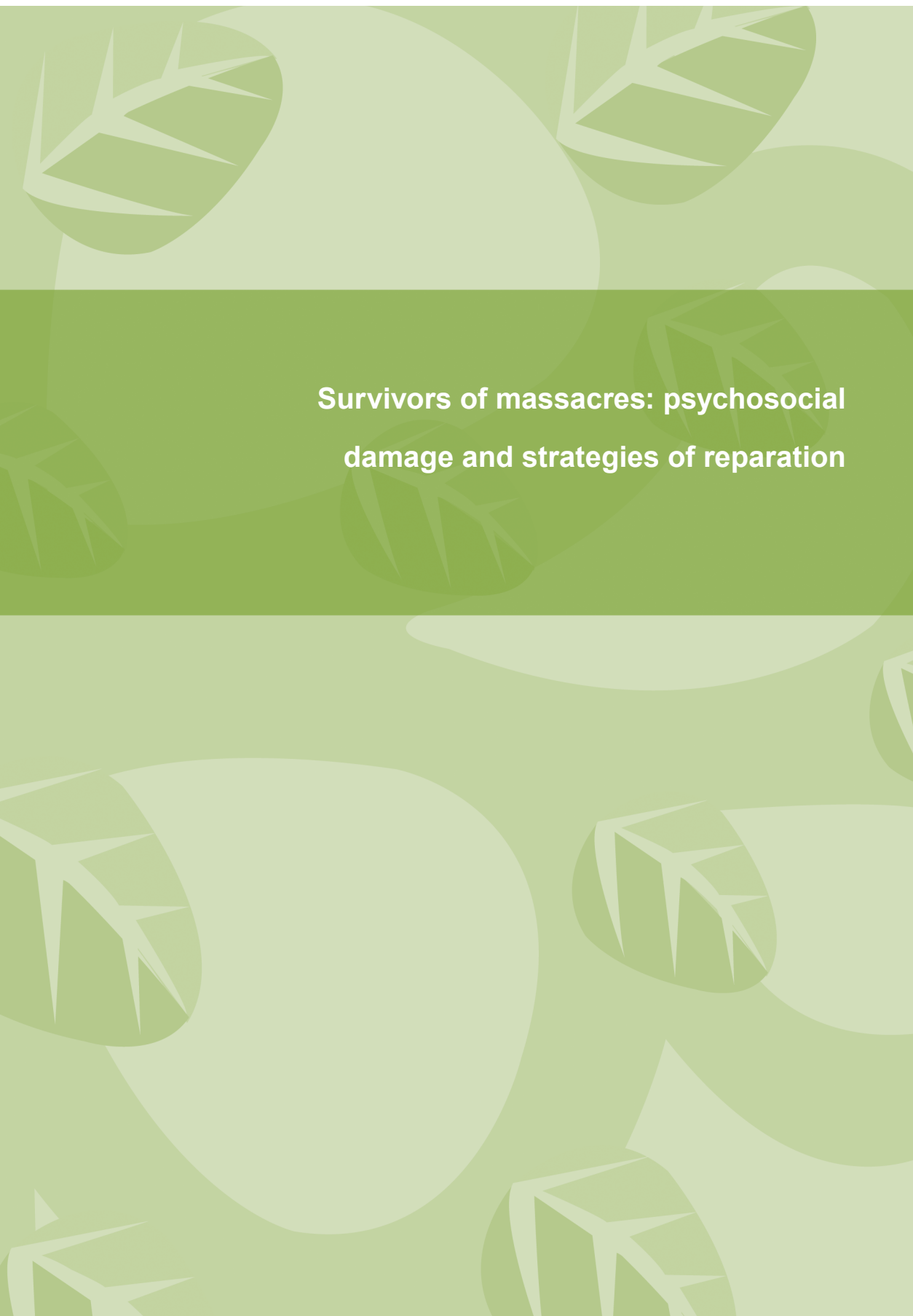
In order to advance in the jurisprudence of reparation, progress must also be made in the interdisciplinary approach of the legal strategy, so that it incorporates a more comprehensive vision of the extraordinary symbolic potential of the reparatory act. This requires that every institution and every person involved in the process never forget the psychosocial dimension that always accompanies the juridical process.

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**Survivors of massacres: psychosocial
damage and strategies of reparation**

This article was prepared by Nieves Gómez Dupuis, a psychologist and criminologist who has worked in the psychosocial and psychological fields with survivors of the internal armed conflict seeking justice, historical memory and reparation. She is associated with the Community Studies and Psychosocial Action Team (ECAP) of Guatemala. She has given expert psychological testimony before the Inter-American Court of Human Rights. This final version also includes contributions from the interdisciplinary team of the IIHR Project “Comprehensive Attention to Victims of Torture,” as well as from the editors of this publication.

Introduction

This article will analyze the harm and effects produced at the individual, group, family and community levels as result of a massacre.

It also intends to describe and delve more deeply into that harm and its psychological and psychosocial *sequelae* and to offer some useful guidelines for possible psychosocial reparation.

The context in which massacres and traumatic events take place within the framework of political violence in Latin America will be briefly presented at the beginning of the article, to be followed by an account of the psychosocial damage that those events produce and by proposed guidelines for reparations to victims and victim-survivors¹ of massacres in a context of political repression.

Traumatic events: massacres and wars of low-intensity

According to the Diagnostic and Statistical Manual of Mental Disorders (DSM IV),² a person has been exposed to a traumatic event when he/she has experienced, witnessed or has been told the story of one or more events characterized by death or threats to his/her physical integrity or that of other persons and when, in addition, he/she has reacted with fear, hopelessness or intense horror.

- 1 This chapter employs the term “victim” in one way and the term “victim-survivor” in a different way. In the cases of collective murders or massacres, it is understood that the murdered persons are the “victims” and that the “victim-survivors” are those who were able to survive because they were not at the place of the event for different reasons but they lost family members and, in the context of scorched earth, their homes, goods and crops, as well as those who were obliged to be witnesses to the deaths.
- 2 The Diagnostic and Statistical Handbook for Mental Disorders (DSM), as its name indicates, is a classification of the different mental disorders established by the American Psychiatric Association and is employed world-wide as a reference for diagnosis. The International Classification of Diseases (ICD) is likewise used internationally. Both are constantly revised and brought up-to-date. DSM-IV was published in 2004.

Pau Pérez Sales (2004) and his collaborators present the concept of trauma as an experience of extreme negative stress that has the following characteristics:

- It is a threat to an individual's physical or psychological integrity and is often related to experiences of chaos and confusion during an event, fragmentation of memory, absurdity, horror, ambivalence or confusion.
- It is characterized by being impossible to narrate, is uncontrollable and is impossible for others to understand.
- It challenges one or more of the basic assumptions that constitute the security reference points of human beings, especially the beliefs of invulnerability³ and control of one's own life: trust in others, in their kindness⁴ and their predisposition to empathy;⁵ trust in the controllable and predictable nature of the world.⁶

The traumatic event and the ensuing trauma define a "before" and an "after" in the life of the person or group that suffered them. They imply a rupture in the individual's own existence, in the continuity of life and in a loss of security (Martín Beristain, 1999, p. 76).

Another determining factor for damage and psychosocial impact is related to who or what is responsible for the events, because it is important to distinguish a traumatic event produced by fortuitous elements—such as a natural disaster—from that which results from the act of another human being. It is also necessary to distinguish whether it is a case of a human being who has the same social responsibilities as the victim or whether it is a case of those responsible for protecting the citizens of a country, such as the State security forces. This difference describes precisely the historical context in which massacres in Latin America have taken place and which enables a characterization of the psychosocial repercussions of repression.

3 The sense of invulnerability and control over one's own life alludes to the belief that "such a thing will never happen to me, it happens to others."

4 The trust in others and in the good will of others is sustained by the belief that others are good and tend to help and support us.

5 Empathy is the capacity to place oneself in the shoes of another and to understand what the other person thinks and feels.

6 Confidence in the controllable and predictable nature of the world permits us to live in an ordered and predictable world where events are controllable and where there are rules that, adequately followed, lead to anticipated consequences.

Since the intensity, characteristics and duration of the traumatic event are determining factors in the harm caused to the victims, some events that are part of the massacre itself and that may, and usually do, intensify the psychosocial harm will be detailed in the following sections.

Historical context of massacres

In most of the Latin American countries that had dictatorial regimes during the 1960s and 1970s, the Doctrine of National Security, which was implemented by the State and directed by the armed forces, sought to stamp out social and political movements that were promoting a change to democratic and communist systems. Massacres or massive murders of groups were used to serve that purpose. In *Guatemala, Memoria del Silencio*, massacre was defined as “The arbitrary execution of more than five individuals, performed in the same place and as part of the same operation, where the victims were totally or relatively defenseless” (Comisión de Esclarecimiento Histórico, 1999, Vol. III, No. 3058). Guatemala, El Salvador, Peru and Colombia are the Latin American countries that have been most affected by these terrorist strategies. For the effects of this article, we will focus on the particular case of Guatemala.

The purpose of the massacres was not only to eliminate individuals, but also to provoke psychological damage in those who were about to die, in those who survived, in witnesses and in those who learned of the massacre. It was not only a shooting; it was also a case of planned and well-organized massacres during which individuals were gathered by age and sex and sometimes some were tortured to serve as example; younger women were sexually abused; the victims had to listen to speeches and were asked to prepare food for the military before they were murdered. These and other atrocious actions lead to the conclusion that they were practices that would generate inevitable and serious psychological damage. The clear intention of causing terror among civilian victims has profound psychological implications that go beyond physical harm.

While in World War I civilian deaths amounted to 5% and in World War II they were almost 50%, now over 90% of the victims of modern wars are civilians. The involvement of civilians is not a secondary event, but forms part of the nature and objective of current wars that attempt to affect negatively the social network of a country as a means to obtain control (Summerfield, 1996, quoted by Beristain, 1999).

In the case of Guatemala, as indicated by the Comisión de Esclarecimiento Histórico, the genocidal strategy had three different stages: the first was the selective elimination of leaders. During the second –“scorched earth”– indiscriminate massacres of rural populations took place, especially indigenous peoples, with the objective of eliminating any base or social support for the guerrilla: this was known as “removing the water from the fish.” Lastly, there was a stage of the re-education of survivors, who surrendered and submitted to the rules imposed by the army.

Survivors-victims were crowded together in common spaces without any respect for, or protection of, their human rights and their dignity to be later relocated in the so-called “model villages” or “development poles” (Vergara Meneses *et al.*, 1989) that were built using designs that were appropriate for exercising strong social control. Houses were concentrated in the same area and everyday life was ruled by a strict military regime and a continuous indoctrination against socialism and communism.

In Peru, Guatemala and Colombia massacres were aimed at destroying indigenous groups and the rural civilian population was very often trapped between the army and the guerrilla, without knowing or understanding the interests and objectives of either group.

The Comisión de Esclarecimiento Histórico documented the genocide against the Mayan people and there are still two criminal cases pending against the top military commands of 1981 and 1982. In this respect, the Inter-American Court of Human Rights, in its judgment in *Massacre of Plan de Sánchez v. Guatemala* of April 29, 2004, on the question at issue held that

With respect to the issue of genocide mentioned both by the Commission and by the representatives of the victims and their next of kin, the Court notes that in adjudicatory matters it is only competent to find violations of the American Convention on Human Rights and of other instruments of the inter-American system for the protection of human rights that enable it to do so. Nevertheless, facts such as those stated, which gravely affected the members of the Maya Achí people in their identity and values and that took place within a pattern of massacres, constitute an aggravated impact that entails international responsibility of the State, which this Court will take into account when it decides on reparations (para. 51).

It is important to note that reference is made to collective and community damage when pointing out the significance that a *massacre* has for a people from the particular perspective of its culture and its values.

Characteristics of massacres

Massacres were classified into two types, according to the number and profile of the victims: those in which there were indiscriminate and massive killings and where victims were women, men, the aged and children and *selective* massacres, in which those who were representatives of the community disappeared or were murdered in front of the others, using acts of extreme cruelty and torture to make examples of them.

When massacres took place in homes or in community spaces used by the population, the perpetrators also destroyed buildings used for security, protection and shelter in which residents could take cover and find peace.

The duration of the massacre, the gathering of the population, the separation into groups, the torture, rape and acts of extreme cruelty and the death sentences constitute inhuman and cruel treatment. These acts have serious effects on the mental integrity of the victims, which go beyond the harm or the physical elimination. The victims are first subjected to a situation of extreme vulnerability, distress and terror because they do not know –but can imagine– the tragic destiny that awaits them, their families and their neighbors. This terror is also experienced by survivors and witnesses when they think of the pain, distress and suffering that the victims had to bear before dying.

In general, massacres are sudden, unexpected, uncertain, multiple and uncontrollable by nature. This provokes confusion, disorientation, an impossibility to respond to the situation and to control it, an impossibility to decide one's own fate and that of the next of kin.

In a scorched earth policy, as in Guatemala where indiscriminate massacres took place, the massacres did not end with the elimination of persons; homes and crops were destroyed, the personal property and animals of the dead were robbed and looted and the few who were able to survive were continuously persecuted. They were forced to live in the mountains without shelter, food or refuge; in tropical areas they had to endure months of torrential rain because they were repeatedly pursued by the army or by paramilitary forces, such as the Civil Self-Defense Patrols.

In the case of Guatemala, the survivors remained in the mountains from one month to twelve years. Certain groups organized themselves into their own communities –Communities of People in Resistance (CPR). Through solidarity and mutual support, they created their own agricultural, security, educational and health systems, seeking to protect themselves from the continual attacks by the army. They were forced to move every so often because of constant threats. Under these conditions, many children, women and old people died from malnutrition and disease. During the displacement, the death of those people who were in a gravely disadvantageous situation created feelings of impotency and fear in family members and neighbors who were unable to do anything to save them.

Those who could not resist were forced to submit to military regimes. At first, they were forced to stay in large barracks in military zones and were later relocated to model villages or to their own communities. Some were forced to live in the military zones and there are reports of cases in which some were tortured and raped; those who were not were forced to listen to and witness others being tortured.

Survivors were faced with a situation of complete vulnerability and lack of protection, so that they became the target of attacks and were continually candidates for physical elimination, which added to their psychological damage. It was a sustained action of death, injuries and constant persecutions that lasted months or years.

The perpetrators were members of the army and of the Civil Self-Defense Patrols that supported the army. The acts of arson, destruction, robbery and looting that took place during massacres were performed by the Patrols; in other words, by individuals, known to those living in the communities where the massacres took place, who in some cases were forced to execute members of their own community.

Other groups were forced to move to other towns or regions in the country and to find a way to support themselves; they often had to hide their place of origin and identity for fear of retaliation. It is important to speak of the damage that these war strategies produce in the civilian population trapped in the middle of the conflict, even though it does not play an active role or is confrontational. These civilian sectors always suffer the consequences of the pressure resulting from acts taken directly against any of the forces involved in the conflict, such as the interruption of the delivery of supplies or other support.

Lastly, there are the groups that move to other countries. Survivors of the regions of Huehuetenango and Ixcán took refuge in Mexico; family members and the Sisters of Charity in some cases had to place the children for adoption. Persons living in

refugee camps had to assume a different identity and way of life, far from their ordinary customs, and were frequently without any news regarding their families and neighbors who remained in the country. Over time, families that remained in Guatemala contacted each other in order to try to rebuild together their lives and their history.

Psychosocial damage: rupture of the social fabric

Damages in the organization and leadership

In a context of political violence, individuals who had roles that were fundamental in the development of the group and in the life of its members died or disappeared during massacres; some of them were points of reference in social struggles.

With the loss of the leaders, the roles of orientation, direction, education and advice disappear as well as the hope for achieving the social change that those leaders were promoting. The group is therefore disarticulated and the group's reference points are lost.

Selective massacres directed towards eliminating specific group members because they were responsible for certain ideas and actions serve as an example to others. The message is clear: if other members of the group think, feel or act the same as the murdered or missing leaders, they will suffer the same fate. Differences with the regime in power are thus eliminated.

Criminalizing any type of leadership that was not under the control of the military meant a loss of the community systems necessary to resolve conflicts and promote development. It also produced a loss that in the medium-term became important due to the harassment and accusations that were directed towards anyone who could retake a relevant community or organizational role (Office of Human Rights of the Archbishopric of Guatemala, 1998, Vol. I, p. 109).

Massacres of peasants in countries such as Guatemala and Colombia resulted in a loss of leadership of the traditional authorities (deputy mayors and elders) and of individuals having defined social roles such as leaders, catechists and midwives. When the massacred victims were students, college professors, journalists and union members, a project of life and a potential contribution to the community were destroyed.

The destructuring of families

Most families in those communities are affected internally by a massacre. Some families are broken up because some of its members seek asylum; others by ideological positions adopted in favor of or against justice or because of exhumations and searching for next of kin. There are also families in which some members struggle to keep their memories and their dignity, while others prefer to forget and look only to the future. Family members sometimes blame one another as a means of justifying the horror.

Because of the pain, distress and sadness, some survivors turn to alcohol as a means of forgetting and others release their anger on their families. Alcoholism and, sometimes, abandonment by one of the parents deteriorate the family relationship and financial aspects.

The overload of roles inside the family

The death or disappearance of the father, mother or children obligates the surviving members of the family to assume those roles. This readjustment produces an extra burden, for some have to take on the chores of the dead or disappeared family member. This is one of the frequent issues regarding the question of damages related to massacres and demonstrates the complexity of determining reparations in the context of the litigation. It also emphasizes the importance of having an interdisciplinary approach that considers, after the profound impact produced by the human rights violation, the effects of impacts at the psychosocial and community levels.

Bearing in mind that women have the roles of providing emotional security—care, food, affection, hygiene, reproduction— and in some cultures and societies, such as indigenous cultures, those of caring for animals and transmitting cultural aspects, the absence of the mother severely affects the structure of the family group.

The disappearance or death of the father compels women to assume the responsibility of providing for the family and of making family and social decisions. She must assume the role of father and mother at the same time.

Peasant families living in rural communities, where roles regarding the division of work between men and women are more defined, women were forced to implement changes in their traditional work patterns, having to work in agriculture without being socially or physically prepared to do so. In general, widows had to confront

the loss of the family income by looking for work, through low-scale sales or other types of economic activities that, although precarious, would allow them to survive (Office of Human Rights of the Archbishopric of Guatemala, 1998, Vol. I, p. 78).

Faced with the disappearance or death of men in communities, women have had to assume the responsibility of producing an income for the family; therefore, the roles that they had before the massacres were modified and this has directly affected their projects of life. This phenomenon not only occurs in Latin America; it is a predominant factor in those countries that live through and suffer the consequences of armed conflicts. In the case, for example, of Srebrenica in the former Yugoslavia, the International Criminal Court stated the following regarding Moslem widows from Bosnia:

In a patriarchal society such as that of Moslems in Srebrenica, after the elimination of almost all the men, it has been practically impossible for Moslem women who survived the capture of the city to return to their normal lives. This has been the case of witness DD, the women were often forced to settle in communal environments... for several years, with a much lower standard of living. Suffering and fear associated with the loss of loved ones makes it impossible for survivors to think of returning to their homes (even if this were truly possible) or even to rebuild a united family unit.

Witness DD states: "...I sometimes tell myself that it would have been better if none of us had survived. I would have preferred that we all died."

The Director of Vive Zene (a non-governmental organization that provides psychological support to numerous women and children survivors of the fall of Srebrenica) has declared that the great majority of Moslem refugee women had been unable to find a job. Also, after the fall of Srebrenica, some women have had to become heads of household and, because of their lack of experience, they have had great difficulty in taking the necessary steps to register the family in the collectivity.⁷

The death of children may mean a lack of future generations and of a project of life that included expectations of progress for the family and the community, from

7 International Criminal Court for the former Yugoslavia, Case IT-98-33-T of August 2, 2001 (Radislaf Krtic), para. 91.

an emotional, social, spiritual, cultural, educational, work, and economic point of view.

In the case of indigenous communities, the death of the elderly ruptures all the structures of power and makes it difficult to transmit the culture, spirituality and traditional forms of resolving problems in a society that is governed by oral transmission.

Psychosocial damages in children

With the disappearance of one or both parents, children lose their basic social referent, their role model for learning, their guide for knowing what and what not to do, the figure that offers them safety and protection. The absence of the mother produces an emotional and cultural feeling of emptiness that children are unable to absorb or give meaning to.

Similarly, families are destroyed by the disappearance of children who were abducted during a massacre. This occurred in Guatemala, Argentina and Chile, among other countries. As a result of the above, the Commission of Disappeared Children emerged in Guatemala:

The National Commission for Seeking Disappeared Children has been able to document nearly 1,000 cases of children who have disappeared around the country, involving ten different ethnic groups of which 90% of the cases concern the Mayan indigenous people. The Report of the Comisión de Esclarecimiento Histórico states that there have been 600 massacres where children were captured and taken to military posts, orphanages or State institutions that put them up for adoption. From 1979 to 1984 adoptions in Guatemala increased. It is estimated that the approximate number of children who disappeared during the armed conflict in Guatemala is somewhere between 4,500 and 5,000.⁸

With respect to surviving children who witnessed the massacres, it is probable that, as a consequence, their mental health is greatly affected. They may specifically have difficulties of concentration, blockage of learning areas, sadness, distress, panic, ask questions about death and want answers about what has happened.

8 I/A Court H.R., *Molina Theissen v. Guatemala. Reparations*, Judgment of July 3, 2004. Series C No. 108. Expert testimony of Axel Mejía Páez.

The same is true of Moslem children and teens in Bosnia:

Similarly, teens who have survived Srebrenica find important obstacles on the road to adult life. Very few have jobs and they do not in any way think of eventually returning to Srebrenica. As the Director of Vive Zene explains: their dream is to go as far away from Bosnia as possible. Nothing more.

Problems of adaptation have also been found in younger children, such as a decreased ability to concentrate, nightmares and flashbacks. The absence of masculine role models is another factor that in the future will inevitably have consequences for Moslem children from Srebrenica.⁹

Loss of cultural practices and possessions

Cultural practices are elements of identity for individuals constituting a group and they encourage cohesion among its members. The disappearance of those practices destroys the group and thus the social referent of those who comprise it.

Due to political violence, persecution and genocide, members of indigenous communities in Guatemala were no longer able to have their rituals and celebrations of the rain, planting, harvest, birth, wedding, sickness or death.

Just as those cultural practices are prevented –through threats, punishment and prohibition– the death and disappearance of those in charge of transmitting them from generation to generation result in a loss of the special characteristics of each culture. In the case of indigenous communities in Guatemala, the death of the women and elderly who were the oral transmitters of culture produced a cultural gap.

Furthermore, the destruction of resources required for subsistence, such as corn, the grinding stone, animals and the home is of such relevance that it goes beyond the economic impact and the damage to property. These elements constitute the environment in which the life of the group is developed and are the referents that give meaning to every individual and to his/her relationship to others and to the world. That is why the loss of personal property ruptures emotional ties: the individual is disoriented and does not know what to do because the daily chores and activities are now impossible.

9 Case IT-98-33-T, *supra* 7, para. 92.

This sometimes produces a sensation of having lost control of one's life. This is emphasized in the report of the Inter-Diocesan Project of Recovery of Historical Memory (Office of Human Rights of the Archbishopric of Guatemala, 1998, Vol. I, p. 107) that reveals that the destruction of the basic means of survival, such as villages, property and animals, not only impoverished families, but also produced feelings of defeat and despair. Many individuals felt that the struggles and years of hard work had been lost and this directly affects future generations. Observing the traditional system of inheritance of indigenous communities was made difficult.

The report also indicates that those material and social losses, in addition to their economic impact, had a symbolic impact in that they affected the feelings, dignity, hopes and significant subjective elements that form part of the culture of these communities and of their social, political and historical life.

Peasant populations organize on the basis of land ownership, thus the loss of that land or the impossibility to remain on it represents a material and cultural loss of enormous proportions:

A fundamental theme in the definition of indigenous peoples is how they relate to the land. All anthropological, ethnographic studies, all documentation which the indigenous peoples themselves have presented in recent years, demonstrate that the relationship between indigenous peoples and the land is an essential tie which provides and maintains the cultural identity of those peoples. One must understand that the land is not a mere instrument of agricultural production, but part of a geographic and social, symbolic and religious space, with which the history and current dynamics of those peoples are linked.

Most indigenous peoples in Latin America are peoples whose essence derives from their relationship to the land, whether as farmers, hunters, gatherers or fishermen. The tie to the land is essential for their self-identification. Physical health, mental health, and social health of indigenous peoples is linked to the concept of the land. Traditionally, indigenous communities and peoples of the various countries of Latin America have had a communal concept of the land and of its resources.¹⁰

As reflected in that excerpt from *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, the cultural context of a region and the symbolic context that its inhabitants give to its different components present a challenge in determining

10 I/A Court H.R., *Mayagna (Sumo) Awas Tingni v. Nicaragua*, Judgment of August 31, 2001. Series C No. 79. Expert testimony of Rodolfo Stavenhagen Gruenbaum, anthropologist and sociologist.

reparations. In this case, for example, attention was paid to the collective sense that land has for indigenous cultures, which presents the extraordinary challenge of considering and proposing reparations on a collective basis, even though the litigation is individual. Cases of massacres are collective and the reparations must contemplate them as such.

Altered mourning, incomplete mourning

The farewell ritual for the dead is of vital importance in every culture, especially in indigenous cultures. It is the passing from life to death, a farewell to a loved one who is going to a different place, a change in the relationship between the living and the dead. A relationship of harmony with nature is present in the Mayan culture and that harmony must also exist between the living and the dead. The dead will rest if the living care for and worry about them and the dead will look after the living only if the dead are at peace. The dead will send to the living advice and warning messages to improve the quality of life, but only if that relationship of harmony exists. For this to be true, the dead must rest in a sacred place where they can be prayed for, offered flowers, candles and music. A farewell ritual must be performed: a wake in the presence of family, friends and neighbors.¹¹

Rites help to separate the relationship between life and death and they allow the damage caused by the impact of the separation to be mitigated, as well as given a certain social recognition. Rites allow people to express their solidarity and the aggrieved may feel accompanied in their sorrow.¹²

Suazo states that

A good part of being at peace and benefiting from life depends on not owing anything to ancestors. They, on their part, have their blessings conditioned to settling their debts with the living and on helping them (Suazo, 2002, p. 29).

The impossibility of providing a decent burial to their loved ones may lead to deep feelings of guilt in the population due to the fact that they were unable to

11 I/A Court H.R., *Plan of Sánchez Massacre v. Guatemala. Reparations*, Judgment of November 19, 2004. Series C No. 116. Expert testimony of Augusto Willemsen-Díaz and Nieves Gómez.

12 I/A Court H.R., *19 Merchants v. Colombia*, Judgment of July 5, 2004. Series C No. 109. Expert testimony of Carlos Martín Beristain.

perform funeral rites, to say farewell to their next of kin or neighbors; they thus feel that they owe something to the dead.

Substitution of norms and traditional values

In the context of political repression, massacre survivors are sometimes subjected to strict disciplinary regimes and punishment under which they must obey and assimilate the rules imposed by military groups. These situations of controlling the population take place regularly in areas that have been specifically defined for that purpose. In the case of Guatemala, many of the survivors were recruited to work in the development poles. They were sometimes forced to perform rituals or to assume customs that were contrary to their cultural practices and they had to request permission for any type of activity.

Living conditions and the substitution of rules and traditional values seriously affect mental health, as stated in the judgment of the International Criminal Court for the former Yugoslavia (Case No. IT-98-30/1-T).

In that country, military control was exercised through intimidation, threats, fear, impunity and disproportionate and humiliating punishments. In some cases, not obeying the imposed rules meant death.

In time, persons concentrated in these camps or development poles were allowed to return home, but always under strict control. In the case of Guatemala, a surveillance system inside their own indigenous communities was created—they all watched each other—and this led to the so-called Civil Self-Defense Patrols, which were directed and controlled by the military.

This control makes for an abrupt change in daily life and results in a lack of control of one's life. Everyone must comply with the rules imposed by the authorities, whether they agree with them or not. This blocks the group's autonomy, its creativity, development, interpersonal relationships, community solidarity, decision-making and form of resolving conflicts according to the social and cultural practices of the community.

Similarly, there is a gradual polarization between those who accept the imposed regime and those who do not. Over time, these situations are accentuated and, when individuals recover their independence, these situations are maintained and influence the community decision-making process with the resulting conflicts between the two groups and even within families themselves.

The Comisión de Esclarecimiento Histórico has stated that “Using group members against their own people is analyzed as an action that goes against the basic essentials of the group” (Vol. III, p. 331).

The controls imposed on groups surviving massacres are relevant in litigation that seeks to establish justice. The damage caused to the population in this context, in which there is a lack of respect for human rights, requires special attention and specific reparation.

Emotional climate

In that context of repression, massacres create political violence and persecution and an emotional climate of a loss of trust among family, friends and neighbors; a fear of speaking and expressing ideas, of holding meetings or demonstrations: a general fear, permanent tension and distress. It ruptures relationships of solidarity and support and faced with the need to find those responsible, victims and victims-survivors are criminalized (Cabrera *et al.*, 1998, p. 35) and held responsible for what has occurred. This causes stigmatization and discrimination that polarize society.

Community disintegration also implied a loss of social support that was provided by inter-family relationships and relations with neighbors. Influenced by their losses, or by fear, the possibilities of support and solidarity regarding issues that were vital to community members were lost. The possibility of being accused of collaborating with guerrilla groups for the most insignificant reason put at high risk any attempt to implement solidarity (REMHI, 1998, p. 116).

The population remains in a state of constant distrust and resists speaking of its own violent experiences, rejects participating in politics and is skeptical of justice. This leads to a blaming of the victims, for there is no control over the victimizers. This language turns into a violence that Bourdieu characterized as *symbolic violence*, a type of language that when used by authorities tends to produce a manner of perceiving the world that is in accordance with their interests, in other words, it gives a different meaning to the facts (Aguiar, 1996).

A lack of trust, solidarity and communication seriously limits human development and restricts the possibility that a project of life will evolve, both at the community and the individual level. Human beings need personal relationships, trust and mutual support in order to grow.

Any social order requires a minimum of cooperation among its members. Without that minimum cooperation, which, for example, demands respect for certain collective rules, ties of solidarity, basic trust and elemental respect, living an ordinary life is impossible (Martín-Baró, 1992).

Psychosocial damage produced by sexual violations

The sexual violation of women¹³ has a connotation that is different than other violations because it causes psychosocial damage in the victim in addition to physical and psychological damage. Sexual violations often cause women to be stigmatized even in their own families and social group. In the case of violations such as torture and forced disappearance a certain degree of stigmatization is also present, but the victims have a family or a social support group. In sexual violations, however, rejection may start with the husband or with the victim herself, who feels guilty for what others did to her.

In sexual torture the boundaries between what is public and what is private are breached. Private parts are exposed, becoming “public”; names, the past, her body, her right to decide. The feeling of vulnerability and helplessness increases during this process.

Sexual torture has the objective, *inter alia*, of public humiliation; the relationship between the sexual act and positive feelings is broken, turning it into a perverse act. It involves forcing the victim to perform acts that break her own rules regarding what to do and what not to do and that have been absorbed from her family environment (family, religion, school, etc.) (Paz, 2004, p.90).

In certain cultures, such as indigenous and Tutsi, the memory and dignity of the woman as transmitter and procreator of the group is damaged at a cultural, social, family and individual level by sexual violations.

In the Akayesu case, the International Criminal Court for Rwanda stated:

...rape and sexual violence, the Chamber wishes to underscore the fact that in its opinion, they constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such. Indeed, rape and sexual violence certainly constitute

13 It would also be true with respect to sexual violations of men, although there are no data in that respect.

infliction of serious bodily and mental harm on the victims and are even, according to the Chamber, one of the worst ways of inflicting harm on the victim as he or she suffers both bodily and mental harm. In light of all the evidence before it, the Chamber is satisfied that the acts of rape and sexual violence described above, were committed solely against Tutsi women, many of whom were subjected to the worst public humiliation, mutilated, and raped several times, often in public, in the Bureau Communal premises or in other public places, and often by more than one assailant. These rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole.¹⁴

Sexual violence was a step in the process of destruction of the Tutsi group - destruction of the spirit, of the will to live and of life itself.¹⁵

In this respect, the Comisión de Esclarecimiento Histórico stated the following:

The CEH investigation was able to confirm that raping women while they were being tortured or before being murdered was a common practice directed towards destroying the person's dignity in its most intimate and vulnerable aspects. The majority of these rape victims were Mayan women. Those who survived still face difficulties due to the deep trauma caused by this aggression and their communities were dishonored by this practice. The presence of acts of sexual violence in the social memory of the communities was converted into a motive for collective revenge (Comisión de Esclarecimiento Histórico, 1999, No. 91).

In several cases, the damage produced by sexual violence is permanent because, in countries such as Guatemala, the victim lives in the same municipality as the assailant(s), which perpetuates the daily fear, the impossibility to forget what happened and the fear of resorting to the courts and of speaking.

14 International Criminal Court for Rwanda, ICTR 96-4-T. The Prosecutor v. Jean-Paul Akayesu, para. 731.

15 *Ibid.*, para. 732.

The impunity and close proximity of the perpetrators of sexual violence have made it impossible for women to participate in legal processes and have prolonged to this day the terror caused by the massacre.¹⁶

Women who are victims-survivors of sexual violations at some time in their lives present the following long-term symptoms: post-traumatic stress disorder, guilt for what has happened, shame, fear, silence, isolation and psychosomatic illnesses such as headaches, breathing problems and gynecological problems.

All these damages and effects on the individual, family and community deteriorate the quality of individual, family and social life of the victims-survivors of sexual violations.

Psychological damage

As mentioned, psychological damage is harm caused to the subjectivity. Experiencing a traumatic event may result in the rupture of certain basic ways of thinking and may produce symptoms of post-traumatic stress: altered mourning experienced from the individual point of view, feeling of guilt for having survived or for having, or not having, done something to save one's loved ones, mental illnesses or morphosomatic disorders. New diagnostic classifications for mental health disorders include some related to cultural aspects, as for example *susto* (fright sickness), which may occur in massacre survivors.

Janoff-Bulman (1992) speaks of the "breaking of the frameworks of reference" in some victims-survivors of traumatic events, which causes a rupture that destroys those frameworks at three levels: with respect to one's self, to others and to the world (Pérez Sales, 2004).

The impact of a violent situation such as a massacre is directed towards destroying the minds of those who experience it. It marks a "before" and an "after" in the life of the victims-survivors since it changes their expectations and how they relate to the world and destroys some certainties of the project of life and therefore of the future. Post-traumatic stress is an anxiety disorder that sets off three types of responses or symptoms:

16 *Plan of Sánchez Massacre v. Guatemala. Reparations, supra* 11. Expert testimony of Nieves Gómez.

- **Responses of reliving the event.** Events are persistently relived in different forms: memories and recurrent dreams that disturb and include images, thoughts and perceptions related to the traumatic event; episodes of retrospective scenes (*flash-backs*) in which the event seems to be taking place at the present time; unease on being exposed to objects or situations that bring back memories.
- **Affective anesthesia and the fact of avoiding stimuli associated with the trauma, such as thoughts, feelings, conversations, activities, places, persons.** In addition, there may be a great lack of capacity to remember important aspects of the event; there is a restriction of the affective life and a feeling of a devastating future.
- **Responses of increased activity.** Persistent warning symptoms that were absent prior to the trauma, such as attacks of irritability or anger, difficulty in going to sleep and/or staying asleep, difficulty in concentrating and motor restlessness. This disorder affects subjectivity and the way of looking at the world, as well as social, work, and family life.

Individuals need to blame someone or situations or things for what is happening to them. That way and according to the manner of thinking learned during their personal lives, certain individuals tend to attribute events to certain circumstances or external agents, but others attribute them to their own circumstances or internal agents, in other words, to themselves.

Due to the unspeakable, multiple, massive, sudden, extreme brutality and violent nature of massacres, individuals are unable to find a meaning for that experience and, in their conception of the world, they cannot find external agents to blame and hold responsible. They therefore feel guilty for “having done, or not done, something to avoid the traumatic event” or for “having survived.” Repercussions on the mental health of those who feel guilty are serious. Individuals who believe that they are guilty live in constant distress and often seek to be consciously or unconsciously punished.

Finally, *susto*¹⁷ –from a multicultural perspective– may resemble a major depression, post-traumatic stress or psychosomatic disorder. Although it may result from different traumatizing situations, in the context of massacres it is understood as the response caused by the impact that these situations provoke on a human group or a people, according to its vision of the cosmos and its culture.

Rubel, O’Neill and Collado (1989, p. 22) describe the symptoms of *susto* as: “the victim is 1) restless while sleeping and 2) the rest of the time he/she is inert, weak, depressed and indifferent to food, clothing and personal hygiene.” *Susto* is present when a rupture of harmonious relations takes place in the social and cultural order, between persons, the dead and nature.

When the symptoms of individual damage become evident in several members of a group, it limits the contribution of each of them to their community or deteriorates the quality of their performance and sense of belonging to the group, directly affecting the optimal development of the project of life of the community. This rupture in turn affects the individual project of life. A circle is thus created in which personal, family and community aspects are irreversibly damaged.

Judge Antonio A. Cançado Trindade, in his separate opinion in “*Street Children*” (*Villagrán Morales et al.*) v. *Guatemala*, states that

But even if those responsible for the established order do not perceive it, the suffering of the excluded ones is ineluctably projected into the whole *sodal corpus*. The supreme injustice of the state of poverty inflicted upon the unfortunate ones contaminates the whole social milieu, which, in valuing violence and aggressiveness, relegates to a secondary position the victims, forgetting that the human being represents the creative force of the whole community. Human suffering has a dimension which is both personal and social. Thus, the damage caused to each human being, however

17 A popular expression included in the “Outline for Cultural Formulation and Glossary of cultural-bound syndromes” of the Diagnostic and Statistical Handbook for Mental Disorders (DSM-IV) and understood as: “Common illness prevalent among some Latins. It is also known as *espanto*, *pasmo*, *tripa ida*, soul loss or *chibab*. It is attributed to soul loss resulting from frightful or traumatic experiences, giving rise to suffering, illness and it is believed that, in extreme cases, it may cause death. Its symptoms include loss of appetite, inadequate or excessive sleep, restlessness in sleep, nightmares, introversion and apathy and low self-esteem or negative feelings towards oneself. The somatic symptoms: muscular disorders, headaches, gastritis and diarrhea. The rites of health are directed towards recuperating the soul so that it returns to the body and cleanses the persona so that the corporal and spiritual equilibrium is restored. Etiological beliefs and configurations of similar symptoms may be found in different parts of the world.”

humble he might be, affects the community itself as a whole [...] the victims are multiplied in the persons of the surviving close relatives, who, furthermore, are forced to live with the great pain inflicted by the silence, the indifference and the oblivion of the others.¹⁸

Possible forms of psychosocial reparation

This section will present some reflections that may offer elements for the creation of measures and forms of reparation from a psychosocial and psychological standpoint.

After reviewing the damage and effects caused by the nature of massacres, plus the ensuing psychosocial damage, elements emerge that could help to repair in some measure those effects since the damage is irreparable. Measures to be adopted in that sense have as their main objectives the acknowledgement of the facts, the trial and conviction of the perpetrators, dignifying the victims, the historical memory –of the victims themselves– and support and solidarity from the rest of society.

Pérez Sales (2004, p. 4) presents the following post-traumatic factors that are significant in the responses of resistance or vulnerability and that help to visualize the purpose and requisites of measures of reparation:

- Foster actions that seek to give a feeling of group or community to those who have had similar experiences, in contrast to the isolation in which they have been immersed after the human rights violation because of impunity.

Among the possible acts of reparation are: formation of groups or associations of victims or victims-survivors; recuperation of the collective memory; reinforcement of traditions and customs; evaluation of events related to the history of the individual; educational and social actions that promote the reconstruction of community identity and strategies that enable the restoration of the social fabric. Given the dimension of the damage, it is probable that only a series of very consistent and repeated actions over time have that potential. It is important to consider processes and not isolated actions and to promote the idea that States assume these reparations as a permanent policy.

18 I/A Court H.R., “*Street Children*” (*Villagrán Morales et al.*) *v. Guatemala. Reparations*, Judgment of May 26, 2001. Series C No. 77, Separate opinion of Judge Cançado Trindade, para. 22.

- Construct collective narratives that present the survivors' strength as opposed to the social stereotype of vulnerability. Similarly, it is important to validate socially the suffering when victims face rejection, stigmatization or humiliation, accompanied by a visualization and recognition of the facts, their damages and effects in the face of dynamics of silence and concealment.

The creation and dissemination of collective narratives is a necessary element for building peace. Every actor in the conflict must tell those narratives and they must be disseminated, starting in primary school using the appropriate pedagogical tools. The importance of Truth Commissions, of making videos, movies, documentaries, radio programs, children's stories, art, etc. is also emphasized as a manner of spreading the truth about a social reality. At the time of analyzing the manner in which collective narratives are created, it is important to think about who is creating them, how they are published and what is their purpose.

The experiences in countries that have suffered massacres have shown that remembering is necessary in order to vindicate the past in a healing manner. It is not a question of forgetting what happened, because it is impossible to build a future by denying what happened in the past. Memory must exist in order to give victims their place and to acknowledge the harm that they have suffered. These memories and the recuperation of history must meet several conditions in order to achieve the objective of reparation: determine the causes, specify the acts of violence, understand the consequences and know who were the victims and who were the perpetrators.

- Foster the recuperation of psychological security in the face of uncertainty. It is necessary to create channels of communication and information with the victims and victims-survivors, providing them with information on the processes of historical memory, reparation and justice and there must be spaces for dialogue and for joint construction by victims and the State in order to develop public policies.

Processes of disseminating historical memory and justice are steps that indicate and guarantee to the victims that the events will not be repeated. This allows recovery of psychological security in the face of the feeling it could all happen again.

For this, a series of measures against impunity and social indifference, together with legal action and punishment, are indispensable. Testimonial and commemorative acts, building memorials, plus initiatives directed to the community and its context may have an immense reparatory impact. The message conveys the belief that in order for the damage and pain not to be repeated, we must remember the victims, not deny them.

It is evident that one of the causes of fragility in those populations is their alienation and poverty, which probably makes them helpless and favors impunity. Measures of reparation cannot ignore that context. Actions related to the creation of worthy alternatives of production and survival must be the main objective of reparation. Only with a true transformation in living conditions will it be possible to promote a perspective of the future.

Prior to presenting a proposal for psychosocial reparations, the true situation and the available resources of cultural, social, legal, economic, educational, political and organizational aspects, as well as public health policies, infrastructure and the existence, or non-existence, of national plans for compensation must be determined. It is ultimately a question of analyzing the context in which the reparation will take place.

Massacres in the context of political violence have an undercurrent of discrimination towards the massacred population; this means that reparations must be directed towards the general population so that the horrendous events not be repeated, encouraging a type of education that implies respecting one another and respecting human rights, creating programs and spaces of awareness, changing attitudes and not discriminating. Similarly, reparations must be directed towards finding a meaning for what has happened and for empowering the victims to become active citizens who participate in the construction of a peaceful and democratic society.

Massacre survivors, as well as future generations, will be the beneficiaries of psychosocial reparation at a community level. The object is to recuperate the historical memory from the victims themselves, dignifying family members who died in the massacre and guaranteeing that there will be no more human rights violations.

To achieve the above, the following actions should be promoted at the governmental level:

- Offer psychosocial training to teachers at different levels of the educational system so that they may in turn transmit their knowledge, awareness and positive attitudes to the victims and to succeeding generations.
- Create awareness and inform personnel working in health centers and hospitals so that they may properly detect and diagnose damages and effects derived from the massacre and respond to the problem effectively. Training should be focused on the effects of political violence and its repercussions on physical and mental health.
- Grant school and university scholarships to victims, victims-survivors and their descendants that include, if necessary, transportation, lodging and meals.
- Create spaces outside classrooms, but inside schools, to develop activities directed towards maintaining and recovering culture and identity, such as theater groups, art and music lessons and others that the community may deem appropriate.
- All of the above must have the necessary human resources, materials and financing.
- Assign human and financial resources for the creation or maintenance of health centers.
- Develop programs for comprehensive recuperation, with community participation, taking into account cultural differences and the victims' needs and fostering the construction of the social fabric, strengthening ties among community members and improving integration.
- Create spaces for clinical intervention directed towards understanding the effects of violence, social reintegration, recuperation of personal autonomy and re-establishment of the project of life.
- Define programs of rehabilitation to offer psychosocial attention to victims of human rights violations during armed conflicts at the personal, family and community levels, respecting their ethnic and cultural identity.

- Train community leaders to work in areas such as the rehabilitation of the physically impaired, projects for the recovery of cultural aspects, attention to victims of sexual violence, to children and the elderly.

These basic actions include those that have already been developed through national compensation programs that seek to offer reparation to victims of armed conflicts and military dictatorships, such as the Comprehensive Plan of Reparations of Peru (APRODEH, 2003) and the National Program of Compensation of Guatemala.

Other resources that may be used to offer appropriate reparations to victims are:

- Using the mass media to deliver specially prepared materials on the subject to schools and universities.
- Having the local and national authorities ask for forgiveness, assigning responsibility for the events in question to the corresponding parties. This action must be publicized as much as possible.
- Building memorials and museums to commemorate the victims and involving survivors in the selection of the site and the manner in which it will be done.
- Setting dates to commemorate, dignify and remember the victims and the events at the local and national levels.
- The need for *justice* is particularly relevant. Regardless of the meaning that each individual, family or community may give it, the application of criminal justice to the material and intellectual perpetrators of human rights violations is essential for the psychological and psychosocial recovery of victims-survivors. International justice has made great progress in persecuting those responsible for those crimes, but the victims themselves express their desire that these trials be conducted in their own countries.

It is also necessary to develop programs that offer psychological and physical assistance to victims-survivors of massacres, programs that would help them to reproduce and absorb the experience; these programs must also promote and

strengthen every psychological tool so that the victims develop a new project of life.

Psychotherapeutic programs must include social and cultural factors that pertain to the context in which the work is being done, taking into account local resources of assistance and traditional methods of treatment and healing. Similarly, in contexts of poverty it is necessary to plan and assign resources for transportation and access to services.

The Ministry of Health must provide psychological attention to the individual and the community; if the institution does not offer the necessary conditions to deal with these psychosocial damages and effects, it should seek the support of specialized entities in order to receive training, advice, supervision and evaluation. In 2005 the Guatemalan Ministry of Health and its National Program of Mental Health requested the Community Studies and Psychosocial Action Team (ECAP) to advise it in implementing the “friendly settlement” in the case of the “Las Dos Erres” massacre and to comply with the Court’s judgment on reparations in *Massacre of Plan de Sánchez v. Guatemala*. The latter was due to the fact that the Ministry did not have under its jurisdiction mental health services for survivors of massacres that took place during the internal armed conflict. However, in view of the cases being brought before the inter-American system, the Ministry has gradually been incorporating that specialty.

Measures of reparation *per se* are just as important as the process in which they take place. It is thus important to take into account what the victims and victims-survivors consider an act of reparation for the violations and it is also important to involve them in making the pertinent decisions.

It is necessary to have available clear, transparent and fluid information regarding every possibility of reparation in order to make decisions that are appropriate to the needs. In order for the victims to understand it, the language used must be as simple as possible and, if necessary, be translated into the local language and should also have the appropriate pedagogical adaptations.

Fluent communication not only enables decision-making, it also minimizes the circulation of false information and rumors that usually emerge when there are expectations of compensation, especially in populations in financial difficulty. Such communication also prevents the victims from being considered criminals or guilty parties, because it explains the reason for the compensation, who is going to provide it and who is going to receive it.

Although among the measures of reparation it is contemplated that the victims will give to the media explanations of what happened, the damages and the responsibility, this public image must be carefully monitored because if it is not handled correctly it may be more harmful than repairing. The material that is to be distributed must be consulted with, and jointly prepared with, the victims and it must not only explain the damage that they suffered, but also the strengths that allowed them to continue. Cases in which women were victims of abuse are especially sensitive. Due to the stigmatization that women suffer, an evaluation should be made to ascertain whether these actions are truly appropriate and beneficial.

Finally, psychosocial reparation must not be exclusively focused on simply complying or not complying with the measures, it must also focus on the quality of the implementation. For example, in the friendly settlement with Guatemala in the case of the massacre of the community Las Dos Erres, it was agreed to offer a program of psychosocial attention to the victims-survivors, but insufficient financial resources were assigned so the program was developed by university students as interns of the School of Psychology, without any other technical or logistical support. Difficulties obligated them to end up working at a different community. To avoid these types of errors, a solution would be to assign a local organization that can offer advice to the State and its agencies, as has been mentioned. In this sense, the reparations ordered by the Court in *Massacre of Plan de Sánchez v. Guatemala* is important. It states:

To this end, the State must set up a committee to evaluate the physical and mental condition of the victims, and also the treatment that each one requires. The non-governmental organization, Community Studies and Psychosocial Action Team, must play an active part in this committee and, should this organization not agree or be unable to assume the task, the State must identify another non-government organization, with experience in treating victims, to replace it. Guatemala must inform the Court about the constitution of this committee within six months. With regard to the medical and psychological treatment, this should be started immediately after the constitution of the committee for a period of five years.¹⁹

Similarly, apologies by the State must be accompanied by true processes of justice, together with reparations and a guarantee of non-repetition. An apology that is not complemented by political measures on justice, education and health and that dignify the individual and enable him/her to recover historical memory will most probably create a new victimization and may be seen as a mockery.

19 *Plan of Sánchez Massacre v. Guatemala. Reparations, supra* 11.

A program of reparations creates expectations in victims-survivors, both with respect to its implementation and to its quality. If the reparations are not complied with, as agreed, arranged and publicized, it produces negative effects that run counter to the object of reparation and, from a psychological point of view, it produces frustration and re-victimization.

Massacres are cases of massive violations of human rights. As such, their impact is immense and their complexity and persistence affect the entire community against which the destruction, elimination and annihilation was directed. The damage is real and concrete but also symbolic, because it affects a people's culture, their history and their dignity as a people. The necessary intervention of reparation must consider community and collective damage, as well as damage at a psychosocial level. Only an interdisciplinary perspective, capable of incorporating that dimension, can achieve a reparatory effect that reflects the ending of impunity. Similarly, the harm to the social fabric provoked by these events demands credible and consistent measures of reparation that promote the true and effective reconstruction of a renewed vision of the future.

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**From victims to social actors: the role
of families in overcoming impunity**

This article was prepared by Jorge Buitrago, a psychiatrist specializing in forensics with broad experience in the psychosocial area and in the defense of victims' human rights. He has presented written testimony to the Inter-American Court of Human Rights. Marcela Salazar Posada, a political scientist, researcher and defender of human rights, assisted in the preparation of the article. This article also includes contributions from the interdisciplinary team of the IIHR Project "Comprehensive Attention to Victims of Torture," as well as from the editors of this publication.

Introduction

The role of the family represents an invaluable contribution to democracy and to humanity. Assuming such a role is, however, only possible through a painful personal undertaking that implies overcoming the damage inflicted by acts of violence perpetrated against a loved one, confronting extremely adverse and risky conditions to one's own physical integrity and devoting enormous material and emotional resources to the search for justice.

*A culture of peace and democracy
is a laborious process that takes a long time.*

Carlos Figueroa Ibarra

In democratic regimes, the people delegate to the State the exercise of violence as a measure of last resort, to be used with limitations and governed by norms and controls so that it is not arbitrary, which excludes brutality, cruelty and, of course, torture. The rise of democracies has brought with it recognition of constitutional rights and the development of a body of norms to ensure respect for those rights, which are properly known as human rights.

Regrettably, even in countries that consider themselves democratic, the abuse of power, the excessive authority of the security forces, political violence, torture and other grave forms of violations have not been eradicated. On the contrary, they persist as a form of domination and the imposition of unequal and unjust conditions.

A key element of modern political violence is the creation of terror to penetrate the entire fabric of social relations and the minds of the people as a means of social control. Most of the acts of torture and violence inflicted on the civilian population are directed toward those ends and not to obtain information. The mutilated bodies of individuals abducted by security agents, dumped in public places, are part of a political theater designed to shock everyone. Not only is there hardly any acknowledgement of the distinction between soldiers and civilians or of any obligation to respect women, children or the aged, but the important institutions and the way of life of an entire population may also be the targets of aggression (Summerfield, 1998).

Military dictatorships imposed by coups d'état were common in Latin America during the 20th century. Torture and other human rights violations, such as arbitrary detentions, forced disappearances and extra-judicial executions were commonplace in different contexts: in regimes headed by military dictatorships, as well as in those

under the guise of a formal democracy where the security forces often “delegated” the application of torture and terror to non-governmental agents, the so-called paramilitary forces.

The military dictatorship in Brazil that held power from the 1960s to the mid-1980s comes to mind, as well as that which took power in Argentina in 1976, about which the Sábato Report includes 8,960 documented cases of forced disappearance between 1976 and 1982, even though other estimates calculate the number of victims at 15,000 to 20,000 (Figueroa Ibarra, 2000). There were also the dictatorships of Chile and Uruguay in the 1970s and in Central America and the Caribbean, including “in Nicaragua ... thanks to the American intervention, the first Somoza began a dynasty that was destined to last until 1979. In El Salvador, the 1932 insurrection was crushed at a cost of a generally estimated 30,000 victims, giving rise to a long period of military dominance that would eventually end with the bloody civil war of the 1980s. In Guatemala, the decade that began with the revolution of 1944 was merely a brief democratic inter-regnum between two long periods of dictatorship, ostensibly put to an end in 1996” (Figueroa Ibarra, 2000).

Other Latin American countries also witnessed systematic human rights violations under military regimes that held power alternatively with governments that were “democratically” elected but manipulated by the circles of power (Peru, Bolivia, Ecuador) or in formal democracies where states of exception and “dirty wars” were used against those who opposed the government. This is the case of Colombia, where such methods of terror have been used for decades and still persist.

During the past century repression in the hemisphere was orchestrated under the doctrine of national security. This has been revealed by news media, such as *El Tiempo*, which reported that “In June 1976, when torture and disappearances reigned in Argentina, U. S. Secretary of State Henry Kissinger told the military dictatorship of that country; ‘If there are things that have to be done, you should do them quickly. But you should get back quickly to normal procedures.’ The National Security Archive, which collects and analyzes government documents, recently divulged the contents of a memorandum regarding a conversation in Santiago between Kissinger and the dictatorship’s Minister of Foreign Affairs, Admiral Gustavo Guzzeti.”¹

The generalized and systematic human rights violations have left *sequelae* that have not yet been overcome. There has been a difficult and prolonged transition in countries of Central America and the Southern Cone still beset by conflicts: on one hand are countries that through great sacrifice have progressed in the struggle against

1 *El Tiempo* of August 27, 2004, pp. 1-6. Bogotá, Colombia.

impunity and, on the other, those that from the seat of power continue to represent the perpetrators and intend to erase the historical memory, ignore the damages that were inflicted on the victims and deny reparations. Nevertheless, the struggle of organizations of victims and their families has prevented the denial of those horrors and, aided by international pressure, these organizations have succeeded in forcing States to offer better guarantees of truth, justice and reparation.

While the violations institutionalized by dictatorships appear to be in the past, social and economic rights continue to be generally ignored and abuses of power continue to exist with violations of the rights to life and physical integrity.

These abuses are still systematic in Colombia, although somewhat dissimulated, and the threat of authoritarianism is still present, as it is in other countries. In the case of Colombia, torture is associated with forced disappearances, massacres and extra-judicial executions: some two million persons have been stripped of what they own and have been forced to move.

This situation has become particularly critical because the violence is structured and directed to maintain conditions of inequality and social injustice, among the most severe in Latin America. Thus, the armed conflict against the guerrillas has lasted longer than any on record. The dominant classes, which traditionally control power within the State, helped organize paramilitary groups, leading to a “para-state.” These groups have concentrated on subduing wide segments of the population. On the pretext of fighting insurgents, subjugation and plundering are based on methods of terror, such as threats, torture, forced disappearance and the selective murders of social and labor leaders, journalists and opposition leaders.

Massacres of peasants are effective in displacing them from their valuable lands, which are then used for projects that serve the interests of privileged groups and multinational companies. This is a good example of the relationship between human rights violations and political control over certain populations.

Given the efforts at making these rights effective regionally, it is distressful that the Colombian government is taking actions by which the perpetrators of these grave crimes could end up enjoying absolute impunity. Agreements being reached with the government tend to omit the rights of the victims and their families who seek the truth, justice and reparation. Human Rights Watch referred to this issue in its 2004 Annual Report.

According to the Report, the process needs safeguards to ensure that those responsible for grave human rights violations will be tried appropriately. It also indicates that the lack of a legal framework “to govern the demobilization process

and the benefits that will be granted to those who turn in their weapons” has become a significant obstacle.... Kenneth Roth, Executive Director of this NGO has warned that Colombia could be making the same mistakes that occurred in countries such as Argentina and Chile in the years that followed the end of the dictatorships: “Impunity was proposed as a means to covering up the problems. But our experience is that they never disappear and instead a message is sent that it is possible to commit abuses since they will later be forgiven.”²

Carlos Figueroa (2000) has commented that

At the dawn of the 21st century Latin America has the most unfortunate set of conditions that might widely lead a culture of violence in the heart of society. Military dictatorships are no more, but new types of authoritarianism have arisen.... The narcotics traffic has become the invisible but determinant force in a large part of the region. Neo-liberal tendencies have not only forced millions of citizens from their own countries, but they have also made being employed a real privilege. Misery in the cities has become the cauldron for the proliferation of everyday delinquency and has turned security of the citizenry into a major issue, which has increased the clamor for a tough hand and a strong man.... If yesteryear’s threat of Communism justified committing monstrosities, today’s justification may arise from the need to eradicate delinquency and tomorrow’s excuse may be the imperious need to maintain national and territorial unity in the face of ethnic vindication.

The justification of those now in power for the subjugation – evidenced by human rights violations– is the struggle against terrorism. The mass media report cases of torture by the military forces of the most powerful nation on earth, which proclaims itself to be a defender of freedom and democracy. United States Senators have been heard defending such practices. Furthermore, it is worrisome to find that this idea is shared by other governments, totally ignoring the advances made by international human rights norms and under international humanitarian law.

In this regard, the Human Rights Watch Annual Report states that “...the use of torture on Iraqis in the Abu Ghraib prison reflects a pattern of contempt for human rights laws and norms by the greatest power on earth. Systematic use of coercive interrogations by the United States government has weakened a pillar of the edifice of international law of human rights, which is the prevention of torture and mistreatment of detainees.”³

2 *El Tiempo* of January 14, 2005, pp. 1-4. Bogotá, Colombia.

3 *Ibid.*, pp. 1-6.

True democracy only exists when there is respect for human rights; that is why, faced with a panorama of grave violations in Latin America, the efforts being made to overcome impunity and strengthen the search for truth, justice and reparation are extremely valuable.

Such efforts significantly include the actions of the victims of political violence and their families who have been able to make their voices heard by awakening consciences and organizing activities to make society aware of the persistent practice of violence and to understand that no one is safe as long as there is no guarantee against the abuse of power.

The response to repressive regimes and social injustices is determined by multiple variables: one's position in society, cultural and ideological background and participation in social and political movements, among others. Each acts to modify reactions and attitudes in the face of abuses of power and violations of rights. Thus, for those having a clear conception and understanding of the meaning of democracy and who socially and politically know how to obtain respect for those values even in situations of persecution or crisis, it is easier to resort to personal and organizational resources to mitigate the impact of such events. The ordinary citizen, on the other hand, may feel overwhelmed and confused, unprepared to face the acts of violence that affect him/her directly or indirectly; it will be necessary to accept the uprooting of a project of life, of values, beliefs and an innocent or idealized vision of society in order to overcome the damage inflicted and then reconstruct his/her life.

Since the gravest violations frequently result in the death of the victim—in most cases an activist or a political, social or community leader—it is the family that must vindicate its kin. That painful task often forces persons who have not participated in political and social movements to confront the risks involved in opposing arbitrary measures and repressive tactics. That is how they begin a difficult journey in which they often join in solidarity with others similarly situated; they come to realize that theirs is not an isolated or accidental case and that joining forces gives them access to the best resources for protecting themselves and strengthening their efforts for vindication.

It is a fact that without the actions of the victims' families, many cases of violations would have remained unknown and forgotten. The cases might have been recorded merely as isolated issues but it would have been impossible to discover that they were part of a pattern of repression to impose policies of subjugation and to take control of financial resources for the use of privileged minorities holding on to power.

In this context, the actions of family members have been fundamental in overcoming impunity. Their actions, which have been directed towards establishing the truth of the events that took place and identifying the material and intellectual authors of the crimes, as well as making sure that they are brought to trial and punished, have led to the formation of organizations that have promoted public recognition of the gravity of those violations and the adoption of laws to punish them. This is a paradigm in the struggle to achieve an effective structuring of fundamental rights as well as respect for them. This is how families, through persistence and by overcoming huge obstacles, have been the indispensable motor for the strengthening and defense of those rights and, consequently, of the construction of humanity.

One example is the efforts of FEDEFAM (Federation of Relatives of Detained and Disappeared Persons in Latin America) towards the enactment of international norms to typify and prohibit forced disappearance, specifically the Inter-American Convention on Forced Disappearance of Persons and the Declaration on the Protection of All Persons Against Forced Disappearance. Equally valuable has been the local work of associations of detained-disappeared persons in making visible and denouncing those practices and typifying them as crimes under domestic legislation.

The actions of the families of victims who have suffered torture, forced disappearance, extra-judicial executions and other grave violations have been decisive in preventing that, in the long transition from dictatorship to democracy, social amnesia, impunity of the perpetrators and disregard for the victims occur and that the victims be remembered.

Those who benefit from the abuse of power see the defenders of human rights and the actions of organized family members as an obstacle to achieving oblivion and to promoting a false history that sometimes goes as far as denying the existence of the victims. Families have opted to preserve that memory and demand truth, justice and reparation. Their actions prevent the continuation of abuse and impunity; they contribute to the construction of democracy and give assurance to the citizenry that they are entitled to feeling secure that their fundamental rights are a reality. It is a difficult goal to reach and truly reaching it is still distant, but every effort in that direction is valid and important.

Reviewing the experiences of those who, through personal suffering and enormous difficulties and risks, have been able to make known the systematic pattern of violations permits an understanding of their importance and value in the

development and strengthening of social movements that defend human rights and aid the transition to democracy. It also contributes to an awareness of the elements that may be useful in strengthening their activities and provides accompaniment and support during the arduous task that lies ahead.

Similarly, it is helpful to creating a consciousness that their actions transcend that context, even if they were produced by personal experience. After becoming social actors, they play a crucial role in the recovery of historical memory, in overcoming impunity and in the development and application of national and international legal instruments to strengthen the defense of the rights of everyone.

Above all, this review makes it possible to understand the transcendental importance of the acts of common citizens in the defense of their rights and in the construction of democracy. As they become stronger through the collective force of individual will the acts of these organizations become a participatory civic exercise that acquires a political dimension by questioning arbitrary policies and by reinforcing the search for a more humane society.

Transformation of family members to a role as social actors

The influence of context

Martín-Baró quotes Paz Rojas who believes that “every person elaborates –in a particular way but always socially– a traumatic experience within its re-socializing context (family, community, social organization, political party, etc.), either consciously or unconsciously, producing causal assignments, a cosmic vision, socially determined behavior, adaptive response styles, political and ideological explanations, etc., which ultimately define certain forms of social conduct. That conduct reverts to the context and to the traumatic effects, either by strengthening the pre-existing situation or by generating a series of possibilities to change that situation” (Rojas, 2000).

Those settings, which exert an influence on family members to transcend the condition of victims and to transform themselves into social actors, may be grouped for review on an individual, family, collective and institutional basis. It is, of course, a classification intended for analysis and it does not imply that they are separate or that they are independent. On the contrary, each of the mentioned categories is tightly knit with the others.

Individual factors

Affective bond with the direct victim

This bond, defined in the Glossary of the Team-Network as “sentiments and emotions generated by interactions, individually as well as socially,” is the essential element in determining that a direct victim’s family member is a victim as well.

Beyond the family relationship, which has been recognized in international law as a source of a right to reparation, the affective bond is the one that largely defines which family members are the most affected and which assume the search for justice: it is frequently the spouse, mother or father, brother or sister, son or daughter.

The affective bond is the one that gives rise to actions that initially occur at the individual level, aimed at clarifying what happened and then seeking punishment for the perpetrators; it is the one that fosters persistence regardless of the increasing difficulties and risks that must be confronted.

In some cases, in terms of reparations the bond has the same degree of relevance as that of a blood relationship.

In cases of indemnification, the Inter-American Court must determine who are the victim’s heirs. In accomplishing that task, it resorts to norms that are commonly employed by most legal systems. One of the norms holds that the children are the heirs, but it accepts that a spouse may be a joint owner of the assets acquired during the marriage. Other norms consider that offspring are entitled to rights as joint heirs.

In the absence of children and a spouse, commonly accepted private law accepts ascendants as heirs.⁴

The Court accepts the terms “children,” “spouse” and “ascendants” as defined by local law. In *Aloeboetoe et al. v. Suriname*, the victims and their families, who belonged to an indigenous group, lived under a very specific definition of family and kinship. The group accepted polygamy, among other practices, and it did not consider as valid the national system of public registration of Suriname, which rendered inapplicable the rules of family law of the State in the case of the affected survivors of that community.

Thus, in ruling on this case that involved the particular customs of an indigenous people, the Inter-American Court accepted that the customs of the community were

4 I/A Court H.R., *Aloeboetoe et al. v. Suriname. Reparations*, Judgment of September 10, 1993. Series C No. 16, para. 62.

not in conflict with the American Convention on Human Rights, which in any event it was possible to do in view of the omissions of the State's registration policy.⁵ Making a list of heirs, including spouses or female companions who were entitled to an indemnification proved extremely difficult because of polygamy. That was the criterion established by the Court with regard to kinship. But what happens legally, when the obligation to repair damage needs to be extended to persons who have suffered the consequences of an unlawful act in spite of not being heirs of the victim? In other words, how is the obligation to grant reparation handled when the damage was inflicted on a third party?

Inter-American jurisprudence has established certain rules⁶ for the admissibility of claims for damages inflicted upon a third party. The first rule establishes that the claim sought must be based on actual payments by the victim to the claimant, regardless of whether they were a legal obligation to pay support. They must be regular, periodic payments, in cash or in kind. The essential condition of the payments is that they were effective and regular.

The second rule is that the nature of the relationship between the victim and the claimant was such that it could be assumed that the payments would have continued if the homicide –death– had not occurred. It is also a requirement that the claimant was actually in need of economic support and that need was regularly met by the victim's payments.

These rules were invoked in *19 Merchants v. Colombia*, where a cousin of a victim was granted the rights of an actual brother, based on the fact that the cousin and the victim lived in the same house and the cousin was like a brother to the victim and participated in his search.⁷

A similar situation was resolved in "*White Panel*" (*Paniagua Morales et al.*) *v. Guatemala*, in which the Court determined the relationship between in-laws who lived in the same house, since one of them actively took part in the search and physical recognition of the body of his sister-in-law.⁸ In *Caracazo v. Venezuela*,⁹ the victim's aunts were awarded the same status as the mother in view of the close

5 *Ibid.*, para. 64.

6 *Ibid.*, para. 68.

7 I/A Court H.R., *19 Merchants v. Colombia*, Judgment of July 5, 2004. Series C No. 109, para. 232.

8 I/A Court H.R., "*White Panel*" (*Paniagua Morales et al.*) *v. Guatemala. Reparations*, Judgment of May 25, 2001. Series C No. 76, para. 109.

9 I/A Court H.R., *Caracazo v. Venezuela. Reparations*, Judgment of August 29, 2002. Series C No. 95, paras. 91.c and 105.

affective relationship that they had with their nephew, in addition to living under the same roof. In a more recent case, *Blanco Romero et al. v. Venezuela*, the victim's nephews were accepted as his sons since they all lived under the same roof.¹⁰

In summary, the Court is willing to grant reparation privileges to heirs, based on the presumption that the death of the victim caused them damage. In the case of third parties –claimants or dependents such as parents, concubine,¹¹ sometimes called permanent companion¹² in the jurisprudence– the Commission will avail itself of the *onus probandi*¹³ rule, which is that the burden of proof is to be decided by the Court itself. The same criterion used to resolve cases of reparations involving material losses is used for allegations submitted by third parties involving non-pecuniary damages –moral damages– in other words, they must be proven in the same way.

Victimization

The line separating the concept of *direct victim* from *indirect victim* regarding closely related family members is imprecise and often erased. The United Nations Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power (Resolution 40/34 of November 29, 1985) provides that the term “victim” should include “immediate family or dependents of the direct victim...” members or persons under the care of the direct victim under circumstances depicting an immediately close relationship. The UN Draft Basic Principles and Guidelines on a Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law states that “the term ‘victim’ also includes the immediate family or dependents of the direct victim...” (Article 8).

In turn, the Inter-American Court has included in its judgments the concept of *direct damages* suffered by victims of grave human rights violations as a causal factor

10 I/A Court H.R., *Blanco Romero et al. v. Venezuela*, Judgment of November 28, 2005. Series C No. 138, para. 72.a.

11 In *19 Merchants v. Colombia*, *supra* 7, the distribution of the compensation among next of kin and the merchants for lost wages and expenses included the spouses and permanent companions, who were given equal amounts; that is, no distinction was made. In the case that a victim had a wife and permanent companion, it was divided equally between them. *See*, para. 230.b.

12 *Ibid.*, para. 230.

13 *Aloeboetoe et al. v. Suriname. Reparations*, *supra* 4, para. 7.

for awarding reparations and has also included the concept of *indirect damages* for the next of kin, as will be seen *infra*.

Inter-American jurisprudence has recognized that the victims' next of kin may also be considered as "victims."¹⁴ The Inter-American Court has held that they may be considered victims when their right to mental and moral integrity has been infringed as a result of violations committed against their loved ones and of the suffering caused by the acts or omissions of the public authorities in dealing with the facts,¹⁵ such as the search for the victims or their remains and the treatment given to the remains.¹⁶

In *Bámaca Velásquez vs. Guatemala*,¹⁷ for example, the Court took into account that the victim's families felt that their right to learn the truth had been obstructed since the corpse had been concealed and the State had obstructed efforts to exhume it. The Court held that there was cruel, inhuman or degrading treatment, in violation of Article 5.1 and 5.2 of the American Convention.

In that same case, the Court referred to the jurisprudence of the European Court of Human Rights, which also grants the condition of victim to persons who are close to the direct victim. The European Court takes other factors into account: "the proximity of the family tie, ... the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those inquiries."¹⁸

14 I/A Court H.R., *Mapiripán Massacre v. Colombia*, Judgment of September 15, 2005. Series C No. 134, paras. 144 and 146; I/A Court H.R., *Serrano Cruz Sisters v. El Salvador*, Judgment of March 1, 2005. Series C No. 120, paras. 113-114 and *19 Merchants v. Colombia*, *supra* 7, para. 210.

15 I/A Court H.R., *Gómez Palomino v. Peru. Reparations*, Judgment of November 22, 2005. Series C No. 16, para. 60; *Mapiripán Massacre v. Colombia*, *supra* 14, paras. 144 and 146; *Serrano Cruz Sisters v. El Salvador*, *supra* 14, paras. 113-114 and *19 Merchants v. Colombia*, *supra* 7, para. 210.

16 *19 Merchants v. Colombia*, *supra* 7, para. 210; I/A Court H.R., *Juan Humberto Sánchez v. Honduras*, Judgment of June 7, 2003. Series C No. 99, para. 101 and I/A Court H.R., *Bámaca Velásquez v. Guatemala. Reparations*, Judgment of February 22, 2002. Series C No. 91, para. 160 and I/A Court H.R., *Blake v. Guatemala. Reparations*, Judgment of January 22, 1999. Series C No. 48, para. 114.

17 *Bámaca Velásquez v. Guatemala. Reparations*, *supra* 16, para. 165.

18 Eur. Court H.R., *Timurtas v. Turkey*, Judgment of June 13, 2000, para. 95 and Eur. Court H.R., *Çakici v. Turkey*, Judgment of July 8, 1999, para. 98.

In the same sense, the European Court¹⁹ has granted the condition of victim of cruel, inhuman or degrading treatment to a mother whose son has been detained and has disappeared, taking into account the gravity of the mistreatment and the lack of official information to clarify the events. For its part, the UN Human Rights Committee,²⁰ interpreting the International Covenant on Civil and Political Rights,²¹ has considered the families of detained and disappeared persons as victims since they are also victims of the rights that have been violated.²²

The Inter-American Court in “*Street Children*” (*Villagrán Morales et al.*) *v. Guatemala*²³ also held that the mothers of the children were considered victims as well since they suffered as a result of the negligence of the State apparatus to establish the identity of their children. Furthermore, no action was taken to locate other family members and notify them of the deaths and the victims therefore could not be buried “according to their traditions, values and beliefs.” The State refrained from investigating and punishing those responsible for the deaths of the children. Related jurisprudence may be cited:

...the suffering of the families of the victims was also a consequence of ... the treatment of the corpses... victims of extreme violence... their bodies were abandoned in an uninhabited spot, they were exposed to the inclemency of the weather and the action of animals and they could have remained thus during several days... .²⁴

19 *Bámaca Velásquez v. Guatemala. Reparations, supra* 16, para 165.

20 The UN Human Rights Committee in *Quinteros v. Uruguay* (1983) pointed out that it understood “the anguish and stress caused to the mother by the disappearance of her daughter and by the continuing uncertainty concerning her fate and whereabouts. The author had the right to know what has happened to her daughter. In these respects, she too is a victim of the violations” of the International Covenant on Civil and Political Rights suffered by her daughter, in particular Article 7 (corresponding to Article 5 of the American Convention).

21 *Bámaca Velásquez v. Guatemala. Reparations, supra* 16, para. 164.

22 UN Human Rights Committee, *Quinteros v. Uruguay*, decision of July 21, 1983 (19th Session), Communication No. 107/1981, para. 14 (17th to 32nd Sessions – October 1982-April 1988). Selected Decisions of the Human Rights Committee, adopted under the Optional Protocol, Vol. 2, 1992.

23 I/A Court H.R., “*Street Children*” (*Villagrán Morales et al.*) *v. Guatemala. Reparations*, Judgment of May 26, 2001. Series C No. 77, para. 161.

24 *Ibid.*, para. 174.

The Inter-American Court held that the treatment given to the remains of the victims constituted cruel and inhuman treatment for the mothers, a violation of Article 5 of the American Convention.

With respect to cases of forced disappearance,²⁵ the jurisprudence of the Court has emphasized that the violation of the right to mental and moral integrity of the next of kin is a direct consequence of such a crime. The next of kin undergo severe suffering due to the crime itself, which is made even more unbearable by the refusal of State authorities to provide information on the whereabouts of the victim or by refusing to begin an investigation to determine what occurred.

In *Mapiripán Massacre v. Colombia*²⁶ the next of kin of the victims suffered damage due to the disappearance and execution of their loved ones. The lack of support of the State authorities in the search for the victims was heightened by the fear of the families that initiating or continuing the search would be accompanied by threats. The next of kin had also been unable to bury them “according to their traditions, values and beliefs” because most of them were still missing. It was not only a question of having committed a violation to the mental and moral integrity of the next of kin, but also the fact that it produced a profound impact on their social and labor relations, including the alteration of their family dynamics, thereby placing at risk, in certain cases, the lives and right to humane treatment of some of their members.

In spite of the fact that the Court did not have complete information on the victims’ next of kin, it presumed that the consequences of the massacre had been suffered by all of them, identified or not. The Court therefore concluded that the next of kin individually identified and those who had not been identified must also be considered victims of a violation of the right to humane treatment, set forth in Article 5.1 and 5.2 of the American Convention.

Similarly, in *19 Merchants v. Colombia*, as a direct consequence of the disappearance of the nineteen, their next of kin “suffered profound grief and anguish, to the detriment of their mental and moral integrity, resulting from all the circumstances subsequent to this disappearance....”²⁷ The bodies of the victims suffered humiliating treatment, as they were dismembered and thrown into a river

25 *Gómez Palomino v. Peru. Reparations, supra* 15, para. 61; *19 Merchants v. Colombia, supra* 7, para. 210; *Bámaca Velásquez v. Guatemala, Reparations, supra* 16, para. 160 and *Blake v. Guatemala, Reparations, supra* 16, para. 114.

26 *Mapiripán Massacre v. Colombia, supra* 14, paras. 144 and 146.

27 *19 Merchants v. Colombia, supra* 7, para. 211.

so that they would not be found and identified, which caused pain and uncertainty among the next of kin since they did not know the whereabouts of their loved ones and they were unable to bury them according to their beliefs and customs.

In this case, the delay in investigating and punishing those responsible caused uncertainty among the next of kin because the first criminal decision was issued ten years after the events had occurred and after the next of kin had heard several versions of what had occurred.²⁸ For more than 16 years the next of kin felt impotent because of the impunity of the State agents who violated the rights of the victims.²⁹

A similar situation may be found in *Gómez Paquiyauri Brothers v. Peru*. The Court held that members of the families of Rafael Samuel and Emilio Moisés Gómez Paquiyauri had been victims of cruel, inhuman or degrading treatment³⁰ in violation of Article 5 of the American Convention, the direct result of the unlawful and arbitrary detention of the brothers and the mistreatment and torture inflicted during their detention and death.³¹

Similarly, in *Tibi v. Ecuador* the Court recognized that the right to humane treatment of the companion, children and stepchildren of the victim was violated as a consequence of the unlawful and arbitrary detention, lack of due process and torture inflicted on the victim. The next of kin lived in a state of anguish as a result of not knowing the whereabouts of the victim after his detention. The negligence of State authorities to terminate the unlawful detention caused them to fear for his life during all that time. The unlawful and arbitrary detention of the direct victim contributed to the break-up of the family nucleus and to the frustration of personal and family plans.³²

In *Serrano Cruz Sisters v. El Salvador* the girls' mother died before the State was able to provide information on what had happened to her daughters and their whereabouts. The impossibility of knowing the truth and the frustration produced by the authorities' lack of cooperation in punishing those responsible and clarifying the whereabouts of the sisters provoked grave damage to the physical integrity of

28 *Ibid.*, para. 215.

29 *Ibid.*, para. 216.

30 *Juan Humberto Sánchez v. Honduras*, *supra* 16, para. 101 and *Bámaca Velásquez v. Guatemala. Reparations*, *supra* 16, para. 162.

31 I/A Court H.R., *Paquiyauri Gómez Brothers v. Peru*, Judgment of July 8, 2004. Series C No. 110, para.118.

32 I/A Court H.R., *Tibi v. Ecuador*, Judgment of September 7, 2004. Series C No. 114, para.160.

the mother and other family members. The right to personal integrity, embodied in Article 5 of the American Convention, was violated to their detriment.³³

International human rights law provides criteria for accepting the next of kin of a direct victim as victims in their own right since they are vulnerable to the consequences of the loss or harm inflicted upon their loved one (father, mother, sister, brother, spouse, child, etc.) and therefore they have a right to be considered beneficiaries of the reparations that the Court may deem appropriate.

On the other hand, the condition of victim granted to the next of kin is not only due to the impact of the crime, which affected them severely, but is also the result of their attempts to overcome impunity, to reveal the truth regarding the events that occurred and to identify those who are guilty, because they frequently turn into targets of threats and harassment and even attempts against their physical integrity and their lives.

That is the importance of their transformation into the role of social actors: from their recognition as victims and the resulting right to demand truth, justice and reparation.

Re-victimization

This expression is the equivalent of “secondary victimization” that is utilized in criminal victimology and that Landrove Díaz, cited by Tomás Valladolid Bueno, has defined as “derived from the relationship of the victim with the juridical-penal system, with the repressive apparatus of the State, which ultimately implies the frustrating clash between the victim’s legitimate expectations and the institutional reality” (Valladolid Bueno, 2003).

Valladolid Bueno also cites Orestes Posada who has stated that “... victimization is a long and complex process, not only because of the instantaneous effects of the crime, but also those produced by a system that does not protect, mistreats and alienates those whom it should serve immediately and with priority (secondary victimization) and by certain social sectors that, rather than lending compassion and solidarity, are indifferent and are often the butchers of those whose rights have been violated...” (Valladolid Bueno, 2003).

When the next of kin reveal the facts, they begin to experience, as an additional source of suffering, the effects of the failure of the police and judicial authorities to act, which is made evident by the difficulties in having their complaints received

33 *Serrano Cruz Sisters v. El Salvador*, *supra* 14, para. 114.

and the investigations initiated. That is where the long road of pain and uncertainty towards seeking the truth and the string of failed attempts begins, which repeatedly feed feelings of impotence, despair, frustration and indignation.

As pointed out by the UN Committee Against Torture, referring to cases involving disappearance, “The uncertainty regarding the truth of those circumstances constitutes a motive of grave and permanent suffering for the families of the disappeared persons.”³⁴

Re-victimization discourages the next of kin and may lead them to abandon their actions to seek justice, leading to frustration and the acceptance of impunity, but it may also encourage them to add their efforts to those of others who have been similarly affected and in this way avail themselves of a mutual means of protection and strengthening.

Re-traumatization

In addition to the rage caused by impunity and the fears brought on by threats are the complications of mourning for the next of kin of tortured and executed persons and the impossibility of mourning for the next of kin of victims of forced disappearance.

Threats and harassment are intentional and systematic actions intended to cause suffering and intimidation and to exert control over the families. They are clearly forms of psychological torture to intimidate the next of kin and to block their efforts and deny their rights as citizens, all with the intention of maintaining impunity.

Family factors

The attitude of a family that decides to seek justice is decisive in terms of whether or not they will support the person seeking it; or will they discourage or ignore him/her or oppose any action out of fear.

With variations depending on their affective bond with the direct victim, all family members have undoubtedly suffered the impact of the violations. Each is exposed to the individual factors that have been mentioned. The family as a whole suffers severe damage that, in addition to the individual traumas, affects the group's dynamics and internal relationships. For the person or persons who, as family members, assume the task of seeking justice, with all the vicissitudes that it implies,

34 CAT/C/49/Add.2.

the attitude of the other family members is crucial either to reinforce or to produce despair. That is why, in psychosocial accompaniment, the factor of the family must be taken into account in its deepest dimension and the entire family must become involved, insofar as possible.

Collective factors

Stigmatization

In addition to the adverse effects resulting from attempts to validate the right to justice, the next of kin are exposed to social stigmatization in their communities, at their places of work and even in circles of friends and relatives. Many consider the acts that victimized them as a motive of suspicion and distrust, thinking that “there must be a reason.” Stigmatization sometimes comes from the mass media, which quotes persons who are recognized as opinion-makers or members of the political or governmental elite. These attacks on the credibility of the social, political, ethnic or community groups to which the victims belong, or belonged in the past, are intended to degrade and de-legitimize their revelations about repressive patterns. They even serve to justify the persistence of human rights violations.

These intentional acts to misinform are another modality for victimization and re-victimization, which are accomplished by the dissemination of the justificatory and propitiatory stigmatization of entire social and political groups.

If the victim is a sympathizer of a political party, the detrimental actions that may be taken against that party and the country where it is based create a negative atmosphere for the construction of democracy. The possibilities of dissidence, critical debate, pluralistic expressions of participation and political action that are part of democracy are then seen as illegitimate and dangerous attitudes that justify ignoring and violating fundamental rights.

Experiencing similar situations and confronting obstacles and stigmatization in seeking justice are part of the context that promotes befriending the next of kin of other victims. Initially, those encounters take place when the next of kin submit their individual claims to the authorities. But later, as they begin to identify a common cause, they find reasons to form active groups and join efforts to seek solutions and support each other in trying to understand what happened and to be able to elaborate their pain.

Community support

The attitude of the community to which the direct victim and the next of kin belong (neighborhood residents or persons living on the same street, work or school colleagues) is also a decisive factor, which may go from distrust and rejection to support and solidarity. It is vitally important, through psychosocial accompaniment, to help the next of kin confront the first possibility and to understand its causes; the latter, however, is a favorable factor that strengthens and protects them.

Institutional and social factors

There are domestic and international institutional and social settings that contribute to the victim's next of kin becoming social actors.

State agencies

Depending on the political context, public agencies in some countries, such as the Ombudsman, certain judicial bodies that respond positively to claims and governmental agencies that aid victims help the next of kin to find more meaning to their actions and to seek legal and other assistance. They also serve to exact more effective responses from those agencies through collective and organized activities.

In countries that are making a transition to democracy or are in a state of post-conflict, next of kin seeking to organize themselves as social actors find ways of pressuring the State into a more consistent handling of rehabilitation and reparation programs to include psychosocial support, symbolic reparations and guarantees that the events will not be repeated. Judgments of international courts are decisive in making the demands more effective.

Social organizations

Trade unions, political movements and associations of minorities that have also suffered persecution and repression, as well as local and foreign associations of victims have been a source of support, advice and training for the families.

National and international human rights NGOs and those providing legal assistance and humanitarian aid merit special mention since they play a fundamental role in orienting and supporting victims and their families, helping them to form

their organizations, thus increasing their possibilities of becoming social actors. Those organizations and their members have suffered systematic persecutions in the past and continue to suffer them in many Latin American countries as a result of their human rights work. The most noted of their members have in turn been victimized because of their solidarity and their commitment to provide accompaniment to the victims' next of kin; this has been the case particularly during prolonged crises involving human rights, as in Colombia, or during fragile moments of political transition to democracy, as in Guatemala and El Salvador.

Judicial scenarios and international human rights norms

It is important to note the contrast between the national and international mechanisms that provide access to justice. On a national plane, while some State sectors and certain economic, social and political groups are in power, they themselves customarily promote or directly incur in violations. The mechanisms of justice only serve their interests. In the face of those circumstances, only international organizations, in spite of the weakness of their means to pressure the States, have been able to adopt binding instruments. These organizations are sufficiently capable to exert independent political pressure and can achieve significant results in terms of justice and reparation in specific cases.

Thus, given the ineffective national mechanisms, accessing these international organizations is an option that gives hope to many of the victims and their next of kin in their efforts to stop, at least partially, the abuse of power that threatens the citizenry of their countries. That is why it is fundamental to strengthen the alliance between victims and their legal defenders and enrich it with psychosocial assistance to facilitate and strengthen the process of becoming social actors, instead of them being reduced to a role of simple pawns in the judicial process without any consideration for their emotions, needs, fears or capabilities; as a simple functional element for juridical arguments and techniques.

Extra-judicial scenarios

There are also extra-judicial actions to acknowledge and reveal the truth, beginning with an extensive search initiated in the national judiciaries, but due to the frustration with the courts, resort is sought through the active pressure through solidarity movements, public demonstrations and mechanisms of public denunciation, such

as the notable case of the Madres de Plaza de Mayo in Argentina.

Some examples of extra-judicial actions are the *Funa* in Chile and the *Escrache* in Argentina, which are mechanisms used by the victims and their families to denounce peacefully and publicly those responsible for repression who remain under judicial and moral impunity.

Psychosocial support

The aforementioned factors may produce positive or negative effects on the reactions of the family to the events and, therefore, on its attitudes regarding the available options to seeking justice. Confronting pain, mourning, fear, stigmatization, re-victimization and re-traumatization all imply a difficult decision-making process in the midst of suffering. Psychosocial support is invaluable in this process to encourage the transition of family members into becoming social actors, but it should be clear that under no circumstances should that support attempt to force personal decisions.

The families of victims of political violence are conscious of the difficulties that they must overcome in their search for justice, but frequently they are not well aware of the emotional impact and other psychosocial consequences that come with the process, which may affect their ability to continue their efforts.

The tendency to blame the victim (stigmatization) undermines the vindication of rights because aggression is interpreted as an act of punishment that was provoked by the victim him/herself. In addition to the inefficiency of the judicial system and the omissions and even the hostility of government employees (re-victimization), it may discourage the next of kin from continuing their efforts to clarify the facts and identify those who were responsible.

If there are also threats and harassment, as is frequently the case (re-traumatization), and the family members perceive that their actions have scant chance of being successful and that they will require prolonged and exhausting efforts, it is possible that they will abandon their attempts. They may even opt for a passive attitude from the start, subjecting themselves, much to their regret, to enduring their unresolved mourning in silence and abandoning the search for justice, submerging themselves into a solitary effort to put up with the pain and to try to forget what happened.

Such attempts are, however, fruitless, because the lack of clarification, the forced silence and the continuing impunity generates bitterness, isolation, loss of self-respect, sentiments of guilt and, in general, a deep and persistent state of emotional suffering.

Family members of tortured persons who have sought the support of organizations providing psychological assistance have mostly shown feelings of despair, severance of projects of life (particularly in the case of adolescents), difficulties in finding themselves, fragility in the family structure, persistence of mourning within the family that is transmitted from generation to generation, continual states of anxiety and depression that reappear on particular dates or are produced by external stimuli and a depletion of the energy level necessary to maintain a constant state of alertness and vigilance. The insecurity and exposure to situations that the adult members of the family are incapable of resolving, even if they wanted to, create in the children a feeling of a lack of protection and self-esteem. There is a high prevalence of women (mothers and wives) who assume a protagonist role in seeking information and denouncing the situation surrounding their family members, which implies an excessive physical and emotional burden (Osso and Wurst, 2003).

The emotional suffering of the next of kin must be considered and understood by those who interact with them during the judicial processes. Whether litigants, lawyers representing human rights bodies, Commissioners or judges, they must be sensitive to the family members' reactions, which at certain times might appear to be extreme or inappropriate, but they are merely an expression of their psychological condition.

Providing psychosocial support makes it possible to protect the family members from re-victimization and it helps them identify personal and organizational resources to continue their struggle beyond their individual vision of what they consider to be "their case." This is how they begin to add a social and political dimension to their search for justice. Thus, it must be more than simply an act of "therapeutic" support, since otherwise it might result in a new type of re-victimization.

Professional attention to torture victims must tend to provide a comprehensive reparation so that they do not feel defenseless and inhibited in their personal and social resources and capabilities to carry on with their lives. A constant level of concern to provide reparation and to prevent re-victimization must also include an understanding of the genesis of political repression. In that regard, Lesser suggests that 'In Latin America a process of scientific victimization has been inflicted on those who have suffered the impact of repression, in referring to their individual experiences as a disorder ... in such a way that a socio-political act of power has become an individual experience' (Castaño, Jaramillo and Summerfield, 1998).

The proposal to avoid victimization is based on a therapeutic focus that “goes beyond the therapist-patient relationship and is based on the premise that in order to overcome damage a person must develop the ability to retake control of his/her life. The objective of therapy must therefore be the elaboration of suffering through a dialectic relationship between the desire to overcome and the internal transformation of suffering and the persons’ potential to transform the conditions that caused the suffering. In other words, the objective is that the person restart a project of life and have access to the different spheres of social practice by assuming a commitment with society and accepting the responsibility of transforming it” (Vela, 1968); that is, by beginning the transition from victim to social actor. Adequate and comprehensive support from the family will foster a greater degree of control over the situation and more autonomy when making the decision to defend one’s rights.

Like comprehensive assistance, psychosocial accompaniment includes therapeutic interventions to aid emotional recuperation, starting with the identification of effects such as fear, internalization of guilt, impact on the family and on the project of life, as the rupture of social networks. Regarding the family, it helps to “attempt to effect a change that will permit individuality and personal development by integrating pain and deprivations through the liberation of those harmful ways of relating that arose as means of defense and protection against a life trauma.” Socially, accompaniment permits “revealing the truth and impunity, establishing new types of supportive relationships that will not only serve to repair the damage but also to promote human development” (Resczynski and Seeger, 1996).

In summary, the basic objectives of psychosocial accompaniment are to help the person achieve personal recognition as an individual with rights and to identify personal needs for reparation, as well as to provide support in the reconstruction and strengthening of the organizing skills and social capabilities needed to fight against impunity through the many stages of the judicial process.

This may contribute significantly to help the person emerge from isolation, to overcome the painful experience as something that was private and to feel encouraged to begin to seek justice, which may not only contribute to vindicate the person’s own case, but may also contribute to the task of overcoming impunity and defending the rights of all other persons.

Psychosocial accompaniment must be extended, as is now being attempted by some specialized NGOs, to victims and families who are involved in seeking justice in each country; that is, during the judicial processes because it is necessary to avoid

the re-victimization that may result from those processes. It must also be articulated and complemented when the cases reach international courts (after the exhaustion of domestic legal remedies and the resulting exhaustion or depletion of the emotional resources of the victims and their families) through comprehensive assistance during those processes, within the same clear model of the recognition of impact, of the right to obtain reparations and the reparatory value of the judicial process.

From that perspective, accompaniment is an important factor to protect and strengthen the victims' next of kin in their transition to a role as social actors, which is a fundamental achievement in terms of symbolic reparation and the reconstruction of projects of life.

What does becoming a social actor mean to family members?

The transition of the next of kin to the function of social actors is a process that implies transcending what is individual to developing collective proposals and responses, by means of which encounters with others who have suffered similar acts lead to an understanding that their cases are the result of systematic patterns of human rights violations and sustained and planned practices.

The positive effects of joining to seek clarification and justice promote the organization and transition of family members into a role as social actors. They begin to collect information, share possibilities of help and distribute tasks to optimize their available resources, thereby discovering ways of exerting collective pressure on the authorities and bringing their situation to the attention of their communities. Parades, public events to make the population sensitive, political rallies, hunger strikes, public sit-ins and issuing bulletins are all concrete results of organizational processes that have a greater impact than individual actions.

This awakening of conscience, arising from pain and personal experiences, is a motivation that encourages them to keep working for the cases of others, regardless of whether justice is achieved in their own cases. Collective actions are deemed to be the most effective way of achieving justice and, as the process continues, of revealing the true character, origin and intention of the inflicted acts and they constitute a fundamental part of the judicial and political arguments needed to support the claims of State responsibility. That is how the potential connection between legal defense and the opportunity of exercising political influence is established, so that, by using organizations of families, demands may be made for new laws and measures to condemn certain practices and that individual cases cease to be considered as

isolated issues. In this way, the painful experiences of the victims and their families provide to humanity basic arguments that enrich the jurisprudence on fundamental rights. In Colombia, for example, the practice of forced disappearance that was denied by the State, in spite of the growing number of denunciations, was finally typified as a crime after eleven years of persistent pressure from family members on the legislative bodies and after having identified it as a systematic practice that had common characteristics in all of those cases.

There is a final and definitive reason for the commitment of these organizations to the cause of human rights...: the need to materialize symbolic mechanisms of reparation in mourning processes. That individual and collective experience has forged convictions, moral principles and values within the group, as well as political-ideological positions in favor of their own struggles. They have achieved a full self-perception of their meaning as an inter-subjective, counter-hegemonic space in a world in which every day the doctrinal basis that will be used to base the post-dictatorship societies is at stake.³⁵

There is a special meaning for the families in becoming social actors as their contribution to full reparation. The act of taking joint and organized measures, after having identified the harm suffered and the common needs and passing from an isolated experience to a collective one, reinforces these persons as they confront destructive impacts.

Forming groups with other persons “also allows re-discovering a sense of continuity of one’s self, when the individual is going through an experience of rupture due to the loss of support from customary social and institutional groups. In other words, forming groups provides protection from feeling defenseless, despair and fear of losing the psychic structure. It also creates conditions to enable reciprocal learning on the part of the different members of the group and on the part of all of them jointly, regarding the contextual conditions in which this bonding may be present” (Edelman and Kordon, 2000).

Beyond the undoubtedly practical value of collective and organized actions in terms of exercising pressure and making public opinion more sensitive, they generate a truly meaningful effect since “(a)n organized social response in the face of traumatic situations and social crises plays a fundamental role in symbolic reparation, as well as in its personal and collective elaboration.”³⁶

35 Personal communication by electronic mail with Carlos Madariaga Araya, Psychiatrist of the Center for Mental Health and Human Rights (CINTRAS), Chile.

36 *Ibid.*

Carlos Madariaga points the way in which family organizations “in Chile today lead the battle that a counter-hegemonic segment of civil society is waging against impunity; their untiring and stubborn attitude of not renouncing this imperative task has resulted in processes that continue in full operation against the most prominent criminals of the dictatorship, including Pinochet himself.”³⁷

One example among many in Latin America of how family members of victims organize and transform themselves into social actors through the interaction of the above-mentioned factors is the creation of the Association of Family Members of Detained-Disappeared Persons (ASFADDES) in Colombia.

Fourteen persons disappeared at the hands of a security agency between March 4 and September 15, 1982 according to investigations: twelve were National University students, one was a laborer and one was a peasant leader:

Led by two well-known defenders of human rights, Eduardo Umaña Mendoza, a lawyer, and Father Javier Giraldo, this group of family members joined together to seek information regarding their loved ones, which planted the seed of what is today ASFADDES. They were inspired by the experience of the Madres de Plaza de Mayo, in Argentina, who at the time were living through the final stages of the military dictatorship and its consequences.

[...] in view of the official silence regarding those who disappeared, the families were forced to find ways [...] With the help of Father Javier Giraldo, towards the end of 1992 the families first met and through an exchange of their personal experiences they began to find connections and relationships between the victims, the events and the actors who took part in the forced disappearance of the students.... At the meeting, the families proposed joining efforts to seek those who had disappeared and to denounce such actions (ASFADDES, 2003).

Beginning with those initial encounters, the families began to establish concrete mechanisms for public denunciation (weekly rallies with photographs of those who had disappeared and posters demanding their reappearance), while jointly pursuing legal claims. They called for the solidarity of students, activists, members of labor unions and political movements, as well as international organizations, creating an awareness that forced disappearances in Colombia were part of a strategy of repression, control and subjugation, as a form of grave and systematic crimes against humanity, that was also being carried out in other countries of the region.

37 *Ibid.*

Organizations of families of detained-disappeared persons arose in each country of Latin America in which such crimes had been committed in a systematic way and were structured as regional bodies: in 1981 the mothers, grandmothers and wives of disappeared persons in various Latin American countries met in Costa Rica, together with lawyers and human rights activists and organizations, to establish FEDEFAM (Latin American Federation of Family Members of Detained-Disappeared Persons).

The psychiatrist Carlos Madariaga has also written that

...in Chile the beginning of the social and political involvement of family organizations was a factor of such importance that it signaled the beginning of a social and political reaction to the military dictatorship, beginning with the first hunger strikes of 1976, at a time when the entire population was paralyzed with terror. These groups were established to reveal the truth and achieve justice for the crimes committed by the dictatorship; their determination resulted in the intense and growing social protagonism of their organizations, able to project themselves forcefully on the national plane and to convoke other civil society organizations to join their efforts. This intense commitment, at a very grave risk to their lives, may be understood in a very preliminary way as a response to the needs of the families to structure their mourning for the loss of their loved ones, first by searching for their bodies and then through the continuing struggle to have access to the truth of what happened and for the administration of justice. That is, this protagonism is a social expression of the efforts to obtain symbolic reparation for the losses, which are always obstructed by the context of impunity. What is exhausting in this process has been the existence of successive moments of re-traumatization in the groups, individually and collectively, which has caused a re-activation of the traumatic experiences and the bio-psychosocial symptoms that are related to it, as may be the case of the detention and subsequent release of the dictator (which happened in England), the negotiations, the recent Valech Report (the result of an incomplete study on torture in Chile), all of which have given rise to new mechanisms of impunity.³⁸

38 *Ibid.*

Impact of family members on human rights jurisprudence

It may be said that there is an active and mutual feedback regarding the actions of the next of kin within the international human rights systems, with respect to the UN norms and to the recommendations and decisions of the Inter-American Commission and Court. To the extent that family members have demanded justice, norms have been developed. The international procedures have helped to identify what reparations are necessary, which has led to jurisprudence. New norms and the judgments on reparations give family members and victims a greater meaning to their actions.

The expansion of the criteria that have been employed in the judgments on reparations has also been an important achievement since the Court has slowly recognized the broader damage to the families, including those which the Court has called “non-pecuniary damages” (which may included in the category of “psychosocial damages”) and it has recognized additional measures of reparation beyond payments of indemnification, such as symbolic reparations.

Claudio Nash points out that “recent judgments (of the Inter-American Court) have incorporated a new concept to the effect that ‘(t)he aforementioned moral damages may include not only the suffering and affliction caused to the direct victims and their next of kin, but also the detriment to values that are very significant for them, as well as alterations whose cost cannot be measured in pecuniary terms” (Nash, 2004).

The author continues that “...in the judgments on reparations in the *Bámaca Velásquez* and *Trujillo Oroza* cases, the Court established that ‘non-pecuniary damages may include the suffering and affliction caused to the direct victims and their relatives, detriment to values that are very significant for individuals, as well as non-monetary alterations in the conditions of existence of the victim or the victim’s family.’” He further comments that “(a)s we can see, the classical concept regarding affliction, whether physical or mental, has been expanded to include the idea of ‘detriment to values that are very significant for them,’ as well as other alterations that may affect the living conditions of the victim or the family. Therefore, the detriment to values would not be circumscribed to the mental affliction, but rather to a more objective form of measurement of the damage as an act that is *per se* capable of affecting the existing morale or, alternatively, the particular morale of a specific group.... This is how it is possible to establish the amount of indemnification in cases involving moral damages due to the violation of a fundamental right or freedom

that concerns a legal right other than life or physical integrity...such as the right of assembly and freedom of movement or of expression, among others” (Nash, 2004). There is also the possibility of demanding symbolic reparations for damages to one’s dignity, good name and project of life, as well as the right to participate in politics. Reparations for psychosocial damages caused to communities or groups would also have to be considered, as in the cases of violence that has been aimed directly against members of social or political movements or against leaders of ethnic groups.

In its November 25, 2000 judgment in *Bámaca Velásquez v. Guatemala*, the Court recognized the affliction of the family members and the effect of violence on the community to which the victim belonged as a source of reparation by concluding that the State had violated Article 5.1 and 5.2 of the Convention to the detriment of Efraín Bámaca Velásque, his wife, father and sisters. The Commission had alleged that Mr. Velásquez was the victim of forced disappearance, that he was detained clandestinely, his feet and hands bound and he was tied to a bed; he had received death threats and was subjected to acts of violence and physical abuse (torture) to punish him for participating in the guerilla movement and to obtain information on that group. The victim’s family members suffered intensely as a result of his disappearance, of the uncertainty caused by the lack of effectiveness of the domestic legal remedies, the obstruction and harassment by public authorities and for not being able to give his remains a proper burial, which had profound repercussions in the Mayan culture to which he belonged. All those actions constituted forms of cruel, inhuman or degrading treatment.

One example of how the Inter-American Court’s judgments have been broadened to include collective damages, in addition to those granted to individuals, and symbolic damages, in addition to pecuniary damages, is its July 3, 2004 judgment in *Molina Theissen v. Guatemala* regarding the disappearance of a child, Marco Antonio Molina Theissen, which occurred in 1981. The judgment included, among other measures of reparation, “a public act of acknowledgement of its international responsibility and of amends to Marco Antonio Molina Theissen and his next of kin in the presence of the highest authorities of the State; an educational center to commemorate the more than 4,500 children who disappeared during the Guatemalan conflict, with a plaque in remembrance of Marco Antonio; and the adoption of a genetic information system to facilitate the determination and clarification of the filiation of disappeared children and allow their identification by the Inter-American Court, in the case of the forced disappearance of Marco Antonio Molina Theissen.... In its judgment, the Court not only recognized the suffering and anguish caused by the loss of Marco

Antonio on the family, but also the frustration of the child's project of life and those of the members of his family" (CEJIL, 2004).

Bringing a case before the inter-American system is *per se* a source of reparation since it opens the way to overcoming impunity and contributes to strengthening respect for human rights. This is how specific cases acquire for the families a sense of meaningful social contribution. An appearance before the Court to present testimony and attend the hearings in which the family members may be interrogated by representatives of the respondent State, who will attempt to disqualify their arguments, implies re-living the pain and running the risk of re-traumatization. That is where the importance of a close and comprehensive psychosocial accompaniment resides, including psychological support, preparation for hearings and joint review of the legal strategy by the family members, the professionals providing the accompaniment and the litigant lawyers.

In conclusion

*Not all has been lost, as long as there are men and women
who continue to work for all of humanity and not only
for their country, their sect, their religion or their party.*

Hector Abad Gómez

Faced with the panorama of human rights violations that has prevailed in Latin America, organizations of victims and their family members have been a key element in the efforts against the perpetrators in combating impunity and in developing domestic and international norms aimed at typifying, proscribing and punishing those violations.

These achievements have been made possible through a process that transforms victims into social actors and in which individual vindication is transcended and collective vindication is achieved.

Through their actions, by which they have discovered that the joining of wills and the act of organizing themselves are the vehicles to obtain a greater capacity to make themselves heard, to demand their rights and to protect themselves against the risk posed by such actions, they become bastions of values, principles and ideals that are the foundation of true citizenship.

These are family members who were suddenly faced with acts of violence and atrocities, the occurrence of which had seemed impossible in their normal daily lives.

As they attempted to understand them, they began to discover the deeply hidden and sinister face of a system that, instead of providing protection, placed obstacles to their demands, hindered investigations, treated them as suspected criminals and failed to protect their rights.

Within that context, family members have acted within their organizations, which have been more effective in seeking truth, justice and reparation. Due to the very nature of the acts, which undoubtedly were the most sinister and horrendous crimes against humanity, and the impossibility for the direct victims to do it by themselves, it was necessary for the families of those who had been tortured, disappeared or executed to assume the task of seeking the truth and the vindication of the violated rights.

Even if the violent act was not directed specifically against the family members, they become victims, mistakenly called *indirect victims*, because the family relationship causes the impact also to fall brutally and profoundly on each of them and on the family structure. It should not be forgotten that the victim's environment (place of work, school, community organization, social or political movement) is also severely affected by those actions.

Without the actions of the families, many of the grave human rights violations that have reached the courts would have been forgotten and would have remained under impunity and the abuses of power would have been rewarded by the failure to punish the perpetrators.

In some cases, the persevering and brave activity of family members has allowed the prosecution of those responsible and it has put national and international pressure on the States to typify those abuses as crimes and to insist on the application of norms to punish them, once the legislation has been enacted.

The actions of family members are generally hindered by the inefficiency of the judicial systems, as well as the negligence of judicial personnel or their control by the perpetrators through intimidation or bribery. But above all, the family members must overcome the lack of political will of the governments, since those who control power and enjoy privileges are those who utilize violence and ignore human rights as a mechanism for domination.

That context of omission and impunity demands the utmost efforts by family members to assume the defense of rights, to seek the legal bases to support their demands and to go before international bodies to avail themselves of the pressure that those bodies can exert on States, given the lack of local guarantees. "The actions demonstrate that we as family members have been the ones who have pushed the

investigations and who have had to bear the enormous difficulties and obstacles erected by the State and to confront them every day, on the path of trying to find our disappeared ones and to obtain justice” (Association of Family Members of Detained-Disappeared Persons, 2003).

Given the arduous task at hand, from the beginning of the process family members become conscious of the need to join forces and to garner support from the progressive and democratic sectors of society and they also realize the importance of using the existing legal institutions to strengthen their claims. As the members of ASFADDES in Colombia have stated, “We as family members have worked assiduously, always within the law, because the passage of time and the events that have occurred have shown that results, however small, may only be achieved when the family members truly commit to maintaining a dynamic process and to leading it to seeking *truth and justice*” (Association of Family Members of Detained-Disappeared Persons, 2003).

Through their efforts, the victims’ family members very soon transcend what is individual and private and are able to perceive that the violations were not isolated events or meant to affect them individually, but rather they were policies of domination, whose strategies are intimidation and terror. That gives them a new identity and they slowly begin to visualize the victim as the target of orchestrated actions, within the contradictions of an unjust society. “In the course of the social practice, which makes demands on and appeals to the State, new social representations are constructed that re-define the meaning of what is traumatic and that enable the unraveling of the determining factors of each situation. The social representation of the *disappeared person, the protester, las madres de la plaza, the children, those who meet in assemblies* are all collective constructions that synthesize such practices” (Edelman and Kordon, 2000).

Transcending what is private leads to meeting other affected persons and to joining forces and thus an organization is formed around the vindications themselves, making it possible to visualize the reality of the violations and to arouse support from other sectors that advocate the struggle for a more just society.

This is how a social response exerts an institutional role upon society, contributing to the construction of a counter-hegemonic social consensus and simultaneously offering the individual psyche the possibility of building understanding.

Social practice is the starting point for the construction of new ideas and discourses. What began as a search for solutions to concrete problems develops into a re-definition of new models and collective ideals.

The Madres de Plaza de Mayo began by searching for their children and in time their movement installed in the collective conscience the ideal of justice and re-defined models regarding the role of women (Edelman and Kordon, 2000).

A fundamental contribution of family members through their social action is opposing and counteracting concretely and effectively the key objectives of political violence, which are reducing spaces for citizen participation, fragmenting society, creating a climate in which dissenting or proposing new ideas becomes dangerous.

By joining together to seek justice and demand respect for human rights, valiantly confronting the messages of horror sent by the perpetrators through the crimes they commit, family members transgress tacit prohibitions, they bring to light arbitrary behavior, they de-legitimize those who from a position of power promote impunity and, above all, they provide an example of dignity and solidarity and demonstrate that the actions of the citizenry can safeguard principles and values.

To the extent that the organizations of the family members become stronger and achieve results in recuperating memory, in obtaining acknowledgement for pecuniary reparations, as well as those that are non-pecuniary and symbolic but nevertheless very important, and in overcoming impunity, they strengthen the conscience of the citizenry regarding the importance of recognizing and respecting fundamental rights, the value of liberty and personal integrity, thus benefiting all humankind.

Recognizing that we are members of the human family requires maintaining a daily practice of rescuing our own mental autonomy, taking jealous care of our capacity to choose. Within that struggle to preserve our autonomy lies the ethics of social responsibility that emerge from the knowledge that our mind is a collective attribute, as pointed out by Bateson (1979), and that it inevitably includes our fellow human beings and that the others are a part of our individuality. Every act of violence means suffering for each and every one of us. That realization, which could be given an apocalyptic overtone, is essentially optimistic since it tells us that it is in our hands to do something about it: it enables us to act (Sluzki, 2002).

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**The role of the State and NGO's in
Chile: mental health care for persons
affected by human rights violations**

This article was prepared by María Isabel Castillo Vergara, founding Partner and President of the Latin American Institute for Mental Health and Human Rights, an agency with experience in psychotherapeutic work, clinical research and assistance to groups of Latin American exiles in Mexico. She was assisted by María Inés Aguilar, Gloria Cruz, Margarita Díaz, Marcia Escobar, Elena Gómez, Juana Kovalskys, Germán Morales, Isabel Piper and Jacqueline Riquelme. This article also includes contributions from the interdisciplinary team of the IIHR Project “Comprehensive Attention to Victims of Torture,” as well as from the editors of the publication.

Introduction

In the countries of Latin America that have been victimized by dictatorships and acts of State terrorism, NGOs dedicated to mental health have generally assumed the task of caring for and repairing the *sequelae* of the harm inflicted upon the citizenry.

This article will present the singular experience of a State assuming that task: Chile. The post-dictatorship governments of that country took it upon themselves to confront, denounce and repair the harm arising from the human rights violations perpetrated between 1973 and 1990.

The Chilean experience marks a Latin American precedent in the field of psychosocial reparations by the State. The commitment that was assumed by creating and launching the Program of Reparations and Comprehensive Health Care for Victims of Human Rights Violations (PRAIS) was a transcendental advance in recognizing the need and the importance of establishing a psycho-juridical approach to treating cases of human rights violations. The program was not, however, free of obstacles and a search to redefine it.

This document presents a study of the socio-political context in which PRAIS was designed, created and implemented in 1990, as well as an analysis of its evolution, its challenges and contradictions.

The Chilean case is not only a reference point for a discussion of the State's role as being responsible for the direct care of victims of human rights violations, but also regarding the commitment to strengthen public policies that promote processes of responsibility and guarantees for comprehensive and high quality care.

The last section will provide a general view of experiences in other Latin American countries in the fields of mental health care and human rights.

Non-governmental programs for medical, social and psycho-therapeutic care as a response to State violence in Chile

Socio-political context

After the coup d'état, all political and social activities that could be suspected of being a form of opposition to the military government were banned. They became clandestine, which meant a high risk for the people and organizations involved in them and the activities were in no way connected with the State. This led to the development of diverse initiatives to reorganize the local power structure and to the creation of new ways of doing politics.

Beginning in the 1980s, the more progressive and committed democratic sectors set in motion policies to reconstruct the social fabric, defend human rights and denounce violations thereof.

Numerous NGOs were created in that framework, promoted by Chileans in exile and supported by international solidarity and international human rights organizations. The Catholic Church in Chile provided auspices and protection, lending its facilities and the coverage provided by its institutions for the development of activities that, given the political context, were clandestine but that little by little paved the way to becoming official.

There was a certain affinity and political trust among some organizations, which allowed the establishment of support networks to defend the persecuted population. The objective was to provide protection to workers, defend their rights and contribute to satisfying their basic needs, as an alternative to the State. Thus, research, interventions and seminars were conducted in areas such as economics, labor, health, peasantry and agrarian issues, ethnic minorities, education and women, among others. Publications, such as newspapers and magazines, initially circulated clandestinely and then more openly.

The year 1992 saw the birth of diverse organizational modalities. In the first group were the Organizaciones Económico Populares (OEP), the purpose of which was to develop communal forms of subsistence in low-income sectors; the second group was the Popular Education Networks, oriented to the subjective transformation and socio-political reactivation of those sectors and, finally, community development programs, devoted to resolving social and health problems. While their assistance roles were certainly meaningful, their most important contribution was to confront social, political and cultural marginality and to promote active and introspective actions to maintain or recuperate the condition of social subjects.

NGOs and other alternative institutions were part of the second group, working to alleviate the mental and physical consequences of the systematic violations of human rights of citizens who were directly affected, as well as of their families. This task, which was carried out during most of the dictatorship, led to the creation of organizational models that later, with the advent of democracy, significantly contributed to the social and political restructuring of the country. Each of these organizations centered their interests on different dimensions of the problem. Some devoted their efforts to documentation and research; others to reflection and education directed to diverse social sectors. Some directed their activity to social, medical and psychological assistance; six of them devoted themselves to health care and assistance.

In spite of these differences, the principal role of most of them was to record and denounce the situation of violence. The role of the Vicariate of Solidarity is worthy of note and as the Foundation of Documentation and Archives it received recognition by UNESCO as part of its Memory of the World Programme. Those records were fundamental to the proposals for reparation presented by the government of Patricio Aylwin in the fields of education, health, culture and institutional strengthening.

These entities, which had been created and sustained by intellectuals and professionals who opposed the military regime, were the vantage point from which it was possible to have a critical view of the policies of the State. The fact that they had access to their own private resources allowed them to create programs of social intervention that were independent and represented an alternative to official ones.

Once the country began its return to democracy, the NGOs and other civil institutions offered their accumulated experience to the government and the latter, taking advantage of their proposals, undertook the task of officially recognizing victims of human rights violations and repairing the harm inflicted on them.

The particular experience of Chile, whose citizens endured for many years a policy of terrorism intended to silence every attempt to denounce violations, proves that even in the midst of adverse and threatening conditions, it is possible to create spaces for solidarity and support for the victims of human rights violations.

The special approach the groups used and the diversity of the professionals involved in the task permitted their actions to be defined as interdisciplinary projects and they constituted a valuable starting point for a subsequent debate on the psycho-juridical assistance to victims of human rights violations.

The NGOs became part of the democratization process and took on the role of implementing the social policies of the State, but this implied the loss of independence and their subordination to the State's own objectives.

Beginning in 1990, and during the presidency of Patricio Aylwin, known as *the transition to democracy*, NGOs played an active role in the democratization and reconstruction of institutions that had been dismantled during the military government. But their role diminished as the professionals began to join State institutions, convinced that many of the tasks that had been carried out by social organizations during the dictatorship should be returned to the programs of the new democratic government. This weakening of the NGOs continued as the contributions of the international community were re-directed to strengthening the new democracy.

Bengoa states that during the transformation the State delegated to the NGOs certain functions as "executors of public policies, which has caused an increasingly critical situation and has led many of the organizations to become consultants, not having their own opinions and having to adapt to constant changes" (Bengoa, 1996, p. 21).

This weakening, however, did not prevent their cumulative experience to be transferred to the new institutional democracy. One example of such synergy was the support, supervision and training provided by the professionals of those organizations, whose experience dates back to 1970, to the Program of Reparations and Comprehensive Mental Health Care for Victims of Human Rights (PRAIS), which has been carried out since that time through the external consulting and training activities that have been laying the bases for the social policies of the government.

PRAIS, created in 1990, is the result of various public policies that were set in motion to provide aid to victims. It is important to reconstruct the scenario in which that governmental program was established; it was born out of the cumulative experience of the Latin American Institute on Mental Health and Human Rights (ILAS), one of several NGOs that provided social, medical and psychological assistance to victims of human rights violations during the military dictatorship and it was also one of the creators and facilitators of the PRAIS.

Through the establishment of this program and with the support of the NGOs that specialized in this field, the State assumed the responsibility of assisting the victims and repairing the harm inflicted upon them once democracy had been restored. These actions became an explicit recognition of the need to repair social

harm through State institutions and to accept that the victims' care should not depend exclusively on the solidarity of the NGOs or on the international agencies that provided their financial support.

With the advent of democracy, different social sectors claimed that it should be the State that carries out the reparations, which until then had been assumed by NGOs. In response, the Government of Coalition of Parties for Democracy set out to "assure respect for fundamental human rights and prevent violations of such rights, through the strengthening of the constitutional and legal status of their promotion and protection, by developing a culture of respect for human rights and, secondly, by resolving the problems associated with violations, which have been pending since the military regime" (Lira and Piper, 1996).

The reinforcement of the legal constitutional status of human rights required that the legislation be adapted to comply with the Universal Declaration of Human Rights, the American Declaration and other complementary international instruments. Consequently, the American Convention on Human Rights or Pact of San José was ratified by the Government of President Aylwin in 1969. In addition, reservations were withdrawn from the Conventions on Torture and the Optional Protocol to the UN Human Rights Covenant, the UN Convention on the Rights of the Child and Additional Protocols I and II to the Geneva Conventions on Protection of Victims of International and Non-International Armed Conflicts were ratified. Bills were submitted to the National Congress to abolish the death penalty (enacted in 2002); for changes in procedures to ensure the right to due process and to reinforce safeguards to human rights in the penal code and to introduce limitations to incommunicado detentions.

An important effort was made to implement an internal legal reform and international instruments for the protection of human rights were ratified in response to psychosocial needs. These actions manifested the political will of Chile, accomplished through a complex process of legal adjustments to repair the harm caused during the dictatorship. This will for justice by the new democracy had to confront a complex political context due to the impositions and remaining grip of the dictatorship.

Policies of understanding to resolve situations of abuse of human rights, in the context of political contradictions

The Government of the Coalition accepted the conditions imposed by the military government and maintained the Constitution -implemented by the regime in 1980, which implied acceptance of the *leyes de amarre* (legal and political restrictions on political competition): Senators appointed by Augusto Pinochet; Binomial Electoral Law;¹ appointment of the Heads of the Armed Forces by a Council composed of the Heads themselves, the President of the Supreme Court, and the Presidents of the Chambers of Deputies and Senate. Accepting this juridical context was one more obstacle to the free exercise of democracy, since the armed forces continued to be involved in politics.

There was a contradiction between the obligation to maintain the system imposed by Pinochet and the proposal to implement a solution to bring justice and reparations to the victims of human rights violations. One of the biggest obstacles to overcoming this situation was the Amnesty Law of 1978. This Law imposed limitations on judicial investigations and absolved guilty parties from crimes against human rights committed up to April 1980 and it blocked any modifications to the Constitution of 1980.

In spite of that context, the Chileans agreed that reconciliation and the search for truth should take priority, even though the actual fulfillment of justice was seen as something remote and it led President Aylwin to propose the scheme of “justice to the extent possible.”

It was also considered essential to provide social, physical and psychological assistance to direct victims of violations and their families. A process was developed to allow the State to assume responsibility, at the psychosocial level, even under the premise that recognized that the harm could not be fully repaired but that a true effort would be made to bring about better justice.

1 Law 18,700 (Binomial Electoral Law) forces the strategic coalition building among the different political parties. Unlike a representative system, this means that each candidate join the coalition. The coalition that obtains the most votes results in the election of the names of that list, although there may be a more representative candidate on other lists with a greater number of votes. The intent of the law was to cause a permanent pseudo-equilibrium among the hegemonic political tendencies in the Congress, although they were not representative as in a democratic election.

The government took several measures to promote the search for these social truths and to prepare a proposal to grant reparations to the victims and their families. One such action was the creation of the National Commission on Truth and Reconciliation (1990), which after receiving the testimony of victims, exposed the citizenry to the unequivocal reality of the political repression: the destroyed lives and bodies of detained and disappeared persons, as well as the harm to their families. A series of sectorial policies were also defined to confront the problems arising from the human rights violations. These were mainly concerned with the social and labor insertion of persons returning from exile, for which the National Office for Returnees was created in 1990, as a branch of the Ministry of Justice.

Attention to the problems derived from human rights violations that resulted in death gave rise to the creation of the National Corporation for Reparation and Reconciliation, which collected the claims received after the Report and classified them according to the criteria established in the General Law on Reparations. That law established social benefits for the families of the victims (the executed and disappeared), such as scholarships for their children and a guarantee that they would have access to education and training in different fields until the age of 35. The Ministry of Education implemented educational programs on human rights and joined several NGOs in activities designed to reaffirm a democratic culture centered on respect for human life.

The Chilean experience responds to the duty to repair the harm caused to individuals as a result of serious violations of their rights. In that sense, the Inter-American Court of Human Rights has stated that any violation of an international obligation that has resulted in harm generates a new obligation: that of adequately repairing the damage caused and effectively ceasing the *sequelae* of such violation.

There exist, however, certain reparatory measures for damages in the Inter-American system that, to a certain degree, allow restitution of the harm caused to the direct victims, their families and the communities where they lived, according to the circumstances resulting from the violations; these are mainly psycho-social restitutions and although that is not the name utilized to describe them, they are part of the measures of satisfaction and guarantee of non-repetition included in the Court's judgments. They are non-pecuniary measures and have no public repercussions; their purpose is to order an investigation and punish those responsible, as well as to recognize the victims' dignity and avoid a repetition of the violations.

Reparations of a psycho-social nature offer a multiplicity of options, since, depending on the characteristics and circumstances of each case, those that will be

chosen will be those that most conveniently achieve a *restitutio in integrum*, to the extent possible.

Program of Reparations and Comprehensive Health Care for Victims of Human Rights (PRAIS)

The actions undertaken by the government of President Aylwin in favor of justice were directed towards a comprehensive understanding of the context in which the violations and subsequent reparation claims occurred. The purpose was not only to modify domestic laws, but also to assume public responsibility for the acts committed and to provide spaces and resources for the psychic and social reparation of the social damage that had been inflicted.

It was recognized that the terrorist crimes committed by the State produced psychological *sequelae* that cannot only be charged to individuals since they are a consequence of a social and political act and it is the State that is responsible for the reparations.

The NGOs' role was crucial in reinstating the victims to their rightful public, political and social place and to put an end to a vision that had been strictly individualized. That may be considered a valuable precedent for the current actions of the Inter-American Court, which also seeks an unrestricted and impartial focus.

Taking into account the NGOs' experiences, the National Commission on Truth and Reconciliation recommended granting comprehensive physical and mental health care to alleviate, modify and prevent the consequences of human rights violations on victims and their families. The recommendations were based on the concept of the social and psychological harm experienced by the victims and the need to grant political, social and psychological reparations.

Referring to the consequences on the health of the victims, the Report stated that:

From the point of view of health, we have received significant opinions. They tend to point out a concern for the health of the victims' families and they recommend that they be given special care, in view of the consequences that the violent acts have had on their health.

Specialized organizations have pointed out that the physical and mental health problems of the victims and their families have special characteristics, which are

different than the illnesses affecting the general Chilean population that was less exposed to these types of violent acts. (Report of the National Commission on Truth and Reconciliation, 1991, pp. 830-832).

The establishment of PRAIS, aside from being a signal of tangible social commitment to the process of reparations, guaranteed effective health coverage for everyone affected in the country.

To formulate this project, the Government convoked the NGOs that had cared for the victims of human rights violations during the dictatorship. The level of initial cooperation facilitated the implementation of certain tasks. Participating bodies during this stage were the Vicariate of Solidarity, CINTRAS, FASIC, ILAS, PIDEE and CODEPU. Later, the institutional relationship was maintained principally through ILAS, which provided training to professionals who began their social work with victims and through the supervision of already-formed clinical teams. The objective was to guarantee the quality of service, since it required specialized personnel with proper sensitivity to provide the necessary comprehensive care.

This combination required the organization of seven multidisciplinary teams attached to the regional Health Services. Each group had a general practitioner, a psychiatrist, one or two psychologists, a social worker, a nurse, a nurse's aide and a secretary.

Design and implementation

The justification for this initiative is described in a document published by the Health Ministry in 1994, which stated that:

The Program of Reparations and Comprehensive Health Care for Victims of Human Rights Violations must be considered an initiative that is clearly integrated into our daily work as health workers. We must understand the profound meaning of this program, under which the traditional Health Services provide a heretofore unapplied dimension, in spite of it being the essence of its institutional existence... The people to whom it is addressed have been harmed by cruelty and violence. That cruelty and violence were inflicted upon them by other men who found a suitable environment to put in practice such sentiments with a ferocity that is the shame of today's Chilean society. Aware that we are referring to problems that can only be explained in a sick society, we have also aimed to cooperate in Chile's recovery from

this drama, which is an expression of the gravest moral crisis faced by the country in all its history.

On the other hand, the introduction of the program into the health establishments and particularly into the doctors' offices or hospitals that receive it, points to the explicit objective of making our health workers understand that above and beyond their legitimate ideological differences, they must give this program the same or even greater attention than is expected of them when they carry out their normal duties.

This is how we have attempted to rescue our fundamental mission: To do good to our fellow human beings without exclusion and to contribute to bringing the Health Services to a large segment of the population who for many years regarded us with distrust and fear, understandable in those who perceived a lack of sensitivity on our part given the concrete drama in which they lived (Ministry of Health, 1994).

The foregoing quotation illustrates the method that was established by the State to insert the reparatory process into its institutions, thereby assuming the task that had been undertaken by the NGOs.

Objectives

The following concrete objectives were established to implement this process:

- Provide comprehensive physical and mental health care to those who had been most severely affected as a consequence of violations to their human rights.
- Extend the State's actions to provide services to those who had been most harmed by the violence and repression.

In like fashion, the following strategies were designed:

- Publicize the program in institutions, organizations and the community in general.

- Interact permanently with the organizations and institutions that represent the beneficiary population.
- Insert the program progressively into the technical and administrative levels of the Health Services.
- Develop a methodology of care in line with the health problems of the beneficiary population: comprehensive care, quality care and a family focus.
- Consolidate the concept of teamwork with an interdisciplinary focus.
- Provide permanent training to each team involved in the Program.
- Design and validate tools for record keeping and evaluation.
- Develop an advisory process to monitor and supervise the teams.

By definition, the beneficiaries of this project were the persons and families most severely affected by human rights violations during the military regime. The families of disappeared persons, relatives of executed politicians and families whose members were detained and tortured and persons or families returning from exile have been added to this category. The team may also evaluate other situations, such as those who were exonerated for political reasons.²

To define the selection criteria for beneficiaries, the *Norms for Selection of PRAIS Beneficiaries* were established. When selected, the affected persons and/or their immediate relatives are awarded a “credential for beneficiaries of PRAIS,” which enables them to have free access to medical attention in the public health system.

This action is enormously relevant, in psychosocial terms, since it implies giving an identity and public recognition to a person whose human rights have been violated and who, therefore, was a victim of violence directed at abolishing his/her psychological integrity. Being a beneficiary of the program means social recognition as a victim by the aggressor, which in this case is the State. This is symbolically the first step in the reparatory process.

2 Those exonerated for political reasons or exonerated politicians were the group of persons who were fired from their work for their ideology and militancy.

The system of reception of the consultants, the type of care provided by the PRAIS teams or the referral to specialists and the evaluation controls were designed by the consultants with the purpose of expediting the beneficiaries' access to the necessary health services. The model for this type of care seeks, beginning with the initial consultation, to provide a comprehensive care plan for the patient. This implies an evaluation of the physical and mental health of the patient and his/her family; the relationship between the reason for consultation and the repressive situation that was suffered; the motivation leading the person to seek consultation at the precise moment it is sought and the surrounding factors that affect or may affect, such the family's socioeconomic situation, or its chronological life cycle, the occurrence of public or private events related to social or political factors that might possibly affect some or all the members of the family. These aspects are particularly difficult for the families of the detained and disappeared persons who, having been so emotionally affected by news of judicial proceedings, discovery of human remains, or other related findings, are driven to seek assistance.

From its beginning, PRAIS has attempted to create spaces for the formation and supervision of its teams to prepare them better to face the difficulties and obstacles that come with their work. PRAIS has, therefore, conducted training sessions and seminars designed to meet the needs of each particular project.

Types of teams and beneficiaries of PRAIS

The majority of PRAIS teams are comprised of five professional members: social workers, psychologists, psychiatrists, nurses and medical doctors, plus secretaries, paramedics and administrative personnel. Since many of them had never before worked with persons subjected to human rights violations, the formation and training conducted by ILAS during the first years of the program (1990-1996) was fundamental. The experience transmitted by the professionals of this NGO, particularly with respect to their model for therapeutic intervention and their work of permanent supervision, permitted the creation of a more adequate working space for specific services.

The beneficiaries are relatives of detained, disappeared and persons executed for political reasons, former political prisoners and tortured persons, families of persons returning from exile, with or without other types of repressive affectation, and employees of public institutions or companies who were exonerated for political reasons. The type of beneficiary corresponds to the rules established by PRAIS and

the benefits provided are extended to those directly affected and their immediate families.

Supervision and training of teams

During those years ILAS carried out joint training sessions for the Program teams, especially through clinical workshops that provided training in psychotherapeutic techniques to individuals, groups and family members.

The objectives of these advisory and supervisory activities have been to:

- Stimulate the formation of multidisciplinary teams, taking into account the difficulties of working with severely traumatized patients.
- Provide training in the model of psycho-therapeutic care developed by ILAS.
- Evaluate the validity of this model within the Health Services and make the necessary modifications to adapt it to the circumstances.

The entire team, professionals as well as administrative staff, participated in training sessions, since it was thought that each of them played a significant role in keeping contact with the beneficiaries and their participation as a group helped to stimulate different work approaches so as to understand better each case. Secretaries, for instance, have to handle and contain very agitated and angry patients, who barge into the offices of the professionals demanding immediate attention and complaining about bureaucratic deficiencies in the service. In this sense, the secretaries' assistance is fundamental as is the group handling of the anxieties, anguish and aggressions caused by the patients.

Since the Program provides comprehensive care, each member of the team contributes his/her personal attributes to provide psychological accompaniment to the beneficiaries. This is another valuable lesson obtained from the Chilean case, which may be used as a reference point for the work of the Inter-American Court since it emphasizes the interdisciplinary approach.

The supervisory participation of administrative staff, social workers and medical doctors facilitated a comprehensive view of each case and prevented possible bias as a result of unilateral handling, while at the same time facilitating the assignment of each patient to the proper professional.

The supervisory process began after each case was presented, analyzed and discussed by the team, using various techniques. The opinions, reflections and feelings that each case had on the group members were understood as indicators of the treatment.

Frequently, therapists refer to their feelings of impotence and defeat vis-à-vis their work: “we believe that we have done everything possible, but there appears to be no change in the families with regard to the motive of the initial consultation, the symptoms or the family dynamics.”

They also refer to the difficulties experienced by patients in opening up emotionally with respect to their traumatic experiences: “patients will rationally only describe their repressive experiences, but they will not establish a relationship between the motives that led them to seek consultation and the related difficulties and/or symptoms and their traumatic experiences, sometimes thinking that “nothing really happened to them.”

Social workers have often felt that the demands placed upon them are excessive. They have made comments such as “I feel overcome by the demands of the patients; they want us to find them a job, a place to live and they think they have a right to yell at us, including statements to the effect that if it weren’t for them, we would all be starving to death.” They are also expected to be therapists: “she regularly comes to me to tell me her problems; she was prescribed psychotherapeutic sessions but she does not attend them and I cannot refuse to listen to her, because I believe that she has suffered a lot.” The secretaries experience similar situations, stating that “patients come around to ask the time of day and they end up telling me their story and I can’t interrupt them.”

It is therefore evident that those who provide support also need systems of emotional support due to their intense and sustained exposure to painful situations with high levels of tension, as well as a series of reactions, frustration, anger and even aggression. This tests their personal resources for control and tolerance and sets in motion feelings of fear and pain that have been experienced before.

While the objectives of PRAIS were to tend medically and psychologically to victims of human rights violations, it also defined that it should give them *preferential* care; that is, it should be more agile than the regular health services provided by the State. This difference, added to the changes in PRAIS policies and the ethical and political nature of their work, resulted in a truly complex function for the work teams.

The problems faced have been numerous and they have required support, generally in areas related to work efficacy and its emotional impact. Some of the difficulties have been:

- The ability to establish realistic criteria regarding partial success in handling the cases.
- Defining criteria for admission, treatment and derivation.
- Deciding how to assign cases, which dilutes professional responsibility within the team as a whole.
- Because of the permanent turnover of the professional teams due to “a poor working environment,” “impotence to handle cases,” “problems with the Director” and “low salaries.” Such problems are serious since they threaten the very existence of the notion of teamwork.

These difficulties are surrounded by ambivalent feelings; in psychological terms, they would be classified as *polar constellations of feelings*, which are based on anxieties due to abandonment, lack of protection and destruction that are natural to situations of violence and that lead to a drive for reparation and justice, but they also foster impunity and oblivion. This state of confusion and contradiction is frequently manifested in these professionals and it gives rise to polar feelings, whose constellations are composed of:

- Omnipotence/impotence: an ambiguous feeling of being able to repair fully and completely or the feeling that nothing can be done to help the patients.
- Naïve trust/paranoid distrust: Wavering between a non-critical opening towards patients and an inquisitive inspection that does not allow emotional support.
- Excessive involvement/emotional separation: the feeling of being overcome by the stories and afflictions of the patients or the adoption of a cold and distant attitude.

This complex and problematic situation, the crises that have characterized the functioning of PRAIS, the modifications and a model of care that should have adapted itself to the conditions of the State's health system have resulted in an instrument that is not now the most appropriate to treat the most severe cases. As a consequence, the NGOs that were providing similar care during the military regime are those that are still expected to take charge of these patients.

Ambivalence on the part of victims regarding care provided by State organizations

The decision to provide social reparatory measures meant that affected persons might have access to care from State organizations. Nevertheless, it seems evident that the actual use of such opportunities was dependent on the degree of social recognition of the harm to the victims, which specifically means the application of truth and justice.

Lack of such recognition on the part of Chilean society leads the victims to show a degree of ambivalence when faced with the option of being assisted by public entities, such as the present Program (Biedermann, Díaz, Piper, Cerda, Proyecto FONDECYT, 1993-1994).

There is also distrust and fear, which are the central aspects of the life experience of people who have been victims of human rights violations. Those emotions are maintained over time, even after the end of dictatorial regimes or wars and they become evident when reparatory measures are offered by the State.

On the one hand, the fear of being exposed and recognized persists. Individuals are frequently afraid of being recognized and identified as former "delinquents" or "terrorists." This produces "an intense fear of being detained again if political conditions should change or become more unstable or if there should be a new coup *d'état*." Also present in the victims' minds is "fear that the shared information will not be kept private," that "it will not be sufficiently protected and safeguarded," or that "it may fall into hands that are not trustworthy." In essence, it is a fear that the information provided may be used against them, somehow or at sometime. Unlike the State, NGOs are perceived as spaces that are more trustworthy due to the professionalism of their teams and the absence of personal interests or commitments.

A second aspect that is also related to the issue of a State program is the quality of care being offered. The general population's opinion and degree of trust regarding

what it can expect from a public service is not positive: it may be considered to be generally low when compared to its perception of private care. Beneficiaries are not only assuming that they will not be adequately cared for, but they are also afraid of being mistreated once again by a State organization. This leads them in many instances to adopting defensive, aggressive fearful attitudes when they seek assistance. In other cases, they demand excessive care, asking to obtain immediate reparation of the harm that they suffered.

Such lack of respect and recognition for the victims on the part of the State and the organizations that provide care is a reflection of insufficient recognition by society, in general.

Process and current situation

As soon as PRAIS no longer had priority in the national political agenda, its institutional presence began to decline and it lost its original profile, including the policies established by the Ministry of Health. The centralized coordination of the program was dismantled and each of the teams was placed under the supervision of the corresponding Health Services agency, answering to a Director. This reflects the importance of the political will of governments and it leads to a discussion of consistency over time. At what point is there no longer a need to provide specific care to the victims of human rights violations? How does the current national political context affect the actions that need to be taken? How does one achieve persistence under the new conditions? These are relevant questions that arose in the Chilean case and they must be discussed when analyzing the State's role in caring for the victims. It is quite possible that we are faced with a case of permanent review to re-define established goals, but above all the goals must be preserved even in the face of different political alternatives.

During 1995 and 1996, the concept of intra-family violence (as a different type of human rights violation) was incorporated into the work of the PRAIS professionals. This represented a change in the definition of who could have access to the services and it caused an increase in demand for assistance, which in turn implied a reduction of the time spent on those who had been affected by political violence.

This reduction in the level of human resources for special care meant a serious risk of leaving the victims without proper conditions for adequate attention to their problems and it reflects upon a State that is not following through with its responsibility towards them.

Some of the teams expressed their disagreement with the incorporation of cases involving domestic violence and others joined a movement that culminated in the First National Meeting of Beneficiaries and Professionals of PRAIS. The purpose was to rescue the original profile of the program and the premises that underlay its creation. It was proposed to have a legal regulatory agency reviewing the beneficiaries and the professionals and approving a specific budget.

A *Technical Norm of PRAIS* was adopted in 2000, redefining the terms of assistance to be provided by the program. In 2003, the Ministry sent to the Congress a draft law reaffirming the relevance and need for health care for victims as one of the necessary principles in the matter of human rights violations.

A new protocol on care is being prepared to stimulate within the teams the rekindling of the original essence of PRAIS. The care must be undertaken on two fronts: on the one hand, attention and cure of illnesses already diagnosed (as has been the case until now) and, on the other, preventive medicine, perhaps with increased intensity. The premise is that PRAIS users (or beneficiaries) are a population group that is more prone or at greater risk of contracting illnesses since it has been subjected to political violence. The principal task should, therefore, be to provide that segment with specific and continuous attention, which would mean a shift in the focus that has been guiding the Program until now.

For optimum results, greater coordination is required between the Health Services and the National Health Fund (FONASA), which is the entity that regulates the issuance of assistance bonds. It is necessary to resolve the issue of excessive growth in the user population, since with the addition of the exonerated politicians as beneficiaries in 1999 it had risen to 180,000 from 45,000.

This initiative was included in the proposal to amend Law 19,123 (Rettig Law, passed in 1990), Article 6 of which grants physical and psychological health benefits to that group. That Law was unanimously adopted by the Chamber of Deputies and was sent to the Senate in July 2004. This Law will enable PRAIS to be institutionalized, whereby it could return to its original reparatory functions. At the same time, it will allow its reorganization, an increase in coverage and a greater public visibility (Lira and Loveman, 2005).

The State as a source of reparations

During the Latin American dictatorships, human rights violations were denied by the State and by important sectors of society. This has led the affected individuals to feel responsible for not having been able to care for their own lives and as traitors for not having opposed torture, more so than the victims of such practices. The authors of ILAS define such feelings as a *privatization of harm*. The recognition of such acts as social misdeeds is what would allow those affected to regain strength from their actions and to take control over their lives.

To delve into that trauma implies reversing its private nature and the therapeutic stage becomes one of the first spaces in which the damage can be socialized. Nevertheless,

such solution during the therapeutic stage is still private and symbolic and the subject is required to re-connect his traumatic experience to the socio-political context in which it occurred and to the meanings and loyalties that he can understand in order to have access to the possibility of acting upon the vital reality and, as a result, to become immersed in the historic, social and political context of which he is a part (Becker *et al.*, 1988, in Martín-Baró, 2000, pp. 299-300).

To re-insert the damage into the social and political context where it belongs implies, *inter alia*, that the State must accept its responsibility as the agent that produced the trauma and must take charge of its reparation. In the Chilean experience, this commitment has been accepted in multiple and contradictory ways by the various governments. One of them was the creation of PRAIS but, as pointed out, its role was progressively weakened.

Even as its infrastructure and basic functional criteria were maintained, the decision to maintain support for PRAIS was affected by the scarce State resources made available for health care. Accepting the fact that the entire health system required improvement in its standards of operation, the availability of State resources for PRAIS was fundamental for it to comply with its reparatory work.

A proposal to amend Law 19,123 is currently in the hands of the legislature. It includes, *inter alia*, a proposal to institutionalize the Program, which would allow a wider degree of official recognition and, therefore, a greater stability for the professionals working in the Program, thereby allowing a higher-quality specialized care for the beneficiaries (Lira and Loveman, 2005).

Experiences in other Latin American countries

Working for mental health and human rights is not a unique experience to Chile. In other Latin American countries, civil society has organized itself to render psychosocial care to victims of State terrorism, as has been the case of Guatemala, Argentina and Paraguay.

Guatemala

Several Guatemalan NGOs have devoted themselves to working with persons affected by State violence. One of them is the Team of Communitarian Study and Psychosocial Action (ECAP), whose work has been directed mainly at developing projects on community mental health, training of promoters, psychosocial reparation, accompaniment in exhumations and giving psychosocial assistance to witnesses of massacres and survivors of tortures. It also offers a Master's Degree program in Social Psychology and Political Violence.

Another well-recognized organization is the Mutual Support Group (GAM), which was started by five women who joined together to demand concrete action by the Government to provide information regarding their detained and disappeared relatives. One of its programs is the "Care and Giving Dignity to Victims and their Families," through which it provides psychological care to indirect victims. It also conducts psychosocial workshops, before, during and after exhumations and in communities where clandestine graves have been found it aids families in their mourning.

The same areas are handled by the Office of Human Rights of the Archbishopric of Guatemala, which is part of the Social Services Office. It concentrates on three areas: Reconciliation, Defense of Human Dignity and Culture for Peace. The first area is directed to psychosocial reparation in the general context of mental health, to the transformation of conflicts through mediation or prevention, to dealing with exhumations and to rejoining children who disappeared during the conflict with their families.

Other organizations currently in operation are the Program for Dignity and Care to Victims (DIGAP), operated by the UN Development Program and the National Mental Health Program, which is an adjunct of the Ministry of Health.

It should be mentioned that due to the research conducted by the Comisión de Esclarecimiento Histórico it was recommended, as a reparatory measure, that a

National Commission for Reparations be formed, from which resulted the National Plan. While the plan exists, its structure is not sufficient to respond to the needs of the affected population.

Argentina

Human rights violations have been handled by NGOs as the State has not yet put into place effective assistance and reparation policies.

From 1979 through 1990, the Madres de Plaza de Mayo provided mental health support to those affected by the repressive political situation and their dedicated work resulted in the creation of the Argentine Psychosocial Work and Research Team (EATIP). The latter emphasizes group therapy, has created specific modules of care and has placed priority on working in areas where the affected persons have grouped together to denounce crimes and foster social participation.

Also created after the dictatorship was the Solidarity Movement to offer specialized care in mental health cases. Later, the Mental Health Team of the Center for Social and Legal Studies (CELS) joined in the effort, supported by a team of professionals in psychology and psychiatry to provide psychotherapeutic and social assistance to victims and their families. Aside from providing direct assistance, this NGO, in cooperation with public health institutions, is conducting a program of psychological care for persons affected by recent cases of police violence. It intends to coordinate, supervise and train professionals to provide care to affected persons so that the Government can respond to the needs of the victims of violence by public security forces.

The Abuelas de Plaza de Mayo, in turn, have the goal to care for the children of the detained-disappeared and those executed for political reasons by recuperating them from their foster families.

In recent years, the State has increased its presence in the human rights arena. Memorial services have been conducted, the facilities of the Naval Mechanics School, a center of torture during the dictatorship, were expropriated and Truth Commissions were created. The Final Stop and Due Obedience Laws were declared unconstitutional in July 2005. While such measures are still insufficient, they are a necessary step in the reparatory process.

Paraguay

During and after the military dictatorship, several organizations of the civil society assumed responsibility for the care of those affected by human rights violations caused by the military during its tenure in power, which lasted until 1989. One of them was the Committee of Churches for Emergency Aid (CIPAE), which since the days of the dictatorship provided legal assistance to victims. It also provided food and support to procure lodging in a context of repression that in addition to detention, torture, disappearance and execution, stripped the victims from their possessions and tools, particularly in rural areas. The Center for Mental Health Alternatives (ATYHA) provided medical and mental health care to victims and their immediate families.

The precarious health care provided by Paraguay and the lack of a governmental body specifically designated to provide care to persons affected by repression led to the conclusion that the real need of the population was of a sanitary nature. Reparations granted by the State have been mainly economic.

It is important to keep in mind that even though the judgments of the Inter-American Court of Human Rights have repeatedly signaled the State's responsibility in human rights violations and it has proposed measures of reparation, numerous States have not complied with the decisions.

Conclusions and recommendations

On the roles of the State and the NGOs

- The legal, social, medical and psychological initiatives developed by NGOs during the Chilean dictatorship were not only important in saving lives, but also in initiating individual reparations. The cumulative knowledge and experience have been extremely useful in the post-dictatorship period.
- NGOs and family groupings that were formed during the dictatorship accomplished a dual purpose: unrelenting denunciations during the first years and then representation of the social memory of human rights violations.
- The diversity of visions of these organizations fostered a multiplicity of approaches to handling the harm caused by political violence.

- The research conducted and the treatments provided to persons affected by human rights violations demonstrate the pertinence of understanding and approaching this situation as a social problem and not so much as an individual problem.
- Since these are traumatic experiences of a socio-political origin, produced by State violence and whose consequences transcend the victim, affecting families and succeeding generations, reparation requires recognition by the State itself and by the rest of society.
- Every government that is formed after a sustained period of armed conflict, as may be the case of a dictatorship, must assume its quota of responsibility in the area of human rights violations and their consequences on persons and society in general. The search for truth and justice, as well as the implementation of the necessary reparatory measures, in the near or medium term, becomes the social necessity to face historical processes.
- One of the specific ways in which the State must assume its duties to repair human rights violations is to provide responsible care for its effects on the physical and mental health of the victims and their families.
- The creation of national programs within the national public health scheme, providing medical and psychological care to affected persons and their families has practical and symbolic consequences that are highly significant. The ultimate goal is the reinsertion into society of those persons who have been marginalized from its services and benefits during many years.
- A suitable resolution of the initial distrust of public services by the affected persons may lead them to feel reconciled and protected by the State.
- The creation of a National Program of Reparation of Health by the State implies budgeting special public resources during prolonged periods. Otherwise, a paradoxical situation may occur: the nominal organization of teams without adequate material conditions to carry out their work turns such action into highly inappropriate working conditions for the care of victims, leading to a situation of pseudo-reparation that in no way will contribute to resolving the affected persons' problems.

Regarding care and beneficiaries

- Providing care to extremely traumatized persons and families requires specialized training since aiding persons who have undergone extreme suffering, which in many cases is not yet resolved, implies a highly emotional impact.
- One of the most common ways of providing professional training to these employees is to organize teams that combine people with and without experience. Systematic supervision of the new teams promotes an appropriate understanding of psychological processes and paves the way for organizing the individual and group activities related to working with severely traumatized patients.
- It is essential that parallel to the creation of national programs for the medical and psychological care of affected persons, special priority be given to the teams that take on such task.
- It is recommended that strong ties be maintained with NGOs with proven experience in human rights, which created and operated systems and trained teams for these tasks. This would allow State programs to take advantage of the cumulative experience of such organizations of civil society.
- It is necessary that civil society organizations maintain a degree of independence, which will allow them to be critical of the actions taken by the State and thus contribute to the strengthening and enrichment of the governmental programs.
- Attention to the problems of persons who suffered violations of their fundamental rights must contemplate the specific subjectivity of each group being treated. This implies adding to the reparatory process a cultural and gender vision to be used in the preparation of programs of special assistance, in accordance with the needs of the users.

Regarding the juridical process

- It is recommended establishing a tie between NGOs and the Inter-American Court of Human Rights in order to obtain support for its judgments and to

generate a favorable environment for proposals to create specialized State programs for treatment and prevention of the *sequelae* of human rights violations.

- It is highly recommended that the training of teams be extended to other professionals who may be involved in judicial processes (legal teams, judges, lawyers, community health promoters, etc.).
- Within the general efforts to promote the acceptance of responsibility for the harm caused by dictatorships, the Chilean experience may provide an extremely interesting reference point for a discussion of the State's role in caring for the victims of human rights violations in terms of the consistency and pertinence of its public policies and its commitment to construct democracy. This is so because in spite of the important contributions of NGOs, it is the State that is responsible for retribution to the victims socially. This will promote a rupture of the individual focus and will elevate publicly, politically and socially the obligation for reparation and justice that the Court pursues.

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