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Unsilencing victims: the role of cross-cultural psychosocial interventions in reparation processes for victims of human rights violationsThe Inter-American System Experience

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Reparations for victims and survivors of severe human rights violations are a challenging field. It is during this process that victims often place their hopes of finding justice and redress. However, victims' voices are frequently unheard and secondary victimization during proceedings is recurrent. In general, legal and social institutions are limited to a repair the irreparable.
In Latin-America, but in many other places, this complexity has been even more intricate when the ethnic component is part of the scenario. Cultural differences are usually unidentified or overlooked.
Psychosocial interventions and mental health care in cross-cultural reparation processes for human rights violations may contribute to redress victims and communities comprehensively. However, they face a number of epistemological and practical shortcomings (e.g. lack of interdisciplinary policies) that will be explored along the document. For this purpose, paradigmatic indigenous cases from the Inter-American Court of Human Rights are examined.
Finally, I will argue that a more interdisciplinary research and practice combining law with social psychology and anthropology can innovatively advise policy makers in the global human rights area. Effective and adequate cross-cultural psychosocial processes, although they cannot ensure successful trial outcomes for victims, may still contribute to the victims' recovery by promoting self-agency and sensitiveness.

Mots-clés :

For those,
who do not speak our languages,
we are invisible.
Humberto Ak'abal

Introduction

Background

"[…] We children of the earth, we Indians all over Guatemala, we commemorate the violence in which we live. In the eighties the President, the rich and the army decided to exterminate the people trough bombs, weapons and hunger. They sent the troops to

all our villages to destroy men and animals to burn our homes and our maize. To avoid death, we fled into the jungle, we fed into the night, we fled into the rain. Some were killed, others starved to death, and others died of fright. Some were burned alive, others got their arm or foot cut off or were pierced with knives they were slaughtered like animals [...]" (Viaene, 2010:101).

This is a commemorative song in Nimlaha'kok community, Guatemala, which describes vividly the kinds of brutal harms that indigenous people suffered in Guatemala, but also, in other countries of the region in the last decades. Like this, during the last century, a number of internal conflicts emerged among the world. Many of them took place in Latin-America (Hayner, 2005; Theidon, 2004). In order to counteract guerrillas or leftists movements, the states attacked and committed gross human rights violations against township and indigenous zones to weaken what they believed were their potential allies (Mack, 2005; Bacic, 2005). This has been the case of indigenous peoples in Guatemala, Peru, Chile, Suriname, Colombia, among others.

Human rights violations against indigenous populations, in other cases, have been the product of the systematic inequality, oppression, and discriminatory policies that the ethnic communities endure in the continent (*inter alia*, lack of access to health services, denial of justice). Examples of this are cases from Ecuador, Paraguay, and México (Beristain, 2010; Valencia, 2011).

Problem Statement

The violence exercised to indigenous peoples and their rights has specific and deeper impacts because the violations suffered often have long-lasting cultural effects in their populations. For instance, in cases where the right to land is affected, the indigenous communities not only may lose their right to decent housing, but the cultural heritage is affected and the spiritual life is broken.

> They [the army] dishonoured all the sacred hills. Because they threw big bombs, big grenades on the sacred fields [...] the mountains have deity, and we defended ourselves over there. Everybody defiled our dignity (Woman in Viaene, 2010: 194).

International Human Rights instruments provide measures to redress victims, namely reparations. Reparations are broadly understood as redress and compensation given for an abuse or injury1. With Human Rights Law, reparations are measures taken by the State to redress ant human rights violations. One specific type of reparation is psychological rehabilitation, which will be analysed in detail in this paper.

Reparations, if well designed, acknowledge victims' suffering, offer measures of redress, as well as some form of compensation for the violations suffered.2However, the needs, concerns, and values of members of non-dominant groups are usually excluded when human rights standards are formulated, interpreted, or implemented, as in the case of

reparations (Brems, 2004:12).

> We understand as reparation, a full achievement of justice that will mean for us the total recognition of all the violated rights. (Doris Caqui in Beristain, 2010:80).

Some challenges

Affording reparations to victims of human rights violations is a requirement of law[3] and ethics, most directly for relieving the suffering of and affording justice to victims individually and collectively, but also for the sake of healing a society whose integrity may be profoundly affected. The concept of reparations may be understood from a variety of disciplines, including but not limited to law, psychology, victimology, criminology, sociology, anthropology, and politics. From a legal perspective, in particular the international legal framework, different concepts fall under the overarching concept of reparation.

The implementation of these various forms of reparations at legal level is often problematic. For instance, victims are often neglected during the legal processes (Zehr, 2003; Lira 2006), or have experienced secondary victimisation within judicial proceedings (Biggar, 2003; Orth, 2002; Trulson, 2005). Women, girls, children, ethnic communities, and people with disabilities are usually the groups who have greater vulnerability.

> Most of them (Maya Quiché indigenous peoples) are illiterate in their own dialects, they do not speak Spanish either, specially the women. To carry out the proceedings we need translators and only some men the leaders can understands the system. (Carlos Loarca in Beristan, 2010:527)

> [A]ny reparations process, whether collective or individual, is likely to involve choices being made regarding how funds should be used, because there are very rarely sufficient resources to meet everybody's needs fully. This means that some people will be disappointed, may not understand, and may not receive what they want or what they believe they are entitled to, even if extensive efforts are made to provide clear explanations. This might trigger further episodes or problems of a psychological nature. I therefore believe that implementation of collective reparations should build in a safety net of capacity to provide psychosocial support, which could be brought in quickly if and when it is needed. It could also be good to obtain input from a psychosocial expert during the planning of collective reparations, in order to so far as possible avoid problems arising (McKay, 2012 interview).

Legal studies often analyse the existence of a legally *binding* norm and corresponding rights for victims to claim reparations (Parmentier, 2009; Antkwiak, 2011). The different forms of reparation merit further research, mainly relating to questions studying the impact of the proposed measures on affected indigenous communities, because of their especial vulnerability as minorities and their right to maintain their identity and traditional practices. This is where legal scholars often fail. The few existing non-legal studies (Beristain, 2010; Donoso, 2009; Guillis, 2005) have already revealed that reparation processes often do not include victims' psychosocial and cultural values in the design and execution of reparative measures, or do not consistently evaluate the impact of reparative measures (Beristain, 2006; Hamber, 2008).

> Psychosocial intervention should have a main role, it is the appropriate instrument, along with other dynamic restoration processes of the social fabric, which allows opening a space to know the truth, build group solidarity and options to improve a social environment often deteriorated. The main intervention from the first moment must be the psychosocial. In this first phase of analysis, psychologists help to gain confidence of the victims and explain them the overall strategy of the case, avoiding false expectations. The accompaniment must be permanent and transversal (Rodríguez, 2012, interview).

Cultural harms usually involve more complex violations affecting profoundly the social fabric. When this collectivity involves indigenous people the harm produced usually threatens their cultural foundations as societies. Therefore, it is imperative that the concept of reparative justice is understood from a comprehensive perspective, in order to attempt to grasp the entire complexity of the individual and, especially the collective harms, produced by the violations (Martz, 2010; Lykes, 2000; Summerfield, 1996; Fletcher & Weinstein, 2002).

One of the most important and most significant goals, and at the same time biggest challenge of providing reparations for victims, is that they should allow the affected persons to channel their frustration, fears, aggression, and feelings of revenge through culturally sensitive manifestations e.g. language and symbolic acts (Lloret, 1998; Donoso, 2009).

> Reparation will be facilitated if people have a space in which they can speak about the subjective impact the atrocities had in their lives, elaborate and re-signify their experiences and their new reality after the traumatic event (Jácome, 2012, interview).

The privatization of the grief has been on the primary causes of secondary victimization. Effective reparations can permit individuals to move beyond trauma, hopelessness, and numbness (Ash, 1998).

> We are glad with the decision of the Court (IACtHR) about the reparations, because it offers an acknowledgement that we were persecuted, and our suffering. If they are implemented, they would be a base to re-start and improve our social, economic and cultural lives in Suriname (Stanley Rech in Beristain, 2010:33).

One of the main problems, however, with the notion of justice in relation to healing is that it might imply that if justice is done, healing will flow as some cathartic way (Fletcher & Weinstein, 2002). "Justice is better thought as a critical part of a long term process and linked with other factors such as truth, reparations and social conditions […] a successful prosecution or perception that justice has been done, restoratively or retributively, may be necessary for recovery but it is unlikely to be sufficient in itself" (Hamber, 2009).

Psychosocial Interventions, Rehabilitation and Cross-CulturalReparation Processes

Theoretical considerations

Psychological Standpoints

Reparation in Psychoanalysis is a mechanism mentioned by Melanie Klein (1882 - 1960), a well-known English psychoanalyst. According to Klein, reparation is the process by which a child overcomes the *Eros* impulses over the *Thanatos* ones, meaning that trough the reparation process, the child learns how to channel aggressive or negative impulses (e.g. anger, resentment), into more socially acceptable ones (e.g. curiosity, physical activity). Klein described reparation as a powerful impetus to creativity (1935), and according to her it is deeply dependent on the social context to provide useful directions for the effort to be channelled.

Etymologically, "to repair" comes from the Latin concept *reparare* which means "To be prepared again". Symbolic reparation means to get ready for a new existence, without terror, without impunity, through a juridical and symbolic act. The symbolic reparation creates an intimacy work in which the victim re-assign the symbol and transform it. In this sense, the reparation is polysemic; it is open to the each victim's signification (Guillis, 2005: 3).

In a psychosocial way, reparations are an attempt to recover the victim's vital project, and to understand the origins and motivation of the repressive action. Reparations should be understood always in an integral perspective, in order to assume the entire complexity of the individual and the collective damages produced by violence.

Critical Social Psychology and Psychodynamic literature, are relevant critical disciplines, that explain underlying intra-psychic processes usually ignored. These approaches also confer conceptual tools to liaise the individual processes (micro) with social/political scenarios (macro), and cultural processes that, when dealing with trauma of political violence cannot be divorced; healing would be related to symbolic concepts such as truth, justice, reparation, anger, and healing (Hamber, 2009).

In order to understand underlying elements usually overlooked on human-social processes, the approaches of Critical Psychology and Psychoanalysis are essential for this research in the sense that they allow to incorporate a new perspectives and ethical concerns to the analysis, discovering essential processes, which are usually overlook by other disciplines, especially when dealing with sensitive issues as conflicts, trauma, and disasters.

In this sense, I will mainly develop findings from Liberation Psychology which is a Critical Psychology's approach originated in Latin-American revolutionary ideologies during the 70s in fields like theology and pedagogy.

> It advocates personal agency and social freedom, ethical power relationships, education, compassion, and solidarity with the oppressed majorities. According to this theory, psychosocial trauma is a normal consequence of a social system based on exploitation and dehumanizing oppression. The trauma affects the whole society in different ways. Martín-Baró reflects the collective trauma as one coming from social domination and neocolonial resource. He thinks that the consequence of a traumatic event is not present only in the individual minds, but is also present psychosocially. Social trauma, therefore, affects individuals precisely in their social character –that is, as a totality, as a system (Martín-Baró, 1994: 124 in Christie & Lykes, 2001: 160).

Psychosocial Interventions

The term psychosocial is related to the dialectical relationship of the individual or intra-psychological factors with the social, political, environmental elements (Martin-Baró, 1994: 124), and the main objective on these kinds of interventions is the attempt to restore the relationship of the individual with reality, recovering his or her capacity to link with other people and the world, as well as their capacity to plan the future by means of a better self-knowledge and their reality (Lira & Weinstein, 1984).

In general terms and especially in modern societies, traditional psychological consultancy has been related to western, individual, and medicine-centered treatments. Psychosocial interventions had brought the challenge to advance to new dimensions, which push us to understand new discourses and to contribute new theorizations, addressing the psychological and general health needs of communities[4], by promoting

and rebuilding the social and cultural context.

> The traditional role of the mental health services for ethnic communities in post-conflict settings has been Clinical focus mainly--the narrow, individualized approach is limiting and frequently misguided (Wessells, 2012, interview).

Anthropological Interventions and Learnings

This chapter will analyze from an epistemological perspective why other disciplines *inter alia* psychology and anthropology have not contributed more adequately and permanently in the interface with Law to reparation processes. The section will also explore practical approaches and few but important achievements of interdisciplinary experiences.

Nevertheless, most of these experiences have been scarce or poorly implemented (Beristain, 2008). The challenge is that legal paradigm remains, which needs to be crossed.

Learnings from anthropology are crucial; they gradually have been integrated in legal and political debates on cultural diversity and human rights. "[R]ecognizing the extent to which the human rights projects is itself a cultural one, and that it can be built upon culture rather than only resist it[...] (Merry, 2003: 67).

Epistemological viewpoints

Law vs. Psychology?

In order to achieve a successful work among disciplines, a methodological line to set the limits of each discipline is required, but also spreading bridges among them. It is essential to try a common language among the knowledges, of easy and accessible management for the victims. Therefore, the simple juxtaposition of disciplines or its coincidental encounter it is not interdisciplinary (Stolkiner, 1999).

In this intent of articulation of different discourses, Law (discourse of the objective order) and Psychology (discourse of the subjective order), two languages well delimited and defined by their differences appear, trying to be interrelated, sometimes melted in one, and occasionally separated inevitably (Neuburger & Rodriguez, 2005).

The world of Law is a world dominated by the discourse of the legality, of the objective and pragmatic law, whose logic corresponds to an objective discourse which can distinguish with clarity what is framed inside the law, and what it is not, the rights protected, those enforced, their repercussions and so on (Neuburger, 2005).

In the psychological discipline, the main concern are the laws of the internal world, the human behaviors, the legal discourse is processed in a different way, and is offered in a new meaning according to the suffering lived, the personal history and the circumstances of life. The logic of the discourse in psychology is more abstract and subjective; therefore its object of study is not precise or tangible.

Furthermore, from an ontological point of view, there is no juridical interpretation really fair, because Law does not contain the referent of the truth. The absolute truth is not possible because Law cannot guarantee total judicial security to anybody; for that reason Law only offers the verdict or *falla.* In Spanish, one of the meanings of verdict is *fallo/a,* which also means failure. It would mean that the Law just can offer a limited truth, a non perfect justice, a human justice.

The justice's *fallo* does not guarantee the truth, it just regulates the *fallo*. But, as we know, absolute truth is impossible, justice has to deal with its own failure (Víquez, 1995: 44).

In this sense, one of the challenges that Anthropology entails is the encounter of different forms of "knowing" of the distinct rationalities and diverse types of understanding the human being and the world. In this context, the main concern is how to interpret without exercising any kind of violence, specially symbolic violence, meaning categorising other (local, marginal, native) knowledges as valid and legitimate. "Western rational thought in not just one species of rational thought nor rational thought just one species of thought" (Hollis, 1970: 218).

On the other hand, as Harding (1991) reminded us,

> …our social and political locations affect our work. Our work interests and dilemmas, as well as the questions we discard, reveal something about who we are. Our responses are governed by our values and they reciprocally help us to shape these values. Reflexivity in the field of human rights is thus a process of critical reflection both on the kind of knowledge produced from research and how that knowledge is generated (Guillemin & Gillan, 2004).

Disciplinary knowledge is a form of power and, therefore, the question of power will necessarily appear. When working for the human rights cause, living in the middle of injustices and violence, witnesses of the vulnerability of people and the prevalence of impunity for so many years, a feeling of immunity against cruelty grows up. However, sometimes, it just in these kinds of environments where may be even easier to reproduce the same violent patterns and destructiveness that are trying to be abolished (Forster, 2003:144). Learn to deal with these issues are still challenges in this work and legitimate ethical concern since serious consequences of these un-reflexive process may result in secondary victimization and/or vicarious trauma.[5]

Why Anthropology?

Anthropological contributions are still scarcely considered in the human rights field. For instance, an important concern for this social science has been to maintain an open mind and a no-judgmental attitude. Simplistic and one-dimensional dichotomies, such as communal versus individualistic, male versus female, Western versus African, traditional versus modern, and folk law versus state-law, do not help in understanding complex situations. It is necessary to reject both universalist or abstract and relativist theories, in favor of 'grounded theories' based on empirical studies of how relations are constituted in specific situations and processes (Hellum, 1998).

Anthropologists working in issues related to violence have tried to raise the inadequacy of the standards and conventions of social science when they try to represent the disorder (Jiménez-Ocampo, 2008). Any field that aim to tackle social exclusion and injustices must understand that people's aspirations are not constructed exclusively at the individual level but are tied in with complex structural, cultural and discursive relations and practices (Burke, 2006: 731).

However, as it was raised by Scheper-Hughes and and Bourgois, anthropologists have been very slow, ambiguous and very locally produced (2004:4), when accounting context of political violence. The raise of indigenous cases is necessarily changing these dynamics.

Some Risks

So far we have analyzed all the potential benefits of applying remedies adapted to contexts and cultural perspectives where they are carried out. However, it is essential to consider some of its potential risks or elements that should be guarded in such processes.

The design and implementation of reparations entails culturally sensitive and appropriate specialized studies to the contexts where the violations occurred, otherwise there is the risk of generalizing the remedies, and trying to apply "cultural recipes" (e.g. if this measure worked in this community, would also work other one). Thus, there must be an adaptation of the measures according to the context and needs of each case.

Cultural elements in many situations of violation of human rights, and even in the absence thereof, are liable to be manipulated, distorted and even politicized. Many times certain arguments based on issues of cultural diversity may become elements that promote a culture of impunity. In other cases, some cultural aspects are taken as static in time, running the risk of perpetuate them, or cultural features are used as stereotypes and discriminatory manner, without analyzing the structural causes of problems.

Another risk may be that many of these groups maintain forms of participation and decision-making leave out all or part of subgroups that may be in vulnerable situations, such as children and women.

> Positive impact includes the restoration of cultural practices that support cultural identity following attacks that seek to undermine/destroy cultural groups. Typically, cultural resources and practices are more sustainable. Yet a complexity is that they are embedded within structures of patriarchy and social inequity, leaving the question whether supporting them helps to cement structures of injustice. This is why it is crucial to take a transformational approach (Wessells, 2012, interview).

The following table summarizes the main benefits of incorporating culturally sensitive reparations and the potential risks or issues that is necessary to take care of in their implementation process.

Table 1: Strengths and potential risks of cross-cultural reparations

Strengths and potential risks of Cross-cultural Reparations	
Benefits	Aspects to take care of
Participative and approaches	Risk of generalizing, requires specificity, adequacy of measures in the context and needs of each case.
More legitimacy	Requires good qualitative and quantitative studies undertaken (surveys, ethnographic analysis, surveys).
Reparative measures more effective	It may re-victimize, if it is not adequate or they are used to stigmatize and discriminate.
May be helpful for reconciliation	It may perpetuate and justify impunity.
Cross-cultural approaches (Western vs. Indigenous cosmovisiones)	Women, children and other subgroups may stay invisible.

Source: Author's compilation based on the literature gathered on the topic.

Psychosocial and Cross-Cultural Approaches in Collective Reparation Processes

The Inter-American Court of Human Rights

This chapter will exemplify throughout the cases from the IACtHR a range of diverse outcomes regarding psychological and culturally sensitiveness on its jurisprudence. It will illustrate the potential benefits of applying psychosocial remedies adapted to contexts and cultural perspectives where they are carried out. But it will also consider some of its potential risks or elements that should be guarded.

As we have seen earlier, the study of reparations in cases of severe violations of human rights has been dominated mainly by the legal field. Currently, however, research on the impacts that have had the policies on reparations in different contexts is moving towards more integrated approaches. The domain of the legality still exists, but it is through these new perspectives and contributions that further debate, discussion, and questions are emerging. The main objective is to make reparations meet its key objective: to redress the victims of human rights violations.

In cases of indigenous peoples, more than any other type of violation, the damage occurs not only at individual but especially collective sphere. Taking into account the time, symbols, and customs of the groups is especially important. These rituals points out, after much time and suffering, the passage from life to death, and may be the appropriate space for closure processes. In this regard, the psychosocial support before, during, and after the processes of justice and reparation is vital. In this field is where academics and practitioners face new challenges, both conceptually and practically (e.g. potential local mistrust, language issues, among others).

> “I find the mental health services do not address the ethnic dimension of the violations as such. Psychosocial services tend to support the victim in relation to the crime suffered (eg. sexual violence) but I am not sure they address the underlying ethnical dimension of the conflict.
> In countries where the divide is very strong, it could prove difficult to work with victims from different ethnic communities together (especially if they have victimised one other). I also see a difficulty for victims to be at ease with a psychosocial expert from the other community (inherent mistrust). And if the expert is from the same community, then it could prove difficult to work genuinely on overcoming the ethnic divide, work towards reconciliation, etc given that the expert will be or at least perceived to be part of the whole picture. In such cases, it may be advisable to have an expert from a third ethnic community (although local ethnic communities, even if not part of the conflict directly, often take sides with one or the other). In some contexts, having a foreign expert could prove to be a solution (sufficient personal distance from ethnic divide context). However, a foreign expert may not have (or not be perceived to have) the necessary profound understanding of the conflict, its roots, etc. Again, it all depends on many factors […]” (Peña, 2012, interview)

One often hears that culture and context "matter" and that any intervention must be "culturally sensitive". This has been truer at rhetoric level than in reality (Culberston & Pouligny, 2008).

Often, violations of indigenous communities occur in contexts where there are systematic levels of inequality and social oppression, in which indigenous peoples are discriminated, stigmatized and therefore in a position of vulnerability. Reparation

processes should complement and align with local development policies. This will ensure that reparation policies do not become specific and isolated activities, with just short-term impacts. Reparations should meet the transformative principle that redress policies should contain in these kinds of sensitive cases. They must reach beyond the return of indigenous peoples to the conditions of oppression where they were before violations occur.6

Reparation processes must be developed in conjunction with the victims and victims' organizations and key elements of civil society. This would be beneficial, on one hand to the victims themselves who feel involved and are considered interlocutors of their own processes and, on the other hand, it offers direction to the States to implement projects that truly meet the needs of people who are targeted (PAHO, 2002: 70).

For Latin-America in-depth studies still are needed in this regard. In other contexts, some studies have made important contributions for understanding the cultural connotations in legal processes and reconciliation. For example, in Bali (Indonesia), the local language does not have words like pardon, amnesty, and testimony (Dwyer, 2008); in Northern Uganda, ideas for amnesty, forgiveness, and reconciliation are not conceptually different. The *timo-tica* concept can be applied to all of them (Allen, 2006;Viaene, 2010; Huyse & Salter, 2008).

There is a large gap in knowledge about how the survivors in local and cultural contexts perceive post-conflict processes. International interventions often use language and Western concepts of justice, truth, healing, and reconciliation without there being an appropriation of the cultural meanings.

Cultural manifestations should find expression in the world of law. It is not at all a "cultural relativism", but rather the recognition of the importance of identity and cultural diversity for the effectiveness of legal norms (IACtHR, Case *Bámaca Velásquez v. Guatemala*, Separate Opinion of Judge Antônio Augusto Cançado Trindade).

Contemporary theories of legal anthropology, legal pluralism specifically, contributes much in this area. For example, Boaventura Sousa Santos stresses the importance of legal hybrids, which are "legal entities or phenomena that combine different and often contradictory legal orders and cultures, creating new forms of meaning and action." (De Sousa Santos 2006 in Vianne,2010).

In practice, this sort of complementarity of the various systems requires hard work and sensitivity. Neither side usually sees on firsthand the need of compromise with the other's requirements. Without adequate preparatory work, and no understanding of such dynamics, these efforts to support inter-culturally the different process may become re-victimizing failures.

In the case of the Mapuche, for instance, the concept of indigenous reparation was ignored and this altered the inclusion of many people, adversely affecting social networks, although the reparations ordered implicated improvements in their living

conditions.(Herzfeld-Bacic *et al*, 1998).

Culture v. Legal Systems

In the case *Aloeboetoe v. Suriname*, the IACtHR said, in reference to reparations for the parents of mass killing's victims of an indigenous community, that it would make "no distinction of sex, even if contrary to custom." Thus, the Court took as beneficiaries of the reparations to the wives of the deceased, the children of these with each of their wives, and parents of the deceased, without distinction based on gender (IACtHR, *Aloeboetoe v. Suriname*, para. 66).

The Court basically gave priority to individual rights over collective rights, without explaining why the culture of the tribe was violating any human right, and without some explanation or reason for the preference of a right (individual) over another (collective). It is noteworthy that the families of the victims and their legal representatives did not request the Court to dismiss the culture of their group. The Court, without request involved, decided to give prevalence to gender rather than cultural (Citroni & Quintana, 2008:322). Although, this can lead to many debates, since gender and ethnic sensitivities which may be seen as sit uncomfortable together, it is important to understand that the case *Aloeboetoe v. Suriname* was one of the earliest in the IACtHR. Different developments on gender and ethnicity, as we will see further in this document, have been developed to avoid potential divergences.

However, an interesting argument in this context is the one stressed by Culberstone and Pouligny. They explained that local groups return to the tradition for resolving conflicts, but also recognize that innovations come from the reality of each culture, and adjusting and taking ideas from the outside and reshaping old concepts to new experiences which are planned and in accordance with local strategies (Culberston & Pouligny, 2008:272).

The problem of how to harmonize international standards of human rights and humanitarian work, as well as Western modern talking psychologies with customary practices, beliefs, and values of different groups, is still a theme of profound debate in order to avoid the reproduction of colonial or post-colonial dynamics.

There are no easy answers, but I highly agree with Hellum (1998:96) when she concludes that more dialogue is necessary, less blind and aseptic laws, and more principles for people be involved in the justice processes.

In these kinds of crossroads it is a very important the decision-making process itself: people must to understand the reasons that guide agencies and the courts to proceed in these areas, there must be opportunity for community discussion (an accompaniment experts would be desirable). Moreover, as has happened in many cases, instead of giving space to specific populations (e.g. women, children, elderly), they may be put in a more vulnerable situation, and thus re-victimization.

In the *Aloeboetoe* case, the Court, "[w]ith the purpose of providing beneficiaries to obtain the best results from the application of amounts received in reparation", stipulated the creation of a Foundation, which was intended to "act as trustee of the funds deposited [...] and to advise the beneficiaries in the implementation of the reparations received or income they receive from the trust." (IACtHR, *Aloeboetoe v. Surinam,* para. 103 and 105). Interestingly, no member of the community was part of the Foundation. In subsequent cases (e.g. *Yakye Axa v. Paragay* and *Sawhoyamaxa v. Paraguay*), the Court itself contemplated the presence of representatives of affected communities in development funds created by order of the IACtHR.

The creation of special funds or foundations to monitor and assist victims and communities to properly implement the reparations ordered, although it may be described as paternalism, it is important to analyze the type of process and degree of involvement of victims and communities in such initiatives. This kind of support and decision-making may be very valuable to people, especially in contexts of extreme poverty or when the type of violence experienced has been considerable, but again, will depend greatly on how it is implemented.

Another case is *Community Moiwana Case v. Suriname* in 2005 regarding the murder of 39 members of the Moiwana Community in a military operation conducted in 1986. According to the community traditions, if one of their members is offended, their relatives are obliged to seek justice for the committed offense. If the offended person has died, his spirit will not be able to rest until justice is done. (IACtHR, *Case of the Moiwana Community v. Suriname,* para. 95). Additionally, the Moiwana Community could not honor appropriately its dead. That was considered a “morally deep transgression”, which offended the ancestors and caused “illnesses of spiritual origin” (Ibid., para. 99). The IACtHR considered them to be a violation of the right to personal integrity of the members of the Community (Ibid., para. 96).

It is worthy to underline the insightful approximation made by former Judge Cançado-Trindade in his Separate Opinion in this case about the closeness between law, ethnic sensitivity of indigenous peoples, and values in ancient cultures. He proposes a new category of damage, not covered by the existing traditional categories: the project of after-life that takes into account the living in the relations with their dead. International law in general, and International Law of Human Rights in particular, cannot remain indifferent to the spiritual manifestations of human beings, such as the ones expressed in the proceedings before the Court in the case *Moiwana Community*. It is also important to conceptualize the spiritual damage as an aggravated form of moral damage which has a direct bearing on what is most intimate to the human person, namely, her inner self, her beliefs in human destiny, her relations with their dead. This spiritual damage would not give rise to pecuniary reparations, but rather to other forms of reparation (Separate Opinion Judge Cançado-Trindade, *Moiwana Community v. Suriname,* para. 95).

Psychological Accompaniment for Compensation

With regard to financial compensations, if they are not well managed, they may cause many difficulties in their implementation. Moreover, in rural settings, where high rates of poverty and the traces of violence have permeated the communal fabric, mechanisms are needed for monitoring and support people to have space to discuss the inevitable problems that arise when implementing this type of reparations. For example, in the case *Plan de Sanchez v. Guatemala*, although the compensation was fulfilled, it generated many family divisions, guilt, alcoholism, and other diseases among the beneficiaries. (Viaene, 2010:42; Espinoza *et al*, 2003).

Participation or representation of the general community leaders are important in order to make decisions that benefit the whole group, and give careful consideration to the dynamics within these groups, in order to prevent the exclusion of certain sectors.(Rubio-Marín *et al*, 2011:46). Noticeable, there are also cases in which solidarity and equitable management by the leaders and communities have been strength. A noteworthy example occurred in the *Yakye Axa* case. One of the legal representatives of the Community said:

> Regarding, the amount of compensation to the community, leaders did very well; [...]. We observed [...] the spirit of sharing collectively was initiated by the leaders themselves. The [compensation was] equally distributed to the heads of families throughout the community, without any conflict (Cabello in Beristain, 2010: 529).

Psychological Rehabilitation

In the case *Escué Zapata v. Colombia*, the Court considered it was necessary to "provide a remedy that seeks to reduce physical and psychological burdens of the families of the victim," produced as a result of the execution of Mr. Escué Zapata. To this end, the Court ordered the State to provide, without charge, the specialized medical, psychiatric, and psychological treatments required by the relatives of the victim, prior expression of consent, as long as necessary, including provision of medicines. The Court clarified that such treatment should consider the circumstances and needs of each person, especially their customs and traditions (IACtHR, *Case Escué Zapata v. Colombia,* para. 173).

In *Xámok Kásek v. Paraguay*, given the difficulties the community members had to access to health centers, the Court ordered the State to establish in the place where the Community stood a permanent health center, with the medicines and supplies needed for adequate health care(IACtHR, *Case of the Indigenous Community Xákmok Kásek v. Paraguay,* para. 306).

In *Rosendo Cantú and others v. Mexico*, the Court held that the facts of the case (rape of the victim) had shown the need to strengthen the health centers to treat women who have suffered violence. It noted that there was a health center in the town where the victims was living, and ordered the State to strengthen it through the provision of

material and personnel resources, including language translators, and by the use of an appropriate action protocol. (IACtHR, *Case Rosendo Cantú et al v. México,* para. 260).

It should be stressed that the ethnic-cultural groups are entitled to maintain, use and protect their traditional medicines and health practices, requiring that public health services be appropriate from a cultural standpoint (Ruiz-Chiriboga, 2006:52). A good example would be the agreement of the Indian Residential Schools[7] which established a Healing Fund to be administered by the Aboriginal Healing Foundation, which agreed to support the healing needs of Aboriginal people affected by the legacy of former Indian Residential Schools, including the treatment for the intergenerational impacts with a holistic, community-based approach (Vrdoljak, 2008:223).

In general, we may say that the psychosocial accompaniment processes and rehabilitation measures taken in reparation contexts should be culturally appropriate. The staff should investigate and also know the history, languages, values, customs, and traditions of the populations. It is also important to take measures regarding the use and training of interpreters in psychotherapeutic contexts of psychosocial support.

Counseling and psychosocial support is part of a comprehensive redress and in this sense, cultural beliefs and practices, as well as the role of traditional leaders and healers should be recognized as legitimate channels to deal with health problems. It is imperative to explore how the knowledge about indigenous healing may be strengthen, and urge the civil society organizations involved to respect and include indigenous medical knowledge within their projects(Viaene, 2010:153).

Indigenous cultures understand health and disease in terms of balance and imbalance of the universe. For them, health treatment must be comprehensive, addressing the physical, but also affective, spiritual, and environmental elements. On the other hand, forms of healing in these cultures include the use of medicinal plants, ceremonies and rituals, especially group-based ones. Indigenous practices do not involve an abandonment of Western medical treatment/drugs, but the search for complementary ways to solve health problems. Health, from a Western perspective, is generally referred to a medical-clinical view, the cure of symptoms and organs are treated in isolation. The emotional, religious, and environmental issues and usually left out from any conception of medical treatment and care (Gómez, 2008: 159).

In Guatemala, for example, even though psychosocial care organizations in this country perform an unprecedented work with communities, and which impact and outcomes should complement other similar experiences, research on the subject noted:

> Despite the profound impact of such beliefs [culture], organizations that offer counseling to victims show a lack of interest and respect for indigenous healing resources. For example, Saq'be, a psychosocial organization is the only one which applies Maya knowledge about health and disease during their sessions (Viaene, 2010:152).

Expert Witnesses

The incorporation of an anthropological expertise to orient the complexity of these kinds of facts makes it easier to understand beyond the borders of the law. The anthropological expert witnesses that have declared before the IACtHR have been useful in showing the damage done to indigenous peoples. They have provided theoretical and practical tools that have given input to the judges and lawyers regarding the characteristics and cultural dimensions of the cases. For example, the case *Escué Zapata* collects items listed in the expert report, which explained to the Court the social and political organization of Paez indigenous and the differences between each of the traditional authorities.(IACtHR, *Case Escué Zapata v. Colombia,* para. 55).

On the other hand, the massacre of Plan de Sánchez, a northern native village of Guatemala, was one of the 600 that occurred in the country. It was perpetrated on July 18, 1982 during the facto government of Efraín Ríos Montt. The army murdered 268 men, women, and children of all ages. According to the psychological expert evidence, the massacre of Plan de Sánchez had terrible consequences in many aspects of the life of its population, such as the breach of family roles, the damage to the cultural identity, the breaking of its ancient relationship with the land and the traditional style of conflict resolution. The community grief was altered; therefore, they could not carry out its rituals and the Mayan traditional burials until 1994, twelve years later, when the exhumations took place.[8]

The psychosocial expert evidence presented in this case analyzed these issues (Nieves, 2005) and recommended to carry out consultations with the communities to decide what they want as remedy, as well as more adequate forms to achieve it, because as many researchers conclude, the reparation achieves its function when it is determined by the victims (Beristain, 2005).

In addition, it was recommended for a consultation to be carried out with the surviving women to develop measures of reparation and programs of medical and psychological attention that contemplate a differentiated vision of the impact according to the kind of victims.

The IACtHR has made diverse considerations and allusions in respect to emotional damage, the permanent breaking of the cultural identity, their customs and traditions, and the psychosocial suffering of the inhabitants of Plan de Sánchez and other communities. Reparations judgment in this case is very extensive and comprehensive in the recognition of immaterial damage as in other forms of repair.

Reparations should ensure maximum possible dissemination among indigenous communities, including strategic and pedagogical techniques and audiovisual resources. The translation into the native languages must be careful also. Dissemination must also reach adequately to non-indigenous sectors, to ensure recognition (ICTJ, 2012: 53).

Moreover, regarding to the victims' declaration in court proceedings, whether national

or international, it must be taken into account that the collection of testimony of victims, if done properly and with culturally sensitiveness, it becomes a valid source means to establish the facts and contribute effectively to the identification of possible perpetrators, without the potential re-victimization of the declaring persons. The same principle applies for the participation of victims in reparations, mainly those of a collective nature. This would require adequate training of personnel, regarding the culture and practices of the community. Culturally sensitive psychosocial accompaniments can also be very helpful on a practical level, as well as participatory teaching methodologies appropriate to the culture, especially in cases where there were many victims involved.

Usually, these processes require contact phases in which the trust is a crucial element, and therefore, there must also be phases or closure activities in which they provide feedback processes. The psychosocial support can also serve as a cultural interpreter and supporter in creating bonds of trust to work more effectively.9

Expert witnesses reports and testimonies were also important in the next two cases where the insights assisted the Court to incorporate specifically the traditions and customs of the victims into the form of compliance of the decision.

In the case *Tiu Tojín v. Guatemala*, the Court found that Maria and Josefa Tiu Tojín were still missing and their whereabouts were unknown. The Court indicated that the effective investigation into their whereabouts or the circumstances of their disappearance is a measure of reparation and therefore an expectation that the State must meet. It therefore ordered the State to proceed immediately to search and locate the victims. In cases where the victims were found dead, the Court ordered that the state should, in a short time, give the remains to their families, after genetic testing. Expenses generated by those measures should be covered by the State. The State also had to cover funeral expenses, respecting the traditions and customs of the families of the victims.(IACtHR, *Tiu Tojín v. Guatemala,* para. 103). Similar remedial action was ordered in the case *Chitay Nech et al v. Guatemala* (para. 240).

In *Escué Zapata v. Colombia*, the Court appreciated that the State found the remains of the victim and handed them to his family and community, which allowed the burial of the victim according to the traditions and customs of the Paez people. However, it took into account that the family waited four years for the remains of Mr. Escué Zapata . The long pass of the time had spiritual and moral repercussions for the family, because according to the indigenous culture (*Case Escué Zapata v. Colombia,* para. 153),

> Since the Nasa child is born, the umbilical cord is sowed in the Mother Earth [...]. But when it dies, we also sow it, we do not bury it, and so there is life. Taking him means disrespect the culture, the Mother Earth. Taking off the bosom is cutting the womb of the woman who created him and saw him grow. It is a huge cultural violation, and it generates the desarmonization of the territory (IACtHR, Escué Zapata v. Colombia, op. cit., para. 153).

Empowerment of Communities

An important development is that culture is an organized resurgence. For example, Mayan priests are initiated to be recognized, asserting their legal right to exist. When communities recover their cultural and religious practices, they achieve to recover also some of the power that was taken from them centuries ago and, during the internal conflicts war during the seventies and eighties finished to weak, especially through violence committed against the elderly, midwives and sacred sites (Del Valle Cóbar, 2004: 175).

From an epistemological point of view, the participation of victims and communities in reparation processes and the transfer of material and cultural practices in the implementation of various measures, enhance the re-positioning of identities and knowledge indigenous marked by exclusion. These processes are born at the same time strengthen the movements that re-enact the appropriation of culture and identity against neo-colonialism of knowledge in Latin-America. From these movements, the value and meaning of those who have been, in the words of postcolonial critical theorists such as Escobar (2007), Mignolo (2010:1-21), Said (1993:132-48), "subalternized" are being recovered; and it is precisely from this thought and epistemologies of the periphery that new concepts are brewing against the grand narratives and Eurocentric systems of thought, as the logocentrism and anthropocentrism.

In *Plan de Sanchez v. Guatemala*, the Court ordered that the State should provide a certain amount of money "for the maintenance and improvements to the infrastructure of the chapel in which the victims pay tribute to those who were executed". According to the Court, "[t]his will contribute to raising public awareness, to prevent the recurrence of events like those that occurred in this case, and to keep alive the memory of the deceased"(IACtHR, *Plan de Sánchez v. Guatemala,* para. 104).

On the other hand, the enormous impact of *Awas Tingni v. Nicaragua* in the Moskitia area (Nicaragua) in which the community is located, is summarized in the following words of a Miskito:

> "As Miskito indigeous [...] is a milestone decision for communities. All law students we have in the Moskitia know the sentence. It's good because in America's history this is the first time that Indians sued the State, and that was something we achieved, and it was not only in Nicaragua. Other people have taken this lawsuit as an example and it is working(Humberto Thompson in Beristain, 2010: 514).

Community Participation and Leadership

In the case of *Chitay Nech et al v. Guatemala*, the Court ordered that, in order to preserve the memory of Mr. Chitay, victim of enforced disappearance, in the community

to which he belonged, the State must place, in coordination with the victim's relatives, in a public and significant place, a commemorative plaque stating the name of Chitay and alluding to the activities performed by him (IACtHR, *Chitay Nech et al v. Guatemala,* para. 251).

In *Moiwana v. Suriname*, the Court ordered the State to build a monument to commemorate the events that occurred in the village of Moiwana and to be "a reminder to the entire nation of what happened and shall not be repeated in the future." The design and location of the monument had to be resolved in consultation with representatives of the victims (IACtHR, *Moiwana Community v. Surinam,* para. 218).

It is important that the reparations' implementation to indigenous groups and local authorities are involved and that the reparations have a sense of validation from the community10. As explained Giller:

> The greatest risk in projects such as ours is to leave people in a more vulnerable position than before, leading them to believe that their ways of coping are somehow inferior to the West [...] where the importance of indigenous knowledge is not recognized."(Giller, 1998:142).

Without proper monitoring, long term and short-term interventions could be harmful. The best way to provide long-term care is by building local capacity.

Finally, it is always important to take care of the implementation timing. The decision-making timing should follow, as much as possible, the community timing. Moreover, as reparations are not static in time, the demands of the people vary according to their needs, to the time that has been implemented or to the various forms of reparation that have received. If a measure has taken a long time to implement, for example, communities may have found alternative solutions and therefore, their needs have changed, making it necessary to re-adjust the compensation ordered or their way of implementation.

> The main positive impacts include better understanding of the local culture or tradition. By being sensitive to the local culture/tradition the socio-psychologist does not uproot the individuals from their cultural environment. This is important at least for the community's acceptance after the socio-psychologist leaves the community, but also for members of the community themselves to help the suffering/traumatized individuals. The challenge is the fact that it often takes a lot of time and needs a lot of patience to understand other people's culture. The process could be hard and time consuming (Wardaya, 2012 interview).

Conclusions

Reparations are perhaps one of the most important aspects within the field of the human rights. For victims, without a doubt, the type, forms, timing of the granted remedies will (or not) let them initiate their mournings in an acceptable time.

Reparations are a very important feature of the interdisciplinary work in the litigation, because the legal, psychological, and anthropological approaches are often fundamental for the interpretation of these issues. Often the legal definition does not reach or agree necessarily with the feelings of the victims. A comprehensive understanding on reparations has to be acquired and a thoughtful consideration of the different cultural values of the people affected by the violations must be seriously taken into account.

However, reparations are still overlooked by international community and States. As Theo Van Boven (2005) affirmed, only scarce or marginal attention is given to the issue of redress and reparation to the victims. Awareness among justice spheres is necessary to face these challenges. For many indigenous communities, the breaking of the bonds with ancestors, the fragmentation of the relation with their sacred lands and their resources, and the forced abandonment of their cultural practices, produce severe suffering to them that undoubtedly affect their right to psychic and moral integrity. In this sense, a specific demand of the indigenous people has been free determination to repair abuses from the standpoint of their own world-view, respect their rights as minorities, and avoid the threats of potential neo-colonialism approaches.

As we have analysed, there are still a number epistemological and practical challenges to face among the work of different disciplines involved in reparation process. Complexities on reparation processes raise very important issues that go far beyond a purely legal approach and that require a strong input from other scientific disciplines, as well as from other sectors of society, including victims and their organizations.

As Wemmers (2009), points out, how courts proceed and, in particular, how they treat victims, are important to victims' sense of justice. Authorities working in the criminal justice system cannot guarantee favourable outcomes; however, they can guarantee fair procedures. Consequently, by treating victims fairly and sensitively, authorities may be able to reduce or cushion the effects of negative outcomes, such as failure to convict the perpetrators or limitations in reparations.

The main idea of a comprehensive approach is try to address a holistic plan of reparations. How reparations programs are constructed and the degree of participation of the victims within them will determine their success and not necessarily the program itself, taken alone.

It is necessary a “process-oriented approach to reparation” which shifts attention to establishing a process towards the development of reparation policies. The main

question is no longer “what” reparation measures can or should be taken but “how” reparation programmes and policies are developed and decided upon (Rombouts & Parmentier, 2009).

Psychosocial support programs can accompany the impersonal and cold effect of some form of reparations. It helps to personalize the reparatory meaning and the message of dignity and inclusion that the policy is intended to provide. Reparations should reverse the message of exclusion. A reparations program for massive crimes should be capable of communicating to victims that they are valued members of the society that once excluded them; it should express in concrete terms that the harm done to the victims was wrong and acknowledge that the rest of the society cares about the consequences. In sum, reparation should recognize the dignity of victims and reaffirm their sense of belonging (Correa, 2011).

The analysis of judgments of the Inter-American Court have shown the importance that psychosocial and anthropological approaches have to contribute to comprehensive reparation programs, especially with dealing with complex cases of indigenous peoples. These perspectives have assisted to the IACtHR to order reparations with innovation and cultural sensitivity that has been considered *per se* a form of recognition for indigenous peoples’ rights and their history of violence.

There is no doubt there are many dares within the path of cross-cultural reparation process and healing, even inside the Inter-American System, which as every justice system is imperfect. Both an inclusive approach in legal systems certainly can provide, as we studied, the flexibility and openness to the Court to develop a dialogue with customary systems has led to the Inter-American System to be one of the pioneers in this type of issues, not in vain the ICC and the African System of Human Rights have taken interest in the judgments produced by the IACtHR, taking it as a guidance to recognize good practices and learning form the challenges it faced in cases of mass rape and ethnic components of high complexity.*“The novel in our reparation’s judgments it is in relation to the ‘other forms of reparation than monetary ones. They have served as inspiration source for other international tribunals.”* (Judge A.A. Cançado Trindade in Beristain 2010: 43).

Reparations to indigenous peoples confront us with the most profound ethical and political questions of our societies. It is not surprising that violations of human rights to indigenous peoples are given in contexts of social exclusion, stigmatization, and discrimination. These are problems that afflict to Latin-America since its beginning, confronting the Law, the States, and ourselves to recognize that the violent past is not that far. On the contrary, the painful reality of exclusion is present in each one of the cases analyzed.

1 Universal Declaration of Human Rights, Article 8.

2 TheInternational Covenant on Civil and Political Rights, Article 2

3 Article 63 (1) of the American Convention on Human Rights, Opened for Signature: 122 November 1969, entry into force: 18 July 1978. Furthermore, the Permanent Court of Justice has given the most authorative renderings of the legal foundation of the rights to reparations. *Charzow Factory* (Jurisdiction) Case, 1927 P.C.I.J (Ser. A) No.9, at 29. 'It is a principle of International Law that the breach of an engagement involves an obligation to make reparations in an adequate form.

4 This paper will understand the concept of 'community' as a tight cohesive social entity with similar cultural practices and mutual interests (Messing, 2009). This concept seems suitable to address the deep relationships within most of ethnic communities specifically in non-western contexts as the Latin-American and African indigenous groups. "Culture is marked by hybridity and creolization rather than uniformity or consistency. Local systems are analyzed in the context of national and international processes and are understood as th3 result of particular historical trajectories" (Merry, 2003:67).

5 Vicarious trauma is s a psychological effect on trauma worker or helper that results from an unhealthy engagement with traumatized victims' reports of traumatic experiences.

6 For a complete analysis of the transformative principle see: IACtHR, Case González et al ("Campo Algodonero") v. México. Judgement of November 16, 2009. Serie C No. 205, para. 450).

7 With the support of the Assembly of First Nations and Inuit organizations, former residential school students took the federal government and the churches to court. Their cases led to the Indian Residential Schools Settlement Agreement, the largest class-action settlement in Canadian history. The agreement sought to begin repairing the harm caused by residential schools. For more information, see: http://www.trc.ca/websites/trcinstitution/index.php?p=3

8 IACtHR, *Case of the Plan de Sánchez Massacre v. Guatemala. Repara–tions.* Judgment of November 19, 2004.

9 For example, Beristain includes the following testimony of a psychologist: "We are working in Rabinal, in the Case of the Military, and our Foundation wants to perform DNA analysis, this has led to cultural conflicts, because people do not understand why you want to remove a part of their deads, which will be gone for good and the dead will not be complete. "(Susana Navarro Psychologist ECAP, Beristain, op.cit., p. 522).

10 A successful example has been the Canada's Assembly of First Nations (AFN) which offered valuable cultural elements to the Truth and Reconciliation Commission of Canada (ICTJ, op. cit., p. 40).

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