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Grounds for reconciliation: participation and reparations at the Inter-American Human Rights System

Bases para la reconciliación: participación y reparaciones en el Sistema Interamericano de Derechos Humanos

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Grounds for reconciliation: participation and reparations at the Inter-American Human Rights System

Bases para la reconciliación: participación y reparaciones en el Sistema Interamericano de Derechos Humanos

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Summary: Introduction. 1. Methodology. 2. Transitional justice and victim-centred approaches. 3. Approaches to the definition of reconciliation. 4. The Inter-American Human Rights System and reconciliation approaches. 4.1. Participation as a constitutive element of reconciliation. 4.1.1. Participation in the stage before the Inter-American Commission. 4.1.2. Participation in the stage before the Inter-American Court. 4.2. Reconciliation as conditional to the enforcement of reparations. Conclusion. References.

Abstract: Reconciliation in a transition requires interconnected events and processes to enable peaceful coexistence and restore trust in State institutions after a period of systematic violations to human rights. It involves articulating different transitional justice mechanisms. Prosecutions, truth commissions, reparations and guarantees of non-recurrence must be implemented comprehensively, ensuring victims' families feel repaired. The absence of this balance hinders reconciliation. This research explores the participation of victims and their relatives in proceedings before the Inter-American Human Rights System (IAHRS) and the implementation of reparations as mechanisms for reconciliation. The study argues that victims' relatives and survivors' input in legal proceedings and horizontal relationships with legal representation foster agency and dignity, enabling reconciliation. Whereas full engagement in the IAHRS process promotes an inclusive legal environment, failure to

implement Court-mandated reparations obstructs reconciliation with State institutions and the idea of justice itself, causing disillusionment.

Keywords: reparations, participation, victims' agency, reconciliation, Inter-American Human Rights System.

Resumen: Tras un periodo de vulneración sistemática de derechos humanos, la reconciliación requiere de procesos interconectados para una convivencia pacífica y la restitución de la confianza en las instituciones del Estado. Consecuentemente, es preciso articular los diferentes mecanismos de la justicia transicional (procesos judiciales, comisiones de la verdad, reparaciones y garantías de no repetición) para que las víctimas se sientan reparadas. La ausencia de este equilibrio dificulta la reconciliación. Esta investigación explora la participación de las víctimas ante el Sistema Interamericano de Derechos Humanos (SIDH) y la implementación de reparaciones como mecanismos de reconciliación. El análisis concluye que la implicación de supervivientes y familiares de víctimas en los procesos judiciales, y las relaciones horizontales con representantes legales promueven la autonomía y dignidad que facilitan la reconciliación. Mientras la participación en el SIDH fomenta la inclusión jurídica, la falta de implementación de reparaciones de la Corte obstaculiza la reconciliación con las instituciones y con la propia idea de justicia, provocando desilusión.

Palabras clave: reparaciones, participación, agencia de las víctimas, reconciliación, Corte Interamericana de Derechos Humanos.

Introduction

This research paper examines the relationship between the petition and case system of the Inter-American Human Rights System (IAHRS) and its impact on reconciliation. To this end, two factors are analysed. First, petitioners and victims' participation in the IAHRS as a process that strengthens reconciliation efforts. Second, the implementation of reparations ordered by the Inter-American Court of Human Rights (IACtHR) as a necessary condition for articulating efforts towards a possible reconciliation context. Further consideration is required on the relationship between reparations, victim participation and reconciliation. Those who have been awarded reparations but whose measures have not yet been implemented may encounter difficulties in achieving reconciliation at different levels: with human rights offenders, state institutions, and with the very concept of justice itself.

To examine this situation I analysed three case studies that are currently in the compliance monitoring stage. The study tracks the obstacles victims face in their quest for justice at the international level. Firstly, I examine the relationship they have with their legal representatives and how they dictate their participation in a formal legal context. Secondly, I focus on the difficulties that many victims face in participating effectively in the Inter-American Commission's proceedings, which are characterised by a legal and technical approach. Furthermore, I examine the problem posed by the accumulation of different cases that the Court is required to analyse together. Thirdly, I analyse the importance of victims' voices in public hearings before the Court to determine reparations, as well as their lack of implementation at the local level, which distance people from reconciliation.

1. Methodology

This article was conducted through a qualitative research consisting of multiple case studies. It encompasses the doctrinal and jurisprudential analysis of reconciliation in light of the practices of the IAHRS. Conversely, it analyses the interviews conducted in the context of three cases presented to the IAHRS: one from Peru, one from Paraguay, and one from Guatemala. Moreover, I examined the case files for each instance in the Court archives.

In 2023 I conducted interviews as part of my doctoral thesis fieldwork on reparations within the IAHRS, focusing on economic,

social, and cultural rights. Sixty-nine interviews were conducted with petitioners, including survivors and relatives of victims, as well as their legal representatives, legal advisors from the Inter-American Commission on Human Rights (IACHR) and the Court, and both current and former judges of the Court. Among these, nine were group interviews: six took place in Peru, two in Guatemala, and one in Costa Rica with legal advisers. Furthermore, I examined legal decisions and court files related to the cases.

2. Transitional justice and victim-centered approaches

Transitional justice (TJ) consists of mechanisms designed to address serious consequences in the aftermath of authoritarian contexts and/or systematic violence (Fischer 2011; Sharp 2016; Rettberg 2005). The “pillars” of TJ (OHCHR 2012, para. 80; Sharp 2013) encompass institutional, administrative and judicial responses to address systematic human rights violations. These include truth commissions, prosecutions of human rights violators, guarantees of non-repetition —such as vetting public agents (de Greiff 2015, paras 21–23)— and reparations programs.

In cases where this context-sensitivity has not been given due consideration, the impact of TJ mechanisms has been very limited, as evidenced by the experiences of Peru, Timor Leste and Kosovo (González 2006, 242–48; Fischer 2011; Theidon 2006, 454–56; Simangan 2017, 312–316). Often, these measures lack social, political, and cultural integration within the specific society. Consequently, they are insufficient in fostering meaningful changes in post-conflict settings.

It is noteworthy that the viewpoints of victims’ families and survivors were often overlooked in the formulation of many institutional transitional justice strategies. In South Africa, the Truth Commission granted amnesties to individuals accountable for serious human rights violations in return for their testimonies, which aimed to uncover the truth in cases involving severe abuses such as torture, murder, and enforced disappearances (Gibson 2002, 344). The Commission’s framework did not incorporate the participation of victims’ relatives, many of whom voiced their disapproval of offering amnesties in exchange for testimonies (Phakathi and van der Merwe 2008, 118–26). The process facilitated forgiveness in a top-down approach, dictating the “how” and “when” of reconciliation to the victims.

In Uganda, the International Crimes Division of the High Court allowed victims to participate in the criminal prosecution of Thomas Kwoyelo, a former commander of the Lord's Resistance Army. However, the absence of clear standards and procedural rules for their involvement resulted in victim fatigue, stemming from their limited direct participation and the prolonged duration of the case (Avocats Sans Frontières 2019, 2). Moreover, the two lawyers assigned to represent the victims lacked experience in international victim representation and had not established direct contact with the affected communities by the time the trial commenced (Avocats Sans Frontières 2019, 2-3). Situations like this may generate a potential disengagement of the victims from the proceedings and the case.

The Special Jurisdiction for Peace in Colombia offers a contrasting perspective. A psychosocial assistance team has been formed to support the involvement of survivors and victims' families in public hearings where perpetrators also give testimony. This initiative seeks to foster spaces for dialogue (Jurisdicción Especial para la Paz 2023).

To effectively address the needs of families affected by human rights violations and survivors, it is essential to understand the experiences of those who have endured violence. This understanding is crucial for developing comprehensive and effective institutional responses (Gready and Robins 2014). When victims turn to the courts, their input is key for their legal strategy (Madlingozi 2010). In this context, lawyers have a duty to cultivate a relationship and communication grounded in equal partnership. It is essential to avoid power dynamics that can perpetuate a passive role for victims (Robins and Wilson 2015). Regarding reparations, this horizontality is crucial. Efforts to address impacts on survivors and victims' families must consider what they need to overcome conflict aftermath.

3. Approaches to the definition of reconciliation

As an initial consideration, it is crucial to acknowledge that the reconciliation process hinges on each individual's personal decision. Consequently, this article addresses the conditions necessary to foster more favorable scenarios that ensure the free choice of each person involved, irrespective of how they perceive and experience this process. Reconciliation, rather than being imposed, remains a possibility.

When considering the conceptualisation of reconciliation, it is important to recognise its broad nature and the multiple approaches it entails. As Dwyer (1999, 82) points out, "(t)he notable lack of any clear

account of what reconciliation is, and what it requires, justifiably alerts the cynics among us”.

A first conceptual approach examines interpersonal conflicts. Bar-Tal and Bennink (2004, 12) describe reconciliation as both a process and an outcome, highlighting that the transformation of relationships between different groups affected by conflict is crucial for ensuring peaceful social coexistence in the long term. Verdeja (2009, 3) equates it to a mutual recognition of respect between opposing parties in a conflict, where each side acknowledges the dignity of the other. From an institutional perspective, reconciliation is frequently linked with the notion of forgiveness (Doorn 2008, 382).

These reconciliation strategies are well-suited to the dynamics of a victim-offender relationship (Gibson 2002, 546–49). Here, the concept of interpersonal reconciliation is understood as the potential to create environments that foster coexistence and the rapprochement between opposing members of a society.

From a second perspective, reconciliation at the institutional level emerges as a distinct possibility. In this context, it is crucial to differentiate between reconciliation with the direct perpetrators of victimizing acts and a broader reconciliation involving the State and public institutions.

The arrival of new administrations can create opportunities to introduce new social policies designed to address unmet needs in transitional justice contexts. These policies should prioritize and centralize the needs and dignity of survivors and victims’ relatives. However, when subsequent governments fail to prioritize these issues or when the policies are not maintained over time, survivors and victims’ relatives often seek justice and redress from international bodies such as United Nations Rapporteurships and Treaty Bodies, as well as regional human rights jurisdictions like the IAHRS.

Beyond the deeply personal aspect, external factors also shape the process of achieving closure and reconciliation within the institutional realm. Martín Beristain (2009, 45) argues that victims’ emotional and psychological closure progresses at a different pace than administrative and judicial proceedings. For example, while legal processes often emphasize the sentencing phase, victims find greater significance in the public hearing, where they have the chance to be heard, or in the implementation of court-ordered measures.

A third approach involves reconciling with the concept of justice itself. This idea posits that individuals who feel alienated from the justice system might regain faith in its capacity to deliver fairness. This notion is linked to the journey victims undertake to be acknowledged,

heard, and compensated. It addresses the needs of victims before State institutions. When national policies fail to adequately address victims' concerns, these institutions lose their legitimacy.

In the American region, the IAHRs frequently is the final recourse to resort to. Petitioners before the IAHRs have navigated a complex journey through national judicial systems before accessing international jurisdiction. In certain cases, judicial decisions have not been aligned with international human rights law, or indeed have contradicted it.

4. The Inter-American Human Rights System and reconciliation approaches

The IAHRs is the regional international institution responsible for protecting and promoting human rights in the Americas. It is composed of the Inter-American Commission and the Inter-American Court. The Commission is responsible for the preparation of thematic and State reports regarding the rights protected under the American Convention on Human Rights. Meanwhile, the Court is responsible for adjudicating contentious cases and issuing Advisory Opinions (American Convention on Human Rights 1978, art. 33).

Within the IAHRs, under the System of Individual Petitions and Cases, individuals and non-governmental organisations may submit a petition to the Commission for the purpose of analysing allegations of human rights violations and determining the admissibility of the petition (Rules of Procedure of the Inter-American Commission on Human Rights 2011, art. 30, 36). The Commission's Report on the Merits assesses whether the rights outlined in the American Convention have been violated. If violations are found, it recommends measures for the State to address the situation and provide remedies to those affected (arts. 43-44). If the State disregards these recommendations, the Commission has the authority to refer the case to the contentious jurisdiction of the IACtHR.

The Court analyses the specific case and issues a judgment, which is binding for the respondent State. In doing so, the judges consider the parties' arguments, the evidence and expert opinions presented, and the necessity of holding hearings, if deemed necessary (Rules of Procedure of the Inter-American Court of Human Rights 2009 arts. 43, 57-58). The Court's judgment may include an order for reparations in favour of the victims of the case.

The IAHRs has intervened in cases related to transitional justice, such as armed conflicts or authoritarian regimes (Case of the Ituango

Massacres v. Colombia. Judgment [Preliminary Objections, Merits, Reparations and Costs] 2006; Case of the Massacre of El Mozote and nearby places v. El Salvador [Merits, Reparations and Costs] 2012; Case of Gomes Lund [Guerrilha do Araguaia] v. Brazil. Judgment [Preliminary Objections, Merits, Reparations, Costs] 2010; Case Gelman v. Uruguay. Judgment [Merits and Reparations] 2011). In such contexts, the IAHRs plays a crucial role in fostering reconciliation through two key aspects: the involvement of victims in the proceedings and the implementation of reparations mandated by the Court.

In this context, it is crucial to differentiate between two approaches to fostering reconciliation: offering apologies and granting recognition. These are two different paths. The apology implies the externalisation of repentance, aim to secure the forgiveness of those affected (Tavuchis 1991). Acknowledgement, in contrast, involves the externalization of *mea culpa* and the acceptance of responsibility. It underscores the dignity and victim status of those impacted by the events in question. This second form of recognition is embodied in the work of the IAHRs through victims' participation and the establishment of reparations.¹

The examination of three cases submitted to the IAHRs's System of Petitions and Cases has highlighted the pivotal role of survivors and victims' relatives in fostering reconciliation. Following the Commission's Merit Report and in the absence of any State initiative to address human rights violations thereby declared, these cases were referred to the Court, which has issued judgments on all three. The cases are:

- a. Members of the Chichupac village and neighboring communities in El Rabinal v. Guatemala (2016) (hereinafter, the Chichupac case)

The case concerns gross human rights violations perpetrated against members of rural communities in Rabinal, predominantly Maya Achí indigenous communities, in the context of military operations conducted by the armed forces and their collaborators during the internal armed conflict in Guatemala from 1981 to 1986. These violations included massacres, enforced disappearances, torture, sexual violence and forced displacement. Furthermore, there was a lack of investigation and prosecution of those responsible.

¹ On the importance of acknowledgment, see Govier and Verwoerd (2002, 74–76).

- b. Dismissed employees of Petroperú and others v. Perú (2017) (hereinafter, the Petroperú case)

The case concerns the violation of the right to judicial guarantees and protection among workers who were dismissed as a result of inadequate and ineffective legal protection during a period of economic rationalisation during the authoritarian regime of Alberto Fujimori in the 1990s. The case concerns 39 workers from the Ministry of Education, 84 from Petroperú, 15 from the Ministry of Economy and Finance, and 25 from the National Port Company.

- c. Goiburú and others v. Paraguay (2006) (hereinafter, the Goiburú case)

The case in question involves the Paraguayan State's international responsibility for the enforced disappearance of Agustín Goiburú, Carlos Jose Mancuello, and the brothers Rodolfo and Benjamin Ramírez Villalba, perpetrated by military and police agents during the dictatorship of Alfredo Stroessner. Additionally, it examines the lack of a comprehensive investigation and the subsequent failure to prosecute those responsible.

4.1. *Participation as a constitutive element of reconciliation*

Reconciliation is closely linked to the effective involvement of the petitioners in legal proceedings and their capacity to assume ownership of it. In the IAHRs, participation is expected from the moment the alleged victims submit a petition to the Inter-American Commission, continuing through to the contentious stage before the Court.

4.1.1. PARTICIPATION IN THE STAGE BEFORE THE INTER-AMERICAN COMMISSION

After the Inter-American Commission evaluates whether the necessary requirements for its admission have been met, it proceeds to the analysis of the petition's merits. The Commission or parties may request meetings to reach a friendly settlement between petitioners and the State to avoid the contentious stage. Throughout the process, although the petitioners themselves may attend these working meetings, it is the legal representatives who are prioritized for intervention.

In the Chichupac case, many of the interviewed survivors and victims' relatives expressed disconnection with the petition stage before the Inter-American Commission (Miguel Sic Osorio, interview,

2023)². This situation is intricately connected to various factors that impeded their full participation. In this case, most of the affected persons are from Mayan Achí communities of Rabinal, Baja Verapaz, Guatemala (Janssens 2012, 146; Oficina de Derechos Humanos, Arzobispado de Guatemala 1998, 143). The indigenous community's vehicular language and the victims' institutional educational level presented significant challenges for them in accessing crucial documents, such as resolutions from the Commission. These challenges were deepened by the lack of familiarity with the intricacies of legal documentation and the procedure itself. The participation of the individuals was based on informal meetings they held with their legal representatives (Tarcila Morales Millian, interview, 2023)³.

For many, even without actively participating in the proceedings before the Commission, the support of their legal representatives was crucial (Jerónimo Paz Ixpata, interview, 2023⁴; Itzel Xic Xic, interview, 2023⁵; Sasil García Toj, interview, 2023⁶). One of the victims in the Chichupac case emphasised the importance of their active role in the case: "When there is a meeting, María Dolores (the lawyer working for the association that is the legal representative in the case) calls me and I go to their office. They're also grateful for my support. When they said 'we had to go to court', I said: 'Let's all go, then' (Napoleón Depaz, interview, 2023⁷)." However, when legal representatives do not make representation an inclusive endeavour, there is often a noticeable disconnect, frustration and even tension between them and the victims. This was evident in the Goiburú case, where the legal representation did not enable victims to engage in the contentious phase and did not submit a demand. The Commission, which had referred the case, was the only party to present their legal arguments to the Court.

In other cases, victims have a pivotal role in the documentation of proofs sent to the Court, and their opinion is respected. One victim from the Petroperú case stated: "I remember that [legal representatives] came to take statements. I participated, [but] when I read it and felt that it did not reflect my opinion. So, I wrote my own statement (...) and sent it (Agustín Acedo, interview, 2023⁸)."

² Guatemala. Interview 1_t9_2.

³ Guatemala. Interview 1_t7_2.

⁴ Guatemala. Interview 1_t2_5.

⁵ Guatemala. Interview 1_t12_2.

⁶ Guatemala. Interview 1_t10_2.

⁷ Guatemala. Interview 1_t8_2.

⁸ Interview 2_t23_2.

Usually, the frequency of working meetings involving the legal representatives of the petitioners, the Commission and State representatives depends on the State's level of predisposition and openness to negotiate a friendly settlement. In the Chichupac case, the case file from the proceedings before the Commission revealed that only a limited number of meetings took place before the Commission released the Report on the Merits of the case in 2014 (IACHR 2016a; IACHR 2014).

Therefore, the disconnection of the victims from this stage of the process was driven by two key factors. Firstly, the State's reluctance to reach a solution that took into account their needs. Secondly, context-based socio-cultural factors that limited the participation of the victims in the process. It is crucial to recognize that the necessary provisions for the petitioners' participation in the Commission's working meetings were not established.

In the Petroperú case, some of the petitioners did participate in some of the working meetings (Isi Flores, interview, 2023⁹; Eduardo Chávarry, interview, 2023¹⁰). Here, those affected did not encounter socio-cultural obstacles that hindered their understanding of the language used in the working meetings, as in the Chichupac case. Despite this, the legal language used in this case also obscured the effective participation of the petitioners in this stage of the process (Isi Flores, interview, 2023). A former legal advisor of the Commission confirmed that this situation is a generalised issue (IAHRC Legal Expert 1, interview, 2023¹¹). Even when petitioners are physically present at working meetings, they often find it difficult to express their concerns in this setting. The current process before the Commission tends to favor a formal legal model, which prioritizes the involvement of lawyers and State representatives over that of the petitioners.

The lack of centrality of victims in this stage in the Petroperú case highlighted the disconnection of petitioners to the process: further negotiations and follow-up of the petition was delegated to the legal representatives (Nidia Blanco Castro, interview, 2023¹²). Limited involvement in legal proceedings can hinder reconciliation with local institutions. This is because there are concrete needs arising from victims' everyday lives and unreported consequences of human rights violations, such as housing, gender-based discrimination and labour

⁹ Perú. Interview 2 t4_2.

¹⁰ Perú. Interview 2 t1_2.

¹¹ Interview 1_t3.

¹² Perú. Interview 2 t32_2.

rights. One of the victims that served as nexus between dismissed workers and the legal representative of the case declared: “When there was something urgent, I would go to the capital and then go back to Talara [a 1100 kilometers journey]” (Eduardo Chávarry, interview, 2023). Then, he would organise meetings and talk to the rest of victims about how the Commission was making progress on their case.

In the Goiburú case, the victims’ testimonies confirmed that the family members were actively involved in the working meetings prior to the case’s referral to the Court (Marcelo Mancuello 2023¹³; Rogelio Goiburú 2023¹⁴). This is related to the socio-cultural context of the victims in the case and their families. Therefore, communication between the petitioners, their legal representatives, the Commission and the State was fluid among all parties (OAS 1996; IAHR 1997, fols 713, 716).

Moreover, there is an additional procedural factor that negatively impacts victims’ perceptions of fairness and justice. The Inter-American Commission has the authority to group cases that share the same object of the petition, the same respondent State, and where the facts of each case exhibit a high degree of similarity.¹⁵ In the Petroperú and Goiburú cases, the files referred to the Court were not submissions of a single case, but the accumulation of a group of similar cases.

In the case of Petroperú, the petition from individuals dismissed from the Petroperú company in Talara, a city in the northern part of the country, was submitted to the IACtHR. This was alongside cases involving workers dismissed from the Ministry of Economy and Finance (MEF), the National Ports Company (ENAPU), and the Ministry of Education (MINEDU), all of whom were based in or near the capital, Lima. Altogether, the grouped cases involved a total of 164 alleged victims.

In the case of Goiburú, the Commission grouped together the cases of enforced disappearance of Agustín Goiburú, Carlos Mancuello and the brothers Rodolfo and Benjamín Ramírez Villalba.

This procedural decision, proposed as a remedy for the overwhelming number of petitions received by the IAHR (OAS/IACHR 2021), has significantly influenced how individuals perceive the IAHR

¹³ Paraguay. Interview 3 t4_2.

¹⁴ Paraguay. Interview 3 t5_2.

¹⁵ *Rules of Procedure of the Inter-American Commission on Human Rights* 2011, art. 29.5: ‘If two or more petitions address similar facts, involve the same persons, or reveal the same pattern of conduct, the Commission may join them and process them together in the same file.’

and the handling of their cases. This, in turn, affects their assessment of justice on an international scale and the possibility of reconciliation. A former legal advisor from the Commission has stated that the accumulation of cases is a necessary measure in order to address the backlog of petitions. However, he considers it essential to ensure that this measure takes into account the views of the parties involved (IACHR Legal Expert 2, interview, 2023¹⁶). In addition, he drew attention to other measures that would improve the management of cases, such as “allocate greater resources to the number of staff working on cases, given that it is here where [human rights] standards are generated.”

One of the main effects of the accumulation of cases is the assimilation of the social, material and cultural conditions of every alleged victim. This blurs diverse realities and factors that affect each group of victims differently. In the case of Petroperú, the socioeconomic reality of the families living in Talara is very different from the social and economic context of the people who had worked in the MEF and MINEDU. While numerous former workers from ENAPU and the MEF were reinstated following multiple complaints, those affected by Petroperú were unable to return to their previous positions, and their economic conditions never fully recovered to the levels they had enjoyed prior to their dismissal (Carlos Zapata, interview, 2023; Rosa Acedo de Seminario, interview, 2023¹⁷; Manuel Paiva, interview, 2023¹⁸; María Esther Medina, interview, 2023¹⁹; Gerber Acedo, interview, 2023²⁰).

4.1.2. PARTICIPATION IN THE STAGE BEFORE THE INTER-AMERICAN COURT

During the contentious stage, which generally progresses more swiftly than the preceding phase before the Commission, the focus of the alleged victims shifts to the final stage of the proceedings: the judgment and reparations that the IACTHR will impose if the State is found to be liable (Martín Beristain 2009, 45).

This expectation increases in view of one of the most relevant moments for victims’ relatives and survivors: the public hearing. The

¹⁶ Interview 14_t3.

¹⁷ Perú. Interview 2 t17_2.

¹⁸ Perú. Interview 2 t15_2.

¹⁹ Perú. Interview 2_t9_2.

²⁰ Perú. Interview 2 t8_2.

Court has the authority to summon the parties, deponents and expert witnesses to hear their testimony and arguments (Rules of Procedure of the Inter-American Court of Human Rights 2009, art. 15). During this hearing, the Court primarily listens to oral presentations from the alleged victims and their families, as well as expert witnesses when necessary. Judges may also question the involved parties to gain a clearer understanding of the relevant information.

This is the pinnacle of victim protagonism throughout the proceedings. They are given the opportunity to address the judges directly, providing first-hand accounts of the events, their expectations, and, most importantly, their needs. For many deponents, the chance to share the truth about what happened and to be acknowledged is seen as a restorative act in itself (Martín Beristain 2009, 66–67).

In the Chichupac case, although more than 800 individuals, including both direct and indirect victims, came forward as alleged victims, none of the interviews with these victims revealed any dissatisfaction with the selection of those who testified before the Court. In fact, they remembered the public hearing as an act of recognition. During the 2016 public hearing, only two individuals who had suffered severe human rights violations during the Guatemalan armed conflict testified.

In this case, the legal representatives articulated the necessary means so that as many victims as possible could attend the hearing and be present at the event. Moreover, they provided psychosocial support to the two witnesses in the case and other victims. Interviews with survivors who attended the hearing showed a high level of acceptance of this procedural mechanism (Sasil García Toj, interview, 2023; Napoleón Depaz, interview, 2023; Miguel Sic Osorio, interview, 2023). A public hearing, even if is not a judgment, is an instance of State accountability and, as such, has an impact on the perception of justice of the people who turn to the IAHRs. For victims, the public hearing is one of the most important moments in the entire procedure, especially if they testify. During the public hearing of the Chichupac case, one of the victims expressed: “We have made an enormous effort, we travelled kilometers and kilometers to be here. Because we have not being listened to [at home]” (IACtHR. 2016b, min. 34:24-34:54). This “being listened to” is the cornerstone of victim recognition and a first step towards reconciliation.

When asked about their experience, both deponents in this case expressed feeling welcomed and pleased to have the opportunity to speak. The formal context of the testimony also influenced their experience: while it can be a daunting and challenging situation, it also

offers deponents a sense of contributing to the process at a crucial stage, thereby emphasizing their agency. Describing the context of the hearing, one of the deponents recalled: "We sat in front of them [remembering the courtroom and the judges]. (...) I am grateful because they listened to us when we arrived. Thank God (Napoleón Depaz, interview 2023)."

In a similar vein, when multiple cases are accumulated, choosing to hear only one victim from several distinct groups effectively homogenizes a context that is, in reality, quite diverse (Gerber Acedo, interview, 2023; María Esther Medina, interview, 2023). In the public hearing of the Petroperú case, only one of the victims from ENAPU was able to present her testimony. Victims from Petroperú in Talara felt that the hearing did not relate to their particular case and experiences:

Petroperú was the group entitled to testify, as none of us had been reinstated in our jobs. Ultimately, this decision was made, and I accepted it. However, [the deponent] spoke about herself and the ENAPU workers (Eduardo Chávarry, interview, 2023).

Legal advisors working with cases at the Court have highlighted the accumulation of cases can effectively obscure the nuances between the various needs of victims from diverse groups (IACtHR Legal Expert 1, interview, 2023²¹; IACtHR Legal Expert 3, interview, 2023²²). Nevertheless, this situation was compared to collective cases, in which it is not possible to review the situation of each individual victim (IACtHR Legal Expert 1, interview, 2023).

Martín Beristain (1998, 2) highlights the importance of psychological support during and after the proceedings as a vital component of victim participation in trials. For many years, psychosocial approaches have focused solely on the victim's ability to testify and contribute essential information to the case. Reconciliation, seen as a rapprochement between victims and the concept of justice, is more likely to occur when victims have the opportunity to express themselves. This is why denying a public hearing in a contentious case can lead to significant frustration for the victims and their families (Carlos Portillo, interview, 2023²³). In the Goiburú case, the Court unexpectedly decided against holding a public hearing, thereby

²¹ Interview 4_t3.

²² Interview 10_t3.

²³ Paraguay. Interview 3 t6_5.

preventing the families of those who were forcibly disappeared from addressing the judges directly.

Indeed, one of the Court's legal advisers noted that in grouped cases, the needs of different groups of victims are identified on the basis of "submitted documents, or from relevant information that may come to light during the hearing (IACtHR Legal Expert 2, interview, 2023)." Therefore, it is of particular importance that, in accumulated cases, the holding of a hearing should have a different procedural priority from that of other cases.

Recounting traumatic experiences in a public forum naturally involves vulnerability and the risk of re-victimizing the witnesses. Romero (2010, 10–11) emphasizes that the victims' narrative is subsumed to what the legal procedure requires, to what is relevant to the case and to the courtroom methodology. As a result, individual emotions and experiences are relegated to the periphery. This is why some legal representations are supported by professionals who offer psychosocial assistance to survivors and the victims' families before, during, and after the hearings. Recently, the Court itself introduced its own psychosocial support program for deponents in public hearings, addressing the vulnerable situations they face (IACtHR 2023).

After the public hearing, the Court deliberates on the case and the judgement is delivered. For the victims, the verdict stands out as a significant moment in the contentious process, particularly regarding reparations. The international acknowledgment of the State's responsibility, especially after national policies have either failed or were absent, serves as a crucial act of recognition for the victims and suggests a potential reconciliation with justice.

However, in many cases, the judgments fall short of meeting the victims' expectations or fail to thoroughly address the reparations needed to confront the consequences of the harm endured.

In the Chichupac case, for instance, the Court requested that the State of Guatemala facilitate the safe return of victims who had been forcibly displaced from their land. However, it clarified that it would not oversee the State's compliance with this measure (IACtHR 2016c, para. 298). This situation rendered a crucial measure of reparation for the victims unenforceable, leading to a profound sense of disappointment for many of them (Legal representative of the Chichupac case, interview, 2023²⁴).

²⁴ Guatemala. Interview 1_t15_1.

In the Petroperú case, a primary demand from the victims, particularly the former Petroperú employees, was the reinstatement of their jobs or the provision of employment opportunities for their children. Nevertheless, the Court opted to grant only monetary compensation, which was deemed exceedingly low, considering the number of individuals recognized as victims in the case. Every victim, regardless of the company they worked for or their individual circumstances, received the same amount, whether they were employed and living in Lima or facing various vulnerabilities in Talara, located in the northern part of the country (IACtHR 2017, paras 222–228).

4.2. *Reconciliation as conditional to the enforcement of reparations*

The IACtHR has placed particular emphasis on the comprehensive nature of the reparations it mandates, aiming to address the harm in a holistic manner while considering its often-structural aspects. In cases of enforced disappearance, the Court gives special relevance to rehabilitation measures for the victims' relatives. In *Gomes Lund v. Brazil*, it determined that "(...) psychological and psychiatric treatment must be provided by State personnel and institutions specialized in victims of acts of violence such as those that occurred in this case" (IACtHR 2010, para. 268). These reparations consider victims' concrete needs. Following the same case, the Court determined that in the provision of psychological and psychiatric rehabilitation measures, "the specific circumstances and needs of each victim must be considered, so that they are offered individual and family treatment".

Regarding structural measures and generalised violence, in the *Coc Max* case, the Court ordered Guatemala to improve and widen the road leading to the entrance of the community (IACtHR 2018).

These reparations target structural areas that enhance the living conditions of those affected by violence. It is crucial, therefore, to consider the interconnections between the reparations ordered to assess their effectiveness and impact. The positive effect of a rehabilitation measure, such as psychological care, can be undermined if the basic needs of the beneficiary are not simultaneously addressed. This is especially true when the current deprivation derives from the victimizing events. Faced with these structural obstacles, the possibilities of generating an environment conducive to promoting closure for victims and reconciliation diminish.

In the cases examined, reconciliation is closely tied to adherence to the reparations mandated by the IACtHR. After the judgment, many

victims expect the State to promptly implement the ordered measures (Dupuis 2009, 24–25). However, compliance times vary from State to State and even from government to government (Pérez Liñán et al. 2023). The legal representative of the Chichupac case declared that the lack of compliance by the State affected “[victims’] health and independence” (Legal Representative of the Chichupac case, interview, 2023²⁵).

Another aspect to consider is the nature of the reparations ordered. Generally, measures of a more structural nature tend to be implemented more slowly than others, either due to a lack of State will or because of insufficient coordination among the state agencies involved in implementing the measure. This latter scenario is evident in reparations such as the construction of roads, the installation of drinking water networks, or the updating of the Armed Forces’ training programs (Pérez Liñán et al. 2023, 28-29, 31). Structural measures are fundamental to reconciliation. Enhancing the economic conditions of those affected by violence is essential for transforming interpersonal relationships and establishing the groundwork for reconciliation (Bar-Tal and Bennink 2004, 26).

Victims of the three cases pointed out that the delay in implementing the Court-ordered measures is a major obstacle to achieving closure for the events that victimized them and to potentially reconciling with justice (Rogelio Goiburú, interview, 2023; Gerber Acedo, interview, 2023; Marcelo Mancuello, interview, 2023; Miguel Sic Osorio, interview, 2023). This phase of the process has also highlighted the limited resources available to an international jurisdiction for ensuring compliance with its judgments. Two victims, one from the Petroperú case and another from the Goiburú case, stated:

Why is this sentence not being enforced? Which strategies should be implemented to guarantee compliance with this sentence, which is insufficient in my opinion? Frankly, it’s a joke. They offer you justice and then fail to deliver (Agustín Acedo, interview, 2023).

Do you know the phrase “If they have no bread, let them eat cake”? [He laughs]. I will never be satisfied with the decision. I will never be happy with it (Rogelio Goiburú, interview, 2023).

This discrepancy between the needs expressed by the victims in the proceedings and the reparations ordered in the judgement creates

²⁵ Interview 3 t3_1.

difficulties when considering efforts towards reconciliation. Furthermore, the State's failure to comply is likely to exacerbate the negative feelings of victims, not only with regard to state institutions, but also with regard to the Court's inability to take measures that influence compliance at the local level.

When the Monitoring Compliance phase commences, the Court oversees the States' implementation of reparations. This stage is particularly stressful for the victims involved in the case. The States' inability or unwillingness to carry out the reparations mandated by the judgment directly affects the mental and emotional well-being of those still engaged in the proceedings. Additionally, it impacts their material well-being, as many face significant economic challenges and rely on compensation ordered by the Court to enhance their living conditions (Martín Beristain 2009, 53–55).

In none of the three cases examined have the States fully complied with all the reparation measures ordered by the Court. In the Chichupac case, out of the 10 measures ordered, only one has been fulfilled (IACtHR 2016c, sec. Reparations).²⁶ In the Petroperú case, which has only two reparation measures ordered, the Peruvian State has not fully complied with the payment of compensatory amounts (taking into account the urgent needs of many of the victims) (IACtHR. 2022).²⁷ Finally, in the Goiburú case, of the ten reparation measures, the State has still not complied with four of them, including the active search for the disappeared persons (IACtHR. 2019).²⁸

²⁶ Reparations encompass several measures: covering costs and expenses; the duty to investigate, prosecute, and, when appropriate, punish those accountable for the human rights violations in the case; determining the whereabouts of victims of enforced disappearance, along with the recovery and identification of remains from clandestine graves; providing medical, psychological, and/or psychiatric care to victims; conducting a public act acknowledging responsibility; publishing and disseminating the Judgment; offering continuous human rights and international humanitarian law training for members of the Guatemalan Army; implementing non-discrimination education programs; strengthening State agencies that combat racial and ethnic discrimination; and compensating for both material and non-material damages.

²⁷ Reparations include: payment of costs and expenses; the publication and dissemination of the Judgment and payment of compensation for material and non-material damage.

²⁸ Reparations include: payment of costs and expenses; the obligation to investigate, prosecute and, where appropriate, punish those responsible for the human rights violations in the case; determination of the whereabouts of victims of enforced disappearance, as well as recovery and identification of the remains of persons buried in clandestine graves; medical, psychological and/or psychiatric care of victims; a public act of recognition of the responsibility; the publication and dissemination of the Judgment; a memorial to the victims; payment of compensation for material and non-material

In this same case, in the first resolution to monitor compliance in August 2008, the Court observed that, in the two years following the judgment, none of the measures had been implemented (IACtHR 2008).

Moreover, it is important to note that reparations which fail to satisfy the expectations of the victims, in conjunction with the ensuing delay in the implementation of measures ordered by the Court, have the potential to engender tension between legal representatives and victims themselves. In relation to one of the victims, the former legal representative of the Goiburú case declared: "He wanted more money (regarding compensation). I told him I would step aside so the family could discuss about how the reparation ordered by the Court would be distributed among them" (Legal Representative of the Goiburú case, interview, 2023).

Likewise, in two of the three judgments analysed, an act of recognition and responsibility of the State was ordered as a reparation measure (IACtHR 2016c, resolute par. 21; IACtHR 2006, resolute par. 7). This form of reparation is of significant importance for victims in terms of their ability to reconcile with the State. The manner in which the measure is implemented reflects the commitment on the part of the public authorities to acknowledge the harm caused and their dedication to honouring the relatives and survivors of the victims. In the Goiburú case, for instance, two sons of victims of enforced disappearance noted that the State conducted the recognition act without the presence of relevant authorities, leading them to perceive it as a mere formality. One of them expressed: "(I)t's all just words, you know? There's a ceremony, everyone is there for the picture and then they all disappear. Typical" (Marcelo Mancuello, interview, 2023). The lack of solemnity and true recognition by the State damages any attempt to build a bridge to reconciliation.²⁹ In a resolution on supervision of compliance, the Court warned how reparatory measures, if adopted late, cease to have a reparatory effect:

The Court notes that the State complied with the public act of acknowledgment of responsibility more than eleven years after the

damage; bringing the offences of torture and 'forced' disappearance of persons contained in articles 236 and 309 of the current Criminal Code into line with the provisions applicable to international human rights law; ongoing human rights education programs within the Paraguayan police forces.

²⁹ On this aspect, Govier states that "(a)n apology in which there is no willingness to undertake any practical measures of reparation is likely to seem insincere or hollow. It may even be worse than no apology at all" (Govier and Verwoerd 2002, 73).

expiration of the term granted in the judgment (...). The Court concurs with the sentiments expressed by the victims' sons, Rogelio A. Goiburú and Carlos Marcelo Mancuello, in the aforementioned act. They emphasized the critical importance of the State promptly fulfilling reparations, as the passage of time affects the adequacy of these reparations (IACtHR 2019, para. 13).

In the Guatemalan case, almost eight years after the sentence, this measure has still not been complied with (IACtHR 2024, resolutive par. 2.d).

It is crucial to stress the interconnected nature of these measures, as they are inextricably linked. In the Goiburú case, for example, the State's acknowledgment of responsibility failed to have a reparative effect because it was not supported by a concrete policy to search for the disappeared persons.

Two of the cases examined involve the enforced disappearance of individuals (IACtHR 2016c, para. 139; IACtHR 2006, para. 94). Consequently, one of the reparation measures established by the Court is the search for the remains of the disappeared persons (IACtHR. 2016c, paras 290–297; IACtHR 2006, paras 171–172). These measures remain open in both the Chichupac and Goiburú cases. Although determining the whereabouts of disappeared persons is a complex task fraught with numerous operational challenges, the documents from the Monitoring Compliance stage of the Court in both cases reveal a lack of willingness on the part of the State to allocate the necessary human and material resources for actively conducting a search over the years.³⁰

The lack of cooperation and initiative from States regarding this specific measure undermines any chance of reconciliation, both at the national level with State institutions and with the broader concept of justice. The search for missing persons in cases of enforced disappearance is a prioritized reparation measure, and reconciliation is closely tied to the compliance, or at least the willingness, of public institutions to make every effort to locate the victims in these cases.

³⁰ The Court's last reference to the reparation measure on the search for the missing persons in the case established as early as 2009: "more than three years having elapsed since the delivery of the Judgment, the State has not made significant progress in the search for the remains of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba (...). If the State claims not to have sufficient resources, it would be appropriate for it to take the necessary measures to take the steps required to strengthen the State's capacity to search for and identify them". The measure is still pending today (IACtHR 2009, par. 30).

Regarding basic material needs, if, as a result of the victimising events, the victims find themselves living in conditions that jeopardise the minimum basis of economic, social and cultural rights that guarantee them dignified life, the fulfilment of measures related to housing, health and work become particularly relevant. In this context, bringing reconciliation closer to families that cannot live in dignity is unthinkable. There are minimum material conditions that must be guaranteed in order to implement reconciliatory approaches. In this sense, it is not feasible to propose reconciliation to families who have been declared victims by the Court and who do not have access to basic services. This is particularly true when compliance with some of the reparations ordered by the Court could substantially improve this situation.

In the two cases where rehabilitation measures were ordered (Chichupac and Goiburú cases), none of the measures were even partially complied with by the State. This is significant given the health concerns expressed by the victims in both cases. One of the victims in the Goiburú case stressed the importance of medical and psychological treatment, especially for the family members who had led the petition before the IAHRs, such as her grandmother, who has since passed away (Marcelo Mancuello, interview, 2023).

Among most of the pending measures highlighted by the victims of the Chichupac case is health care, which is becoming increasingly urgent due to the passage of time and the advanced age of many of the survivors.

We need a doctor here. The government told us that there would be one in the village, but there is no doctor or medicine. So what are we waiting for? (T)he Court promised us health, education. [W]e are dying, we suffer, our children suffer from illnesses because of all that violence (Juanita D. P., interview, 2023³¹).

Furthermore, many of the victims interviewed indicated that they had no money to obtain treatment. Some of them are reliant on their children to procure vital medications (Pablo Cuxum, interview, 2023). Others used their compensation payment to address illnesses of their children (Paulina Toj, interview, 2023), distorting the goal of the reparation measure.

In the Petroperú case, the only reparation measure directly related to the victims is the payment of compensation. The State has

³¹ Guatemala. Interview 1_t1_2.

successfully avoided complying with this measure by initially attributing the delay to changes in its internal institutional structure and the adoption of computerised administrative processes. However, these changes have merely served to delay compliance. As the Court has rightly pointed out in its monitoring of the case, the excessive delay in the payment of compensation to the declared victims in this case is not reasonable (IACtHR 2022, para. 33).

Considering the advanced age of most victims and their challenges in accessing adequate medical care due to financial constraints, the victims' legal representative requested provisional measures to ensure that the State would exceptionally provide the urgent medical treatment needed by one of the victims (IACtHR 2022, par. 5). The Court rejected such a measure and the victim died. Nonetheless, the Court issued a resolution mandating 'enhanced supervision' of the case and requested the State to report within three weeks to expedite the payment process, as the delay at this stage was deemed 'unacceptable' (IACtHR 2022, par. 33).

In the Goiburú case, one of the victims expressed that he no longer monitors the implementation of the judgment, since it has been "a terrible frustration" (Rogelio Goiburú, interview, 2023).

Conclusion

From the cases analysed, and especially through interviews with victims, a clear disconnection emerges between the potential for reconciliation and the minimal involvement of these victims in judicial proceedings. Additionally, this situation is exacerbated by the glaring failure of States to comply with the reparations ordered by the Court. The fact that it is impossible to guarantee a context that promotes reconciliation also extends to reconciliation at different levels. Due to the failure of States to comply with the reparations ordered for victims, it is not possible for survivors and their families to approach State institutions. This disbelief, particularly evident in cases like that of Goiburú, hinders victims' ability to reconcile with the very concept of justice.

The lack of connection with the concept of justice in a broad sense is a significant problem. The words of those interviewed reveal a fatigue with the search for the prosecution of those responsible, reparations, and truth. This translates into a profound distrust of justice systems, both nationally and internationally.

At the international level, it has been observed that the procedural system of the Inter-American System does not actively encourage victims to participate, often relegating them to a passive role at various stages of the process, both before the Commission and before the Court. There is an exception to this rule, which is the holding of public hearings before the Court. In the course of the interviews, individuals confirmed that this was a defining moment for them in terms of feeling close to achieving justice. This viewpoint is further validated by the observation that among the three case studies examined, victims in the Goiburú case, which did not involve a public hearing, expressed the most negative perceptions of the Inter-American System.

It is important to note that the manner in which legal representatives of victims work with them –either vertically or horizontally– significantly influences their experience and effective participation throughout the judicial process. Providing psychosocial support for witnesses, ensuring all victims have access to documentation, and facilitating ongoing two-way communication are key elements that shift the relationship between legal professionals and victims from a hierarchical to a more egalitarian one.

When it comes to transitional justice measures, the issue lies not with the foundational pillars themselves, but with their sequencing. These measures cannot be implemented in a disjointed manner. The effectiveness of a transitional scenario aimed at fostering reconciliation becomes doubtful when reparations are only partially executed; for example, offering compensation without making efforts to locate missing persons. Similarly, acts of responsibility lose their impact if they occur without establishing the truth about the events that caused victimization. Each pillar of transitional justice either strengthens or undermines the others. Moreover, they directly influence the potential for reconciliation, whether it is aimed at national institutions or at the perception of justice through international avenues.

If the participation of victims in the proceedings before the IAHRS and the implementation of the reparations they require are not considered, the conditions necessary to foster reconciliation at various levels cannot be assured. At the Inter-American institutional level, the process itself must ensure that victims are recognized and that mechanisms are in place to guarantee their effective participation. Similarly, the reparations ordered by the IACtHR can be seen as the enactment of justice at the national level. Their fulfilment reconciles the victims with the idea of justice, satisfies their needs, and at the same time promotes the creation of spaces for coexistence. Therefore, participation and reparations build the social, cultural, economic, and

political base necessary to promote the multiple dimensions of reconciliation.

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