

# CEJIL GAZETTE

A PUBLICATION OF THE CENTER FOR JUSTICE AND INTERNATIONAL LAW

## EDITORIAL

### **New approaches to the litigation of torture cases: a psychological perspective**

**S**ince its inception, the Inter-American System on Human Rights has paid special attention to cases involving torture. The practice of torture, widely employed throughout the Americas during the era of military dictatorships and internal armed conflicts, is still used in today's democracies, both in the form of isolated incidents and as part of a widespread systematic pattern of abuse.

Within this context, many torture victims and their relatives have testified and continue to testify before the Inter-American System with the hopes of finding answers that state authorities have not offered.

In fact, the Inter-American System has received a substantive number of complaints involving torture: For instance, 50% of the cases before the Inter-American Court involve torture and cruel, inhumane, and degrading treatment<sup>1</sup>. CEJIL has participated in several of these cases. Currently, CEJIL litigates 46 cases and represents over 3,000 victims of torture and inhumane treatment before the Inter-American Commission and Court. This experience has been a useful way to call attention to the fact that these

cases cannot be approached solely from a legal perspective. Rather, a broader approach that takes into consideration other aspects of a case on torture, such as the psychological ramifications, is essential.

Within a broader approach, it is necessary to offer psychological care to victims of torture, especially as they go through different steps of the legal process, where they have to revisit their painful past and disclose traumatic experiences.

Participating in a process before an international tribunal can lead victims to relive part of the suffering they have undergone. Many who testify before these bodies cry while others show other symptoms such as depression, disassociation, speaking distantly in a monotone voice, loss of connection to the incident or loss of memory of major life milestones, etc. Others simply refuse to tell their story or if they do, they may omit certain fundamental points.

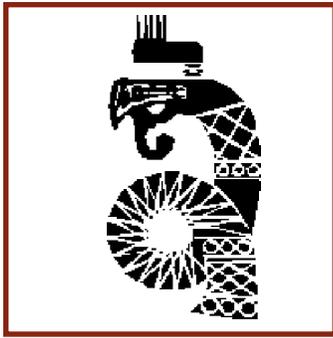
The documentation of cases under such circumstances requires lawyers be appropriately trained to understand the process undergone by those involved in the pursuit of justice in these types of

cases. Within this context, it is important that they know how to deal with these situations so that the case not only fulfills its legal objectives, but also so that it also appropriately offers redress and empowers all those affected.

Likewise, the testimonies of experts and psychologists are essential to the documentation of these types of cases. Moreover, the support these professionals offer to victims and their relative members throughout the process is fundamental.

Finally, the assistance of specialized psychologists and professionals also can be key in the reparations stage as a means to appropriately assess the damages incurred by victims of torture and their relatives. This is especially important in determining the impact beyond the more noticeable scars and to establish concrete forms of reparation.

<sup>1</sup> 2003 Annual Report (Inter-American Court) and Rodríguez Rescia Victor. Torture in the Inter-American System: Psychological Report as Evidence.



### **What impact does dealing with cases with victims of torture have upon the human rights lawyers?**

Direct and constant contact with victims of torture and similar abhorrent treatment has an impact upon those responsible for these cases. Listening and supporting the victims and their relatives; handling accounts about the most violent situations on a daily basis; and designing legal strategies based on this information to fulfill victims and their families' expectations for justice can all lead to a variety of physical and emotional responses by human rights lawyers.

In dealing with these types of situations, many human rights defenders have suffered from nightmares or complete exhaustion following an interview or a hearing. Other effects include depression, excitement, lack of motivation, stress, and a manic approach to work. In some cases, these professionals develop deep empathy towards the victims and their feelings. Sometimes

these moods are reflected in strong reactions towards their own colleagues, family, or authority figures.

Although working on these types of cases often leads to concrete results and great satisfaction, the Member States' high rate of in compliance with the recommendations and decisions of the Inter-American System often generates frustrations.

Taking this scenario into consideration, it is crucial that human rights defenders responsible for these cases know the effects that this work can have upon them under different circumstances. Moreover, it is important that they be trained to help design a successful and comprehensive case strategy, as well as to care for their physical and psychological well-being.

*“Those of us who have chosen psychological reparations as one of the important objectives of our work through the study and the unveiling of the workings of the internal psyche, and those of us who have chosen the path of legal reparations through the study of law have the opportunity to learn from each other, create a common language, and to move towards a mutual understanding of these two worlds through this joint project. Together, we also have the opportunity to ask questions and find creative alternatives within the complex context of human rights work.”*

*(Alicia B. Neuburger, psychologist and member of the network-team of the Project.)*

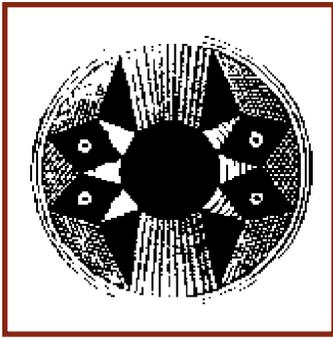
### **Testifying before the Inter-American Commission and Court as a Form of Redress**

The testimony of victims or their relatives before the Inter-American System in cases of torture and cruel, inhuman, and degrading treatment is central to evidence because they are the best positioned to provide a firsthand report of the facts included in complaints, as well as to explain how the events have influenced their lives. Therefore, it is very important that victims or relatives testify directly and immediately before these bodies to validate the alleged violations.

Moreover, their testimony before the Inter-American Commission and Court is an important form of redress in and of itself. This is especially true because most of the cases denounced before the Inter-American System reach this body after the victims and their relatives have gone through many steps at the national level, without ever being heard or finding justice. Within this context, a testimony before a human rights mechanism such as the Inter-American

System, where they are heard and their suffering is acknowledged, is a form of redress in and of itself.

Furthermore, theoretically, the State in question and the victims as plaintiffs are at an equal standing before the Inter-American Commission and the Court. This symbolic parity values and dignifies the victim's testimony.



## ***The Inter-American Court's Jurisprudence on Torture***

CEJIL has litigated and continues to litigate an important number of torture cases before the Inter-American System. This has allowed the many different aspects of the problem of torture to arise and also led to the development of jurisprudence on this issue.

In the case of *Las Palmeras*, for example, the Inter-American Court referred to the psychological effects of impunity when it established the Colombian State's responsibility to investigate the case and sanction those responsible for the violation. It also noted its duty to publicly disclose decisions related to the case.

In the cases of *Cantoral Benavides vs. Peru*, *Blake* and *Villagran Morales and others* (the latter two against the State of Guatemala), the Court considered psychological torment to be a form of torture, based upon the understanding that all acts "that produce any acute physical, psychological, or moral suffering upon the victim" are considered torture.

The case of *Bamaca Velazquez vs. Guatemala* also recognizes the suffering undergone by relatives of the victims of torture and forced disappearance, given the uncertainty surrounding the lack of information on the whereabouts of their loved ones and their remains. Moreover,

the impunity enjoyed by those responsible for these crimes constituted a violation of their physical integrity.

Also, in *Juan H. Sanchez vs. Honduras*, the Court referred to the effect of impunity upon relatives of the victim as "making them feel vulnerable and in a state of constant defenselessness vis-à-vis the State, a situation that causes them deep anguish". In this sense, the Court not only ordered the investigation of the case by state authorities (among other reparation measures), but it also stated that the family members should have complete access to and participate in the different stages of the investigation. Additionally, the Court ordered the State to publicly disclose the case's decision.

Moreover, in the case *Bulacio vs. Argentina*, where the victim was arbitrarily detained by police forces and died while in prison, the Court established: "It is part of human nature that a person subject to arbitrary detention experiences deep suffering, accentuated in the case of children. It is reasonable to conclude that such distress extends to the closest members of the family, especially those who were in close emotional contact with the victim. No evidence is required to reach this conclusion".

Experts also have appeared before the Court to suggest forms of reparations

not only for the individual victims and their relatives, but also for the community and society in general. For example, in the case of *Villagran Morales and others*, the psychologist Ana Deutsch explained the psychological impact that torture has over a child and the effect that this has upon surviving relatives. This helped determine the damage suffered by the relatives and identify adequate measures to offer redress. Therefore, concomitant with the request of the mothers, she considered that it was important that the Court order symbolic reparations, such as naming a school after the children.

In *Bulacio vs. Argentina*, the psychologist Graciela Guillis, expert for this case before the Court, described the psychological ramifications of the murder of Walter Bulacio by state authorities upon his family members. By showing the central role that Bulacio had within his family and the expectations that his relatives had invested in him, the psychologist contributed to a deeper understanding of the impact his death had upon his family. Moreover, the psychologist was able to shine a light upon the importance of the particular circumstances leading to his death: the police forces, which were supposed to guarantee his individual rights, were responsible for his death and for the impunity that then surrounded his murder.



### **The Project: “Providing Psychological Support for Victims of Torture in the Inter-American System on Human Rights”**

CEJIL and the Inter-American Institute for Human Rights (IIHR) are implementing the project “Providing Psychological Support for Victims of Torture in the Inter-American System on Human Rights”. This project draws upon the experiences of the IIHR within an academic context and in the development of standards, as well as CEJIL’s expertise in litigation before the Inter-American System.

Expected to last 3 years, this project’s main goal is to offer psychological care to victims and relatives who file complaints involving torture, cruel, inhumane and degrading treatment before the Inter-American System. The project promotes the incorporation of a psychological component into the Inter-

American System’s application of international human rights law.

As far as specific objectives, this project proposes the following scopes of work:

- 1) The litigation of torture cases before the Inter-American Commission and Court, as well as the monitoring of the Member States’ efforts to implement these decisions;
- 2) The creation of a network-team of specialists that can provide psychological care and accompany victims and relatives who have presented complaints involving torture before the Inter-American System. Composed of 10 Latin American specialist in care, rehabilitation, and psychological reparations for those affected by torture, this network-team

will testify before these bodies as experts;

- 3) The design of a methodology for the psychological care of victims or relatives denouncing torture cases, which can then be applied to similar cases as well as shared with other NGOs and human rights defenders that work before the Inter-American System;
- 4) The provision of training and psychological care for the CEJIL staff so they are better equipped to deal with torture cases;
- 5) The preparation of publications and reports that systematize the experiences and work carried out during this project.

### **Meeting of Experts on the Provision of Psychological Services to Victims of Torture**

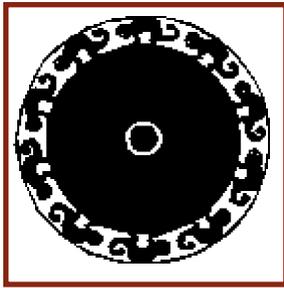
From August 2<sup>nd</sup> – 4<sup>th</sup> of 2003, members of the team-network of experts met in San José, Costa Rica as part of an initiative undertaken by the Inter-American Institute for Human Rights (IIHR) within the framework of the Project *Psychological Assistance to Victims of Torture in the Inter-American System*, which is funded by USAID. Staff members from the IIHR and CEJIL also participated in the meeting.

The meeting’s objective was to establish strategies for implementing a comprehensive approach to the treatment of torture victims who have cases before the Inter-American System. At the same time, the meeting gave the

network-team of specialists the opportunity to come together as a group and to agree upon common communication methods, such as an email listserve and a special section on the IIHR’s website to exchange information.

On the other hand, CEJIL took the lead in a broader discussion on the difficulties and expectations involved in providing legal aid to those affected by torture. Attorneys from CEJIL/Costa Rica participated by sharing their experiences, which facilitated the exchange amongst the members of the network-team, thereby enriching a joint psychological/legal approach to human rights.

Amongst many conclusions during this meeting, the participants established a clear need to strengthen interdisciplinary work, both from the legal and psychological approaches, as a way to enrich the legal strategy of a case and offer better conditions to victims testifying before the Inter-American System. In this sense, there was a clear need to create a common language that is accessible to both disciplines so that all working on the issue can better understand those affected by torture, as well as influence the process of securing integral reparations that benefit the individual victims and society as a whole.



## **NEWS FROM THE INTER-AMERICAN SYSTEM**

### **OAS ELECTS NEW SECRETARY GENERAL**

On June 7, 2004 the Organization of American States (OAS) elected Miguel Angel Rodriguez as its next Secretary General during the 2004 General Assembly in Quito, Ecuador.

Mr. Rodriguez will occupy his post in September 2004 for a term of five years. While participating in a meeting with CEJIL and other member organizations of the International Coalition of Organizations for Human Rights in the Americas, Secretary General-elect Rodriguez promised to promote and maintain a continued dialogue between his office and human rights organizations working in the Americas.

### **EXPERTS MEET IN MEXICO TO DISCUSS THE INTER-AMERICAN SYSTEM**

Between July 19 and 21, 2004, representatives from the Inter-American Commission and Court, non-governmental organizations dedicated to advancing human rights in the Americas, government human rights programs, universities and other experts met in Mexico to discuss various aspects of the Inter-American System for the Promotion and Protection of Human Rights.

The meeting, which was mandated by the Member States of the OAS as part of Resolution 2030 at the 2004 General Assembly, was the first step in a process intended to undertake deep and wide-ranging reflection on the Inter-American

System. This process, which is required to include a variety of human rights experts from diversity backgrounds and professional affiliations, is intended to strengthen and improve the Inter-American System.

### **SIGNIFICANT CUT TO THE COMISION'S BUDGET APPROVED**

Despite widespread criticism from the international human rights community, the Inter-American Commission on Human Rights suffered a 10% reduction (352,100 USD) in its budget for the 2005 fiscal year. The budget reduction, which was passed as part of Resolution 2059 at the OAS General Assembly, represents a significant retreat by Member States in their collective commitment to strengthening the Inter-American System.

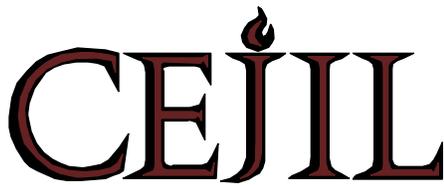
The content of Resolution 2059 was largely the result of a private meeting of the OAS Permanent Council in which restructuring the OAS was a primary concern. In an effort to promote funding for the Commission, CEJIL, on behalf of the International Coalition of Organizations for Human Rights in the Americas, submitted a petition urging the Permanent Council not to approve the proposed budget cuts. Furthermore, CEJIL and the Coalition urged the Permanent Council to establish a monetary fund for victims bringing cases before the Inter-American System and the reformation of the processes by which Judges and Commissioners are elected. CEJIL believes it is important that these processes be completely transparent and

that they prioritize competence, moral authority and each candidate's commitment to human rights.

### **CIVIL SOCIETY ORGANIZES SHADOW EVENTS DURING THE 2004 OAS GENERAL ASSEMBLY**

Together with CEJIL, several member organizations of the International Coalition of Organizations for Human Rights in the Americas organized a day of programming concurrent to the activities of the General Assembly on June 6, 2004. During the morning session, representatives from various organizations discussed the role of the OAS in strengthening the rule of law in Latin America and the application of the Democratic Charter with official representatives of governments from across the Hemisphere. Those participating in the meeting included Secretary General-Elect Miguel Angel Rodriguez, the Peruvian Foreign Minister, the Bolivian, Colombian and Peruvian Permanent Representatives before the OAS, and other representatives from national governments and offices of the OAS.

In addition to the morning session, CEJIL and other member organizations of the Coalition organized three round table discussions. Each focused on an issue of high priority on the Coalition's agenda, and included violence against women; security, terrorism and human rights; and indigenous rights.



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