

Taking Account of Psychological Harm

An agenda for human rights law and psychology.

KEY POINTS

- Violence against the physical and psychological well-being of persons is a human rights violation.
- Human rights cases have addressed psychological harms such as mental violence, mental abuse, psychological suffering, distress, etc.
- Courts seek expert opinions from psychologists during trials, making "clinical psychological knowledge" an integral part of the justice outcomes.
- Law and psychology share a common interest in shaping the discourses on suffering and justice.

Justice for human rights violations involves taking into account psychological harm caused to individuals and communities. Justice for psychological harm is specifically grounded in four considerations:

1. that harm to human persons can be both physical and psychological
2. that even in the absence of physical injuries, psychological harm can constitute a human rights violation
3. that those causing psychological harm ought to be accountable
4. that claims for justice for harm are supported by human rights principles

One finds that across legal systems, laws align and support these considerations while making justice for psychological harms a matter of rights, well-being, and state responsibility.

Psychological Harm

"Psychological harm" has many labels. In human rights cases, it has been addressed as mental violence, mental abuse, psychological suffering, moral suffering, mental distress, psychological discomfort, emotional injury, mental and psychosocial afflictions, etc. Suffering, according to Harvard researcher Tyler VanderWeele, might be understood as the undesired experience, of considerable intensity or duration, of a negative physical or affective state. Physical suffering will often involve an experience of pain, and psychological suffering some form of sadness, fear, or anger ([VanderWeele, 2019](#)).

International and domestic rules empower victims to seek justice. The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power provides "victims who have suffered harm, including emotional suffering are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered" (1985). And judicial courts are empowered to entertain complaints under the laws that criminalize intentional conduct of seriously impairing a person's psychological integrity through coercion or threats ([Istanbul Convention](#)).

Justice for Harm

Courts contribute to making standards and benchmarks to address cases involving psychological harm. In the [ground-breaking](#) decision of [Ricky Nathanson v. Farai Mteliso](#), the Zimbabwean High Court ordered compensation for unlawful arrest, harassment, emotional distress, and humiliation caused to an individual by the police/state authorities. Noteworthy are the observations of the court that in such cases, all courts face a challenge in the quantification of damages, and that no mathematical formula can be relied on because each case is unique (2019).

In the context of collective suffering, the Inter-American Court of Human Rights in [Massacres of El Mozote v. El Salvador](#) recognized the individual and collective dimensions of mental suffering caused by armed conflicts (massacre). In determining the psychosocial impacts of armed conflicts and the reparations required, the court relied on expert opinions. While making the state accountable for the harm caused, the court cites the expert opinion:

"... the massacre... dissolved the social networks in which the life project of both the individual and the community was inserted... There was a loss of the collective subject that identifies an individual with the community, and there was a significant impact on the collective dignity. And the victims have not been able to process their sorrow owing to lack of mechanisms for the social validation of their pain, as a result of the lack of institutional and collective support. It is a very deep and private sorrow, which paralyzes many healthy aspects, such as giving or receiving affection, and having a plan for the future. All of this must be repaired at both the individual and the collective levels."

In many human rights cases, courts, based on the gravity of the harm and other factors, have ordered penal sanctions/punishment, compensation, rehabilitative services, apologies, public acknowledgment of responsibility, guarantees for non-repetition, etc. The Inter-American Court made psychosocial assistance an essential part of repairing harm.

Psychology and Human Rights Law

In both the cases of Ricky Nathanson and El Mozote, the psychological expertise and assistance sought by the courts was an integral part of the trial process. In an analysis of the works of the Inter-American Court, Vargas-Forman writes that "clinical-psychological knowledge can contribute to national and international litigation... (and)

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nurture the determinations that are issued from the justice systems" (Vargas-Forman: 2022).

In their work on the psychological impact of structural violence, Hammad and Tribe employ the human rights and community liberation psychology framework to emphasize how continual, systemic, and structural oppression can be potentially more psychologically detrimental than specific incidents of conflict and violence. And thus, interventions made in disaster and conflict settings should be made accordingly (Hammad & Tribe: 2020).

Human rights practice, literature, and studies highlight the contribution of law and psychology toward justice for psychological harms. Questions of interest to both are whether there is a universal theory on psychological harms to inform matters of justice; whether psychological harm can have a cultural context; whether psychological suffering can have an [empirical measure](#); and whether newer threats like [climate anxiety](#) and [technology-based harm](#) are being addressed.

To sum up, violence against the mental well-being of persons and communities is a human rights concern. And discourses on rights and justice are beginning to acknowledge the close relationship law and psychology have forged for alleviating human suffering.

References

Andrea Leiter, Magdalena Thöni (2012), "Hannes Winner, Evaluating human life using court decisions on damages for pain and suffering", International Review of Law and Economics, 119-128

Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), 2011. <https://rm.coe.int/168008482e>

El Mozote (2012) https://www.corteidh.or.cr/docs/casos/articulos/seriec_252_inq1.pdf

Jeyda Hammad, Rachel Tribe (2020), Social suffering and the psychological impact of structural violence and economic oppression in an ongoing conflict setting: The Gaza Strip, Journal of Community Psychology, 1-20.

Ricky Nathanson Case (2019). <https://zimlii.org/zw/judgment/bulawayo-high-court/2019/135>

Ruth Vargas-Forman (2022), Contribution of the Psycho-forensic Evidence in the Inter-American Court in the Case of Lonkos and Mapuche Indigenous Leaders Versus Chile, in Elizabeth Lira, Marcela Cornejo, Germán Morales (eds.), Human Rights Violations in Latin America Reparation and Rehabilitation, 179-194.

Tyler J. VanderWeele (2019), Suffering and Response: Directions in Empirical Research, Vol. 24 Social Science and Medicine, 58-66.

UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985. <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration...>

Deepa Kansra, Taking Account of Psychological Harm, *Psychology Today* (August 2022).

Grist (2022), The Next Climate Battle in Courts is over Mental Health: European lawsuits allege that climate inaction is causing psychological harm — and violating human rights. <https://grist.org/international/the-next-climate-battle-in-the-courts-i...>

Deepa Kansra (2021), Neuro rights- the new human rights. <https://www.researchgate.net/publication/353211087> Neuro rights the new...

<https://www.psychologytoday.com/intl/blog/rights-well-being/202208/taking-account-psychological-harm>