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| Institution: University of Essex |
| Unit of Assessment: 20 – Law |
| Title of case study: Securing Reparations for International Human Rights Violations |
| <p>1. Summary of the impact</p> <p>Dr Clara Sandoval's research has helped to clarify the scope of the obligation to provide reparations under international law. This research has informed legal cases worldwide considering claims to reparations: international courts such as the International Criminal Court and the Inter-American Court of Human Rights have relied on her work and her expert advice when considering claims to reparations; lawyers have used her work to claim reparations for victims of human rights violations; and international NGO Redress has used her work in its campaigns.</p> |
| <p>2. Underpinning research</p> <p>A variety of branches of international law entitle victims of human rights violations to reparations. Sandoval's publications on the legal principle of reparations deal with two questions: who can claim to be a victim for the purposes of reparation? and what is the scope of particular forms of reparations, such as rehabilitation, under international law?</p> <p>In answer to the first question Sandoval (Lecturer in Law from 2003, Senior Lecturer from 2009) has argued that the legal definition of 'victim' ought to be flexible, culturally sensitive, and broad, on the grounds that applying the concept in this way will ensure we deal adequately with all those who suffered serious human rights violations. This research includes Sandoval's work on the use of the concepts of victim and injured party in the Inter-American Court of Human Rights (2009b), the details of which supported her contention that courts should apply both concepts when awarding reparations for human rights violations.</p> <p>Sandoval has also argued that reparations should extend to the family members of direct victims of human rights violations, as those family members are often also harmed by, for instance, the loss of the family breadwinner, and suffer mental and emotional harm as the result of the loss of a loved one (Sandoval et al. 2009). The research on the concept of victim and family members has been used in debates at the International Criminal Court, the Extraordinary Chambers of the Courts of Cambodia, and in litigation (see section 4).</p> <p>To answer the second question, Sandoval has worked with human rights NGO Redress on research into the legal definition of rehabilitation, a particular form of reparations. Before Sandoval's research on the issue, nothing in academic research had been written on the legal concept of rehabilitation and the concept was considered to be limited to physical and mental health. Sandoval has argued that the concept of rehabilitation should be considered to be more holistic: rehabilitation ought to include the provision of assistance on social services, legal services, and financial services to victims of human rights violations. Sandoval's report for Redress (2009a) also recommended that the UN Committee Against Torture publish clarification of the definition of rehabilitation.</p> <p>Sandoval has also researched the gendered dimensions of reparations. Her article on the Inter-American Court of Human Rights (IACHR) 'Cotton Field' judgement (2011) is the culmination of her research into how judges should approach claims from women who have been victims of discrimination, abuse, and sexual violence. The paper proposes elements of a holistic gender</p> |

approach to reparations to be followed by international tribunals in cases of violence and discrimination against women. These proposals are based on research that Sandoval undertook before the *Cotton Field* judgement, research which resulted both in this academic publication and her amicus curiae submitted to the IACHR for the *Cotton Field* case (see section 4).

3. References to the research

Sandoval, C., R. Rubio, and C. Diaz (2009) Repairing family members: Gross human rights violations and communities of harm, in R. Rubio (ed.) *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations*, Cambridge: Cambridge University Press, 215-290. ISBN: 9780521517928

Sandoval, C. (2009a) *Rehabilitation as a Form of Reparation under International Law*, London: Redress. Available at: <http://www.redress.org/reports/The%20right%20to%20rehabilitation.pdf> [also available from HEI on request]

Sandoval, C. (2009b) The concepts of 'injured party' and 'victim' of gross human rights violations in the jurisprudence of the Inter-American Court of Human Rights: A commentary on their implications for reparations', in C. Ferstman, A Stephens, and M. Goetz (eds.) *Reparations for Victims of Genocide, Crimes against Humanity and War Crimes: Systems in Place and Systems in the Making*, The Netherlands: Brill, 243-282. ISBN: 978-9004174498

Sandoval, C. and R. Rubio (2011) Engendering the reparations jurisprudence of the Inter-American Court of Human Rights: The promise of the Cotton Field Judgment, *Human Rights Quarterly*, 33 (4), 1062-1091. DOI: 10.1353/hrq.2011.0060

Sandoval, C. (2012) What should the European Court learn from the Inter-American Court on reparations?, *EHRAC Bulletin*, 17, European Human Rights Advocacy Centre. Available at: [https://metranet.londonmet.ac.uk/fms/MRSite/Research/HRSJ/EHRAC/Publications/2012/EHRAC English Summer ONLINE-2.pdf](https://metranet.londonmet.ac.uk/fms/MRSite/Research/HRSJ/EHRAC/Publications/2012/EHRAC%20English%20Summer%20ONLINE-2.pdf) [also available from HEI on request]

4. Details of the impact

Issues concerning reparations are of major contemporary importance. However, there is very little clarity about how we should implement these legal provisions. Sandoval's work has therefore filled an important gap and had a formative influence in legal applications of the concept of reparations.

Expert Advice for the ICC, the UN, and other Courts

In July 2005 a Vice President of the International Criminal Court invited Sandoval to work as a visiting professional at the Court to advise her on how to understand reparations. Sandoval's research on the Inter-American Court was particularly valuable to her role as advisor, as at this stage the IAC was the only court with a clearly defined treatment of reparations. This advice to the ICC has led to the research impacting on ICC judgements during the REF period 2008-2013. Both the ICC and the UN have contacted Sandoval on multiple occasions since 2008 to provide them with expert advice on reparations for gross human rights violations and international crimes.

For example, the ICC's report on the case of the Democratic Republic of Congo v Thomas Lubanga Dyilo includes an annex written by Sandoval [corroborating source 1]. This annex details the understanding of reparations in the IACHR and is based on her research in this area (2009b). The guidance given in the ICC report makes multiple references to practices in the IACHR and cites both Sandoval's annex and the briefing papers written by her students and based on her research. The ICC judged on the Lubanga case – its first judgement on reparation – in August

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2012. The Vice President of the ICC, who was also one of Judges on the Lubanga judgement, has personally communicated her thanks to Sandoval for bringing the ICC's attention to relevant cases in the IAC, which guided their final judgement:

I want to thank you for all your support over many years and the generous contribution that you always gave me to fine tune the many ideas that there are. You were decisive when from the beginning you made me aware of the importance of the Inter-American Court.

Vice President of the International Criminal Court

Other examples of Court use of Sandoval's reparations work include:

- In 2009 Sandoval used her research in an amicus curiae brief on reparations for the Inter-American Court 'Cotton Field' v Mexico case. In accordance with convention, the final judgment did not quote the brief, but the Court did acknowledge the brief [corroborating source 3, para 14], as the only brief dealing with reparation to be submitted to the Court, and it is clear from the judgment that many of the views put forward in the brief were taken on board by the Court [full analysis of the court decision reflecting the brief is available as corroborating source 4].
- Sandoval, in collaboration with legal charity and NGO Redress (see below), is currently using her research to litigate the case of Garcia Lucero v Chile at the Inter-American Court. Leopoldo Garcia Lucero and others are seeking reparations for human rights violations under Pincohet. The case has received international media attention (see for instance *The Guardian* [source 5]).

Redress

Sandoval's research on reparations has also had significant impact on the activities of international human rights NGO Redress, with whom Sandoval had collaborated to produce some of the underpinning research (2009a). Redress has used her work in a number of submissions to a range of courts including the International Criminal Court:

- Sandoval was asked by Redress to write its January 2010 amicus curiae brief for the case of Manuel Cruz Cavalcanti [source 6]. Here Sandoval used her research on rehabilitation to argue that Cavalcanti was entitled to both greater monetary compensation and other forms of rehabilitation. In January 2011 the court awarded Cavalcanti greater monetary compensation, in accordance with Sandoval's brief [source 7].
- Aside from the Redress report written by Sandoval, a second Redress report on the concepts of reparations and victim [source 8] makes multiple references to her publication on the concepts of injured party and victim (2009b). This report has formed a major part of their campaigning and was submitted to the ICC to advise on how to award reparations.
- Sandoval's report on Rehabilitation, written for Redress, has been used by the NGO in much of their international legal campaigning. The report was cited in Redress' discussion paper submission to the Government of Rwanda regarding reparations for survivors of genocide [source 9], in which Redress argue that rehabilitation 'should include medical and psychological care as well as legal and social services' (p.6).

Sandoval's Redress report on rehabilitation has impacted not only on the campaigns of Redress but also on the UN Committee Against Torture (UNCAT). Her report recommends that UNCAT write a General Comment on Article 14 of the Convention Against Torture, which deals with reparations for torture victims, including rehabilitation. This recommendation was a contributing factor to UNCAT's decision to publish, in December 2012, a General Comment on Article 14.

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Sandoval was subsequently consulted and interviewed by members of the Committee responsible for the drafting of the General Comment and her publications were circulated to Committee members. The influence of Sandoval's research on the General Comment is most evident in its section concerning rehabilitation, which states that 'the provision of means for as full rehabilitation as possible...should be holistic and include medical and psychological care as well as legal and social services' [source 10]. The influence of Sandoval's research was attested in comments made by a member of UNCAT, Nora Sveaass. In a paper given by Dr Sveaass to the Washington College of Law Sveaass said that Sandoval's Redress report 'gives a very good and comprehensive review on the history of rehabilitation in treaties, declarations, and conventions on human rights, and in particular reparation' [source 11].

5. Sources to corroborate the impact [All sources saved on file with HEI, available on request]

1. International Criminal Court, *Situation in the Democratic Republic of the Congo, In the case of the Prosecutor against Thomas Lubanga Dyilo*, ICC-01/04-01/06, 1 September 2011.
2. Vice President of the International Criminal Court
3. Inter-American Court of Human Rights, *Case of Gonzalez et al. ('Cotton Field') v Mexico, Judgment of November 16, 2009*:
http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf
4. Internal comparative analysis of decision in *Case of Gonzalez et al. ('Cotton Field') v Mexico, Judgment of November 16, 2009* and Sandoval's Amicus Curiae.
5. 'Torture survivor leads Chileans' battle for justice over Pinochet abuses', *The Guardian*, 6 May 2013: <http://www.guardian.co.uk/world/2013/may/06/chile-america>
6. Amicus Curiae, Caso: Manuel Cruz Cavalcanti - 2004-00140-0-1903-JR-PE-2 (00198-2005-0-1SP): <http://www.redress.org/Amicus-final19Jan2010.pdf>
7. Judgement for the case of Manuel Cruz Cavalcanti:
http://www.redress.org/2011_Spanish_Judgement.pdf
8. Redress, 'Justice for Victims: the ICC's reparations mandate', 20 May 2011:
http://www.redress.org/downloads/publications/REDRESS_ICC_Reparations_May2011.pdf
9. 'Recommendations for Reparation for Survivors of the 1994 Genocide Against Tutsi' Redress,
http://www.redress.org/downloads/publications/121031right_to_rep.pdf
10. UN Committee Against Torture, General comment No. 3 'Implementation of article 14 by States parties' (2012)
11. Nora Sveaass, paper to the American University Washington College of Law, available at:
<http://www.wcl.american.edu/hrbrief/17/4grossman2.pdf?rd=1>