

ECONOMIC, SOCIAL, CULTURAL, AND ENVIRONMENTAL RIGHTS AND TRANSITIONAL JUSTICE: A CULTURAL ANALYSIS OF LAW PERSPECTIVE ON THE CASE OF THE PLAN DE SÁNCHEZ MASSACRE

DERECHOS ECONÓMICOS, SOCIALES, CULTURALES Y AMBIENTALES Y JUSTICIA TRANSICIONAL: UN ANÁLISIS CULTURAL DE LA PERSPECTIVA JURÍDICA DEL CASO DE LA MASACRE DE PLAN DE SÁNCHEZ

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Abstract: This article explores the intersection between economic, social, cultural, and environmental rights (ESCR) and transitional justice (TJ) in the Inter-American system, using the Plan de Sánchez Massacre v. Guatemala (2004) case as a pivotal moment in the emergence of this legal doctrine. The ruling issued by the Inter-American Court of Human Rights (IACtHR) not only acknowledged the gravity of the human rights violations committed by state security forces but also set a precedent for expanding reparations beyond traditional civil and political rights. By incorporating ESCR considerations, the court strengthened the link between TJ and structural inequalities, particularly

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regarding historically marginalized groups like the Maya indigenous people. Framed within Paul W. Kahn's cultural analysis of law (CAL), this study argues that Plan de Sánchez case represents a natal judgment in the legal doctrine of ESCR and TJ, emphasizing how the categories and legal narratives used by the Inter-American judges shape and give meaning to the legal culture surrounding justice, state responsibility, and reparations. By articulating the connection between ESCR and TJ, this article highlights the potential for a more holistic legal culture within the Inter-American system, one that not only provides redress for past atrocities but also fosters long-term social transformation through rights-based reparations.

Keywords: Economic, Social, Cultural, And Environmental Rights (ESCR), Transitional justice, Inter-American Court of Human Rights, Cultural analysis of law, Plan de Sánchez Massacre case.

Resumen: *Este artículo explora la intersección entre los derechos económicos, sociales, culturales y ambientales (DESCA) y la justicia transicional en el sistema interamericano, para lo cual utiliza el caso de la Masacre de Plan de Sánchez vs. Guatemala (2004) como un momento clave en la emergencia de esta doctrina jurídica. La sentencia emitida por la Corte Interamericana de Derechos Humanos no solo reconoció la gravedad de las violaciones de derechos humanos cometidas por las fuerzas de seguridad del Estado, sino que también sentó un precedente para la ampliación de las reparaciones más allá de los derechos civiles y políticos tradicionales. Al incorporar consideraciones sobre los DESCAs, la corte reforzó la conexión entre la justicia transicional y las desigualdades estructurales, particularmente en relación con grupos históricamente marginados, como el pueblo indígena maya. Enmarcado dentro del análisis cultural del derecho de Paul W. Kahn, este estudio sostiene que el caso de la Masacre de Plan de Sánchez constituye la sentencia de natalidad en la doctrina jurídica de los DESCAs y la justicia transicional, al ilustrar cómo las categorías y narrativas jurídicas empleadas por los jueces interamericanos configuran y otorgan significado a la cultura jurídica en torno a la justicia, la responsabilidad estatal y las reparaciones. Al articular el vínculo entre los DESCAs y la justicia transicional, este artículo subraya el potencial de una cultura jurídica más integral dentro del sistema interamericano, una que no*

solo repare las atrocidades del pasado, sino que también impulse una transformación social a largo plazo a través de reparaciones.

Palabras clave: *Derechos económicos, Sociales, Culturales y ambientales (DESCA), Justicia transicional, Corte Interamericana de Derechos Humanos, Análisis cultural del derecho, Caso Masacre de Plan de Sánchez.*

Summary. *I. Introduction. II. The theoretical and methodological framework: cultural analysis of law. III. The natality of the legal doctrine: Plan de Sánchez Massacre v. Guatemala (2004). III.1. Connections with transitional justice discourse. III.2. Communicating vessels with ESCR agenda. IV. Final remarks. References.*

I. INTRODUCTION

In recent years, a significant debate has emerged regarding the need to incorporate the protection of ESCR (health, education, housing, et.) into TJ processes. This debate is particularly relevant because TJ mechanisms have traditionally been associated with the civil and political rights agenda, often relegating ESCR to a secondary role (Campos, 2022; García, 2019; Miller, 2008; Muvingi, 2009; Szoke-Burke, 2015). However, integrating these rights into TJ initiatives can serve as a powerful instrument for fostering social transformation, preventing new conflicts, and addressing the priorities and needs of victims in societies undergoing transition (Arbour, 2007).

A comprehensive understanding of TJ thus requires an approach that not only acknowledges violations of civil and political rights but also makes visible those affecting ESCR. In this sense, the protection and guarantee of ESCR are essential to fulfilling the objectives of TJ by addressing the root causes of

legitimate grievances, grievances that, if left unresolved, “are likely to fuel the next conflagration” of conflicts (Arbour, 2007, p. 8).

The Inter-American Human Rights System has not been silent to concerns associated with ESCR and TJ (Corte IDH, 2017; 2021). Indeed, there is an extensive scholarship on how the system’s organs have addressed issues traditionally linked to TJ, developing standards related to the rights to justice, truth, and reparation (Cançado, 2012; García & Muñoz, 2016; González, 2012; Parra, 2022). At the same time, discussions on the possibilities and limitations of ESCR protection have long been present in the Inter-American system (Ibáñez, 2015; Ferrer, 2017; Góngora, 2018; Salmón & Bregalio, 2019). These debates gained further momentum in recent years, particularly after the IACtHR broke the barrier of direct justiciability of ESCR under the American Convention on Human Rights with the landmark case *Lagos del Campo v. Peru*, a turning point in its jurisprudence (Morales et al., 2018)¹.

Therefore, this article examines how the intersection between TJ and ESCR emerges and acquires meaning in a judgment of the IACtHR, contributing to a distinctive Inter-American legal narrative. To analyze this judicial construction (the legal doctrine of the intersection of ESCR and TJ), it is necessary to adopt Paul W. Kahn’s CAL as the conceptual and methodological framework, specifically drawing on his method of judgment analysis, as it is outlined briefly in the next section. In that sense, in the remaining sections of this article, it is examined how elements of the TJ discourse and the ESCR agenda intersect in the case of the *Plan de Sánchez*

¹ Until 2017, the IACtHR has addressed the violation on ESCR in an indirect way of through the association with articles of the American Convention on Human Rights related to civil and political rights.

Massacre v. Guatemala (2004), giving birth to the judicial doctrine of the intersection between ESCR and TJ.

II. THE THEORETICAL AND METHODOLOGICAL FRAMEWORK: CAL

The CAL is a descriptive and analytical perspective that examines the symbolic structures shaping individuals' legal-political imagination. It is based on the premise that we exist within a reality of meanings, and that law, as part of this social imaginary, constructs the categories and notions through which we interpret and shape that reality (Bonilla, 2017). In this sense, the legal system is made up of a set of beliefs and meanings that both constitute individual subjects and shape collective identities. Law, understood as part of culture, is a particular way of constructing narratives that give meaning to and interpret the world we inhabit. Consequently, for CAL, the central question about law is to understand the meanings with which individual and collective identities are constructed (Kahn, 2017).

According to Kahn (2017), jurisprudence and judges are essential for understanding the meanings that shape the universe in which individuals live. Judicial decisions rely on rhetorical strategies aimed at persuading a political community, and a judgment is effective when it convinces the audience to view a situation through narratives that organize social and political life. In this way, courts do more than interpret the law: they construct rhetorically persuasive narratives that uphold a shared vision of community life (Kahn, 2017).

The author Kahn (2017) also proposes a method for analyzing judgments based on two variables: a) the relationship of a judgment to the original authoritative text, and b) the relationship of that judgment to previous rulings interpreting the authoritative text. In his framework, a judgment's interpretation can be represented on a cardinal graph, with the vertical axis corresponding to the first variable (a) and the horizontal axis to the second (b). Judicial decisions are thus positioned within an ongoing dialogue between authoritative texts and prior rulings, navigating along these axes. Therefore, a judgment entirely faithful to the original text lies at one extreme of the vertical axis, while a judgment emphasizing past interpretations and precedents moves along the horizontal axis.

Using this analytical framework, Kahn identifies three movements that describe the life cycle of a judicial doctrine: emergence, development and decline. These movements correspond to three categories of rulings: natal, progressive, and destructive. Natal judgments initiate a new line of interpretation; progressive rulings contribute incrementally to the development of an existing doctrine; and destructive or critical rulings aim to dismantle a doctrinal line, advocating a return to the original authoritative text. This typology provides a means to understand the evolution of judicial doctrines over time.

The following section examines the case of *Plan de Sánchez Massacre v. Guatemala* (2004), which is argued to constitute the natal judgment in the development of the judicial doctrine at the intersection of TJ and ESCR.

III. THE NATALITY OF THE LEGAL DOCTRINE: PLAN DE SÁNCHEZ MASSACRE V. GUATEMALA (2004)

Plan de Sánchez is a village in the central highlands of Guatemala, predominantly inhabited by the Maya indigenous people. On July 18, 1982, during the height of violence in Guatemala's internal armed conflict and under the presidency of General Efraín Ríos Montt (1982-1983), state security forces, primarily the Army, supported by paramilitary structures (civil self-defense patrols), carried out a brutal massacre that left approximately 268 people dead (Corte IDH, 2004a).

In a Sunday market day, one of the busiest in the village and neighboring communities due to religious and commercial activities, soldiers raped and murdered young girls and women. Children were brutally beaten or kicked to death. The detained villagers were forced into a house, executed with grenades and firearms, and then burned when the attackers set fire at the site. The following day, soldiers returned to Plan de Sánchez, ordering survivors to hastily bury the bodies. They also looted and destroyed homes and personal belongings, threatening those who had returned. Fearing continued military presence, the survivors fled the village and remained displaced for years (Corte IDH, 2004b).

During proceedings before the IACtHR, Guatemala acknowledged its responsibility in the case. Based on this acknowledgment, the court found Guatemala accountable for violating multiple rights protected under the American Convention, including personal integrity, judicial guarantees, protection of honor and dignity, freedom of conscience and religion, freedom

of thought and expression, freedom of association, the right to private property, equality before the law, and judicial protection. The court also ruled that Guatemala had failed to fulfill its obligation to respect and ensure these rights (Corte IDH, 2004b).

The case reached the IACtHR in July 2002 and initiated a series of cases identified as "massacres" that were beginning to be brought before the court (Cançado, 2012). The factual record revealed: a) a large number of victims, primarily from the indigenous population; b) direct involvement of the military in planning and executing the attack; c) acts of extreme violence against women, children, and the elderly; d) a lack of serious and effective investigation of those responsible; and e) the absence of reparations for the victims and their families.

Beyond its factual and legal importance, this case highlights critical issues in global debates on TJ and victims' rights, particularly regarding ESCR. It is at this intersection that TJ and ESCR converge within the Inter-American legal framework, signaling the emergence of a new legal doctrine. Following Paul Kahn's theory, the Plan de Sánchez Massacre ruling can be understood as a natal judgment, a foundational decision that establishes a new interpretative trajectory. The following sections examine how this intersection between TJ and ESCR evolves within the court's jurisprudence.

III.1. Connections with TJ discourse

At the time, a global debate was unfolding on the international responsibility of states, spurred by the work of the International Law Commission (ILC) on the subject (Crawford, 2005). In this context, the

IACtHR, considering the gravity of the facts of Plan de Sánchez Massacre, declared violations of the American Convention based upon the concept of “aggravated international responsibility of the state”². Although the IACtHR lacked jurisdiction to rule on the allegations of genocide raised by the Inter-American Commission and the victims’ representatives, it acknowledged that, in the early 1980s, there was a counterinsurgency policy in Guatemala, ordered by the highest authorities of the state, known as “scorched earth operations”, which consisted of killing and destroying the way of life of the indigenous Mayan people, for their alleged support to guerrilla forces (Corte IDH, 2004a).

Similarly, the court’s adoption of aggravated international responsibility aligned with broader international efforts to combat impunity. In parallel with the ILC’s discussions on state crimes, the early 21st century saw a major development in global justice: the establishment of the International Criminal Court (ICC) through the entry into force of the Rome Statute in 2002. Although the IACtHR cannot determine the criminal responsibility of individuals, the concept of aggravated international responsibility aligns with the objectives of the global anti-impunity movement, as it reinforces the state’s duty to investigate, prosecute, and punish those responsible for violations of rights under the American Convention on Human Rights (Campos & Machado, 2020).

This duty to combat impunity, while not new in Inter-American jurisprudence, is central to the dominant discourse of TJ, which is grounded in

² This term was first used in the judgment of case of Myrna Mack Chang v. Guatemala (2003). The court used this expression in reference to an aggravated degree of responsibility for certain violations of international law, avoiding an imprecise analogy to the language of criminal law associated with crimes of state.

international human rights law and international criminal law instruments, which underpin society's efforts to confront legacies of large-scale past abuses. By the late 1990s and early 2000s, states' obligations toward victims of massive human rights violations and breaches of international humanitarian law were becoming more clearly defined, ensuring both minimum sanctions for perpetrators and protection of victims' rights (Teitel, 2003). At the beginning of the 21st century, two global instruments³ articulated the content of states' obligations to combat impunity and the victims' right to reparations under international law, establishing the foundations of the classic TJ framework.

These instruments are built around four core principles: the right to truth, justice, reparation, and guarantees of non-repetition. The right to truth has both individual and collective dimensions, obliging the state to preserve historical memory, and recognizing that clarifying past atrocities is essential for victims and society. The right to justice affirms victims' entitlement to fair and effective judicial remedies and compels the state to investigate, prosecute, and sanction those responsible for serious violations. Likewise, reparation requires providing adequate and proportional remedies (monetary, symbolic or rehabilitative) for the harm suffered. Finally, guarantees of non-repetition obligate the state to implement institutional and legal reforms to prevent future violations.

³ UN Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity (firstly drafted by Louis Joinet in 1997 and updated by Diane Orentlicher in 2005) and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly, 2006).

Within this normative framework, the United Nations Secretary-General developed a conceptual model of TJ that has influenced global practice. In his 2004 report, TJ is defined as the “full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice, and achieve reconciliation”⁴ (United Nations, 2004, para. 9).

According to the IACtHR, and as established in its first contentious judgment, the state’s duty to combat impunity requires the effective investigation, prosecution, and punishment of those responsible directly and indirectly for human rights violations. States must address serious violations because impunity perpetuates their recurrence and because fulfilling this duty restores victims’ full enjoyment of their rights. This obligation also includes refraining from legal mechanisms, such as amnesties, statutes of limitations, or exemptions from criminal responsibility; or any measures intended to obstruct prosecutions or nullify convictions, as emphasized in the judgment on the Plan de Sánchez Massacre (Corte IDH, 2004b).

A further significant aspect of the Plan de Sánchez case, closely tied to TJ discourse, is the victims’ right to the truth. Although not explicitly recognized in the American Convention on Human Rights, the court has consistently held that impunity violates this right. In that sense, victims and

⁴ While widely referenced in TJ debates, the concept of reconciliation remains open to interpretation. It generally refers to processes of rebuilding relationships after massive human rights violations and may take place at various levels: individual, institutional, and societal. These processes can involve both vertical (between citizens and state institutions) and horizontal (between citizens) dynamics, which often overlap depending on the context. For further discussion, see Seils (2017) and Skaar (2012).

their families possess the fundamental right to know the truth about past atrocities, including the identities of the state agents responsible for these violations (Corte IDH, 2004b). Therefore, the right to the truth is intrinsically linked to the state's duty to investigate, prosecute, and sanction those accountable.

III.2 Communicating vessels with ESCR agenda

In the Plan de Sánchez Massacre judgment, the ESCR approach emerges through two distinct and complementary paths: a) indirectly, based on the interpretation of the other rights provided for in the American Convention on Human Rights, traditionally associated with civil and political rights; and b) through the concept of comprehensive reparation developed by the court and the measures issued in response to the victims' claims.

Consistent with its jurisprudence at the time, the court's statements on ESCR, including the Plan de Sánchez Massacre case, have been situated within the broader framework of civil and political rights established in the American Convention, representing the so-called indirect protection of ESCR (Góngora, 2018; Ibáñez, 2020; Parra, 2022). This indirect approach addresses ESCR violations through their connection to rights expressly recognized in the Convention, such as the right to life, personal integrity, or judicial guarantees. Under this framework, ESCR were not examined autonomously but incorporated insofar as their violation also entailed an infringement of civil and political rights.

In this judgment, ESCR concerns were reflected in the recognition of the violation of the ethnic and cultural identity of the Mayan people and the

special vulnerability of the victims. A key concern highlighted by concurring opinions in the ruling was that the violations suffered by the victims –all members of the Achí-speaking Mayan community– entailed the destruction of their cultural traditions, rituals, and forms of community organization. These elements were considered “both a condition and expression of the identity of the members at both the individual and the collective level” (Corte IDH, 2004c). Therefore, the deliberate extermination of entire Mayan communities by the state disrupted their social structures, cultural practices, and religious traditions.

Also, by recognizing the gravity and aggravated impact of the State’s responsibility in the circumstances of the Plan de Sánchez Massacre, the court opened the way to order various forms of reparation for the consequences of the case. This development was reinforced by procedural reforms that enhanced victims’ participation in Inter-American proceedings.

The adjudication of the Plan de Sánchez case coincided with the implementation of the fourth rules of procedure of the IACtHR, which came into force on June 1, 2001. These rules have been described as “historic” and “revolutionary” in the court’s trajectory (Cançado, 2010; Feria Tinta, 2006), as they allowed victims or their representatives to participate autonomously and directly throughout the entire proceedings before the court. This procedural reform ensured that victims’ voices were heard directly, enabling a more active and significant role in the proceedings (Cançado, 2001). This way, by granting space for victims, the court could address the challenges of recognizing and processing claims permeated by ESCR.

As previously noted, the IACtHR found that the Plan de Sánchez Massacre was part of a state strategy aimed at exterminating the indigenous Mayan communities and destroying their way of life, including housing, crops, livestock, and cultural identity. Consequently, the court ordered Guatemala to implement a housing program for surviving victims in the village and to develop a set of social programs benefiting members of the Plan de Sánchez community and surrounding areas in relation to ESCR:

The state shall implement the following programs in the communities [...]: a) study and dissemination of the Maya-Achí culture in the affected communities [...]; b) maintenance and improvement of the road systems between the said communities and the municipal capital of Rabinal; c) sewage system and potable water supply; d) supply of teaching personnel trained in intercultural and bilingual teaching for primary, secondary and comprehensive schooling in these communities, and e) the establishment of a health center in the village of Plan de Sánchez with adequate personnel and conditions, and also training for the personnel of the Rabinal Municipal Health Center so that they may provide medical and psychological care to those who have been affected and who require this kind of treatment[...]. (Corte IDH, 2004b, operative paragraph 9).

In the case of Plan de Sánchez Massacre, this idea is more relevant in two aspects: a) because of the type of measure to improve the living conditions of the victims in the case (health, housing, education), including the serious situations of discrimination and social exclusion suffered by the Mayan people

in Guatemala; and b) because of the collective dimension of the harm caused to the identity and values of the members of the Mayan Achí linguistic community.

By ordering this type of measure, the court's decision aligns with a restorative approach⁵. In that sense, beyond reparations for individual harm, the court adopts measures aimed at addressing the root causes of the violations, often embedded in systemic patterns of marginalization. By doing so, it moves beyond mere compensation to promote the restoration of rights and the advancement of social rights. These reparations extend to entire communities, reflecting a recognition that human rights violations are also the result of entrenched social inequalities. Thus, the court acknowledges the collective dimension of harm and the need for transformative remedies.

The broad range of reparation measures that blossomed within the Inter-American system is what gives concrete form to the principle of integral reparation. The “natal” judgment in the Plan de Sánchez Massacre case is emblematic in this regard. In the words of Antkowiak, “this was the first time any international tribunal ordered reparations for the survivors and next of kin

⁵ Restorative approach is a paradigm that seeks to repair the harm caused by wrongdoing through inclusive processes that engage victims, offenders, and the broader community. Rather than focusing solely on punishment, it emphasizes accountability, dialogue, reparation, and the rebuilding of relationships. Restorative justice has influenced TJ mechanisms and reparative frameworks, particularly when they aim to address the needs of victims and promote community healing. For further discussion, see: Antkowiak (2012), Romero & Jiménez (2020), Zehr (2015).

if a full-scale massacre. The breadth and depth of the remedies ordered are impressive” (Antkowiak, 2008, p. 353).

Ultimately, the Plan de Sánchez judgment exemplifies the intersection between TJ and ESCR. By incorporating ESCR concerns through an indirect protection approach and crafting reparations that reflect victims’ collective voices, the court forged a new jurisprudential space, one where TJ and ESCR converge. This decision marked the birth of an Inter-American legal doctrine that recognizes and addresses the socio-economic dimensions of mass atrocities.

IV. FINAL REMARKS

The recognition of the natal judgment as a fundamental ruling in the development of the legal doctrine at the intersection of ESCR and TJ highlights key aspects of the legal culture within the Inter-American system. An analysis of the court’s rulings reveals the categories used by its judges, which both shape and reflect the evolving meanings of ESCR and TJ. From a CAL perspective, examining these decisions provides insight into the network of meanings that constitute the legal culture of this regional system.

In that sense, the Plan de Sánchez Massacre case underscores two critical dimensions linked to global debates on TJ and victims’ rights. By acknowledging the gravity and extensive impact of the massacre, the court expanded the scope of reparations, setting a precedent for comprehensive measures. Additionally, procedural reforms granting victims a direct voice before the court facilitated the inclusion of ESCR concerns in contentious cases,

strengthening their presence within the Inter-American human rights framework. In this way, TJ and ESCR converge within the court's litigation.

This convergence calls for an expanded conception of legal culture, one that provides stronger protections for victims of mass and systematic violations in transitional contexts. Also, an ESCR-based perspective in analyzing state obligations related to justice and truth enhances understanding of the broader socio-political conditions underlying these violations. Such a perspective clarifies a) how the lack of ESCR protections and b) the heightened vulnerability of individuals lacking full ESCR enjoyment can contribute to and exacerbate the effects of massive and systematic violations within TJ processes. Contextualizing violations in this way is essential to fulfilling the guarantees of non-repetition, a core principle in the court's reparations jurisprudence.

Finally, explicitly linking TJ and ESCR presents new challenges for conceptualizing post-conflict transitions and designing large-scale reparations for human rights violations. The transformative potential of such transitions must be balanced with the institutional capacities of each country to address the magnitude of harm and the number of victims requiring redress. A holistic, ESCR-grounded approach can guide reparations that not only compensate past harms but also promote structural change and long-term social justice.

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