Analyzing non-pecunary reparations awarded by the Inter-American Human Rights Court

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ANALYZING NON-PECUNARY REPARATIONS IN THE INTER-AMERICAN COURT OF HUMAN RIGHTS: RIGHT TO LIFE JURISPRUDENCE

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The first contentious case decided by the Inter-American Court (Court), Velásquez Rodríguez v. Honduras, was the first time that a human rights body ruled on the illegal nature of the practice of forced disappearances.\(^1\) During the reparations phase, the victims’ representatives asked the Court to order Honduras: to investigate and prosecute those responsible for committing the acts; to immediately stop the practice and policy of conducting forced disappearances; to publish a serious report documenting the events; to emit a public apology for their international violation; to name a public property such as a street, a school or a hospital in name of the victims of forced disappearances; and to establish an educational fund and a retirement fund for the enjoyment of the victim’s next of kin.\(^2\) The Court ordered Honduras to investigate the events and to punish those responsible for committing the acts of forced disappearances. It further instructed Honduras to inform the victim’s relatives the location of the victim’s remains,\(^3\) and then rejected all other petitions and determined that the ruling against Honduras is in “itself a type of reparation and moral satisfaction of significance and importance for the families of the victims.”\(^4\)

In the reparations stage of its most recent case on the right to life, Heliodoro Portugal v. Panama, the Court ruled that a state has a continuous duty investigate and punish those responsible of committing human rights violation. It then ordered the state to: publish the pertinent parts of the ruling in a local newspaper and in the country’s Official Gazette; to provide medical and psychological treatment to the victim’s immediate family; to name a street in memory of the victim; to acknowledge their international responsibility in a public ceremony attended by high-ranking state official and the victim’s heirs; and to typify the crimes of torture

\(^3\) Id, parr. 35-36
\(^4\) Id
and forced disappearances to satisfy Panama’s obligations under the Convention against Forced Disappearances and the Convention against Torture.\(^5\)

It took 20 years for the Court to award such comprehensive non-pecuniary reparations. This paper will examine how these non-pecuniary measures were developed by the Court in the context of violations to the right to life. Before doing so, a brief explanation of the concept of reparations will be offered. Then the paper will focus on the evolution of the Court’s understanding of Article 63(1) and how it has expanded the concept of non-pecuniary reparations. Finally, the paper will try to identify certain factors that affected the results of the case. It will also try to identify if specific factors present in the cases were conclusive or affected the determination of the Court.

**International Responsibility for Unlawful death.**

A state has international responsibility when there is an unlawful death of a foreigner by actions of its agents acting within the scope of their authority. A state is also liable if it failed to take the adequate measures to protect the foreigner against state actors or non-state actors. States are not required to guarantee the safety of foreigners, and international responsibility is not attached to instances of accidental deaths or when the alleged victim “provoked or contributed significantly to cause his death”.\(^6\) There is also no responsibility when the death is attributed to a private actor. However responsibility will arise when the state does not properly investigate and punish the offenders. Responsibility will also depend on the particular circumstances of a case. For

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example, the state must assign the appropriate resources to respond adequately to a particular event or implement those measures needed to prevent that the foreseeable events result in unlawful death. When there is a breach, the state will espouse the claim from the injured national against the breaching state, and as such, has exclusive discretion in deciding how to seek reparations. A state may even choose not to pursue a claim against another for various political, diplomatic, economical, or military reasons. As such, traditional international state responsibility does not recognize an individual’s right to reparation against an offending state.

Nevertheless, the development of modern international human right law changed all of this. In the last 60 years, states have increasingly recognized that all humans are born with a series of inalienable rights which states must respect and ensure. By means of treaties, states voluntarily accept to ensure and respect these rights within their jurisdiction. These treaties also require that states adopt administrative or legislative measures assuring that in the event of a violation, individuals may enforce their rights, present a claim and seek redress. Failure to comply with this obligation will result in the state’s violation of its international responsibility before other states, regardless of the victim’s nationality or legal status. This principle has been recognized as a tenet of international state responsibility and is found in the International Law Commission's Draft Articles on the Responsibility of States for Internationally Wrongful Acts.\(^7\)

Equally important is a state’s duty to provide reparations to the injured party. The obligation of making reparations in international law has been recognized early on and has been called customary international law.\(^8\) Reparations can be awarded in various forms such as restitution,
compensation, or satisfaction. The purpose of restitution is to return the situation to its original state, that is, to the way it was before the illegal act was committed. Examples of restitution include releasing an illegally arrested individual or returning illegally seized property. In some instances, restitution is impossible, such as in cases of wrongful deaths or when property is destroyed. In other cases restitution does not adequately address the gravity of an injury. For these, compensation provides the victim with a monetary payment as a means of repairing the moral and material damages inflicted by the wrongdoer. Satisfaction refers to the acts that an offending state will take to repair the non-material injury and to avoid repeating them. The Basic Principles on State Responsibility enumerates an exhaustive list of acts considered valid in assuring non-repetition. These includes: immediately cease the violation; promise full disclosure of the results of an effective investigation; search for the bodies of the victims and assist in the identification and reburial of the victim’s remains in accordance with their cultural practices, among others.

The American Convention of Human rights is a regional treaty developed under the auspices of the Organization of American States as a complementary model of protection from that offered by the International Covenant on Civil and Political Rights of the United Nations’ system. As of this writing, twenty five Latin American countries have ratified such binding instrument. As

9 Emmanuela Chiara Gillard, Reparation for Violations of International Humanitarian Law, IRRC September 2003 Vol. 85 No 851, p. 530
10 ILC Articles of State Responsibility, Art. 35
11 ILC Articles of State Responsibility, Art. 36
12 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, Principle 25
signatories, these states "undertake to respect the rights and freedoms recognized herein and to ensure all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination," and to recognize "the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution of laws of the state concerned or by this Convention."\(^{15}\) The responsibility for monitoring state’s compliance within the region falls on the Inter-American Court of Human Rights (Court) and the Inter-American Commission of Human Rights (Commission). Although these organs were crafted to resemble their counterparts already found in the European human rights system, (European Court of Human Rights and the no longer existing European Commission of Human Rights) certain differences exist between them.\(^{16}\)

For example, the Inter-American Court can issue binding judgments on member states and issue advisory opinions. However, it’s authority to emit advisory opinions is considered much broader than in the EU model.\(^{17}\) Another difference is that the Court’s contention jurisdiction is not limited to acts under the American Convention, but includes other treaties, such as the Convention on the Prevention, Punishment and Eradication of Violence against Women and Inter-American Convention on Force Disappearances.\(^{18}\) The Court can also issue protective measures requiring states to act immediately or to refrain from continuing a particular conduct.

The role of the Inter-American Commission is also more robust than its EU counterpart. The Commission was established in 1960, and with time it has interpreted the scope of its functions

\(^{15}\) Articles 1 and 25 of the American Convention.


\(^{17}\) Id

\(^{18}\) Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, Article 11 and the Inter-American Convention on Force Disappearances, Article XIII
very broadly. Although it originally had no authority to accept individual petitions and determine if a violation existed, since its first working session it decided that it would take cognizance of the information provided. 19 In 1965, by statute, the OAS expanded the Commission’s mandate. Not only was it allowed to receive petitions, but it was mandated to monitor state compliance with the American Declaration, and to submit an annual report on the situation of human rights in the hemisphere. 20 Since then, the Commission has received thousands of individual petitions alleging violations to the human rights protections, conducted critically important in loco visits, and prepared multiple country reports denouncing the human rights violations that they found.

Inter-American System’s Procedure

After the passing and entry into force of the American Convention, the Commission retained its pre-Convention quasi-judicial authority and was entrusted with the exclusive authority to refer contentious cases before the Court. Thus, all petitions must be examined first by the Commission. 21 The Commission can only refer those cases whose countries have accepted the jurisdiction of the Court. Because of this, the Commission is the only organ of the Inter-American system that retains jurisdiction over Canada, the United States, and other common law Caribbean Islands that have not ratified the American Convention nor have accepted the Court’s jurisdiction. After the Commission receives an individual petition, the State is then notified and given an opportunity to reply. The Commission will then determine if the state conduct violates any of its human rights obligations. If it determines that a violation exists, the Commission forwards a set of recommendations to the state for immediate application. The Commission can also be asked to act as an arbitrator between the parties to help negotiate a friendly settlement.

20 Goldman, supra n.13
21 Article 61(1) of the American Convention.
The Commission will refer cases to the Court when: a) a friendly settlement cannot be reached; b) the state has failed to adopt the recommendations of the Commission; or, c) the precautionary measures ordered by the Commission are not adopted.

The Commission’s role changes before the Court proceedings and is similar to that of a prosecutor, maintaining an active role in the representation of the petitioner against a state. The original rules of procedure of the Inter-American Court limited the victim’s participation only to the reparation phase. Nevertheless, since 2001, the victims can actively participate along with the Commission during the admissibility, merits, and reparation phases. The Court will hear arguments from the parties and make a determination as to the validity of the allegations. If the Court finds a violation, it proceeds to determine the appropriate reparations that shall be awarded. This process is governed by article 63(1) of the American Convention. It states that:

If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

The language adopted in article 63(1) is broader than the EU human rights system. The Court is empowered to “not only compensate the victim, but to order the state to take remedial measures”. It also has the authority to retain jurisdiction and to supervise compliance.

**Jurisprudence of the Court**

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23. Sual, supra n. 6, p.540

Since issuing its first judgment, the composition of the Court has changed a total of 10 times. During this twenty year span, it has found a violation to Article 4 of the American Convention, Right to Life, in forty eight different occasions, which represents 52% of the time.\textsuperscript{25} Of these, forty two cases have been unanimously decided; including the 24 occasions the state has acknowledged or partially acknowledged its international responsibility for violating the right to life of the victim.\textsuperscript{26} In twenty five cases a state party has exercised its right to solicit an \textit{ad hoc} judge.\textsuperscript{27} However, of these, only on two occasions have they not voted with the majority, and were on matters not related to a violation of the right to life.\textsuperscript{28} In this same time, the Court has ordered an array of measures to prevent repetitive conduct. The Court has granted the following measures:

1) Duty to investigate, prosecute, and punish those responsible \hfill (83%)
2) Publish the operative parts of the judgment \hfill (65%)
3) Adjust internal legislation \hfill (46%)
4) Locate and inform the victim’s relative of the victim’s remains \hfill (46%)
5) Hold a public act acknowledging international responsibility \hfill (46%)
6) Name a place in honor of the victims \hfill (42%)
7) Provide Health benefits to victims and their next of kin \hfill (42%)
8) Conduct human rights training to state agents \hfill (33%)
9) Provide educational benefits \hfill (21%)
10) Provide a school \hfill (6%)
11) Provide more security \hfill (6%)
12) Reform prison conditions \hfill (4%)
13) Establish a community trust fund \hfill (4%)
14) Grant a retrial \hfill (4%)
15) Provide shelter for internally displaced persons (IDPs) \hfill (4%)
16) Create a national awareness campaign to protect children \hfill (4%)
17) Reform current children legislation \hfill (4%)
18) Create a database with DNA to identify missing children \hfill (2%)

\textsuperscript{25} See Table 1
\textsuperscript{26} Id
\textsuperscript{27} Id
\textsuperscript{28} \textit{Neira-Alegría et al. v. Peru}, reparations, Dissent by Ad hoc judge Orihuela-Iberco
In its judgments, the Court has been able to identify the victims of these illegal deaths. We can classify them into the following different categories of victims: children (12 cases), convicts or people awaiting trial detained in prisons (9 cases), women (7 cases), indigenous peoples (5 cases), union leaders (4 cases), and students (9 cases). Within these categories the reparations most typically ordered by category are:

**Children**

1) Duty to investigate, prosecute, and punish those responsible (75%)
2) Publish the operative parts of the judgment (75%)
3) Adjust internal legislation (58%)
4) Name a place in honor of the victims (58%)
5) Provide Health benefits to victims and their next of kin (50%)
6) Hold a public act acknowledging international responsibility (50%)
7) Conduct human rights training to state agents (42%)
8) Locate and inform the victim’s relative of the victim’s remains (42%)
9) Provide educational benefits (25%)
10) Reform prison conditions (17%)
11) Provide more security measures (8%)
12) Create a national awareness campaign to protect children (8%)
13) Create a database with DNA to identify missing children (8%)

**Indigenous People**

1) Educational benefits (80%)
2) Adjust internal legislation (60%)
3) Publish parts of the judgment in native language (60%)
4) Health benefits (60%)
5) Public act acknowledging responsibility (40%)
6) Duty to investigate and prosecute (40%)
7) Inform and retain the remains of the victims to the next of kin (40%)
8) Create a community fund (40%)

**Detained or convicted persons**

1) Inform the remains of the victims (67%)

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29 See Table 2
30 Id
31 Id
2) Publish parts of the judgment in the Official Gazette (67%)
3) Duty to investigate and prosecute (44%)
4) Adjust internal legislation (44%)
5) Public act acknowledging responsibility (44%)
6) Train its agents on human rights (33%)
7) Health benefits (33%)
8) Educational benefits (22%)
9) Name a place in honor of the victims (22%)
10) Order a retrial (22%)
11) Prison reform to meet international standards (11%)

Women32

1) Duty to investigate and prosecute (86%)
2) Publish parts of the judgment in the Official Gazette (71%)
3) Train its agents on human rights (57%)
4) Name a place in honor of the victims (57%)
5) Health benefits (43%)
6) Inform the remains of the victims (43%)
7) Public act acknowledging responsibility (29%)
8) Adjust internal legislation (14%)
9) Provide shelter to returning IDPs (14%)
10) Educations benefits (14%)

Students33

1) Duty to investigate and prosecute (100%)
2) Inform the remains of the victims (67%)
3) Publish parts of the judgment in the Official Gazette (56%)
4) Name a place in honor of the victims (56%)
5) Public act acknowledging responsibility (44%)
6) Adjust internal legislation (33%)
7) Train its agents on human rights (33%)

It is interesting to note how the measure of duty to investigate and prosecute has been ordered 83% of the time; it significantly varies according to the group of victims, from 100% in cases of students to 40% in cases dealing with indigenous peoples. Nevertheless, the data reflects that the

32 See Table 2
33 Id
Court does tend to address the necessities of each group accordingly. The paper will now examine the actual jurisprudence of the Court.

1989 - 1990

The first two reparations ever awarded by the Inter-American Court were issued on the same day and both of them dealt with the illegal practice of forced disappearances in Honduras. The Court found that Article 63(1) of the American Convention codified a rule of customary international law allowing a victim of an international violation to bring a claim for reparations.

After examining the facts of the case, the court awarded reparations for pecuniary and moral damages. As for non-pecuniary damages, the Court ordered Honduras to investigate the acts that lead to the forced disappearances and prosecute those responsible. The Court also called for an immediate end to the practice of forced disappearances. The State was also ordered to inform the victim’s relatives about the fate and location the victim’s bodies. In explaining its rationale, the Court referred to its merit’s decision where it stressed that the violation stems not from a failure to prosecute a person, but from the state’s inability to conduct a serious investigation. This omission makes the state an accomplice to the crime, thereby fostering impunity. Accordingly, the duty to investigate will continue until the “the fate of the person disappeared is known”.

The Commission and the victim’s representatives had asked the Court for other measures assuring non-repetition, such as: the publication of a report documenting the events; a public apology; to name a public property after the victims of forced disappearances; and to establish an educational fund and a retirement fund for the enjoyment of the victim’s next of kin. The Court

34 Id, Godinez, parr. 191
dismissed all of these measures and stated that it “understands that the judgment on the merits of July 29, 1988, is in itself a type of reparation and moral satisfaction of significance and importance for the families of the victims.”

1993-1994

The Court decided a case involving with the torture and killing of 15 indigenous persons, including minors, by Suriname’s military forces. In the *Aloeboetoe Case*, the Court again ordered the state to inform the victim’s relative about the fate and location of the victim’s remains.

The Court instructed Suriname to create a trust fund in order to facilitate the administration of the awarded monetary compensation Furthermore, Suriname had to rehabilitate a school and a medical facility in the vicinity of the Maroon’s community. This was the first time the Court ordered a reparation that addressed an economic, social, and cultural right. Professor Antowiack has expressed his belief that this award was a direct consequence of the Court’s representative country visit which “likely occasioned a more sympathetic and generous approach to remedies in the case.” But, it must also be considered that the award could be a directly related to Suriname’s own arguments during the reparations phase. Suriname had already accepted international responsibility, and in this stage it raised objections to the Commission’s demands which called for: a public act acknowledging international responsibility, a responsible investigation and prosecution of the responsible; the renaming of a public park, street or place in honor of the victims; and for the exhumation of the victim’s bodies for proper burial. In response, Suriname suggested that the Court instead ordered them to provide “free housing, medical and educational

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36 Velasquez, supra. n. 2 at parr. 36, Godínez-Cruz, Reparations, supra n. 33, parr. 37
38 Antowiack, supra n. 7, p. 366, see footnote 70
39 Alboetoe, supra, n. 29, parr. 20
attention” as appropriate forms of reparations.\textsuperscript{40} In explaining its reasoning for granting the school and medical facilities, the Court noted that even though the victim’s children have received pecuniary compensation assuring that their educational expenses were secured, such award was inoperative unless Suriname reopens the school and medical facility and to assign the necessary resources for their operations.\textsuperscript{41} Although the Court cites Velasquez in ordering the state to inform the victim’s relatives of the whereabouts of the victims, it does not order Suriname to comply with its duty to investigate and prosecute those responsible.

**1995 – 1997**

During this two year span, the Court issued the reparations for the *El Amparo* case (Venezuela) and the *Caballero Delgado and Santana* case (Colombia). Although both countries acknowledged their international responsibility for violations to the American Convention, neither could reach a friendly settlement with the petitioners. In the *El Amparo* case, the Commission requested that the Court ordered Venezuela: to publicly acknowledge its international responsibility and to promise that similar violations will not be repeated; to amend its Code of Military Justice; to establish a foundation for the promotion of human rights; to investigate and prosecute those responsible for committing the acts; and to honor the victims.\textsuperscript{42} The Court expressly rejected the Commission’s requests to rule on the compatibility of the Code of Military Justice with the protections of the American Convention. It explained that it was bound by its previous Advisory Opinion where it determined that in contentious proceedings the

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\textsuperscript{40} Id, parr. 32-35

\textsuperscript{41} Id, parr. 96

Court cannot rule on abstract questions.\textsuperscript{43} It further noted that since Venezuela accepted responsibility, the judgment itself constituted adequate reparations.\textsuperscript{44} The Court’s decision to abstain from ruling on the compatibility of the Code of Military Justice of Venezuela with the American Convention prompted a strong dissenting opinion from Judge Antônio Augusto Cançado Trindade.\textsuperscript{45} He argued that under international human rights law, as resolved by the European Human Rights Court and the Human Rights Committee, the legality of a legislation can be examined by a court even when no actual harm exists.\textsuperscript{46} He also contended that the Court has a duty of prevention, which included the examination of legislation that may hinder the effective protections that states must employ.\textsuperscript{47} The dissent does not cite or mention any particular arguments presented by the victim’s representatives or by the Commission, therefore it is difficult to identify if these had any influence in the dissenting opinion.

The second case of this period is the \textit{Caballero Delgado and Santana} case. The Commission requested identical reparations as in the \textit{El Amparo} case. Only this time, the Commission requested that the Court ordered Colombia to amend its \textit{habeas corpus} procedure, to incorporate the crime of forced disappearance within its penal code, and to exclude the military from exercising its jurisdiction to investigate and prosecute human rights violations committed by its agents.\textsuperscript{48} The Court rejected all of these claims. It considered that the existing \textit{habeas corpus} procedure was effective. It also considered that the codification of the crime of forced disappearance was not necessary and believed that it would be “inappropriate to address the

\begin{thebibliography}{9}
\bibitem{El Amparo, supra n. 34, parr. 60-61}
\bibitem{Id, Dissenting Opinion by Judge Antônio Augusto Cançado Trindade}
\bibitem{Id, parr. 5-11}
\bibitem{Id}
\end{thebibliography}
military jurisdiction during the reparations phase.”\textsuperscript{49} It also dismissed the Commission’s requests (a public act acknowledging responsibility, economic support for the assistance of a college, and human rights training to military officers) by insisting that the judgment on the merits is an appropriate form of reparation and that it was “be improper to order the government further forms of reparations”.\textsuperscript{50} Once again, Judge Antônio Augusto Cançado Trindade dissented from the majority, restating his reasoning previously developed in El Amparo case. In his opinion the Court has a duty to examine internal legislation and its effects on the protections of the American Convention.

\textbf{September 1997 – December 1997}

During this four month period, the Court issued its ruling on the \textit{Neria-Alegria} case. It decided that Peru must do “everything in its power to identify and locate the remains of the victims and deliver them to their next of kin.” This reparation measure is different than previously awarded measures in that states now must not only inform, but locate, identify and return the victim’s remains. During the merits phase of the case, the Court was presented with facts that showed that out of 111 persons killed, only seven had been positively identified. The aggravating factor was that all the people killed by the Peruvian Navy were in the custody of the state.\textsuperscript{51} The state’s gross negligence seems to be the catalyst for the expansion of this type of measure.

\textbf{January 1998 – September 1999}

Although only 3 cases were decided, remarkable progress was achieved during this period. In the \textit{Benavides-Cevallos} case, the Court had to address the first friendly settlement dealing with a

\textsuperscript{49} Id, parr. 54-58  
\textsuperscript{50} Id  
\textsuperscript{51} I/A Court H.R., \textit{Case of Neira-Alegria et al. v. Peru}, Merits judgment of January 19, 1995. Series C No. 29, parr. 64 - 72
right to life violation. Under article 53 of its Rules of Procedure, the Court has a duty to verify if the agreement is consonant with the American Convention. Ecuador had committed to: pay the victim’s heirs $1,000,000 for all damages suffered; investigate and prosecute those responsible for the acts; and memorialize the name of the victim by naming a street, park, or school in his honor of the victim. Ecuador would also ratify the Convention to End Forced Disappearances and incorporate it into its domestic legal system.\textsuperscript{52} The Court approved the agreement and unanimously ordered Ecuador to provide the measures.

The second case also involved an acknowledgement of responsibility by Argentina. In the \textit{Garrido} case, the parties decided to use the Court’s contentious jurisdiction to question the federal clause whereby Argentina rejected international responsibility for the acts committed by the agents of the state of Mendoza. After dismissing Argentina’s claim, the Court addressed the non-pecuniary damages requested. It did not order Argentina to adjust its domestic legislation to include the crime of forced disappearances because the Argentine agent informed the Court that it had already introduced legislation to that end. Similarly, the Court acknowledged the state’s commitment to publicize both, the domestic \textit{ad hoc} arbitral tribunal findings and the Court’s judgment.\textsuperscript{53} It further instructed Argentina to take the necessary measures to adjust its internal legislation to ensure that the protections of the American Convention were effectively protected.\textsuperscript{54} This case is important since it is the first time during a right to life case that the Court examined the effects of an internal legislation with the protections of the American Convention. Moreover, it instructed Argentina to adjust its internal legislation, rejecting the Court’s previously established trend of non-interference with internal legislation. The Court

\textsuperscript{53} I/A Court of H.R., parr. 66
based its reasoning on principle of *allant de soi*, established by an advisory opinion of the Permanent Court of Justice where states who sign an international treaty must introduce legislation into their domestic system to make such treaty operative. The Court even declared this as principle as customary international law. Furthermore, the Court went on to state that in order to comply with the American Convention such internal legislation must be effective assuring that the treaty has “full force and effect within its domestic legal system”. At no point did the Court expressly reject its previous practice of non-intervention. The Court acknowledged how it “underscored this point” in the *Aloeboetoe* case, but made no mention of how it also rejected to interfere with the internal legislation in the *El Amparo* and the *Caballero Delgado and Santana* cases. It must also be mentioned that although the Court “ordered” Argentina to adopt the necessary internal legislation, Argentina had informed the Court that it has already taken steps to that end.

In *Castillo Paez*, the Court elaborated its reasoning on the concept of reparations. The Court discussed how the right to reparations is not expansive to society. It goes on to state that..”[t]he court has not held that the moral damages caused by an individual’s death extends to such communities, and even less to the nation as a whole. If in some exceptional case such compensation has ever been granted, it would have been to specific communities that have suffered proven moral damages”. It then ruled that Peru must investigate and prosecute those responsible, regardless of the existence of two amnesty laws. The Court considered these amnesty laws to be internal obstacles that might prevent the victim’s family from knowing what happened to the victim and if possible, the location of the remains. The victim’s family right to

55See (“principe allant de soi”; Exchange of Greek and Turkish populations, Advisory Opinion, 1925, PCIJ, Series B No. 10, p. 20).
56 Id
know the truth is now linked to the state’s duty to investigate.\textsuperscript{58} The Court linked the protections of article 25 and article 1(1) (access to the courts and to a simple and rapid recourse) with article 8(1) (right to a fair trial). The Court then refused to order Peru to issue a public acknowledgement of its international responsibility, even though it noted that Peru had consistently made statements denying the validity of the petitioner’s claims, resulting in additional pain.\textsuperscript{59} Instead, it considered that the fact that the petitioners made a claim in an international forum is in itself satisfaction, especially if the condemnatory judgment validates their claim.\textsuperscript{60}

\textbf{1999 – 2001}

During this period, the Court dealt with 3 cases from Guatemala, (\textit{Blake, White Van}, and \textit{Street Children}) and 2 from Peru (\textit{Durand and Uguarte} and \textit{Barrios Altos}). In the \textit{Blake} case, the Court ruled that it had no jurisdiction over a violation to the right to life of Mr. Nicholas Blake because Guatemala had accepted the jurisdiction of the Court with a reservation excluding all acts predating the date of ratification.\textsuperscript{61} This was criticized by one of the panel’s judges.\textsuperscript{62} Nevertheless, the Court ordered Guatemala to investigate and punish those responsible and to adopt the necessary legislative measures to comply with this obligation.\textsuperscript{63} It must be noted that the state’s response was that it had already taken steps to ensure that the human rights violations would not be repeated and were also part of the recently signed Accord of Firm and Lasting Peace, of December 29, 1996.

\textsuperscript{58} Id, parr. 103-107  
\textsuperscript{59} Id, parr. 96  
\textsuperscript{60} Id  
\textsuperscript{63} Blake, supra n. 53, parr. 64
In the *Street Children* case, the Court found the state responsible for violations to the right to life of a number of minors and ordered the investigation and prosecution of those responsible and to return the victim’s bodies to the family. The Court also ordered Guatemala to adjust its internal legal structure to uphold its duties under Article 19 of the American Convention, although it refuses to state how these changes should take place.\(^{64}\)

The Court also ordered the state to rename an educational facility in honor of the victims which includes a plaque with all of their names. “This will contribute to raising awareness in order to avoid the repetition of harmful acts such as those that occurred in the instant case and will keep the memory of the victims alive.”\(^{65}\) The Court cites the *Benavides* case as its precedent for awarding this remedy, a case involving a mutually agreed reparation measure. In this way, the Court avoided to discuss the adequacy, effect, or validity of such measure to the present case.

In the *White van* case, the Court ordered the state to adjust its legislation to establish a national registrar which contained the names of all persons detained by the government. This recommendation was offered by the Commission.\(^{66}\) The Court also stated that the victim’s have a “right to know what happened, and to know the identity of the State agents responsible for the facts”.\(^{67}\) The Court cites the *Alboetoe* and *Velazquez* cases as its precedents. However it must be noted that in *Alboetoe*, the Court did not require Suriname to investigate the events, while in *Velasquez*, the Court had not yet expanded the victim’s rights to know in such an expansive manner. Until this case, the victim’s right to know the identity of state agents was not explicitly stated.

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\(^{65}\) Id, parr. 103


\(^{67}\) Id, parr. 200
In the *Barrios Altos* case, the Court approved a friendly settlement where Peru committed to: provide medical and psychological treatment; provide for a comprehensive education’s package that included scholarships, uniforms, books, class materials, and tutoring; erect a monument in memory of the victims; sign the International Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity; define the crime of extra-judicial execution; publish the judgment; issue a public apology; and implement the necessary measures to comply with the Court’s ruling on the legal effect of the Amnesty laws.\(^{68}\) Although the agreement required the parties to search for the identity of the victim’s next of kin, the Court found it necessary that Peru used radio, TV, and print media assuring national coverage in its search.\(^{69}\)

In *Durand and Uguarte* case, Peru also acknowledged its responsibility and submitted to the Court a friendly settlement for approval. Like the previously discussed *Barrios Campos* case, Peru agreed to provide free medical and psychological treatment to the victim’s next of kin; to pay a portion of the construction cost of the residence of the named beneficiaries; to publish the judgment in the Official Gazette; a public apology; the investigation and prosecution of those involved; and to locate and identify the remains of the victims.\(^{70}\)

### 2002

During this period, the Court issued 5 judgments (*Bamaca, Trujillo, Hilarie, El Caracazo, Las Palmeras Massacre*).

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\(^{69}\) Id, Parr. 31-32

In the *Bamaca* case, the Court ordered Guatemala to investigate and punish those responsible for the committing the human right violations. It also took the opportunity to clarify that the right to know the truth was subsumed within the victim’s family right to know, which then is linked to the duty of the state to investigate and prosecute those responsible.\(^71\) It then stated that the beneficiaries of reparations are not limited to the individual victims, nor to their families, but to society as a whole.\(^72\) The Court cited the *Castillo – Paez* and a series of reports issued by various UN human rights organs.\(^73\) This is important because the Court cited the very same case that rejected the exact argument it now endorses. Then the Court acknowledged the victim’s Mayan ancestry and the cultural importance of the burial ceremony among this indigenous people.\(^74\) This new found cultural sensitivity stems from the Court’s recently decided *Awas Tingis* case, which discussed the protections afforded to indigenous people in international law. The Court then ordered Guatemala to publicly acknowledge its responsibility and to implement a national exhumation program. It again cites *Benavides*, a friendly settlement, as its precedent and avoided discussing the appropriateness of the measure.

In the *Trujillo* case, Bolivia was ordered to enact legislation making forced disappearance a criminal offense.\(^75\) Furthermore, it had to provide periodic updates to the victim’s family.

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\(^{72}\) Id, parr. 76


\(^{74}\) Id, parr. 81

concerning all the efforts taken in locating, identifying, and returning the victims.\textsuperscript{76} The Court also considered that it was appropriate that Bolivia published its judgment in its Official Gazette,\textsuperscript{77} and that it trained its security personnel on human rights issues.\textsuperscript{78} Finally, the Court endorsed Ecuador’s proposal to name an educational center in memory of the victim.\textsuperscript{79}

In the first case dealing with the mandatory application of the death penalty, the Court held that the \textit{Offense against Person Act} is by itself contrary to the American Convention. As non-pecuniary reparations, the Court ordered Trinidad and Tobago to refrain from applying the Offense against Persons Act until it is adjusted to comply with the American Convention. Furthermore, Trinidad and Tobago was to re-try all the named victims and refrain from applying the death penalty as a possible sentence. It was also ordered the establishment of an effective pardons procedure and to improve the prison conditions as to meet international standards.\textsuperscript{80}

In \textit{El Caracazo}, the Court ordered the elimination of any amnesty laws that hindered the prosecution of those responsible of the violations and to locate, exhume, identify, and return of the victim’s remains to their relatives.\textsuperscript{81} Furthermore, Venezuela was ordered to train all law enforcement and military and security official on human right law, with a particular attention on the appropriate use of force when responding to emergency situations. The Court cited the previously decided \textit{Durand and Uguarte}, another friendly settlement, as its precedent for

\textsuperscript{76} Id, parr. 117  
\textsuperscript{77} Id, parr. 119  
\textsuperscript{78} Id, parr. 121  
\textsuperscript{79} Id, parr. 122  
\textsuperscript{80} \textit{I/A Court H.R., Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago}. Merits, Reparations and Costs. Judgment of June 21, 2002. Series C No. 94, parr. 212-217  
\textsuperscript{81} \textit{I/A Court H.R., Case of the Caracazo v. Venezuela}. Reparations and Costs. Judgment of August 29, 2002. Series C No. 95,
awarding such measures, and again avoided discussing the origin and appropriateness of measure.\textsuperscript{82}

The \textit{Palmeras Massacre} case provided the Court with the opportunity to clarify that the statute of limitations on a crime is stopped while a petition addressing the crime is being entertained by an international human rights organ. Thus, the state had a continued duty to prosecute an offender.\textsuperscript{83} Furthermore, Colombia had to identify a victim, locate his remains, and locate his next of kin and disseminate the necessary information through the national media. The Court continued its practice of citing cases that were resolved through friendly settlements as its basis for awarding a particular reparations measure. In this case it cited the \textit{Barrios Altos} case.

\textbf{2003}

The 2003 session reviewed the validity of two friendly settlements. In the \textit{Bulacio} case, the Court introduced a new reasoning for the existence of the duty to investigate and prosecute those responsible. It found that a state was bound by the principle of \textit{pacta sunt servanda} and by Article 27 of the Vienna Convention on the Laws of Treaties. Therefore, Argentina was obliged to implement effective domestic legislation to make the treaty prohibitions operative within its territory.\textsuperscript{84} Then the Court interpreted the effect of Article 7 of the American Convention in reference to its conclusions of the Advisory Opinion which determined that all persons under 18 are to be considered as minors.\textsuperscript{85} After ruling on the controversy, the Court looked favorably at the internal legal adjustments that Argentina had made to comply with the American Convention.

\textsuperscript{82} Id, parr. 127
\textsuperscript{83} I/A Court H.R., \textit{Case of Las Palmeras v. Colombia}. Reparations and Costs. Judgment of November 26, 2002. Series C No. 96, parr. 68
\textsuperscript{85} Id, parr. 123
More specifically, the Court approved of the Argentine measures that affected police detention centers, police detention procedures, and all regulations dealing with the detention of minors.\textsuperscript{86} In \textit{Myrna Mack}, although the Court acknowledged that the state punished one of the perpetrators of the crime, it stressed that a sphere of impunity existed in Guatemala. Asides from ordering the prosecution of the intellectual authors of the crime, the Court ordered Guatemala to provide additional security measures to the judicial authorities, prosecutors, legal operators, and the victim’s next of kin,\textsuperscript{87} and to provide human rights law and international humanitarian law training to its security forces.\textsuperscript{88} Furthermore, the state had to establish a scholarship for an anthropology student in a well known university and dedicate a public space in memory of the victim. It is the first time that a state is ordered to train its officials on the rules of international humanitarian law, and neither the Commission nor the victims’ representatives nor the state had proposed such measure. The Court also ordered the state to publicly accept its responsibility.\textsuperscript{89}

The Court cited cases (\textit{Juan Humberto Sanchez, Las Palmeras} and \textit{El Caracazo} cases) that did not ordered the states to hold public acts acknowledging its responsibility, but to publish the judgment.

\textbf{2004 – 2006}

During this next period the Court issued judgments on an unprecedented twenty two cases, from Guatemala (\textit{Molina-Thiesen, Carpio, Raxcaco}), Colombia (\textit{19 Tradesmen, Maparipan Massacre, Pueblo Bello Massacre, Ituango Massacre}), Peru (\textit{Gomez, Huilca, Gomez Palomino, Baldeon, Castro, La Cantuta}), Paraguay (\textit{Juvenile Reeducation Institute, Yakye Axa Indigenous Community, Sawhoyamaxa Indigenous Community, Vargas}), Venezuela (\textit{Blanco Romero, Montero}),

\textsuperscript{86} Id, parr. 144
\textsuperscript{88} Id, 284.
\textsuperscript{89} Id, 280
and Honduras (*Servellon*). By this time, the Court had routinely awarded the following measures: to investigate, prosecute and punish the offenders; to locate, identify and return the victim’s remains; to name a location in memory of the victim; to publish the judgment; to provide health and educational benefits; and to adjust their internal legislation. Instead of repeating these measures, the paper will only highlight the novel remedies that the Court provided during this period.

In *Molina- Thiesen*, the Court accepted Guatemala’s acknowledgement of its international responsibility and requested that it adopted an amendment to its civil code in order to recognize a presumption of death to all those disappeared, and to adopt a genetic data bank for the effective identification of those the disappeared.\(^90\) In granting the genetic databank, the Court directly credits the argument presented by the Commission, the victim’s representatives, and their expert witnesses as decisive.\(^91\)

In the *19 Tradesmen* case, the Court rejected Colombia’s arguments that it was not responsible for the violations of right to life attributed to paramilitary forces within its jurisdiction. Aside from the above mentioned remedies, Colombia was ordered to conduct a genuine search of the remains of the victims that were dismembered and thrown into the Magdalena River 16 years before.\(^92\) The Court also noted that some of the witnesses feared for their safety and it instructed Colombia to provide the necessary security measures to assure their right to life, including the safe return of those family members who lived in exile.\(^93\)

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\(^{91}\) Id


\(^{93}\) Id, parr. 280
In *Gomez-Paquiyauri*, although the Court acknowledged that the perpetrators responsible for committing the human rights violations were imprisoned, it ordered Peru to re-open an investigation and prosecute the intellectual authors of the crimes.\(^94\) It also granted a request by the victim’s wife and ordered Peru that it recognized the legality of the victim’s daughter hereditary rights.\(^95\)

In the *Juvenile* case, Paraguay was ordered to reassess its policy on the treatment of minors in custody and to make a public announcement assuring that minors will not be housed alongside adults.\(^96\) Furthermore, the state had to provide medical and psychological treatment to all victims,\(^97\) and educational and vocational training benefits to all former inmates.\(^98\)

In *Carpio*, Guatemala was ordered to reinvestigate and retry all those responsible for the death of Mr. Carpio Nicolle because the previous trial was ineffective. It ordered the state to implement measures designed to strengthen its investigatory capacity, such as the adoption of the *United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*.\(^99\)

In *Hiulca-Tecse*, the Court reviewed the validity of a proposed friendly settlement. After validating the agreement, it ordered Peru to design a human rights law or labor law course in memory of the victim. It also ordered that Peru praise the work of the killed union leader during the Labor Day celebrations.\(^100\)

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\(^95\) Id, parr. 238


\(^97\) Id, parr. 317

\(^98\) Id, parr. 321


In *Yakye Axa Indigenous Community*, the Court unanimously found that Paraguay violated article 4(1) in combination of article 1(1) of the American Convention because Paraguay did not uphold its obligation to provide for the necessary legal recognition of the traditional lands and the resources therein, so that the indigenous community could effectively enjoy the right to life. But the Court also found (5-3) that Paraguay was not responsible for the deaths of 16 indigenous people due to malnutrition and diseases. The Court expressly recognized the collective nature of the reparations. Because of this, Paraguay was ordered to provide legal title to the traditionally occupied lands of the Yakye Axa Indigenous community. It also ordered Paraguay to assure that during this period, the community had been provided with: potable drinking water, medical care, food, latrines, and the appropriate bilingual materials to provide for an adequate education. Furthermore, the state had to publish the judgment and hold a public ceremony recognizing its international responsibility, to be conducted in both Spanish and Exnet.

The Court in *Raxcaco Reyes* dealt with its second case on the mandatory application of the death penalty. It ordered Guatemala to adjust its internal legislation by eliminating the automatic application of the death penalty in cases of kidnapping and abduction, and to adopt an effective pardons procedure. It also ordered Mr. Raxco’s death penalty conviction revoked and to conduct a retrial. It further ordered to implement international prison standards within its own operations.

Colombia was ordered to investigate and prosecute those responsible for the *Mapiripan massacre* and to forgo the validity of the “Ley the Justicia y Paz” whose effect was hindering

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102 Id, parr. 211-227.
103 Id, 226 – 227.
that obligation. Colombia also had to amend its criminal code and adopt the international
definition of forced disappearances. In this same case, Colombia was ordered to identify all of
the victims by contacting their next of kin and if possible, return their remains. To accomplish
this task, it was ordered to create an administrative monitoring body.\textsuperscript{105} The state had to provide
additional security for those internally displaced persons who wish to return to village of
Mapiripan.\textsuperscript{106} It ordered a similar remedy to those victims that were displaced by the 
\textit{Ituango Massacre}, but in addition it required that the state provide a housing program to those
displaced.\textsuperscript{107} In granting this last remedy, the Court made specific reference to the right to
adequate housing as described in the International Covenant on Economic, Social and Cultural
Rights.\textsuperscript{108}

In \textit{Gomez Palomino}, the Court ordered Peru to provide adult educational programs allowing the
beneficiaries to complete their primary and secondary education, and to guarantee that the
victim’s daughter receives primary, secondary, and if desired, free university education.\textsuperscript{109}

In \textit{Blanco Romero}, the Court requested that Venezuela investigate and prosecute those
responsible, adopt changes in the definition of forced disappearances, publish the judgment, and
accept international responsibility. It also granted the victim’s representatives request to provide
a birth certificate for her child, thereby facilitating their departure from Venezuela, if it was

\textsuperscript{105} I/A Court H.R., \textit{Case of the Mapiripán Massacre v. Colombia}. Merits, Reparations and Costs. Judgment of
\textsuperscript{106} Id, parr. 312.
\textsuperscript{107} I/A Court H.R., \textit{Case of the Ituango Massacres v. Colombia}. Preliminary Objection, Merits, Reparations and
\textsuperscript{108} Id, footnote 223 “ Cf. application of the International Covenant on Economic, Social and Cultural Rights,
General Observation 4, The right to adequate housing (paragraph 1 of Article 11 of the Covenant), (Sixth session,
\textsuperscript{109} I/A Court H.R., \textit{Case of Gómez-Palomino v. Peru}. Merits, Reparations and Costs. Judgment of November 22,
2005. Series C No. 136, parr. 149
necessary. The Court extended the right of the victim’s next of kin to know the truth by declaring that they must have “full access and standing at all stages and levels of the domestic criminal proceedings instituted… pursuant to domestic law and to the American Convention”. Interestingly, the Court does not discuss the reasons for implementing such measures. It must be noted that the victim’s representatives requested “adequate participation during the criminal proceedings”.

In the *Pueblo Bello Massacre* case, Colombia was ordered to investigate and prosecute those responsible, with the caveat that it must notify the Court every six months as to the progress of the criminal proceedings. It also required that Colombia locate and identify the victim’s remains, using the UN Manual on Summary and Extrajudicial Executions. Furthermore, the Court ordered Colombia to guarantee the security of the victim’s next of kin who decide to return to Pueblo Bello and provide them with adequate housing.

Paraguay was ordered to deposit $1 million into a development fund for the benefit of the *Sawhoyamaza Indigenous Community*. The fund would cover the housing, educational and medical expenses, as well as the construction costs of a sewage and sanitary infrastructure. In the meantime, Paraguay had to provide immediate water and food supplies, medical treatment, set-up latrines, provide bilingual education, and establish a communications system which allows the community to call in the event of a medical emergency.

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111 Id, parr. 97
112 Id, parr. 91(b)
114 Id, 275 - 276
116 Id, 230
In *Baldeón-García*, the Court ordered Peru to assure that their investigative procedures comply with the international standards as defined by the Istanbul protocol.\(^{117}\)

The Court also recognized the criminal proceedings in place at the time, were discriminatory against the Quecha speaking rural community. Therefore, Peru had to adjust its procedures to ensure the effective participation of the indigenous victim’s next of kin during all criminal stages.\(^ {118}\)

Brazil violated the right to life when a mental patient was brutally beaten and murdered while receiving psychological care at a public institution. The Court ordered Brazil to offer human rights training to these health professionals.\(^ {119}\)

In *Montero-Aranguren*, the Court ordered Venezuela to adopt the UN Manual on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions as a guide for the effective investigation and prosecution of the criminal acts.\(^ {120}\) The court ordered Venezuela to improve the living conditions of prison inmates, including, “a) bed space that meets minimum standards; b) accommodation which is ventilated and naturally lit; c) regular access to clean toilets and showers securing toilet privacy; d) adequate, timely and sufficient food and health care; and e) access to educational, employment and other opportunities to assist inmates towards a law abiding and self supporting life.”\(^ {121}\)

Honduras was also found to have violated the right to life of minors in *Servellon*. It requested that the government adjusted its investigation of the crime using the UN Manual on the Effective

\(^{118}\) Id, parr. 202 - 203.
\(^{120}\) I/A Court H.R., *Case of Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, parr. 140
\(^{121}\) *Montero-Aranguren*, supra n. 122, parr. 146
Prevention and Investigation of Extralegal, Arbitrary and Summary Executions.\textsuperscript{122} Since the case involved minors, the Court ordered a national campaign “with the purpose of creating awareness in the Honduran society regarding the importance of the protection of children and youngsters, inform it of the specific duties for their protection that correspond to the family, society, and the State, and make the population see that children and youngsters in situations of social risk are not identified with delinquency.” Furthermore, Honduras must issue a postal stamp allusive to the protection due by the State and society to children and youngsters in risky situations, in order to prevent them from becoming victims of violence.” Lastly, Honduras must create “a unified data base between all institutions involved in the investigation, identification, and punishment of those responsible for the violent deaths of children and youngsters in risky situations. That registry must help increase the effectiveness of the investigations.”\textsuperscript{123} All of these measures had been requested by the victim’s representatives.\textsuperscript{124}

In a historic case, the Court ordered Paraguay to investigate and prosecute those responsible for the political murder of Agustín Goiburú Giménez and others during the oppressive regime of the then dictator Stroessner, and implored Paraguay to exert diplomatic pressure assuring the extradition of those responsible.\textsuperscript{125} Nevertheless, the Court did not adopt a request by the victim’s representative ordering Paraguay to commence criminal proceedings \textit{in absentia}. This petition was rejected because the Court could not find any international or regional consensus as to the validity of the measure.\textsuperscript{126} The Court hailed Paraguay’s attempt to memorialize the events

\begin{footnotesize}
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\item Id, parr. 201 - 203
\item Id, parr. 167(d)
\item Id, parr. 168
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by creating the Center of Documentation and Files for the Defense of Human Rights, known as the “Terror Files”.¹²⁷

In Vargas, the Court ordered Paraguay to adjust its internal legislation whereby prohibiting the recruitment of children into the armed forces.¹²⁸ In Castro, the Court repeated its standard reparations, ordering the state to investigate, prosecute and punish; along with identifying and returning the remains of the victims, among others.¹²⁹ And, in La Cantuta case, the Court reaffirmed its previous ruling on Barrios Altos and instructed that forced disappearance and extrajudicial executions are crimes against humanity and that no internal legal impediment can exist if it hinders the state’s obligation to investigate.¹³⁰

2007

In Massacre Rochela, the Court approved a friendly settlement between the parties containing various awards, such as: memorializing the victims with a plaque; a public apology acknowledging international responsibility; the duty to investigate and prosecute; publish the judgment; and offer a scholarship on human rights. The victims were to receive educational benefits and medical treatment. Colombia even agreed to offer employment at the Office of the Prosecutor to the victim’s next of kin.¹³¹

In the case of Escue Zapata, Colombia was order to provide $40,000 into a development fund in memory of the victim “so that the Community can invest it in collective interests' service or

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¹²⁷ Id, parr. 170.
works for its own benefit, in accordance with their consultations, decisions, usages, customs and traditions, independently of the public works put aside in the national budget for that region."\textsuperscript{132}

Neither the Commission nor the victim’s representative requested such remedy. It also instructed Colombia to hold a public act of acknowledgement in Spanish and in Nasa Yute. The Court also ordered the creation of a university chair to honor the victim.\textsuperscript{133}

The remaining cases of the period did not include any new form of reparations that have not been identified.\textsuperscript{134} In \textit{Boyce v. Barbados}, the Court ordered similar reparations as all other cases involving mandatory death sentences.\textsuperscript{135}

\textbf{2008}

The only case dealing with the right to life was the \textit{Helidoro Portugal} case where the Court determined that it had no jurisdiction to rule on the forced disappearances of the victim. It nevertheless, found Panama in violation of article 4(1) in relation to article (1) of the American Convention and ordered the state to conduct an investigation and prosecution of those responsible. In the reparations stage, the Court rejected the victim’s representative’s requests, such as: the creation of a video about the history of the dictatorship in Panama and the life of Heliodoro Portugal; the inclusion of the judgment in the history courses of Panama; the creation of a Special Prosecutor for human rights violations, among others.\textsuperscript{136}


\textsuperscript{133} Id, parr. 177 - 178


Conclusion

The Court has expanded the concept of satisfaction significantly since it first issued its Velasquez ruling. After identifying the cases and the factors that appear to influence the Court, there is still much confusion. It remains unclear what judicial technique does the Court follows when it employs new reparations measures.

For example, in the Bamaca case, the Court interpreted that the right to reparations is not limited to the petitioner nor to its family, but also extends to society as a whole. The Court cited in passing, the Castillo Paez judgment and then discusses several reports from various UN human rights bodies which establish that very same principle. The first problem is that Castillo Paez rejects the very idea of extending the benefits of reparations to society as a whole. In fact, the case seems to suggest that the chances of awarding such a remedy were almost certainly improbable. Secondly, the Court misses the opportunity to contribute to the development of the law because it avoids addressing the drawbacks or mishaps from its previous employed rationale.

Another method that the Court adopts in awarding reparations is to cite its previous cases without discussing them. For example, in Garrido, for the first time, the Court ordered a state to adjust its internal legislation so that its effects comply with the American Convention. The Court recognized that in the past it had “underscored” its ability to rule on domestic legislation, and cites the Alboetoe case. More surprisingly, the Court ruled that a state’s obligation to adjust its internal legislation to conform its treaty obligations is a rule of customary law. However, it failed to discuss what factors it considered when ruling on the development of this principle of customary law. Furthermore, the Court does not explain how its reasoning changed from the El Amparo and Caballero Delgado cases, where it decided not to address the Venezuela’s Code of Military Justice and Colombia’s habeas corpus procedure. It also makes no mention on the legal
effect of its previous Advisory Opinion limiting its jurisdiction to real and not abstract controversies. Again, the Court misses an opportunity to develop its reasoning and fails to grasp an opportunity to contribute to the understanding of its own principles.

In evaluating the cases discussed, one can note that the Court would usually refer to its most current cases. For example, in *Myrna Mack*, Guatemala had acknowledged its international responsibility. Nevertheless, the Court instructed it to hold a public act in coordination with the victim’s next of kin, acknowledging its responsibility. Instead of explaining its reasoning for awarded such remedy, it refers to *Juan Humberto Sanchez*. But, then again, that case does not discuss the reasons for implementing a public apology as a reparations measure. *Sanchez* simply cites *Las Palmeras* (2002) and *El Caracazo* (2002). In these two cases, the states concerned accepted responsibility and were not ordered to make a public apology, but only to publish the judgment. This technique is employed repeatedly by the Court. This is problematic because it rarely allows the reader to accurately point to the arguments or reasoning that the Court uses to explain a reparations measure.

Another practice employed by the Court is to “order” a state to comply with the measures established in a friendly agreement. Then the Court refers to these “orders” whenever it tries to implement new reparations measures. For example, the measure requiring a state to name a public space in honor of the victim can be traced to the *Benavides* case, a friendly settlement arranged by the Commission between the victim’s representatives and the state. In this way, it not only misses another opportunity to explain its reasoning, but misleads a reader by suggesting that it had previously discussed the appropriateness and the legal implications of the particular measure.
The Court has made significant progress in twenty years of issuing sentences. Furthermore, some of the awarded reparations are among the most important and advanced of any human rights body. Nevertheless, the Court must develop a more disciplined approach when presenting a novel claim. It must explain its reasoning, and more importantly, explain when it disagrees with a previous Court practice. In this manner, the Court will earn more respect at as an important international player.
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<td>Mapiripán Massacre</td>
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<td>Gómez-Palomino</td>
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<td>Blanco-Romero et al.</td>
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<td>Pueblo Bello Massacre</td>
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<td>Baldeón-García</td>
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<td>Ituango Massacre</td>
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<td>Ximenes-Lopes</td>
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<td>Montero-Aranguren et al.</td>
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<td>Serrellón-García et al.</td>
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<td>Miguel Castro-Castro Prison</td>
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<td>La Cantuta</td>
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<td>Rochela Massacre</td>
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<td>Escué-Zapata</td>
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<td>Zambrano-Vélez et al.</td>
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<td>Heliodoro-Portugal</td>
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**Children or minors**

Aloeboetoe et al. v. Suriname  
Street Children v. Guatemala  
El Caracazo v. Venezuela  
Bulacio v. Argentina  
Molina-Thiessen v. Guatemala  
Gomez v. Peru  
"Juvenile Reeducation Ins." v. Paraguay  
Mapiripán Massacre v. Colombia  
Sawhoyamaxa Indigenous Community v. Paraguay  
Ituango Massacre v. Colombia  
Servellón-García et al v. Honduras  
Vargas-Areco v. Paraguay

**Indigenous People**

Aloeboetoe et al. v. Suriname  
Bámaca-Velásquez v. Guatemala  
Yakye Axa Indigenous Community v. Paraguay  
Sawhoyamaxa Indigenous Community v. Paraguay  
Escue-Zapata v. Colombia

**Detained or convicted persons in prison**

Neira-Alegría et al. v. Peru  
Durand and Uguarte v. Peru  
Hilaire, et al. v. Trinidad and Tobago  
El Caracazo v. Venezuela  
"Juvenile Reeducation Ins v. Paraguay  
Raxcacó-Reyes v. Guatemala  
Montero-Aranguren et al v. Venezuela  
Miguel Castro-Castro Prison  v. Peru  
Boyce et al. v. Barbados
Women

Caballero Delgado v. Colombia
Benavides v. Ecuador
El Caracazo v. Venezuela
Myrna Mack v. Guatemala
Mapiripán Massacre v. Colombia
Sawhoyamaxa Indigenous Community v. Paraguay
Miguel Castro-Castro Prison v. Peru

Students

Velásquez v. Honduras
Benavides-Cevallos v. Ecuador
Castillo-Páez v. Peru
Barrios Altos v. Peru
El Caracazo v. Venezuela
Trujillo-Oroza v. Bolivia
Molina – Thiessen v. Guatemala
Gómez-Paquiyauri Bro v. Peru
La Cantuta v. Peru