THE SCOPE OF REPARATIONS IN THE CASE-LAW OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS[1]

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"Spiritual development is the supreme end of human existence and the highest expression thereof".

Preamble of the American Declaration on the Rights and Duties of Man, the first international human rights instrument of a general nature, adopted in April of 1948.

1. INTRODUCTION

International human rights law has included the right of every victim to effective remedies in its *corpus juris*. Despite the international recognition achieved in the second half of the 20th century, after 50 years of the end of the Second World War as many as 200 million people have died in over 310 international and non-international conflicts around the world.[2] The right to effective remedies generally remains without effective enforcement, except as provided for by the European and American Conventions on Human Rights, and applied by the European Court of Human Rights and the Inter-American Court of Human Rights, respectively.

The present study analyses the interpretation and application by the Inter-American Court of Human Rights ("IACtHR"), of the five forms of reparation identified in *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*, recently adopted (in December 2005) by the U.N. General Assembly. The present study will at first consider the historical evolution of the right to reparation under public international law and its further integration to international human rights law. Secondly, it will analyze the interpretation and application of each form of reparation – restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition – by the IACtHR, as well as – thirdly - identify key concepts of its case-law, such as the notions of *full reparation* and *damage to project of life*.

2. THE HISTORICAL EVOLUTION OF THE RIGHT TO REPARATION UNDER INTERNATIONAL LAW

When a State is found responsible for an internationally wrongful act, two linked obligations automatically arise under the law of State Responsibility. First, the responsible State must cease that act and guarantee its non-repetition;[3] secondly, it must provide full reparation for damages caused by that act, whether they are material or moral.[4] In *Factory at Chorzow*, the Permanent Court of International Justice ("PCIJ") defined the function of the obligation to provide reparation as to "(…) wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed".[5] Since then the International Court of Justice ("ICJ") has consistently reaffirmed that the obligation of the responsible State to make full reparation is well established in general international law.[6]

If restitution is unavailable or inadequate to ensure full reparation, it may be partially or entirely substituted by compensation.[7] As the PCIJ subsequently found in *Factory at Chorzow*, the role of compensation is to fill in any gaps so as to ensure full reparation for damage suffered.[8] Satisfaction is the third form of reparation that the responsible State may have to provide if the damage cannot be made good by restitution or compensation.[9] According to the International Law Commission ("ILC"), satisfaction is the remedy for those injuries, not financially assessable – and frequently of a symbolic nature –, which amount

to an affront to the State.[10] The forms of satisfaction may consist in, for example, the declaration of the wrongfulness of the act by a judicial body[11] or a formal request for apology.

However, the system of reparation pursuant to public international law, as identified by the ILC, is strictly set under an inter-state reality. When applied in the realm of international human rights law, such legal concepts must be adapted to fit into a reality between unequal entities, that is, the State and the individual.

3. THE RIGHT TO REPARATION UNDER INTERNATIONAL HUMAN RIGHTS LAW

Traditionally, reparations for serious human rights violations used to be conceived in the context of State Responsibility until the end of the Second World War. Wrongs committed by a State against its own nationals were regarded as domestic affairs, whereas wrongs committed by a State against nationals of another State (aliens) gave rise to claims by the other State as asserting its own rights, and not the rights of the victims themselves. After the Second World War, with the proclamation of international human rights, victims saw a progressive recognition of their right to pursue reparation before domestic courts and, having exhausted the internal remedies, before international tribunals. The integration of human rights into State Responsibility extended the obligations assumed by States not only towards other States but also to individuals.[12]

The international right to reparation has a dual meaning: it has a (a) procedural dimension, which comprehends the right to effective remedies or, in other words, the *formal* access to justice; and (b) a substantive dimension, that is, the *material* access to justice.[13] Provisions providing a right to an effective remedy can be found in numerous international instruments, in particular article 6 of the Universal Declaration of Human Rights, article 2 of the International Covenant on Civil and Political Rights, article 6 of the International Convention on the Elimination of all Forms of Racial Discrimination, article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 39 of the Convention on the Rights of the Child, article 3 of the Hague Convention respecting the Laws and Customs of War on Land (Convention IV), article 91 of the I Protocol Additional to the Geneva Conventions of 12 August 1949, article 7 of the African Charter on Human and Peoples' Rights, article 25 of the American Convention on Human Rights, article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and articles 68 and 75 of the Rome Statute of the International Criminal Court.

The substantive dimension of the right to an effective remedy is reflected in the general principle of law of wiping out the consequences of the wrongs committed.[14] It is the *material* access to justice. In this respect, the General Assembly of the United Nations adopted Resolution 60/147, in December 2005, called *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* ("Basic Principles"), which points out that victims are entitled to the following types of reparation: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. Accordingly, the Basic Principles have identified distinct forms of reparations *from the perspective of the victims,* of their needs, aspirations and claims. Those principles, together with the *UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power* (1985) and the *Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity by the UN Commission on Human Rights* (2005), seem to indicate the existence of customary international rules governing individual reparation claims.

Although most international tribunals were established long before the adoption of the Basic Principles, the content of that resolution is widely accepted. Indeed, regional human rights courts have applied the five forms of reparation, the Inter-American Court of Human Rights being the most innovative, especially with respect to satisfaction and guarantees of non-repetition. Likewise, national truth and reconciliation commissions have taken important steps to provide redress and implement permanent programmes for social development.

The forthcoming sections will track the Basic Principles as they are interpreted and implemented by the Inter-American Court of Human Rights.

4. THE SCOPE AND IMPACT OF REPARATIONS ORDERED BY THE INTER-AMERICAN COURT OF HUMAN RIGHTS

The Inter-American Court of Human Rights has developed a global reputation for being progressive in the realm of reparations, having consis-

tently awarded every form of reparation both in the context of individual and collective claims. The holistic approach of the IACtHR has defined important concepts, such as *full reparation* (*reparación integral*) and damage to a project of life (*proyecto de vida*), and has interpreted the right to reparation in the light of the particularities of traditional groups and communities. Due to the factual nature of the cases before the Court, restitution has often been impossible, particularly in cases of death, severe psychological trauma, complete destruction of property or forced disappearances.

The IACtHR's faculty to order reparations is consecrated in Article 63(1) of the American Convention on Human Rights, which states the following:

> 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 of Article 63(1) is clear in disclosing to the Court a wide horizon in the matter of reparations. In fact, the drafting history (*travaux préparatoires)* of the American Convention reveals no debate about conferring broad remedial competence on the Court. Initially, the Inter-American Commission on Human Rights had worked from drafts that replicated the language of Article 50 of the European Convention on Human Rights, and so were more restrictive with respect to forms of reparation other than compensation. However, Guatemala's written comments on the Commission's draft sought to strengthen the article further, so as to add other remedies for the consequences of the act that impaired the injured rights and that the injured party be guaranteed the enjoyment of the violated right. The drafting Committee II largely accepted these proposals, and the Plenary adopted the present version of Article 63(1) without discussion, giving the Court powers to (a) ensure that the victim enjoys future respect for the right or freedom that was violated; (b) remedy the consequences of the violation; and (c) compensate for the harm.[15]

The IACtHR, in the exercise of its judicial discretion, has interpreted and applied extensively Article 63(1) of the American Convention according to the teleological method of interpretation, which is provided by Article 31 of the 1969 Vienna Convention on the Law of Treaties. There is no other international tribunal that has awarded so many different and creative measures of reparation as the IACtHR. It regards reparations as "measures aimed at eliminating, moderating or compensating the effects of the violations committed. Their nature and amount depend on the characteristics of the violation and, at the same time, on pecuniary and non-pecuniary damaged caused".[16] The Court has based its progressive case-law mainly on the jurisprudential criterion of *full reparation* (*reparación integral*), which takes into account the integrality of the personality of the victim, that is, the impact that the human rights violation had upon the victim's potentialities and capacities and, consequently, upon his or her project of life (*proyecto de vida*).[17] In fact, for the purpose of achieving *full reparation*, the Court has also applied the principle of *jura novit curia* in cases in which petitioners did not specifically alleged a particular violation of the American Convention.

In addition, recent reforms of the Rules of Procedure of the IACtHR have enlarged the participation of victims before the Court. In 1996 the Rules of Procedure were reformed so as to confer *locus standi* to the victims exclusively for the reparations stage. In 2000 a new reform extended the *locus standi* of the representatives of victims to all stages of the proceedings before the Court. The fact that victims are able to independently present their views and arguments before the Court enabled judges to determine the nature of reparations with greater precision in a case-by-case basis. Moreover, the constant assistance of experts (psychologists, anthropologists, social scientists, forensic and medical professionals) has proved to be of paramount importance in the assessment of the harms suffered by victims.

5. RESTITUTION AS INTERPRETED BY THE INTER-AMERICAN COURT OF HUMAN RIGHTS

Restitution should, whenever possible, restore the victim to the original situation before the human rights violation. Measures of restitution include the restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment, and return of property.[18]

The IACtHR has reviewed a series of unfair domestic judgments so as to restore the right to personal liberty. In *Loayza Tamayo*, for example, the Court declared that the trial to which the victim was

subjected violated rights enshrined in the American Convention. For that reason, the Court (a) ordered the release of the victim,[19] and (b) declared that that trial had no legal effect and all the respective proceedings and records were null and void.[20]

The IACtHR has also ordered measures of restitution with respect to economic and social rights, mainly in the employment context. In *Baena Ricardo et al.*, the Court ordered Panama to reinstate 270 workers that had their rights violated or, if that was not possible, to provide employment alternatives with similar condition, salaries and remuneration as they had at the time their rights were violated.[21] Similarly, in *Loayza Tamayo*, the Court found that Peru had an obligation to reinstate the victim in her previous job and ensure that she receives her salaries, social security and employment benefits.[22]

As to the return of property, one may single out the consideration given by the Court to cultural particularities, especially in the context of indigenous populations and traditional territories. In *Moiwana Community*, the Court ordered Suriname to take legislative, administrative, and any other necessary measures to ensure the property rights of the members of the Moiwana community in relation to the traditional territories from which they were expelled.[23] Similarly, in *Yakye Axa Community*, the Court declared that the measures of territorial restitution for indigenous populations must be guided primarily by the meaning of the land for them. The Court further stated that this same criterion should be applied in compensation measures, in case the State is unable to return the traditional territories.[24] This cultural perspective on restitution was also applied in *Mayagna (Sumo) Awas Tingni Community*, in which the Court stressed the following:

> "*Given the characteristics of the instant case, some specifications are required on the concept of property in indigenous communities. Among indigenous peoples there is a communitarian tradition regarding a communal form of collective property of the land, in the sense that ownership of the land is not centered on an individual but rather on the group and its community. Indigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival*".[25]

It could be inferred from the case-law of the IACtHR that restitution of traditional territories can also imply the restoration of the right to manifest one's religion. As the Court stated, "for indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations."[26]

6. COMPENSATION AS INTERPRETED BY THE INTER-AMERICAN COURT OF HUMAN RIGHTS

When restitution is factually impossible, the Court resorts to compensation. It usually awards material and moral damages, alongside the use of other types of reparations. Regarding the prioritization of restitution over compensation, the Court has stressed:

> The reparation of harm caused by a violation of an international obligation requires, whenever possible, full restitution (restitutio in integrum), which consists in restoring the situation that existed before the violation occurred. When this is not possible, as in the present case, it is the task of this Tribunal to order the adoption of a series of measures that, in addition to guaranteeing respect for the rights violated, will ensure that the damage resulting from the infractions is repaired, by way, inter alia, of payment of an indemnity as compensation for the harm caused.[27]

The IACtHR has understood that material damages cover both *lucro cessans* (loss of profit) and *damnum emergens* (consequential damages). Punitive damages are generally not allowed.

Damnum emergens comprehends expenses incurred into by the victim as a result of the violation, such as, *inter alia*, medical services, transportation, lodging, and investigation of the victim's whereabouts.[28] *Lucro cessans* comprehends every loss of income as a consequence of the violation, such as the suspension of the salary of the victim or of their next of kin,[29] or any other circumstance that adversely impacts the labor capacity of the victim. In the case of survivors, the calculation of the compensation includes the time that the victim remained unemployed.[30] The notion of *lucro cessans* also comprehends loss of opportunities. In *Cantoral Benavides*, the Court considered that the violation of the victim's rights interrupted his studies, and so it ordered a compensation for what

he otherwise would have received as a salary of a newly graduated biologist.[31]

The IACtHR defines moral damages as the suffering and distress caused to the victims and to their next of kin, and detriment to very significant personal values, such as non-pecuniary alterations in the conditions of existence of the victim and their family.[32] Those damages include feelings of frustration and impotence in face of the authorities' failure to investigate,[33] humiliation, fear, anxiety, insecurity, and feelings of inferiority,[34] which can be exacerbated by the special vulnerability of the victim. In cases of serious violations of human rights, the Court has consistently applied the presumption of moral damage to the victim's next of kin.[35]

In addition to ordering indemnity payments to victims as compensation for the harm caused by a State Party, the IACtHR has ordered States to invest a certain amount in works or services of collective interest for the benefit of a community as a whole, by common agreement with the community and under the supervision of the Inter-American Commission on Human Rights. Thus, the Court has attempted not only to repair the right violated but also to improve the social conditions that make victims vulnerable to further human rights violations. This type of collective compensation was ordered in cases that involved a plurality of victims, such as the *Mayagna (Sumo) Awas Tingni Community* case.[36] In this case, the absence of "delimitation, demarcation, and titling of the property of indigenous communities"[37] created conflicts about land ownership.

An interpretive contribution of the IACtHR in the realm of compensation is its consideration to the economic realities facing States Parties. For example, in the case of *Aloeboetoe v. Suriname*, the Court took into account Suriname's objection that reparations should be in line with the current social and economic reality in Suriname.[38] As a result, apart from requiring the state to pay a reduced amount (USD 453,102) to the victims' relatives, the Court ordered other non-pecuniary measures, such as the reopening of a school in Gujaba and the staffing of it with teaching and administrative personnel, and making a medical dispensary operational in the same locality.[39]

It is worth noting that whereas national law has been used to support the calculation of reparations before the European Court of Human Rights,[40] national law does not play a significant role in its Inter-American counterpart. The Court focuses exclusively on international law in virtually every case.[41]

7. REHABILITATION AS INTERPRETED BY THE INTER-AMERICAN COURT OF HUMAN RIGHTS

More so than its regional peers, the Inter--American Court has identified the power of rehabilitation in both individual and collective reparations, and for family members of victims as well as victims themselves. Nonetheless, the Court has usually used terms other than rehabilitation, like *assistance*, and has always ordered rehabilitation alongside other types of reparations. Rehabilitation includes medical and psychological care as well as legal and social services.[42]

In the case of the *Mapiripán Massacre*, for example, the Court covered several types of reparations. First, the IACtHR ordered the State of Colombia to provide the next of kin of the victims, upon notification of those already identified and upon identification of others not yet individually identifiable, adequate medical treatment through national health services so as to reduce psychological disorders. Second, the Court ordered Colombia to ensure security conditions for the next of kin of the victims, as well as other inhabitants of Mapiripán who had been displaced, to return to Mapiripán and reintegrate themselves in their hometowns. The same approach was taken in the case of the *Moiwana Community*, whereby the Court ordered Suriname to ensure the safety of those community members who decided to return to Moiwana Village.[43]

The Inter-American Court ordered States to provide medical and psychological treatment to victims' next of kin in several other cases, such as the case of *Castro-Castro Prison*,[44] the *Massacre of Pueblo Bello* case,[45] and the *Massacres of Ituango* case, amongst others. Interestingly, in the *Massacres of Ituango* case the Court went even further by ordering Colombia to implement a housing program and provide appropriate housing to the surviving victims who lost their homes.[46]

In the *Plan de Sánchez v. Guatemala* case, the Court was asked to provide appropriate redress for a Mayan indigenous community devastated by the mass murder of over 250 persons. This was the first time an international tribunal ordered reparations for the survivors and next of kin of a full-scale massacre.[47] The Court ordered, among other things, the investigation, prosecution, and punishment of the responsible parties;

a public acceptance of responsibility for the case's facts; establishment of a village housing program; medical and psychological treatment for all surviving victims; implementation of educational and cultural programs; and the translation of the judgment into the appropriate Mayan language.[48]

In some cases involving the victimization of groups, the Court ordered States to establish trust funds on behalf of the whole community, so as to enhance their economic and social development. In *Moiwana Community*, for example, the Court ordered Suriname to establish a community development fund.[49] Similarly, in *Aloeboetoe,* the Court ordered Suriname to establish two trust funds, one on behalf of the minor children and the other on behalf of adult beneficiaries, and a foundation to all the victims of the community.[40] This demonstrates the Court's use of rehabilitation as a form of collective reparation.

It is worth noting that the Court has incorporated several educational measures reparations orders, which fall most obviously under the notion of *rehabilitation*, although not exclusively. On the one hand, in the realm of rehabilitation, victims received scholarships and educational materials, such as books, uniforms and class materials;[51] on the other hand, in the area of *guarantees of non-repetition,* States were ordered to provide training in human rights and international humanitarian law to members of the Armed Forces, National Police, and heath care service, amongst others.[52]

8. SATISFACTION AS INTERPRETED BY THE INTER-AMERICAN COURT OF HUMAN RIGHTS

The Inter-American Court has distinguished itself in developing the practice of ordering non-pecuniary reparations, regardless of the size of the case or the human rights violations alleged. As forms of satisfaction, the Court has ordered measures such as (a) the construction of monuments and naming of streets in memory of victims; (b) the creation of national days, ceremonies, commemoration and tributes to victims; (c) the verification of the facts and full disclosure of the truth, including the search for the whereabouts of disappeared victims; and (d) the issuance of public apologies, official declarations, and the publication of its own judgment.

In some cases the IACtHR used broad terminology to describe the nature of the memorials to be built, such as "memorial monument",[53] whereas in other cases the Court specifically addressed the measures to be taken, such as the naming and inaugurating of a school with the name of the victims.[54] When the Court takes the decision of ordering the construction of a memorial, it usually imposes the requirement of consulting the parties on relevant questions, such as the location of the memorial, the date for completion, and the agents who shall carry out the process of construction.[55]

In most cases – mainly those involving massacres – the monuments are intended to pay tribute to a collective form of victimization. Even though a monument may be built on behalf of only one victim, the petitioners usually seek to leave a deeper social trace, that is, they seek to share their reparation with society at large and for posterity.[56] The *Trujillo-Oroza* case is one such example, whereby the mother of the victim asked of the Court that "(…) a monument should be erected to the memory of José Carlos because this would allow future generations to learn about this part of Bolivia's history and because the next of kin of detained-disappeared persons have the right to perpetuate the memory of the youth who died because they disagreed with the political system."[57] The Court ordered Bolivia to officially assign the name of the victim to an educational establishment in Santa Cruz.[58]

Similarly, in the case of the *Mapiripán Massacre*, the IACtHR ordered Colombia to build, within one year of the judgement, an appropriate and dignified monument in remembrance of the facts in the Mapiripán Massacre.[59] The same approach was taken in the case of the *Moiwana Community v. Suriname*, since the Court ordered the State to build a memorial to the victims and to carry out a public ceremony whereby apologies should be made to the family member of the victims.[60]

The IACtHR has also ordered the construction of monuments in service of transitional justice. Three Peruvian cases, *Barrios Altos, La Cantuta,* and *Prison of Castro-Castro* illustrate the role that the construction of a monument can play in a society experiencing a time of transition – in the case of Peru, the end of both the Fujimori government and the fight against the Sendero Luminoso group. In 2001 the Court ordered the construction of a "memorial monument" in Lima for all the victims of the *Barrios Altos* case.[61] Then, in the case of *La Cantuta* (2006) the Peruvian State argued that a monument known as *El Ojo que Llora* ("The Crying Eye"), built by a private association in collaboration with State authorities, already existed in memoriam of all victims of violence in Peru. The Court ordered that the names

of the ten victims of the *La Cantuta* case should be included in the memorial.[62]

Finally, in the case of the *Castro-Castro Prison*, Peru once again complained that it had already built a monument for the victims, but the Court insisted that *all* the people declared as deceased victims in the case should be represented in the monument.[63] Today *El Ojo que Llora* is a well-known monument in Peru, located in the centre of Lima (*Campo de Marte*), and includes the names of all persons that were identified by the reports of the Peruvian Truth and Reconciliation Commission as victims of terrorist groups and State agents in Peru.

Satisfaction as the search for truth has also been employed in several judgments on reparations before the IACtHR. In that context, the Court has emphasized the legal obligations of States to investigate the facts that caused the violation in question, to punish the perpetrators, and to publish the truth in the national media. For example, in the cases of *Gutiérrez Soller v. Colombia* (2005), *Mapiripán Massacre v. Colombia* (2005), and *Maritza Urrutia v. Guatemala* (2003), the Court ordered the State to investigate the facts, identify, prosecute and punish those responsible, and to publish the truth and the results of the trial in national newspapers. In fact, in *Moiwana Community*, the Court declared that the family members of victims of serious human rights, as well as society as a whole, have a *right* to truth,[64] highlighting that "the right to truth, once recognized, constitutes an important means of reparation."[65] This measure is extremely relevant when "designed to restore [the victims'] reputation and honor."[66] Thus, unlike the European Court of Human Rights, the interpretation of satisfaction advanced by the IACtHR, as the search for truth, surpasses the former's limited notion of declaratory relief.

The *Street Children* case illustrates how the Court has taken account of cultural particularities into its judgments. Given the paramount importance in Mayan culture of giving a proper burial to mortal remains, the IACtHR ordered, apart from pecuniary compensation, that the State of Guatemala provide resources and adopt measures for the transfer of the mortal remains of the victims and their subsequent burial in the place chosen by their parents.[67] This decision was clearly motivated by the desire of the next of kin to give the victims' mortal remains an appropriate burial, "according to their religious beliefs and customs."[68] The IACtHR also ordered Guatemala to designate an educational centre with a name allusive to the young victims and place in it a plaque with the names of each of the five street children that were murdered.[69]

A similar approach was taken in *Moiwana Community*: apart from pecuniary compensation, the Court ordered the State to recover the mortal remains of the Moiwana community members and deliver them to the surviving members. Likewise, in *Neira Alegria et al. v. Peru*, the Court stated: "as a form of moral reparation, the Government has the obligation to do all in its power to locate and identify the remains of the victims and deliver them to their next of kin".[70] The separate opinion by Judge Cançado Trindade in the *Street Children* case stresses that the Court should not limit itself to the award of compensation since the "integrality" of the human being and human suffering require an integral form of reparation. He then highlights the need to use rehabilitation in concert with satisfaction measures.[71]

Also in the context of cultural particularities, in the public hearings of the case of *Mayagna (Sumo) Awas Tingni Community*, the indigenous members of the Mayagna Community stressed the vital importance of their relation to the lands where they live, not only for their own subsistence, but also for their religious beliefs and the integrity of the families. Thus, the Court ordered that the delimitation, demarcation and titling of that property should be done according to the customary law of the Mayagna Community, that is, their values, customs and mores,[72] defining the scope of reparations by the social context of victims.

The IACtHR has also made important jurisprudential contributions to reparations for victims of massacres, in which restitution was simply impossible.[73] In these, the Court found that the distinction between direct and indirect victims was inappropriate,[74] thereby enlarging the notion of victimhood and their ability to seek redress.[75] Moreover, since those cases involved an indefinite plurality of victims, the Court opted to establish a new criterion for ordering reparations, namely, that unidentified beneficiaries could be eventually included in an open-list and entitled to the reparations set by the Court, even if their names were not included in the petition prepared by the Inter-American Commission. This criterion can be found mainly in the Colombian and Guatemalan cases.[76] In fact, the Inter-American system allows victims to file a group petition claiming reparations for violations of their collective rights. In the *Saramaka People v. Suriname* case, for example, the application was filed on behalf of the indigenous community of the Saramaka people.[77]

Interestingly, in several cases concerning massacres, States have acknowledged their international responsibility during the public hearings before the IACtHR. In fact, in some cases States have spontaneously issued public apologies for the victims.[78]

A unique contribution by the IACtHR to the notion of satisfaction is its concern for the temporal dimension of the suffering of victims, specifically through the concept of "project of life."[79] The *rationale* of the concept of *project of life* is that the State must offer the victims means to fulfill their main projects of life when the violation that they suffered may be considered an insurmountable obstacle to the realization of those projects. Thus, in the case of *Cantoral Benavides,* the Court ordered Peru to provide the victim with the means to carry out and complete his studies at a university of recognized academic quality, since it was precisely his unlawful imprisonment that denied his project to pursue a university degree.[80] The Court went even further in the case of *Gómez-Palomino versus Peru* by applying the concept of project of life in an intergenerational perspective. Accordingly, the Court took into account that serious human rights violations leave lingering after-effects on the victims and their next of kin directly harmed, and so affect the new generations in different ways.[81] Thus, in order to achieve integral reparation, the Court ordered Peru to provide the siblings of the victim or, if so desired, to their sons and daughters, with scholarships and educational material as a measure of satisfaction.[82]

Furthermore, the IACtHR has consistently ordered the publication of its judgments so as to restore the dignity and reputation of the victims and persons closely connected with them. For that purpose, the Court has ordered the publication of its judgments in the native language of the victims, such as *Maya-Achí*, *Miskito*, *Sumo*, and *Rama*,[83] through official gazettes and newspapers with national circulation,[84] radio stations with broad coverage,[85] websites,[86] and bulletins of the armed forces.[87] Alongside the publication of the judgment, the Court has ordered States to promote public acts of acknowledgment of its international responsibility and tribute to the memory of the victims.[88]

9. GUARANTEES OF NON-REPETITION AS INTERPRETED BY THE INTER-AMERICAN COURT OF HUMAN RIGHTS

Guarantees of non-repetition comprise measures of legislative, judicial and executive nature, as well as broad structural measures of a policy nature, mainly institutional reforms aiming at the protection and promotion of human rights.[89] Due to their preventive purpose, guarantees of non-repetition "benefits society as whole",[90] and is therefore an important step in achieving collective redress for victims of gross violations of human rights.

The IACtHR has ordered measures of executive nature that aimed, *inter alia*, at the protection of persons in the legal profession and human rights defenders, the promotion of human rights and international humanitarian law education to pertinent sectors of society, and the reform of detention centers according to the international standards. In *Myrna Mack Chang,* the Court ordered the State to provide security measures to members of the judicial system involved in the investigation of the murder of the victim.[91] In the same case, after identifying the participation of military officials in the killing of Myrna Mack, an anthropologist and human rights activist, the Court ordered Guatemala to provide human rights and international humanitarian law education to members of the Armed Forces and the National Police.[92] The Court issued similar orders in subsequent cases, such as *La Cantuta*[93], *Mapiripán Massacre*,[94] *Tibi*,[95] *Massacres of Ituango*,[96] and *Ximenes Lopes*.[97]

The IACtHR has also ordered significant legislative measures to harmonize provisions of domestic law with the American Convention on Human Rights. There are several cases in which the Court ordered States to repeal[98], adopt and amend national laws,[99] including, if necessary, national constitutions,[100] so as to avoid further violations of the American Convention. Interestingly, in a memorable *dictum* of the *Barrios Altos* judgment, the Court held that self-amnesty laws lack legal effect because they violate non-derogable rights recognized by international human rights law and established in the American Convention.[101]

As to the judicial measures, the Court has consistently ordered States to investigate, prosecute and, if appropriate, punish the individuals responsible for the human rights violation.[102] Accordingly, States must remove all *de facto* and *de jure* obstacles that obstruct the investigation of the facts, and ensure that the next of kin of the victim or their representatives have full access to and participate in all stages and instances of the domestic criminal proceedings. As stated by the Court, "impunity promotes the chronic repetition of human rights violations and leaves victims and their families, who have a right to know the truth

about the facts, totally defenseless";[103] hence the preventive nature of such judicial measures.

As set forth in the case-law of the IACtHR, guarantees of non-repetition of human rights violations are also based on the education and training in the human rights area, which have a broad structural scope aimed at ending a culture of ignorance and discrimination in a specific sector of society or against a certain social groups. Thus, the Court has ordered specific human rights training to judicial servants, medical and health--care professionals, police officers, and military agents.[104] Similarly, after identifying a "culture of gender-based discrimination" in Mexico,[105] the Court ordered the State to implement permanent education in human rights and gender in order to develop the capacity of the society to recognize the discrimination that women suffer in their daily life.[106]

Other measures of preventive nature have been ordered to society as a whole. In El Salvador, thousands of girls and boys were separated from their families as a result of an internal armed conflict. In order to enable those children to regain their identity and their past, the Court ordered the State to create a genetic information system to permit identification of family members and enhance their reunification.[109] Likewise, the Court ordered Guatemala to create a webpage and database for the search of children abducted and illegally retained during the internal conflict.[108]

10. CONCLUSION

Full reparation transcends the purely economical perspective on the human person. Solutions of private law, such as concepts of material and moral damage, and elements of *damnum emergens* and *lucrum cessans*, are strongly influenced by a patrimonial content and interest. The IACtHR refused to undertake the pure and simple transposition of such concepts into the domain of the international human right law.[109] For that reason, the Court began advancing not only a new case-law on reparations, but also a new theory governing victims´ redress (collective and individual), bearing in mind the integrality of the personality of the victim, and the impact upon this latter of the human rights violation.

After the case of *Aloeboetoe v. Suriname*, when the victims were awarded several non--pecuniary measures of reparation, the IACtHR started to develop what later became the most prominent characteristic of its case-law: a holistic and non-pecuniary approach to reparations.[110] It was mainly after the cases of *Loayza Tamayo* and the *Street Children* (*"Villagran Morales"*) that the Court began to take into account that the integrality of the personality of the victim demands *full reparation* (*reparación integral)* for the damages to the *project of life of the victim*.

The innovative approach of the IACtHR to satisfaction as a more meaningful form of reparation than mere "declaratory relief" – historically utilized by the European system – is an outcome of its willingness to consider the integrality of the victim and the collective impact of reparations. Indeed, satisfaction and guarantees of non-repetition have an important collective dimension: they inform society as a whole about the need to improve social policies according to international human rights standards. Thus, reparations are not simply backward looking. They aim to reintegrate the marginalized and stigmatized victims into society, playing an important role in the ending social exclusion. They also aim to rebuild and reform certain sectors of the society in order to create the conditions for communities to prosper. Furthermore, reparations can also represent the society's acknowledgement of the harm done to the victim, and so recreate bonds of social solidarity.[111]

The Court's consideration for relative cultural contexts and the desired wishes of the individuals and communities is of paramount importance. Overemphasizing pecuniary compensation in the domain of international human rights law, apart from being insufficient to achieve full redress, may also have negative impacts on victims and communities. For example, in Chile, studies have concluded that the impact of individual pecuniary measures of compensation awarded by the Government on the Mapuche indigenous communities have distorted family relations of solidarity and negatively affected community networks.[112]

Likewise, in Argentina, sociological studies have pointed that a considerable part of the society was not favorable to the administrative pecuniary measures of compensation for victims of enforced disappearance. Families believed that agreeing to receive this type of reparation was to presume the victim dead. Moreover, families had a sense of guilt for demanding money as a consequence of the disappearance of the victim. Many beneficiaries felt that by accepting this money the State would buy their silence and subsequently abandon the search for truth. In other words, families felt that pecuniary compensation was a measure for replacing true justice. For those reasons, the sociologist Elizabeth Jelín concluded that "most of the families preferred measures of restitution,

satisfaction, and above all, guarantees that this would never take place again".[113]

Under the concept of *full redress*, the five forms of reparation are seen as complementary rather than mutually exclusive. In certain cases, more than one form of reparation may commend victims in order to render justice.[114] Thus, reparations should combine individual and collective, material and symbolic measures.

The potential impact of the case-law of the IACtHR onto the other two regional human rights courts is arguable. The African Court of Human and Peoples' Rights still does not have a case-law on reparations, whereas the European Court of Human Rights Article has been interpreting and applying article 50 of the European Convention restrictively, mainly awarding pecuniary forms of reparation. Nonetheless, the experience in Latin America may become extremely useful to the International Criminal Court ("ICC"), since the nature of crimes (e.g. crimes against humanity) that the IACtHR has dealt with are likely to come before the ICC. In this context, Article 75 of the Rome Statute allows the ICC to appropriate reparation in respect of victims. While it specifically mentions *restitution, compensation* and *rehabilitation*, it also uses the terminology "including," meaning that the list of reparations in Article 75 is not exhaustive.

NOTES

1. The present research was undertaken by the author at Utrecht University, the Netherlands, during the academic year of 2009-2010, under the supervision of Professor Leo Zwaak, to whom the author expresses his thanks and appreciation.
2. Bassiouni, Cherif. Victim's Rights: International Recognition. *In: The Pursuit of International Criminal Justice: Victimization, and Post--Conflict Justice, vol. I*. Antwerp: Intersentia, 2010, p. 581.
3. See Articles on Responsibility of States for Internationally Wrongful Acts, art. 30, adopted by the International Law Commission in 2001.
4. *Id,* art. 31.
5. Permanent Court of International Justice. Case Concerning the Factory at Chorzow (Claim for Indemnity – the Merits). Publications of the PCIJ, Series A, No. 17, 13 September 1928, pp. 27-28.
6. ICJ. *Gabcikovo-Nagymaros Project* (Hungary v. Slovakia), Judgement, I.C.J. Reports 1997, p. 81, para. 152; *Avena and Other Mexican Nationals* (Mexico v. United States of America), Judgment, I.C.J. Reports 2004, p. 59, para. 119; *Armed Activities on the Territory of the Congo* (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005, p. 168, para. 259; *Reparation for Injuries Suffered in the Service of the United Nations,* Advisory Opinion, I.C.J. Reports 1949, p. 184. See also IACtHR, *Case of Blake v. Guatemala.* Judgement of January 22, 1999 (Reparations and Costs), para. 33, whereby the Court recognizes that reparation is a rule of international customary law.
7. See Articles on Responsibility of States for Internationally Wrongful Acts, art. 36, adopted by the International Law Commission in 2001.
8. Permanent Court of International Justice. Case Concerning the Factory at Chorzow (Claim for Indemnity – the Merits). Publications of the PCIJ, Series A, No. 17, 13 September 1928, pp. 47-48.
9. See Articles on Responsibility of States for Internationally Wrongful Acts, art. 37, adopted by the International Law Commission in 2001.
10. Report of the International Law Commission on the work of its fifty-third session (A/CN.4/SER.A/2001/Add.1). Geneva: United Nations, 2007, p. 106.
11. See, for instance, the *Corfu Channel* case, where the Court granted Albania's request to declare the wrongfulness of the action of the British Navy in order to provide "appropriate satisfaction". ICJ, *Corfu Channel, Merits,* p. 35.
12. UN Doc. S/2000/1063. Letter dated 12 October 2000 from the President of the International Criminal Tribunal for the former Yugoslavia addressed to the Secretary-General, para. 20.
13. Shelton, Dinah. Remedies in International Human Rights Law. New York: Oxford U. Press, 2005, pp. 7-9.
14. Boven, Theo van. Victims' Rights to a Remedy and Reparation: the new United Nations Principles and Guidelines. *In: Reparations for Victims of Genocide, War Crimes and Crimes against Humanity.* Leiden: Nijhoff, 2009, p. 24.
15. Shelton, Dinah. Remedies in International Human Rights Law. New York: Oxford U. Press, 2005, p. 217.
16. IACtHR. *Case of Vargas-Areco v. Paraguay.* Judgment of September 26, 2006 (Merits, Reparations and Costs), para. 142.
17. See *Case of Loayza Tamayo v. Peru*, Judgment of 27 November 1998 (Reparations and Costs), Joint Separate Opinion of Judges A.A. Cançado Trindade and A. Abreu Burelli. See also *Case of the "Street Children" (Villagran-Morales et al.) v. Guatemala,* Judgment of May 26, 2001 (Reparations and Costs), Separate Opinion of Judge A.A. Cançado Trindade.
18. UNGA Res. 147, 21 March 2006, A/RES/60/147, para. 19.
19. IACtHR. *Case of Loayza-Tamayo v. Peru*, Judgment of September 17, 1997 (Merits), para. 84.
20. IACtHR. *Case of Loayza-Tamayo v. Peru*, Judgment of November 27, 1998 (Reparations and Costs), para. 122. See also *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004 (Preliminary Objections, Merits, Reparations and Costs), para. 195.
21. IACtHR. *Case of Baena Ricardo et al. v. Panama,* Judgment of February 2, 2001 (Merits, Reparations and Costs), para. 214(7).

22. IACtHR. *Case of Loayza-Tamayo v. Peru*, Judgment of November 27, 1998 (Reparations and Costs), paras. 113-116.
23. IACtHR. *Case of the Moiwana Community v. Suriname.* Judgement of June 15, 2005 (Preliminary Objections, Merits, Reparations and Costs), operative para. 3. See also the *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of August 31, 2001 (Merits, Reparations and Costs), operative para. 3-4.
24. IACtHR. *Case of the Yake Axa Indigenous Community v. Paraguay.* Judgment of June 17, 2005 (Merits, Reparations and Costs), para. 149. See also the *Case of the Sawhoyamaxa Indigenous Community v. Paraguay.* Judgment of March 29, 2006 (Merits, Reparations and Costs).
25. IACtHR. *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of August 31, 2001 (Merits, Reparations and Costs), para. 149.
26 *Ibid.*
27. IACtHR. *Case of the Moiwana Community v. Suriname.* Judgement of June 15, 2005 (Preliminary Objections, Merits, Reparations and Costs), para. 170. See also: *Case of the Serrano-Cruz Sisters*, Judgment of March 1st., 2005. Series C No.120, para. 135; *Case of Carpio-Nicolle et al.,* Judgment of November 22, 2004. Series C No.117, para 87; and *Case of the Plan de Sánchez Massacre.* Reparations, Judgment of November 19, 2004. Series C No. 116, para. 53.
28. Rojas Báez, Julio José. La Jurisprudencia de la Corte Interamericana de Derechos Humanos en material de Reparaciones y los criterios del proyecto de Articulos sobre Responsabilidad del Estado por hechos iinternacionalmente ilicitos. *In: American University International Law Review,* vol. 23, n. 1, 2007, p. 108. See also the following cases: *Juan Humberto Sánchez v. Honduras,* Judgment of June 7, 2003 (Preliminary Objections, Merits, Reparations and Costs), para. 166(c); *Bulacio v. Argentina,* Judgment of September 18, 2003 (Merits, Reparations and Costs), para. 89; *SUárez-Rosero v. Ecuador*, Judgment of January 20, 1999 (Reparations and Costs), para. 60.
29. See IACtHR, *Case of Bámaca-Velásquez v. Guatemala,* Judgment of February 22, 2002 (Reparations and Costs), para. 54(a), whereby the Court granted a sum of money to Mrs. Harbury for the time that she took investigating the whereabouts of her husband as well as struggling against the obstructions and acts of denial of justice, which did not allow her to practice her profession.
30. IACtHR. *El Amparo v. Venezuela*, Judgment of September 14, 1996 (Reparations and Costs), para. 28.
31. IACtHR. *Cantoral-Benavides v. Peru*, Judgment of December 3, 2001 (Reparations and Costs), para. 49.
32. IACtHR. *Bulacio v. Argentina*, Judgment of September 18, 2003 (Merits, Reparations and Costs), para. 90; *Juan Humberto Sánchez v. Honduras,* Judgment of June 7, 2003 (Preliminary Objection, Merits, Reparations and Costs), para. 168; *El Caracazo v. Venezuela,* Judgment of August 29, 2002 (Reparations and Costs), para. 94; *Trujillo Oroza v. Bolivia,* Judgment of February 27, 2002 (Reparations and Costs), para. 77.
33. IACtHR, *Case of Blake v. Guatemala.* Judgment of January 22, 1999 (Reparations and Costs), para. 20(e).
34. IACtHR. *Case of Loayza-Tamayo v. Peru*, Judgment of September 17, 1997 (Merits), para. 57.
35. IACtHR. *Case of the Street Children (Villagrán-Morales et al.) v. Guatemala,* Judgment of May 26, 2001 (Reparations and Costs), para. 68; *Case of Aloeboetoe et al. v. Suriname*, Judgment of September 10, 1993 (Reparations and Costs), para. 71; *Case of Velásquez Rodríguez v. Honduras,* Judgment of July 21, 1989 (Reparations and Costs), para. 50; *Case of Godínez Cruz v. Honduras,* Judgment of July 21, 1989 (Reparations and Costs), para. 48.
36. IACtHR. *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua,* Judgment of August 31, 2001 (Merits, Reparations and Costs), operative para. 6.
37. *Id*. at operative para 3.
38. *Id at* para 34.
39. IACtHR. *Case of Aloeboetoe et al. v. Suriname.* Judgement of September 10, 1993 (Reparations and Costs).
40. See for example, ECtHR, *Case of Lithgow and Others*, 102 Eur. Ct. H.R. (ser. A) (1986), in which compensation awarded for the taking of property was based on domestic U.K. law.
41. *Cf.,* for example, the case of *Velásquez-Rodríguez v. Honduras; case of Godínez Cruz v. Honduras.*

42. UNGA Res. 147, 21 March 2006, A/RES/60/147, para. 21.
43. IACtHR. *Case of the Moiwana Community v. Suriname*. Judgement of June 15, 2005 (Preliminary Objections, Merits, Reparations and Costs), operative para. 4.
44. IACtHR. *Case of the Miguel Castro-Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), operative para. 13-14.
45. IACtHR. *Case of Pueblo Bello Massacre v. Colombia.* Judgment of January 21, 2006 (Merits, Reparations and Costs), para. 11.
46. IACtHR. *Case of the Ituango Massacres v. Colombia.* Judgment of July 1, 2006 (Preliminary Objections, Merits, Reparations and Costs), operative para. 19.
47. See Separate opinion of Judge Cançado Trindade, April 2004: the "*Plan Sanchez Case* was of far greater magnitude than preceding cases such as *Aloeboetoe v. Suriname.*"
48. IACtHR. *Plan de Sánchez Masacre v. Guatemala case*. Judgment of 19 November, 2004 (Reparations and Costs), para. 93.
49. IACtHR. *Case of the Moiwana Community v. Suriname*. Judgement of June 15, 2005 (Preliminary Objections, Merits, Reparations and Costs), operative para. 5.
50. IACtHR. *Case of Aloeboetoe et al. v. Suriname*. Judgment of September 10, 1993 (Reparations and Costs), para. 100.
51. See, for example, the case of *Barrios Altos v. Peru*. Judgment of November 30, 2001 (Reparations and Costs), operative para. 4.
52. *Cf. infra.*
53. IACtHR. *Case of Barrios Altos v. Peru*. Judgement of November 30, 2001 (Reparations and Costs), operative para. 5.
54. IACtHR. *Cf. Street children case*, *op. cit.*, para. 122.
55. IACtHR. Case of the *Moiwana Community v. Suriname.* Judgement of June 15, 2005 (Preliminary Objections, Merits, Reparations and Costs), para. 218. Inter-American Commission on Human Rights. *Villatina Massacre v. Colombia*, Case 11.141, Report No. 105/05, October 27, 2005, para. 25.
56. MEGRET, (F.), "Of Shrines, Memorials and Museums: Using the International Criminal Court's Victim Reparation and Assistance Regime to Promote Transitional Justice." Electronic copy available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1403929.
57. IACtHR. *Case of Trujillo-Oroza v. Bolivia.* Judgment of February 27, 2002 (Reparations and Costs), para. 46.
58. *Ibid,* operative para. 6.
59. IACtHR. *Case of the "Mapiripán Massacre" v. Colombia.* Judgement of September 15, 2005 (Merits, Reparations, Costs), operative para. 10-13.
60. IACtHR. *Case of the Moiwana Community v. Suriname.* Judgement of June 15, 2005 (Preliminary Objections, Merits, Reparations and Costs), operative para. 2-7.
61. IACtHR. *Case of Barrios Altos v. Peru*. Judgement of November 30, 2001 (Reparations and Costs), operative para. 5.
62. IACtHR. *Case of La Cantuta v. Peru.* Judgement of November 29, 2006 (Merits, Reparations and Costs), operative para. 12.
63. IACtHR. *Case of the Miguel Castro-Castro Prison v. Peru.* Judgment of November 25, 2006 (Merits, Reparations and Costs), para. 454.
64. For the notion of truth as a form of satisfaction to the family members of the victims, see: *Myrna Mack Chang versus Guatemala* (2003); *Hermanas Serrano Cruz versus El Salvador* (2005); *Trujillo Oroza versus Bolivia* (2002); *Huilca Tecse versus Peru* (2005); *Carpio Nicolle et al. versus Guatemala* (2004); *19 Tradesmen versus Colombia* (2004); *Bámaca Velásquez versus Guatemala* (2002); *Barrios Altos versus Peru* (2001).
65. IACtHR. *Case of the Moiwana Community v. Suriname.* Judgment of June 15, 2005 (Preliminary Objections, Merits, Reparations and Costs), para. 204.
66. Inter-American Commission on Human Rights. *Juan Manuel Contreras San Martín, Victor Eduardo Osses Conejeros, and José Soto Ruz v. Chile.* Case 11.715, Report No. 32/02, March 12, 2002, para. 14.
67. IACtHR. *Case of the "Street Children" (Villagrán Morales et al.) versus Guatemala.* Judgement of May 26, 2001 (Reparations and Costs), operative para. 6.
68. *Id,* para. 102.
69. *Id,* operative para. 7.
70. IACtHR. *Case of Neira-Alegría et al. v. Peru*. Judgment of September 19, 1996, para. 69.

71. Cançado Trindade, A.A., Separate Opinion in the *Case of the "Street Children" (Villagrán Morales et al.) vs. Guatemala.* Judgement of May 26, 2001 (Reparations and Costs), para. 28, 35 and 37.

72. IACtHR. *Case of the Mayagma (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of August 31, 2001 (Merits, Reparations and Costs), para. 164 and operative para. 4.

73. In most of the massacre cases before the Inter American Court, States have accepted responsibility for the massacres.

74. See the Street Children case, whereby the Court found that the mothers of the street children should also be considered direct victims, but in relation to other human rights violations.

75. Note that this innovative notion of victim is not limited to massacre cases. See IACtHR, *Case of the Sisters Yean and Bosico v. Dominican Republic.* Judgment of September 8, 2005 (Preliminary Objections, Merits, Reparations and Costs); Case of Cesti-Hurtado v. Peru. Judgment of May 31, 2001 (Reparations and Costs).

76. IACtHR. *Mapiripán Massacre v. Colombia.* Judgment of September 15, 2005 (Merits, Reparations, and Costs), paras. 247 and 257(b); *Case of the Plan de Sánchez Massacre v. Guatemala,* Judgment of November 19, 2004 (Reparations), para. 67. See also *Case of the Moiwana Community v. Suriname.* Judgement of June 15, 2005 (Preliminary Objections, Merits, Reparations and Costs), para. 178.

77. IACtHR. *Case of the Saramaka People v. Suriname.* Judgment of November 28, 2007 (Preliminary Objections, Merits, Reparations, and Costs), para. 22.

78. IACtHR. *Case of Mapiripán Massacre v. Colombia* (2005). Judgment of September 15, 2005 (Merits, Reparations and Costs), para. 314, whereby Colombia expresses "(…) it's deep respect and sympathy for the victims of the facts that took place in Mapiripán in July 1997, and (…) evokes their memory to state its regret and to apologize to their next of kin and to Colombian society". Similarly, see *Case of the Moiwana Community v. Suriname.* Judgment of June 15, 2005 (Preliminary Objections, Merits, Reparations and Costs), para. 216.

79. The concept of "project of life" was first applied by the Court in the case *Loayza Tamayo versus Peru* and later in *Street Children v. Guatemala* (2001), *Cantoral Benavides v. Peru* (2001), *Gómez Palomino versus Peru* (2005).

80. IACtHR. *Case of Cantoral Benavides v. Peru*. Judgment of December 3, 2001 (Reparations and Costs), operative para. 6.

81. IACtHR. *Case of Gómez-Palomino v. Peru.* Judgment of November 22, 2005 (Merits, Reparations and Costs), para. 146.

82. *Id,* paras. 145, 148.

83 IACtHR. *Case of the Plan de Sánchez Massacre v. Guatemala,* Judgment of November 19, 2004 (Reparations), para. 102; *Case of Yatama v. Nicaragua,* Judgment of June 23, 2005 (Preliminary Objections, Merits, Reparations and Costs), para. 253.

84. IACtHR. *Case of the Plan de Sánchez Massacre v. Guatemala,* Judgment of November 19, 2004 (Reparations), para. 102.

85. IACtHR. *Case of Yatama v. Nicaragua,* Judgment of June 23, 2005 (Preliminary Objections, Merits, Reparations and Costs), para. 253.

86. IACtHR. *Case of Serrano-Cruz Sisters v. El Salvador.* Judgment of March 1, 2005 (Merits, Reparations and Costs), para. 195.

87. IACtHR. *Case of Carpio-Nicolle et al. v. Guatemala,* Judgment of November 22, 2004 (Merits, Reparations and Costs), para. 138.

88. IACtHR. *Case of Huilca Tecse v. Peru*, Judgment of March 3, 2005 (Merits, Reparations and Costs), para. 111; *Case of the Serrano-Cruz Sisters v. El Salvador*, Judgment of March 1, 2005 (Merits, Reparations and Costs), para. 194; *Case of Carpio-Nicolle et al. v. Guatemala*, Judgment of November 22, 2004 (Merits, Reparations and Costs), para. 136; *Case of the Yakye Axa Indigenous Community v. Paraguay*, Judgment of June 17, 2005 (Merits, Reparations and Costs), para. 226.

89. UNGA Res. 147, 21 March 2006, A/RES/60/147, para. 23.

90. IACtHR. Case of Trujillo-Oroza v. Bolivia. Judgement of February 27, 2002 (Reparations and Costs), para. 110.

91. IACtHR. *Case of Myrna Mack Chang v. Guatemala.* Judgement of November 25, 2003 (Merits, Reparations and Costs), operative para. 6.

92. See *supra* n. 104 at para. 282.

93. IACtHR . *Case of La Cantuta v. Peru.* Judgement of November 29, 2006 (Merits, Reparations and Costs), operative para. 15.

94. IACtHR. *Case of the "Mapiripán Massacre" v. Colombia.* Judgement of September 15, 2005 (Merits, Reparations, Costs), operative para. 13.

95. IACtHR. *Case of Tibi v. Ecuador,* Judgment of September 07, 2004 (Preliminary Objections, Merits, Reparations and Costs), operative para. 13.

96. IACtHR. *Case of the Ituango Massacres v. Colombia.* Judgment of July 1, 2006 (Preliminary Objections, Merits, Reparations and Costs), operative para. 21.

97. In this case the education and training program was targeted at health care staff. IACtHR. Case of *Ximenes Lopes v. Brazil,* Judgment of July 4, 2006 (Merits, Reparations and Costs), operative para. 8.

98. IACtHR. Case of Barrios Altos v. Peru. Judgement of March 14, 2001 (Merits), operative para. 4; Case of La Cantuta v. Peru. Judgement of November 29, 2006 (Merits, Reparations and Costs), operative para. 7. Case of Almonacid Arellano et al v. Chile. Judgement of September 26, 2006 (Preliminary Objections, Merits, Reparations and Costs), operative para. 3 and 5.

99. IACtHR. Case of Castillo Petruzzi v. Peru. Judgement of May 30, 1999 (Merits, Reparations and Costs), operative para. 14.

100. IACtHR. Case of "The Last Temptation of Christ" (Olmedo-Bustos et al) v. Chile. Judgement of February 5, 2001 (Merits, Reparations and Costs), operative para. 4.

101. IACtHR. Case of Barrios Altos v. Peru. Judgement of March 14, 2001 (Merits), paras. 41-44.

102. IACtHR. *Case of Baldeón García v. Peru*, Judgment of April 6, 2006 (Merits, Reparations, and Costs), para. 199; *Case of Escué Zapata v. Colombia*, Judgment of July 4, 2007 (Merits, Reparations and Costs), para. 166; *Case of the Rochela Massacre v. Colombia*, Judgment of May 11, 2007 (Merits, Reparations, and Costs), para. 295.

103. IACtHR. *Case of Heliodoro Portugal v. Panama,* Judgment of August 12, 2008 (Preliminary Objections, Merits, Reparations and Costs), para. 244.

104. IACtHR. *Case of La Cantuta v. Peru,* Judgment of November 29, 2006 (Merits, Reparations and Costs), paras. 240-241; *Case of Ximenes-Lopes v. Brazil*, (Merits, Reparations and Costs), para. 250; *Case of the Caracazo v. Venezuela,* Judgment of August 29, 2002 (Reparations and Costs), para. 127; *Case of Myrna Mack Chang v. Guatemala,* Judgment of November 25, 2003 (Merits, Reparations and Costs), para. 282; *Case of Gutiérrez-Soler v. Colombia,* Judgment of September 12, 2005 (Merits, Reparations and Costs), para 106.

105. IACtHR. *Case of González et al. ("Cotton Field") v. Mexico,* Judgment of November 16, 2009 (Preliminary Objection, Merits, Reparations, and Costs), paras. 164.

106. IACtHR. *Case of González et al. ("Cotton Field") v. Mexico,* Judgment of November 16, 2009 (Preliminary Objection, Merits, Reparations, and Costs), paras. 540-541.

107. IACtHR. *Case of Serrano-Cruz Sisters v. El Salvador.* Judgment of March 1, 2005 (Merits, Reparations and Costs), para. 193. Similarly, see the case of the *Mapiripán Massacre v. Colombia.* Judgment of September 15, 2005 (Merits, Reparations, and Costs), para. 308.

108. IACtHR. *Case of the "Las dos Erres" Massacre v. Guatemala,* Judgment of November 24, 2009 (Preliminary Objection, Merits, Reparations, and Costs), para. 271-274.

109. See *Case of Loayza Tamayov. Peru*, Judgment of 27 November 1998 (Reparations and Costs), Joint Separate Opinion of Judges A.A. Cançado Trindade and A. Abreu Burelli.

110. Salvioli, Fabian. Que veulent les victimes de violations graves des droits de l'homme? *In: Réparer les violations graves et massives des droits de l'homme: La Cour interaméricaine, pionnière et modèle?* Paris: Société de législation comparée, 2010, pp.31-67.

111. De Greiff, Pablo. Justice and Reparations, *In: The Handbook of Reparations*. New York: Oxford University Press, 2006, pp. 451-477; Roht-Arriaza, Naomi. Reparations in International Law and Practice. *In: The Pursuit of International Criminal Justice: Victimization, and Post-Conflict Justice, vol. I*. Antwerp: Intersentia, 2010, pp. 655-698.

112. *Cf.* Pérez, Teresa, Herzfeld, Roberta, Sales, Pau. Muerte y Desaparición Forzada en la Araucanía: una aproximación étnica – efectos psicosociales e interpretación sociocultural de la repression política vivida por los familiares de detenidos-desaparecidos y ejecutados mapunches y no-mapunches. *In:* Ko'aga Roñe'eta Online Journal, Series X, available at: http://www.derechos.org/koaga/x/mapuches.

113. Jeiín, Elizabeth *apud* Guembe, Maria José. Economic Reparations for Grave Human Ri-

ghts Violations: The Argentinean Experience. *In: The handbook of reparations*. Pablo de Greiff (ed.). New York: Oxford University Press, 2006, p. 38.

114. Boven, Theo van. Victims' Rights to a Remedy and Reparation: the new United Nations Principles and Guidelines. *In: Reparations for Victims of Genocide, War Crimes and Crimes against Humanity*. Leiden: Nijhoff, 2009, p. 39.