

THE EXPANDING SCOPE AND IMPACT OF REPARATIONS AWARDED BY THE INTER-AMERICAN COURT OF HUMAN RIGHTS

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The Inter-American Court of Human Rights has pioneered an expanding range of international judicial remedies for human rights violations. In the 15 years since its first remedial order in a Honduran disappearance case,¹ the Court has awarded reparations in 47 cases through 2004.² The pace of its jurisprudential development has recently accelerated; it has issued more than two thirds of its judgments on reparations since 2001.³ Especially in the last four years, through escalating awards of compensatory damages, and broader and deeper measures of restitution, rehabilitation, satisfaction and guarantees of non-repetition, the Court endeavors to approach the elusive ideal of justice for victims of violations of fundamental rights.⁴

The Court is enabled to do so by its broad remedial mandate under the American Convention on Human Rights.⁵ Article 63.1 of the Convention provides that in contentious cases:

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 Court is thus expressly authorized to order three kinds of reparations: (1) to ensure enjoyment of rights or freedoms, (2) to remedy consequences of violations, and (3) to award fair compensation. The Court understands this mandate to embody 'one of the fundamental principles of international law,'⁶ and to encompass the full range of reparations under international law, including restitution, compensation (including costs of litigation), rehabilitation, and satisfaction and guarantees of non-repetition.⁷

1. INTERNATIONAL VS. NATIONAL LAW

The Court has long held that its mandate requires it to award reparation as determined 'in all its aspects' by international law, without being restricted by national law.⁸ For example, formalities required under domestic laws for valid powers of attorney,⁹ or for witness declarations, do not apply before the Court, since under international law 'no particular formalities are required to make an act valid; even oral statements are valid ...'¹⁰

The Court's reparations judgments, however, do not rely exclusively on international law. Where they entail restitution of salaries, pensions, dividends or corporate earnings due under national law, the Court orders restitution in principle, but leaves the amounts to be determined by national agencies under national procedures.¹¹ As the Court explained in a case where wrongful imprisonment kept a victim from managing his company:

The internal courts or the specialized national institutions have specific knowledge of the branch of activity to which the victim was dedicated. Taking into consideration the specificity of the reparations requested and also the characteristics of commercial and company law and the commercial operations involved, the Court considers that this determination corresponds to the said national institutions rather than to an international human rights tribunal.¹²

The Court has likewise left the question of the identity of an unknown victim for resolution under domestic law.¹³ And it defers to indigenous custom with regard to family relationships, for purposes of distribution of damage awards, so long as the custom does not contradict the Convention, for example, by discriminating on the basis of gender.¹⁴ As in all other cases, however, when the Court leaves aspects of reparation to domestic courts

or agencies, it retains jurisdiction until it deems its judgment complied with in full.¹⁵

2. SUMMARY OF REPARATIONS AND REMEDIES ORDERED BY THE COURT

According to the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law*, prepared by the United Nations Special Rapporteur, victims are entitled to three kinds of remedies: access to justice, reparation for harm suffered, and access to factual information concerning the violations.¹⁶ The *Basic Principles* further identify four basic forms of reparation: restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition.¹⁷ Although it does not always label them as such, the Inter-American Court awards all three kinds of remedies and all four basic forms of reparation, as well as most of the particular forms of reparation suggested in the *Basic Principles*.¹⁸

The remedies ordered by the Court in all 47 cases to date are summarized in Appendix 2. The following summary attempts to classify them according to the Special Rapporteur's scheme (although there is some overlap among categories). Under the heading of access to justice are the Court's orders requiring access to national courts, publication of its judgments, and monitoring and supervision of compliance with its judgments. Under the heading of reparations, the summary discusses orders on restitution, compensation (including litigation costs and attorneys' fees), rehabilitative services, and measures of satisfaction and guarantees of non-repetition, including orders that States investigate and prosecute perpetrators and accessories, symbolic measures including memorials and public apologies, identification and transfer of remains for proper burial at State expense, and legislative, administrative and policy reforms. The summary concludes with a discussion of the Court's orders on victims' right of access to information about violations.

Until 1998 the Court rarely awarded significant relief other than monetary compensation. (One exception was a 1993 order requiring Suriname to reopen a school and open a medical clinic in a small village where the families of seven execution victims still lived.¹⁹) In recent years, however, as the summary shows, the Court has become far more disposed to order measures of access to justice, restitution, rehabilitation, satisfaction and guarantees of non-repetition, and access to information.

2.1 ACCESS TO JUSTICE

2.1.1 NATIONAL JUDICIAL PROCEEDINGS

In 1997 the Court opined that, while it could rule on procedural violations of international rights in domestic judicial proceedings, 'it lacks jurisdiction to remedy those violations in the domestic arena.'²⁰ In ten cases since 1998, however, while not directly remedying the domestic legal effects of such violations, the Court has ordered States to do so. It has required States to take steps ranging from annulment or denial of legal effect to judgments in criminal cases,²¹ or of resulting fines and penalties,²² to expediting pending prosecutions,²³ and guaranteeing the security of witnesses and other trial participants,²⁴ to granting or conditioning new trials with due process safeguards.²⁵

Where the criminal judgments or other prior domestic proceedings were brought against alleged perpetrators,²⁶ the Inter-American Court orders may be viewed as means of promoting access to justice by victims. Where the past criminal judgments or penalties were brought against the victims, whose rights to due process of law were violated by those proceedings,²⁷ the Inter-American Court orders may be viewed as measures of restitution and rehabilitation.

2.1.2 INTER-AMERICAN JUDGMENTS AND PUBLICATION

The *Basic Principles* recognize the right of victims to access not only to national but also to international justice.²⁸ The Inter-American Court generally considers its judgments *per se* to constitute measures of moral reparation (albeit generally insufficient, by themselves, in view of the gravity of the crimes and their impact on the victims).²⁹ In addition, its judgments and their publication may be viewed as aspects of access to justice.

To enhance the reparatory impact of its judgments, the Court has ordered States in 19 cases since 2001 to publish portions of its judgment in official gazettes and widely circulated newspapers.³⁰ It ordered Ecuador in one case to publish the judgment not only in Ecuador, but also in France, where the victim had relocated.³¹ In the case of the massacre of the inhabitants of an indigenous village, the Court ordered Guatemala to translate the judgment into the local Mayan language and to deliver copies to each victimized survivor and family member.³² With two exceptions (including one

where the President had already acknowledged State responsibility, so that further publication was arguably unnecessary),³³ the Court in recent years has ordered publication in all cases involving the most egregious violations.³⁴

In support of an order to publish portions of a judgment against Guatemala, Judge Sergio Garcia Ramirez explained that publishing in the official gazette 'relates to the formal character of the jurisdictional decision,' while publishing 'in another newspaper with nationwide circulation' relates 'to the advisability that public opinion should learn' about the Court's judgment. He added:

The purpose of publication and compensation is three-fold: a) ... the moral satisfaction of the victims or their successors, the recovery of honor and reputation that may have been sullied by erroneous or incorrect versions and comments; b) ... the establishment and strengthening of a culture of legality in favor, above all, of the coming generations; and c) ... serving truth, to the advantage of those who were wronged and of society as a whole. ...

In brief, the reparation of the harm in this case has compensatory and preventive effects; ...³⁵

2.1.3 COMPLIANCE MONITORING, REPORTS AND SUPERVISION

From the outset the Court has retained jurisdiction to monitor State compliance with its judgments on reparations.³⁶ Not until 1999, however, did the Court first require a State to report on compliance with an element of the Court's judgment.³⁷ Beginning in 2001, judgments on reparations routinely order States to submit reports, within six months or a year, on their compliance with all elements of the Court's judgment.³⁸ Since the Court sometimes designates these merely as 'first' reports,³⁹ the expectation is that States are to submit reports periodically until compliance is complete.⁴⁰

In 2003 Panama challenged the Court's jurisdiction to monitor compliance and to order States to submit reports.⁴¹ The Court's jurisdiction and powers are conferred by the Convention,⁴² and further defined by its Statute, adopted by the Organization of American States ('OAS').⁴³ Under these instruments, Panama argued, monitoring compliance is a post-judgment phase which falls 'strictly within the political sphere' of the OAS General Assembly. It 'has never been included in the norms that regulate ... international courts' and is not a function conferred on the Court by the Convention or the Statute.⁴⁴

Rejecting Panama's challenge, the Court ruled that it has inherent authority to monitor compliance with its judgments, both as an element of jurisdiction and as 'an integral part of the right of access to justice.'⁴⁵ Among other grounds, the Court reasoned that it must monitor compliance, in order to carry out its mandate under the Convention to report non-compliance to the General Assembly.⁴⁶ Unlike the European Convention on Human Rights, it noted, the American Convention does not specify a body to monitor compliance, and the OAS General Assembly not only refrains from monitoring compliance, but appears to approve of the Court's doing so.⁴⁷ The Court concluded that it has competence to monitor compliance, to request States to submit reports, to assess their reports and to issue instructions and orders on compliance.⁴⁸

2.2 RESTITUTION

Since the victims in most cases to date were killed or forcibly disappeared, the Court has had relatively few occasions to consider restitution. It has awarded reinstatement to positions of employment or ownership in four cases.⁴⁹ In another case it ordered Colombia to assist a victim to return home from exile abroad.⁵⁰ In seven cases it required restoration of the *status quo ante* by ordering that victims be relieved of judicially imposed convictions, punishments or penalties.⁵¹

2.3 COMPENSATION

2.2.1 COMPENSATORY DAMAGES

The mainstay of the Court's remedial work from the beginning has been to award monetary damages to survivors, heirs and family members, both for economic loss and for pain and suffering, but not for punitive damages.⁵² (The Court's judgments refer to economic loss as 'material' or 'pecuniary' damage in the English translation, but consistently call it '*material*' damage in the original Spanish; likewise they refer to pain and suffering as 'moral' or 'non-pecuniary' damage in English, but consistently '*moral*' in Spanish.)⁵³ In only two cases, both involving denials of judicial due process, has the Court declined to award monetary damages. In both, however, it ordered the State to forgive judicial fees, fines or penalties imposed by national courts,⁵⁴ saving the victims significant sums, in one case some \$140 million.⁵⁵

As shown in Appendix 2, during its first decade of reparations judgments, the Court usually awarded monetary damages in amounts less than \$200,000. However, it exceeded that amount in several cases. For example, in 1993 it awarded

\$453,000 for the extrajudicial execution of seven Maroons in Suriname;⁵⁶ in 1996 it granted \$722,000 in the case of an army massacre that killed 14 Venezuelan peasants and wounded two more;⁵⁷ and in 1998 it approved a settlement agreement by which Ecuador agreed to pay \$1 million to the parents of a woman who was arbitrarily detained, tortured and murdered.⁵⁸

Since 2001, in cases of massacres and multiple victims, the Court has increasingly granted multi-million dollar judgments. Its largest to date is \$7.925 million for an army massacre of 268 peasants in an indigenous Guatemalan village,⁵⁹ followed by \$6.895 million for the torture and assassination of 16 merchants by paramilitaries in Colombia,⁶⁰ \$5.482 million for the killings and disappearances of 37 demonstrators in Venezuela,⁶¹ \$3.659 million for a fire and abuse in a Paraguayan juvenile detention center that left 12 dead and 23 injured,⁶² and \$3.4 million for a supposed anti-terrorist operation in Peru that killed 15 innocent victims and wounded four more.⁶³

By North American standards, even these amounts may seem small in view of the numbers of victims and the gravity of the crimes. But the modesty of the awards mainly reflects widespread poverty in Latin America. The principal element of economic damages awarded by the Court is based on the present value of the victim's expected lifetime earnings, minus projected expenses, had he or she lived.⁶⁴ Latin American incomes are low, especially for peasants but even for most professionals. Where victims were unemployed or employed in the informal sector, the Court presumes that their annual income would have been equivalent to the minimum legal wage.⁶⁵ As a result of these factors, it is common for the Court to award no more than \$30,000 to \$35,000 for the total present value of the victim's lifetime lost earnings.⁶⁶

The recent increases in damage awards, then, are chiefly for pain and suffering. For example, of the largest judgment, the award of \$7.925 million for the massacre of the inhabitants of an indigenous village in Guatemala, \$6.34 million was for the pain and suffering endured by those who were killed and by their traumatized family members.⁶⁷

Where victims have died, their next of kin may recover damages in two capacities: first, as heirs, for damages owing to the deceased victims, and second, as family members, for their own economic losses and pain and suffering caused by the death of their loved ones.⁶⁸ For surviving children, the Court initially required that damage awards be placed in trust accounts.⁶⁹ Aware of the cumbersome formalities and expense of trust

accounts,⁷⁰ the Court now allows awards for surviving children to be deposited in savings accounts, certificates of deposit or in similar investments in "solvent and safe" banks.⁷¹

The Court is flexible in regard to the proof required to support awards of damages. Based on 'human nature,' it presumes that victims subjected to brutal violence before dying suffer pain and moral damages.⁷² Without requiring evidence and subject to rebuttal by the State, it also presumes that close family members endure anguish and psychological suffering when their loved ones are killed, forcibly disappeared or tortured.⁷³ Even where the amounts of their economic damage have not been proved, it is willing to award, in fairness, some level of compensation.⁷⁴ Where evidence of family ties has not been presented, the Court has allowed family members a period of two years after judgment to document their relationship, in order to qualify for damage awards.⁷⁵

However, the Court's flexibility is not unlimited. Where there was 'no evidence' that victims of forced disappearances lived with or provided economic support to brothers and sisters, the Court declined to award the siblings damages for economic loss.⁷⁶ Similarly, in the case of the wrongful imprisonment and torture of a Peruvian university professor, the Court recognized that the violations altered her 'life plan' for her career, but was unwilling to speculate as to the economic value of what she might have achieved absent the violations.⁷⁷ In a later case the Court attempted to remedy the interruption of the 'life plan' of a young university student, not by specifying an amount of compensation, but by ordering the State to provide him a full university scholarship, so that he could pursue his potential.⁷⁸

Where it is clear that past violations will cause continuing expenses in the future, the Court also awards 'future' damages. It has awarded as much as \$10,000, for example, for future costs of continuing psychological treatment.⁷⁹

2.2.2 LITIGATION COSTS AND ATTORNEYS' FEES

Until 1997 the only parties allowed to appear before the Court were States and the Inter-American Commission on Human Rights ('the Commission'), an organ of the OAS.⁸⁰ The Commission's functions include, among others, referring cases to the Court and appearing before the Court.⁸¹ In cases during those early years, the overburdened Commission regularly enlisted the assistance of lawyers representing the victims as its 'consultants' before the Court. With equal regularity the Court declined

to award the litigation costs or fees of these consultants or their clients, reasoning that they resulted from Commission decisions on how to organize its work, and would not have been incurred at all by the private parties, if the Commission had chosen to present the case using only its own staff attorneys, funded by its OAS budget.⁸² In such cases the Court awarded litigation costs only to victims, and only for their expenses before national tribunals, as an element of 'material' reparation.⁸³

Effective in 1997, however, the Court revised its regulations to allow victims direct standing before the Court on matters of reparations.⁸⁴ In 2001 a further revision broadened the independent standing of victims before the Court to include the entire case,⁸⁵ except for the initial referral to the Court, which under the Convention remains exclusively with the Commission or the State.⁸⁶ These changes opened the door to awards of litigation costs and attorneys' fees of the victims, not only for their activities before national courts, but also for their participation in proceedings before the Inter-American Commission and Court.⁸⁷ The Court has awarded such costs in nearly all cases since 1998. However, the amounts of cost awards remain modest; only five have exceeded \$50,000,⁸⁸ and only one has topped \$100,000.⁸⁹

The Court explains that it orders reimbursement of costs and expenses, including attorneys' fees, only where 'strictly necessary' to protect human rights, and that it 'must decide these cases with restraint. ... [O]therwise, international human rights litigation would be denatured.'⁹⁰ No doubt the Court remains sensitive to potential adverse reactions by States, and is aware that generous payments to lawyers and legal organizations would be more difficult to defend than payments to victims of heinous crimes.

The Court's largest award to date is illustrative. In the case of the assassination of Guatemalan anthropologist Myrna Mack, the Myrna Mack Foundation requested \$164,000 for legal expenses in domestic and international fora, plus \$104,000 for expenses in the most recent two years, including administrative and operational costs, plus \$36,000 in costs of domestic litigation, for a total of \$304,000.⁹¹ The Court, however, considered it 'equitable' to award only \$145,000,⁹² less than half the amount requested. Since the Court did not detail its reasons, one is left to wonder to what extent it disallowed specific expenses as not 'strictly necessary,' and to what extent it simply considered the total amount requested (\$304,000) to be excessive, perhaps in relation to the compensatory damages awarded to the victims (\$616,000).

The Court's disposition of requests by law firms and legal organizations based in the United States was even more cautious. Two US-based non-governmental human rights organizations each requested in excess of \$60,000 for expenses, but were awarded only \$5,000 and \$3,000, respectively.⁹³ Two large US law firms each requested \$50,000 as a 'symbolic' payment for what would have been far larger fees even at discounted rates, but were each awarded a still more symbolic \$5,000.⁹⁴

In view of the tradition of *pro bono publico* legal work (services without fee in matters of public interest) by major US law firms, these \$5,000 awards may be viewed simply as a way of saying, thank you. If the Court had attempted seriously to compensate these firms for their time, even at reduced rates, it might have been criticized by Latin American States for ordering a poor country to pay hefty sums to wealthy US law firms – and for work they doubtless undertook without any real expectation of getting paid. On the other hand, the US-based NGO's are not wealthy. Fairly reimbursing their expenses would enable them to offer more services in more cases. One may hope that the Court will move toward more serious reimbursements of their expenses.

2.3 REHABILITATIVE SERVICES

The Court has become attentive to measures of rehabilitation. Since 2001 it has ordered States to provide educational, medical or similar services or scholarships to survivors and affected family members in nine cases⁹⁵ (compared to only once in earlier years).⁹⁶ Its most expansive order came in 2004 in the case of the massacre of the inhabitants of an indigenous village in Guatemala. In addition to monetary damages, the Court ordered the State to provide not only medical treatment, including free medicines and a health clinic, but also education in Mayan culture, bilingual teachers, housing assistance, and infrastructure investment in roads, sewers and drinking water.⁹⁷

2.4 SATISFACTION AND GUARANTEES OF NON-REPETITION

2.4.1 INVESTIGATION AND PROSECUTION

In most cases since 1998 (and in one as early as 1996)⁹⁸ the Court has ordered the State to investigate, prosecute and punish the persons responsible for the violation. It issues such orders

both as moral reparation and as deterrence. In the Mack case, for example, its judgment recited moving testimony by family members about how the persistent impunity in the case caused them emotional anguish and psychological suffering.⁹⁹ In ordering 'effective' investigation and prosecution, not only of the perpetrators of the brutal assassination, but also of those responsible for the subsequent cover-up, the Court expressly recognized that impunity encourages chronic repetition of such human rights violations.¹⁰⁰

Beginning in 2002, the Court now also specifies that victims must be granted rights to participate in these proceedings, 'in accordance with domestic laws' and Convention rights.¹⁰¹ In at least two cases, it has even awarded costs for their future expenses of doing so.¹⁰² In addition, the Court now routinely requires that the results of the investigation be made public.¹⁰³ In one case it has ordered that the prosecution be conducted before civil, not military courts,¹⁰⁴ and in others it has required not only criminal but also administrative proceedings.¹⁰⁵

2.4.2 SYMBOLIC MEASURES

The Court understands that symbolic measures may be important forms of moral reparations, and may also serve to deter further violations.¹⁰⁶ It has ordered the State in eight cases since 2001 (and in one settlement agreement it approved in 1998¹⁰⁷) to name a street, school, plaza, memorial (or commemorative scholarship) for a victim, usually with a commemorative plaque as well.¹⁰⁸ It has ordered the State in 11 cases to conduct a public ceremony, where victims officially receive awards of compensation and the State accepts responsibility for the wrongs and 'makes amends' to the victims.¹⁰⁹ Beginning in late 2003, the Court in seven cases has even ordered that high officials of the State participate in these public ceremonies.¹¹⁰ In four cases the Court expressly ordered the State to make a public apology to the victims.¹¹¹

2.4.3 REMAINS AND BURIAL

The Court appreciates that locating the remains of victims and ensuring their proper burial are important to the dignity of the dead and to the mental well-being of loved ones.¹¹² Since 1996 it has ordered States in 12 cases of deaths and disappearances to take such measures as making serious efforts to locate remains, turning them over to families for burial, and transferring and burying them at State expense.¹¹³ In 2002 it went so far as to order Guatemala, the scene of hundreds of

massacres, to institute a national exhumations program.¹¹⁴

2.4.4 LEGISLATIVE REFORM

In 16 cases beginning in 1998 the Court has ordered the State to enact legislative reforms either to remove *de jure* violations or to facilitate prevention, prosecution or remedies for violations. The affected national legislation has involved terrorism,¹¹⁵ treason,¹¹⁶ extrajudicial executions,¹¹⁷ forced disappearances,¹¹⁸ registers of prisoners,¹¹⁹ presumptions of death,¹²⁰ genetic data systems,¹²¹ amnesties and statutes of limitations for gross violations of human rights,¹²² censorship,¹²³ libel laws,¹²⁴ children's rights,¹²⁵ juvenile detention,¹²⁶ indigenous land and property titles,¹²⁷ right of judicial appeal,¹²⁸ and international human rights and humanitarian law.¹²⁹

The Court's authority to order legislative reform is supported by article 2 of the Convention, which requires States to take such legislative or other measures as may be necessary to implement the Convention.¹³⁰ But the Court in some cases has ordered legislative reform as a measure of reparation even where, on the merits, it found no violation of article 2.¹³¹ In such cases it nonetheless relies in part on the substantive obligations of States under article 2,¹³² as well as on their general obligations under article 1.1 to ensure enjoyment of rights,¹³³ and under customary international law to modify their domestic laws to meet treaty commitments.¹³⁴ However, the Court orders legislative reform only where the legislation at issue was in fact applied in the victim's case. Despite a vigorous dissent by Judge Cancado-Trindade, the majority of the Court thus far has declined to order reform of legislation which has not actually been applied in the victim's case.¹³⁵

2.4.5 ADMINISTRATIVE AND POLICY REFORM

Administrative measures ordered by the Court sometimes involve only direct relief to victims, such as its order in 2001 that Nicaragua determine the boundaries of the land of an indigenous community and, until that task was completed, to refrain from taking any steps that affect its use and enjoyment.¹³⁶ In other cases since 2002 the Court has ordered administrative or policy measures whose impact is broader, even societal. These include orders that States train military, police and judicial personnel in matters of human rights and humanitarian law,¹³⁷ develop a national exhumations program,¹³⁸ prepare plans for lawful control of disturbances,¹³⁹

ensure only proportionate use of force by security forces,¹⁴⁰ develop records of detainees,¹⁴¹ develop policies on juvenile detention,¹⁴² improve conditions at a prison and transfer prisoners who do not belong there,¹⁴³ and devote sufficient resources and expertise to ensure prosecution of cases of extrajudicial executions in accordance with international norms.¹⁴⁴

As in the case of legislative reform, the Court's orders to pursue administrative and policy reform are supported by the State's obligation under article 2 to adopt such 'other measures' as may be needed to implement the Convention. But again, the Court does not limit its orders of administrative reform only to cases where it finds a violation of article 2 on the merits.¹⁴⁵

2.4.6 CIVIL SOCIETY PARTICIPATION

The Court has recently begun to direct States to include non-governmental organizations and civil society in the implementation of reparations. In ordering Guatemala to establish a committee to evaluate and recommend physical and psychological treatment of the victims of the massacre of an indigenous community, the Court directed that the committee should include active participation by a non-governmental organization with relevant experience.¹⁴⁶ When it ordered Ecuador to develop a training program for prison, judicial and law enforcement personnel on the human rights of prisoners, it ordered that civil society should participate in the design and implementation of the program.¹⁴⁷

2.5 ACCESS TO INFORMATION

The Court now routinely requires that victims (and the public) be provided access to information about the violations. It does so by ordering States to make public the results of their criminal and administrative investigations of a case.¹⁴⁸ The Court explained in *Bamaca*, for example:

[D]ue to the characteristics of this case, the right to the truth [is] ... subsumed in the right of the victim or his next of kin to obtain clarification of the facts relating to the violations and the corresponding responsibilities from the competent State organs, through the investigation and prosecution established in Articles 8 and 25 of the Convention. ... [O]nly if all circumstances of the violations involved are clarified can it be considered that the State

has provided the victim and his next of kin effective remedy and that it has complied with its general obligation to investigate.

The right that every person has to the truth has been developed in international human rights law and, ..., the possibility of the victim's next of kin knowing what happened to the victim and, ..., the whereabouts of the victim's mortal remains, is a means of reparation, and therefore an expectation regarding which the State must satisfy the next of kin of the victims and society as a whole.¹⁴⁹

3. TWO ILLUSTRATIVE CASES: REPARATIONS THEN AND NOW

The dramatic expansion in the scope of remedies and reparations granted by the Court over time can be illustrated by comparing its first judgment on reparations, issued in 1989 in *Velasquez*,¹⁵⁰ with one of its more recent – and now typically comprehensive – remedial judgments, issued in 2003 in the *Mack* case.¹⁵¹ Both cases involved the violent death or forced disappearance of a single victim. In the earlier case, the remedies were limited to monetary compensation. In the later case, they also included extensive measures of access to justice, rehabilitation, satisfaction and guarantees of non-repetition (including symbolic measures, public acts and legislative reform), and access to information.

In *Velasquez*, the Court awarded a single form of reparations: payment of 750,000 Honduran *lempiras* to the widow and children of the victim.¹⁵² This initial award proved inadequate, however, because Honduras delayed making payment until after its currency was devalued. The Court had failed to benchmark the payment to a hard currency such as US dollars. Nor did it order payment of interest in case of delays. The Court later remedied these deficiencies in an interpretive judgment.¹⁵³ The Court learned from this experience. It now routinely orders payment of compensation in US dollars or their local currency equivalent, and imposes standard bank interest on any delays in payment.¹⁵⁴

If the Court's jurisprudence in 1989 were what it is today, the Court would have considered a wide range of other remedial measures. Indeed, the widow of Mr. Velasquez asked for a series of remedial measures which may have seemed outlandish at the time, but most of which are now commonplace in the Court's judgments. She asked the Court to order the Government to ensure the following:¹⁵⁵

1. An end to forced disappearances.
2. An investigation of each of the 150 cases of reported disappearances.
3. A complete and truthful public report on what happened to all the disappeared.
4. Trial and punishment of those responsible.
5. A public undertaking to respect human rights.
6. A public act to honor and dignify the memory of the disappeared.
7. Demobilization and disbanding of repressive bodies created to carry out disappearances.
8. Guarantees to respect the work of humanitarian organizations and public recognition of their social function.
9. An end to aggression and pressure against the families of the disappeared and public recognition of their honor.
10. Establishment of a fund for education of the children of the disappeared.
11. Guaranteed employment for children of the disappeared who are of working age.
12. Establishment of a retirement fund for parents of the disappeared.

The Inter-American Commission on Human Rights requested similarly broad remedial measures.¹⁵⁶ But the Court ordered only monetary compensation, and only to the widow and children. It eschewed other remedial measures, and declined relief to anyone outside the immediate family. Even though on the merits the Court ruled that Honduras had a legal obligation to investigate, prosecute and punish any persons responsible for the disappearance,¹⁵⁷ its judgment on reparations declined the Commission's request to order Honduras to do so. The Court explained in effect that its judgment on the merits spoke for itself and was a form of reparation.¹⁵⁸

The Court's remedial reticence was understandable at the time. As a new institution adjudicating its first case in an uncertain diplomatic environment,¹⁵⁹ the Court was concerned not to overreach, lest States already tempted to defy it might be given an excuse. In addition, its jurisprudence on reparations was new and undeveloped, not yet the beneficiary of normal, incremental, doctrinal evolution.

The Court's more expansive approach to reparations today is illustrated by its 2003 judgment in the Mack case. In addition to awarding \$266,000

in material damages (for lost income, medical expenses and consequential expenses)¹⁶⁰ and \$350,000 in moral damages to members of the family,¹⁶¹ the Court ordered Guatemala:¹⁶²

1. To 'effectively' investigate the case in order to identify, put on trial and punish all material and intellectual authors of the crime, as well as of the subsequent cover-up.
2. To make public the results of this investigation. The Court emphasized the rights of both the families and society as a whole to know the truth of what happened and who was responsible, and that in a concrete case the guarantee of this right to be informed is an important means of reparation.¹⁶³
3. To remove all obstacles and mechanisms, whether legal or *de facto*, that perpetuate impunity for the perpetrators. The State must accordingly refrain from granting any amnesty, prescription by reason of passage of time, or other provision that would exempt the perpetrators from being investigated, held responsible, and punished.¹⁶⁴
4. To provide adequate guarantees for the security of judicial authorities, prosecutors, witnesses, justice officials and family members of the victim; and to utilize all means to expedite the judicial process in the case.
5. To publish portions of the Court's judgment, which it recognizes as *per se* a form of reparation, in the State's official gazette and in another newspaper of national circulation.
6. To carry out a public act recognizing the State's responsibility for the facts and to make amends to the memory of the victim and her family, in the presence of the highest authorities of the State.
7. To honor publicly the memory of a police investigator who was assassinated while investigating the case.
8. To include instruction on human rights and international humanitarian law in training programs for armed forces and police.
9. To establish an annual one-year university scholarship in anthropology in the name of the victim.
10. To give the name of the victim to a recognized street or plaza in the capital and to place a visible plaque in the place where

she was killed, commemorating her and her research and advocacy in support of Guatemala's indigenous populations.

11. To pay \$163,000 (US) in costs and expenses to the organizations and law offices for their pursuit of the case in both domestic courts and the Inter-American system.
12. To make all payments free of tax or other charge.
13. To comply with all measures of reparations within one year, and to pay standard bank interest for any delay.
14. To report to the Court on compliance with all measures of reparations within one year. The case is to remain open, with compliance under supervision by the Court, until all measures have been completed.

In addition, the Court was apparently prepared, if necessary, to order institutional reform. The Commission and victims asked it to order dissolution of the Presidential Military Staff, whose high command was found by the Court to be responsible for the murder of Myrna Mack. Although the Court did not grant the request, it noted that recent Guatemalan legislation established a civilian security organ to replace the Presidential Military Staff, and that the President recently presided over a ceremony initiating the transfer of functions to the new civilian body.¹⁶⁵ If Guatemala had not already taken these steps, the Court might well have ordered dissolution.

4. REASONS FOR EVOLUTION IN THE COURT'S JURISPRUDENCE ON REPARATIONS

At least six factors have likely contributed to the Court's evolution during the last 15 years toward a more expansive remedial approach. First, as illustrated by the requests noted above in the *Velasquez* case, the Court has been pushed continually by the Commission and by victims to grant more extensive reparations.¹⁶⁶ This push has come not only through their advocacy before the Court, but also through the examples provided by their settlement agreements with States in cases before the Court, which go into effect only if approved by the Court. For example, the Court's judgment approving the 1998 settlement agreement with Ecuador in the *Benavides* case was the first to order, as provided by the agreement, that the State erect a memorial to the victim.¹⁶⁷ Even more

striking was the 2001 settlement agreement with Peru in the *Barrios Altos* case. In addition to granting the largest monetary compensation awarded by the Court up to that time (\$3.4 million), it was also among the first to require a memorial and provision of medical and educational services to survivors and next of kin, and was the first to require a public apology and domestic publication of the judgment.¹⁶⁸ Only after *Barrios Altos*, as shown in Appendix 2, did such remedies become commonplace in the Court's reparations judgments.

Second, beginning with the compliance by Honduras in 1995 and 1996 with the Court's first reparations judgment in *Velasquez*,¹⁶⁹ (after Carlos Roberto Reina, a former President of the Court, became President of Honduras), the Court has been encouraged by the relatively consistent degree of substantial compliance by States with its reparations orders.¹⁷⁰ This is especially true of its orders requiring payment of monetary compensation. Where difficulties have arisen, they have been mostly in matters where States, even those acting in good faith, encounter inherent difficulties, such as orders to investigate and prosecute perpetrators or to revise legislation.¹⁷¹

Third, the Court has steadily gained acceptance among Latin American States, thereby enhancing its institutional self-confidence. Under the Convention, States Parties are not bound to accept the Court's jurisdiction in contested cases, but may do so by means of an optional declaration.¹⁷² Over time more and more States have accepted the Court's contentious jurisdiction. With the acceptance in 1998 by the two largest States, Brazil and Mexico, the Court now enjoys essentially universal Latin American participation.¹⁷³

Fourth, the Court's accumulated experience in cases of political violence and impunity has persuaded it of the need to order more sweeping remedies, both to make victims whole and to deter violations.¹⁷⁴

Fifth, doctrinal evolution has predictably taken place, facilitated by the Court's flexible view of its own precedents on reparations: '... [W]hile case law may establish precedents, it cannot be invoked as a criterion to be universally applied; instead, each case needs to be examined individually.'¹⁷⁵

Finally, the evolution of jurisprudence on reparations has been spurred by particularly creative jurists on the Court. Noteworthy, for example, are several concurring opinions on reparations by Judges Cancado Trindade and Garcia Ramirez.¹⁷⁶

5. CONCLUSION

In the 15 years since its first judgment on reparations, the Inter-American Court has vastly expanded the remedies and measures of reparation it now regularly orders. Aside from its still restrictive approach in the amounts it awards for litigation costs and expenses, the Court's basic philosophy strives to approach the ideal of seeking to provide truly full remedies and reparations, to the extent permitted by international law, for serious violations of human rights.

The Court is all too aware, in the words of its current President, Judge Sergio Garcia Ramirez, that '[f]ull restitution — which implies full return — is conceptually and materially impossible.' While this is obvious in the case of victims who have been murdered, 'it also occurs in other circumstances; thus, in the case of deprivation of freedom, ... it is feasible to give the individual back his enjoyment of freedom, but not to return his lost freedom ...'¹⁷⁷

In cases of gross violations, as Judge Antonio Cancado Trindade explains, '[R]eparations for human rights violations only provide the victims the means to attenuate their suffering, making it less unbearable, perhaps bearable.'¹⁷⁸ Yet reparations are 'undeniably important. Rejection of indifference and oblivion, and guarantees of non-recidivism of the violations, are expressions of solidarity [with] the victims and the potential victims, ...'¹⁷⁹

So then the goal must be, as Judge Garcia Ramirez concludes,

To establish a new situation that is as similar as possible to the preceding one [that existed before the violation]. It is to that end that elements of reparation, compensation, satisfaction, retribution, freedom, complement, substitution, etcetera, are factors ... In this way, the victim's legal rights are regained, at least partially ...¹⁸⁰

The Court's very awareness of the impossibility of fully repairing the damage caused by violations of human rights thus leads it to insist all the more on a full range of remedial measures. So, too, does its understanding, as expressed by Judge Cancado Trindade, that '[t]he fixing of reparations ought to be based on the consideration of the victim as an integral human being, and not on the degraded perspective of the *homo oeconomicus* of our days.'¹⁸¹

To the Court's credit, it has managed to achieve so deep an understanding, and so full a response to the real needs of victims and those they

leave behind, while also attaining a remarkable degree of compliance by States with its judgments. This is due in part to the prudence with which the Court has developed its remedial jurisprudence, gradually but steadily expanding the scope of the reparations it orders.

Even so, the extent of compliance by States remains surprising. In response to the Court's order to conduct a public event in the Mack case, for example, the government might have attempted to comply minimally. Instead it complied in impressive fashion. Following a march by hundreds of Mack supporters, a ceremony was held in Guatemala's Presidential palace in April of 2004. In the presence of the Presidents of the Supreme Court and Congress, Guatemalan President Oscar Berger publicly asked the Mack family for forgiveness, declared that acts like the murder of Myrna Mack Chang must not be repeated, and committed his government to work to strengthen the Supreme Court.¹⁸²

A more important — and certainly a more difficult — test, however, will be Guatemala's ability to bring the perpetrators of the murder to justice. Whether that will happen remains uncertain. If it does, a significant share of the credit should go to the Inter-American Court and its readiness to order the broad range of remedies and reparations which justice demands in cases of gross violations of human rights. On the other hand, if impunity continues to prevail, that will be a sobering reminder that the real test of judicial remedies for human rights violations is whether they are effective, not only in alleviating and compensating for the suffering of victims to the extent possible, but also in shaping legal and practical environments that make respect for human rights more likely in the future.

APPENDIX 1: JUDGMENTS ON REPARATIONS OF INTER-AMERICAN COURT OF HUMAN RIGHTS, 1989-2004

(Number of Judgment in Series C, Title of Case and Judgment)

as posted on the Court's web site at <http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/OASpage/humanrights.htm>

7. *Velásquez-Rodríguez vs. Honduras*. *Compensatory damages* (Art. 63(1) American Convention on Human Rights). Judgment of July 21, 1989.

8. *Godínez-Cruz vs. Honduras*. *Compensatory damages* (Art. 63(1) American Convention on Human Rights). Judgment of July 21, 1989.
15. *Aloeboetoe et al. vs. Suriname*. *Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of September 10, 1993.
16. *Gangaram-Panday vs. Suriname*. Judgment of January 21, 1994.
28. *El Amparo vs. Venezuela*. *Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of September 14, 1996.
29. *Neira-Alegría et al. vs. Peru*. *Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of September 19, 1996.
30. *Genie-Lacayo vs. Nicaragua*. Judgment of January 29, 1997.
31. *Caballero-Delgado and Santana vs. Colombia*. *Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of January 29, 1997.
38. *Benavides-Cevallos vs. Ecuador*. Judgment of June 19, 1998.
39. *Garrido and Baigorria vs. Argentina*. *Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of August 27, 1998.
42. *Loayza-Tamayo vs. Peru*. *Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998.
43. *Castillo-Páez vs. Peru*. *Reparations* (art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998.
44. *Case of Suárez-Rosero vs. Ecuador*. *Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of January 20, 1999.
48. *Blake vs. Guatemala*. *Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of January 22, 1999.
52. *Castillo-Petruzzi et al. vs. Peru*. Judgment of May 30, 1999.
71. *The Constitutional Court vs. Peru*. Judgment of January 31, 2001.
72. *Baena-Ricardo et al. vs. Panama*. Judgment of February 2, 2001.
73. *“The Last Temptation of Christ” vs. Chile* (*Olmedo-Bustos et al.*). Judgment of February 5, 2001.
74. *Ivcher-Bronstein vs. Peru*. Judgment of February 6, 2001.
76. *The “Panel Blanca” vs. Guatemala*. (*Paniagua-Morales et al.*). *Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of May 25, 2001.
77. *The “Street Children” vs. Guatemala*. (*Villagrán-Morales et al.*). *Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of May 26, 2001.
78. *Cesti-Hurtado vs. Peru*. *Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of May 31, 2001.
79. *The Mayagna (Sumo) Awas Tingni Community vs. Nicaragua*. Judgment of August 31, 2001.
87. *Barrios Altos vs. Peru*. *Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of November 30, 2001.
88. *Cantoral-Benavides vs. Peru*. *Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of December 3, 2001.
89. *Durand and Ugarte vs. Peru*. *Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of December 3, 2001.
91. *Bámaca-Velásquez vs. Guatemala*. *Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of February 22, 2002.
92. *Trujillo-Oroza vs. Bolivia*. *Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of February 27, 2002.
95. *El Caracazo vs. Venezuela*. *Reparation* (Art. 63(1) American Convention on Human Rights). Judgment of August 29, 2002.
96. *Las Palmeras vs. Colombia*. *Reparation* (Art. 63(1) American Convention on Human Rights). Judgment of November 26, 2002.
97. *Cantos vs. Argentina*. Judgment of November 28, 2002.
98. *“Five Pensioners” vs. Peru*. Judgment of February 28, 2003.
99. *Juan Humberto Sánchez vs. Honduras*. Judgment of June 7, 2003.
100. *Bulacio vs. Argentina*. Judgment of September 18, 2003.
101. *Myrna Mack-Chang vs. Guatemala*. Judgment of November 25, 2003.
103. *Maritza Urrutia vs. Guatemala*. Judgment of November 27, 2003.
107. *Herrera-Ulloa vs. Costa Rica*. Judgment of July 2, 2004.
108. *Molina-Theissen vs. Guatemala*. *Reparations* (Art. 63.1 American Convention on Human Rights). Judgment of July 3, 2004.

109. **19 Merchants vs. Colombia.** Judgment of July 5, 2004.
110. **The “Gómez-Paquiyaury Brothers” vs. Peru.** Judgment of July 8, 2004.
111. **Ricardo Canese vs. Paraguay.** Judgment of August 31, 2004.
112. **Children’s Rehabilitation vs. Paraguay.** Judgment of September 2, 2004.
114. **Tibi vs. Ecuador.** Judgment of September 7, 2004.
115. **De la Cruz Flores Vs. Perú.** Judgment of November 18, 2004.
116. **Plan de Sánchez Massacre Vs. Guatemala. Reparations** (Art. 63.1 American Convention on Human Rights). Judgment of November 19, 2004.
117. **Carpio Nicolle Vs. Guatemala.** Judgment of November 22, 2004.
119. **Lori Berenson Mejía vs. Perú.** Judgment of November 25, 2004.

NOTAS

1. *Velasquez-Rodriguez v. Honduras*, Compensatory Damages, Judgment of 21 July 1989, Series C, n. 7 (hereafter '*Velasquez, n. 7 (1989)*').
2. The 47 judgments are listed in Appendix 1. References in text and notes list only the principal surname of the lead victim, or the popular name of the case, followed by the Judgment number in series C and the year of the judgment, eg, *Velasquez, n. 7 (1989)* or *Street Children, n. 77 (2001)*. Full texts of all judgments cited in this chapter are available in English (except for the most recent, available only in Spanish), accessible at http://www.corteidh.or.cr/seriec_ing/index.html.
3. Appendix 1 shows 15 judgments on reparations entered through 1999, with the remaining 32 entered during 2001-04.
4. See, eg, *Cantoral, n. 88 (2001)*, par 53; *Gomez, n. 110 (2004)*, par 223.
5. Organization of American States, *Official Records*, OEA/Ser.K/XVI/1.1, doc. 65, Rev. 1, Corr. 2 (1970), opened for signature, 22 Nov 1969, entered into force, 18 July 1978, reprinted in 9 ILM 673 (1970) (hereafter '*Convention*').
6. *Amparo, n. 28 (1996)*, par 14, citing, inter alia, *Factory at Chorzow, Jurisdiction, Judgment n. 8, 1927, Series A, n. 9*, at 21, and *Factory at Chorzow, Merits, Judgment n. 13, 1928, PCIJ, Series A, n. 17*, at 29.
7. See, eg, *Garrido, n. 39 (1998)*, par 41; *Loayza, n. 42 (1998)*, par 85.
8. *Amparo, n. 28 (1996)*, par 15; see also *Velasquez, n. 7 (1989)*, pars 30-31; *Mack, n. 101 (2003)*, pars 234-36.
9. *Loayza, n. 42 (1998)*, pars 94-100.
10. *Garrido, n. 39 (1998)*, par 55.
11. *Constitutional Court, n. 71 (2001)*, par 130.5; *Baena, n. 72 (2001)*, par 214.6; *Ivcher, n. 74 (2001)*, par 191.8; *Cesti, n. 78 (2001)*, par 80.1; and *5 Pensioners, n. 98 (2003)*, par 187.5.
12. *Cesti, n. 78 (2001)*, par 46.
13. *Caballero, n. 31 (1997)*, par 45.
14. *Aloeboetoe, n. 15 (1993)*, par 62.
15. *Constitutional Court, n. 71 (2001)*, par 130.7; *Baena, n. 72 (2001)*, par 214.10; *Ivcher, n. 74 (2001)*, par 191.11; *Cesti, n. 78 (2001)*, par 80.8; and *5 Pensioners, n. 98 (2003)*, par 187.12.
16. Final Report of the Special Rapporteur, M. Cherif Bassiouni, *The right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms*, UN Doc E/CN.4/2000/62, 18 Jan 2000, Annex, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law* (hereafter '*Basic Principles*'), par 11.
17. *Basic Principles*, par 21.
18. *Ibid* pars 22 (restitution), 23 (compensation), 24 (rehabilitation) and 25 (satisfaction and guarantees of non-repetition).
19. *Aloeboetoe, n. 15 (1993)*, par 116.5.
20. *Genie, n. 30 (1997)*, par 94.
21. *Loayza, n. 42 (1998)*, par 192.3; *Castillo Petruzzi, n. 52 (1999)*, par 226.13; *Cantoral, n. 88 (2001)*, pars 99.4, 99.5; *Herrera, n. 107 (2004)*, par 207.4.
22. *Suarez, n. 44 (1999)*, par 113.1; *Cantos, n. 97 (2002)*, par 77.1; *Berenson, n. 119 (2004)*, par 248.5.
23. *Mack, n. 101 (2003)*, par 301.6; *Carpio, n. 117 (2004)*, par 155.2.
24. *Mack, n. 101 (2003)*, par 301.6; *Carpio, n. 117 (2004)*, par 155.2.
25. *Castillo Petruzzi, n. 52 (1999)*, par 226.13; *Cruz Flores, n. 115 (2004)*, par 188.1.
26. *Mack, n. 101 (2003)*, pars 276-77, 301.6; *Carpio, n. 117 (2004)*, par 155.2.
27. *Loayza, n. 42 (1998)*, par 192.3; *Suarez, n. 44 (1999)*, par 113.1; *Castillo Petruzzi, n. 52 (1999)*, par 226.13; *Cantoral, n. 88 (2001)*, pars 99.4, 99.5; *Cantos, n. 97 (2002)*, par 77.1; *Herrera, n. 107 (2004)*, par 207.4; *Berenson, n. 119 (2004)*, par 248.5; see also *Cruz Flores, n. 115 (2004)*, par 188.1.
28. *Basic Principles*, par 14.
29. *Eg, Amparo, n. 28 (1996)*, par 35.
30. The Court first ordered publication of the operative part of its judgment in *Cantoral, n. 88 (2001)*, par 99.7.
31. *Tibi, n. 114 (2004)*, par 280.11.
32. *Plan de Sanchez Massacre, n. 116 (2004)*, par 125.4.
33. *Urrutia, n. 103 (2003)*, par 178 (President acknowledged State responsibility); *19 Merchants, n. 109 (2004)*.

34. No publication was ordered in *Cantos*, n. 97 (2002) (access to courts); *5 Pensioners*, n. 98 (2003) (property and judicial protection); and *Herrera*, n. 107 (2004) (libel conviction in violation of free press).
35. *Bamaca*, n. 91 (2002), Concurring Opinion of Judge Sergio Garcia Ramirez, at 3.
36. *Velasquez*, n. 7 (1989), par 60.5.
37. *Blake*, n. 48 (1999), par 75.1. The Court did the same in *Last Temptation of Christ*, n. 73 (2001), par 103.4.
38. *Eg, Tibi*, n. 114 (2004), par 280.20; *Cruz Flores*, n. 115 (2004), par 188.17.
39. *Eg, Tibi*, n. 114 (2004), par 280.20; *Cruz Flores*, n. 115 (2004), par 188.17.
40. See, eg, *Baena Ricardo et al v. Panama*, Competence, Judgment of Nov 28, 2003, pars 12, 21 and 37.
41. *Ibid*, pars 53 and 54.
42. Convention, arts 52-73.
43. Statute of the Inter-American Court of Human Rights, adopted by the General Assembly of the OAS at its Ninth Regular Session, La Paz, Bolivia, Oct 1979, Resolution n. 448.
44. *Baena Ricardo*, Judgment of Nov 28, 2003, pars 54 (a) and (p).
45. *Ibid* pars 129-31.
46. *Ibid* par 133, citing Convention art 65, which requires that the Court's annual report to the OAS General Assembly 'shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations.'
47. *Baena Ricardo*, Judgment of Nov 28, 2003, pars 87-88, 110-16 and 135.
48. *Ibid* pars 139 (1) and (2).
49. *Loayza*, n. 42 (1998), pars 192.1 and 192.2; *Baena*, n. 72 (2001), par 214.7; *Ivcher*, n. 74 (2001), par 191.8; *Cruz Flores*, n. 115 (2004), pars 188.6, 188.8.
50. *19 Merchants*, n. 109 (2004), par 295.10.
51. *Loayza*, n. 42 (1998), par 192.3; *Suarez*, n. 44 (1999), par 113.1; *Castillo Petruzzi*, n. 52 (1999), par 226.13; *Cantoral*, n. 88 (2001), pars 99.4, 99.5; *Cantos*, n. 97 (2002), par 77.1; *Herrera*, n. 107 (2004), par 207.4; *Berenson*, n. 119 (2004), par 248.5.
52. *Velasquez*, n. 7 (1989), par 38; *Garrido*, n. 39 (1998), par 43.
53. *Eg, Aloeboetoe*, n. 15 (1993), par 97 ('material' and 'moral' damages); *Street Children*, n. 77 (2001), pars 123.1 and 123.2 ('pecuniary' and 'non-pecuniary' damages).
54. *Cantos*, n. 97 (2002), par 77.1; *Berenson*, n. 119 (2004), par 248.5.
55. *Cantos*, n. 97 (2002), pars 70, 77.1.
56. *Aloeboetoe*, n. 15 (1993), par 116.1.
57. *Amparo*, n. 28 (1996), par 64.1.
58. *Benavides*, n. 38 (1998), par 48 and op par 3.
59. *Plan de Sanchez Massacre*, n. 116 (2004), pars 72-76, 80-89, 117, 125.10, 125.11.
60. *19 Merchants*, n. 109 (2004). Although the case involved 19 victims, damages were awarded only for 16; further proceedings are pending for the remaining three. See pars 233-34.
61. *Caracazo*, n. 95 (2002), pars 143.6, 143.8.
62. *Children's Rehabilitation Institute*, n. 112 (2004), pars 340.16 and 340.17.
63. *Barrios Altos*, n. 87 (2001), par 50.2.
64. *Eg, Amparo*, n. 28 (1996), par 28.
65. *Caracazo*, n. 95 (2002), par 50(d).
66. *Eg, Aloeboetoe*, n. 15 (1993), par 93; *Amparo*, n. 28 (1996), par 29; *Loayza*, n. 42 (1998), par 129 (A).
67. *Plan de Sanchez Massacre*, n. 116 (2004), pars 80-89, 117, 125.11.
68. *Eg, Garrido*, n. 39 (1998), pars 50, 65.
69. *Eg, Velasquez*, n. 7 (1989), par 58; *Amparo*, n. 28 (1996), par 46.
70. *Loayza*, n. 42 (1998), par 184.
71. *Ibid*; *Garrido*, n. 39 (1998), par 86; *Sanchez*, n. 99 (2003), par 201.18.
72. *Aloeboetoe*, n. 15 (1993), pars 51-52.
73. *Aloeboetoe*, n. 15 (1993), pars 52, 54; *Caracazo*, n. 95 (2000), par 50(e).
74. *Eg, Amparo*, n. 28 (1996), par 21; *Neira*, n. 29 (1996), par 42; *Castillo Paez*, n. 43 (1998), pars 76-77.
75. *Caracazo*, n. 95 (2002), par 73.
76. *Garrido*, n. 39 (1998), pars 59-61.
77. *Loayza*, n. 42 (1998), pars 144-54.
78. *Cantoral*, n. 88 (2001), pars 60, 80, 99.6.
79. *Ibid*, pars 51(b) and (f); *Mack*, n. 101 (2003), par 266.
80. Charter of the Organization of American States, OAS Treaty A-41, *opened for signature* Apr. 30,

- 1948, 2 UST 2394, entered into force, Dec. 13, 1951, art 106. For full text of the Charter, as amended, see 33 ILM 989 (1994).
81. Convention, arts 41(f), 51.1, 57 and 61.
82. Eg, Aloeboetoe, n. 15 (1993), pars 79, 114; Caballero, n. 31 (1997), par 59.
83. Eg, Aloeboetoe, n. 15 (1993), pars 94, 111.
84. Rules of Procedure of the Int.-Am.Ct.H.Rts, effective Jan 1, 1997, art. 23 (accessible at <http://www1.umn.edu/humanrts/iachr/rule1-97.htm>, visited Jan. 13, 2005).
85. Rules of Procedure, as revised effective June 1, 2001. See S.J. Anaya and C. Grossman, 'The Case of Awas Tingni v. Nicaragua: A New Step in the International Law of Indigenous Peoples,' (2002) 19 *Ariz. J. Int'l & Comp. Law* 1, at 8 n 14. See current Rules of Procedure (as amended 2003), art 23.1, accessible at <http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/OASpage/humanrights.htm> (visited Jan 13, 2005).
86. Convention art 61.1.
87. Garrido, n. 39 (1998), par 81; Loayza, n. 42 (1998), par 178.
88. Caracazo, n. 95 (2002), par 143.10 (\$86,000); Palmeras, n. 96 (2002), par 96.9 (\$51,000); Mack, n. 101 (1993), par 301.15 (\$168,000); Plan de Sanchez Massacre, n. 116 (2004), pars 116, 125.12 (\$55,000); Carpio, n. 117 (2004), pars 145, 155.8 (\$62,000).
89. Mack, n. 101 (1993), par 301.15 (\$168,000).
90. Cesti, n. 78 (2001), par 72.
91. Mack, n. 101 (1993), par 288(a).
92. Par 291(a).
93. Pars 288 (b) and (d), 301.15(b) and (e).
94. Pars 288 © and (e), 301.15© and (d).
95. Barrios, n. 87 (2001), pars 50.3, 50.4; Cantoral, n. 88 (2001), pars 99.6, 99.8; Durand, n. 89 (2001), par 45.3; 19 Merchants, n. 109 (2004), par 295.9; Gomez, n. 110 (2004), par 253.13; Children's Rehabilitation Institute, n. 112 (2004), pars 340.12, 340.13; Cruz Flores, n. 115 (2004), pars 188.5, 188.7; Plan de Sanchez Massacre, n. 116 (2004), par 125.7; Berenson, n. 119 (2004), par 248.5.
96. Aloeboetoe, n. 15 (1993), par 116.5.
97. Plan de Sanchez Massacre, n. 116 (2004), pars 125.7, 125.8, 125.9.
98. Amparo, n. 28 (1996), par 64.4.
99. Mack, n. 101 (2003), par 264.
100. Pars 272, 301.5.
101. Bamaca, n. 91 (2002), par 106.2; Sanchez, n. 99 (2003), par 201.10; Caracazo, n. 95 (2002), par 143.1.
102. Caracazo, n. 95 (2002), par 143.10 (\$10,000); Mack, n. 101 (2003), par 301.15(a) (\$5,000).
103. Eg, Bamaca, n. 91 (2002), par 106.2.
104. 19 Merchants, n. 109 (2004), par 263; but see Caballero, n. 31 (1997), par 57 (question of competence of military courts raised too late at reparations stage).
105. Caracazo, n. 95 (2002), par 143.1; Sanchez, n. 99 (2003), par 201.10.
106. Eg, Cantoral, n. 88 (2001), par 81; Mack, n. 101 (2003), pars 285-86.
107. Benavides, n. 38 (1998), par 48.5, op par 3.
108. Street Children, n. 77 (2001), par 123.7; Barrios, n. 87 (2001), par 50.5 (f); Trujillo, n. 92 (2002), par 141.6; Mack, n. 101 (2003), pars 301.11, 301.12; Molina, n. 108 (2004), par 106.6; 19 Merchants, n. 109 (2004), par 295.7; Gomez, n. 111 (2004), par 253.12; Plan de Sanchez Massacre, n. 116 (2004), par 125.6.
109. Barrios, n. 87 (2001), par 50.5 (e) (written public resolution only); Bamaca, n. 91 (2002), par 106.3; Trujillo, n. 92 (2002), pars 122, 141.6; Mack, n. 101 (2003), par 301.8; Molina, n. 108 (2004), par 106.5; 19 Merchants, n. 109 (2004), pars 295.7, 295.8; Gomez, n. 111 (2004), par 253.10; Children's Rehabilitation Institute, n. 112 (2004), par 340.11; Tibi, n. 114 (2004), par 280.12 (formal written declaration only); Plan de Sanchez Massacre, n. 116 (2004), pars 100, 101, 125.2, 125.3; Carpio, n. 117 (2004), par 155.4.
110. Mack, n. 101 (2003), par 301.8; Molina, n. 108 (2004), par 106.5; 19 Merchants, n. 109 (2004), par 295.8; Children's Rehabilitation Institute, n. 112 (2004), par 340.11(a); Tibi, n. 114 (2004), par 280.12 (written declaration only); Plan de Sanchez Massacre, n. 116 (2004), par 125.2; Carpio, n. 117 (2004), par 155.4.
111. Barrios, n. 87 (2001), par 50.5 (e); Cantoral, n. 88 (2001), par 99.7; Durand, n. 89 (2001), par 45.4(b); Tibi, n. 114 (2004), par 280.12.
112. Eg, Neira, n. 29 (1996), par 69; Bamaca, n. 91 (2002), par 76.
113. Neira, n. 29 (1996), op par 4; Caballero, n. 31 (1997), par 66.4; Panel, n. 76 (2001), par 229.3; Street Children, n. 77 (2001), par 123.6; Durand, n. 89 (2001), par 45.4(d); Bamaca, n. 91 (2002), par 106.1; Trujillo, n. 92 (2002), par 141.1; Caracazo, n. 95 (2002), pars 142.3,

- 143.3; Palmeras, n. 96 (2002), pars 96.2, 96.4; Sanchez, n. 99 (2003), par 201.11; Molina, n. 108 (2004), par 106.2; 19 Merchants, n. 109 (2004), par 295.6.
114. Bamaca, n. 91 (2002), pars 83, 106.4.
115. Loayza, n. 42 (1998), par 192.5; Castillo Petruzzi, n. 52 (1999), par 226.14; Berenson, n. 119 (2004), par 248.1.
116. Loayza, n. 42 (1998), par 192.5.
117. Barrios, n. 87 (2001), par 50.5(b).
118. Trujillo, n. 92 (2002), pars 98, 141.2.
119. Panel, n. 76 (2001), par 229.4.
120. Molina, n. 108 (2004), par 106.7
121. Ibid, par 106.8.
122. Loayza, n. 42 (1998), pars 166-71, 192.6; Castillo Paez, n. 43 (1998), pars 103-07, 118.2; Mack, n. 101 (2003), pars 276-77, 301.6; Carpio, n. 117 (2004), par 155.2.
123. Last Temptation of Christ, n. 73 (2001), par 103.4.
124. Herrera, n. 107 (2004), pars 198, 207.10.
125. Street Children, n. 77 (2001), par 123.5.
126. Bulacio, n. 100 (2003), par 162.5.
127. Mayagna, n. 79 (2001), par 173.3.
128. Herrera, n. 107 (2004), pars 157-68, 207.5.
129. Bamaca, n. 91 (2002), pars 85, 106.4.
130. Art 2 provides in full: 'Domestic Legal Effects. Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.'
131. Loayza, n. 42 (1998), par 87; Castillo Paez, n. 43 (1998), par 51; Panel, n. 76 (2001), par 203; Street Children, n. 77 (2001), par 98; Trujillo, n. 92 (2002), par 62; Mack, n. 101 (2003), par 301.1, 301.2, 301.3.
132. Eg, Trujillo, n. 92 (2002), par 96.
133. Caballero, n. 31 (1997), Dissenting Opinion of Judge A.A. Cancado Trindade, par 19.
134. Eg, Trujillo, n. 92 (2002), par 96.
135. Amparo, n. 28 (1996), pars 56-60, 64.5, and Dissenting Op of Judge A.A. Cancado Trindade.
136. Mayagna, n. 79 (2001), par 173.4.
137. Bamaca, n. 91 (2002), pars 86, 106.4; Trujillo, n. 92 (2002), pars 121, 141.5; Caracazo, n. 95 (2002), par 143.4 (a); Mack, n. 101 (2003), par 301.10; Tibi, n. 114 (2004), par 280.13; Carpio, n. 117 (2004), pars 135, 155.3.
138. Bamaca, n. 91 (2002), pars 83, 106.4.
139. Caracazo, n. 95 (2002), par 143.4 (b).
140. Ibid, par 143.4©.
141. Sanchez, n. 99, (2003), par 201.12.
142. Children's Rehabilitation Institute, n. 112 (2004), par 340.11.
143. Berenson, n. 119 (2004), par 248.6.
144. Carpio, n. 117 (2004), pars 135, 155.3.
145. Eg, Trujillo, n. 92 (2002), pars 6.2, 120-21, 141.5.
146. Plan de Sanchez, n. 116 (2004), par 108.
147. Tibi, n. 114 (2004), par 280.13.
148. Eg, Bamaca, n. 91 (2002), par 106.2.
149. Ibid, pars 75-76 (footnotes, paragraph numbers and internal quotations omitted).
150. Velasquez, n. 7 (1989).
151. Mack, n. 101 (2003).
152. Velasquez, n. 7 (1989), par 60.1.
153. *Velasquez-Rodriguez v. Honduras*, Interpretation of the Compensatory Damages Judgment, Judgment of 17 August 1990, Series C, n. 9.
154. Eg, Mack, n. 101 (2003), pars 301.13 and 301.18.
155. Velasquez, n. 7 (1989), par 7.
156. Ibid, pars 8 and 9.
157. *Velasquez-Rodriguez*, Judgment of 29 July 1988, Series C, n. 4, par 174.
158. Velasquez, n. 7 (1989), pars 9, 32-36 and 60.
159. See generally D. CASSEL, 'Peru Withdraws from the Court: Will the Inter-American Human Rights System Meet the Challenge?,' (1999) 20 *HRLJ* (Human Rights Law Journal) 167.
160. Mack, n. 101 (2003), pars 250-54.
161. Pars 301.13 and 301.14.
162. Pars 301.4 – 301.12 and 301.15 – 301.19.
163. Pars 273-74, 301.5.
164. Pars 276, 301.6.
165. Par 283.
166. See also, eg, Caballero, n. 31 (1997), par 58 (Commission requests for public apology,

- support for a college named for victim, human rights dissemination program).
167. Benavides, n. 38 (1998), par 48.5, op par 3.
168. Barrios, n. 87 (2001), pars 50.1, 50.3, 50.4, and 50.5 (d), (e) and (f).
169. Annual Report of the Inter-American Court of Human Rights 1996 (1997), Appendix XXVII.
170. See, eg, Orders of the Court in the section on 'Compliance with Judgment' on the Court's web site. <http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/OASpage/humanrights.htm> (last visited Jan 4, 2005); see also *Baena Ricardo et al. v. Panama*, Competence, Judgment of Nov 28, 2003, par 102 and n 43 and cases cited therein. A notable exception is Trinidad and Tobago, which declined to comply with judgments in death penalty cases. See *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, Compliance with Judgment, Order of the Inter-American Court of 27 November 2003, accessible at the foregoing web address.
171. Eg, *Villagran Morales et al. v. Guatemala* (the 'Street Children' case), Compliance with Judgment, Order of 27 November 2003.
172. Convention art 62.
173. The 21 States accepting the Court's contentious jurisdiction now include Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay and Venezuela. See table and notes at <http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.saj.oas.org> (visited Nov 9, 2004).
174. See generally, D.CASSEL, 'La lucha contra la impunidad ante el sistema interamericano de derechos humanos,' in J.Mendez, M. Abregu and J. Mariezcurrena (eds), *Verdad y Justicia. Homenaje a Emilio F. Mignone*, Inter-American Institute of Human Rights, San Jose, 2001, p 357.
175. Amparo, n. 28 (1996), par 34.
176. See, eg, concurring opinions of Judge Cancado Trindade in Amparo, n. 28 (1996); Loayza, n. 42 (1998) (jointly with Judge Abreu Burelli); Cantoral Benavides, n. 88 (2001); and Bulacio, n. 100 (2003); and of Judge Garcia Ramirez in Bamaca, n. 91 (2002) and Plan de Sanchez Massacre, n. 116 (2004), pars 15-30.
177. Bamaca, n. 91 (2002), Concurring Opinion of Judge Sergio Garcia Ramirez, at 1.
178. Bulacio, n. 100 (2003), Reasoned Opinion of Judge A.A. Cancado Trindade, par 25.
179. Ibid par 40.
180. Bamaca, n. 91 (2002), Concurring Opinion of Judge Sergio Garcia Ramirez, at 1.
181. Street Children, n. 77 (2001), Separate Opinion of Judge A.A. Cancado Trindade, par 37.
182. C. M. VILLASENOR, 'Pide Perdon por crimen,' *Prensa Libre*, Guatemala, 23 April 2004 (accessible at www.prensalibre.com, visited Nov 10, 2004).

