



HUMAN RIGHTS CLINIC

THE UNIVERSITY *of* TEXAS SCHOOL *of* LAW

**COLLECTIVE AND MORAL REPARATIONS
IN THE INTER-AMERICAN COURT OF HUMAN RIGHTS**

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This report does not represent the official position of the School of Law or of the University of Texas, and the views presented here reflect only the opinions of the individual authors and of the Human Rights Clinic.

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I. INTRODUCTION

The information presented in this study is the product of the Human Rights Clinic at the University of Texas School of Law, where an interdisciplinary group of law and graduate students work on human rights projects and cases from the advocate's perspective. The Human Rights Clinic has partnered with the International Center for Transitional Justice (hereinafter "ICTJ") to produce this study focusing on the forms of collective and moral reparations in the Inter-American system. This study will be used to facilitate the crucial role that lies ahead for the Extraordinary Chambers in the Courts of Cambodia (hereinafter "ECCC").

The Inter-American Court of Human Rights' approach to collective and moral reparations is relevant to the ECCC because the ECCC is only empowered to grant these types of reparations. "Subject to Article 39 of the ECCC Law, the Chambers may award only collective and moral reparations to Civil Parties. These shall be awarded against, and be borne by convicted persons."¹ The Court's treatment of collective and moral reparations may serve as a model to the ECCC as it plots a new course in the jurisprudence of reparations.

Over the last twenty years, the Inter-American Court of Human Rights (hereinafter "the Court") created a new paradigm for reparations under international human rights law. The Court remains at the forefront in ordering and enforcing collective and moral reparations for mass human rights violations. This study analyzes the method and the rationale that underpins the Court's decisions to award collective and moral reparations. This analysis focuses on collective or group reparations rather than reparations awarded to individuals. Collective reparations are often directed to situations that require "remediation for collective harms."² Generally, these collective harms resulted from mass human rights violations, oftentimes perpetrated by the State or with the State's tacit approval. This study will not review compensatory damages.

This study concentrates on the different forms of collective and moral reparations that the Court has ordered. The Court's guiding principles are woven throughout the forms of collective and moral reparations that it orders: to restore dignity to the victims, and to prevent future human rights abuses. Although the Court has developed a comprehensive legal regime on reparations, only limited analysis and case examples are included in this study.

II. HOW THE COURT APPROACHES REPARATIONS

1. Forms of Reparations Granted by the Court

The Court has developed what many consider to be "the most comprehensive legal regime on reparations developed in the human rights field in international law."³ In the late 1980's, the Court faced a slew of claims stemming from repressive and violent regimes throughout Central and South America. Pursuant to its mandate in the American Convention, the Court served as an

¹ Internal Rules of ECCC, rev. 3 Rule 23(11), 6 Mar. 2009.

² Darren Hutchinson, *Reparations: A Comparative Perspective*, 56:6 AM. U. L. REV. 1402, 1402 (2007).

³ Dean Claudio Grossman, *Reparations in the Inter-American System: A Comparative Approach*, 56:6 AM. U. L. REV. 1375, 1376 (2007).

adjudicatory body for these claims.⁴ In 1988, the Court began a new chapter in the field of reparations with its decision in the *Velásquez-Rodríguez v. Honduras* case.⁵

Honduran authorities kidnapped, tortured, and presumably executed Angel Manfredo Velásquez-Rodríguez. The government staged his disappearance and then obstructed his family's efforts to locate him. Years later, the Court reviewed the case. To provide redress to Velásquez-Rodríguez's family, the Court became the first human rights tribunal to require the State to "prevent, investigate and punish any violation of the rights recognized by the [American] Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation."⁶ Through its reasoning in *Velásquez-Rodríguez*, the Court set the foundation for an innovative and extensive framework of reparations that would be utilized to provide redress for the victims of a wide range of human rights abuses.

Reparations in the Inter-American system generally refer to numerous ways in which a State responsible for violations under the American Convention can make amends for its wrongful acts.⁷ "[T]he term 'reparations' may encompass restitution, financial compensation, rehabilitation, and satisfaction."⁸ Financial compensation is the most commonly employed form of remedial State measures.⁹ Traditionally, the Court ordered the State to pay financial compensation for material losses or actual damages.¹⁰ "As generally understood, the term actual damages may include loss of earnings, restitution of money or material possessions, and loss of real property."¹¹ Financial or pecuniary reparations remedied a quantifiable loss suffered by the victims. However, the Court expanded the concept of financial compensation in order to provide redress for injuries that were harder to quantify.

In *Velásquez-Rodríguez*, the Court held that "[a]s to emotional harm, ... indemnity may be awarded under international law and, in particular, in the case of human rights violations. Indemnification must be based upon the principles of equity."¹² The Court expanded the scope of monetary reparations to account for "the victim's mental anguish, emotional distress, and pain and suffering."¹³ These forms of reparations are referred to as non-pecuniary or "moral reparations." Moral reparations may include "both the suffering and distress caused to the direct victims and their next of kin, and the impairment of values that are highly significant to them, as well as other suffering that cannot be assessed in financial terms."¹⁴ The Court recognizes that some types of harm cannot be precisely quantified monetarily. The Court therefore seeks to provide other forms of restitution.

⁴ American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, *entered into force* July 18, 1978, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 (1992).

⁵ I/A Court H.R., *Case of Velásquez-Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4.

⁶ *Id.* at (para. 166).

⁷ Arturo J. Carrillo, *Justice in Context: The Relevance of Inter-American Human Rights Law and Practice to Repairing the Past*, in THE HANDBOOK OF REPARATIONS 504, 512 (Pablo de Greiff ed., 2006).

⁸ Jo M. Pasqualucci, *Victim Reparations in the Inter-American Human Rights System: A Critical Assessment of Current Practice and Procedure*, 18 MICH. J. INT'L L. 1, 23 (1996).

⁹ Carrillo, *supra* note 7, at 513.

¹⁰ *Id.*

¹¹ Pasqualucci, *supra* note 8.

¹² *Case of Velásquez-Rodríguez v. Honduras*. Merits (para. 27).

¹³ Carrillo, *supra* note 7, at 519.

¹⁴ I/A Court H.R., *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala*. Reparations and Costs. Judgment of May 26, 2001. Series C No. 77 (para. 84).

“[T]he Court must turn to other alternatives: first payment of an amount of money or delivery of goods or services that can be estimated in monetary terms, which the Court will establish through reasonable application of judicial discretion and equity.”¹⁵ When the Court applies the principles of equity to compensate a victim for non-pecuniary harm, it evaluates several different factors unique to that victim’s situation before setting a just amount for a reparations award.¹⁶ Among the factors considered, the Court “bear[s] in mind the economic and social position of the beneficiaries.”¹⁷ The Court also evaluates “differences in the injuries and ill-treatment suffered by the ... victims.”¹⁸

The advent of non-pecuniary or moral reparations ushered in a new phase in the Court’s reparations jurisprudence. The Court did not limit its reparations awards to individuals who directly suffered pecuniary or moral harm. Instead, the Court began to recognize that the impact of human rights abuses affects more than the immediate victims. Mass human rights violations in particular cause suffering that is not contained to individuals. Instead, entire communities fall victim to the State’s failure to safeguard human rights. The collective harm merits collective redress. In *Aloeboetoe et al. v. Suriname*, the State’s armed forces attacked, beat, and murdered indigenous civilians accused of being part of a subversive force.¹⁹ The Court declared that “[t]he obligation to make reparation for damages caused is sometimes, and within limits imposed by the legal system, extended to cover persons who, though not successors of the victims, have suffered some consequence of the unlawful act.”²⁰ Collective reparations allow the Court to force the State to make amends for human rights violations that affect entire communities.

Since collective reparations can potentially encompass large numbers of victims, pure monetary compensation is not always a feasible tool for redress. Rather than relying exclusively on money to relieve the claimants’ suffering, the Court requires States responsible for human rights violations to implement “acts or works of a public nature or repercussion, which have effects such as recovering the memory of the victims, re-establishing their reputation, consoling their next of kin or transmitting a message of official condemnation of the human rights violations in question and commitment to the efforts to ensure that they do not happen again.”²¹ These types of collective reparations include: the victim’s right to truth; the State’s duty to investigate, prosecute, and punish; the State’s obligation to prevent future abuses; the restoration of the legal order; the State’s duty to publicize the Court’s judgments; the State’s public acceptance of responsibility for human rights abuses and a corresponding apology; the restoration of affected communities; the next of kin’s right to know the location of the victim’s remains; and the State’s duty to establish memorials and erect monuments to honor the victims. While this is a non-exhaustive list of non-pecuniary, collective reparations, the Court has utilized these measures of restitution to address a multitude of harms ranging from forced disappearances to large-scale massacres.

¹⁵ I/A Court H.R., *Case of the Moiwana Community v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124 (para. 191).

¹⁶ Carrillo, *supra* note 7, at 520.

¹⁷ I/A Court H.R., *Case of Aloeboetoe et al. v. Suriname*. Reparations and Costs. Judgment of September 10, 1993. Series C No. 15 (para. 91).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at (para. 67).

²¹ *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala*. Reparations and Costs (para. 84).

2. Overarching Objectives of Collective and Moral Reparations

Collective and moral reparations share two common characteristics in the Inter-American system. First, all collective and moral reparations are intended to restore dignity to victims. Some forms of moral harm are so depraved that they can never be fully mended monetarily. “Money alone cannot re-humanize the victims.”²² However, the individual as well as the community that endured great suffering deserve a degree of recognition. Collective and moral reparations begin to restore the victims’ dignity by publicly sharing their stories. Acknowledgment of their pain elevates the victims back to the status of human beings with rights that demand respect. The nameless souls who vanished as a result of state-sponsored forced disappearances regain their identities. The lowest villagers who perished in massacres receive an apology from the highest authority of the State. Although collective and moral reparations may not entirely reconstitute the victims of human rights abuses physically or economically, they succeed in addressing “the psychological, moral, and symbolic elements of the violation.”²³

Second, the Court designs collective and moral reparations to prevent future human rights abuses. While attempts to restore dignity focus on the damage that has already been inflicted on individuals, the Court also wants to prevent the same harm from reoccurring in the future. Commonly referred to as the guarantee of non-repetition, the Court orders reparations that will change the environment that permitted the State to harm its people. Usually, the Court will accomplish this end by ordering the State to change its social, legal and political institutions, or policies.²⁴ Reparations that mandate human rights training for military and security forces create a setting that fosters respect for human rights. Monuments and memorials honoring the dead serve as daily reminders of the State’s past failures and inspire the State’s leaders to strive for more secure and more just futures.

3. The Court’s Mandate to Grant Reparations

The Court’s decision in *Velázquez-Rodríguez* marked a sea change in human rights jurisprudence. Though innovative reparations crafted by the Court over the last two decades can be traced to that decision, it is also true that “during the Court’s first decade of contentious cases it showed marked restraint toward non-monetary remedies.”²⁵ Today, the Court, through its mandate to grant reparations, Article 63(1), has “creatively developed the law of reparations within the Americas.”²⁶ Though “the American Convention only has one short and brief article on reparations,” the Court has incorporated general principles of international law to define the broad scope of its reparations power.²⁷

The American Convention establishes in Article 63(1):

²² Alice Riener, *Reparations and the Issue of Culture, Gender, Indigenous Populations and Freedom of Expression: “Children & Reparations”*, 56:6 AM. U. L. REV. 1439, 1442 (2007).

²³ *Id.*

²⁴ Carrillo, *supra* note 7, at 527.

²⁵ Thomas M. Antkowiak, *Remedial Approaches to Human Rights Violations: The Inter-American Court of Human Rights and Beyond*, 46 Colum. J. Transnat’l L. 351, 365 (2008).

²⁶ Grossman, *supra* note 3, at 1376.

²⁷ Sergio Garcia Ramirez, *Reparations in the Inter-American System: Keynote Speaker*, 56:6 AM. U. L. REV. 1429, 1429 (2007).

“[t]hat 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.”²⁸

The Court’s expansive interpretation of Article 63(1) with respect to its scope and beneficiaries reflects the Court’s general approach as an international human rights body. Article 63(1) grants the Court considerable power.²⁹ It authorizes the Court to rule that if a right or freedom is violated, the act constituting the breach “be remedied and that fair compensation be paid to the injured party.”³⁰ The Court initially refrained from awarding non-monetary remedies.³¹ However, in recent years, the Court has utilized Article 63(1)’s potential and developed an expansive interpretation as to what constitutes a remedy pursuant to Article 63(1). This development permitted redress for both individuals and groups, with a strong preference for equitable remedies.

The Court’s current model equally emphasizes pecuniary, non-pecuniary or moral, and collective reparations. The Court’s jurisprudence has “established new paradigms in international law for the redress of individuals and groups . . . [it] now orders non-monetary remedies in every possible scenario, regardless of the case or the human rights violations alleged; “gross” or “systematic” abuses are clearly not required.”³²

The Court’s reparations evolved considerably from the *Velázquez-Rodríguez* decision in 1988 to the *Plan de Sánchez Massacre v. Guatemala* case in 2004. In *Velázquez-Rodríguez*, where beyond ordering compensation for the deaths, the Court merely ruled that the State had a continuing duty—as long as the fate of the disappeared was not known—to investigate the forced disappearances, as well as “to prevent involuntary disappearances and to punish those directly responsible.”³³ However, sixteen years later, the Court in *Plan de Sánchez Massacre v. Guatemala*, a case involving murder of over 250 persons from the Mayan indigenous community by State agents, determined that compensation and declaratory relief would have been wholly inadequate. The Court ordered a spectrum of remedies including: investigation, prosecution, and punishment; a culturally tailored public act acknowledging state responsibility; a culturally tailored publication of the judgment; investment to maintain and improve a memorial in which victims pay homage to those massacred; implementation of a housing program; medical treatment; and other social programs in the affected communities. The expansive interpretation of “remedy” pursuant to Article 63(1) in all cases, not merely in cases of gross violations, has become a defining feature of the Court.

The Court also established that Article 63(1)’s obligation to make reparations should be interpreted in accordance with international law. To comply with international law, the Court articulated three key requirements that must be followed when ordering reparations. First, the responsible State’s duty to provide restitution is rooted in customary international law. Second,

²⁸ Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter *American Convention*].

²⁹ Antkowiak, *supra* note 25, at 365.

³⁰ Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter *American Convention*].

³¹ Antkowiak, *supra* note 25, at 365.

³² *Id.* at 386.

³³ *Id.* at 365.

the State has the duty to provide full restitution. Finally, the Court established that all stages of restitution are regulated by international law.³⁴

The first requirement, the duty to provide reparation, was first addressed in *Velázquez-Rodríguez*.³⁵ “Clearly, in the instant case the Court cannot order that the victim be guaranteed the enjoyment of the rights or freedoms violated; [it] can rule that the consequences of the breach of the rights be remedied and that just compensation be paid.”³⁶ The Court clarified the duty to provide restitution as a requirement of customary international law in numerous cases.³⁷ In *Urrutia v Guatemala*, the victim was detained and tortured by State agents, presumably for carrying out tasks for a revolutionary organization. The Court reiterated the concept that whenever there is a violation of an international legal norm and there is harm, a remedy must apply.³⁸ “The Court has established in its consistent case law that it is a principle of international law that any violation of an international obligation that has caused damage gives rise to a new obligation: to remedy the damage caused adequately.”³⁹ The Court again addressed the application of this guiding principle in *Mapiripán Massacre v. Colombia*, a case in which 49 civilians accused of being FARC were tortured, murdered, and dismembered by a paramilitary group collaborating with Colombia state agents, again addressed the application of this guiding principle. “[Article 63(1)] reflects a customary rule that is one of the basic principles of contemporary International Law regarding the responsibility of States.”⁴⁰

The second requirement, the duty to provide full restitution, has been addressed by the Court on many occasions. The Court has consistently recognized that reparation of harm must be adequate. “Reparation of the damage caused by abridgment of an international obligation requires, whenever possible, full reparation (*restitutio in integrum*), consisting of reestablishment of the situation prior to the violation.”⁴¹ “If this is not possible, as in the instant case, the international court must order a series of measures that, in addition to ensuring respect for the

³⁴ I/A Court H.R., *Case of Maritza Urrutia v. Guatemala*. Merits, Reparations and Costs. Judgment of November 27, 2003. Series C No. 103 (paras. 141-43).

³⁵ *Case of Velásquez-Rodríguez v. Honduras*. Merits.

³⁶ *Id.* at (para. 189).

³⁷ For examples of cases where the Court recognizes Article 63(1) [duty to retribute] as customary international law, see: *Case of Valle-Jaramillo et al. v. Colombia*, Series C No. 192 (para. 198); *Case of Ticona-Estada et al. v. Bolivia*, Series C No. 191 (para. 106); *Case of Tiu-Tojín v. Guatemala*, Series C No. 190 (para. 55); *Case of the Saramaka People v. Suriname*, Series C No. 172 (para. 186); *Case of Zambrano-Vélez et al. v. Ecuador*, Series C No. 166 (para. 131); *Case of Escué-Zapata v. Colombia*, Series C No. 165 (para. 126); *Case of the Rochela Massacre v. Colombia*, Series C No. 163 (para. 226); *Case of La Cantuta v. Peru*, Series C No. 162 (para. 199); *Case of the Miguel Castro-Castro Prison v. Peru*, Series C No. 160 (para. 414); *Case of Almonacid-Arellano et al. v. Chile*, Series C No. 154 (para. 135); *Case of Goiburú et al. v. Paraguay*, Series C No. 153 (para. 141); *Case of the Ituango Massacres v. Colombia*, Series C No. 148 (para. 346); *Case of the Sawhoyamaya Indigenous Community v. Paraguay*, Series C No. 146 (para. 196); *Case of the Pueblo Bello Massacre v. Colombia*, Series C No. 140 (para. 227); *Case of the Mapiripán Massacre v. Colombia*, Series C No. 134 (para. 243); *Case of the Serrano Sisters v. El Salvador*, Series C No. 131 (para. 29); *Case of the Girls Yean and Bosico v. Dominican Republic*, Series C No. 130 (para. 209); *Case of Yatama v. Nicaragua*, Series C No. 127 (para. 231); *Case of the Yakye Axa Indigenous Community v. Paraguay*, Series C No. 125 (para. 180); *Case of the Moiwana Community v. Suriname*, Series C No. 124 (para. 169); *Case of Serrano-Cruz Sisters v. El Salvador*, Series C No. 120 (para. 134); *Case of the Plan de Sánchez Massacre v. Guatemala*, Series C No. 116 (para. 52); *Case of the 19 Merchants v. Colombia*, Series C No. 109 (para. 220); *Case of Myrna Mack-Chang v. Guatemala*, Series C No. 101 (para. 235); *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala*, Series C No. 77 (para. 62).

³⁸ *Case of Maritza Urrutia v. Guatemala*. Merits, Reparations and Costs.

³⁹ *Id.* at (para. 141).

⁴⁰ *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs (para. 243).

⁴¹ *Case of Maritza Urrutia v. Guatemala*. Merits, Reparations and Costs (para. 143).

rights abridged, will redress the consequences caused by the infringements and order, *inter alia*, payment of compensation for the damage caused.”⁴²

The third requirement, the duty to ensure that all stages of restitution are regulated by international law, has been addressed by the Court on many occasions. In this respect, international law reigns supreme over domestic law. “The responsible State may not invoke provisions of domestic law to modify or fail to comply with its obligation to provide reparation, all aspects of which (scope, nature, methods and determination of the beneficiaries) are regulated by international law.”⁴³ Article 63(1) of the Convention empowers [the Court] to determine what measures that will repair the consequences of a violation and regulate all aspects thereof.”⁴⁴

Although Article 63(1) of the American Convention is brief, the Court’s expansive interpretation of it draws in international law principles that considerably affect how the Court operates as an international human rights court. The Court’s interpretation of Article 63(1) grants the Court the authority to order reparations with the breadth and depth necessary to provide victims with appropriate redress for the harms they have suffered, particularly in cases of gross human rights violations. By expansively interpreting its charging instrument, the Court

⁴² For examples of cases where the Court recognizes reparations means full, and if not possible, adequate restitution, see: *Case of Valle-Jaramillo et al. v. Colombia*, Series C No. 192 (para. 198); *Case of Ticona-Estada et al. v. Bolivia*, Series C No. 191 (para. 106); *Case of Tiu-Tojín v. Guatemala*, Series C No. 190 (para. 55); *Case of the Saramaka People. v. Suriname*, Series C No. 172 (para. 186); *Case of Zambrano-Vélez et al. v. Ecuador*, Series C No. 166 (para. 131); *Case of Escué-Zapata v. Colombia*, Series C No. 165 (para. 126); *Case of the Rochela Massacre v. Colombia*, Series C No. 163 (para. 226); *Case of La Cantuta v. Peru*, Series C No. 162 (para. 201); *Case of the Miguel Castro-Castro Prison v. Peru*, Series C No. 160 (para. 415); *Case of Almonacid-Arellano et al. v. Chile*, Series C No. 154 (para. 136); *Case of Goiburú et al. v. Paraguay*, Series C No. 153 (para. 142); *Case of the Ituango Massacres v. Colombia*, Series C No. 148 (para. 347); *Case of the Sawhoyamaya Indigenous Community v. Paraguay*, Series C No. 146 (para. 197); *Case of the Pueblo Bello Massacre v. Colombia*, Series C No. 140 (para. 228); *Case of the Mapiripán Massacre v. Colombia*, Series C No. 134 (para. 244); *Case of the Serrano Sisters v. El Salvador*, Series C No. 131 (para. 29); *Case of the Girls Yean and Bosico v. Dominican Republic*, Series C No. 130 (para. 210); *Case of Yatama v. Nicaragua*, Series C No. 127 (para. 232); *Case of the Yakye Axa Indigenous Community v. Paraguay*, Series C No. 125 (para. 181); *Case of the Moiwana Community v. Suriname*, Series C No. 124 (para. 170); *Case of Serrano-Cruz Sisters v. El Salvador*, Series C No. 120 (para. 135); *Case of the Plan de Sánchez Massacre v. Guatemala*, Series C No. 116 (para. 53); *Case of the 19 Merchants v. Colombia*, Series C No. 109 (para. 221); *Case of Myrna Mack-Chang v. Guatemala*, Series C No. 101 (para. 236); *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala*, Series C No. 77 (para. 60).

⁴³ For examples of cases where the Court recognizes all stages of reparations are regulated by International Law, see: *Case of Valle-Jaramillo et al. v. Colombia*, Series C No. 192 (para. 198); *Case of Ticona-Estada et al. v. Bolivia*, Series C No. 191 (para. 106); *Case of the Saramaka People. v. Suriname*, Series C No. 172 (para. 186); *Case of the Rochela Massacre v. Colombia*, Series C No. 163 (para. 226); *Case of La Cantuta v. Peru*, Series C No. 162 (para. 200); *Case of the Miguel Castro-Castro Prison v. Peru*, Series C No. 160 (para. 415); *Case of Almonacid-Arellano et al. v. Chile*, Series C No. 154 (para. 136); *Case of Goiburú et al. v. Paraguay*, Series C No. 153 (para. 141); *Case of the Ituango Massacres v. Colombia*, Series C No. 148 (para. 347); *Case of the Sawhoyamaya Indigenous Community v. Paraguay*, Series C No. 146 (para. 197); *Case of the Pueblo Bello Massacre v. Colombia*, Series C No. 140 (para. 228); *Case of the Mapiripán Massacre v. Colombia*, Series C No. 134 (para. 244); *Case of the Serrano Sisters v. El Salvador*, Series C No. 131 (para. 29); *Case of the Girls Yean and Bosico v. Dominican Republic*, Series C No. 130 (para. 210); *Case of Yatama v. Nicaragua*, Series C No. 127 (para. 232); *Case of the Yakye Axa Indigenous Community v. Paraguay*, Series C No. 125 (para. 181); *Case of the Moiwana Community v. Suriname*, Series C No. 124 (para. 170); *Case of Serrano-Cruz Sisters v. El Salvador*, Series C No. 120 (para. 135); *Case of the Plan de Sánchez Massacre v. Guatemala*, Series C No. 116 (para. 53); *Case of the 19 Merchants v. Colombia*, Series C No. 109 (para. 221); *Case of Myrna Mack-Chang v. Guatemala*, Series C No. 101 (para. 236); *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala*, Series C No. 77, (para. 61).

⁴⁴ I/A Court H.R. -Cruz., *Case of the Serrano Sisters v. El Salvador*. Interpretation of the Judgment of Merits, Reparations and Costs. Judgment of September 9, 2005. Series C No. 131, (para. 30).

established a robust mandate that has enabled it to confront a variety of human rights abuses.

Another key element to the Court's mandate is that the Court has the authority to order reparations against a State regardless of the length of time that has passed which may have brought a new government into power. The Court's authority to order the State to grant reparations for human rights violations committed by previous regimes is grounded in international law.

Following the principle of the continuity of the State, the Court's authority to order a State to make reparations cannot be undercut by the rise of a new controlling government. Even if the State's current leadership was not complicit in past human rights violations, the Court can still order the State to make amends to the victims. "According to the principle of the continuity of the State in international law, responsibility exists both independently of changes of government over a period of time and continuously from the time of the act that creates responsibility to the time when the act is declared illegal. The foregoing is also valid in the area of human rights, although, from an ethical or political point of view, the attitude of the new government may be much more respectful of these rights than that of the government in power when the violations occurred."⁴⁵

4. Features of the Court's Case Law on Reparations

After laying claim to the authority to award collective and moral reparations, the Court spent the next two decades adjudicating cases involving grievous human rights violations. The Court quickly learned to draft reparations orders that were "clear enough to be understood and followed by frequently unenthusiastic bureaucrats, as well as concrete enough to be verifiable by the Court in the supervisory process."⁴⁶ The Court also realized the importance of crafting reparations that were "sufficiently flexible to allow the sovereign state some discretion, since an international tribunal cannot anticipate all of the country-specific complications that might arise in the course of implementation."⁴⁷

Aside from these practical considerations, other trends began to emerge in the Court's case law regarding reparations. The Court exhibited a strong concern for the victims. Moreover, the Court considered the victims' cultural backgrounds and found creative ways to address the specific needs and injuries of the victims who appeared before it.

a. Who is the "Injured Party"

The Court is not only concerned about the form, scope, and realistic implementation of reparations, but also the delivery of those reparations to the appropriate individuals. Reparations can only be directed to the "injured party" per the Court's interpretation of Article 63(1). "Injured party" encompasses both the victim and his next of kin, who may also be considered victims. The Court affirmed, on several occasions, that the relatives of the victim of violations of human rights may, in turn, be victims.⁴⁸ The Court has necessarily had to flesh out the definition of the next of kin. Once the victims and the next of kin are identified, they are the beneficiaries

⁴⁵ *Case of Velásquez-Rodríguez v. Honduras*. Merits (para. 184).

⁴⁶ Thomas M. Antkowiak, *Remedial Approaches to Human Rights Violations: The Inter-American Court of Human Rights and Beyond*, 46 COLUM. J. TRANSNAT'L L. 351, 384 (2008).

⁴⁷ *Id.*

⁴⁸ *Case of Escué-Zapata v. Colombia*. Merits, Reparations and Costs (para. 77).

of the reparations once certain requirements are met.

First, the Court must determine next of kin. The Court has developed a flexible interpretation of who should be included in the definition next of kin. In *Myrna Mack-Chang v. Guatemala*, a social activist was extra-legally executed by a state actor. When deciding who should be included as victim's next of kin, the Court declared the concept "next of kin of the victim" to include "all persons linked by close kinship, including the parents, children and siblings, who might have the right to compensation."⁴⁹ The Court reads the definition broadly. In *Myrna Mack-Chang*, the Court assimilated the victim's first cousin to the status of her sibling, as he was "raised by the [the victim's family] since he was a small child and is considered one more member of the family."⁵⁰ In assimilating him to status of sibling, the Court "assume[d] that he could not be indifferent to what happened to [the victim], for which reason the acts in violation of the Convention [also] affected him ..."⁵¹

In determining next of kin, the Court notes that the expression "victim's family" should be understood to include all those persons closely related to him. In other words, the victim's children, parents and siblings could be considered next of kin and have the right to receive compensation.⁵² A spouse and a "permanent partner" of the victim receive reparation.⁵³ Damage caused to other members of the victim's family or to third parties, due to the death of the victim, may also be claimed in their own right [to] constitute damage the existence of a relationship of effective, regular financial support between victim and claimant and the possibility of realistically presuming that this support would have continued if the victim had not died.⁵⁴

After the Court determines who is the "injured party," the injured party must meet certain requirements to qualify as a potential beneficiary of reparations. Typically, the injured party must establish standing before the Court. The victim must appear in front of the Court in order to receive reparations so that the Court can determine that the person is a victim. Furthermore, the victims must be suitably identified. The Court has developed jurisprudence on these two requirements.

First, standing before the Court is not a fixed concept. Instead, the Court has been flexible about when a beneficiary may be included in the judgment. It has not stringently denied beneficiaries because they were added late. In *Bámaca-Velásquez v. Guatemala*, where members of a revolutionary unit were detained, tortured and disappeared by state armed forces, the Court noted that while this case was "before the inter-American system ... since 1992, it is not until ... 2001 ... when the existence of [the victim's sister was] brought to the attention of the Court."⁵⁵ The Court realized that the circumstances of the case kept the victim's sister from being immediately identified. Confusion stirred up by the conflict, poor communication at the time of events, and unique characteristics of the Mayan culture hindered the sister's immediate identification. Nonetheless, the Court concluded in its 2002 merits judgment that the victim's sister should be added as a beneficiary of reparations. The Court's approach to addition of

⁴⁹ *Case of Myrna Mack-Chang v. Guatemala*. Merits, Reparations and Costs (para. 243).

⁵⁰ *Id.* at (para. 244).

⁵¹ *Id.*

⁵² *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala*. Reparations and Costs (para. 68).

⁵³ *Case of the Miguel Castro-Castro Prison v. Peru*. Interpretation of the Judgment of Merits, Reparations and Costs (para. 421).

⁵⁴ *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala*. Reparations and Costs (para. 68).

⁵⁵ *Case of Bámaca-Velásquez v. Guatemala*. Merits.; *Case of Bámaca-Velásquez v. Guatemala*. Reparations and Costs (para. 36).

untimely-presented victims further illustrates their willingness to loosen strict protocol when circumstances permit.

The Court has also determined how beneficiaries may be included in the judgment even if those beneficiaries do not qualify for standing at the time of the merits decision. The Court favors taking note of special circumstances and allowing victims to be added subsequent to their merits decision.⁵⁶ In *Mapiripán Massacre v. Colombia*, a paramilitary group collaborated with state agents to torture, dismember, eviscerate and decapitate 49 civilians accused of being associated with FARC.⁵⁷ The paramilitaries threw the victims' remains into the Guaviare River. Before determining beneficiaries or reparations the Court observed, "the facts of the instant case are set within a widespread situation of forced internal displacement..."⁵⁸ In determining beneficiaries, the Court reiterated "its consternation regarding the grave facts of the [case], which have a series of effects when reparations are set."⁵⁹ In *Mapiripán*, "it was established that the objective of the *modus operandi* of the massacre was to make the identification of executed or missing victims difficult or impossible, by destroying evidence, intimidating and displacing the inhabitants of the municipality of Mapiripán."⁶⁰ As a consequence of the *modus operandi* used to terrorize the population, carry out the massacre, and dispose of the bodies, it was not possible for the authorities to fully identify the victims.⁶¹ Therefore, at the time of the *Mapiripán* merits decision, only close to half of the approximately 49 executed or missing victims had been individually identified.⁶²

However, the Court handled *Mapiripán* in a way that allowed the case to move forward, without excluding the possibility for justice for all of the unidentified victims. First, the Court expressed "its deep concern regarding the situation of the unidentified victims [as] well as regarding that of their next of kin."⁶³ Then, the Court held off "from ordering compensation for pecuniary damages in favor of those victims and their next of kin who have not been individually identified."⁶⁴ The Court stated that "setting of reparations in this international instance neither obstructs nor precludes the possibility of the next of kin of unidentified victims filing the appropriate complaints before the national authorities, as they come to be identified, including the means ordered in this Judgment."⁶⁵ If the next of kin of the unidentified victims file their complaints, then "the Court deem[ed] that the compensation due to each must be granted in the same manner set forth with regard to those who have been duly identified."⁶⁶ Finally, the Court set time limits for the unidentified victims' next of kin to be added onto the judgment. They

⁵⁶ The Inter-American Court took a different approach in *Plan de Sánchez Massacre v. Guatemala*, where they held they were "unable to establish any compensation for victims who have not been individualized at this time" and instead, "without detriment to the foregoing, [the] Court reserve[d] the possibility to determine [o]ther forms of reparation in favor of all the members of the communities affected by the facts of the case." *Case of the Plan de Sánchez Massacre v. Guatemala*. Reparations and Costs (para. 62).

⁵⁷ *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs.

⁵⁸ *Id.* at (para. 173).

⁵⁹ *Id.* at (para. 246).

⁶⁰ *Id.*

⁶¹ *Id.* at (paras. 96.41).

⁶² *Id.* at (para. 246).

⁶³ *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs (para. 247).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at (para. 257(b)).

“must appear before the official mechanisms⁶⁷ that will be established for this purpose, within 24 months of when it was notified, and they must prove their relationship or kinship with the victim, though sufficient means of identification or by means of two attesting witnesses, as the case may be.”⁶⁸

The Court’s approach to subsequent identification is also used for individuals who are currently listed as beneficiaries in the proceeding, but have yet to provide proper identification. In *Moiwana Community v. Suriname*, a military operation was conducted at Moiwana Village, in which state agents and collaborators killed at least 39 defenseless community members, including infants, women, and the elderly, and wounded many others. The operation burned and destroyed village property and forced the survivors to flee. Although the attack occurred in 1986, the official investigations did not begin until 1989.⁶⁹ The Court recognized that it would be difficult to identify the victims because the State did not conduct a timely investigation. Moreover, provisions in the State’s domestic law actually interfered the investigation and kept the investigators from reaching any meaningful results. Further obstruction of justice by the State’s military regime was also evident. Because of this, the Court held that “compensation [shall] be awarded in the same manner as those properly identified [as] long as they appear before the appropriate state officials within 24 months following the notification of the instant judgment and provide sufficient means of identification.”⁷⁰

The Court’s jurisprudence reflects a creative approach with regards to acceptable means of proving identity. The special circumstances of conflict and strife, poor communication, and cultural and language barriers have led the Court to accept many forms of victim identification. In *Moiwana Community*, following precedent, the Court considered “as properly identified those victims who are referred to in an official document, such as a birth certificate or “family book.”⁷¹ Therefore, official identification documents may include a birth certificate or something equivalent, such as a family book.

The Court has even identified victims using unofficial documentation. In *Moiwana Community*, the Court determined that “adequate identification shall entail either: a) an official document attesting to the person’s identity; or b) a statement before a competent state official by a recognized leader of [the indigenous] community members, as well as the declarations of two additional persons, all of which clearly attest to the individual’s identity.”⁷² The Court granted more latitude in *Moiwana Community* with respect to acceptable means of proving identity because “many [indigenous community members] do not possess formal identity documents, and were never inscribed in the national registry.”⁷³ The Court’s flexible approach illustrates a strong concern for the victims and the circumstances of the victims in a case-by-case approach to formal identity requirements.

⁶⁷ The Court ordered the State must establish, within six months of notification of this judgment, an official mechanism that will operate for two years, with participation by the next of kin of the victims to: monitor the administrative-law proceedings; ensure effective payment of compensation; follow up on State actions to search for and individually identify the victims and their next of kin; to ensure effective treatment; and coordinate actions so that the displaced can return if they wish to do so. *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs (para. 311).

⁶⁸ *Id.*

⁶⁹ *Case of the Moiwana Community v. Suriname*. Preliminary Objections, Merits, Reparations and Costs (para. 86(15)-(25)).

⁷⁰ *Id.* at (para. 178).

⁷¹ *Id.* at (para. 177).

⁷² *Id.* at (para. 178).

⁷³ *Id.*

The Court has demonstrated creativity and flexibility in: the broad inclusion of who is deemed to be an injured party; in the addition of beneficiaries at later stages of the case; in its handling of the future inclusion of unidentified victims; and in determining what documents or declarations are suitable identification. Further, the Court has been particularly concerned about victims of mass and gross human rights violations, and its jurisprudence has taken into account special facts and circumstances of the cases brought before it, with a constant focus on who is the victim.

b. Strong Concern for the Victim

The Court's jurisprudence reflects a strong concern for the victim. In attending to the victims, the Court listens to the victims' preferences in order to shape adequate reparations. "The inherent flexibility of an equitable system allows the [Court] to build in victims' preferences."⁷⁴

The Court's victim-centric approach emphasizes the idea that reparations have special meaning for the victims of mass human rights violations.⁷⁵ Cases involving mass human rights violations cannot be adequately compensated by money alone. Non-pecuniary or moral damages, and collective and symbolic measures of redress are critically important to ensure non-repetition. But the Court's approach as "victim as center" is applied in all of its case law, not only in cases where mass violations have occurred.

Victims' preferences being accorded great weight when the Court shapes reparations is an important and unique feature of the operation of the Court. In cases where the Court must deal with atrocities that defy monetary measurement, this feature is essential. "Considering such preferences is simply necessary in circumstances that defy economic damage assessment: the victims themselves, together with psychological and perhaps other expert testimony, are in the best position to indicate how the status quo ante can be approximated in each context."⁷⁶

Further, victims generally prefer non-monetary remedies above all.⁷⁷ "An array of evidence, including testimony before the [Court] itself, demonstrates that victims most demand that offenders make amends for violations [s]uch reparations include an apology, a recognition of responsibility, and restitutionary measures that will restore their dignity, health, reputation, and place in society."⁷⁸ "On the other hand, cash compensation produces ambivalence among many victims, and is not often considered central to the healing process [i]n this way, the Court's emphasis upon official apologies, the publication and circulation of its judgments, and rehabilitation is well placed."⁷⁹

c. Cultural Approach to Reparations

The Court has also displayed a deep appreciation for the cultural differences that distinguish the claimants seeking redress. Deference to local communities has led the Court to tailor restitution to cultural differences. The cultural approach is reflected in many, if not all aspects of the Court's reparations. The Court's deference to local customs has not weakened the

⁷⁴ Antkowiak, *supra* note 25, at 387.

⁷⁵ Grossman, *supra* note 3, at 1376.

⁷⁶ Antkowiak, *supra* note 25, at 388.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

import of its declarations. On the contrary, by respecting the mores of local communities, the Court has achieved a remarkable degree of authority.

Typically, the Court will apply general principles to cultural particularities. Two basic principles underpin most of the Court's reparations. First, the Court remains committed to awarding reparations that restore the victims' dignity. Second, the Court intends to grant reparations that prevent future violations. With these two guiding principles in mind, the Court then considers the harm suffered by the victims in light of cultural particularities. Finally, the Court considers the type of remedial measures in light of cultural identities and means.

The Court recognizes that language barriers must be considered when granting reparations. For example, in cases involving reparations for indigenous communities, the Court ordered the State to publish the Court's judgments in Maya K'iché⁸⁰ and Dutch,⁸¹ the official languages of the victims. The translations were simple, but effective ways of acknowledging cultural differences.

When the Saramakas, a tribal people, brought a claim against Suriname for unjustly depriving them of their land, the Court structured the reparations to reflect the traditional practices of the Saramaka.⁸² Rather than individually naming the Saramaka as claimants, the Court perceptively noted that "the members of the Saramaka people are identifiable in accordance with Saramaka customary law, given that each Saramaka individual belongs to only one of the twelve matrilineal *lös* in which the community is organized."⁸³ Instead of insisting on receiving individual petitioners, the Court permitted the Saramakas to present their claim as a group. Rather than formulating and enforcing rigid procedural standards, the Court has adapted its jurisprudence to fit within the community seeking redress.

The Court's cultural approach is also evident in its decisions to add or reject beneficiaries of reparations. As previously mentioned in *Bámaca-Velásquez v. Guatemala*, the victim's sister had not been presented to the Court as a victim until nearly nine years after the harm was caused. "Nevertheless, the Court took "into account the special circumstances of the conflict and poor communications [at] the time of the events, and it accept[ed] the argument regarding the characteristics of the Mayan culture, and [the ethnic group the victim's family was a member of]."⁸⁴ By taking these cultural factors into account, the Court was able to add the victim's sister as a beneficiary.

d. Creative Approach to Reparations

The Court also has been able to address a wide range of claims because it has taken creative approaches to reparations. It adapted its decisions based on input it received from the claimants who appeared before it. Furthermore, the Court learned from its past decisions by actively monitoring and enforcing its judgments. The Court was able to learn from its mistakes and successes. The Court's approach is not overly formalistic or legalistic. It focuses on the victims rather than state-to-state interactions, as many other human rights bodies often do. The

⁸⁰ *Case of Tiu-Tojín v. Guatemala*. Merits, Reparations and Costs (para. 108).

⁸¹ *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs (para. 196).

⁸² *Id.* at (para. 188).

⁸³ *Id.*

⁸⁴ *Case of Bámaca-Velásquez v. Guatemala*. Merits.; *Case of Bámaca-Velásquez v. Guatemala*. Reparations and Costs (para. 36).

Court's orders are detailed, practical, and measurable. The Court's decisions adapt general principles to human rights law and to the realities on the ground.

In States with unreliable lines of communication or remote populations, the Court thought of creative ways to contact the victims of mass violence. The Court instructed States to repeatedly broadcast radio transmissions during timeframes when victim audiences would most likely be listening.⁸⁵ Indeed, the Court has required States to use new technologies to better implement remedial measures. For example, DNA screening has become a commonly ordered reparation to establish the identity of the dead.⁸⁶

The Court's characteristic creativity goes beyond using cutting edge technology to implement its orders. The Court also demonstrated its inventiveness in the substantive nature of its reparations. In *Loayza-Tamayo v. Peru*, a case dealing with a professor who was illegally detained, the Court considered awarding reparations for damage to a "life plan." The life plan is "akin to the concept of personal fulfillment, which in turn is based on the options that an individual may have for leading his life and achieving the goal that he set for himself."⁸⁷ Although, the Court recognized "grave damage to the 'life plan' of Ms. Maria Elena Loayza-Tamayo", it refrained from awarding reparations since "neither case law nor doctrine has evolved to the point where acknowledgment of damage to a life plan can be translated into economic terms."⁸⁸ However, a dissenting judge signaled his support for the life plan. Given the Court's willingness to adapt over time, the life plan could become commonly used reparation in the future. Although the life plan reparation may represent the Court's future, it will not be discussed in detail in this report.

e. Tailored and Specific Approach to Reparations

The Court's use of tailored and specific orders is one of the core features of the Court's case law. Tailored and specific orders leave minimal room for interpretation. The Court issues reparations this way in order to reduce state discretion and assure efficient implementation of the reparations.

An example of the detail the Court has used to ensure State discretion is minimized is in *Serrano-Cruz Sisters v. El Salvador*, where armed forces forcibly disappeared child sisters as part of a systematic occurrence during the State's internal conflict. By the time the case reached the Court, the State had already created "the Inter-institutional Commission to trace children who disappeared as a result of the armed conflict in El Salvador."⁸⁹ However, the Court noted the State's Decree creating the commission "did not contain specific regulations on the function or the working methods of the commission in order to fulfill its mandate."⁹⁰ The Court asserted its role to "make observations on the parameters that [the] national commission [should] comply with, and how it should function" as a measure of reparation.⁹¹

The Court established specific parameters that the State must adhere to when implementing the Commission. First, the Court noted that the State must evaluate why previous

⁸⁵ *Case of Tiu-Tojín v. Guatemala*. Merits, Reparations and Costs (para. 108).

⁸⁶ *Case of Goiburú et al. v. Paraguay*. Merits, Reparations and Costs (para. 172).

⁸⁷ I/A Court H.R., *Case of Loayza-Tamayo v. Peru*. Reparations and Costs. Judgment of November 27, 1998. Series C No. 42 (para. 148).

⁸⁸ *Id.* at (para. 153).

⁸⁹ *Case of Serrano-Cruz Sisters v. El Salvador*. Merits, Reparations and Costs.

⁹⁰ *Id.* at (para. 183).

⁹¹ *Id.* at (para. 184).

initiatives were unsuccessful. “The State must ensure that all its institutions and authorities are obliged to cooperate by providing information to the national tracing commission and by providing access to all files and records that could contain information on the possible fate of [the children].”⁹² Next, “the independence and impartiality of the members of the national tracing commission must be ensured, and it must have the necessary human, financial, logistic, scientific and other resources to be able to investigate”⁹³ Furthermore, the composition of the commission is important in ensuring effectiveness. “The Court considers that the national tracing commission must include State institutions that have demonstrated some interest in resolving this problem and others who should be members because of their functions, and also that civil society should participate through non-governmental organizations that have been engaged in this search or that are specialized in working with young disappeared persons.”⁹⁴

The Court did not shy away from dictating exactly what had to be done. The Court has taken these measures to greater lengths in more recent jurisprudence. The Court developed its specific and tailored approach to reparations after finding that leaving room for discretion with States in carrying out general reparations led to ineffective outcomes.

III. FORMS OF COLLECTIVE AND MORAL REPARATIONS

1. Judgment Itself as a “Per Se” Form of Reparation

The Court commonly asserts that the judgment itself is a *per se* form of reparation to the victims. However, the Court differs from other human rights tribunals in that it typically does not find this to be adequate to repair the moral harm suffered by the victims. Instead, the Court usually declares that the judgment itself is a *per se* form of reparation. The Court then proceeds to account for the circumstances of the case and the graveness of the violation in order to determine that the judgment itself cannot be the only non-pecuniary damage awarded for the moral harm suffered by the victims.

The Court follows international case law in that the judgment itself is a *per se* form of reparation to the victims. “International case law has repeatedly established that the judgment constitutes a *per se* a form of reparation.”⁹⁵ The judgments also constitute moral reparations. “The Court understands that the judgment on the merits ... is in itself a type of reparation and moral satisfaction of significance and importance for the families of the victims.”⁹⁶

However, the Court differs from other human rights tribunals because it typically does not hold that the judgment itself is adequate to repair moral damages. The Court noted in earlier jurisprudence, “there are numerous cases in which other international tribunals have decided that a condemnatory judgment constitutes *per se* adequate reparation for moral damages, as amply demonstrated by the jurisprudence of, among others, the European Court of Human Rights.”⁹⁷ Recognizing this, the Court further asserted, “it is the Court's opinion that although a condemnatory judgment may in itself constitute a form of reparation and moral satisfaction,

⁹² *Id.* at (para. 186).

⁹³ *Id.* at (para. 187).

⁹⁴ *Id.* at (para. 188).

⁹⁵ *Case of Myrna Mack-Chang v. Guatemala*. Merits, Reparations and Costs (para. 260).

⁹⁶ *Case of Velásquez-Rodríguez v. Honduras*. Reparations and Costs (para. 36).

⁹⁷ I/A Court H.R., *Case of Neira-Alegría et al. v. Peru*. Reparations and Costs. Judgment of September 19, 1996. Series C No. 29, (para. 56).

whether or not there has been recognition on the part of the State, it would not suffice in the instant case, owing to the particular seriousness of the violation of the right to life and of the moral suffering inflicted on the victims and their families, which deserve be paid fair compensation.”⁹⁸ That the judgment itself is not adequate as a form of moral satisfaction due to the seriousness of the violation is an approach that that Court has maintained throughout its case law when dealing with gross human rights violations.

The Court’s determination that the judgment constitutes a *per se* a form of reparation in *Myrna Mack-Chang v. Guatemala*, an extra-legal execution case, is illustrative of its usual approach. After noting that the judgment constitutes *per se* a form of reparation, the Court continued, “nevertheless, given the grave circumstances of the instant case, the intensity of the suffering caused by the respective facts to the victim and [next] of kin, the alterations to the conditions of existence of the next of kin and then other non-material or non-pecuniary consequences suffered by the later, the Court deems that it must order payment of a compensation for non-pecuniary damages, in fairness.”⁹⁹ Therefore, the Court does not limit compensation for victim’s mental and physical suffering because the judgment constitutes *per se* a form of reparation.

The Court, particularly in cases of gross violations of human rights, looks at the circumstances of the case to determine mental and physical suffering. In *Myrna Mack-Chang*, the Court took into account that the victim was extra-legally executed in circumstances of extreme violence “for which reason is evident that she felt corporal pain and suffering before her death, and this was aggravated by the climate of harassment at the time.”¹⁰⁰ Therefore, “non-pecuniary damage inflicted on the victim is evident, at [sic] it is part of human nature that every person subject to aggression such as that committed against [the victim] experiences deep moral suffering.”¹⁰¹ Consequently, in cases involving gross violations of human rights, even though the judgment constitutes a necessary *per se* a form of reparation, it does not adequately repair the mental and physical damages caused to the victim and the next of kin.

2. Right to Truth

The Court has repeatedly asserted the right to truth as an important measure of reparation under international human rights law. “The Court considers that the victims of grave human rights violations and their next of kin, if applicable, have the right to know the truth.”¹⁰² “This right to truth has been developed by international human rights law, its recognition and exercise in any specific situation, is an important measure of reparation.”¹⁰³

The Court considers the right to truth to be an individual and collective right. Individually, it is “the right of the next of kin of victims to know what happened and the identity of the [agents] responsible.”¹⁰⁴ Therefore, “the State has a duty to investigate the facts and to punish those responsible.”¹⁰⁵ Individually and collectively, “this measure benefits not only the

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Case of Myrna Mack-Chang v. Guatemala*. Merits, Reparations and Costs.

¹⁰¹ *Id.*

¹⁰² *Case of the 19 Merchants v. Colombia*. Merits, Reparations and Costs (para. 259).

¹⁰³ *Id.*

¹⁰⁴ *Id.* at (para. 258).

¹⁰⁵ *Id.*

next of kin victims, but also society as a whole, because, by knowing the truth about such crimes, it can prevent them in the future.”¹⁰⁶

In a separate opinion, Judge A.A. Cançado Trindade expounded on the importance of the right to truth.¹⁰⁷ “The search for truth – as illustrated by the cases of forced disappearance of persons – constitutes the starting-point for the liberation as well as the protection of the human being; without truth (however unbearable it might come to be) one cannot be freed from the torment of uncertainty, and it is not possible either to exercise the protected rights.”¹⁰⁸ “The right to truth applies ultimately also as a sign of respect for the dead and the living. The hiding of mortal remains of a disappeared person, in a flagrant lack of respect to them, threatens to disrupt the spiritual bond which links the dead to the living, and attempts against the solidarity which ought to guide the paths of the human kind in her temporal dimension.”¹⁰⁹

Particularly with grave human rights violations, the right to truth not only restores the dignity of the individual victims and their next of kin, but it also prevents human rights violations from occurring in the future by promoting societal awareness. “Every person, including the next of kin of the victims of grave violations of human rights, has the right to the truth. Therefore, the next of kin of the victims and society as a whole must be informed of everything that has happened in connection with said violations.”¹¹⁰ In *Myrna Mack-Chang v. Guatemala*, an extra-legal execution case, the Court required the investigation, prosecution and punishment of those responsible. To keep the victim’s community informed of the State’s efforts to make amends, the Court ordered, “the outcome of the [domestic criminal proceedings against the perpetrators] must be made known to the public.”¹¹¹

In recent cases, the Court emphasized that “[t]he acknowledgment and exercise of the right to know the truth in a specific situation constitutes a means of reparation.”¹¹² Deceptions and half-truths foster impunity. In the *La Rochela Massacre v. Columbia*, paramilitaries kidnapped and later gunned down fifteen justice officials who were investigating a series of human rights abuses in La Rochela, a district in central Colombia.¹¹³ The murderers staged the scene of the massacre to incriminate a local guerilla group. In its review of the case, the Court framed the right to truth as a collective and moral reparation. The Court required that the “findings in such [domestic criminal] proceedings shall be publicized by the State in such a way as to enable the Colombian society to know the truth regarding the events of the Rochela Massacre.”¹¹⁴

3. The Duty to Investigate, Prosecute, and Punish

The duty to investigate, prosecute, and punish was one of the first state obligations enunciated by the Court.¹¹⁵ The Court has repeatedly emphasized the seriousness of this

¹⁰⁶ *Id.* at (para. 259).

¹⁰⁷ *Case of Bámaca-Velásquez v. Guatemala*. Merits, separate opinion of Judge A.A. Cançado Trindade, (para. 29), p. 8

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at (para. 31), p. 8-9.

¹¹⁰ *Case of Myrna Mack-Chang v. Guatemala*. Merits, Reparations and Costs (para. 275).

¹¹¹ *Id.*

¹¹² Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. (para. 289).

¹¹³ *Id.*

¹¹⁴ *Id.* at (para. 295).

¹¹⁵ See *Velasquez Rodriguez v. Honduras*.

obligation. “Whenever there has been a human rights violation, the State has a duty to investigate the facts and punish those responsible ... and this obligation must be complied with in a serious manner and not as a mere formality.”¹¹⁶ The duty to investigate, prosecute and punish achieves several purposes, in that it: combats impunity; provides domestic justice as dignity to the victims; and provides domestic justice as collective reparation for the society as a whole.

The Court stresses the need to combat impunity. By fully complying with the duty to investigate, prosecute and punish, the State combats impunity and deters future repetition. For example, in *Serrano-Cruz Sisters v. El Salvador*, where two child sisters were forcibly disappeared, the Court established “that the State has the obligation to avoid and combat impunity, which the Court defined as ‘the absence of any investigation, pursuit, capture, prosecution and conviction of those responsible for the violation[s].’”¹¹⁷

The Court also emphasizes the connection between domestic justice and the dignity of the victims. In *Goiburú et al v. Paraguay*, Paraguayan authorities disappeared four men who opposed the ruling regime. In its analysis of the case, the Court observed that “[t]he absence of a complete and effective investigation into the facts and the impunity constitute a source of additional suffering and anguish for the next of kin.”¹¹⁸ Investigations and punishments serve as reparations because they restore some dignity to the deceased and grant solace to the survivors of the tragedy. In *Goiburú*, the family members wanted to know the fate of their missing relatives. That knowledge presumably helped assuage “the mental and moral anguish caused by the alleged detention and subsequent disappearance of the alleged victims and the alleged absence of a complete, impartial and effective investigation into the facts.”¹¹⁹

Justice provided by domestic legal entities also serves as a collective reparation. As intertwined with the right to truth, it is essential that the “outcome of the proceeding [be] made known to the public.”¹²⁰ “These measures benefit not only the next of kin of the victims, but also society as a whole, because, by knowing the truth about such crimes, they can be prevented in the future.”¹²¹ If society is made aware of human rights abuses, there is little chance that the perpetrators will be able to escape judgment. The masterminds of genocide, ethnic cleansing, and forced disappearances will not find sanctuary behind a veil of impunity. By forcing society to confront these evils, the Court has helped prevent future human rights violations.

The duty to investigate, prosecute and punish has been refined as the Court has tackled more cases. The Court’s instructions on how to fulfill the duty to investigate, prosecute and punish have varied in detail since the *Velásquez-Rodríguez* opinion, but the most recent cases provide clear instructions. By being very specific, the Court ensures the State will fulfill its obligations. The Court’s orders have included: providing security; providing access to the investigation process; removing legal obstacles; ensuring speediness of the process; ensuring effectiveness of the process; accounting for time elapsed; and accounting for the gravity of the violations.

In *Ituango Massacre v. Colombia*, paramilitary groups operating with the tacit approval of the Colombian police, tortured and disappeared Colombian civilians residing in the Ituango region. Real property was wrongfully seized and livestock and homes were destroyed.¹²² In

¹¹⁶ *Case of Serrano-Cruz Sisters v. El Salvador*. Merits, Reparations and Costs (para. 168).

¹¹⁷ *Id.* at (para. 170).

¹¹⁸ *Id.*

¹¹⁹ *Case of Goiburú et al v. Paraguay*. Merits, Reparations and Costs, (para. 4).

¹²⁰ *Id.*

¹²¹ *Case of Serrano-Cruz Sisters v. El Salvador*. Merits, Reparations and Costs (para. 169).

¹²² *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs.

Ituango, the Court's order to the Colombian government illustrates the essential components to guarantee effective investigation, prosecution and punishment. The Court ordered the State to:

- (a) remove all the obstacles, *de facto* and *de jure*, that maintain impunity;
- (b) use all available means to expedite the investigation and judicial proceedings[;] and
- (c) grant guarantees of adequate safety to the victims, investigators, witnesses, human rights defenders, judicial employees, prosecutors and other agents of justice, as well as the former and current inhabitants of Ituango.¹²³

The Court has only recently clarified that removal of legal obstacles entails removing both obstacles in the written laws and in practice. In previous cases, the Court did not require the investigation to remove *de facto* and *de jure* obstacles. The *Ituango* selective execution case, stresses the importance of an exhaustive search for the truth regarding human rights abuses. It also indicates that the duty to investigate, prosecute, and punish is intended to do more than simply provide answers for the grieving relatives of victims. Investigations, prosecutions, and punishments deter future human rights abuses. The lengths to which a state will go to hunt down the perpetrators of mass atrocity should warn potential violators that their crimes will not go unnoticed or unpunished.

Further, any amnesty provision poses a serious legal obstacle to justice. Therefore, the Court has consistently declared that amnesty for human rights abuses conflicts with international law.¹²⁴ The Court "reiterates its *jurisprudence constante* that no domestic legal provision of law can impede compliance by a State with the obligation to investigate and punish those responsible for human rights violations."¹²⁵ "Specifically, the following are unacceptable: amnesty provisions, rules regarding extinguishment and establishment of exclusions of liability that seek to impede investigation and punishment of those responsible for grave human rights violations."¹²⁶

The Court is practical in its order that the State provide security in the investigation and prosecution process. In *Myrna Mack-Chang v. Guatemala*, an extra-legal execution case, the Court held the State must provide sufficient security measures to the judicial authorities, prosecutors, witnesses, legal operators and [victim's next of kin]."¹²⁷ The Court recognized that investigators and witnesses would not facilitate a thorough investigation if they felt threatened or intimidated by the perpetrators of the crime. The investigation could only be effectively carried if the State guaranteed the safety of everyone involved. Security can also be achieved through transparency.

The Court ensures that the next of kin have access to the investigation process.¹²⁸ In *Tiu Tojín*, the Court mandated that "the State shall guarantee, as far as possible, that the victims of the present case do not have to make excessive or exaggerated efforts to access the centers for the administration of justice in charge of the investigation of the present case."¹²⁹ The surviving family members should not have to wade through a swamp of bureaucratic sinkholes in order to make sure their dead relatives are afforded a degree of justice. By monitoring the investigation,

¹²³ *Id.* at (para. 400).

¹²⁴ Diego Rodriguez-Pinzon, *Reparations: A Comparative Perspective*, 56:6 AM. U. L. REV. 1390, 1393 (2007).

¹²⁵ *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs (para. 304).

¹²⁶ *Id.*

¹²⁷ *Case of Myrna Mack-Chang v. Guatemala*. Merits, Reparations and Costs (para. 277).

¹²⁸ *Case of Tiu-Tojín v. Guatemala*. Merits, Reparations and Costs (para. 100).

¹²⁹ *Id.*

the next of kin exert pressure on the State to bring the perpetrators of human rights violations to justice.

The Court further also seeks to ensure that the investigation and prosecution process will be timely and effective — two key factors in combating impunity and State complacency in carrying out the Court’s orders. In cases where an effective investigation has not occurred, and in particular a great deal of time has passed, the Court demands that the State investigate, prosecute and punish, and guarantee that the “domestic proceedings ... will be effective.”¹³⁰ In *Plan de Sánchez Massacre v. Guatemala*, where State agents perpetrated a mass murder of over 250 persons from the Mayan indigenous community, it had been “more than 22 years after the massacre and 10 after the corresponding investigations were opened.”¹³¹ Because this time had passed and the State still had not investigated the facts or identified, prosecuted and punished those responsible, the Court held that this “constitutes a situation of impunity [which] harms the victims, and encourages the chronic repetition of the human rights violations ...”¹³²

In accounting for the gravity of the violations in *Tiu Tojín v. Guatemala*, where an indigenous victim and her daughter were detained and forcibly disappeared by state officials, the Court observed that “the obligation to investigate with due diligence acquires special intensity and importance due to the gravity of the crimes committed and the nature of the rights infringed.”¹³³ The *Tiu Tojín* court held that cases of forced disappearances warranted an investigation of the utmost intensity. The *Tiu Tojín* opinion even suggests that human rights abuses require more robust and extensive investigations than ordinary crimes. Human rights abuses, like the forced disappearances in *Tiu Tojín*, are so appalling that they necessitate equally vigorous responses.

Furthermore, in the investigation phase, several crucial factors have been ordered by the Court in order to ensure the effectiveness of the investigation. These include: the investigation as the State’s duty and not individual responsibility; that the State not be allowed to claim “state secret” in the investigation; and that the State has a duty to investigate and punish not only the material but also the intellectual actors as well.

The State’s duty to investigate and punish not only the material but also the intellectual authors of the violation was clearly laid forth in *Myrna Mack-Chang v. Guatemala*, an extra-legal execution case. The Court specified precisely who must be the target of investigation and punishment. “To completely redress this aspect of the violations committed, the State must effectively investigate the facts in the instant case, so as to identify, try, and punish all the direct perpetrators and accessories, and the other persons responsible for [the victim’s extra-legal execution], and for the cover-up of the extra-legal execution and of the other facts ...”¹³⁴

4. Search, Exhumation and Proper Burial of Victim’s Remains

The Court recognizes that knowledge of the victim’s final resting place is of the utmost importance to the victim’s family. “[O]ne of the greatest sources of suffering for the Mowiwana community members is that they do not know what has happened to the remains of their loved ones, and as a result, they cannot honor and bury them in accordance with fundamental norms of

¹³⁰ *Case of the Plan de Sánchez Massacre v. Guatemala*. Reparations and Costs (para. 99).

¹³¹ *Id.* at (para. 94).

¹³² *Id.* at (para. 95).

¹³³ *Case of Tiu-Tojín v. Guatemala*. Merits, Reparations and Costs.

¹³⁴ *Case of Myrna Mack-Chang v. Guatemala*. Merits, Reparations and Costs (para. 275).

N'djuka culture.”¹³⁵ As a result, “[t]he Court’s first remedies addressing individual victims ... are orders that states find and return the corpses of the disappeared and executed... This measure is so fundamental in Inter-American jurisprudence that willful obstruction in this regard or disrespectful treatment of corpses would eventually be regarded as cruel and inhuman treatment toward the next of kin.”¹³⁶

In *19 Merchants v. Colombia*, the national army and a paramilitary group forcibly disappeared nineteen merchants. In this case, the Court discussed the purpose behind the next of kin’s rights to know the location of the victim’s remains and the right to have them returned. “It is an act of justice to know the whereabouts of the disappeared persons, and it is a form of reparation because it allows the victims to be dignified, by recognizing the importance of their memory for those who were their loved ones and by allowing the latter to give them appropriate burial.”¹³⁷

The next of kin’s right to know the location of her loved ones remains can be viewed as only an individual reparation. The next of kin’s right to know the location of the victim’s remains necessarily entails the State’s obligation to genuinely search for remains and to facilitate the return of remains. “In the case of those detained and disappeared, the return of the remains is, in itself, and act of justice and reparation.”¹³⁸ However the search can also be a collective reparation because it provides closure for communities as well as the victim’s next of kin. “While locating and identifying cadavers constitute basic steps of a criminal investigation, here a central objective is satisfaction, and even the rehabilitation, of both family members and communities.”¹³⁹ By ordering a national exhumation program, the State can provide resolution for communities where mass atrocities were perpetrated.

In addition to locating and exhuming the dead, the Court also makes certain that the remains are handled with the utmost respect. The Court views “care for the mortal remains of a person [as] a form of human dignity.”¹⁴⁰ “The mortal remains of a person deserve respectful treatment before that person’s next of kin, due to the significance they have for them.”¹⁴¹

The Court has also displayed notable concern for handling the victim’s remains in accordance with the victim’s culture. The Court recognizes that different cultural mores must be taken into account when ordering reparations concerning victim’s remains. In *Bámaca-Velásquez v. Guatemala*, the Court recognized that “respect for those remains, observed in all cultures, acquires a very special significance in the [victim’s culture and ethnic group].”¹⁴² The Court observed the cultural relevance of the victim’s ethnic group in that “funeral ceremonies ensure the possibility of the generations of the living, the deceased person, and the deceased ancestors meeting anew ... thus, the cycle between life and death closes with these funeral ceremonies.”¹⁴³ In light of the relevant cultural considerations, the Court ordered the State to “conduct the exhumations, in the presence of the next of kin, to locate the mortal remains of [the victim] and

¹³⁵ *Case of the Moiwana Community v. Suriname*. Preliminary Objections, Merits, Reparations and Costs (para. 100).

¹³⁶ Antkowiak, *supra* note 25, at 367.

¹³⁷ *Case of the 19 Merchants v. Colombia*. Merits, Reparations and Costs (para. 266).

¹³⁸ *Id.*

¹³⁹ Antkowiak, *supra* note 25, at 367.

¹⁴⁰ *Case of Bámaca-Velásquez v. Guatemala*. Reparations and Costs (para. 81).

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

hand them over to them.”¹⁴⁴ The Court even expanded the scope of this reparation to include a national exhumations program. “As a measure of satisfaction, the Court considers that the State must implement, if it does not already exist, a national exhumations program.”¹⁴⁵

The Court noted in early decisions that once mortal remains are found and delivered to the victim’s next of kin, the State has a further obligation to provide appropriate burial, accounting for religious beliefs and custom. In the *Case of the Street Children*, where five youths were burned, tortured and shot in the head by state security agents, the Court ordered the State to “adopt the necessary measures to transfer the mortal remains of this victim to the place chosen by his next of kin, without any cost to them, so as to satisfy the desire of the family to give them appropriate burial, according to their religious beliefs and customs.”¹⁴⁶ Here, the Court did not further analyze religious beliefs and customs.

The Court has also been willing to utilize new technologies to facilitate the return of victims’ remains. In *Goiburú et al v. Paraguay*, a disappearance case, the Court required the State to locate the remains of the victims and “return them to their next of kin as soon as possible, once it has proved the relationship through DNA testing.”¹⁴⁷ The Court instructed the Peruvian government in *La Cantuta v. Peru*, where soldiers kidnapped, executed and disappeared a human rights professor and a group of his students from a local university, to “search for and locate the mortal remains of [the victims]... Should the remains of the victims be found, the State must deliver them without delay to their next of kin, prior genetic parentage evaluation thereof. The State must also bear any burial expenses, as agreed with the victims’ next of kin.”¹⁴⁸ Accurate identification is central to reparations involving exhumation and burials. Like the public acknowledgment, the exhumation and burial of human rights victims bears testimony to the abuses of the State. The reparation also provides comfort to the relatives of the victims since they gain knowledge of their family members’ final resting places. The exacting identification process and eventual interment reminds society of past human rights abuses and encourages measures to prevent future episodes.

5. Human Rights Training for State Officials

In addition to discovering the truth about human rights abuses and punishing those responsible, the Court requires the State to prevent future human rights violations. The Court has ordered States to design and implement comprehensive human rights training for State officials as a means of guaranteeing ongoing compliance with human rights obligations. The Court has focused on educating public officials about their responsibilities to protect human rights. In *Myrna Mack-Chang v. Guatemala*, an extra-legal execution case, the Court ordered that “the State must adopt the necessary provisions [for incorporating training] “the State must adopt the necessary provisions [for incorporating training] and, specifically, those tending to educate and train all members of its armed forces, the police and its security agencies regarding the principles and rules for protection of human rights, even under state of emergency.”¹⁴⁹ The Court’s focus on military and police forces is not unusual. By targeting the branches of government responsible

¹⁴⁴ *Id.* at (para. 82).

¹⁴⁵ *Id.* at (para. 83).

¹⁴⁶ *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala*. Reparations and Costs (para. 102).

¹⁴⁷ *Case of Goiburú et al. v. Paraguay*. Merits, Reparations and Costs (para. 172).

¹⁴⁸ *Case of La Cantuta v. Peru*. Merits, Reparations and Costs (para. 231).

¹⁴⁹ *Case of Myrna Mack-Chang v. Guatemala*. Merits, Reparations and Costs (para. 282).

for upholding the law, the Court seeks to instill a better understanding of human rights obligation in the organs of government responsible for defending them. The Court further specified what the human rights curriculum in *Myrna Mack-Chang* would entail – “the State must specifically include education on human rights and International Humanitarian Law in its training programs for the members of the armed forces, of the police and of its security agencies.”¹⁵⁰

6. Structural Changes to Domestic Law

In some cases, the Court determined that human rights training alone would not bring about the necessary changes in the State’s government. Instead the State’s domestic law had to be modified. The entire structure of the State had to be altered in order to guarantee that human rights violations would not occur again in the future. The Court has achieved structural modifications by requiring States to ratify human rights treaties. In other cases, the Court reviewed the State’s governing instruments and ordered the State to overhaul its domestic laws in order to comply with basic human rights principles.

a. Ratifying Human Rights Instruments

The Court frequently orders States to make themselves parties to human rights treaties in order to prevent future abuses. *Ticona-Estrada et al v. Bolivia* is representative of the way the Court orders ratification of human rights instruments. In *Ticona-Estrada et al v. Bolivia*, where victim was a teacher who was detained, tortured and disappeared by state agents, the Court lauded the State for ratifying an international agreement concerning forced disappearances. “The Court positively values the State’s ratification of the International Convention for the Protection of All Persons against Enforced Disappearances and it positively values it, since it contributes to the non-repetition of the facts of the instant case.”¹⁵¹ By officially binding itself to the terms of a human rights instrument, the State signaled its intent to prevent future human rights violations.

However, in the *Serrano-Cruz Sisters v. El Salvador*, a forced disappearance case of two children, the Court had to do more than commend the responsible State.¹⁵² The Court found that the El Salvadoran government had not classified forced disappearances as a crime. The Court “observe[d] that this classification was not adapted to international standards on forced disappearance of persons as regards the description of the elements of the criminal classification and the penalty corresponding to the gravity of the crime. The Court considers that El Salvador should classify this crime appropriately and adopt the necessary measures to ratify the Inter-American Convention on the Forced Disappearance of Persons.”¹⁵³ The Court ordered the El Salvadoran government to ratify an international convention to fully comply with the terms of the reparations agreement.

b. Amending, Repealing, and Adopting New Domestic Law

Included in the obligation of the State to prevent future abuses is the duty to restructure domestic law so that it complies with international human rights norms. As in *Bámaca-Velásquez*

¹⁵⁰ *Id.*

¹⁵¹ *Case of Ticona-Estrada et al. v. Bolivia*. Merits, Reparations and Costs (para. 176).

¹⁵² *Case of Serrano-Cruz Sisters v. El Salvador*. Merits, Reparations and Costs.

¹⁵³ *Id.* at (para. 174).

v. Guatemala, a disappearance case, the Court usually broadly asserts what the State must do. In *Bámaca-Velásquez*, the Court ordered the State to “adopt the legislative and any other measures required to adapt the [domestic] legal system to international human rights norms and humanitarian law, and to make them domestically effective.”¹⁵⁴

In the wake of massive human rights violations, the Court crafted collective reparations with the intent of “reestablishing and rescuing the general legal order.”¹⁵⁵ The Court salvaged the legal order by promoting structural changes that would ultimately foster an environment conducive to human rights enforcement. The Court required special training for security and military forces, and offender states were forced to ratify human rights instruments and overhaul domestic law. These measures encouraged the “advancement of human rights by creating the conditions for repairing other existing violations and preventing new violations from occurring.”¹⁵⁶

The Court targeted institutions that were entrusted with safeguarding human rights, but historically had abused them. Essentially, reparations had to restore the authority of the police and military forces, but constrain them in order to prevent future violations. In *Miguel Castro Prison v. Peru*, Peruvian prison guards killed 42 inmates and injured 175 more. Over 300 inmates were tortured. The Court held that “in order to adequately guarantee the right to life and integrity, the members of the security forces must receive adequate training.”¹⁵⁷ The Court ordered Peru to “design and implement, within a reasonable period of time, human rights education programs, addressed to agents of the Peruvian police force, on the international standards applicable to matters regarding treatment of inmates in situations of alterations of public order in penitentiary centers.”¹⁵⁸

Similarly in the *Case of La Cantuta v. Peru*, where a group of individuals was executed and disappeared, the Court mandated human rights training for the “security intelligence services, the Armed Forces and the National Police on legality issues and restrictions related to the use of force in general situations, armed conflict and terrorism, the due obedience concept and the role of said institutions in situations such as the events in the instant case. In doing so, the State must implement, on a permanent basis and within a reasonable time, human rights-oriented programs for all-rank members of the above-mentioned institutions.”¹⁵⁹ “The State must also adopt the necessary measures to train and educate prosecutors and judges, including officers of military criminal courts, on international standards related to the judicial protection of human rights.”¹⁶⁰

¹⁵⁴ *Case of Bámaca-Velásquez v. Guatemala*. Reparations and Costs (para. 85).

¹⁵⁵ Ramírez, *supra* note 27, at 1433.

¹⁵⁶ Carlos Ayala, *Lawyering for Reparations: Inter-American Perspective*, 56:6 AM. U. L. REV. 1413, 1417 (2007).

¹⁵⁷ I/A Court H.R., *Case of the Miguel Castro-Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160 (para. 451); *see also* I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163 (para. 303) (“the state must adopt measures designed to educate and train members of security forces on the principles and rules governing the protection of human rights and international humanitarian laws, including limitations that constrain them.”).

¹⁵⁸ *Case of the Miguel Castro-Castro Prison v. Peru*. Merits, Reparations and Costs (para. 452).

¹⁵⁹ *Case of La Cantuta v. Peru*. Merits, Reparations and Costs (para. 240).

¹⁶⁰ *Id.* at (para. 241).

7. The Duty to Publicize

The duty to publish, in part or whole, the Court's judgment in national newspapers is consistently applied by the Court in creative and thoughtful ways that take into account the circumstances surrounding the case and needs of the victims and their next of kin. Typically, when weighing the needs of victims, the Court considers how their communities will receive information regarding their cases.

The duty to publicize is designed for the satisfaction of victims and the prevention of further violations.¹⁶¹ Once this remedy was introduced, the tribunal has never looked back, requiring it in nearly every subsequent case, even when states publicly acknowledged responsibility for the violations.¹⁶² This inexpensive remedy serves many purposes including clearing the name of the victim, who often is much maligned in the public's perception.¹⁶³

The duty to publicize has evolved in its scope and specificity. Not only has the Court's judgment including the facts, the legal reasoning, and reparations become more elaborate in recent years, but the Court has also adapted its orders to better suit the appropriate method of publication. The Court orders: that the State publish the judgment in official newspapers and on a government website with the idea that the judgment itself is an official document; that the State publish the judgment in a national newspaper with the idea that the reparation has a collective aspect and thereby the whole society must be able to access the judgment to learn the facts and holdings; and that the State broadcast via radio the judgment with the idea that victims are of paramount importance and must have access to the judgment, and in some cultural contexts radio broadcast may be the only method of delivery. The Court is very specific on how the aforementioned methods of publication must be accomplished; including a strict timeframe the State is required to meet.

The Court commonly orders that the State publish the judgment in official newspapers and on a government website with the idea that the judgment itself is an official document. For example, in *Yatama v. Nicaragua*, where political candidates from a indigenous regional party were excluded from municipal elections, the Court ordered publication of judgment in the official gazette and on the State's official website.¹⁶⁴ By being presented on the State's website, the judgment took on the appearance of an official State document. Another example is *Tiu Tojín v. Guatemala*, a case dealing with military abuse of indigenous people, where the Court ordered publication of specified passages of the Court's opinion in "the Official Newspaper and in another of wide national circulation."¹⁶⁵ Like the State's website, the official newspaper carries the unofficial endorsement of the State government. However, the Court orders publication in both official and national newspapers.

The Court commonly orders that the State publish the judgment in a national newspaper with the idea that the reparation has a collective aspect and thereby the whole society must be able to access the judgment to learn the facts and holdings. For example, in *Yatama v. Nicaragua*, a case concerning indigenous political candidates, the Court ordered publication in not only a national newspaper but also in another newspaper "with widespread circulation."¹⁶⁶

¹⁶¹ Antkowiak, *supra* note 25, at 380.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Case of Yatama v. Nicaragua*. Preliminary Objections, Merits, Reparations and Costs (para. 252).

¹⁶⁵ *Case of Tiu-Tojín v. Guatemala*. Merits, Reparations and Costs (para. 106).

¹⁶⁶ *Case of Yatama v. Nicaragua*. Preliminary Objections, Merits, Reparations and Costs (para. 252).

Another example of collective redress is in *Case of the Rochela Massacre*, a case concerning the extra-legal execution of 15 judicial members. The severity of the crime in the *Rochela Massacre* warranted a full television program that explained what happened at La Rochela and featured the Colombian government's recognition of its complicity in the tragedy.¹⁶⁷ Reparations like in *Rochela Massacre* honor the memory of the victims, reduce the probability of future violence, and serve an important function in facilitating collective memory so that the whole of society is redressed for the violations committed in the name of their government.

The Court commonly orders the State to broadcast via radio the judgment with the idea that victims are of paramount importance and must have access to the judgment. In some contexts, radio broadcasts may be the only means of communicating with remote communities. This is a very practical approach. The Court developed the duty to publicize to accommodate victims, relatives, and communities that have limited access to news or may be proficient only in their indigenous languages. For example, in *Yatama v. Nicaragua*, concerning indigenous political candidates, the Court remembered that “the [indigenous] communities use radio as a means of information; [and] therefore consider[ed] it necessary for the State to publicize, on a radio station with broad coverage [pertinent parts of judgment] ... to be done in Spanish, Miskito, Sumo, Rama and English ...”¹⁶⁸ In *Yakye Axa Indigenous Community v. Paraguay*, where the State was denying the community effective rights to their ancestral lands, the Court required the State to pay for the costs of a radio broadcast “in [the indigenous language] and in Guaraní or Spanish, on a radio station to which the members of the [victimized] community have access.”¹⁶⁹ Transmitting the radio broadcasts in these languages ensures that the affected communities will have meaningful access to the information.

Yet another example illustrating cultural sensitivity is in *Saramaka People v. Suriname*, a situation dealing with military abuses of the Mayan indigenous people, where the Court also ordered publicity that would reach the audiences most affected by the government's actions. In the *Saramaka People*, the Court ordered the State to publish sections of the Court's judgment in Dutch in the local newspaper.¹⁷⁰ Moreover, the State had to finance two radio broadcasts explaining the Court's opinion in the language of the Saramaka people.¹⁷¹ The Court customized reparations regarding publicity so that the populations harmed would be able to understand the government's apology.

Like the Saramaka, the Maya in *Tiu Tojín v. Guatemala*, a case dealing partly with the military's abuses of the Mayan indigenous people, also merited special treatment in the order of radio broadcast. The Court “consider[ed] it necessary that the State make public, through a radio station of ample coverage in the department of El Quiché,” specified passages of the Court's opinion.”¹⁷² The Court was specific in what languages this must occur. “The aforementioned must be done in Spanish and in the Maya K'iché language, for which the translation of the previously mentioned sections of the present judgment to Maya K'iché must be ordered.”¹⁷³

The Court is very specific on how the methods of publication must be accomplished, with strict timelines. For example, in *Yakye Axa Indigenous Community v. Paraguay*, concerning ancestral lands, the Court specified that the State's radio broadcast of the judgment in the

¹⁶⁷ *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs (para. 277).

¹⁶⁸ *Case of Yatama v. Nicaragua*. Preliminary Objections, Merits, Reparations and Costs (para. 252).

¹⁶⁹ *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs (para. 227).

¹⁷⁰ *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs (para. 196).

¹⁷¹ *Id.*

¹⁷² *Id.* at (para. 108).

¹⁷³ *Id.* at (para. 108).

indigenous language and on a radio station to which the members of the victimized community have access to be made at least four times, with two weeks time between each broadcast.”¹⁷⁴ Another example of the Court’s specificity is in *Tiu Tojín v. Guatemala*, a case dealing with military abuse of indigenous people. The Court was careful in considering precisely how the judgment would reach the maximum number of individuals affected. The Court ordered publication of specified passages of the Court’s opinion in newspapers within six months, and the radio broadcast to be done on a Sunday and at least on four occasions with a four-week interval between each one. For this, the State has a one-year period as of the notification of the present Judgment.”¹⁷⁵

8. Public Acceptance of Responsibility and Apology

The Court consistently orders that the State conducts an act accepting its responsibility and in more recent case law, that the State apologizes for the human rights abuses committed. The Court places the individual victims and next of kin at the center by requiring elaborate public ceremonies, at times attended by high-ranking officials, in the presence of those effected, and with respect to culture and tradition of affected communities. The Court’s case law in this area has developed from generalized statements to specific requirements. Specific requirements include who must participate in the public act, how it must be conducted and disseminated, and when it must occur.

The purpose of the reparation requiring that the State carry out a public act of acknowledgment of its responsibility and a public apology is “to repair the damage to the reputation and honor the victims and their next of kin, and in order to avoid a repetition of acts such as those [in the case where reparations are ordered].”¹⁷⁶

The Court has more recently required the State to conduct both a public act of acknowledgment of State responsibility and a public apology, with the public apology being a later development. In *Moiwana Community v. Suriname*, where state agents massacred over 40 indigenous village members, the Court ordered that the State “publicly recognize its international responsibility for the facts of the instant case” and that the State officials “issue an apology to the Moiwana community members.”¹⁷⁷ Before ordering the apology, the Court noted that the State had “no objections to issue a public apology to the whole nation with regard to the occurrences that took place in the Village of Moiwana and to the survivors and the family members in particular.”¹⁷⁸

The Court has also required that the State’s public acceptance of responsibility be meaningful. Generally, the apology is considered meaningful if it is offered in the presence of the highest authorities of the State. In *Myrna Mack-Chang v. Guatemala*, the Court specifically required the State to carry out a public act of acknowledgment of its responsibility in the presence of the highest authorities of the State. “To act as guarantees of non-recidivism ... the State must carry out a public act of acknowledgment ... in the presence of the highest authorities of the State, which must be published in the media.”¹⁷⁹

¹⁷⁴ *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs (para. 227).

¹⁷⁵ *Id.*

¹⁷⁶ *Case of the 19 Merchants v. Colombia*. Merits, Reparations and Costs (para. 274).

¹⁷⁷ *Case of the Moiwana Community v. Suriname*. Preliminary Objections, Merits, Reparations and Costs (para. 216).

¹⁷⁸ *Id.*

¹⁷⁹ *Case of Myrna Mack-Chang v. Guatemala*. Merits, Reparations and Costs (para. 275).

The Court often provides detailed instructions to the State about what must occur during a public act of apology. In *Plan de Sánchez Massacre v. Guatemala*, involving full-scale indigenous community massacre, the Court detailed where the apology must occur, who must attend, how resources must be provided to those wanting to attend, what language it must occur in, how it must be publicized, and in what time frame it must occur.¹⁸⁰ “The act should be carried out in the [village where the massacre occurred], in the presence of high-ranking State authorities, and in particular, in the presence of the members of the [community and other victims].”¹⁸¹ “The State must provide the means to facilitate the presence of [villagers, community members and other victims and] also [must] conduct this act in both Spanish and [the victim’s native language], and publicize it in the media.”¹⁸² Finally, the Court set a specific timeframe. “The State shall carry out this activity within one year of notification of this judgment.”¹⁸³

The Court regularly orders States to publicly acknowledge human rights abuses in ways that conform to the customs of the victimized communities. In *Yakye Axa Indigenous Community v. Paraguay*, concerning ancestral lands, the Court demanded that the State “take into account the traditions and customs of the members of the Community.”¹⁸⁴ The Court issued a similar order in *Escué-Zapata v. Colombia*. The Court directed the government to publicly admit its role in the torture and execution of an indigenous human rights defender. The acknowledgment occurred in the victim’s hometown of Resguardo de Jamalo, in a public ceremony that included the State’s highest-ranking officials and in the presence of the victim’s relatives. Again, the Court required the State to “take into account the traditions, usages and customs of the members of the Community.”¹⁸⁵

However, the Court has not always ordered public apology at the request of the victims. In *Maritza Urrutia v. Guatemala*, a detention and torture case, the Court did not order a public act of acknowledgment or a public apology.¹⁸⁶ The Court noted that the President had “made an institutional acknowledgment of the State’s responsibility with regard to several cases being processed before the Commission, including the [present case].”¹⁸⁷ Additional apologies were superfluous.

The Court has also reserved the authority to reject public acknowledgments it deems inadequate. The Court dismissed the Colombian government’s admission of complicity in the Ituango Massacres because the public acknowledgment did not reflect the severity of the violation.¹⁸⁸ “[O]wing to the scale of the events in [Ituango Massacres], as a measure of satisfaction for the victims and a guarantee of non-repetition of the grave human rights violation that were committed, the State must acknowledge publicly, in the presence of senior authorities, its international responsibility for the facts of the massacre...”¹⁸⁹ The Court required senior level

¹⁸⁰ *Case of the Plan de Sánchez Massacre v. Guatemala*. Reparations and Costs.

¹⁸¹ *Id.* at (para. 100).

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs (para. 226).

¹⁸⁵ I/A Court H.R., *Case of Escué-Zapata v. Colombia*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, (para. 177).

¹⁸⁶ *Case of Maritza Urrutia v. Guatemala*. Merits, Reparations and Costs.

¹⁸⁷ *Id.* at (para. 178).

¹⁸⁸ *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs (para. 406).

¹⁸⁹ *Id.*

officials to acknowledge the State's failures. Anything less would not adequately provide reparation to the victims.

The Court's order in *Zambrano-Vélez et al v. Ecuador*, a case concerning the illegally execution of three individuals in front of their family members, indicates that some human rights abuses may require a higher quality apology. In *Zambrano-Vélez*, the Court characterized the Ecuadorian government's public acknowledgment as a "partial *acknowledgement* of responsibility."¹⁹⁰ The Court held that the partial public acknowledgment failed to preserve the memory of the victims and failed to guarantee non-repetition.¹⁹¹ The Court instructed the State to "carry out a public act of *acknowledgment* of its responsibility for the judicial execution of the victims" in the presence of the family members and with the participation of leading government officials."¹⁹² The Court remains committed to public acknowledgments of responsibility and apologies that both honor the victims and pledge non-repetition in the future.

9. Community Development and Infrastructure

The Court has developed creative ways to use reparations to restore community infrastructure that has been scarred by human rights violations. When the Court engages in community restoration, it typically includes an oversight component in order to make certain that the State fully complies with its demands.

Requiring investment in a fund for community development or ordering restoration of community infrastructure supervised by appropriate officials is a common way the Court has handled reparations in cases involving indigenous or ethnic communities. In fact, "court judgments have never awarded substantial individual moral damages to members of indigenous and ethnic communities; the judges have preferred to assign cash to developmental funds or programs."¹⁹³

In *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, an indigenous land rights case where the State was about to grant a logging company a concession to commence logging on communal lands, the Court ordered the State to invest in works or services of collective interest as reparation for immaterial damages.¹⁹⁴ "The State must invest, as a reparation for the immaterial damages, in the course of 12 months, the total sum of \$50,000 [United State dollars] in works or services of collective interest for the benefit of the [indigenous community], by common agreement with the Community and under the supervision of the Commission."¹⁹⁵

In *Moiwana Community v. Suriname*, where state agents massacred over 40 indigenous village members, the Court ordered the State to establish a developmental fund, consisting of \$1,200,000 (United States dollars).¹⁹⁶ This fund "will be directed to health, housing and educational programs for the [victimized community] members. The specific aspects of said programs shall be determined by an implementation committee."¹⁹⁷ The Court required the

¹⁹⁰ *Case of Zambrano-Vélez et al. v. Ecuador*. Merits, Reparations and Costs (para. 150).

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ Antkowiak, *supra* note 25, at 397.

¹⁹⁴ I/A Court H.R., *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79, (para. 167).

¹⁹⁵ *Id.*

¹⁹⁶ *Case of the Moiwana Community v. Suriname*. Preliminary Objections, Merits, Reparations and Costs (para. 214).

¹⁹⁷ *Id.*

implementation committee to complete its work in five years. “The abovementioned committee will be in charge of determining how the developmental fund is implemented and will be comprised of three members. The committee shall have a representative designated by the victims and another shall be chosen by the State; the third member shall be selected through and agreement between the representatives of the victims and the State. If the State and the representatives of the victims have not arrived at an agreement regarding the composition of the implementation committee within six months from the date of notification of the present judgment, the Court will convene them to a meeting in order to decide upon the matter.”¹⁹⁸

When establishing a fund for community development, the Court tends to grant administrative control to the victims. The Court realizes that the best way to reconstitute shattered communities is to give the surviving community members the resources they need to cultivate new beginnings. In *Sawhoyamaxa Indigenous Community v. Paraguay*, an indigenous natural resources land rights case, the Court placed the fund “at the disposal of the leaders of the Community, in their capacity as representatives thereof.”¹⁹⁹ The Court essentially empowers the victimized community to rebuild itself.

In some cases, the Court ordered the responsible State to institute housing projects to shelter communities displaced by illegal State actions.²⁰⁰ Oftentimes, the Court requires that the State provide security personnel to guarantee safe passage for displaced victims to travel to their new homes.²⁰¹ In cases involving community restoration, the Court seeks to create a new sanctuary to replace the home that was lost, but it also intends to build a secure community that can grow without the fear of renewed State persecution.

Plan de Sánchez Massacre v. Guatemala, involving a full-scale indigenous community massacre, was the first time any international tribunal ordered reparations for the survivors and next of kin of a full-scale massacre.²⁰² First, the Court ordered monetary compensation to improve a particular community structure with symbolic meaning, to keep alive the memory of those who died, to be further discussed under memorials.²⁰³ The Court also ordered implementation of a housing program within five years of the notification of the judgment.²⁰⁴ “Since the inhabitants [of the community] lost their homes as a result of [the massacre] ... the State must implement a housing program to provide adequate housing to the surviving victims who live in that village ... and who require it.”²⁰⁵ Furthermore, in *Plan de Sánchez Massacre v. Guatemala*, a case involving a massive indigenous community massacre, the Court recognized the collective harm to the members of the [indigenous] communities affected and therefore ordered numerous social programs in the affected communities.²⁰⁶ The numerous reparations ordered aimed to ensure that the community would not only be repaired, but improved for future benefit. The specific reparations the Court ordered included study and dissemination of the [indigenous culture] through a [state language academy]; maintenance and improvement of road systems between the affected communities and the municipal capital; sewage system and portable water supply; supply of teaching personnel trained in intercultural and bilingual

¹⁹⁸ *Id.* at (para. 215).

¹⁹⁹ *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*. Merits, Reparations and Costs (para. 207).

²⁰⁰ *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs (para. 407).

²⁰¹ *Id.* at (para. 404).

²⁰² Antkowiak, *supra* note 25, at 353.

²⁰³ *Case of the Plan de Sánchez Massacre v. Guatemala*. Reparations and Costs (para. 104).

²⁰⁴ *Id.* at (para. 105).

²⁰⁵ *Id.*

²⁰⁶ *Case of the Plan de Sánchez Massacre v. Guatemala*. Reparations and Costs (para. 110).

teaching for [schooling] in these communities; and the establishment of a health center in the [village where the massacre occurred] with adequate personnel and conditions, as well as training for [health center] personnel so that they can provide medical and psychological care.²⁰⁷

The Court characterized infrastructure projects and basic sanitation services as collective reparations. In *Sahoyamaxa Indigenous Community*, an indigenous land rights case, the Court insisted that the State provide sufficient drinking water, latrines, and “all necessary material and human resources for the children of the [Sahoyamaxa’s new] settlement.”²⁰⁸ Functioning infrastructure is crucial to rebuilding persecuted communities. However, elements of the rebuilt community can also serve as reminders of the past atrocities.

10. Monuments and Memorials

The Court’s reparations involving monuments and memorials intended to preserve the victim’s memory have included: dedicated street names; scholarships, grants and endowed professorships; and national days of remembrance. These symbolic monuments and memorials serve to honor the memory of the victim and ensure non-repetition. The overall goal of the monuments and memorials is to “redress the damage caused to the victims and their next of kin, preserve the memory of the victims, and prevent the recurrence of the events of the instant case.”²⁰⁹ The Court commemorates the life of the victim and pays tribute to the victim’s contribution to his community.

In *Case of the Street Children*, where five children were extra-legally executed, the Court’s reparation centered on the fact that the victims were young children. The Court ordered the State “to designate an educational center with a name allusive to the young victims in this case and to place in this center a plaque with the names [of the victims].”²¹⁰ The purpose of this is “to contribute to raising awareness in order to avoid the repetition of harmful acts such as those that occurred in the instant case and will keep the memory of the victim’s alive.”²¹¹

In *Myrna Mack-Chang v. Guatemala*, the extra-legal execution victim was a social activist. Therefore, the Court ordered the State to “name a well-known street or square in Guatemala City in honor of Myrna Mack-Chang, and place a prominent plaque in her memory at the place where she died or nearby, with a reference to the activities she carried out.”²¹² The purpose in doing this “will contribute to awakening public awareness to avoid recidivism of facts such as those that occurred in the instant case and to maintain remembrance of the victim.”²¹³

The Court also ordered a prominent scholarship in the name of Myrna Mack-Chang. The Court’s rationale was to ensure “non-recidivism of the facts of the instant case [and] ... public recognition of the victim.”²¹⁴ The Court ordered the State to establish “a scholarship, in the name of Myrna Mack-Chang, to cover the complete cost of a year of study in anthropology at a prestigious national university.”²¹⁵ The Court specified, “said scholarship must be granted by the

²⁰⁷ *Id.*

²⁰⁸ *Id.* at (para. 230).

²⁰⁹ *Id.* at (para. 280).

²¹⁰ *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala*. Reparations and Costs (para. 103).

²¹¹ *Id.*

²¹² *Case of Myrna Mack-Chang v. Guatemala*. Merits, Reparations and Costs (para. 286).

²¹³ *Id.* at (para. 286).

²¹⁴ *Id.* at (para. 285).

²¹⁵ *Id.*

State permanently every year.”²¹⁶ This would be considered an indefinite tribute to the victim.

In *Plan de Sánchez Massacre v. Guatemala*, concerning a full-scale indigenous community massacre, the Court ordered maintenance and improvements to the chapel where the victims pay homage to those executed. “With regard to the guarantees of non-repetition ... the Court establish[ed], in fairness, the sum of \$25,000 [United States dollars] [for] maintenance and improvements to the infrastructure of the chapel in which the victims pay homage to those who were executed.”²¹⁷ “Within one year of notification of this judgment, the sum must be delivered to the [community itself] or their chosen representatives, who will be responsible for administering it.”²¹⁸ The Court stated the purpose of the fund to maintain and restore the chapel—“this will help raise public awareness to avoid repetition of events as such as those that occurred in this case, and keep alive the memory of those who died.”²¹⁹

The Court commended the Paraguayan government for dedicating a public plaza in honor of the victims of a series of forced disappearances. The Court observed that the plaza served as “an important comprehensive public recognition of those whose forced disappearances occurred.”²²⁰ However, the Court was not satisfied with State’s actions. To serve as a reparation, the Court told the State to erect another monument in a central and prominent site in the capital city.²²¹ The second monument specifically had to include a plaque listing the victims’ names and the circumstances that led to their disappearances.²²²

To gain the Court’s approval, memorials and monuments must capture the violence, the suffering of the victims, and the State’s complicity in the incident. In *La Cantuta v. Peru*, where a group of individuals were executed and disappeared, the Court thought highly of the State’s construction of the “*El Ojo Que Lloro*” (The Crying Eye), a public memorial for students and a human rights professor executed by government-sponsored paramilitaries.²²³ However, the Court further insisted that “the State must ensure that, within the term of one year, the 10 individuals declared executed or forcefully disappeared victims in the instant case shall be represented in said memorial if they are not represented so far and provided their relatives so desire.”²²⁴ State-sponsored art does not constitute a memorial or a monument in terms of collective reparations. The memorial and monument must serve as a physical reminder of the lives lost to State human rights abuses.

The Court often treats memorials and with the same degree of solemn respect accorded to gravesites. In fact, highly formalistic ceremonies often accompany the construction of a memorial or a monument. In *La Rochela Massacre v. Colombia*, an extra-legal execution case, the Court ordered that a photographic gallery representing the victims of the massacre be installed in a “visible and dignified place” in a courthouse.²²⁵ Since the victims were members of the judiciary, the Court wanted their memory associated with the judicial branch of the State’s government. The Court also ordered the installation of a plaque with the date of the events and

²¹⁶ *Case of Myrna Mack-Chang v. Guatemala*. Merits, Reparations and Costs (para. 285).

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Case of Goiburú et al. v. Paraguay*. Merits, Reparations and Costs (para. 174).

²²¹ *Id.* at (para. 177).

²²² *Id.*

²²³ *Case of La Cantuta v. Peru*. Merits, Reparations and Costs (para. 236).

²²⁴ *Id.*

²²⁵ *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs (para. 277).

the names of the victims in a judicial complex in the capital city.²²⁶ The State had to confer with the victim's relatives regarding the details of the installation ceremony.²²⁷

Designating a national day in honor of victims in mass violations of human rights is powerful reparation of remembrance. In *Serrano-Cruz Sisters v. El Salvador*, the forced disappearance victims were children. Therefore, the Court ordered that the State to “designate a day dedicated to the children who, for different reasons, disappeared during the internal armed conflict, in order to make society aware of the need for all [citizens of the country] to work together to find the best solutions ... leading to the truth about the whereabouts of the children.”²²⁸ The Court set a six-month time limit on the State's obligation to comply.²²⁹

In recent years the Court has creatively designed memorials to acknowledge the life's work of the victims of human rights abuses. The victim in *Escué-Zapata v. Colombia* dedicated his professional career to fighting for indigenous rights. After his murder, the Court approved of the State's efforts to create a university chair named after the victim at the University of Cauca.²³⁰ The State's reparation reflected the life of the victim. The Court also suggested that “the homage to the memory of [the victim] must be done through beneficial works for the benefit of the Community in which he exercised a kind of leadership.”²³¹ Memorials and monuments serve as an important acknowledgment of the harm that befell the people. Not only is honoring the victims of violations of utmost importance, but also rehabilitation for survivors.

11. Rehabilitation

Finally, the Court frequently orders rehabilitation for the victims and surviving relatives of mass human rights abuses. In *Plan de Sánchez Massacre*, over 250 people were massacred. The Court ordered that “the State shall provide, free of charge through its health institutions, the medical treatment the victims require, including any necessary medication; further the State shall create a specialized mental health treatment program provided free of charge, with the special circumstances of each person taken into account for individual, family or collective treatment.”²³² The Court further ordered the State to set up a committee to evaluate the treatment, and the treatment should be started immediately after committee constituted and should last for five years.²³³

Psychological treatment can also serve as a collective reparation if it is provided as group therapy for a large number of traumatized individuals. In *19 Merchants v. Colombia*, where nineteen individuals were disappeared, the Court ordered that “psychological treatment must be provided that takes into account the particular circumstances and needs of each of the next of kin, so that they can be provided with collective, family, or individual treatment....”²³⁴ Rehabilitation restores the physical and mental well-being of the victims and helps them come to terms with the ordeal they survived. By restoring the victims' health, the State takes steps towards mending their dignity.

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Case of Serrano-Cruz Sisters v. El Salvador*. Merits, Reparations and Costs (para. 196).

²²⁹ *Id.*

²³⁰ *Case of Escué-Zapata v. Colombia*. Merits, Reparations and Costs (paras. 178-79).

²³¹ *Id.* at (para. 168).

²³² *Case of the Plan de Sánchez Massacre v. Guatemala*. Reparations and Costs (para. 107).

²³³ *Id.* at (para. 108).

²³⁴ *Case of the 19 Merchants v. Colombia*. Merits, Reparations and Costs (para. 278).

IV. MONITORING AND COMPLIANCE

The Court consistently asserts “[t]hat monitoring compliance with its decisions is a power inherent in the judicial functions of the Court.”²³⁵ In *Baena-Ricardo et al. v. Panama*, the Court explained how it derived the authority to monitor compliance with its decisions.²³⁶ Article 65 of the American Convention requires the Court to “submit, for the [General] Assembly [of the Organization of American State’s] consideration, a report on its work during the previous year. [The report] shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations.”²³⁷ In order to prepare its report for the Assembly, the Court explained that it necessarily had to monitor if States complied with its judgments. Therefore, “when adopting the provisions of Article 65 of the Convention, the intention of the States was to grant the Court the authority to monitor compliance with its decisions....”²³⁸ From this provision, the Court staked out a role in overseeing implementation of its decisions.

In the merits phase of the decision-making process, the Court typically provides a roadmap of its monitoring function. “In accordance with its consistent practice, the Court reserves the authority, inherent in its attributions, to monitor full compliance ...”²³⁹ After reserving authority to monitor full compliance, the Court orders that the case shall only be filed after the State fully complies. “The case shall be filed once the State has fully complied with the provisions of [the] ruling.”²⁴⁰ The Court always sets a time limit for the State to comply with the different reparations. It also establishes a deadline for the State to submit a report on its progress of compliance. With these measures in place, the Court has developed a transparent process through which it guarantees full compliance from the State.

In the enforcement phase, the Court “by virtue of its authority to monitor compliance with its own decisions”²⁴¹ produces an order declaring what the State to date has complied with, partially complied with, and what obligations have not been fulfilled. The Court keeps the “monitoring process open until full compliance [with obligations] is achieved.”²⁴²

An example of the Court’s enforcement style is the *19 Merchants v. Colombia*, where the national army and a paramilitary group forcibly disappeared nineteen merchants, which was decided on the merits in 2004.²⁴³ In its 2009 enforcement order, the Court noted the State had complied with several of its obligations including: ensuring indemnification in appropriate financial institution for underage beneficiaries, and adopting necessary actions to locate the families of several victims in order to provide them indemnification.

However, as of 2009 the Court still found many obligations pending. With respect to these obligations, the Court ordered the State to maintain open the process of supervision of

²³⁵ I/A Court H.R., *Case of Bámaca-Velásquez v. Guatemala*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of January 27, 2009, (para. 2), p. 3.

²³⁶ I/A Court H.R., *Case of Baena-Ricardo et al. v. Panama*. Competence. Judgment of November 28, 2003. Series C No. 104

²³⁷ American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, *entered into force* July 18, 1978, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 (1992), article 65.

²³⁸ *Case of Baena-Ricardo et al. v. Panama*. Competence (para. 90).

²³⁹ *Case of the 19 Merchants v. Colombia*. Merits, Reparations and Costs (para. 294).

²⁴⁰ *Id.*

²⁴¹ *Case of Bámaca-Velásquez v. Guatemala*. Monitoring Compliance with Judgment p. 16.

²⁴² *Id.*

²⁴³ *Case of the 19 Merchants v. Colombia*. Merits, Reparations and Costs.

compliance of the pending orders: to investigate acts of the present case with the goal to investigate, prosecute and punish all material and intellectual authors of the violations committed; to effectuate a serious search to determine the location of the remains of the rest of the victims and deliver these remains to next of kin; to establish a monument in memory of the victims, during a public ceremony and in the presence of the victim's families; to offer psychological and medical treatment; and establish safe conditions so that members of one victims family can return safely from exile, among others.

The Court required creative steps to be taken to ensure compliance. These included a request that the State present a report that indicates all the measures it has adopted to fulfill the reparations ordered by the Court that were still pending within roughly a three-month period from the order.²⁴⁴ The Court further requested the victim's representatives present observations to this report "no later than four and six weeks respectively."²⁴⁵

The Court practices sustained and continuous monitoring. An example is in *Case of the Street Children*, where judgment on reparations was issued in 2001, and the Court entered enforcement orders in 2003, 2005, and 2009.²⁴⁶ In 2009, the Court again dismissed the State's report that it had adopted effective measures for compliance with its duty to investigate and adapt domestic law provisions required to guarantee performance of its obligation, thereby leaving the case open so that the Court can "continue examining closely the measures adopted for compliance in the instant case ..."²⁴⁷ This illustrates how serious the Court takes full compliance with its reparation orders.

In *Ituango Massacre v. Colombia*, where with the tacit approval of the Colombian police force, paramilitary groups tortured and disappeared Colombian civilians residing in the Ituango region, the Court carefully explained the steps the Colombian government had to take to be in full compliance with its decision. In the "Means of Compliance" section of the opinion, the Court instructed the State to make pecuniary and non-pecuniary payments and to erect commemorative plaques within one year of the date of the judgment.²⁴⁸ The Court only gave the State six months to publish the pertinent parts of the judgment.²⁴⁹ The Court also set out detailed procedures regarding money transfers²⁵⁰ and money management.²⁵¹ By carefully articulating how the State must comply with the judgment, the Court ensures that there is little leeway for the State to feign compliance.

Nonetheless, States occasionally fail to follow the Court's explicit instructions. Then the Court must review its opinions and draft follow-up decisions referred to as "Monitoring Compliance with Judgment." In 2009, the Court revisited the *Ituango Massacre* case, which had been adjudicated three years earlier. In the compliance decision, the Court carefully reviewed what reparations the State fully complied with, what reparations the State partially complied

²⁴⁴ I/A Court H.R., *Case of the 19 Merchants v. Colombia*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 08, 2009. State required to submit its report at the Corte Interamericana de Derechos Humanos, no later than the 15 of October 2009.

²⁴⁵ *Id.*

²⁴⁶ *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala*. Reparations and Costs (paras. 2-4), p.1.

²⁴⁷ *Id.* at (para. 1 and 39), p. 10.

²⁴⁸ *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs (para. 417).

²⁴⁹ *Id.*

²⁵⁰ *Id.* at (para. 422) ("the State shall deposit in a solvent Colombian banking institute. The investment must be made within one year, in United States dollars, and in the most favorable financial conditions permitted by law and banking practice, until the beneficiaries come of age.").

²⁵¹ *Id.* at (para. 423) ("If, after 10 years, the compensation has not been claimed, it shall revert to the State with the accrued interest.").

with, and finally what orders were still outstanding.²⁵² The Court listed the obligations the State still had not met. The outstanding orders included: bringing forward the diligences necessary to provide justice in the case; giving adequate treatment to the families of the victims at no cost; taking necessary actions to guarantee safe conditions so that the ex-habitants of the *corregimientos* of “El Arco” or “La Granja”, that have been displaced, can return to El Arco or La Granja; and carrying out a public act of recognition of international responsibility for what happened in the case, with the presences of high authorities.²⁵³ Although the Court issued its order three years earlier, the State still had not completed many of its responsibilities.

When the Court finds that a responsible State has not fully met the burdens of the decision, the Court reasserts its authority over the matter. In *Ituango*, the Court declared that it would maintain open the process of supervision until the State’s obligations had been fulfilled.²⁵⁴ Furthermore, the Court established a new deadline for the State to meet its duties.²⁵⁵ It also insisted that the State file progress reports with the Court every four to six weeks.²⁵⁶ Although the reparations ordered by the Court still had not been delivered three years after the Court’s judgment, the Court maintained an interest in forcing the State to meet its obligations. By rigorously monitoring State compliance, the Court has ensured that its decisions remain relevant and that the victims of human rights abuses eventually receive justice, even if delayed.

V. CONCLUSION

Over the last twenty years, the Inter-American Court of Human Rights established a unique paradigm for providing redress to the victims and survivors of human rights abuses. Through an expansive interpretation of its mandate, the Court asserted the authority to adjudicate human rights claims. The Court also claimed the power to order States to comply with international and customary human rights norms. Within the Inter-American system, the Court was sanctioned to confront States that flagrantly disregarded human rights protections. It was empowered to seek justice for the dead.

As it confronted massacres, forced disappearances, and assassinations in countries throughout Central and South American, the Court built a system of reparations that rested on two bedrock principles: restoration of the victims’ dignity and prevention of future human rights violations. Even though these two principles guided the Court’s decisions, they did not restrict the types of reparations granted by the Court.

On the contrary, the Court demonstrated remarkable creativity and sensitivity in tailoring individualized reparations for specific harms. Unlike other international tribunals that took a state-centered approach to human rights, the Inter-American Court championed the rights of the individual victims. The Court considered distinct cultural mores as it addressed various types of harms. It factored these customs into its decisions and ordered States to make reparations in accordance with the traditions and customs of the victimized peoples. The Court’s approach led to the conception of a diverse set of collective and moral reparations that still furthered the

²⁵² I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 07, 2009 (Only in Spanish).

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.* (The Court gave the State three months to fully comply with its decision.)

²⁵⁶ *Id.*

Court's ultimate goals, the restoration of the victims' dignity and the prevention of future violations.

The Court's body of work on reparations has illuminated previously unrecognized rights for the victims of human rights abuses and likewise committed States to meeting new obligations. The surviving family members of human rights abuses have the right to know what happened to their dead loved ones. They have the right to recover the remains of the deceased and inter them in an appropriate final resting place. On the other hand, the State has the obligation to investigate, prosecute, and punish the perpetrators and masterminds of human rights violations. The State owes the victims public apologies that acknowledge the State's complicity in the violent events that robbed them of their loved ones. The State has the duty to amend, repeal, and adopt whatever laws are needed to facilitate the protection of human rights. Finally, the State must remember the dead through memorials and monuments and help the survivors find solace through rehabilitation.

The experience of the Inter-American Court should serve as a guide for the Extraordinary Chambers in the Courts of Cambodia as it constructs its own system of reparations. Rather than limiting itself to a standard set of reparations for all cases, the Court tailored unique measures of redress for each victim or group of victims that appeared before it. The Court's thoughtful and deliberate approach facilitated the successful implementation of meaningful collective and moral reparations. As many in Central and South America can attest to, the ECCC can chart a new course in Cambodian history by discovering ways to restore dignity to those brutalized by years of oppression and violence, and ensuring that future generations never have to experience similar ordeals.

APPENDIX: Inter-American Court of Human Rights Case Summaries

70 and 91 (merits and reparations stage) - Case of Bámaca-Velásquez v. Guatemala (Nov 25, 2000 and Feb 22, 2002)

I/A Court H.R., *Case of Bámaca-Velásquez v. Guatemala*. Merits. Judgment of November 25, 2000. Series C No. 70; I/A Court H.R., *Case of Bámaca-Velásquez v. Guatemala*. Reparations and Costs. Judgment of February 22, 2002. Series C No. 91.

Holding: Here, [victim] and other combatants of the Guatemalan National Revolutionary Unit were detained, tortured, and disappeared by the Guatemalan armed forces, and the State denied the concealment and failed to investigate and prosecute. The Court recognized that the *right to the truth* has been developed in international human rights law (Case 91, para. 75-76). The Court ordered reparations including, but not limited to: the State locating and burying remains bury in accordance with “customs and religious beliefs” (para. 79). The Court declined to set a time limit to State delivering the mortal remains (para. 102).

Statement of Significance:

In the merits stage, the Court held the *right to the truth* “is subsumed in the right of the victim or his next of kind to obtain clarification of the facts relating to the violations and the corresponding responsibilities from the competent State organs, through investigation and prosecution” (para. 210).

In the reparations stage, the representatives of the victims requested a beneficiary of reparations be added, even though she had not been mentioned since the case was in the Inter-American system in 1992. For the inclusion of this beneficiary (victim’s sister), “the representatives and the Commission argued that they had not mentioned her before because they were not aware of the existence of [victim’s sister] due to the language and communication difficulties with the [victim’s] family, which is a Mam family, much more closed in its manner of communicating certain things concerning their daily life, and due to the distance between their places or residence, as she had to leave the farm where they were and go to Guatemala city, due to the harassment [to] her husband [whom] they almost tried to kidnap” (para. 36). The Court noted “that while this case has been before the inter-American system for the protection of human rights since 1992, it is not until November 20, 2001 ... shortly before the public hearing on reparations, when the existence of [victim’s sister] [was] brought to the attention of the Court” (para. 36). “Nevertheless, [the] Court takes into account the special circumstances of the conflict and poor communications in Guatemala at the time of the events, and it accepts the argument regarding the characteristics of the Mayan culture, Mam ethnic group, that the [victim’s] family was a member of, which was referred to at the public hearing” (para. 36). Therefore, the Court included victim’s sister as a beneficiary of possible reparations, and held her compensation “shall be set in accordance with the abovementioned criteria, taking into account her relationship as a sister of the victim on his mother’s side” (para. 36).

Aside from pecuniary and non-pecuniary damages, the Court ordered other forms of reparations.

The Court ordered the State to investigate and punish.²⁵⁷ The Court ordered that the State

²⁵⁷ For cases where the Court has recognized a State duty to investigate, prosecute, and punish, see: *Case of Valle-Jaramillo et al. v. Colombia*, Series C No. 192 (para. 227); *Case of Ticona-Estada et al. v. Bolivia*, Series C No. 191 (para. 143); *Case of Tiu-Tojín v. Guatemala*, Series C No. 190 (para. 68); *Case of the Miguel Castro-Castro*

“must conduct an investigation to determine the persons responsible for the human rights violations referred to in [the] Judgment, and also to publicly disseminate the results of such investigation and punish those responsible.” (para. 73). “The reparations that must be made by the State necessarily include effectively investigating the facts, punishing all those responsible, and disseminating the results of the investigation (para. 73).

The Court that the [victim’s relatives] had the “right to know what happened” and “to know which state agents were responsible” (para. 74). The Court established the right to truth was subsumed in the right of the victim or his next of kin to obtain clarification of the facts relating to the violations (para. 75). The right that every person has to the truth has been developed in international human rights law.²⁵⁸ The Court held that 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” (para. 76).

The Court deemed the care for the mortal remains of a person is a form of observance of the right to human dignity (para. 81) and that the State must locate remains of [the victim] and bury them in accordance with their customs and religious beliefs (para. 79). The concurrence specifically noted “the right of the next of kin of a person who has died to receive his mortal remains, independently of any ethnic, religious, cultural consideration of a particular case” and “this is a universal, constant right” (pg. 2; para. 2). The concurrence further noted, “on the other hand, this same judgment of the [Court] has considered the specific relevance that receiving, honoring and adequately burying these remains has for the Mayan culture, the Mam group, to which the victim and his next of kin belonged” (pg. 2; para. 2). Further, “there is no conflict between these rights, which are concentric circles or manifestations of one and the same legally protected right ... [t]his essential relationship between the rights does not lead to one being ignored – that linked to belonging to an indigenous ethnic group – because another is recognized – the universal right to receive the remains of a relative and bury them honorably” (pg. 2; para. 2).

The Court declined to set a time limit to State delivering the mortal remains (para. 102). Instead, the Court noted when it evaluates the degree of compliance with these obligations, it “will adopt the relevant measures at the appropriate time to ensure compliance with this measure [delivery of mortal remains]” (para. 102).

Prison v. Peru, Series C No. 181 (para. 44); *Case of Zambrano-Vélez et al. v. Ecuador*, Series C No. 166 (para. 148); *Case of Escué-Zapata v. Colombia*, Series C No. 165 (para. 164); *Case of the Rochela Massacre v. Colombia*, Series C No. 163 (para. 295); *Case of La Cantuta v. Peru*, Series C No. 162 (para. 160); *Case of the Miguel Castro-Castro Prison v. Peru*, Series C No. 160 (para. 347); *Case of Almonacid-Arellano et al. v. Chile*, Series C No. 154 (para. 151); *Case of Goiburú et al. v. Paraguay*, Series C No. 153 (para. 123); *Case of the Ituango Massacres v. Colombia*, Series C No. 148 (para. 399); *Case of the Sawhoyamaya Indigenous Community v. Paraguay*, Series C No. 146 (para. 153); *Case of the Pueblo Bello Massacre v. Colombia*, Series C No. 140 (para. 268); *Case of the Mapiripán Massacre v. Colombia*, Series C No. 134 (para. 299); *Case of the Moiwana Community v. Suriname*, Series C No. 124 (para. 207); *Case of Serrano-Cruz Sisters v. El Salvador*, Series C No. 120 (paras. 166-182); *Case of the Plan de Sánchez Massacre v. Guatemala*, Series C No. 116 (para. 94); *Case of the 19 Tradesmen v. Colombia*, Series C No. 109 (para. 263); *Case of Maritza Urrutia v. Guatemala*, Series C No. 103 (para. 176-177); *Case of Myrna Mack-Chang v. Guatemala*, Series C No. 101 (paras. 275-277); *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala*, Series C No. 77 (para. 101).

²⁵⁸ Citing, among other things, *United Nations Human Rights Committee, Quinteros v. Uruguay, Communication No. 107/1981, decision of 21 July 1983*).

Further, the state must conduct exhumations, in the presence of next of kin, to locate mortal remains (para. 82). The Court considered the State must implement, if it does not currently exist, a national exhumations program (para. 83).

The Court ordered a public act of recognition.²⁵⁹ The Court deemed the “State must carry out a public act of recognition of its responsibility in connection with the facts of the case, and of relief to the victims.” (para. 84; citing *Cantoral Benavides v. Peru*, para. 81).

The Court ordered publication of judgment in newspaper.²⁶⁰ The Court ordered the State to publish in two public papers once only the operative part of the Nov 25 2000 Judgment on the merits and chapter pertaining to the proven facts in that judgment (para. 84).

The Court further ordered: that Guatemala must adopt legislative and any other measures to adapt domestic law to international human rights norms and humanitarian law; must train public law enforcement personnel on the offense of disappeared persons; and must fully apply the articles pertaining to torture in the Convention (paras. 85-87).

The Court ordered the state to carry out financial compensation within 6 months from date of judgment (para. 96).

²⁵⁹ **For cases where the Court has ordered public act of recognition, see:** *Case of Valle-Jaramillo et al. v. Colombia*, Series C No. 192 (para. 237); *Case of Ticona-Estada et al. v. Bolivia*, Series C No. 191 (para. 163); *Case of the Miguel Castro-Castro Prison v. Peru*, Series C No. 181 (para. 50); *Case of the Saramaka People. v. Suriname*, Series C No. 172 (para. 194); *Case of Zambrano-Vélez et al. v. Ecuador*, Series C No. 166 (para. 150); *Case of Escué-Zapata v. Colombia*, Series C No. 165 (para. 177); *Case of the Rochela Massacre v. Colombia*, Series C No. 163 (para. 277); *Case of La Cantuta v. Peru*, Series C No. 162 (para. 235); *Case of the Miguel Castro-Castro Prison v. Peru*, Series C No. 160 (para. 445); *Case of Almonacid-Arellano et al. v. Chile*, Series C No. 154 (para. 149); *Case of Goiburú et al. v. Paraguay*, Series C No. 153 (para. 173); *Case of the Ituango Massacres v. Colombia*, Series C No. 148 (paras. 405-406); *Case of the Pueblo Bello Massacre v. Colombia*, Series C No. 140 (para. 277); *Case of the Mapiripán Massacre v. Colombia*, Series C No. 134 (para. 314); *Case of the Girls Yean and Bosico v. Dominican Republic*, Series C No. 130 (para. 235); *Case of the Yakyé Axa Indigenous Community v. Paraguay*, Series C No. 125 (para. 226); *Case of the Moiwana Community v. Suriname*, Series C No. 124 (para. 216); *Case of Serrano-Cruz Sisters v. El Salvador*, Series C No. 120 (para. 194); *Case of the Plan de Sánchez Massacre v. Guatemala*, Series C No. 116 (paras. 100-101); *Case of the 19 Tradesmen v. Colombia*, Series C No. 109 (para. 274); *Case of Myrna Mack-Chang v. Guatemala*, Series C No. 101 (paras. 278-279).

²⁶⁰ **For cases where the Court has ordered dissemination of judgment in the media, see:** *Case of Valle-Jaramillo et al. v. Colombia*, Series C No. 192 (para. 234); *Case of Ticona-Estada et al. v. Bolivia*, Series C No. 191 (para. 160); *Case of Tiu-Tojín v. Guatemala*, Series C No. 190 (para. 106); *Case of the Miguel Castro-Castro Prison v. Peru*, Series C No. 181 (para. 29(c)); *Case of the Saramaka People. v. Suriname*, Series C No. 172 (paras. 196, 197); *Case of Zambrano-Vélez et al. v. Ecuador*, Series C No. 166 (para. 151); *Case of Escué-Zapata v. Colombia*, Series C No. 165 (para. 173); *Case of the Rochela Massacre v. Colombia*, Series C No. 163 (para. 277); *Case of La Cantuta v. Peru*, Series C No. 162 (paras. 222-223); *Case of the Miguel Castro-Castro Prison v. Peru*, Series C No. 160 (paras. 445-446); *Case of Almonacid-Arellano et al. v. Chile*, Series C No. 154 (para. 144); *Case of Goiburú et al. v. Paraguay*, Series C No. 153 (para. 175); *Case of the Ituango Massacres v. Colombia*, Series C No. 148 (para. 410); *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*, Series C No. 146 (para. 236); *Case of the Pueblo Bello Massacre v. Colombia*, Series C No. 140 (para. 279); *Case of the Mapiripán Massacre v. Colombia*, Series C No. 134 (para. 318); *Case of the Girls Yean and Bosico v. Dominican Republic*, Series C No. 130 (para. 234); *Case of Yatama v. Nicaragua*, Series C No. 127 (paras. 252-253); *Case of the Yakyé Axa Indigenous Community v. Paraguay*, Series C No. 125 (para. 227); *Case of Serrano-Cruz Sisters v. El Salvador*, Series C No. 120 (para. 195); *Case of the Plan de Sánchez Massacre v. Guatemala*, Series C No. 116 (paras. 102-103); *Case of Myrna Mack-Chang v. Guatemala*, Series C No. 101 (para. 280).

77 – Case of the Street Children (May 26, 2001)

I/A Court H.R., *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala*. Reparations and Costs. Judgment of May 26, 2001. Series C No. 77.

Holding: In *Street Children*, five youths were burned, tortured, and shot in the head in Guatemala City by State security agents in 1990. During the merits phase, the Court found violations for the abduction, torture and murder of the victims, two of which were minors. Here, the Court ordered reparations including, but not limited to: the State’s duty to investigate and punish (para. 101); the State to open an educational center, to “contribute to raising awareness in order to avoid the repetition of harmful acts” and to “keep the memory of the victims alive” (para. 103); and the delivery of mortal remains (para. 102).

Statement of Significance:

The Court held that “damage caused to other members of the victim’s family or to third parties, due to the death of the victim, may be claimed in their own rights” (para. 68). “However, [c]ertain conditions must be met in order to constitute a damage and the resulting right to reparation these include the existence of a relationship of effective, regular financial support between the victim and the claimant and the possibility of realistically presuming that this support would have continued if the victim had not died” (para. 68). “With regard to such claimants, the *onus probandi* corresponds to them, whether or not they are members of the victim’s family – and the expression “victim’s family” should be understood in an extensive form that covers all those persons closely related to him; in other words, his children, parents and siblings, who could be considered next of kin and have the right to receive a compensation ...” (para. 68).

The Court considered that on many occasions, the Court has referred to the right of the next of kin of the victims to know what happened and the identity of the state agents responsible for the acts. (para. 100). The Court ordered the State to investigate and punish (para. 101).

The Court ordered the State to “designate an education center with a name allusive to the young victims in this case and to place in this center a plaque with the names of [individual victims]” (para. 103). “This will contribute to raising awareness in order to avoid the repetition of harmful acts such as those that occurred in the instant case and will keep the memory of the victims alive” (para. 103).

The Court ordered the State “should adopt the necessary measures to transfer the mortal remains of this victim to the place chosen by his next of kin, without any cost to them, so as to satisfy the desire of the family to give them appropriate burial, according to their religious beliefs and customs” (para. 102). The Court did not further analyze “religious beliefs and customs.”

79 – Case of the Mayagna (Sumo) Awas Tingni Community (Aug 31, 2001)

I/A Court H.R., *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79

Holding: This is an indigenous land rights case, where the State was about to grant a logging company a concession to commence logging on communal lands. The Court took into account the special relationship that the Mayagna (Sumo) people have with their ancestral lands; upheld their property rights; struck down the logging concession; and ordered the State to invest in

services of collective interest to the community.

Statement of Significance:

The Court found violations of the Convention instituted necessary actions to ensure the right to land. The Court ordered the State to “adopt legislative, administrative, and any other measures required to create an effective mechanism for delimitation, demarcation, and titling of the property of indigenous communities, in accordance with their customary law, values, customs and mores” and that the State must carry out “the delimitation, demarcation, and titling of the corresponding lands of the members of the Awas Tingni Community, within a maximum term of 15 months, with full participation by the Community and taking into account its customary law, values, customs and mores” (para. 164). A joint separate opinion noted that the indigenous community has “the right to preserve their past and current cultural manifestations, and the power to develop them in the future” (pg. 2, para. 8).

The Court considered that “due to the situation in which the members of the Awas Tingni Community find themselves due to lack of delimitation, demarcation, and titling of their communal property, the immaterial damage caused must also be repaired, by way of substitution, through a monetary compensation” (para. 167).

The Court noted that the Judgment constitutes, in and of itself, a form of reparation for the indigenous community (para. 166).

The Court found, aside from costs, that in equity, the State must invest, as reparation for the immaterial damages, in the course of 12 months, US \$50K in works or services of collective interest for the benefit of the communities, by common agreement with the community and under supervision by the Commission, pursuant to para. 167. (Holding, para. 6). The Court found the state must submit a report on measures taken to comply with the Judgment to the Court every 6 months, and the Court decided to oversee compliance with the Judgment and that the case will be concluded once the State has fully carried out the provisions set forth in the Judgment. (Holding, para. 8-9).

101 – Case of Myrna Mack Chang v. Guatemala (Nov 25, 2003)

I/A Court H.R., *Case of Myrna Mack-Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101.

Holding: This case concerns the extra-legal execution of Myrna Mack, a social activist, in 1990. The Court talks very specifically about what the State has to investigate, importantly, removing remove de facto and legal mechanisms that maintain impunity (para. 277). The Court noted, “the right to the truth has been developed by International Human Rights Law” and constitutes “an important means of reparation” (para. 274). The Court ordered reparations including, but not limited to: the State to investigate and punish all the direct perpetrators and accessories, and the other persons responsible for [victim’s] extra-legal execution (para. 275) and publicly acknowledge responsibility “in the presence of the highest authorities of the State” (para. 278). The Court disallowed the State to institute any form of amnesty (para. 276).

Statement of Significance:

The Court determined the 8 victims in this case: 1) Myrna Mack Chang, the victim; 2) Lucrecia Hernández Mack, the daughter de the victim; 3) Yam Mack Choy, the father; 4) Zoila

Chang Lau, the mother; and the siblings of the victim: 5) Helen Mack Chang, sister and private accuser; 6) Marco Mack Chang; 7) Freddy Mack Chang; and 8) Ronald Chang Apuy (para. 242). As victims, they are entitled to reparations [pecuniary and non-pecuniary] by the Court (beneficiaries) as next of kin. Next of kin includes: “includes all persons linked by close kinship, including the parents, children and siblings, who might have the right to compensation, insofar as they fulfill the requirements set forth in the case law of [the] Court” (para. 243).

Importantly, the first cousin of victim raised by the family was assimilated to the status of victim’s sibling. “It has been proven [that cousin of victim] was raised by the [victim’s family and] will be assimilated to the status of sibling and it assumes he could not be indifferent to what happened to [victim] (para. 244). Victim’s actual sister, though she did not participate in instant proceeding, was also deemed a beneficiary of reparations. “The Court assumes she has undergone the same suffering as the rest of the family”(para. 245).

The Court reiterated the right to truth. “Every person, including the next of kin of the victims of grave violations of human rights, has the right to the truth ... therefore, the next of kin of the victims and society as a whole must be informed of everything that has happened in connection with said violations” (para. 274). “This right to the truth has been developed by International Human Rights Law; recognized and exercised in a concrete situation, it constitutes an important means of reparation” (para. 274). Therefore, in this case it gives rise to an expectation that the State must satisfy for the next of kin of the victim and Guatemalan society as a whole (para. 274).

The Court reiterated the duty to investigate and punish, very specifically. The Court held that “the State must effectively investigate the facts in the instant case, so as to identify, try, and punish all the direct perpetrators and accessories, and the other persons responsible for the extra-legal execution of Myrna Mack Chang, and for the cover-up of the extra-legal execution and of the other facts in the instant case, aside from the person who has already been punished for these facts” (para. 275). Further, that “the outcome of the proceeding must be made known to the public, for Guatemalan society to know the truth” (para. 275).

Not only did the Court specify in great detail all the actors involved that must be punished, they held that the State “must abstain from resorting to legal concepts such as amnesty, extinguishment, and the establishment of measures designed to eliminate responsibility” (para. 276).

Further, the Court ordered that for the State to properly comply, it must “remove all de facto and legal mechanisms and obstacles that maintain impunity in the instant case; it must provide sufficient security measures to the judicial authorities, prosecutors, witnesses, legal operators, and to the next of kin of [victim] and use all means available to it so as to expedite the proceeding” (para. 277).

The Court ordered a public act of recognition. “For the acknowledgment of responsibility by the State and what this Court has set forth to have full reparation effects for the victims and to act as guarantees of non-recidivism, the Court deems that the State must carry out a public act of acknowledgment of its responsibility regarding the facts in this case and of amends to the memory of Myrna Mack Chang and to her next of kin, in the presence of the highest authorities of the State, which must be published in the media” (para. 278).

The Court also ordered that the State must publish Judgment within 3 months at least once in the official national newspaper.

The Court ordered training for to avoid recidivism. The Court noted “the facts of this case reveal that the armed forces, the police corps, and the security and intelligence agencies of the

State acted exceeding their authority ... and that it is imperative to avoid recidivism of the circumstances and facts described [here]” (para. 281). Therefore, the State must “adopt the necessary provisions [to] educate and train all members of its armed forces, the police and security agencies regarding the principles and rules of protection for human rights, even under a state of emergency” (para. 282).

The Court ordered a scholarship in the name of victim. “With respect to guarantees of non-recidivism ... [a]s part of public recognition of the victim, the State must establish a scholarship” in the name of [victim], to cover cost of a year of study, and “must be granted by the State permanently every year” (para. 285).

The Court ordered that the State name a well known street or square in Guatemala City after victim, and place a plaque in her memory where she died, or nearby. “The State must also name a well-known street or square in Guatemala City in honor of Myrna Mack Chang, and place a prominent plaque in her memory at the place where she died or nearby, with a reference to the activities she carried out” (para. 286). “This will contribute to awakening public awareness to avoid recidivism of facts such as those that occurred in the instant case and to maintain remembrance of the victim” (para. 286).

For compliance, the Court ordered the state to pay damages and fees within 1 year of the Judgment (para. 293). The Court also reserved the right to monitor comprehensive compliance with the instant Judgment, and the case will be closed once the State has fully complied (para. 300).

103 – Case of Maritza Urrutia v. Guatemala (Nov 27, 2003)

I/A Court H.R., *Case of Maritza Urrutia v. Guatemala*. Merits, Reparations and Costs. Judgment of November 27, 2003. Series C No. 103.

Holding: The case concerns the detention and torture of victim by State agents, presumably for carrying out tasks for a revolutionary organization (EGP). Here, the Court did not order a public apology and noted the President already made an institutional acknowledgment of state responsibility.

Statement of Significance:

The Court has established in its case law that “it is a principle of international law that any violation of an international obligation that has caused damage gives rise to a new obligation: to remedy the damage caused adequately” (para. 141). To meet this obligation, the Court bases itself on Article 63(1) of the American Convention.

Article 63(1) of the American Convention states: “*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*” (para. 141).

The Court recognized the duty to provide restitution as customary international law. “Article 63(1) of the American Convention contains a norm of customary law that is one of the

fundamental principles of contemporary international law on State responsibility” (para. 142).²⁶¹ “When an unlawful act occurs, which can be attributed to a State, this gives rise to its international responsibility for violating the international norm, with the consequent obligation to cause the consequences of the violation to cease and to repair the damage caused” (para. 142).

The Court recognized that reparations means full, and in the alternative, adequate restitution. “Whenever possible, reparation of the damage caused by the violation of an international obligation requires full restitution (*restitutio in integrum*), which consists in the re-establishment of the previous situation”²⁶² (para. 143). “If this is not possible, as in the instant case, this international Court must order the adoption of measures to ensure that, in addition to guaranteeing respect for the violated rights, the consequences of the violations are remedied and compensation is paid for the damage caused” (para. 143).

The Court recognized that all stages of reparations are regulated by international law. “The responsible State may not invoke provisions of domestic law to modify or fail to comply with its obligation to provide reparation, all aspects of which (scope, nature, methods and determination

²⁶¹ **For cases where the Court recognizes Article 63(1) [duty to retribute] as customary international law, see:** *Case of Valle-Jaramillo et al. v. Colombia*, Series C No. 192 (para. 198); *Case of Ticona-Estada et al. v. Bolivia*, Series C No. 191 (para. 106); *Case of Tiu-Tojín v. Guatemala*, Series C No. 190 (para. 55); *Case of the Saramaka People. v. Suriname*, Series C No. 172 (para. 186); *Case of Zambrano-Vélez et al. v. Ecuador*, Series C No. 166 (para. 131); *Case of Escué-Zapata v. Colombia*, Series C No. 165 (para. 126); *Case of the Rochela Massacre v. Colombia*, Series C No. 163 (para. 226); *Case of La Cantuta v. Peru*, Series C No. 162 (para. 199); *Case of the Miguel Castro-Castro Prison v. Peru*, Series C No. 160 (para. 414); *Case of Almonacid-Arellano et al. v. Chile*, Series C No. 154 (para. 135); *Case of Goiburú et al. v. Paraguay*, Series C No. 153 (para. 141); *Case of the Ituango Massacres v. Colombia*, Series C No. 148 (para. 346); *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*, Series C No. 146 (para. 196); *Case of the Pueblo Bello Massacre v. Colombia*, Series C No. 140 (para. 227); *Case of the Mapiripán Massacre v. Colombia*, Series C No. 134 (para. 243); *Case of the Serrano Sisters v. El Salvador*, Series C No. 131 (para. 29); *Case of the Girls Yean and Bosico v. Dominican Republic*, Series C No. 130 (para. 209); *Case of Yatama v. Nicaragua*, Series C No. 127 (para. 231); *Case of the Yakye Axa Indigenous Community v. Paraguay*, Series C No. 125 (para. 180); *Case of the Moiwana Community v. Suriname*, Series C No. 124 (para. 169); *Case of Serrano-Cruz Sisters v. El Salvador*, Series C No. 120 (para. 134); *Case of the Plan de Sánchez Massacre v. Guatemala*, Series C No. 116 (para. 52); *Case of the 19 Tradesmen v. Colombia*, Series C No. 109 (para. 220); *Case of Myrna Mack-Chang v. Guatemala*, Series C No. 101 (para. 235); *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala*, Series C No. 77 (para. 62).

²⁶² **For cases where the Court recognizes reparations means full, and if not possible, adequate restitution, see:** *Case of Valle-Jaramillo et al. v. Colombia*, Series C No. 192 (para. 198); *Case of Ticona-Estada et al. v. Bolivia*, Series C No. 191 (para. 106); *Case of Tiu-Tojín v. Guatemala*, Series C No. 190 (para. 55); *Case of the Saramaka People. v. Suriname*, Series C No. 172 (para. 186); *Case of Zambrano-Vélez et al. v. Ecuador*, Series C No. 166 (para. 131); *Case of Escué-Zapata v. Colombia*, Series C No. 165 (para. 126); *Case of the Rochela Massacre v. Colombia*, Series C No. 163 (para. 226); *Case of La Cantuta v. Peru*, Series C No. 162 (para. 201); *Case of the Miguel Castro-Castro Prison v. Peru*, Series C No. 160 (para. 415); *Case of Almonacid-Arellano et al. v. Chile*, Series C No. 154 (para. 136); *Case of Goiburú et al. v. Paraguay*, Series C No. 153 (para. 142); *Case of the Ituango Massacres v. Colombia*, Series C No. 148 (para. 347); *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*, Series C No. 146 (para. 197); *Case of the Pueblo Bello Massacre v. Colombia*, Series C No. 140 (para. 228); *Case of the Mapiripán Massacre v. Colombia*, Series C No. 134 (para. 244); *Case of the Serrano Sisters v. El Salvador*, Series C No. 131 (para. 29); *Case of the Girls Yean and Bosico v. Dominican Republic*, Series C No. 130 (para. 210); *Case of Yatama v. Nicaragua*, Series C No. 127 (para. 232); *Case of the Yakye Axa Indigenous Community v. Paraguay*, Series C No. 125 (para. 181); *Case of the Moiwana Community v. Suriname*, Series C No. 124 (para. 170); *Case of Serrano-Cruz Sisters v. El Salvador*, Series C No. 120 (para. 135); *Case of the Plan de Sánchez Massacre v. Guatemala*, Series C No. 116 (para. 53); *Case of the 19 Tradesmen v. Colombia*, Series C No. 109 (para. 221); *Case of Myrna Mack-Chang v. Guatemala*, Series C No. 101 (para. 236); *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala*, Series C No. 77 (para. 60).

of the beneficiaries) are regulated by international law” (para. 143).²⁶³

Aside from financial damages, the Court considered other forms of reparation. The Court noted that it has been 11 years since the facts of the instant case occurred and the perpetrators have not been held accountable, that the State must investigate and identify those responsible (para. 176-77). The Court also ordered that “the results of the trial be published” (para. 177).

The Court did not order a public apology, as the President made a previous institutional acknowledgment. The representatives of victim requested a public apology. However, the Court reiterated that the judgment constitutes, *per se*, a form of reparation and satisfaction for the victim” and observed that the President made an “institutional acknowledgment of the State’s responsibility with regard [to this case and] several cases being processed before the Inter-American Commission” (para. 178).

The Court held that the judgment constitutes, *per se*, a form of reparation for the victim (Holding, para. 4; para. 178).

To comply, the State was ordered to compensate within 1 year (para. 185). The Court monitored compliance (Holding, para. 12).

109 – Case of the 19 Merchants v. Colombia (Jul 5, 2004)

I/A Court H.R., *Case of the 19 Tradesmen v. Colombia*. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109.

Holding: The case concerns forced disappearance of tradesman by national army and paramilitary group. The Court reiterated the right to truth and noted that the measure not only benefits the next of kin but also the whole society because, “by knowing the truth about such crimes, it can prevent harm in the future” (para. 259). The Court ordered reparations including, but not limited to: a genuine search for victims’ remains, erection of a monument, and medical and psychological treatment for next of kin.

Statement of Significance:

The Court determined the victims themselves to be the “inured parties” and the victim’s next of kin to be beneficiaries (para. 227-235). The Court noted the victims’ next of kin will

²⁶³ For cases where the Court recognizes all stages of reparations are regulated by International Law, see: *Case of Valle-Jaramillo et al. v. Colombia*, Series C No. 192 (para. 198); *Case of Ticona-Estada et al. v. Bolivia*, Series C No. 191 (para. 106); *Case of the Saramaka People. v. Suriname*, Series C No. 172 (para. 186); *Case of the Rochela Massacre v. Colombia*, Series C No. 163 (para. 226); *Case of La Cantuta v. Peru*, Series C No. 162 (para. 200); *Case of the Miguel Castro-Castro Prison v. Peru*, Series C No. 160 (para. 415); *Case of Almonacid-Arellano et al. v. Chile*, Series C No. 154 (para. 136); *Case of Goiburú et al. v. Paraguay*, Series C No. 153 (para. 141); *Case of the Ituango Massacres v. Colombia*, Series C No. 148 (para. 347); *Case of the Sawhoyamaya Indigenous Community v. Paraguay*, Series C No. 146 (para. 197); *Case of the Pueblo Bello Massacre v. Colombia*, Series C No. 140 (para. 228); *Case of the Mapiripán Massacre v. Colombia*, Series C No. 134 (para. 244); *Case of the Serrano Sisters v. El Salvador*, Series C No. 131 (para. 29); *Case of the Girls Yean and Bosico v. Dominican Republic*, Series C No. 130 (para. 210); *Case of Yatama v. Nicaragua*, Series C No. 127 (para. 232); *Case of the Yakye Axa Indigenous Community v. Paraguay*, Series C No. 125 (para. 181); *Case of the Moiwana Community v. Suriname*, Series C No. 124 (para. 170); *Case of Serrano-Cruz Sisters v. El Salvador*, Series C No. 120 (para. 135); *Case of the Plan de Sánchez Massacre v. Guatemala*, Series C No. 116 (para. 53); *Case of the 19 Tradesmen v. Colombia*, Series C No. 109 (para. 221); *Case of Myrna Mack-Chang v. Guatemala*, Series C No. 101 (para. 236); *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala*, Series C No. 77 (para. 61).

have a right to reparations established by the Court (para. 229). “ The Court deems that the suffering and death of a person causes his children, spouse or companion, parents, siblings, non-pecuniary damage, which does not have to be proved” (para. 229).

The Court reiterated “the right of the next of kin victims to know what happened and the identity of the state agents responsible” (para. 258). “This measure benefits not only the next of kin of the victims, but also society as a whole, because, by knowing the truth about such crimes, it can prevent harm in the future (para. 259). The Court reiterated that the “right to truth has been developed by international human rights law, and its recognition and exercise in any specific situation is an important measure of reparation” (para. 261).

The Court established the State’s duty to investigate and punish. They specifically noted “the State must abstain from using figures such as amnesty, provisions on prescription and the establishment of measures designed to eliminate responsibility ... “ (para. 263). “The [criminal process] must be disseminated publicly, so that [society’ may know the truth about what happened” (para. 263).

The Court noted the obligation of the State to conduct a genuine search for victims’ remains. The Court recognized the right of the next of kin victims to know the whereabouts of victim’s remains, and that this right constitutes a measure of reparation, an expectation the state must satisfy (para. 265). “In the case of those detained or disappeared, the return of the remains is, in itself, and act of justice and reparation. It is an act of justice to know the whereabouts of the disappeared persons, and it is a form of reparation because it allows the victims to be dignified, by recognizing the importance of their memory for those who where their loved ones and by allowing the latter to give them appropriate burial.” (para. 266, quoting *Case of Juan Humberto Sánchez, Case of La Palmeras, Case of El Caracazo*).

The Court considered the State should erect a monument in memory of the victims, and that “the State and the victims’ next of kin must reach an agreement on the choice of the place where the monument is to be erected” (para. 273). “Colombia should place a plaque with the names of the 19 tradesmen, which expressly mentions that it is there in compliance with the reparation ordered by the Inter-American Court, at that place during a public ceremony in the presence of the victims’ next of kin” (para. 273). “This will also contribute to awakening public awareness to avoid repetition of acts such as those that occurred in the instant case and to keeping the memory of the victims alive” (para. 273).

Further, the Court considered it necessary, “in order to repair the damage to the reputation and honor of the victims and their next of kin, and in order to avoid repetition of acts such as those in this case” that the State “carry out a public act to acknowledge its international responsibility” (para. 274). This is to be carried out “in the presence of the next of kin of the victims and the highest State authorities must take part in it (para. 274).

Further, the Court observed it “necessary to order a measure designed to reduce the physical and psychological sufferings of the next of kin” and ruled that the State has the obligation to provide without charge the medical and psychological treatment required by the next of kin of the victims, including the medication that they require (para. 278). This must take into account particular circumstances of each person, so that they can be provided with collective, family or individual treatment, as agreed with each of them following an individual assessment (para. 278). The State must inform next of kin where they will receive such treatment within 1 year and the institutions themselves must be fully informed about reparation so that the treatment is provided as ordered by the Court (para. 278).

Further, the Court considers that the Judgment constitutes *per se* form of reparation (para.

279). Court ordered, in case of one victim, that the State must establish necessary conditions for the members of the family who are in exile to return to Colombia, if they wish, and to cover the resulting expenses (para. 279).

The Court asserted its power to supervise compliance. “In accordance with its consistent practice, the Court reserves the authority, inherent in its attributions, to monitor full compliance with this judgment” (para. 294). “Within one year from the notification of this judgment, Colombia shall submit to the Court a first report on the measures taken to comply with it” (para. 294).

116 – Case of the Plan de Sánchez Massacre v. Guatemala (Nov 19, 2004)

I/A Court H.R., *Case of the Plan de Sánchez Massacre v. Guatemala*. Reparations and Costs. Judgment of November 19, 2004. Series C No. 116.

Holding: This case concerns the massacre of 268 individuals, mostly members of Maya indigenous community, because they were Mayan, perpetrated by the State army with support of civilian patrols. The Court recognized the collective nature of the harm, and ordered numerous reparations based on collective entitlement. The Court ordered reparations including, but not limited to: translation of not only the merits and reparations judgments, but of the Inter-American Convention of Human Rights into the indigenous Maya-Achí language (para. 102); monetary compensation the victims; collective improvements to the community (para. 104); and medical and psychological treatment for the victims (paras. 106-107).

Statement of Significance:

The Court determined beneficiaries. The Court considered surviving victims of the massacre who were individualized on the list of victims are the “injured party” (para. 61). The Court indicated, during its April 2004 judgment that “those identified subsequently could also be considered victims” (para. 62). However, here, the Court considered that “it is unable to establish any compensation for victims who have not been individualized at this time” (para. 62). “Without detriment to the foregoing, this Court reserves the possibility to determine, in the corresponding section, other forms of reparation in favor of all the members of the communities affected by the facts of the case” (para. 62).

The Court noted that reparations were not exhausted by compensation for pecuniary and non-pecuniary damage; other forms of reparation must be added (para. 93).

The Court began to determine measures of satisfaction seeking to repair the “non-pecuniary damage, which are not of a pecuniary nature, but rather have public repercussions” (para. 93). The Court noted these measures “have particular relevance in this case, owing to the extreme gravity of the facts and the collective nature of the damage produced” (para. 93).

The Court held the State has an obligation to investigate the facts that resulted in the violations, and identify, prosecute, and punish those responsible, noting the State still has not done this 22 years passed since massacre and 10 years since investigations were open. “This constitutes a situation of impunity, which contravenes the State’s aforementioned obligation, harms the victims, and encourages the chronic repetition of the human rights violations in question” (para. 95).

The Court held the State must organize a public act acknowledging its responsibility, which should be carried out in the village where the massacre occurred, in presence of high-

ranking State authorities, and in presence of community members (para. 100). The State must provide means to facilitate that all those previously mentioned can be in attendance. The act must be conducted in both Spanish and Maya-Achí (the indigenous language), and publicized in the media, and the act must be carried out within 1 year of the Judgment (para. 100). During the act, the “State must honor publicly the memory of those executed,” and “must take into account the traditions and customs of the members of the affected communities in this act” (para. 101). The Court does not specify how the State is to take this into account.

The Court considered the unique language needs of the community, and ordered specific reparations in the Maya-Achí language. “The Court considers that the State must translate the American Convention on Human Rights into the Maya-Achí language, if this has not been done already, as well as the [merits judgment], and this judgment” (para. 102). Further the State must “provide the necessary resources to publicize these texts in the municipality of Rabinal [of the community] and deliver them to the victims of the instant case” within 1 year (para. 102). The Court ordered the State to “publish, at least once, in the official gazette and in another daily newspaper with national circulation, in Spanish and in Maya-Achí [certain provisions of the judgment] within 1 year” (para. 103).

The Court held, with regard to the guarantees of non-repetition of the facts of this case, that the State must pay 25K for maintenance and improvements to the infrastructure of the chapel in which the victims pay homage to those executed in the massacre. Within 1 year the sum must be delivered to the members of the community or their chosen representatives, who will be responsible for administering it. The Court noted “this will help raise public awareness to avoid repetition of events such as those that occurred in this case, and keep alive the memory of those who died” (para. 104).

The Court held, since the members of the community lost their homes as a result of the massacre, that the “State must implement a housing program to provide adequate housing to the surviving victims who live in the village and who require it” (para. 105). This must be implemented within 5 years (para. 105).

The Court held the State shall provide, free of charge through its health institutions, the medical treatment the victims require, including any necessary medication; further the State shall create a specialized mental health treatment program provided free of charge, with the special circumstances of each person taken into account for individual, family or collective treatment (para. 107). The Court further ordered the State set up a committee to evaluate the treatment, and the treatment should be started immediately after committee constituted and should last for 5 years (para. 108).

Lastly, given the harm caused to the members of the community, the Court order that the State shall implement numerous social programs in the affected Maya communities, some specifics including: maintenance and improvement of road systems, sewage system and potable water supply, supply of teaching personnel, establishment of a health center, all programs which must be implemented within 5 years of notification of this judgment, and the State must present the Court with a detailed implementation report each year (para. 110).

120 – Case of the Serrano-Cruz Sisters v. El Salvador (March 1 2005)

I/A Court H.R., *Case of Serrano-Cruz Sisters v. El Salvador*. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120.

Holding: This case concerns the forced disappearance of then child sisters by soldiers, members of a Battalion in the Salvadoran Army, during “Operation Cleansing.” The Court ordered reparations to facilitate the finding of all disappeared children from the conflict. Some of these reparations include: creation of a national Commission dedicated to finding all the disappeared children (paras. 183-188); creation of a website database to facilitate family reunification (para. 189-91); creation of a genetic information system (para. 192-93); and creation of a day in remembrance (para. 196). The Court ordered that the State’s already established national Commission must adhere to specific parameters established by the Court.

Statement of Significance:

The Court considered the victims themselves and their next of kin as beneficiaries (para. 143-144). The Court reiterated that “it is presumed that an individual’s suffering causes non-pecuniary damage to their parents and siblings, and it is not necessary to prove this” (para. 145).

The Court noted the State has “a duty to investigate the facts and punish those responsible” (para. 166-182). “These measures benefit not only the next of kin of the victims, but also society as a whole, because, by knowing the truth about such crimes, they can be prevented in the future” (para. 169). Further, “the Court has established that the State has the obligation to avoid and combat impunity, which the Court has defined as the absence of any investigation, pursuit, capture, prosecution and conviction of those responsible for the violations of rights protected by the American Convention” (para. 170). Further, the State must “abstain from using figures such as amnesty ...” (para. 172).

The Court took into account the State issued an Executive Decree creating the “Inter-institutional Commission to trace children who disappeared as a result of the armed conflict in El Salvador” (para. 183). However, “the Decree did not contain specific regulations on the functions or the working methods of the commission in order to fulfill its mandate, but merely indicated that these would be determined in its [internal regulations]” (para. 183). Further, “the Court was not informed of whether the respective regulations had been issued” (para. 183).

The Court made observations on what the national Commission should comply with, and how it should function. The Court noted “the State could comply with this measure of reparation through the [already established Commission] if it adheres to the parameters established by the Court” (para. 184). In the alternative, the State could “create a new Commission that complies with the parameters” (para. 184).

The Court continued on to list specific steps the Commission should take with regards to effective investigation. “The Court observe[d] that the function of the commission cannot be limited to “collaboration”; rather it must take the initiative to adopt the necessary measures to investigate and collect evidence about the possible whereabouts of the [disappeared children] and thereby facilitate the determination of what happened and family reunification” (para. 185).

The Court noted that the State must evaluate why previous initiatives were unsuccessful. “The State must ensure that all its institutions and authorities are obliged to cooperate by providing information to the national tracing commission and by providing access to all files and records that could contain information on the possible fate of [the children]” (para. 186). Further, “the independence and impartiality of the members of the national tracing commission must be

ensured, and it must have the necessary human, financial, logistic, scientific and other resources to be able to investigate” (para. 187).

The Court noted the Commission cannot merely include State authorities. “The Court considers that the national tracing commission must include State institutions that have demonstrated some interest in resolving this problem and others who should be members because of their functions, and also that civil society should participate through non-governmental organizations that have been engaged in this search or that are specialized in working with young disappeared persons” (para. 188).

The Court ordered a database be established by creating a webpage for the disappeared children, and described how the database should be set up, and what should be included in it, and the State must comply within 6 months of notification of the Judgment (para. 189-91).

The Court further ordered creation of a genetic information system (para. 192-93). The Court emphasized “the importance of using science to identify the people who disappeared and their next of kin” (para. 192).

The Court ordered the State “to organize a public act acknowledging its responsibility for the violations declared in this judgment and to make amends to the victims and their next of kin” (para. 194). “Also, the State shall disseminate this act through the media and on the Internet” (para. 194). The State was given one year to carry out the act (para. 194).

As in other occasions, the Court ordered the State publish the Judgment in two national newspapers within 6 months of notification of Judgment (para. 195). The Court also considered “that a link should be established to the complete text of this judgment on the web search page for disappeared persons” (para. 195).

The Court further ordered the State to “designate a day dedicated to the children who disappeared during the conflict” (para. 196). This is “in order to make society aware of the need for “all Salvadorans [...] to work together to find the best solutions [...] leading to the truth about the whereabouts of the children,” as the State affirmed in the public hearing before the Court” (para. 196).

The Court ordered the State to provide medical and psychological care to the beneficiaries (para. 197-200). Finally, the Court held that the Judgment constitutes, *per se*, a form of reparation (para. 201).

124 – Case of the Moiwana Community v. Suriname (Jun 15 2005)

I/A Court H.R., *Case of the Moiwana Community v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124.

Holding: This case concerns the massacre of over 40 people from village of Moiwana by state agents. Here the Court orders reparation for the harm suffered by a people. The Court ordered reparations including, but not limited to: a public act acknowledging international responsibility, but also a public apology, as the State had “no objections to issue a public apology to the whole nation” (para. 216); a developmental fund “directed to health, housing, and educational programs for Moiwana community members” (para. 214); and a monument “as a reminder to the whole nation of what happened and what may not [be] repeat[ed] in the future” (para. 218). The Court included moral damages.

Statement of Significance:

Consistent with *Case of Plan de Sanchez Massacre*, the Court held “the identities of the beneficiaries must be properly communicated to the Court ... thus, [the Court] cannot grant the request that additional victims, which to date have not been individualized before the Court, be named for compensation purposes ... [as in] *Case of Plan de Sanchez Massacre* ... no additional victims were permitted to be identified, following the judgment on reparations, in order to receive monetary awards (para. 177).

“Following precedent, [the Court] considers as properly identified those victims who are referred to in an official document, such as a birth certificate or “family book” submitted before [the Court]” (para. 178). For all those individualized in the application who have not been “suitably identified,” they must “appear before appropriate State officials within 24 months following notification of the instant judgment and provide sufficient means of identification” (para. 178). The Court considers adequate identification as: a) an official document attesting to the person’s identity; or b) a statement before a competent state official by a recognized leader of the Mowiwana community members, as well as the declarations of two additional persons, all of which clearly attest to the individual’s identity. “The Court notes that it is granting more latitude in this case with respect to acceptable means of proving identity ... [because] many Maroons [members of the Mowiwana indigenous community] do not possess formal identity documents, and were never inscribed in the national registry” (para. 178).

The Court included in damages *moral damages*. ‘Moral damages may include suffering and affliction, detriment to very significant personal values, as well as non-pecuniary alterations to a victim’s living conditions” (para. 191). “Since it is not possible to assign a precise monetary equivalent to non-pecuniary damage, for purposes of comprehensive reparation to victims, the Court must turn to other alternatives: first, payment of an amount of money or delivery of goods or services that can be estimated in monetary terms, which the Court will establish through reasonable application of judicial discretion and equity; and second, public acts or works that seek, inter alia, to commemorate and dignify victims, as well as to avoid the repetition of human rights violations” (para. 191).²⁶⁴

The Court ordered the State to provide collective title to the Mowiwana traditional territories, including “the creation of an effective mechanism for the delimitation, demarcation and titling of said traditional territories” (para. 209).

The Court ordered State guarantees of safety for those community members who return, by sending “representatives every month to Mowiwana village during the first year [to] consult with residents (para. 212).

The Court ordered establishment of a developmental fund. The Court ordered it consist of 1.2 million US dollars, is completed within 5 years from notification of Judgment, and its specific aspects be determined by an implementation committee comprised of 3 members (para. 214), Of the 3 members, 1 shall be chosen by victims, 1 by the state, and 1 through agreement of both (para. 215).

The court ordered not only that the State “publicly recognize its international responsibility for the facts of the instant case” but also that they “issue an apology to the Mowiwana community members” (para. 216). Before ordering the apology, the Court noted that the State had “no objections to issue a public apology to the whole nation with regard to the occurrences that took place in the Village of Mowiwana and to the survivors and the family members in particular”

²⁶⁴ Citing to *Case of Serrano-Cruz Sisters v. El Salvador*, Series C No. 120 (para. 156); *Case of the Plan de Sánchez Massacre v. Guatemala*, Series C No. 116 (para. 80).

(para. 216).

The Court ordered the erection of a monument, that the State “shall place it in a suitable public location” (para. 218). “The memorial’s design and location shall be decided upon in consultation with the victims’ representatives” and completed within 1 year from notification of judgment (para. 218).

125 – Case of the Yakye Axa Indigenous Community v. Paraguay (Jun 17 2005)

I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125.

Holding: This case concerns indigenous property rights, where the State was not providing the Yakye Axa community effective rights to their ancestral territory claims. Aside from handling over traditional territory (para. 217), providing basic goods and services (para. 221), and adapting legislation to the Convention (para. 225), that the State must: publicly acknowledge responsibility (para. 226) and publish and disseminate the judgment (para. 227).

Statement of Significance:

With regards to adapting legislation to the Convention, the Court ordered the State within a reasonable term, in its domestic legislation, such legislative, administrative, and other measures that may be necessary to create an effective mechanism for indigenous peoples’ claims to ancestral lands, such that it makes their right to property effective, taking into account their customary law, values, practices and customs (para. 225). It did not elaborate how the State was to take custom and tradition in account.

The Court, as it has ordered in other cases, deemed necessary, “with the aim of redressing the damage caused to the victims, for the State to conduct a public act of acknowledgment of its responsibility” (para. 226). This act must be conducted at the current seat of the Yakye Axa Community, at a public ceremony attended by high State authorities and the members of the Community living in other areas, and with participation by the leaders of the Community” (para. 226). The State must provide the means for said persons to attend the aforementioned act (para. 226). “The State must conduct said act both in the Enxet language and in Spanish or Guaraní, and make it known to the public by means of the media” (para. 226). “At this act, the State must take into account the traditions and customs of the members of the Community” (para. 226). The Court did not elaborate how the State was to take custom and tradition in account.

The Court ordered the publication and dissemination of pertinent parts the judgment (para. 227). The Court ordered publication not only in newspapers, but that the State must cover the costs of radio broadcasting “in Enxet language and in Guaraní or Spanish, on a radio station to which the members of the Yakye Axa Community have access ... the radio broadcast must be made at least four times, with two weeks time between each broadcast” (para. 227).

127 – Case of YATAMA v. Nicaragua (Jun 23 2005)

I/A Court H.R., *Case of Yatama v. Nicaragua*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 23, 2005. Series C No. 127.

Holding: This case concerns political exclusion of certain candidates from the indigenous regional party in the 2000 municipal elections. The Court ordered reparations including, but not limited to: publication of judgment; adoption of legislative measures to establish a simple, prompt, and effective recourse against the decisions of the Supreme Electoral Council; reforms to electoral act of 2000; and that the Judgment constitutes per se a form of reparation (para. 252-260).

Statement of Significance:

The Court ordered publication of judgment not only in newspapers and on the State's official website (para. 252) but also took into account "the [indigenous] communities use radio as a means of information; it therefore considers it necessary for the State to publicize, on a radio station with broad coverage [pertinent parts of judgment] ... to be done in Spanish, Miskito, Sumo, Rama and English ..." (para. 252).

The Court ordered adoption of legislative measures to establish a simple, prompt, and effective recourse against the decisions of the Supreme Electoral Council (para. 254) and reforms to electoral act of 2000 (para. 256-259). In doing so, the State must "and adopt, within a reasonable time, the necessary measures to ensure that the members of the indigenous and ethnic communities may participate in the electoral processes effectively and taking into account their traditions, practices and customs, within the framework of a democratic society" (para. 259). "The requirements established should permit and encourage the members of these communities to have adequate representation that allows them to intervene in decision-making processes on national issues that concern society as a whole, and on specific matters that pertain to these communities; therefore, these requirements should not constitute barriers for such political participation" (para. 259).

130 – Case of the Girls Yean and Bosico v. Dominican Republic (Sep 8 2005)

I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130

Holding: In this case, the State refused issue birth certificates to for [children] even though they were born within the State's territory and the State's Constitution establishes the principle *ius soli* to determine those who have right to citizenship. The Court ordered a public apology (para. 235), even though the State here, as in *Case of the Moiwana Community v. Suriname*, did not explicitly say they had no objections to doing so.

Statement of Significance:

The Court ordered the State to publish certain parts of the judgment (para. 234).

The Court ordered the State to "organize a public act to acknowledge its international responsibility for the [facts here] and to apologize to the [claimant children] ... with participation of the authorities, the victims and their next of kin, and disseminate it via the media" (para. 235). "This act would be a measure of satisfaction and would serve as a guarantee of non-repetition"

(para. 235).

The Court ordered that State should adopt “legislative or other measures necessary to make effective” the rights established in the Convention (para. 236); and “adopt within its domestic [legislation] measures needed to regulate the procedure [for nationality] (para. 239).

131 – Case of the Serrano-Cruz Sisters v. El Salvador (Sep 9 2005)

I/A Court H.R -Cruz., *Case of the Serrano Sisters v. El Salvador*. Interpretation of the Judgment of Merits, Reparations and Costs. Judgment of September 9, 2005. Series C No. 131

Holding: This case deals with the interpretation of the Judgment of merits, *Case of Serrano-Cruz Sisters v. El Salvador*, Series C No. 120, concerning the forced disappearance of child sisters by armed forces. The interpretation was requested by violating State El Salvador. The Court held article 63(1) in the Convention reflects customary law, and State’s domestic laws cannot shape nor impede ordered reparations. “Article 63(1) of the Convention empowers [the Court] to determine the measures that will lead to repair the consequences of a violation and regulate all aspects thereof” (para. 30).

Statement of Significance:

The State requested interpretation on the reasons that lead the Court to establish the non-pecuniary damage amount; the compensation imposed by the Court for non-pecuniary damages in favor of disappeared children’s mother who is deceased; and the distribution of that amount (para. 16).

The Court dismissed the request on the non-pecuniary damage amount. The Court held that the State “does not seek that the Court interprets the meaning or scope of the Judgment, but rather ... [uses this request for interpretation] as a way to challenge the Judgment ...” (para. 20).

The Court dismissed the request on the compensation imposed by the Court for non-pecuniary damages in favor of disappeared children’s mother who is deceased. The Court held that the State “does not seek that the Court interprets the meaning or scope of the Judgment, but rather, the State seeks that the Court determines compensations based on the internal laws of El Salvador” (para. 27). “As the Tribunal established, International Law regulates every aspect of the obligation to repair (scope, nature, mode and determination of beneficiaries) and a defendant State cannot modify or fail to comply with the obligation to repair by invoking provisions or difficulties in its internal laws” (para. 29). “The above-mentioned article 63(1) of the Convention empowers [the Court] to determine the measures that will lead to repair the consequences of a violation and regulate all aspects thereof” (para. 30).

The Court clearly lays out its indemnification procedure. In all cases where the Court has decided on reparations, it held “indemnification is to be paid for non pecuniary damages suffered by the victims up to the time of their death, as well as to victims of enforced disappearance, and for the many years of suffering of the victim’s next of kin, even if they are deceased at the moment that the Court enters its Judgment” (para. 32). “The European Court of Human Rights had followed this same criteria” (para. 33). The Court explained that the Court fixed a compensation generated by the damages suffered by victims’ mother while she was alive, and this is to be transmitted to her heirs, her children (para. 31).

On the distribution of the non-pecuniary damages amount to victims’ deceased mother, the Court held they had clearly established that there is a possibility that the [disappeared child]

victims are still alive (para. 47). Consequently, they “should also be taken into account” when distribution of the deceased mother’s non-pecuniary damages is delivered to her children in equal parts (para. 48). The compensations for the [disappeared child] victims; and their share in their deceased mother’s reparations, were ordered to be deposited in a bank account to be claimed (para. 46, 49).

134 – Case of the “Mapiripán Massacre” v. Colombia (Sep 15 2005)

I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134.

Holding: As in *19 Merchants v. Colombia*, this case is an important example where the Court is required to provide redress for massive violations of the most basic rights. This case concerns the torture and murder of at 49 civilians in 1997 by a paramilitary group collaborating with agents of the State. Of the 49 victims, 10 were identified, along with some of their next of kin. Since not all the victims’ next of kin had been adequately identified, compensation due to unidentified next of kin would be granted contingent that within 24 months kinship is proved (para. 257). The Court ordered reparations, including, but not limited to: that “the State must build an appropriate and dignified monument in remembrance of the facts in the Mapiripán Massacre, as a measure to prevent such grave events from happening in the future” (para. 315); and ordered specify how the State must deal with victims’ remains (paras. 305-310).

Statement of Significance:

The facts of the case are set within a widespread situation of forced internal displacement in Colombia, caused by domestic armed conflict, affecting a population of 1.5-3 million (para. 173).

The Court addressed “the scope and juridical effects of the partial acknowledgment of international responsibility by the State” (para. 101).

In looking at this, the Court had an opportunity to speak to the special nature of international human rights treaty obligations. It noted that “the special nature of [the American Convention and other human rights treaties] and their collective implementation mechanism entail the need to apply and interpret their provisions in accordance with their object and purpose, as to ensure that the State Party guarantee compliance with them and their effect *effet utile* in their respective domestic legal systems” (para. 105). “This principle applies not only to the substantive provisions ... [but] also to procedural rules” (para. 105).

For international responsibility of the State, it is “enough to prove that there had been support or tolerance by public authorities ... or omissions that enabled violations to take place” (para. 110). “Said responsibility may also be generated by acts of private individuals not attributable in principle to the State” (para. 111). The Court further noted with regards to international responsibility of the State, that in reviewing State violations under the Convention, the obligations derived from [international humanitarian law] must be taken into account (para. 115). The Court concluded that, with the link between the armed forces and the paramilitary group established, the State bears international responsibility; therefore, “the Court grants full effectiveness to the partial acknowledgment of responsibility” (paras. 123-124).

The Court pointed out (as it has repeatedly) that any violation of an international obligation that has caused damage entails the duty to make adequate reparations (para. 242). The Court

cites to Article 63(1) of the American Convention which enshrines this principle, noting said article reflects a customary rule that is one of the “basic principles of contemporary International Law regarding the responsibility of States” (para. 243).

In determining beneficiaries, the Court “reiterated its consternation regarding the grave facts of the instant case, which have a series of effects when reparations are set” (para. 246). “It was established that the objective of the *modus operandi* of the massacre was to make the identification of executed or missing victims difficult or impossible, by destroying evidence, intimidating and displacing the inhabitants of the municipality of Mapiripán” (para. 246). “The Court states its deep concern regarding the situation of the unidentified victims, for whose death the State also acknowledged its responsibility, as well as regarding that of their next of kin” (para. 247). “While the approximately 49 victims acknowledged by the State as well as their next of kin, will be beneficiaries of other forms of reparation and/or the compensation set for non-pecuniary damages, for lack of information the Court abstains from ordering compensation for pecuniary damages in favor of those victims and their next of kin who have not been individually identified” (para. 247) “However, the Court states that setting of reparations in this international instance neither obstructs nor precludes the possibility of the next of kin of unidentified victims filing the appropriate complaints before the national authorities, as they come to be identified, including the means ordered in this Judgment” (para. 247). “The Court deems that the compensation due to each must be granted in the same manner set forth with regard to those who have been duly identified” contingent that within 24 months “they prove their relationship or kinship with the victim, through sufficient means of identification (birth certificate, death certificate, identification card) or by means of two attesting witnesses, as the case may be” (para. 257(b)).

Consistent with previous judgments, the Court ordered the State to investigate the facts in the case, to identify, prosecute, and punish those responsible (para. 295-300). The Court reiterated that “the State is under the obligation to combat this situation of impunity by all means, as it fosters chronic recidivism of human rights violations and total defenselessness of the victims and of their next of kin, who have the right to know the truth about the facts” (para. 297). The “right to truth ... constitutes an important means of reparation [and] generates an expectation of the victims, which the State must satisfy” (para. 297).

The Court “reiterates its *jurisprudence constante* that no domestic legal provision of law can impede compliance by a State with the obligation to investigate and punish those responsible for human rights violations” (para. 304). “Specifically, the following are unacceptable: amnesty provisions, rules regarding extinguishment and establishment of exclusions of liability that seek to impede investigation and punishment of those responsible for grave human rights violations – such as those of the instant case, executions and forced disappearances” (para. 304). “The Court reiterates that the State’s obligation to adequately investigate and to punish those responsible, as appropriate, must be carried out diligently to avoid impunity and repetition of this type of acts” (para. 304).

Consistent with previous judgments, the Court ordered the State identify the victims of the massacre and their next of kin. “The Court deems it indispensable, for purposes of reparation, to individually identify the victims ...” (305). “To make individual identification effective and feasible, the State must publish an announcement by means of a radio broadcaster, a television broadcaster and a newspaper, all of them with national coverage, stating that it is attempting to identify the victims ...” (para. 306). Also, the State must “establish a genetic information system” (para. 308). “When mortal remains are found and identified, the State must deliver them

as soon as possible to their next of kin, once filiation has been genetically proven, for them to be honored in accordance with their respective beliefs. If no next of kin claim the remains within two years time, the State must individually place them in the cemetery in Mapiripán, with reference to the fact that he or she is an unidentified victim of the Mapiripán Massacre or –when appropriate- an unclaimed one” (para. 310).

The Court ordered the State to create official mechanism to monitor compliance with reparations ordered. “The State must establish, within 6 months [of judgment] an official mechanism that will operate for 2 years, with participation by the next of kin of the victims [to perform the functions of decision making, monitoring] [of the judgment]” (para. 311).

The Court ordered the State provide adequate treatment of the next of kin of the victims; guarantee the safety of former inhabitants of the municipality who decide to return; take steps to train officials in human rights obligations; and to publish the pertinent parts of the instant judgment (see paras. 312-318).

The Court ordered the State build a monument. “The State must build an appropriate and dignified monument in remembrance of the facts in the Mapiripán Massacre, as a measure to prevent such grave events from happening in the future” (para. 315). “Said monument must be placed in an appropriate public space in Mapiripán, within 1 year of notification of the instant Judgment” (para. 315).

140 – Case of the Pueblo Bello Massacre v. Colombia (Jan 31 2006)

I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140.

Holding: As in *Mapiripán Massacre v. Colombia*, this case is an important example where the Court is required to provide redress for massive violations of the most basic rights. This case concerns the forced disappearance of 37 [persons], as well as the extrajudicial execution of 6 peasants in 1990 by a paramilitary group collaborating with agents of the State. The Court recognized as in *Mapiripán Massacre v. Colombia* that not all victims’ next of kin had been identified and ensured they would be included in reparations if they took adequate steps (para. 237). The Court ordered reparations, including: investigation, prosecution, and punishment of those responsible; identification of victims; adequate medical or psychological care for next of kin; security for next of kin who decide to return; public apology and acknowledgment of international responsibility; monument; and publication of judgment (see para. 264-279).

Statement of Significance:

The Court noted when interpreting and applying the Convention, “The Court must pay attention to the special needs for protection of the individual, the ultimate beneficiary of the provisions of the respective treaty” (para. 117).

In determining beneficiaries, “the Court considers that the 37 persons disappeared and the six persons deprived of life are the “injured party” (para. 234) and “the Court considers that the immediate family of the 43 victims are the “injured party” in their own capacity” (para. 235). “Pursuant to its case law, the Court considers that the adequately identified immediate family [of the disappeared] includes their mothers, fathers, sisters, brothers, wives, companions and children, whose names appear in a document issued by a competent authority proving their relationship, such as a birth certificate or baptismal certificate” (para. 235).

The Court established that the next of kin that have not yet been identified or whose documents do not confirm the relationship to victim, that their compensation that corresponds to them for the non-pecuniary damage suffered will conform to the parameters established for next of kin duly identified as long as they identify themselves and prove their relationship within 24 months of notification of the Judgment (para. 237).

The Court found the other forms of reparations “measures have special relevance in this case owing to the extreme gravity of the facts” (para. 264).

Consistent with previous judgments, the Court ordered the State to investigate the facts in the case, to identify, prosecute, and punish those responsible (para. 268). The Court reiterated that “the State is under the obligation to combat this situation of impunity by all means, as it fosters chronic recidivism of human rights violations and total defenselessness of the victims and of their next of kin, who have the right to know the truth about the facts” (para. 266). The “right to truth ... constitutes an important means of reparation [and] generates an expectation of the victims, which the State must satisfy” (para. 266).

Consistent with previous judgments, the Court ordered the State to search for, and bury the victims of the massacre (para. 270). “The Court considers it essential [that] the State [seek] and identify the disappeared victims” (para. 270).

Consistent with previous judgments, the Court ordered the State to provide adequate medical or psychological care for next of kin (para. 274). “The Court considers it necessary to provide a measure of reparation that seeks to reduce the physical and mental ailments of the immediate next of kin of those [disappeared]” (para. 274).

Consistent with previous judgments, the Court ordered the State to guarantee security for next of kin and former inhabitants of the municipality who decide to return (para. 275). Further, “since many of the inhabitants of Pueblo Bello lost their professions as a result of [the massacre] the Court considers that, as it has in other cases, the State should implement a housing program for the next of kin who return” (para. 276).

Consistent with previous judgments, the Court ordered the State to publicly apologize and acknowledge international responsibility (para. 277). “The State should also issue an apology to the next of kin of the persons disappeared and deprived of life for failing to comply with its obligation to guarantee the rights to personal liberty, humane treatment and life of these persons, as a result of its failure to comply with its prevention, protection and investigation obligations, and also for the violation of the rights of access to justice, judicial protection and judicial guarantees to their detriment” (para. 277).

Consistent with previous judgments, the Court ordered the State to “erect an appropriate and proper monument to recall the facts of [the massacre], as a measure to prevent recurrence of such grave events in the future” (para. 278).

Consistent with previous judgments, the Court ordered the State to publish the pertinent part of the judgment (para. 279).

“In accordance with its consistent practice, in exercise of its attributes and in compliance with its obligations deriving from the American Convention, the Court shall exercise the authority inherent in its attributes to monitor compliance with all the terms of this judgment” (para. 295). The State “shall provide the Court with a first report on the measures adopted to comply with the judgment” (para. 295).

142 – Case of the Indigenous Community Yakye Axa v. Paraguay (Feb 6 2006)

I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay*. Interpretation of the Judgment of Merits, Reparations and Costs. Judgment of February 6, 2006. Series C No. 142

Holding: This case deals with the interpretation of the Judgment of merits, *Case of the Yakye Axa Indigenous Community v. Paraguay*, Series C No. 125, concerning indigenous property rights. The representatives requested the interpretation. In clarifying the judgment, the Court noted “such historical memory and particular identity must be especially considered in identifying the land to be transferred to them” (para. 23).

Statement of Significance:

The representatives requested interpretations for two aspects of the judgment: provisions that order the State to return the territory historically owned by the members of the [C]ommunity, whilst at the same time directing that the area in issue has to be identified; and the manner in which the State should fulfill its obligations to establish a fund for the purpose of acquiring the territories to be conveyed because the term in which do so is not long enough (para. 6)

As to the first aspect concerning identifying the territory historically owned by the members of the [C]ommunity, the Court noted that with regards to the land the Community “adopted a particular identity, associated with a physically and culturally determined geographic area” (para. 23). The Court held “such historical memory and particular identity must be especially considered in identifying the land to be transferred to them” (para. 23). The Court did not specify how this was to occur.

Concerning the manner in which the State should fulfill its obligations to establish a fund, the Court specifically laid out how the State was to fulfill its obligation to delimit, demarcate, title and transfer said territory for free to the Community within a maximum period of 3 years (para. 32-35). Further, the Court noted the State should identify the territory before the creation of the Fund, so that the allocation of the money be budgeted properly (para. 36).

“The State [should] create the Fund which will provide the money in any case, and set a sum which allows ensuring the acquisition or condemnation process is not affected by the insufficiency of funds” (para. 36).

143 – Case of Raxcacó-Reyes v. Guatemala (Feb 6 2006)

I/A Court H.R., *Case of Raxcacó-Reyes v. Guatemala*. Interpretation of the Judgment of Merits, Reparations and Costs. Judgment of February 6, 2006. Series C No. 143.

Holding: This case deals with the interpretation of the Judgment of merits concerning a prison decided on September 15, 2005. The State requested the interpretation. Here, the Court ordered State to pay victim directly, and the victim would pay representatives.

Statement of Significance:

The Court held, (in the merits Judgment para.138) and conclude here again, that “the State should reimburse [the victim and the victims] shall give to his representatives any amount that may be equitably prorated depending on the assistance they might have given to him” (para. 22).

145- Case of the Moiwana Community v. Suriname (Feb. 8, 2006)

I/A Court H.R., **Case of the Moiwana Community v. Suriname**. Interpretation of the Judgment of Merits, Reparations and Costs. Judgment of February 8, 2006. Series C No. 145

Holding: In this interpretation of the Judgment of merits, the Court ordered the State to continue to comply with the terms of the earlier judgment. The Court required the State to provide reparations for the unjust expulsion of the Moiwana indigenous community from their traditional lands.

Statement of Significance:

In the interpretation of the Judgment, the court affirmed the State's obligation to recover the remains of the Moiwana killed during past skirmishes with the state. To prevent future violence, the Court instructed the State to "adopt legislative, administrative, and other measures needed to ensure the property rights of the members of the Moiwana community in relation to the traditional territories from which they were expelled." (para. 1). "The State will also provide for the members' use and enjoyment of those territories. These measures shall include the creation of an effective mechanism for the delimitation, demarcation and titling of said traditional territories." (para. 3).

The Court also ensured that the State would guarantee the safety of the Moiwana members who decide to return to the Moiwana community. (para. 4). The Court also ordered the State to establish a community development fund for the Moiwana (para. 5).

"The State shall carry out a public ceremony, whereby Suriname recognizes its international responsibility and issues an apology." (para. 6). Additionally, the Court forced the State to build a memorial "in a suitable public location" honoring the Moiwana people.

146- Case of the Sawhoyamaya Indigenous Community v. Paraguay (Mar. 29, 2006)

I/A Court H.R., **Case of the Sawhoyamaya Indigenous Community v. Paraguay**. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146

Holding:

The Sawhoyamaya Indigenous Community engaged the State in a protracted legal dispute over the right to traditional tribal land and the natural resources located there within. According to the indigenous people, "[t]he lack of guarantee of the right to their communal property and the serious conditions in which the members of the [tribe] still live have caused them suffering and have been detrimental to the preservation of their way of living, customs, and language." (para. 73(75)).

Statement of Significance:

The Court acknowledged that the reparations awarded in this case would benefit the larger Sawhoyamaya Indigenous Community rather than individual claimants. Therefore, the Court placed the compensation "at the disposal of the leaders of the Community, in their capacity as representatives thereof." (para. 207).

"The Court considers that the restitution of traditional lands to the members of the Sawhoyamaya Community is the reparation measure that best complies with the *restitutio in*

integrum principle. Therefore the Court orders that the State shall adopt all legislative, administrative or other type of measures necessary to guarantee the members of the Community ownership rights over their traditional lands, and consequently the right to use and enjoy those lands.” (para. 210).

Recognizing that full restitution might not be possible, the Court provided that the State could fulfill its obligations to the Sawhoyamaxa Community by “mak[ing] over alternative lands, selected upon agreement with the aforementioned Indigenous Community, in accordance with the community's own decision-making and consultation procedures, values, practices and customs. In either case, the extension and quality of the lands must be sufficient to guarantee the preservation and development of the Community’s own way of life.” (para. 212).

The Court recognized the symbolic value the Sawhoyamaxa placed on their land. The Court observed that “the denial of those rights over land involves a detriment to values that are highly significant to the members of those communities, who are at risk of losing or suffering irreparable damage to their lives and identities, and to the cultural heritage of future generations.” (para. 222).

The State was also forced to take measures to assure the productivity of the Sawhoyamaxa’s land. The Court ordered the State to “implement a project for the adequate development of such lands, immediately after consultations with and acceptance by the Community.” (para. 223). Moreover, the Court instructed the State to establish a community development fund of US\$1,000,000.00, “which will be used to implement educational, housing, agricultural and health projects, as well as to provide drinking water and to build sanitation infrastructure, for the benefit of the members of the Community. These projects must be established by an implementation committee, as described below, and must be completed within two years as from delivery of the lands to the members of the Indigenous Community.” (para. 224).

“The Court orders that, while the members of the Community remain landless, the State shall immediately, regularly and permanently adopt measures to: a) supply sufficient drinking water for consumption and personal hygiene to the members of the Community; b) provide medical check-ups, tests and care to all members of the Community, especially children, elder people and women, together with periodic parasite removal and vaccination campaigns, respecting their practices and customs; c) deliver sufficient quantity and quality of food; d) set up latrines or other type of sanitation facilities in the settlements of the Community, and e) provide the school of the “Santa Elisa” settlement with all necessary material and human resources, and establish a temporary school with all necessary material and human resources for the children of the “Kilómetro 16” settlement. The education provided must, inasmuch as possible, respect the cultural values of the Community and of Paraguay, and is to be bilingual; in the Exent language, and at the discretion of the members of the Community, either in Spanish or in Guarani.” (para. 230).

“The Court also orders the State to implement, within one year as from the date notice of the instant Judgment be served, a registration and documentation program aimed at offering the members of the Community the possibility to register and to obtain their identification documents.” (para. 231).

“Finally, given the difficulties encountered by the members of the Community to access health care centers (*supra* para. 73(72)), the State shall set up in the Santa Elisa and Kilómetro 16 settlements of the Sawhoyamaxa Community a communication system to allow victims to contact health authorities competent to address emergency cases. If necessary, the State shall

provide transportation. The State shall establish such communication system within six months as from the date notice of the instant Judgment be served.” (para. 232).

The Court also forced the State to publish the Court’s judgment in the official gazette and in another daily newspaper. (para. 236). The Court also wanted the State to broadcast the judgment over the radio “in the language indicated by the members of the Community, in a radio station accessible to them. Said radio broadcasting shall be made at least four times in two-week intervals.” (para. 236).

148- Case of the Ituango Massacres v. Colombia (July 1, 2006)

I/A Court H.R., **Case of the Ituango Massacres v. Colombia**. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006 Series C No. 148

Holding: With the tacit approval of the Columbian police force, paramilitary groups murdered, tortured, and disappeared Columbian civilians residing in the Ituango region. Real property was wrongfully seized and livestock and homes were destroyed. The Court awarded pecuniary and nonpecuniary reparations to the immediate next of kin of the victims.

Statement of Significance;

The Court identified next of kin beneficiaries “by a document issued by the competent authority proving this, such as a birth certificate or a baptismal certificate, death certificate or identity card, or by acknowledgment of this relationship in the domestic proceedings.” (para. 356). These injured parties received pecuniary damages that accounted for the loss of income over the lifetime of the individuals. (para. 373).

Recognizing the severity of the crimes committed, the Court ordered reparations of “a public scope or repercussion.” (para. 396). The Court ordered the State to “conduct criminal proceedings concerning the Ituango massacres, so that the facts are clarified and those responsible punished.” (para. 399). The State had to remove all obstacles, both de facto and de jure, to an investigation and prosecution. (para. 400).

The State was forced to provide medical treatment for the victims’ families. (para. 403) If the families wished to leave the Ituango region, the Court made the State facilitate their move free of charge and with a guarantee of safe passage. (para. 404). For the families who lost their homes, the Court required the State implement a housing program to provide appropriate housing. (para. 407).

The Court held that the State’s partial acknowledgment of responsibility for the Ituango massacres was insufficient. (para. 406). The State had to “acknowledge publicly, in the presence of senior authorities, its international responsibility for the facts of the massacres... and apologize to the next of kin.” (para. 406). The State also had to erect a plaque recording the events that transpired in Ituango, “so that the new generations are aware of the events that took place in this case.” (para. 408). The State’s official gazette and another national newspaper also had to publish the contents of the Court’s judgment within six months. (para. 410).

Finally, the Court required the State “to implement a permanent training program on human rights and international humanitarian law for the Columbian Armed Forces.” (para. 409).

153- Case of Goiburú et al v. Paraguay (Sept. 22, 2006)

I/A Court H.R., **Case of Goiburú et al. v. Paraguay**. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153

Holding: Paraguayan authorities illegally and arbitrarily detained, tortured, and disappeared four men because they opposed the governing political party. The Court awarded reparations to the surviving victims and to some of their family members, including wives, children, brothers, nieces, and nephews. The Court stressed the State's duty to fully facilitate an investigation into the incident.

Statement of Significance:

In accordance with Article 63, the Court held that international law required the State to make full restitution to the victims. Along with the surviving victims, the beneficiaries included wives, children, brothers, nieces, and nephews. (para. 134). The court acknowledged the emotional damage inflicted on the victims' families as well as the economic loss of a contributing member of the household. (para. 135). The Court awarded pecuniary damages to the injured parties.

The Court also ordered nonpecuniary forms of redress. First, the Court instructed the State to "combat the situation of impunity that reigns in this case by all possible means." (para. 164). In order to fully understand and appreciate the gravity of the abuses inflicted on the victims, the Court directed the State to "remove all *de facto* and *de jure* obstacles that maintain impunity and use all available means to expedite the investigation and the respective proceedings and thus avoid a repetition of such serious acts..." (para. 165).

In addition to a thorough investigation and vigorous prosecution of those responsible, the Court also called on the State to locate the remains of the victims who never returned to their families. "[T]he State must return them to their next of kin as soon as possible, once it has proved the relationship through DNA testing." (para. 172).

The State also was required to public apologize to the victims' next of kin. Senior state officials were instructed to participate. (para. 173). The Court commended the State for already dedicating a public plaza in honor of the victims in this case. The Court observed that the plaza served as "an important comprehensive public recognition of those whose forced disappearance occurred..." (para. 174). However, the Court told the State to erect another monument in a central and prominent site in the capital city. (para. 177). The second monument specifically had to include a plaque listing the victims' names and the circumstances that led to their disappearance. (para. 177).

Since Paraguayan security forces detained, tortured, and disappeared the victims, the Court ordered the State to implement permanent human rights training programs for the Paraguayan police forces. (para. 178). The Court sought to make the State's police forces aware of international human rights instruments related to the forced disappearance of people and torture. (para. 178).

Finally, the Court ordered the State to provide medical treatment to the victims' families to alleviate the physical and mental burdens from this ordeal. (para. 176).

160- Case of the Miguel Castro-Castro Prison v. Peru (Nov. 25, 2006)

I/A Court H.R., **Case of the Miguel Castro-Castro Prison v. Peru.** Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160

Holding: In this case, 42 inmates were killed, 175 were injured, and 322 inmates were subjected to cruel, inhumane, and degrading treatment. Due to the large number of victims involved in the incident, the Court emphasized the importance of identifying the remains of each prisoner and returning those remains to the proper surviving relatives.

Statement of Significance:

The Court recognized the next of kin of the victims as beneficiaries eligible for reparations. (para. 420). The next of kin include the victims' sons, daughters, permanent partners, spouses, parents, and brothers.

The Court indicated that "the State must adopt all those measures necessary to comply with the obligation to investigate and, in its case, punish those responsible of gross violations to human rights." (para. 439). Furthermore, the Court urged the State to "fight this situation of impunity." (para. 440).

The Court ordered the State to return the body of one of the deceased victims to his family and to pay for all associated transportation fees. (para. 443). Pursuant to the Court's judgment, "the State must adopt all the measures necessary to ensure that all the inmates that died as a result of the attack be identified and their remains be handed over to their next of kin, pursuant to domestic legislation." (para. 444).

The Court forced the State to publicly acknowledge its responsibility in the affair that led to the suffering and deaths of the victims. "The State must transmit said act through the media, including the transmission on radio and television. For this, the State has one year, as of the notification of the present Judgment." (para. 445). The Court also insisted that the State publish the judgment in the Official Newspaper and in another newspaper of national circulation. The Court set a six-month deadline for compliance with these measures. (para. 446).

To address the physical and psychological suffering, the Court ordered the State to provide free medical and psychological treatment to the victims' family members. (para. 449).

Finally, the Court ordered the State to provide training for the State's security and military forces in human rights issues. (paras. 450, 451).

162- Case of La Cantuta v. Peru (Nov. 29, 2006)

I/A Court H.R., **Case of La Cantuta v. Peru.** Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162

Holding: Soldiers kidnapped, executed and disappeared a human rights professor and a group of his students from the local university. The reparations ordered by the Court reflected the academic nature of the victims. The State was forced to provide classes and training to government officials about human rights abuses.

Statement of Significance:

In addition to the victims, the Court recognized the victims' next of kin as beneficiaries entitled to reparations. (para. 205). The Court ordered the State to "use all means available to

fight the situation of impunity surrounding the instant case, as impunity fosters the chronic repetition of human rights violations...” (para. 222). To that end, the Court required the State to publish Peru’s Truth and Reconciliation Commission. (para. 223)

To alleviate the suffering of the surviving family members of the victims, the Court instructed the State to “search for and locate the mortal remains of [the victims]... [s]hould the remains of the victims be found, the State must deliver them without delay to their next of kin, prior genetic parentage evaluation thereof. The State must also bear any burial expenses, as agreed with the victims' next of kin. (para. 231).

The Court acknowledged the official apologies issued by the president and his agents (paras. 233, 234), but the Court still ordered the States to “make a public acknowledgement of liability for the forced disappearance or extra-legal execution of the victims. That public acknowledgement must be made in the presence of the relatives of the aforementioned victims and must count on the participation of the State’s highest-ranking authorities. Said public act must be performed within six months following notice of this Judgment.” (para. 235).

The Court approved of the State’s construction of the “*El Ojo Que Llora*” (The Crying Eye), a public memorial for the victims. (para. 236). However, the Court further insisted that “the State must ensure that, within the term of one year, the 10 individuals declared executed or forcefully disappeared victims in the instant case shall be represented in said memorial if they are not represented so far and provided their relatives so desire.” (para. 236).

The Court ordered the State to publish selected passages of the Court’s opinion in the Official Gazette and in another national daily newspaper within six months of the judgment. (para. 237).

To relieve the physical and psychological suffering of the victims’ relatives, the Court forced the State to free of charge and at national health-care facilities, with any necessary medical and psychological treatment which shall comprise provision of medicines. The psychological treatment must be provided taking into account the specific conditions and needs of each individual. (para. 238).

The Court mandated human rights training for the “security intelligence services, the Armed Forces and the National Police on legality issues and restrictions related to the use of force in general situations, armed conflict and terrorism, the due obedience concept and the role of said institutions in situations such as the events in the instant case. In doing so, the State must implement, on a permanent basis and within a reasonable time, human rights-oriented programs for all-rank members of the above-mentioned institutions.” (para. 240) Moreover, the Court called for similar training for judicial officers, including judges.

163- Case of the Rochela Massacre v. Colombia (May 11, 2007)

I/A Court H.R., **Case of the Rochela Massacre v. Colombia**. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163

Holding: In this case, a State-sponsored paramilitary group executed twelve justice officials and violated the personal integrity of three other officials. The victims were targeted while they were carrying out an investigation in their capacity as justice administration officials. The civilian and military perpetrators of the massacre have not been investigated or punished.

Statement of Significance:

“It is a principle of International Law that any violation of an international obligation, which causes damage, gives rise to a duty to make adequate reparations. The obligation to provide reparations is regulated in every aspect by International Law. The Court has based its decisions on this matter upon Article 63(1) of the American Convention.” (para. 226)

The victims’ permanent partners, spouses, children, parents, and siblings were deemed eligible as beneficiaries of reparations. (para. 237)

The Court also approved of several measures intended to honor the victims. (para. 277). First, a plaque with the names of the victims and the date of the massacre would be installed in the Courthouse of San Gil municipality. A photographic gallery will also be installed in a “visible and dignified” place.

Following the publication of the Inter-American Court’s Judgment, the ceremony in which the plaque is placed and the photo gallery is revealed in the Courthouses of San Gil will be broadcast on the official channel with nationwide coverage, in the space assigned to the Superior Council of the Judicature [*Consejo Superior de la Judicatura*], with prior publicity through the state agencies’ websites and by all such media as are available to the victims’ representatives, so that society as a whole knows the truth.

Another plaque with the date of the events and the names of the victims shall be placed in Paloquemao judicial complex in the city of Bogotá. The manner and place of this ceremony in which the plaque is to be fixed shall be agreed upon between the State and the representatives. (para. 277).

A television program will be aired on a channel with nationwide coverage. The program will describe the Rochela Massacre, and report on the State’s partial recognition of its complicity in the tragedy. The program will also discuss “all such aspects as are necessary to honor the memory of the victims. In addition, interviews will be made with some of the victims and relatives based upon prior selection and with their consultation. (para. 277)

The State, with the Court’s approbation, agreed to establish a diploma course on human rights. The State also established a human rights scholarship for members of the judiciary interested in pursuing human rights scholarship.

In accordance with the Court’s judgment, the Office of the Human Rights Observer will also issue a publication that deals with the events of the Rochela Massacre

The State pledged to “undertake[] a best efforts obligation to request the Superior Council of the Judicature that the Courthouse of the municipality of San Gil be given a name that evokes the memory of the victims in this case. If this provision is approved by the Superior Council of the Judicature, such name shall be agreed upon with the representatives.” (para. 277).

The Court required the State to publish the Court’s judgment in a widely circulated national newspaper. The State also had to notify the victims’ representatives of the publication date so they could review and disseminate the article.

The State also agreed to provide educational scholarships for the victim’s next of kin. (para. 277). Furthermore the State’s Prosecutor’s Office will offer job vacancies to the victims and their next of kin, “to the extent that they meet the qualification standards required to occupy the positions pursuant to constitutional, administrative and statutory guidelines. (para. 277).

“The Court repeat[ed] that the State is obliged to...resort[] to all available means, as impunity fosters the chronic repetition of human rights violations and renders victims and their relatives, who have a right to know the truth concerning the events, completely defenseless.” (para. 289). The Court ordered the State to, “within a reasonable time, and taking into account

this Judgment's paragraphs 151 to 198, effectively conduct both current and future criminal proceedings and adopt all such measures necessary to clarify the events in this case in order to identify this responsible for the violations." (para. 295).

"In order to contribute to the reparation of the physical and psychological damages, the Tribunal finds it necessary to order the State to freely and immediately provide, through its specialized institutions of health, the medical and psychological treatment required by the next of kin of the deceased victims, and the surviving victim... and his next of kin." (para. 302)

"[T]he State must adopt measures designed to educate and train members of security forces on the principles and rules governing the protection of human rights and international humanitarian laws, including limitations that constrain them." (para. 303).

The Court "requires proceedings within a reasonable time, the factual clarification of the events, the investigation and punishment of the perpetrators and reparation of the violations." (para. 287)

165- Case of Escue-Zapata v. Colombia (July 4, 2007)

I/A Court H.R., **Case of Escué-Zapata v. Colombia**. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165

Holding: In 1988, the Colombian National Army detained, beat, and eventually executed the victim because of his defense of indigenous people's rights. In response, the Court ordered the State to undertake several reparations related to the victim's professional work. The State was forced to fund community initiatives within the indigenous population that the victim championed.

Statement of Significance:

The Court identified the victim and the victim's permanent companion, sisters, brothers, parents, and children as beneficiaries of the reparations ordered by the Court. (para. 129). The Court recognized that "the facts of the case impacted on the different spheres of the [victim's family members'] lives: Physical, mental, family and financial health." (para. 152).

"[T]he State must grant to Myriam Zapata Escué a scholarship for university studies in a Colombian public university chosen by common consent between her and the State. The scholarship must cover all the expenses until the completion of the course of studies, the academic material as well as the lodging and subsistence. The State must, also, bear the expenses of the transportation from the city where the beneficiary will study until the Community in order to keep the ties with the community, the traditions, usages and customs as well as the permanent contact with her family without further difficulties. Said scholarship should be in force immediately as from the service of notice of the present Judgment, so that the beneficiary starts her studies in the next university period, if she wishes so." (para. 170)

"The Court orders the State to provide [the victim's family members] any necessary medical, psychiatric and psychological treatment which shall comprise provision of medicines. The treatment must be provided taking into account the specific conditions and needs of each individual, specifically their customs and traditions in order to provide the corresponding appropriate treatment." (para. 172)

Although the Court recognized the State's efforts to hold the perpetrators of the crime legally accountable, "[t]he Court has established in this Judgment that the domestic proceedings

initiated in the present case have not constituted effective recourses to guarantee a true access to justice for the victim's next of kin, within a reasonable time, comprising the enlightening of the facts, the investigation and, when appropriate, the punishment of the responsible and the reparations of the violations." (para. 164)

The Court commended the State's intent to establish a memorial to the victim, but suggested "that the homage to the memory of [the victim] must be done through beneficial works for the benefit of the Community in which he exercised a kind of leadership." The Court ordered the State to establish a fund, which would be turned over to the victim's community so that the "community can invest it in collective interests' service or works for its own benefit, in accordance with their consultations, decisions, usages, customs and traditions, independently of the public works put aside in the national budget for that region." (para. 168)

The Court acknowledged the State's public apology "for the serious violations of human rights committed by its agents to the detriment of Germán Escué and his relatives." (para. 175) However, "the Court finds that the State must make a public acknowledgement of liability, as a measure of reparation for the damage caused to the victim and his relatives, previously agreed upon by the relatives and the representatives, in relation to the violations declared in this Judgment. That public acknowledgement must be made in Resguardo de Jambaló, in a public ceremony and must count on the participation of the State's highest-ranking authorities. Furthermore, that act must be made in the presence of leaders of the Community and the victim's relatives, if they wish so. The State must provide the means to facilitate the presence of these persons in the said act. Also, the Colombian State must conduct this act in both Spanish and in Nasa Yute. In such act, the State should take into account the traditions, usages and customs of the members of the Community. To that end, the State shall carry out this activity within one year of notification of this Judgment." (para. 177).

"[T]he State shall publish at least once in the Official Gazette and in another national daily newspaper [designated sections] of the present Judgment.... Likewise, the State should translate the mentioned paragraphs and the operative paragraphs into Nasa Yute and publish it in a widely circulated newspaper of the Cauca area, specifically one of the area in which the family of [the victim] live. Said publications shall be made within six months following notice of this Judgment." (para. 174).

The Court approved of the State's efforts to create a university chair named after the victim at the University of Cauca. (paras. 178,179).

166- Case of Zambrano Velez et al. v. Ecuador (July 4, 2007)

I/A Court H.R., **Case of Zambrano-Vélez et al. v. Ecuador**. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166

Holding: The plaintiffs claimed that Ecuadorian soldiers illegally executed three citizens in front of their families. Among other reparations, the Court ordered the Ecuadorian government to implement a special training program for the Military Forces and National Police that emphasized the use of force during states of emergency. In addition to forcing the State to publicly acknowledge its role in the tragedy, the Court also crafted educational reparations intended to curtail future violence.

Statement of Significance:

The Court considered the family members of the victim to be an “injured party.” The family members of the victims are to be considered as beneficiaries of the reparations ordered by the Court for non-pecuniary damage. (para. 135) The family members included the victims’ partners, daughters, and sons.

The State must use all available means to render effective the investigation and proceedings in the ordinary criminal jurisdiction and as such, to avoid the repetition of facts similar to those in the instant case. (para 148)

“In order to ensure that both the partial *acknowledgement* of responsibility made by Ecuador and the findings by the Court in this case have full effects of reparation to preserve the memory of [the victims] and to apologize to their family members; as well as to ensure that such acknowledgement by the State and findings by the Court serve as non-repetition guarantees, the Court deems important that the State carry out a public act of *acknowledgement* of its responsibility for the extrajudicial execution of the victims and for other violations committed in the instant case. Such act shall be carried out in the presence of the family members of the aforementioned individuals, if they wish to assist, and shall also involve the participation of high State authorities. The said act must be celebrated within six months from the notification of the present Judgment.” (para. 150)

The Court commanded the State to “publish at least once in the Official Gazette and in other newspaper of broad national coverage,” designated portions of the Court’s order within six months of the judgment. (para. 151)

The Court reminded the State of its obligation to prevent future abuses and recommended adoption of “all legal, administrative and other measures necessary to prevent further occurrence of similar facts.” (para. 153). The Court also forced the State to “adapt its domestic legislation on states of emergency and suspension of guarantees” to bring it in line with international conventions. (para. 154) “More specifically, the State must ensure the adequacy of its legislation so that military jurisdiction could not assume the competences of the common jurisdiction, as set forth in the present Judgment (*supra* paras. 53-68) (para. 154).

The Court also approved of the State’s intention “to run a process of prevention, training and diffusion of a public policy on education to human rights within the public sector, proceeding which is actually in the process of being implemented through a ‘Handbook on Proceedings for the Public Sector’; [i]n order to fulfill its obligations assumed internationally and even more, with the aim to constitute an initiative at the regional level on the respect, protection and guarantee of human rights.” (para. 155)

The Court also required the State to design and implement training regimes for the Military Forces and National Police that emphasized the humane use of force during times of emergency. (para. 157) “[T]he Court also require[ed] the State to adopt necessary measures to train and educate prosecutors and judges, including officers of military criminal courts, on international standards related to the judicial protection of human rights. As such, the State shall also implement, within a reasonable time, permanent programs of education in human rights for the aforementioned officers. (para. 158).

172- Case of the Saramaka People v. Suriname (Nov. 28, 2007)

I/A Court H.R., **Case of the Saramaka People. v. Suriname.** Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007 Series C No. 172

Holding: The Saramaka people claimed that the State did not effectively recognize their right to the use and enjoyment of their traditional land. The Court ordered the State to adopt legal provisions recognizing and defending the Saramaka's right to their indigenous land. The Court also forced media outlets to disseminate the Court's opinion.

Statement of Significance:

The victims alleged that the State "violated the right to judicial protection to the detriment of such people by not providing them effective access to justice for the protection of their fundamental rights, particularly the right to own property in accordance with their communal traditions, and that the State has allegedly failed to adopt domestic legal provisions in order to ensure and guarantee such rights to the Saramakas." (para. 2)

In this case, the Court did not find it necessary to individually name the members of the Saramaka people as claimants in order to recognize them as an injured party. Instead, "the Court observe[d] that the members of the Saramaka people are identifiable in accordance with Saramaka customary law, given that each Saramaka individual belongs to only one of the twelve matrilineal *lös* in which the community is organized." (para 188). "[T]he Court consider[ed] the members of the Saramaka people as the 'injured party' in the present case who, due to their status as victims of the violations ... are the beneficiaries of the collective forms of reparations ordered by the Court." (para. 189).

The Court compelled the State to "delimit, demarcate, and grant collective title over the territory of the members of the Saramaka people, in accordance with their customary laws." (para. 194) The State must begin this process within three months of the judgment.

The State must also "grant the members of the Saramaka people legal recognition of their collective juridical capacity, pertaining to the community to which they belong, with the purpose of ensuring the full exercise and enjoyment of their right to communal property, as well as collective access to justice, in accordance with their communal system, customary laws, and traditions." (para. 194)

To ensure compliance with the Court's intent, the State was forced to "remove or amend the legal provisions that impede protection of the right to property of the members of the Saramaka people and adopt, in its domestic legislation, and through prior, effective and fully informed consultations with the Saramaka people, legislative, administrative, and other measures as may be required to recognize, protect, guarantee and give legal effect to the right of the members of the Saramaka people to hold collective title of the territory they have traditionally used and occupied, which includes the lands and natural resources necessary for their social, cultural and economic survival, as well as manage, distribute, and effectively control such territory, in accordance with their customary laws and traditional collective land tenure system, and without prejudice to other tribal and indigenous communities." (para. 194).

The State must also "adopt legislative, administrative and other measures necessary to recognize and ensure the right of the Saramaka people to be effectively consulted, in accordance with their traditions and customs, or when necessary, the right to give or withhold their free, informed and prior consent, with regards to development or investment projects that may affect their territory, and to reasonably share the benefits of such projects with the members of the

Saramaka people, should these be ultimately carried out. The Saramaka people must be consulted during the process established to comply with this form of reparation. The State must comply with this reparation measure within a reasonable time...” (para. 194).

The Court required the State to “ensure that environmental and social impact assessments are conducted by independent and technically competent entities, prior to awarding a concession for any development or investment project within traditional Saramaka territory, and implement adequate safeguards and mechanisms in order to minimize the damaging effects such projects may have upon the social, economic and cultural survival of the Saramaka people.” (para. 194).

The State was also forced to “adopt legislative, administrative and other measures necessary to provide the members of the Saramaka people with adequate and effective recourses against acts that violate their right to the use and enjoyment of property in accordance with their communal land tenure system. The State must comply with this reparation measure within a reasonable time.” (para. 194).

“Additionally, the Court considers that the present Judgment *per se* is a form of reparation that should be understood as a form of satisfaction that recognizes that the rights of the members of the Saramaka people addressed in the present Judgment have been violated by the State.” (para. 195)

The State must translate into Dutch and publish designated sections of the Court’s judgment in the State’s Official Gazette and in another national daily newspaper. The State must also finance two radio broadcasts of the Court’s judgment in the Saramaka language on a radio station accessible to the Saramaka people. The victims must be given notice of the time and date of the broadcasts. (para. 196)

185- Case of the Saramaka People v. Suriname (Aug. 12, 2008)

I/A Court H.R., **Case of the Saramaka People v. Suriname**. Interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs. Judgment of August 12, 2008. Series C No. 185

Holding: The Court clarified that the Suriname government had to work with a group designated by the Saramaka. The Court allowed the Saramaka to designate a group based on the tribe’s customs to serve as representatives of the larger group.

Statement of Significance:

The State must consult with the Saramaka representatives regarding the process of delimiting, demarcating and granting collective title over the territory of the Saramaka people.

The process of granting the members of the Saramaka people legal recognition of their collective juridical capacity, pertaining to the community to which they belong;

The process of adopting legislative, administrative, and other measures as may be required to recognize, protect, guarantee, and give legal effect to the right of the members of the Saramaka people to the territory they have traditionally used and occupied;

The process of adopting legislative, administrative and other measures necessary to recognize and ensure the right of the Saramaka people to be effectively consulted, in accordance with their traditions and customs;

Regarding the results of prior environmental and social impact assessments, and

Regarding any proposed restrictions of the Saramaka people's property rights, particularly regarding proposed development or investment plans in or affecting Saramaka territory.

With respect to the environmental and social impact assessments, the Court required Suriname to work with the Saramaka to ensure the survival of the tribe. The Court clarified that survival meant more than preventing tribal members from losing their lives. The government had to avoid any projects thought would adversely affect the culture of the Saramaka.

190- Case of Tiu Tojin v. Guatemala (Nov. 26, 2008)

I/A Court H.R., **Case of Tiu-Tojín v. Guatemala**. Merits, Reparations and Costs. Judgment of November 26, 2008. Series C No. 190

Holding: The Court addressed the forced disappearance and detention of the victim and her daughter at the hands of officers of the Guatemalan army along with members of the Civil Self-Defense Patrols. This case also reflects the military's abuse of the Mayan indigenous people.

Statement of Significance:

The Court ordered the State to carry out "a special, rigorous, impartial, and effective investigation in order to prosecute and punish the planners and perpetrators of the forced disappearance of [the victim] and her daughter..." (para. 68). The court urged the state to fulfill its obligation to investigate and punish in order to identify and curtail the "systematic patterns that allowed the commission of grave violations of human rights during that time (*supra* para. 51)." (para. 69). The Court reiterated to the State that "the prohibition of the forced disappearance of persons and the related duty to investigate them and, if it were the case, punish those responsible has the nature of jus cogens." (para. 91).

The Court provided that "[i]f the victims were found dead, the State shall, in a short period of time, hand over the remains to their next of kin, prior genetic verification of their relationship. The expenses generated by this process shall be covered by the State. Additionally, the State shall cover, if it were the case, the funeral expenses, respecting the traditions and customs of the next of kin of the victims." (para. 103).

The Court also ordered publication of specified passages of the Court's opinion in "the Official Newspaper and in another of wide national circulation" within six months. (para. 106). Furthermore, the Court "consider[ed] it necessary that the State make public, through a radio station of ample coverage in the department of El Quiché," specified passages of the Court's opinion. "The aforementioned must be done in Spanish and in the Maya K'iché language, for which the translation of the previously mentioned sections of the present judgment to Maya K'iché must be ordered. The radio broadcast shall be done on a Sunday and at least on four occasions with a four-week interval between each one. For this, the State has a one-year period as of the notification of the present Judgment." (para. 108).

To guarantee the victims' right to a fair trial, the Court mandated that the State "ensure that [the victims] understand and are understood in the legal proceedings started, thus offering them interpreters or other effective means for said purpose. Similarly, the State shall guarantee, as far as possible, that the victims of the present case do not have to make excessive or exaggerated efforts to access the centers for the administration of justice in charge of the investigation of the present case. Without detriment to the aforementioned, the Court considers it necessary to order

the State to pay an amount for future expenses, as a way of guaranteeing that the victims can act as plaintiffs in the criminal proceedings started before the ordinary justice system.” (para. 100)

“[T]he State is compelled to guarantee, as it did in the present case (*supra* para. 20), the transfer from the military criminal jurisdiction to the regular jurisdiction of those judicial case files that refer to any issue not directly related to the duties of the armed forces, specifically those that imply the prosecution of human rights violations. The domestic legislation in force and the decisions of the Guatemalan Supreme Court of Justice is clear in this sense (*supra* paras. 114 and 115). (para. 120).

191- Case of Ticona Estrada et al v. Bolivia (Nov. 27, 2008)

I/A Court H.R., **Case of Ticona-Estada et al. v. Bolivia**. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191

Holding: The Court ordered the State to investigate and prosecute the parties responsible for the forced disappearance, detention, and torture of the victim. Furthermore the Court required the State to find the victim’s remains and provide medical and psychological care for his surviving family members. For the community, the Court required the State to publish the Court’s opinion and comply with other provisions which raised awareness of the State’s complicity in human rights abuses.

Statement of Significance

The Court ordered the State to conduct a thorough investigation into the forced disappearance of the victim.²⁶⁵ (para. 143; *see also Bamaca-Velasquez v. Guatemala*, para. 7).

The Court deemed it appropriate to order publication of specified passages of the Court’s opinion in “the Official Gazette and in another newspaper of wide national circulation.” (para. 160) “Said publications shall be made within six months following notice of this Judgment.” (para. 160).

The Court approved the State’s “acknowledgment on international responsibility of the State and the apology offered on August 13, 2008 during the public hearing held in the instant case, as well as the repetition of the act of acknowledgment on international responsibility for the human rights violations made on September 10, 2008, in the city of La Paz, Bolivia.” (para. 163)

The Court also positively valued the State’s measures to commemorate the memory of the victim including “the act performed on June 5, 2007, by which a square of the city of Oruro was named “Plaza del Universitario Renato Ticona Estrada” [*Square of the university student, Renato Ticona Estrada*]. Furthermore, the State communicated that during the act of acknowledgement of international responsibility performed on September 10, 2008, the State presented the publication of the Ministry of Foreign Affairs and Worship called “Historia y Vida de Renato Ticona Estrada” [*History and Life of Renato Ticona Estrada*], which was distributed to organizations for the defense of human rights and libraries opened to the general public.” (paras. 164, 165)

The Court also ordered reparations aimed at reducing the “moral and mental distress due to the disappearance of a loved one” suffered by the victim’s family. (168) The Court required the State to “effectively provide... the medical and psychological so requested to [the victim’s family members]; such treatment should be provided by personnel specializing in the treatment

²⁶⁵ Duty to investigate case;

of physical and mental health care problems that such people suffers from to ensure they are provided with the most appropriate and effective treatments. This medical and psychological treatment must be provided for the necessary time, free of charge and it must include the provision of the necessary medications, taking into consideration the ailments of each of them, following an individual evaluation.” (para. 169)

“Based on the foregoing, this Tribunal considers it is appropriate as guarantee of non-repetition, that the State provides the Inter-Institutional Council for the Clarification of Forced Disappearance, within a reasonable time, with the human and material resources necessary so that such council may effectively exercise the power granted to it. To such effects, the State must present, within one year, a specific proposal together with a program of action and planning related to the compliance with this order.” (para. 173).

Finally, the Court lauded “the State’s ratification of the International Convention for the Protection of All Persons against Enforced Disappearances and it positively values it, since it contributes to the non-repetition of the facts of the instant case.” (para. 176).

192- Case of Valle-Jaramillo et al v. Colombia (Nov. 27, 2008)

I/A Court H.R., **Case of Valle-Jaramillo et al. v. Colombia.** Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192

Holding: The Court crafted reparations that would salvage the memory of a slain human rights defender and protect future human rights advocates in Colombia. A State-sponsored paramilitary group executed the Victim after he publicly denounced military activities. The Court ordered reparations including, but not limited to a State-funded grant for a human rights defender unit in the Commission (p. 227(c)(3)); installation of a plaque in memory of the victim in the courthouse (p. 227(c)(2)); establishment of a course on human rights in the law school (p. 237).

Statement of Significance:

In this case, the Court urged reparations in order to “repair the damage caused to the victims and their next of kin, to keep alive the memory of the deceased victim, and to avoid a recurrence of facts such as those in this case.” (para. 229)²⁶⁶ See (para. 230). The Court ordered its reparations “with the objective of raising awareness about the risks faced by human rights defenders, in order to avoid a recurrence of facts such as those of the instant case” (para. 239).

The Court ordered the State to conduct “an impartial and exhaustive investigation in order to prosecute and to punish all the masterminds and perpetrators” of the victim’s murder (para. 227(a)). To facilitate that objective, the Court required the State to “remove all the obstacles, *de facto* and *de jure*, that prevent adequate investigation into the facts, and use all available means to expedite that investigation and the respective proceedings in order to avoid a recurrence of facts as grave as those of this case” (para. 232).

The Court also instructed the State to publish the proven facts and the operative paragraphs of the Court’s judgment “in the official gazette and once in another national newspaper with widespread circulation...” The court went on to specifically designate which paragraphs of its decision should be published. (para. 234). The State was also required to disseminate the Court’s judgment to various State entities including the Executive Branch (p.227(b)).

In order to “recover the historical memory of [the victim] as a human rights defender,” the

²⁶⁶ 163 Rochelle.

Court ordered the organization of a public act in the presence of senior State authorities to apologize to the victim and his next of kin, underscoring the memory of [the victim] as a human rights defender at the [university] where the victim taught and graduated. The Court also required “[e]laboration of a plaque in memory of [the victim] [...] to be installed in the Courthouse of the Department of Antioquia, in order to keep his memory alive and prevent violations such as those determined in the instant case, and [e]stablishment of the [...] grant [in the victim’s name], which will be provided only once, to support the work of the Human Rights Defenders Unit of the Inter-American Commission on Human Rights for two (2) years.” Additionally, the Court considered “it pertinent to urge the State to make every effort to establish a course on human rights [in the law school] that, as a measure of satisfaction, will honor the memory of the human rights defender.” (para. 237).

The Court also ordered reparations for the victim’s sister and one of the victim’s human rights defender colleagues. The Court required the State to “guarantee the safety of [the victim’s colleague] should he consider returning to Colombia permanently [and] to facilitate the process of return to their places of origin for the victims.” Furthermore, the State had to “offer, following consultation with the victims, a study grant in Colombia for educational opportunities in the sector, profession, or subject that the victims wish to study.”