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THE IMPLEMENTATION OF REPARATIONS IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

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Dr. Christian G. Sommer, Professor and researcher of Public International Law (National University of Córdoba, Catholic University of Córdoba and Siglo 21 University). Argentina.

Dr. Victorino F. Sola Professor and researcher of Constitutional and Conventional Procedural Law (Catholic University of Córdoba, National University of Córdoba and Siglo 21 University) Argentina.

Abstract: Reparations as a consequence of the harm suffered by individuals is a general principle of law, recognized by States as a mechanism to compensate for the harm caused by others. In the regional systems for the protection of human rights, the courts have made important advances throughout their operation in generating progressive interpretations of the principle of reparations as a consequence of human rights violations by States. In the inter-American human rights system, the role of the Inter-American Court of Human Rights has had an important evolutionary development on the interpretations of how States

should repair violations committed in their territories.

As has already been indicated in the international arena as well as by national courts, reparation for the harm caused is not simply the payment of sums of money. This would be the simplest form that States would have for having caused human rights violations or even crimes against humanity. For this reason, the Inter-American Court, since its first case, has been indicating to the States that economic reparation is only one part of the State's obligation to make reparations. The most important judgments that the regional Court has indicated in its 40 years are marked by the so-called “non-pecuniary reparations”. In other words, reparations that seek to ensure that the events that occurred do not happen again, that the States commit to train their officials in human rights and respect for persons, build schools, hospitals, and roads to improve the living conditions of the victims, etc.

For further more about this evolution, this paper develops the main jurisprudence of the Inter-American Court on reparations and how international law has already set important standards to be applied by States.

Keywords: Inter-American System, Reparations, Human Rights, Inter-American Court of Human Rights, Regional Court, International Law, International Responsibility.

Preliminary notes

The damages caused by human rights violations, as explained in the doctrine, take-on a double dimension: on the one hand, they acquire an individual aspect, which is the harm caused to the victim (and to each of the members of his family environment), while, on the other hand, they have a collective importance, which refers to the harm caused to society as a whole (as to its social sphere). Likewise, this type of injury has a multiple nature, for example, in a situation of violation of the right to life or personal integrity, its effects range from physical and psychological suffering to the destruction of life projects and alterations in the conditions of existence of the victim and his family, producing immediate *sequelae* over time (Saavedra Alessandri, 2005).

When States carry out actions or omissions that involve damages such as those mentioned above, the victims usually have national and international mechanisms to claim for the acts that violate their rights and possible reparation. Without adequate reparation, there is no legal certainty or justice, which the legal order has endeavored, with varying results, to guarantee the gradual and sufficient reparation of the right of the victims and-by this means-of the interest of society. This arduous battle initially waged at the domestic level, has long

since reached the international arena (García Ramírez, 2020). And this even though it is not infrequent that the actions of state bodies aimed at achieving adequate access to justice and reparation of the damages caused are not always effective, or prevent adequate assistance to the victims.

The history of Latin America is marked by international armed conflicts, national political and armed crises, etc., which have led to serious violations of the human rights of the region's inhabitants. In most of these situations, impunity is the rule due to the lack of state action in investigating, prosecuting, and eventually convicting those responsible (Caballero Ochoa, García Puerta, Arjona Estevez, 2020). At the same time, since the approval of international human rights instruments in Latin America, it can be seen that States or non-State armed groups are responsible for serious violations. We can mention everything from disappearances of persons, torture, extrajudicial executions, etc., to difficulties in accessing domestic courts or in conducting judicial proceedings with a lack of due process guarantees, to claims by indigenous and tribal peoples, women, the elderly, children, and adolescents, etc, who also fail to find in the national judicial system-the necessary reparations for the transgressions that have occurred.

In this context, the work of the inter-American human rights protection bodies has played a substantial role in the formulation

of standards of protection that empower individuals to claim their observance from the State. As part of the work of the Inter-American Court of Human Rights (hereinafter, IACHR), attention to the victims of the violations suffered and, above all, the obligation of the state authorities to -fully remedy the harm caused constitute, at present, a significant contribution to the search for effective justice. Hence, this paper seeks to provide a sample of the various decisions on reparations to victims (and their families) that the records of the Court of San José contain since its first pronouncements at the end of the 1980s.

Reparations are a necessary basis for victims to find the end of a long road of claims, in which one can appreciate how the Inter-American Court has constructed various interpretations of the different ways to remedy human rights violations. Certainly, this is not a minor fact in the discourse of the Inter-American Court: its judges evolve with their standards, which-then-circulate when used in the argumentation of other international or national courts and put in contact with the operators of diverse (and, in some cases, even interconnected through a model of multilevel protection) legal systems that contribute to the emancipatory force of human rights (Piovesan, 2017; Arcaro Conci, Mezzetti, 2017).

With these premises, it is possible to anticipate a central argument that will run through this article and that has been

supported by specialists: the transformative mandate in the inter-American -space-makes it clear that the work of the regional human rights Court goes far beyond deciding whether in the specific case there was a violation of conventional principles and precepts since creative and far-reaching reparations orders have become a key to transformative constitutionalism (Von Bogdandy, 2019).

The international responsibility of States and the respect for human rights

As with any activity that the State carries out with other subjects of the international community (mainly other States), the responsibility to act under the international commitments undertaken persists. In the case of state responsibility for violation of human rights standards, the question arises: in all circumstances must the State be held accountable for the acts and/or deeds imputed to it; if it must be held accountable for the acts and/or deeds of any state institution, is it not possible to exempt itself from responsibility; if so, for what period and under what conditions would it be appropriate to exclude its duty to respond; and so on.

The answer to these questions raises suggestive challenges. One of them is associated with the (very current, by the way) circumstance of the absence, beyond some normative provisions

in particular in international human rights instruments, of a binding international document of a general nature, based on which the responsibility of States in cases of non-compliance with an international obligation is established. Most of the jurisprudence and doctrine uses as a reference criterion-the International Law Commission (hereinafter, ILC) Project/Draft entitled: International Responsibility of States for Internationally Wrongful Acts, which was approved on August 9, 2001 -by the United Nations General Assembly (hereinafter, DARSIIWA). This proposal goes back almost 40 years and constitutes one of the most relevant contributions to the codification and progressive development of one of the most relevant areas of international law. The work began in 1956 under the direction of F.V. García Amador (Cuba), in his capacity as Special Rapporteur, who served from 1955-1961. He was followed later by Roberto Ago (1963-1979), Willen Riphagen (1979-1986), Gaetano Arangio-Ruiz (1987-1996) and James Crawford (1997-2001).

Establishing the existence of international responsibility entails identifying, as indicated in the aforementioned draft, conduct consisting of (i) an act or omission that violates an international obligation (Articles 2 and 12 DARSIIWA, without the intention or fault of the offending party being relevant); (ii) that is imputable to the responsible State through some of its organs or

acts of third parties (Articles 4 et seq. of DARSIIWA) (Conforti, 1995; Remiro Brotons, 1997; Brownlie, 1998; Gutierrez Espada, 2001; Monroy Cabra, 2002; Shae, 2003; Pérez Gonzalez, 2005; Barboza, 2007; Rey Caro, 2008; Feit, 2010). In addition, if the wrongful act causes damage, another obligation of the State may arise, such as the obligation to make reparation (Article 31 DARSIIWA). This secondary obligation of international law has been widely enunciated in international jurisprudence. Reference may be made to early decisions such as the claims in the British Claims in the Spanish Zone of Morocco case, where Arbitrator Max Huber held that it is an indisputable principle that responsibility is a necessary corollary of rights, emphasizing that all rights of an international order have as a consequence an international responsibility (U.N.R.I.A.A, 1925). One cannot fail to recall the oft-cited *Fabrica de Chorzów* case, in which the Permanent International Court of Justice held:

“(...) it is a principle of international law, and even of a broader conception of law, that any breach of an obligation includes an obligation to make reparation” (PCJ, 1928).

In this sense, when a State signs and ratifies an international treaty, it undertakes to adopt all necessary measures for its compliance and validity, eliminating the obstacles that may arise in its execution by internal entities. This obligation is also subject to the commitments assumed, according to article 27 of the 1969 Vienna Convention on the Law of Treaties (VCLT), not to attempt to justify its domestic law to infringe or evade an

international commitment. From this perspective, responsibility constantly accompanies States insofar as they are required to act by international law and to exhibit the necessary disposition to account for their legal acts or omissions before this normative order. It can be understood, therefore, that responsibility is based on the precept of good faith contained in the principle *pacta sunt servanda*, under which it is obliged to comply with the provisions of any treaty in force (Article 26 VCLT).

The ILC commentary to the above-mentioned draft states that article 1 covers relations arising under international law from the internationally wrongful act of a State “(...) or even of other subjects of international law” (ILC Rapporteur, 2001). Thus, the general rule of State responsibility set out in article 1 is expressed in the following formulation: Every internationally wrongful act of a State entails the international responsibility of that State. At the same time, for an act to be attributable to a State, some of the conditions set out in the DARSIVA must be met.

Therefore, Article 4 of the PREI stipulates that the conduct of any organ is considered an act of the State in international law, regardless of whether that organ exercises legislative, executive, judicial, etc. functions and regardless of the position it occupies in the organization of the State. In addition to what has been said so far, consideration should be given to the time in which a

wrongful act by a State may constitute a breach of an international obligation that gives rise to a duty of international responsibility:

- (i) as regards the executive branch of government, the acts that could give rise to international responsibility are acts or omissions incompatible with the State's obligations, which may arise from the acts of officials operating within the limits of their powers or at the instruction of the government. Some of the clearest examples refer to the case of a President or Head of State signing a treaty that restricts any of the internationally recognized human rights;
- (ii) For its part, the legislative branch is characterized by its production of laws as legal acts of the State, since through them its organs express their will. A frequent example of an unlawful act in this sense is the enactment of a law that contravenes a treaty in force or the omission to enact legislation necessary for the implementation of a given international commitment;
- (iii) for the rest, the actions of the judiciary are attributable to the State and generate its international responsibility when the courts of justice violate international standards relating to the administration of justice (e.g., unjustified delays in criminal proceedings).

From the outset, the members of the Commission expressed

their interest in analyzing aspects of the international responsibility of States for violations of international human rights norms. And in the contributions of Rapporteur García Amador, there are already reflections on the obligations of States to apply a single standard of treatment to the human person, the rights that also dealt with legal property, the physical and psychological integrity, and freedom of the person, etc (Ferrer Lloret, 1998).

It is not always, of course, the principal organs of the State that generate the transgression of the international obligation. It is common for such responsibility to arise in a federal state subdivision or decentralized organ. The conduct of the organs also includes the conduct of any person or entity that-, under domestic law, exhibits the corresponding status. Thus, in the Moses -case, which was the subject of a decision of the Mexico-USA Joint Claims Commission-, it was noted to this effect:

“(...) an official or person vested with authority thus represents his government, which, in the international sense, is the sum of all officials and persons vested with authority (More, 1898)”.

Likewise, in the case *Certain German Interests in Polish Upper Silesia*, the PCIJ states:

“(...) from the international point of view and the point of view of the Court as an organ, domestic laws (...) express the will of States and constitute State activities, in the same way as legislative decisions or administrative measures” (PCJI, 1923).

Beyond the organs or subjects performing the acts giving rise to state responsibility, the conduct for which the State is

accountable may consist of a single act or a succession of events over some time. Therefore, to be exonerated from international responsibility, the national authorities must demonstrate the achievement of a certain result in seeking to choose subsequent means to remedy the breach of the obligation (and this is to avoid the accomplishment of the initial action of the wrongful act) (Ago, 1977). As has been argued, for facts that are not of a single time (i.e., continuous, compound, or complex), it is obvious that their greater or lesser prolongation- over time- usually entails on a qualitative level a greater or lesser gravity of the fact itself from the point of view of the injury to the subjective right and, therefore, is likely to have an impact on the degree of international liability and, specifically, on the extent of the reparation (Diez de Velasco, 2005).

Hence, articles 14 and 15 of DARSIIWA establish a series of rules about acts of the State that are prolonged in time. On the one hand, in continuous events, the breach of the obligation extends over the period in which the event is contrary to an international obligation. Moreover, in episodes that constitute a breach of an international obligation to prevent, the breach extends over the entire time during which the event(s) giving rise to it is prolonged. Finally, in those events occurring through acts and omissions of an unlawful nature, the transgression extends over the period beginning with the first of the acts or

omissions in the series and continues as long as they are repeated and are not ceased by the domestic authorities.

Specifically, it is clear from the criteria of the DARSIIWA that those who suffer the unjust infringement of their rights expect much more than declarations, they need and demand reparations, they expect compensation, satisfaction, the return-whenever possible-of what has been taken from them without right or reason. The same is true of society, whose grievance against some of its members becomes, in the end, a grievance against all (and which, in this sense, compromises the peace, security, and justice of the whole). And, finally, whoever consummates the tort or must respond to it (strictly speaking, the State in the international order) faces the jurisdictional declaration of responsibility but also the consequent assumption of inherent obligations (which translate into actions, commitments, benefits, etc., covered by the common denominator of reparation) (García Ramírez, 2020).

Some general considerations on reparations in international law

Historically, reparations in international law were concentrated on those demanded by States for violations of an international obligation contracted between them, without individuals reaching international jurisdictional instances for the sake of

their recognition.

However, the use of became more moderate and-progressively-the individual was empowered to bring claims in international venues (Remiro Salvioli, 1995; Kawabata, 1997; Brotons, 1997; Bassiouni, 1998; Danieli, 1998; Minow, 1999; Shelton, 1999; Tomuschat, 2002; Shaw, 2003; An-Naim, 2003; García Ramírez, 2003; Gialdino, 2003; Pisillo Mazzeschi, 2003; Bauxbaum, 2005; Ferrer Lloret, 2005; Diez de Velasco, 2005; Salado Osuna, 2005; Falk, 2006; Cançado Trindade, 2007; López Zamora, 2007; Pérez Leon Acevedo, 2008; Drnas, 2009). Access to international forums for redress constitutes a decided legal (as well as moral) advance of the present era and, consequently, transnational courts have consolidated an interpretative practice of an expansive nature (i.e., beyond the positive terms set forth in international documents). Such progress should be considered by the national authorities as instruments to optimize their habits and procedures of access to reparation measures (Salvioli, 2019).

It is well known that in the framework of state responsibility, reparation for a wrongful act takes the form of restitution, compensation or satisfaction under articles 34 to 39 DARSIVA. Reparation of the damage caused by the breach of an international obligation may consist of full restitution (*restitutio in integrum*), which includes the reestablishment of the previous

situation and reparation of the consequences produced by the breach and/or the payment of compensation for pecuniary and non-pecuniary damage. Compensation, on the other hand, is the most usual form of reparation.

By using the terms reparation and compensation, we are in fact referring to two different notions that are in a relationship of genus to species. In the international sphere, a distinction is usually made between so-called compensation and damages, which species of reparations can be implemented. When a State expropriates private property in the exercise of its sovereign power, payment of damages is not normally required, but is usually stipulated through compensation (also labeled indemnification).

With respect to the calculation of the reparation, it is considered that it can be of a complex nature to the point that it often requires the participation of experts for the appraisal. If the wrongful act has been committed, the guiding principle is that reparation should, as far as possible, restore the situation that would have existed if the unlawful event had not occurred. Thus, in settling the Chorzów Factory case, the CPJI expressed such principle in the following terms:

“(...) the essential principle which enshrines the actual concept of an illegal act, a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals, is that reparation for the illegal act must, as far as possible, wipe out all the consequences of the action and restore the situation which would have existed if the illegal act had not been committed” (P.C.I.J., 1928).

In parallel to this obligation to make reparation as a consequence of international responsibility, the obligation not to repeat the violation has been applied in international practice. The obligation to provide assurances and guarantees of non-repetition goes beyond the principle of good faith, under which States are expected to act in order not to repeat the acts that gave rise to international responsibility. In effect, what is at stake is that the responsible State should generate-in a real and tangible manner-all the necessary conditions so that the unlawful acts committed do not happen again.

The reparations regime in the Inter-American human rights system

The international systems for the protection of human rights, created as conventional mechanisms for the citizens of the States Parties to resort to exceptional jurisdictional instances in the event of violations of human rights treaties, have assumed-in recent decades-an exponential demand in their operation. Certainly, during this period, the image of the bodies of the Inter-American System has been promoted in the public agenda of many States as mechanisms that, although they have helped to consolidate the rule of law and respect for human rights in a democratic society, have also been a hard nut to crack for governments reluctant to abide by the decisions of the Inter-

American Commission Human Rights (IAComHR).

One of the most influential tools in the inter-American Human Rights System (hereinafter, IAHRs) has been the performance of the Rapporteurships of the IAComHR. In this sense, e.g., the work carried out by the Office of the Rapporteur for Freedom of Expression has generated significant claims against some States, mostly denounced for attempting to restrict freedom of expression in their territories, under the spurious justification of expanding free expression, while conditioning or excluding the flow of communication of media outlets critical of their public administrations or government measures.

This fact has progressively implied a series of state reactions, in some cases very clear, by encouraging practices that delay the tutelary reaction of the Inter-American System of Human Rights (ISHR) or by encouraging threats to denounce the American Convention on Human Rights (ACHR). Recall, among others, the examples of Peru when former President Fujimori tried to exclude the application of the ACHR in the face of the continuous complaints against his State in the La Cantuta and Barrios Altos cases, the withdrawal of Trinidad and Tobago from the jurisdiction of the Inter-American Court of Human Rights (IACHR) or-more recently-the case of Venezuela, where former President Chávez described the system as an extension of the North American “Empire” and-under those reasons-

promoted the denunciation of the Convention in order to avoid the numerous petitions filed against his state and the increasingly conclusive sentences of the IACHR (particularly in the well-known cases of López Mendoza and Díaz Peña, which generated the claim of the State and its reluctance to comply with the sentences of the Court of San José for considering them to be in violation of its sovereignty.

Although international human rights law has succeeded in recent times in making the principle of non-interference in the internal affairs of States more flexible, it is no less true that it is corroborated by the fact that some highest domestic authorities seek (under the argument of national sovereignty) to bend the respect and control of human rights to the aegis of their exclusive state power.

It is clear that the regional or universal human rights systems have had the boom that has only been seen in the last half century, precisely because of the repeated failures of States to guarantee human rights in their jurisdictions. The constant use of the system by victims, non-governmental organizations and the States themselves has allowed for a mechanism for the protection and promotion of human rights that, within the inter-American perimeter, is facing an important debate on where and how to advance in reforms aimed at further strengthening its institutions and, at the same time, an adequate treatment of the

parties in conflict (both citizens and the State itself).

It should be added that international or regional protection systems reveal a subsidiary nature to national schemes, i.e., they operate as an *ultima ratio* when States have failed to provide due protection to the rights of individuals, or have failed to do so because they are insufficient. In the Inter-American human rights system, reparation is the way to respond to human rights violations committed by States within the framework of the international norms to which they have committed themselves (Pasqualicci, 1996; García Ramírez, 2001; Shelton, 2004; Nash Rojas, 2007; Rodríguez Pinzón, 2007; Rojas Baez, 2008; Drnas, 2009; Salvioli, 2010; Espejo Yaksic, Herencia Carrasco, 2011; Rousset Siri, 2011; Leiva García, 2012; Salmon, 2012; Antkowiak, 2012; Calderón Gamboa, 2013; Cançado Trindade, 2013; Steiner, Uribe, 2014; Schneider, 2015; Carbonell, Caballero González, 2016; Badillo, Muñoz, 2018; Grossman, Del Campo, Trudeau, 2018; Santiago, Bellocchio, 2018; IACHR Court, 2021).

It is important to note that the-ISHR-has a main instrument for the protection of human rights, the ACHR, approved by the OAS. The initiative to create a Convention materialized in November 1969, when the Inter-American Specialized Conference on Human Rights was held in San José, Costa Rica. The ACHR was drafted, which established the creation of the

two main bodies (the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, respectively), responsible for supervising respect for and guarantees of the rights contained in the various inter-American documents.

In this sense, the ACHR regulates a provision on the right to reparation in accordance with the functions that its organ of control of international responsibility (i.e., the IACHR) can exercise. Article 63(1) states:

“(...) when it decides that there has been a violation of a right or freedom protected by this Convention, the Court shall order that the injured party be guaranteed the enjoyment of his right or freedom that was violated. It shall also order, if appropriate, that the consequences of the measure or situation that led to the violation of those rights be remedied and that fair compensation be paid to the injured party” (OAS, 1969).

As will be mentioned in the following sections, the IACHR has developed a jurisprudence on reparations that represents the crown jewel within the boundaries of the ISHR, at least since the concept of integral reparation in cases of human rights violations has nourished the inter-American legal system with a view to the gestation of structural transformations: once the international responsibility of the State is established, the obligation to make integral reparations arises. Thus, the jurisprudential interpretation of Article 63 of the ACHR by the Court of San José has filled the obligation to make reparations with its own content (Morales Antoniazzi, 2019).

Of course, this is a constantly evolving jurisprudential reading in

which each decision brings new developments to the legal consequences of violations of international human rights, and whose criteria and guidelines thus established by the Inter-American Court of Human Rights contribute, to a decisive degree, to the integration of the *ius commune* of human rights in the continent. The clarification that since art. 63 of the ACHR is a suggestive but reduced formula, its interpretative result highlights the similarity between the performance of the constitutional courts (called to maintain the relevance of the supreme texts in new contexts) and the work of the international human rights courts to fix-according to an inexorably progressive criterion-the meaning of the supreme formulas of a legal order, that is, through the systematic reconsideration, with a current view, of texts written years ago and under other circumstances (García Ramírez, 2020).

Victims as recipients of reparations

The international systems for the protection of human rights, created as conventional mechanisms to enable the citizens of the States Parties to have access to exceptional jurisdictional instances in the event of violations of human rights treaties, have not remained static. On the contrary, they have been subject to continuous modifications in their internal regulations and processes. In particular, the necessary adaptation of the ISHR is

no exception (beyond the reforms to the rules of procedure of the IACHR and the IACHR that have taken place substantially over the last 35 years).

Here it is appropriate to dwell on the role of the victims in the ISHR because they have progressively acquired greater procedural relevance (Sommer, 2014). In several cases brought before the IACHR, some victims were not heard by the regional court, since-according to the regulations that initially governed it-was the power of the IACHR to determine-in detail the possible victims and their presentation before the inter-American judicial forum (IACHR, 1980, 1991, 1996, 2000). The variations introduced through the regulatory changes of 2003 (Article 23) and the jurisprudential work of the IACHR, among other aspects, increased the space for victim's participation, reformulating their role in human rights protection proceedings (Cançado Trindade, 2003; Medina Quiroga, 2011).

Thus, as of the aforementioned modification of the IACHR regulations, the alleged victims, their next of kin or their representatives can participate directly in all stages of the process (*locus standi in judicio*) and, in this sense, provide evidence and present particular positions to the IACHR, different from those of the IACHR itself, both in procedural and substantive aspects or from the perspective of reparations, although the IACHR still retains the power to conclude whether

or not to elevate a case to the Court of San José-requesting the victims or their representatives to activate *per se* the jurisdiction of the court (Camarillo Govea, 2018).

In turn, with the regulatory innovation of the IACHR in 2009 (Article 35.2), the regional court made it possible that when the IAComHR has not specifically identified victims, the transnational court will have a margin of consideration to include other victims according to the evidence collected before that instance. If the cases thus considered and the reasons that led to these modifications are appreciated, their application is detected primarily in cases of massacres and in hypotheses of a considerable number of victims (IACHR Rio Negro Massacre v. Guatemala, 2012; IACHR Nadege Dorzema et al. v. Dominican Republic, 2012; IACHR Cacarica River Basin (Operation Genesis) vs. Colombia, 2013; IACHR Workers of the Hacienda Brasil Verde vs. Brazil, 2016).

Also concerning the victims access to justice, it should be noted that-as of the 2009 regulatory change (Article 37) indicates that in cases of alleged victims without duly accredited legal representation, the Court may appoint an *ex officio* Inter-American Defender to represent them during the processing of the case and the figure of the Inter-American Defender was introduced, to solve the difficulties of their access to the jurisdiction of the IACHR for economic reasons (i.e., when they

were unable to avail themselves of paid legal assistance).

Thus, we went from a conception in which the IACoMHR decided (even against the victim's claims) which rights it would bring before the IACHR for violation of the Convention and related treaties, to a position in which currently, although the IACoMHR retains a relevant role in the proceedings, it acts-in the end-as a mere procurator of the victim's representatives (who do not appoint private representatives) and even in parity of criteria with them. It is not superfluous to recall that the 2003 and 2006 versions of the Rules of Procedure provided that the IACoMHR appointed its delegates and could include representatives of the victims, but the latter were subject to the Commissioners' orders. When the 2009 reform took place, although the IACoMHR maintained its role as the procedural subject that brings the case before the IACHR Court and expresses itself on the facts of the case, the victims and their representatives can act with procedural legitimacy in the hearings before the Court itself (Article 40 of the Rules of Procedure of the IACHR).

On the other hand, it is appropriate to point out that a significant part of the cost of litigation not covered by the IACHR has usually been borne by the victims' representatives and the litigant organizations themselves, thus using resources destined for the defense of other matters and which are not always

compensated in the judgments of the IACHR (as has been pointed out by non-governmental organizations specialized in the ISHR) (Cejil, 2006; OEA, 2011). This lack of adequate compensation for costs and expenses encourages a malicious attitude on the part of some States in the region, not only because they do not bear the financial consequences associated with unnecessary delays and procedural obstruction, but also because they inhibit victims from bringing a case before the ISHR (at least, since they hardly trust that the expenses they will incur will be reimbursed).

In this regard, a timely proposal has been made to the States to create a legal assistance fund for victims and representatives who come before the IAHRS, as already exists in other jurisdictional spheres (e.g., the International Criminal Court (ICC), (ICC, 2005). As a result of this proposal, -at its 38th session, -the General Assembly approved a resolution creating the “Legal Assistance Fund of the Inter-American Human Rights System” (OEA, 2008), which aims to facilitate access for petitioners who do not have financial resources, especially for legal expenses. It should be noted that, to date, many cases before the ISHR are assisted by professionals on a *pro bono* basis, as they belong to non-governmental organizations dedicated to litigation before the aforementioned system. In November 2009, the Permanent Council of the OAS approved

Resolution CP/Res. 963, which put into operation the Rules of Procedure of the Fund, without prejudice to the fact that the IACHR Court established Rules of Procedure that entered into force on 1 June 2010, and the IAComHR did the same with the implementation of its Rules of Procedure, which entered into force on 1 March 2011.

The conceptual boundaries of the notion of integral reparation

The scope of the standards of reparation in the ISHR is not expressly set out in the Convention, whose Article 63 describes only generic aspects that the States agreed upon around 1969. In contrast, the progressive work of the Inter-American Court has been the result of a gradual interpretation of the scope of the types of damages and modes of reparation applicable to victims of violations of regional international instruments.

As a consequence of this hermeneutic practice, as of the other exegeses that the regional human rights Court has sponsored, it is difficult-for the States Parties to-evade the standards of state responsibility for human rights violations and-even more, difficult for them-to avoid making adequate reparations to the victims. It should be recalled that they have the primary obligation to investigate and prosecute those responsible for violations of conventionally protected rights and, in any event,

to make adequate reparations for the damages suffered.

This has led the Inter-American Court-in its history of more than 40 years-to build guidelines on the scope of damages and reparations not only in contexts of violations provided for in the Convention but also due to the application of general standards and principles derived from general international law, international criminal law, international humanitarian law, international environmental law, etc. (IACHR *Serrano Cruz Sisters v. El Salvador*, 2000; *Comunidades Afrodescendientes Desplazadas de la Cuenca del Río Cacarica-Operación Génesis-vs. Colombia*, 2013; *Advisory Opinion OC-23/17, Environment and Human Rights*, 2017).

Such standards have been key in framing the applicable law and the overall interpretation of state obligations (and not so much domestic norms). However, this has not been free from criticism insofar as the San José Court departs from any consideration of norms that, although they are of evidentiary relevance to the particular case, have a national practice and validity.

Indeed, if one analyzes the pronouncements in which the IACHR has ruled on the scope of the victims' right to reparations, one could make some classifications that make it possible to specify the decisions of the regional court and the interpretative scope attributed to Article 63 of the Convention (and other concordant norms). Likewise, the Court of San José

has evolved towards the following understanding: reparation is not reduced to a mere pecuniary issue but, on the contrary, it is projected as a healing institute equipped with an integrating effect of other aspects that make concrete the state's conduct of remedying the victims. Thus, Cançado Trindade lists the saga of measures aimed at preserving and rescuing their honor, their right to justice, and even their right to the truth (Cançado Trindade, 2006).

In this endeavor, Inter-American judges have sponsored different types of reparations to contemplate-as a response-that the complex (and fluctuating) typology of damages requires the design of different specific measures (Calderón Gamboa, 2013). Thus, the powers of the inter-American judge, observes Carlos Ayala Corao:

“-are neither exhaustive nor restrictive, since they include the competence, in general, to reestablish the victim in the human rights violated by the State, to repair any consequences or harmful effects of the violation and the payment of fair compensation. Furthermore, this imprint of the aforementioned conventional provision allows the deployment of protective and reparatory powers that do not stop at the current victims but are projected on the potential ones, requiring the States the most varied legislative, public policy, administrative, judicial, educational, etc. measures to prevent future transgressions (...)” (Ayala Corao, 2020).

Non-pecuniary damages

The first point is to identify the effects on human rights that translate into non-material damages, including moral and psychological damages, the impact on the life project, etc.

This type of damage is characterized: (i) by its lack of economic value (at least, if it is admitted that pain, uncertainty, etc., are not quantifiable vectors); (ii) by the compensatory damages as the usual reparatory mechanism that weighs the seriousness of the act and the intensity of the suffering caused (Ventura Robles, 2012); (iii) by the fact that the wrongful act can affect spiritual and moral values not only of an individual but also of a group (Nash Rojas, 2005); and, finally, (iv) because they do not need to be proved because of the evidence that, as a consequence of a transgression of human rights, the nature of the human person experiences spiritual pain, psychic suffering, moral anguish, etc. Specifically, it is sufficient to prove the vexations and aggressions that have occurred (IACHR 19 Merchants v. Colombia, 2004).

Now, what damages are included in the universe of moral damages? Faúndez Ledesma (2004) reviews, among other examples, the damage to honor, suffering, pain, and even humiliation resulting from a genuine violation of the dignity of the human person, while other scholars postulate its association with the suffering of fear, suffering, anxiety, degradation, etc., and the inculcation of feelings of inferiority, insecurity, frustration, and helplessness (Rojas Baez, 2007). And what has been its development in the annals of the IACHR? The judicial discourse, in the first place, focuses on the psychological

connotations of the injury (even when projected on physical or bodily suffering), as well as on the alterations to daily life (both of the victim and his family members), excluding those cases in which the Court of San José also inserts-within this category-the detriment of significant values for the human being (or his family group) (IACHR *Trujillo Oroza v. Bolivia*, 2002). Thus, for example, in sentencing the "*Myrna Mack Chang vs. Guatemala*" case, it warned that it is evident that the victim experiences not only bodily pain but also suffering before her death, which-in this case-was aggravated by the environment of harassment she was living in at the time (IACHR, 2003).

The IACHR has also inferred that the suffering or death of a person causes non-pecuniary damage to his children, spouse or partner, parents, and siblings (IACHR 19 *Merchants v. Colombia*, 2004:249), so that it can be presumed that parents have suffered morally because of the cruel death of their children (IACHR *Aloeboetoe v. Suriname*, 1993), as well as that the death of a person causes non-pecuniary damage to his siblings. In sum, the suffering originated to the victim "extends to the most intimate members of the family, especially those who were in close affective contact with the victim" (IACHR *Bulacio v. Argentina*, 2003).

Then, a careful reading of the jurisprudential repertoires of the regional human rights court leads experts to note that the

frequency with which it appeals to a standard of objective measurement (Ventura Robles, 2012) to design a plethora of measures of satisfaction endowed with a trace of non-repetition and public repercussion. Therefore, discounting that the condemnation by the IACHR entails *per se* a form of satisfaction with a preventive bias (at least as an indicator of the international wrongdoing committed by the State) (IACHR “Street Children” (Villagrán Morales) v. Guatemala, 2001), the truth is that scholars bring up measures coined by the Inter-American jurisprudence that, under the canon of comprehensive reparation, emphasize the rescue of the memory of the victims, the restoration of their dignity, the publicity of the official reprobation of the violations, etc (Calderón Gamboa, 2013).

From this enclave, the following examples can be found in Inter-American judicial law:

- (i) the publication and dissemination of the conviction (often within 6 months of its notification), including translation into the language of indigenous and tribal communities and peoples whose rights were implicated in the case being prosecuted (IACHR Chitay Nechv. Guatemala, 2010);
- (ii) the performance of a state act of public acknowledgment of international responsibility for the violation caused or for the lack of necessary protection for the victims (and its inadequacy). Its implementation, however, is not left to

mere internal discretion, since its execution must meet the objective of redressing the victims (or their memory), be carried out in their language or tongue, and outline the violations declared by the IACHR in the presence of state officials and agents, as well as the victims and their next of kin, etc (IACHR *Radilla Pacheco v. Mexico*, 2009).

(iii) the commemoration of the victims with the purpose (not only honorary, by the way) of awakening the conscience to avoid the repetition of harmful acts, to keep alive their memory, and to appease the moral suffering of their relatives through the placement of plaques in evocation of the act and rescue of their prestige, the allocation of state funds for the maintenance of religious spaces in which tribute is paid to the deceased victims, the designation of squares with their names, the construction of monuments also with their names or the investiture of those already existing, etc (IACHR '*Street Children*' (*Villagrán Morales et al.*) v. Guatemala, 2001).

Of course, this is not an exhaustive or closed catalog. Thus, for example, Cançado Trindade adds-to the preceding menu -a measure of intense ethical value, since it is the public apology that is associated with the acceptance of the State's international responsibility, the forgiveness requested by the State for its violating acts and the justice that this constitutes for the victim (Cançado Trindade, 2006). Although -at first -the IACHR did

not include this aspect in its decisions on reparations (even when requested by the petitioners), it should be noted (Calderón Gamboa, 2013:163) that it was only later that it altered this criterion, given that in subsequent judgments-it ordered the State to publicly apologize to the victims and they are next of kin (as happened in 2005 in the-case of the “Yean and Bosico girls”), in 2003 in-the “Bulacio” case by ordering the State to publish the operative part of the Judgment in the Official Gazette, and - subsequently reissued-in 2006 based on the rulings in the “Goiburú” case (establishing that the State must carry out a public act acknowledging its responsibility for the disappearance of the victims) and the “Vargas Areco” case (ordering a public act in the community of the victim's next of kin since they were not present at the public hearing in the case).

In turn, damages of a psychological nature are those that entail a pathological alteration or modification of the psychic apparatus as a consequence of a trauma that exceeds any chance of verbal or symbolic elaboration, with the particularity that the Court of San José has on occasions ordered its reparation without individualizing it with a specific title, while on other occasions it has done so jointly with moral damages and on others autonomously (Calderón Gamboa, 2013).

However, what is interesting about the reparation mechanism for this type of damage is the variety of modalities used to make the

duty to respond effectively: without discounting the awarding of compensation amounts, the execution of measures of satisfaction (with the scope already explained) and of a restitutionary nature (annulment of criminal records), rehabilitation measures appear on the scene by which the sentenced State is constrained to individually assess the victims and provide them with medical, psychological and psychiatric treatment, free of charge, immediately and subject to the prior consent of the victim, psychological and psychiatric treatment free of charge, immediately and with their prior consent, even with the addition that such benefits must be provided through specialized state health institutions and without any type of restriction in time or to the physical or psychological requirements of the victim (IACHR *Goiburú v. Paraguay*, 2006). Undoubtedly, the residence of the victims, as well as their circumstances and needs, must be contemplated in the state's response in favor of their rehabilitation, so that if they are not based in the place under the jurisdiction of the responsible State, the latter must pay the amounts applied to cover the treatment ordered and meet the expenses involved in their place of residence (IACHR *Contreras v. El Salvador*, 2011). Nor are there any *numerus clausus*-inventories, since experts argue that the duty to investigate and punish can operate as a reparative component of this type of damage (Calderon Gamboa, 2013).

Finally, it should be noted that the damage to the life project, based on a holistic consideration of the victim's person, involves making a judgment on how the act of violation of human rights affects the future projections that she had for her life program at the time of the transgression based on factors of vocation, aptitudes, circumstances, personal aspirations, etc. that allow her to reasonably set expectations and reach them (IACHR Cantoral Benavides v. Peru, 2001), although the victim's prospects for personal, professional and family development are also modulated. What does this specimen of damage, which is considered a pioneering advance in the field of IHRL comprise? According to the verdicts of the IACHR and based on the subject's options to lead his life and achieve the destiny he proposes, the judges of San José extend it to the hypothesis of total and irreparable loss or the assumption of considerable and very difficult to repair impairment of his opportunities for development (IACHR Loayza Tamayo v. Peru, 1998). Therefore, it has been ruled out in those cases in which the victim has died, given the impossibility of replacing the expectations of realization that every person reasonably cherishes (IACHR González (Campo Algodonero) v. Mexico, 2009).

Property damage

The jurisprudential concept of material damage refers to the:

“(...) loss or detriment of the victim's income, the expenses incurred due to the facts and the consequences of a pecuniary nature that have a causal link with the facts of the case” (IACHR *Bámaca Velásquez vs. Guatemala*, 2002). However, this notion can be broken down into three important areas:

(i) Emerging damage: this label covers the detriment to the victim's assets as a result of the violation of his rights (Abreu Burelli, 2005) as well as the direct and immediate expenditures that he, his relatives, or representatives make reasonably and demonstrably to repair the unlawful act and nullify its effects (IACHR *Velásquez Rodríguez v. Honduras*, 1989). In short,-explains Claudio Nash Rojas, it-represents all the expenses incurred by the victims (or their representatives) on the occasion of the wrongful act (Nash Rojas, 2009).

Therefore, among the reimbursable items-primarily through compensatory damages-are listed the medical expenses for the physical or psychological improvement of the victim, expenses for his search and/or rescue, the loss suffered in his patrimony, the future medical expenses to generate welfare for the victim or his relatives, etc (IACHR “*Street Children*” (Villagrán Morales) v. Guatemala, 2001). In addition, funeral expenses, food and lodging expenses (IACHR *Blake v. Guatemala*, 1999) and even travel or visit expenses during the victim's deprivation of liberty (IACHR *Cantoral Benavides v. Peru*, 2001), etc. are also authorized. What is the evidentiary basis required? On some

occasions, Inter-American judges have required specific proof of each of the expenses and their link to the case (IACHR Velásquez Rodríguez v. Honduras, 1989), while on other occasions (in particular, when dealing with long periods of impunity or contexts of serious human rights violations), they have flexibly resorted to guidelines of equity to determine their compensability (IACHR Bámaca Velásquez vs. Guatemala, 2002).

(ii) loss of income or loss of profits: unlike the loss of assets derived directly and immediately from the facts, loss of profits refers exclusively to the loss of future economic income that can be quantified based on measurable and objective indicators (IACHR Loayza Tamayo v. Peru, 1998). What points of reference, then, should be used when quantifying this compensation section? It is explained that, among others, the life expectancy in the country at the time of the fact, the circumstances of the case, the legal minimum wage, the loss of a certain chance, etc., must be taken into account (Rojas Baez, 2008). It should be noted that, in contrast to what is corroborated in terms of damage to the life project, compensation for loss of earnings is not ruled out in the event of the victim's death; rather, in the event of a death caused by the transgressions that are the object of the conviction, the Court of San José determines the amount of compensation based on the income

that the victim received and those that he would have received until his possible natural death according to life expectancy, work progress, etc (IACHR Velásquez Rodríguez v. Honduras, 1989). On the other hand, it may well happen that the victim survives the sentenced violations, in which case the determination takes as a reference the period that he/she remained unemployed as a consequence of those violations so that the IACHR uses the remuneration received at the time of the violation as a basis for compensation (even without neglecting the impact of the inflationary process) (Ventura Robles, 2012b).

(iii) damage to family assets: as an annexed material compensation, the Inter-American Court also compensates the damage to the assets of the family members as a consequence of what happened to the victim (Ventura Robles, 2012b; Calderon Gamboa, 2013). Thus, it is common for scholars to mention, among others, the costs of relocation or change of residence for protection, obtaining new jobs, social reincorporation, or due to the loss of possessions caused by violence or persecution, etc. In this line of argument, the victim's next of kin-in the case Castillo Paez v. Peru (IACHR, 1998)-argued that the violations led to a series of harmful effects on their family fortune (bankruptcy of the father's business, sale of the family residence, etc.) so that the IACHR ruled that there was a causal link between the

violation and the pecuniary damage, ordering the payment of a lump sum (quantified according to equity guidelines) as compensation. It is worth mentioning that, before the case in question, the Regional Court of Human Rights held that it was entirely impossible (under the principle that his action had immeasurably multiplying effects) to oblige the perpetrator to erase all the consequences caused by his act (IACHR Aloeboetoe et al. v. Suriname, 1993). However, the Court has relaxed this rule in hypotheses in which, in real terms, there is general patrimonial damage caused to the family group (in the precedent in question, the disappearance of a member of the family, for reasons attributable to the State, which caused economic disruption to the family). It should be noted that-in subsequent decisions-this chapter of the material damage has already been recognized in the jurisprudential annals of the IACHR, by admitting that it has awarded compensation for such concept in cases:

“in which, even when there is no suitable mechanism to demonstrate the exact amount or value of the damage, it is evident from the facts that there is an economic detriment evidenced by factors such as the following: a substantial change in the conditions and quality of life derived as a direct consequence of facts attributable to the State; the incurring of expenses related to exile or relocation of the home; expenses for social reincorporation; expenses incurred to obtain jobs that were lost as a result of the violations committed by the State; expenses related to the loss of studies; loss of possessions, as well as the detriment to the physical, psychological and emotional health of the affected family” (IACHR Baldeón García v. Peru, 2006).

State reparation measures: adequately investigating, prosecuting, and punishing the facts that led to the violations

A constant feature of the cases that reach the ISHR is that they are often based on violations of Articles 8 and 25 of the ACHR. That is, the violation is configured by the lack of application -in the States of -standards of access to justice for the victims and their families as well as a judicial process that offers guarantees of impartial investigation and proper procedure (For an in-depth analysis of the standards of Articles 8 and 25 (Salomon, 2011; Espejo Yaksic, Leiva García, 2012; Steiner, Uribe, 2014; Carbonell, Caballero González, 2016), also a key aspect in other international documents such as the United Nations Covenant on Civil and Political Rights (hereinafter, ICCPR) (Noor, 1981).

This has been seen in situations ranging from the most complex and massive, such as those recently reported in hypotheses of crimes against humanity, to cases in which only a few officials have been involved or events of lesser impact. In this regard, the San José Court has insisted that impunity should not be perpetuated in the cases that come to its attention and that these situations are also contrary to the obligations that States have assumed internationally (IACHR *Barrios Altos v. Peru*, 2001; *La Cantuta v. Peru*, 2006; *Masacre de Pueblo Bello v. Colombia*, 2006; *Goiburú v. Paraguay*, 2006). Hence, the State's

commitment to guarantee that the truth of the facts is known, as a right of justice for the victims, is highlighted (UNHCHR, 2006; OAS, 2005, 2006). In the same vein, the former United Nations Commission on Human Rights, in the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (2005) established-inter alia-: (i) every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes (principle 2); (ii) the State must preserve archives and other evidence concerning human rights violations and facilitate their knowledge, as a measure aimed at preserving the collective memory from oblivion and, in particular, preventing the emergence of revisionist and negationist theses (principle 3); (iii) irrespective of any legal action they may bring, victims and their families have an imprescriptible right to know the truth about the circumstances in which the violations were committed and, in the event of death or disappearance, about the victim's fate (principle 4); and, finally, (iv) it is incumbent upon States to take appropriate measures, including measures necessary to ensure the independent and effective functioning of the judiciary, to give effect to the right to know. Appropriate measures to ensure this right may include non-judicial processes that complement the judicial function. In any case, States should guarantee the production of archives relating to human rights

violations and the possibility of consulting them (aspects contemplated since its first rulings). The IACHR affirmed the existence of the right of the victim's next of kin to know the fate of the victim and, if applicable, where his remains are located, while noting that the right of the next of kin of victims of grave human rights violations to know the truth is part of the right of access to justice. On other occasions, the Court has repeated these positions (IACHR *Garrido and Baigorria v. Argentina*, 1998; *Castillo Paez v. Peru*, 1998; *Blake v. Guatemala*, 1999; *Fire Factory of Santo Antônio de Jesus vs. Brazil*, 2020; *Mota Abarullo et al. v. Venezuela*, 2020).

From the point of view of international law, impunity for human rights violations constitutes a violation of the commitment assumed by States to respect and guarantee the exercise of human rights, and to provide victims with effective remedies to protect them. These obligations to investigate and prosecute adequately have also been pointed out by the International Court of Justice, which considers that every State must immediately proceed to a preliminary investigation of the facts occurring in its territory and eventually prosecute them. In the matter of Questions relating to the Obligation to Prosecute or Extradite (*Belgium vs. Senegal*), (ICJ, 2012) can also appreciate the separate vote of Judge Cançado Trindade when he states:

“(...) the obligations of the State (under the conventions for the protection of the human person) to prevent, investigate and punish serious violations of

human rights and international humanitarian law "are not mere obligations of conduct, but rather obligations of result", since we are faced with peremptory norms of international law that safeguard the fundamental rights of the human person (...). In the sphere of *jus cogens*, such as the absolute prohibition of torture, the state's obligations are of due diligence and of result, otherwise, he adds, the doors would remain open to impunity".

According to Article 1.1 of the ACHR, the States Parties are obliged to respect and guarantee all the rights and freedoms recognized in the Convention. While the obligation to respect implies limits on the actions of state organs and agents, which derive from the content of the rights protected by the treaties, the obligation to guarantee implies that States have to guarantee their free and full exercise to all person's subject to their jurisdiction, without any type of distinction or discrimination (Parra Vera, 2012). Thus, this precept does not constitute a programmatic provision, since the ACHR finds direct application in all its clauses when an American State has signed, ratified, or acceded to it. The obligations contained in international conventional law, and particularly those referring to human rights, constitute for all national judges

"directly applicable law and in preference to domestic legal norms, since the legal system itself adopts Articles 36 and 31.1, on the one hand, and Article 27 of the Convention, on the other; the former determines the obligation to comply in good faith with international obligations (*pacta sunt servanda and bona fide*), and Article 27, in turn, establishes the duty not to create obstacles under domestic law to the fulfillment of international obligations" (Nogueira Alcalá, 2012; Rey, 2012).

The content of the obligation to guarantee has also been interpreted by the IACHR, since its first judgment in the case of "Velázquez Rodríguez v. Honduras" and has been reflected on

several occasions. The IACHR expressed that this obligation implies the duty of the States Parties to organize the entire governmental apparatus and, in general, all the structures through which the exercise of public power is manifested, in such a way that they are capable of legally ensuring the free and full exercise of human rights. As a consequence of this obligation, States must prevent, investigate and punish any violation of the rights recognized by the Convention and also seek to restore, if possible, the violated right and, where appropriate, to repair the damage caused by the violation of human rights. If the State apparatus acts in such a way that such a violation goes unpunished and the victim is not restored, as soon as possible, to the full enjoyment of his rights, it can be said that it has failed in its duty to guarantee the free and full exercise of those rights to the person's subject to its jurisdiction (IACHR *Almonacid Arellano et al. v. Chile*, 2006).

The judicial organs of a State have, therefore, a central role in the fulfillment of the obligation to investigate, prosecute and, where appropriate, punish human rights violations (Kleffner, 2003). To establish whether a State, through the actions of its judicial organs, has fully complied with its obligation to investigate, prosecute and punish, the Court of San José can examine the judicial proceedings carried out at the domestic level, since the function of the international court is to determine

whether the integrity of the proceedings was per international provisions; this examination, then, aims to verify whether the proceedings have been conducted with respect for judicial guarantees, within a reasonable time, and whether they have provided an effective remedy to ensure the rights of access to justice, knowledge of the truth of the facts and reparation to the next of kin (IACHR *Ximenes López v. Brazil*, 2006; *Balderón García v. Peru*, 2006; *Guachalá Chimbo v. Ecuador*, 2021).

It should be clarified that the duty in question is an obligation of means and not of result, which must be assumed by the State as its legal duty and not as a mere formality atoned in advance to be fruitless or mere management of private interests that depends on the procedural initiative of the victims, their relatives or the private contribution of evidentiary elements. In light of such behavior, once the State authorities know the fact, they must initiate *ex officio* and without delay a serious, impartial, and effective investigation. Such an investigation must be carried out by all available legal means and be oriented towards the determination of the truth (IACHR *Pueblo Bello Massacre v. Colombia*, 2006). As part of the obligations that the IACHR usually imposes on States, not only does it establish that governments must investigate and prosecute, but it has also set standards to ensure that such prosecution measures do not involve mere formal commitments or simulate apparent judicial

proceedings to satisfy the state's duty to substantiate a judicial process. Hence, in several cases, the Court of San José has ordered measures to substantiate judicial proceedings that guarantee a real truth or that exhibit a “fraudulent” purpose.

To establish a criterion on the scope of adequate investigations and due process, the IACHR has also refined standards on the reasonable length of a judicial proceeding. About the duration of criminal investigations and prosecutions, the IACHR has said:

“(…) three elements must be taken into account to determine the reasonableness of the period in which a process takes place: a) complexity of the matter, b) procedural activity of the interested party, and c) conduct of the judicial authorities”.

It has also been pointed out that the computation of the period begins with the first procedural act directed against a certain person as the probable perpetrator of a crime and ends when a final and definitive sentence is issued; the computation of the time includes the appeals of instance (IACHR *Acosta Calderón v. Ecuador*, 2005; *Baldeón García v. Peru*, 2006). The Court has also established that “[t]he reasonableness of the time limit must be assessed with the total duration of the criminal proceeding” (IACHR *Ximenes López v. Brazil*, 2006).

In some cases, related to extrajudicial executions and attacks on personal integrity, the regional Court considered that:

“(…) the courts of justice acted without independence and impartiality, applying legal norms or provisions contrary to due process or omitting to apply those that corresponded” (IACHR *Carpio Nicolle et al. v. Guatemala*, 2004).

In addition, it also determined that:

“(...) there was continuous obstruction of the investigations by agents of the State and the so-called “parallel groups” in power, as well as a lack of diligence in the development of the investigations, which [determined the] total impunity”, the lack of “guarantees necessary to investigate and evaluate each evidentiary material” and that the “general situation prevailing in the justice system [...] denounced its impunity [...] denot[ed] its powerlessness to maintain its independence and impartiality in the face of the pressures to which its members could be subjected. The Inter-American judges referred to the “fraudulent *res judicata*” taking into account that it was demonstrated that the systematic obstruction of the administration of justice and due process prevented the identification, prosecution, and punishment of those materially and intellectually responsible for the execution of the victims” (IACHR *Gutiérrez Soler v. Colombia*, 2005).

Satisfaction measures

Adequate comprehensive reparation is no longer considered a matter that covers only monetary aspects. Victims often turn to the ISHR in search of moral reparation or recognition that the State violated not only the life or physical integrity of individuals but also caused spiritual or emotional harm. In the evolution of the decisions of the IACHR, one can appreciate how the court gradually considered moral affectations under the heading of human rights violations, especially the most serious and atrocious (associated with crimes against humanity that occurred in the American region in the twentieth century).

In the context of internal armed conflicts, many families lost their loved ones through disappearances or extrajudicial executions and, in the years after the cases were investigated by the States, it has not always been corroborated that the internal authorities take measures to satisfy the request for forgiveness of

the victims and their families with apologies or acts that generate social awareness of what happened. Various precedents, such as the saga of the Peruvian cases of the 1990s (IACHR *Barrios Altos v. Peru*, 2001; *La Cantuta v. Peru*, 2006) or the various massacres committed in Colombia (IACHR *Mapiripán Massacre v. Colombia*, 2003) or Guatemala (IACHR *Dos Erres Massacre v. Guatemala*, 2009), it can be seen that the measures adopted by the IACHR were aimed at implementing responses of satisfaction in terms of which the State requests public apologies or builds monuments in memory of the victims (IACHR *González (“Campo Algodonero”) vs Mexico*, 2009). The Court was ordered a monument be erected to the women who had been victims of gender-based murders so that society would know the context of violence they had suffered and also as a measure to raise awareness about sexual exploitation and the consequences of the state's inaction against criminal groups. As mentioned above, the state's public acknowledgment that the acts were the responsibility of its agents makes reconciliation possible and restores to the victims (and their families) the dignity that they saw dissipated. In the opinion of the Inter-American Court, especially in cases of serious human rights violations, State forgiveness should contribute to a commitment to non-repetition as well as to social visibility of the events that occurred and even to raising awareness of the state's conduct.

In cases that had important repercussions due to the scope of the judgments, the IACHR considered that the States should provide reparation and satisfaction for the events that occurred, either by naming a street or square after the victim (IACHR Benavides Cevallos vs. Ecuador, 1998) or by naming an educational center for children and adolescents after another of the victims in the case (IACHR Street Children, Villagrán Morales) v. Guatemala, 2001).

On occasions, this saga of decisions by the Inter-American court has not been exempt from debate and criticism, as they have been considered to exceed the scope of jurisdiction that the States granted to the regional court within the framework of the scope of Article 63 of the Convention. The case of the monument in Peru of victims of the State and armed groups called “The Eye that Cries” generated a great national and international public debate on the competencies of an international court to impose monuments that end up generating reactions contrary to the mechanisms of reconciliation and truth that were intended.

The violations suffered by the victims are also of a psychological or emotional nature. For this reason, the IACHR has ordered reparations for the health affections of persons with adequate measures for their personal containment, and if the pronouncement addresses the rights of children and adolescents,

the State's commitment must be even greater. Thus, the IACHR has indicated:

“(...) to contribute to the reparation of these damages, the Court establishes the obligation of the State to provide free of charge, through its specialized health institutions, the psychological treatment required by the persons mentioned in the previous paragraph, as well as the medical treatment required by the former inmates injured in the fires, including, *inter alia*, the medications and surgical operations that may be necessary” (IACHR Instituto de Reeducción del Menor vs. Paraguay, 2004), or the assistance of medications free of charge (IACHR De La Cruz Flores v. Peru, 2004).

In cases of violations of the rights of indigenous peoples and communities, it should be noted that inter-American judgments are very varied in terms of measures to improve the conditions that led to the violations, particularly in cases of dispossession of their lands. In some judgments it has held:

“(...) in view of the measures of reparation requested by the Commission and the representatives, the dispossession of their territory, the damage caused to it, and the fact that the indigenous peoples have the right to the conservation and protection of their environment and the productive capacity of their territories and natural resources, the Court orders that the fund is allocated with the objectives of (i) developing projects aimed at increasing agricultural or other products in the Community; (ii) improving the Community's infrastructure under its present and future needs; (iii) restoring deforested areas” (IACHR Garifuna Community of Punta Piedra and its members vs. Honduras, 2015).

In other rulings, it has ordered, on the other hand, the creation of reparation funds for community development (IACHR Aloeboetoe et al. v. Suriname, 1993; Mayagna (Sumo) Awas Tigni Community v. Nicaragua, 2001; Xucuru Indigenous People and its members v. Brazil, 2018) or the execution of land demarcation processes (IACHR Yakye Axa Indigenous Community v. Paraguay, 2005; Sawhoyamaxa Indigenous

Community v. Paraguay, 2006; Saramaka People v. Suriname, 2007; Triunfo de la Cruz Garífuna Community and its members v. Honduras, 2015; Kaliña and Lokono Peoples v. Suriname, 2015; Xucuru Indigenous People and its members v. Brazil, 2018), without prejudice to ordering the State to implement infrastructure plans to provide communities with better access to health care, roads or drinking water supply (IACHR Río Negro Massacres v. Guatemala, 2012; Garífuna Community of Punta Piedra and its members v. Honduras, 2015; Indigenous Communities Members of the Lhaka Honhat Association (Nuestra Tierra) v. Argentina; 2020; Buzos Miskitos (Lemoth Morris) v. Honduras, 2021).

Within the new lines of work of the IACHR, a more forceful line of jurisprudence can also be seen in the area of obligations that finds as addressees not only the State but also groups of individuals in business contexts that impact the rights of indigenous communities and other sectors, as well as highlighting the obligation to satisfy the damages caused by such companies (IACHR Xákmok Kásek Indigenous Community v. Paraguay, 2005; Ximenes López v. Brazil, 2006; Saramaka People v. Suriname, 2007). In some cases, the Inter-American decisions have incorporated references to the United Nations Guiding Principles on Business and Human Rights with the objective of analyzing the contexts of human rights

violations of indigenous peoples in business activities (IACHR *Pueblos Kaliña and Lokono v. Suriname*, 2015; *Buzos Miskitos (Lemoth Morris) v. Honduras*, 2021), (Salmon, 2012).

As anticipated, armed conflicts and displacement of persons have been analyzed in various proceedings before the IACHR. To respond to these serious violations, the Court of San José has ordered the national authorities to take various measures to ensure compensation for the losses caused. Many of the persons displaced by armed conflict have lost their property, and States have been ordered to guarantee housing plans for these collective victims (IACHR *Plan de Sánchez Massacre v. Guatemala*, 2004; *Pueblo Bello Massacre v. Colombia*, 2006; *Massacres of El Mozote and nearby places v. El Salvador*, 2012) or a return to their lands and homes without further danger to their lives or families (whether the threat comes from State organs themselves or non-state armed groups)(IACHR *Mapiripán Massacre v. Colombia*, 2005; *Pueblo Bello Massacre v. Colombia*, 2006; *Ituango Massacres v. Colombia*, 2006).

Non-repetition measures

Another of the measures that have had a significant impact on inter-American decisions are those that tend to give a symbolic meaning to reparations because of being understood as a behavior that States should not repeat at the risk of aggravating

or encouraging future episodes of human rights violations. One of the activities that the Regional Court has taken into account (throughout its more than 40 years of existence) is to require the domestic authorities to ensure that the events that have occurred are not repeated on an ongoing basis. Indeed, if the violations are the result of conduct or omissions of the state organs, they are obliged to prevent, through adequate due diligence, that their transgressions are not repeated.

There are several requests to the States to modify such behaviors, which are usually requests for training on respect for human rights for state officials (mainly police officers, penitentiary agents, and justice personnel, among others) (IACHR González et al. (Campo Algodonero) v. Mexico, 2009). Measures of non-repetition are significant for States to adopt provisions within the framework of their international obligations (Articles 1.1 and 2 of the ACHR and related treaties) to modify state conduct and treatment of the population in general, but especially of vulnerable groups in society.

These measures also have a meaning of commitment in matters concerning indigenous and tribal peoples and communities that have suffered-on repeated occasions-similar violations. In some cases, the IACHR has established as a measure of non-repetition the realization of prior consultations with the communities to avoid the repetition of violations of their rights. It can be

illustrated with the sentence in the case “Kichwa Indigenous People of Sarayaku vs. Ecuador”, stating:

“(…) the State is responsible for the violation of the right to communal property of the Sarayaku People, for not having adequately guaranteed their right to consultation. Consequently, the Court provides, as a guarantee of non-repetition, that if it is intended to carry out activities or projects of exploration or extraction of natural resources, or investment or development plans of any other kind that involve potential impacts on the Sarayaku territory or essential aspects of their worldview or their cultural life and identity, the Sarayaku People must be previously, adequately and effectively consulted, in full compliance with international standards applicable to the matter” (IACHR Kichwa Indigenous People of Sarayaku v. Ecuador, 2012).

In other precedents, it has ordered measures where by the State must refrain from taking any further measures that violate the rights of the communities. (IACHR Moiwana Community v. Suriname, 2005). In its case, the Court emphasized:

“(…) until the property rights of the members of the community over their traditional territories are secured, the State must refrain from actions-whether by state agents or third parties acting with the acquiescence or tolerance of the State-that affect the existence, value, use or enjoyment of the property located in the geographic area where the members of the community traditionally lived”.

In the event of violations involving violations of women's rights, the IACHR has deployed various methods to redress them and ensure that measures are adopted internally to prevent their repetition. Thus, in the case of sexual violence perpetrated by public officials, it was noted:

“(…) [the IACHR] values positively the existence of various actions and training courses developed by the State. In this regard, it considers that they should include, as appropriate, the study of the provisions of the Istanbul Protocol and the Guidelines of the World Health Organization, and should emphasize the care of alleged victims of rape, particularly when they belong to groups in a situation of greater vulnerability such as indigenous women” (IACHR Fernández Ortega v. Mexico, 2010; Women Victims of Sexual

Torture in Atenco v. Mexico, 2018).

In Atenco case, the IACHR ordering the State to create and implement, within two years, a training plan for officers of the Federal Police and the State of Mexico aimed at: (i) sensitize the members of the police forces in approaching police operations with a gender perspective, the discriminatory nature of gender stereotypes such as those employed in this case and the absolute duty to respect and protect the civilian population with whom they come into contact in the framework of their law enforcement work, as well as to (ii) train police officers on the standards regarding the use of force in contexts of social protest established in this Judgment and in the jurisprudence of this Court. This training plan should be incorporated into the regular training course of the members of the federal and state police force.

It has also ordered the continuity of assistance programs and training on sexual violence, but with the deployment of a committed gender perspective that does not revictimize women (IACHR Rosendo Cantú v. Mexico, 2010; Véliz Franco v. Guatemala, 2014; Velásquez Paiz v. Guatemala, 2015; Favela Nova Brasília v. Brazil, 2017). Furthermore, it is added that the aforementioned policies should not be formal or in temporary periods that do not bring about genuine changes in the perceptions of public agents.

Precisely, the Court of San José has reiterated this point:

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“(…) training, as a continuous training system, must be extended for a significant period to fulfill its objectives. Likewise, and in light of the jurisprudence of this Court, it warns that training with a gender perspective implies not only learning the rules but must generate that all officials recognize the existence of discrimination against women and the effects that stereotypical ideas and evaluations generate in women concerning the scope and content of human right”. (IACHR *Espinoza Gonzales v. Peru*, 2014). More recently, it has also obliged the State to generate a series of actions to prevent women human rights defenders and journalists from being threatened or losing their lives in the defense of women's rights.

Special consideration should be given to the events of violence against girls and adolescents since the IACHR has stated that the state's care and policies of non-repetition are a maximum commitment that the States must apply based on the impact on the progressive maturity process of the victims (IACHR *V.R.P., V.R.P.C. v. Nicaragua*, 2018). Indeed, it is well known that -in cases of women victims of gender violence- the harm that can be caused by inadequate mechanisms of containment and investigation further aggravates the circumstances of vulnerability.

From this point of view, the most recent inter-American jurisprudence has promoted that the:

“(…) State adopt protocols that establish clear protection measures and criteria to be taken into account during investigations and criminal proceedings derived from acts of sexual violence to the detriment of children and adolescents.) The state should adopt protocols that establish clear protection measures and criteria to be taken into account during investigations and criminal proceedings arising from acts of sexual violence to the detriment of children and adolescents; that ensure that statements and

interviews, medical-forensic examinations-, as well as psychological and/or psychiatric expertise is carried out in a manner tailored to the needs of the child and adolescent victims, and delimit the content of specialized comprehensive care for the child and adolescent victims of sexual violence” (IACHR V.R.P., V.P.C. et al. v. Nicaragua, 2018).

It’s not could it be overlooked that the violations that often occur in the context of the actions of state security officials have led the IACHR to emphasize:

“(…) the power, and even the obligation of the State to “guarantee (the) security and maintain public order”. However, the state's power in this area is not unlimited; its actions are conditioned by respect for the fundamental rights of individuals under its jurisdiction and the observance of procedures under the law” (IACHR Bulacio v. Argentina, 2003).

Moreover, in addressing various aspects of the exercise of civil and political rights, the IACHR has established guidelines for non-repetition that have been key to legislative changes in the region. Thus, concerning the right to be elected in democratic elections and the scope of the right to indefinite reelection (IACHR Yatama v. Nicaragua, 2005; Castañeda Gutman v. Mexico, 2008; Advisory Opinion OC-28/21, The concept of indefinite presidential reelection in presidential systems in the context of the Inter-American System of Human Rights, 2021), equal access to assisted reproduction techniques (IACHR Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica, 2012), etc. In sum, in the Latin American context, the San José Court, through the adoption of measures of non-repetition, in addition to reparations *in integrum*, achieves a preventive and emblematic effect in the sense of taking advantage of the fragment of cases that effectively reach its forum so that the

judgment has an impact beyond the specific case (Von Bogdandy, 2019).

Measures to adjust internal standards

However, it is important to keep in mind that many of the human rights violations that are known in the ISHR correspond to situations that have their origin in existing norms that are contrary to inter-American standards and whose application has been violated over time. Sometimes they are simple regulatory norms, on other occasions norms of regional or national application, and even the IACHR has resolved cases in which the collision between the standards of a right or the lack of its provision in the political constitution of a State has been considered contrary to the mandate of the ACHR.

It has also been possible to learn of cases of regulatory regimes that prevented the investigation of serious human rights violations (mainly due to events that occurred during the various dictatorial governments of a civil-military nature in the last decades of the twentieth century in Latin America). The various cases on the legality of amnesty provisions and laws that prevented the investigation and prosecution of systematic human rights violations can be mentioned here. The Court of San José has considered that such regulations are harmful to the standards of the ACHR and has even warned that such impediments were

already provided for as norms of *jus cogens* (IACHR Barrios Altos v. Peru, 2001; Gelman v. Uruguay, 2011; Gaja, 1981) before the existence and entry into force of the Convention itself. Therefore, one way to repair the damages suffered by the victims and their families is to remove the obstacles that prevent the investigation, prosecution, and eventual conviction of those responsible.

This saga of IACHR decisions has not been free from reproach either, especially when it is argued that amnesty laws were intended to achieve “national reconciliation”, or that they did not arise from the aspirations of authoritarian governments seeking impunity for their acts (as happened in some Central American cases or the most resounding cases in Peru- Barrios Altos, La Cantura, Castro Castro Prison) but, on the contrary, from legislative decisions emanating from democratically elected parliaments (as in the case of Gelman v Uruguay). Also in this line of argument, inter-American jurisprudence has considered cases of violations that, despite not being expressly provided for in the text of the ACHR, are subject to the practice of a conventional interpretation under the Convention (supported not only by the Convention itself but also by other international instruments), all in light of the rules of interpretation contained in super-article 29 of the ACHR (Sola, 2019). In this way, the application of standards derived from

international criminal law has been encouraged (especially when it has undergone great development in recent decades).

In cases of serious human rights violations, the San José Court analyzed the scope of “crimes against humanity” to consider that the events that took place in the States of the region constituted more than isolated acts of murder, kidnapping, or disappearance of persons. These decisions were also relevant in forcing national bodies to adapt their domestic norms (e.g., by creating clearer criminal offenses and even including crimes against humanity in their criminal legislation) to prevent the crimes from recurring in the future. It should be recalled that the obligations of States to adopt measures to bring their international commitments into line with the canon of norms and interpretations of the ACHR (and other binding American human rights instruments), constrains States to remove any normative obstacle that impedes respect for the human rights of their inhabitants.

These obligations (foreseen since the first judgment of the IACHR) have led the regional human rights court to generate new definitions of the obligations of State organs to adapt to the interpretative guidelines established by its jurisprudence in pursuit of the guarantee of the rights recognized therein. Thus, for example, the Court of San José has developed a hermeneutic process that was initially based on the commitment to respect

human rights treaties to validate the useful effect (IACHR *Trabajadores Cesados del Congreso (Aguado Alfaro) v. Peru*, 2006; *Heliodoro Portugal v. Panama*, 2008; *Radilla Pacheco v. Mexico*, 2009; *Fernández Ortega et al. v. Mexico*, 2010; *Rosendo Cantú et al. vs. Mexico*, 2010; *Liakat Ali Alibux vs. Suriname*, 2014) of their application, taking a more contemporary step in light of the doctrine of conventionality control (García Ramírez, 2020). Indeed, through a series of judgments and advisory opinions, the IACHR has established the attribution and duty (initially destined to the judicial organs and/or linked to the administration of justice) to informally carry out an examination of the adequacy of national norms and acts to the guidelines of the ACHR and the interpretations of the IACHR itself (*Almonacid Arellano v. Chile*, 2006) (although it should be noted that later the other organs and state powers have been summoned).

The Court indicated that domestic judges and courts are subject to the rule of law and, therefore, are obliged to apply the provisions in force in the legal system. But when a State has ratified an international treaty such as the American Convention, its judges, as part of the state apparatus, are also subject to it, which obliges them to ensure that the effects of the provisions of the Convention are not diminished by the application of laws contrary to its object and purpose, and which from the outset

lack legal effect. In other words, the Judiciary must exercise a kind of “conventionality control” between the domestic legal norms that apply in specific cases and the American Convention on Human Rights. In this task, the Judiciary must take into account not only the treaty, but also the interpretation made by the Inter-American Court, the ultimate interpreter of the American Convention. Therefore, it is appropriate to emphasize what the IACHR recently stated in this regard:

“(…) all authorities of a State Party to the Convention should exercise a “conventionality control” between acts or omissions and domestic norms and the American Convention, so that the interpretation and application of domestic law are consistent with the state's international human rights obligations. This control of conventionality must be carried out within the framework of their respective competencies and the corresponding procedural regulations, and in this task, taking into account not only the treaty but also the interpretation of the same by the Inter-American Court, the ultimate interpreter of the American Convention” (IACHR Colindres Schonenberg v. El Salvador, 2019; Olivares Muñoz et al. v. Venezuela, 2020).

Under these conditions, the focus on measures to bring domestic legislation into line with international obligations has had a considerable impact on the purpose of calibrating the various criminal and criminal procedure systems in the region, which were (and still are) subject to considerable practices that were harmful to human rights and, therefore, in dissonance with the mandates (normative and jurisprudential) of the ISHR.

In numerous precedents, for example, the IACHR has stated that the State:

“(…) must adapt, within a reasonable period of time, its domestic legislation to the American Convention, such that it) must adapt, within a reasonable

period of time, its domestic legislation to the American Convention, in such a way that a) it adequately incorporates the international standards on the use of force by law enforcement officials, said standards must contain the specifications indicated in paragraph 75 of this Judgment; b) it puts into operation a penitentiary surveillance body that is eminently civilian in nature; c) guarantees an effective procedure or mechanism, before a competent, impartial and independent body, for the verification and investigation of complaints filed by persons deprived of liberty regarding human rights violations, in particular regarding the legality of the use of lethal force exercised by state agents; d) guarantees that investigations into acts constituting human rights violations are carried out by ordinary prosecutors and judges” (IACHR *Montero Aranguren and others (Retén de Catia) v. Venezuela*, 2006).

On some of these points, it could also be mentioned the reiterations of this trend of argumentation when pointing out the minimum standards that must be observed in the process of detention and search of a person in a police procedure (IACHR *Fernández Prieto and Tumbeiro v. Argentina*, 2020); in the same sense concerning the right to appeal judgments (IACHR *Barreto Leiva v. Venezuela*, 2009; *Valle Ambrosio et al. v. Argentina*, 2020), or when insisting on the improvement-based on international standards-of conditions of detention of persons deprived of liberty in dignified spaces (IACHR *Instituto de Reeducción del Menor vs. Paraguay*, 2004; *Caesar v. Trinidad and Tobago*, 2005; *Vélez Loo v. Panamá*, 2010; *Mendoza et al. v. Argentina*, 2013). On this last aspect, the IACHR has specified a range of minimum standards for detention conditions to ensure: a) a space large enough to spend the night; b) ventilated cells with access to natural light; c) access to clean toilets and showers with sufficient privacy; d) adequate, timely

and sufficient food and health care, and e) access to educational, labor and any other measures essential for the reform and social readaptation of inmates.

Finally, it should not be forgotten that in other cases -the IACHR has ordered States to adjust national norms with the rights of migrants to be treated with dignity, especially when they are in situations of irregular migration (IACHR Vélez Looz vs. Panamá, 2010; Nadege Dorzema v. Dominican Republic, 2012; Familia Pacheco Tineo v. Plurinational State of Bolivia, 2013; Dominican and Haitian expelled persons vs. Dominican Republic, 2014). Such measures and the notes of their evolution reveal -in the end, one of the areas in which the process of inter-Americanization in human rights of national orders takes shape through the interaction of the IACHR and domestic authorities; they even stand as an authentic example of how the interactive mechanism advances towards a common body of standards for the safeguarding of rights, democracy and the rule of law and strengthens the paradigm of transforming constitutionalism in the region (Morales Antoniazzi, 2019).

Some final thoughts

The description of the central features of the reparations regime as the ultimate goal of the ISHR's contentious procedure (Acosta Alvarado, 2013) can hardly be isolated not only from the

vigorous presence of international law in the integration of what Sergio García Ramírez has labeled as the contemporary status of the human being. The author indicated that the jurisprudence of the IACHR on reparations constitutes one of its relevant contributions (in his opinion, the most important) to the formation of international human rights law and serves as an example of the way in which it has provided an eminent service to regional human rights law since its establishment in 1979, first through advisory opinions and then through judgments in specific cases (García Ramírez, 2009); but also from the activist role from which the San José Tribunal has designed and implemented a wide range of reparations (Huneeus, 2011).

Certainly in its work after more than 40 years of existence, the IACHR has built a consistent jurisprudence in its endeavor to establish basic standards concerning the obligations in which States sovereignly assume the commitment to provide adequate and comprehensive reparations to the victims of human rights violations that have occurred in their jurisdictions. This result, in part, is also a reflection of the evolution of the functioning of the IACHR itself in receiving the experiences and claims narrated by the victims in their written submissions and presented in the hearings before the San José courts. Indeed, giving a human face to the victims' (and their relatives') claims and, at the same time, understanding their suffering, are some of the reasons why the

IACHR increasingly extended not only economic reparations but also built a very broad jurisprudence on non-pecuniary reparations.

Among the cardinal contributions of Inter-American judicial law to the chapter on reparations are: i) the preventive function of the damage through guarantees of non-repetition; ii) the revaluation of non-monetary measures of rehabilitation, satisfaction, etc.; iii) the open acceptance of collective non-pecuniary damage; iv) the insistence on the need for effectiveness of compensatory judgments-in order not to be relegated to mere declarations-; etc (Kemelmajer de Carlucci, 2020).

The attraction of this whole jurisprudential movement is to understand that through the different types of reparations that the IACHR has sponsored thus far (identified and analyzed throughout this work), a set of standards is constructed that States are obliged to implement. This is not only because the cases processed by the IACHR have so indicated, but also because it is understood that they entail obligations to adapt their domestic legislation in light of the expansive effect of the judgments (and of the advisory opinions as well) rendered in the framework of the conventionality control to which all organs of the States Parties to the ACHR and other binding treaties of the region are summoned.

The role of the IACHR in providing reparations to victims of serious human rights violations should be duly appreciated if one considers that the American region has experienced armed violence in recent decades and does not lose sight of the fact that there are still commitments by States to mitigate the effects on the inhabitants of urban or rural areas due to the new scourges of violence perpetrated by armed criminal or paramilitary groups.

It should also be noted that the scope of inter-American jurisprudence on reparations implies that national bodies can also adapt the criteria established therein to optimize the criteria for interpreting their domestic norms and, based on this exegetical practice, contribute to the desideratum of the full and effective enjoyment of human rights. At the end of the day, this aspect is nothing more than a derivative of its most deeply rooted commitment to comply with and execute the pronouncements of the Court of San José in such a way that the economic and non-pecuniary reparations that the victims deserve for the damages caused by the organs of the State or other subjects concerning which it must ensure that they do not incur in human rights violations become a reality.

In the final analysis, the current pace at which the scheme of reparations for victims of human rights violations (and their families) has gained momentum in the IAHRS is evidence, in addition to the crucial character, it reveals as an essential step-,

if not aimed at remedying any consequences-so that the victims can move forward with their life projects, that it is correct to suggest that the analysis of the behavior of the States concerning the reparations ordered by the international body also offers-a true examination of the good faith of the States: inter-American decisions on reparations test the good faith compliance of state obligations (Salvioli, 2020) (and even measure it at its very limits).

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