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Getting to Full Restitution

Guidelines for Court-Ordered Reparations in Cases Involving Sexual Violence Committed during Armed Conflict, Political Violence, or State Repression

Defining court-ordered reparations for victims of sexual violence committed during armed conflict, political violence, or state repression is not an easy task. The challenges only increase when there are few domestic precedents for defining such reparations based on international human rights law or international humanitarian law. However, decisions by international and foreign courts as well as other sources of international law can be useful guidelines and references for domestic judges, lawyers, and advocates in interpreting national law, to determine the coherence between national law and constitutional principles or fundamental rights, to fill in any gaps, or to resolve inconsistencies in national law.¹ Several international instruments and court decisions provide elements for defining each form of reparation, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

Recent developments in how to provide reparations under international law and its case law could be used by judges, lawyers, and practitioners in domestic cases. One of the most relevant such developments is the understanding that when dealing with violations that have consequences that cannot be fully assessed economically, the obligation to provide reparations should not be limited to monetary compensation.² This paper explains how the legal notion of *restitutio in integrum* has become the basis for defining and ordering other forms of reparation, particularly restitution and symbolic reparation. Traditional public international law and recent developments in human rights law point to this broader approach to reparation. Examples from the jurisprudence of international human rights tribunals analyzed in this paper reveal the reasoning behind court decisions in applying a notion of reparations that responds to the different dimensions of harms.

The paper also explains how human rights law has defined *rehabilitation*, a form of reparations that is especially relevant for victims of sexual violence. Both the normative and the jurisprudential basis of this notion are analyzed, including the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Other forms of reparations relevant for addressing the consequences of sexual violence

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¹ This paper does not assume that international law must be formally incorporated into the domestic legal system to develop effective and fair court-ordered reparations but suggests that judges and advocates may use international norms and precedents in their decisions.

² Because restitution and compensation are more common forms of reparation, this paper does not examine them in detail, but focuses on other forms that could pose more challenges, including rehabilitation, satisfaction, guarantees of non-repetition, and community dimensions of reparations decisions in some cases where they are relevant for making reparations effective.

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About the Author

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include measures for guaranteeing access to education for victims and their children and symbolic forms of reparations, such as official apologies and memorialization, which fall under the notion of *satisfaction*.³

The paper also emphasizes that sexual violence can have different impacts on victims' needs, which should be taken into account by judges and advocates when defining specific reparations—as should the gender of the victim. Reparations should also be defined in ways that could help victims to be accepted into their communities of origin, given that a sense of belonging is important for overcoming the enduring consequences of sexual violence. The paper also considers how to define reparations for impacted communities when the harms affect not only the individual but also collective values.

The legal notions and examples discussed in this paper can be used by judges, lawyers, and anyone working on practical responses to the different consequences of sexual violence perpetrated in a systematic way or on a massive scale, affecting entire communities. They can help to define forms of reparation that can address the varied consequences of sexual violence for both direct and indirect victims as well as, in some cases, the communities to which they belong. They also offer alternative forms of reparation when it is inadequate or impossible to put a monetary value on different types of harm. This may be particularly relevant for victims in communities that are not fully immersed in a monetary economy or where money alone cannot repair the different dimensions of harm. The reasoning behind the norms and decisions could be adapted to different legal systems, based on principles of fairness and the obligation of all systems to protect and guarantee human rights.

Full Restitution as the Governing Notion of Reparations

The basic principle governing reparations is *restitutio in integrum* or “full restitution.” This notion derives from the idea that reparations should try to return the victim of a crime to the situation that existed before the crime. This is impossible in some situations (notably in cases involving a loss of life or physical impairment) and particularly challenging in others, such as torture, sexual violence, or crimes that do not have an explicit monetary dimension. Traditionally, courts have taken a monetary approach to defining reparations in these cases, based exclusively on ordering monetary compensation for all economically assessable damages resulting from the violation. This approach results in courts providing compensation for the following types of consequences: direct material harm, for example, funeral expenses or medical expenses; loss of income, or projecting the amount of income the victim would have earned if he or she had not been killed or had not suffered the harm; and moral harm, which is usually equated with subjective suffering resulting from the harm.

Reparations understood in these terms cannot be limited to statutory definitions of maximum compensation amounts or under any consideration not derived from a strict assessment of losses. The person or persons responsible for the harm, including the state, cannot limit their liability if the decision is governed by a basic notion of full restitution.

However, even if such harms could theoretically be financially assessed, in practice it is clear that in many cases, particularly with regard to physical harm, such an approach is unsatisfactory to most victims. This is especially true in situations where the state is responsible for violations, because it has the capacity and means to implement many other forms of reparation that complement compensation.

³ Satisfaction is a legal notion that could be easily misunderstood. Given the nature of the crimes discussed it is impossible for any form of reparation to provide satisfaction on victims. The harm caused can be devastating and those responsible for causing it cannot claim that they are contributing for victims to feel satisfied by reparative measures, no matter what they involve. Satisfaction as understood by international law can be translated better as symbolic forms of reparations, which need to be added to material ones to be credible and effective.

While the notion of full restitution should guide decisions on court-ordered reparations for human rights violations, there are situations where strict adherence to it may be impractical. These include: cases of massive violations involving large number of victims in which an individual assessment of the harm suffered by each victim could involve a long and complex process; where standards of evidence regularly used by courts could lead to the exclusion of harms or victims who cannot be registered; and processes that risk excluding victims who are most vulnerable, such as the less educated, those who fear reprisal or stigma, and those still suffering trauma who are reluctant to undergo invasive questioning or examinations, etc. In those cases, reparations policies or programs should be designed that combine different measures to address the general consequences of violations, such as more flexible and inclusive measures that do not require individual assessments of harm, but are based on a notion of acknowledgment of responsibility and recognizing victims' inherent dignity.⁴

How Reparation Is Understood in International Law: Useful Analogies for Domestic Courts

When a state commits internationally wrongful acts that cause harm to another state, reparations should take the form not just of restitution or compensation but also of satisfaction or symbolic reparations, when appropriate. The International Law Commission defines satisfaction as “an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.”⁵ The commission's 2001 Articles of Responsibility of States for Internationally Wrongful Acts (particularly articles 34–37) define international law regarding reparation and satisfaction. Its official commentaries on article 34 clarifies the notion of full reparations:

In certain cases, satisfaction may be called for as an additional form of reparation. Thus full reparation may take the form of restitution, compensation and satisfaction, as required by the circumstances.

Article 34 also makes it clear that full reparation may only be achieved in particular cases by the combination of different forms of reparation. For example, re-establishment of the situation which existed before the breach may not be sufficient for full reparation because the wrongful act has caused additional material damage (e.g., injury flowing from the loss of the use of property wrongfully seized). *Wiping out all the consequences of the wrongful act may thus require some or all forms of reparation to be provided, depending on the type and extent of the injury that has been caused.*⁶

The same notion of full reparations is applicable in respect to the obligation to provide effective remedies to victims of gross violations of international human rights law and serious violations of international humanitarian law. In 2006, the UN General Assembly adopted by consensus the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*,⁷ which identifies existing mechanisms and

4 See Cristián Correa. Making Concrete a Message of Inclusion: Reparations for Victims of Massive Crimes, in: Letschert, R., Haveman, R., Brouwer, A. M., & Pemberton, A., (eds.), *Victimological Approaches to International Crimes: Africa* (Cambridge/Antwerp/Portland: Intersentia, 2011).

5 International Law Commission, Text adopted by the Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session. The report, which also contains commentaries on the draft articles, appears in Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 (A/56/10), Article 37.2. Annex to General Assembly resolution 56/83 of 12 December 2001, and corrected by document A/56/49(Vol. I)/Corr.4.

6 Emphasis added.

7 UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* [hereinafter *Basic Principles on the Right to Remedy and Reparations*], U.N.G.A. Resolution A/RES/60/147 of March 21, 2006.

modalities for defining reparations for such violations and defines the obligation of states to provide reparations in the following terms:

Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. *Reparation should be proportional to the gravity of the violations and the harm suffered.* In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law

The document defines restitution, compensation, and rehabilitation, providing useful guidelines for a court:

Restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.

Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

- (a) Physical or mental harm;
- (b) Lost opportunities, including employment, education and social benefits;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Moral damage;
- (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

Rehabilitation should include medical and psychological care as well as legal and social services.

The resolution lists 16 examples of types of satisfaction and guarantees of non-repetition. Some of them are broad obligations to be implemented by different policies, but many of them could be ordered by a court as forms of reparations. The examples could help a court in examining cases of human rights violations that would be appropriate to address the non-material consequences of violations, the need for acknowledgement, the restoration of the victim's "good name," and measures that could help to prevent future violations of the same nature.

The notion of comprehensive reparations for violations of international human rights law also derives from the official interpretations of conventions recognizing the right to reparations and effective remedies of victims of such violations. Article 2.3 of the International Covenant on Civil and Political Rights establishes that individuals have a right to

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remedy for violations involving the right to life, physical integrity, and other fundamental rights and that it is the obligation of the state to provide, through judicial or other authorities, such a remedy. Article 2.3 states:

Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

The UN Human Rights Committee, established by the same covenant, delivered general comments for the interpretation of these provisions. It stated that providing effective mechanisms for reparations is an essential component of the obligation to respect human rights:

Article 2, paragraph 3, requires that States Parties make reparation to individuals whose Covenant rights have been violated. Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged. In addition to the explicit reparation required by articles 9, paragraph 5, and 14, paragraph 6, the Committee considers that the Covenant generally entails appropriate compensation. The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.⁸

Another example of how reparations for violations of international human rights law are understood derives from Article 14.1 of the Convention against Torture:

Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.

Although this provision specifically refers to torture, it can be applied to other violations, because victims of violence, including sexual violence, are in an analogous situation to victims of torture in regards to their right to reparation; therefore, they should not be discriminated against. Moreover, in many cases sexual violence can constitute a form of torture under the definition established by article 1 of the Convention against Torture.⁹

The Committee against Torture, established by the Convention against Torture to interpret and monitor compliance to the convention, has interpreted this norm, affirming the

⁸ Human Rights Committee, General Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant Adopted on 29 March 2004 (2187th meeting) CCPR/C/21/Rev.1/Add. 13, 26 May 2004, para. 16.

⁹ See Special Rapporteur on Torture, Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Commission on Human Rights, U.N. Doc. E/CN.4/1986/15, para 119 (1986) (by Peter Kooijmans) Committee against Torture, General Comment No. 2, Implementation of Article 2 by States Parties, U.N. Doc. CAT/C/GC/2, 24 January, 2008, para 18 and 22.

same notion of comprehensive reparations, involving restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.¹⁰ It defines each form of reparation in a way consistent with the *Basic Principles on the Right to Remedy and Reparations* quoted above. Those definitions may be useful guidelines for courts in determining the content of the state's obligation to provide reparations to victims of sexual violence.

Further, the committee's comments on how to determine amounts of compensation are of particular relevance for understanding the need for a comprehensive approach to reparations:

The Committee emphasises that monetary compensation alone may not be sufficient redress for a victim of torture and ill-treatment. The Committee affirms that the provision of only monetary compensation is inadequate for a State party to comply with its obligations under article 14.¹¹

Judicial Decisions on Reparations

Inter-American Human Rights System

Since as early as 1989 the Inter-American Court of Human Rights (IACHR) has consistently used the notion of full restitution for determining the responsibility of states in regards to victims of human rights violations. In its first decision, the court, finding against Honduras in a case of the enforced disappearance of a student, decided that

Reparation of harm brought about by the violation of an international obligation consists in full restitution (*restitutio in integrum*), which includes the restoration of the prior situation, the reparation of the consequences of the violation, and indemnification for patrimonial and non-patrimonial damages, including emotional harm.¹²

Later decisions have only expanded this notion. In a more recent case, it found that

The reparation of damage caused by a breach of an international obligation requires, wherever possible, full restitution (*restitutio in integrum*), which consists of reinstating the situation prior to the violation. Where this is not feasible, as happens in the majority of cases involving human rights violations, the Court shall decide measures to guarantee the infringed rights, repair the damage caused by the violations and establish an amount in compensation to make good on the damage caused. Therefore, the Court has considered the need to order several measures of reparation in order to fully redress the damage caused, and therefore, in addition to pecuniary compensation, the measures of restitution, satisfaction and guarantees of non-repetition are especially relevant.¹³

The IACHR's 2009 judgment in the *González et al. ("Cotton Field") v. Mexico* case is of particular relevance for understanding the nature of reparations.¹⁴ In this case, involving three young women whose bodies were found in a cotton field in Ciudad Juárez after they were kidnapped by a criminal gang and subjected to sexual violence and executed, the court found that the state was responsible for the violation of the victims' right to life because of its insufficient efforts to locate the women after they went missing or to report their disappearances to local authorities despite several warnings that young women like

10 Committee against Torture, General Comment No. 3, Implementation of article 14 by States parties, U.N. Doc. CAT/C/GC/3, 19 November 2012, para 1 and 2.

11 Ibid., para 9.

12 IACHR, *Velásquez Rodríguez v. Honduras*, reparations and costs. Judgement of 21 of July, 1989, para. 26.

13 IACHR, *Atala Riffo et al. v. Chile*, merits, reparations and cost. Judgement of 24 of February, 2012, para. 241.

14 IACHR, *González et al. ("Cotton Field") v. Mexico*, preliminary objection, merits, reparations, and costs. Judgment of November 16, 2009

them who were kidnapped were at high risk of being killed if they went missing in that particular city at that time, and given that state officials ignored those warnings. The court found that such omission violated Mexico's specific commitments under the Inter-American Human Rights System for the prevention of violence.

Further, in examining requests for reparations made by the Inter-American Commission of Human Rights, the court considered that measures needed to:

- (i) refer directly to the violations found by the Tribunal;
- (ii) repair the pecuniary and non-pecuniary damage proportionately;
- (iii) not make the beneficiaries richer or poorer;
- (iv) restore the victims to their situation prior to the violation insofar as possible, to the extent that this does not interfere with the obligation not to discriminate;
- (v) be designed to identify and eliminate the factors that cause discrimination;
- (vi) be adopted from a gender perspective, bearing in mind the different impact that violence has on men and on women, and
- (vii) take into account all the judicial acts and actions in the case file which, according to the State, tend to repair the damage caused.¹⁵

These factors can be useful guidelines for any court deciding on reparations in cases of human rights violations. They have guided decisions in other cases.

The specific nature of the reparations measures granted by the court have varied from case to case, based on the consequences of the violations on victims. Some decisions regarding violations of a similar nature to those examined by the court are explained below.

Domestic Courts

The notion of comprehensive or integral reparations has also been used by domestic courts. The High Administrative Court of Colombia (Consejo de Estado), in examining state responsibility for violations committed by police or military officers ordered compensation to be paid by the respective institution and for the National Police or Army to deliver public apologies to victims, design and implement training for its personnel in order to avoid repetition, and publish the court decision in a public place.¹⁶

The African Court of Human and Peoples' Rights has only recently started to make decisions granting reparations to victims of violations of the African Charter. In a recent judgment regarding the right to reparations of the relatives of a victim of killing, the court not only ordered the payment of compensation to the victim's widow and family members, but also the publication of a summary of the court decision as satisfaction and to reopen the investigation of the murder as a guarantee of non-repetition.¹⁷ In another recent case, it also ordered the publication of a decision regarding a violation of the freedom of expression, in which the decision on the merits ordered expunging the criminal records of the defendant.¹⁸

¹⁵ Ibid., para. 451.

¹⁶ Consejo de Estado, judgements of 19 October, 2007, file 29273; 28 January, 2009; 8 February 2013; and 10 December 2015, file 48392, para. 12.17.11.

¹⁷ African Court of Human and Peoples' Rights, *In the matter of beneficiaries of late Norbert Zongo, Abdoulaye Nikiéma alias Ablassé, Ernest Zongo and Blaise Ilboudo @ The Burkinabè Human and Peoples' Rights Movement v. Burkina Faso*, application 013/2011, judgement on reparations, 5 June, 2015.

¹⁸ ACHPR, *in the matter of Lohé Issa Konaté v. Burkina Faso*, application 004/2013, judgement on reparations, 3 June, 2016.

Nonjudicial Human Rights Bodies

Nonjudicial human rights bodies have recognized the obligation of states responsible for human rights violations to provide reparations that are not limited to compensation. The UN Human Rights Committee in reviewing cases of torture, illegal detention, arbitrary arrest, and other serious violations has recognized this obligation, which includes investigating alleged violations, prosecuting those responsible, and providing appropriate measures of satisfaction.¹⁹ In a more recent case involving torture, it ordered “any necessary and adequate psychological rehabilitation and medical treatment [be] provided to the author [a Nepali victim of human rights violations].”²⁰ In regards to preventing similar violations in future, it reiterated previous recommendations it had made to the Nepali government on eradicating the use of torture and criminalizing it with sanctions and remedies commensurate with the gravity of the crime. The Committee against Torture has also referred to similar state obligations when concluding individual communications, including rehabilitation and protection for the complainant and his or her family.²¹

Rehabilitation as a Form of Reparation

Rehabilitation is a measure frequently ordered by courts as a form of reparation. As previously mentioned, the *Basic Principles on the Right to Remedy and Reparation* includes “medical and psychological care as well as legal and social services” under this notion.²² It should be noted that the Basic Principles refer to the rehabilitation of the *victim*, not the *offender*, which is a different issue.

The Committee against Torture’s General Comment No. 3 provides additional considerations for deciding on appropriate forms of rehabilitation, based on a notion of guaranteeing conditions for the individual’s full recovery and self-sufficiency in the long term, considering the wide-ranging nature of the harms typically caused by torture.

The Committee affirms that the provision of means for as full rehabilitation as possible for anyone who has suffered harm as a result of a violation of the Convention should be holistic and include medical and psychological care as well as legal and social services. Rehabilitation, for the purposes of this general comment, refers to the restoration of function or the acquisition of new skills required by the changed circumstances of a victim in the aftermath of torture or ill-treatment. It seeks to enable the maximum possible self-sufficiency and function for the individual concerned, and may involve adjustments to the person’s physical and social environment. Rehabilitation for victims should aim to restore, as far as possible, their independence, physical, mental, social and vocational ability; and full inclusion and participation in society.

The Committee emphasizes that the obligation of States parties to provide the means for “as full rehabilitation as possible” refers to the need to restore and repair the harm suffered by the victim whose life situation, including dignity, health and self-sufficiency may never be fully recovered as a result of the pervasive effect of torture. The obligation does not refer to the available resources of States parties and may not be postponed.

In order to fulfil its obligations to provide a victim of torture or ill-treatment with the means for as full rehabilitation as possible, each State party should adopt a long-term and integrated approach and ensure that specialized services

19 Human Rights Committee. *Chaulagain v. Nepal*, CCPR/C/112/D/2018/2010, para 13.

20 Human Rights Committee, *A.S. v. Nepal*, CCPR/C/115/D/2077/2011, para 10.

21 U.N. Comm. against Torture, *Gerasimov v. Kazakhstan*, CAT/C/48/D/433/2010 (May 24, 2012), para. 14.

22 *Basic Principles on the Right to Remedy and Reparations*, para. 21.

for the victim of torture or ill-treatment are available, appropriate and promptly accessible. These should include: a procedure for the assessment and evaluation of an individual's therapeutic and other needs, based on, among others, the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol); and may include a wide range of inter-disciplinary measures, such as medical, physical and psychological rehabilitative services; re-integrative and social services; community and family-oriented assistance and services; vocational training, education etc. A holistic approach to rehabilitation which also takes into consideration the strength and resilience of the victim is of utmost importance. Furthermore, victims may be at risk of re-traumatization and have a valid fear of acts which remind them of the torture or ill-treatment they endured. Consequently, a high priority should be placed on the need to create a context of confidence and trust in which assistance can be provided. Confidential services should be provided as required.

The Convention's requirement to provide these forms of rehabilitative services does not extinguish the need to provide medical and psychosocial services for victims in the direct aftermath of torture, nor does such initial care represent the fulfilment of the obligation to provide means for as full a rehabilitation as possible.²³

Notably, the Human Rights Committee's decisions do not refer to specific ways to implement rehabilitation, nor does the Committee against Torture refer to any in the individual cases it examines. They have left it to the states to define.

In contrast, the jurisprudence of the IACHR includes specific provisions on how to provide rehabilitation for victims of human rights violations. In a case against Brazil pertaining to the enforced disappearance of 60 persons, the IACHR ordered that medical and psychological care be provided to the victims' relatives:

The Court finds, as it has done in other cases, that a measure of reparation that provides appropriate care for the physical and psychological effects suffered by the victims is necessary. Consequently, the Court deems it convenient to order the State to provide the victims, per their requests, free of charge and immediately, appropriately, and effectively, with the medical and psychological or psychiatric care by means of public health institutions. Therefore, the specific injuries or impairments of each person must be considered by means of a prior physical and psychological assessment. Moreover, the treatment must be provided in Brazil for the time necessary and it must include the provision, free of charge, of medication that may be required.²⁴

In a case pertaining to a massacre committed inside a prison that resulted in the death of several prisoners and the torture, rape, and other acts of sexual abuse of prisoners, where physical and psychological suffering still affected survivors and the relatives of those who had died in the massacre was demonstrated, the IACHR found:

In order to contribute to the reparation of the physical and psychological damages, the Tribunal rules the State's obligation to offer, without cost and through it specialized health institutions, the medical and psychological treatment required by the victims and their next of kin, including any

²³ Committee against Torture, General Comment No. 3, paras 11–14.

²⁴ IACHR, *Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, preliminary objections, merits, reparations and costs. Judgement of 24 of November, 2010, para. 267.

medication required by them, taking into consideration the sufferings of each of them after an individual evaluation.²⁵

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Another relevant IACHR decision involves a case of rape of an indigenous woman by members of the Mexican Army. As result of the violation, the woman was rejected by her husband and family, and forced to leave her community. The court found that the victim's daughter had also suffered a violation of her psychological integrity.²⁶ Consistent with its prior decisions, in addition to compensation for pecuniary and nonpecuniary damages, the court ordered the state to provide rehabilitation:

The Court finds, as it has in other cases, that it is essential to order a measure of reparation to provide appropriate care for the physical and psychological effects suffered by the victims, having regard to their gender and ethnicity. Consequently, having confirmed the violations and the damage suffered by the victims in this case, the Court rules that the State shall provide, immediately and free of charge, the medical and psychological care they require. In doing so, the State must obtain the consent of the victims, providing prior, clear and sufficient information. The treatment should be provided for as long as is necessary and should include the provision of medicines, and if applicable, transportation, interpreters and other costs that are directly related and strictly necessary.

In particular, the psychological or psychiatric treatment must be provided by State personnel and institutions specializing in the treatment of victims of acts of violence as in this case. If the State cannot offer such services, it must provide these by using specialized private or civil society institutions. In providing this treatment, the specific circumstances and needs of each victim must be taken into account, so that they are offered individual and family treatment, as agreed with each one, following an individual evaluation. Finally, this treatment must be provided, to the extent possible, at the institutions nearest to their place of residence. The victims who request this measure of reparation, or their legal representatives, have six months from the notification of this Judgment to inform the State of their specific requests for psychological or psychiatric treatment. The Court emphasizes that the State and the representatives must make their best collaborative efforts and provide the victims with all the information necessary for them to receive psychological treatment in order to move forward with the implementation of this measure in an agreed manner.²⁷

The court did not request the creation of a new health care center, finding that reasonable care could be provided in a neighboring village. However, it ordered that the center

should be improved through the provision of material resources and personnel, including a translator who speaks Me'paa, as well as the use of an appropriate protocol for implementing appropriate actions.²⁸

The IACHR made a similar decision in another case of rape of an indigenous woman by Mexican soldiers, ordering the provision of psychosocial and medical care for her and her four children.²⁹

²⁵ IACHR, *Miguel Castro-Castro Prison v. Peru*, merits, reparations and costs. Judgement of 25 November, 2006, para 448 and 449.

²⁶ IACHR, *Rosendo Cantú et al. v. Mexico*, preliminary objections, merits, reparations and costs. Judgement of 31 August, 2010, para 137 to 139.

²⁷ *Ibid.*, para. 252 and 253.

²⁸ *Ibid.*, para 260.

²⁹ IACHR, *Fernández Ortega et al. v. Mexico*, preliminary objections, merits, reparations and costs. Judgement of 30 August, 2010, para 251 and 252.

In another case, a Colombian court examining the criminal responsibility of a paramilitary commander for the forced recruitment of 309 children and youth ordered, among other measures (including compensation), the implementation of a psychosocial rehabilitation program with continued and personalized therapy for all 309 victims and engaging the victims to take part in defining the program. It also ordered that physical care be provided to any victims in need through the public health care system.³⁰

Education as Reparation

In several contexts, policies for improving access to education for victims and/or their children have been ordered or implemented after finding that violations had resulted in serious obstacles to victims' continuing their education or providing education for their dependents. Such policies and decisions are based on the understanding that for many victims what they resent the most is not being able to provide a better future for their children. Education, then, can be seen as a form of social rehabilitation and a form of compensation for particular consequences of violations—or even as a form of satisfaction, in terms of affirming the victim's dignity.³¹

In one of its earliest cases, the IACHR recognized education as a form of compensation (in addition to cash payments) for relatives of seven members of an ethnic community who had been forcibly disappeared and executed by state agents. Because most of the victims' children lived in a poor, isolated village where the health care center and school were closed, the court ordered both the center and school to be reopened and staffed. The decision benefited not only these children but also the whole community.³²

In a previously discussed case involving the rape of an indigenous woman by Mexican soldiers, the court awarded the victim and her daughter rehabilitation services, satisfaction measures, and scholarships, in addition to compensation. The judgment states:

The Court has established in this Judgment that the facts of the case affected Mrs. Rosendo Cantú and her daughter in a way that continues over time, and that it caused significant changes, both in their lives and in their relationships, affecting their personal development (supra paras. 130, 131, 138 and 139). Based on the foregoing, and bearing in mind the representatives' request, in this case the Court deems it appropriate to order as a measure of satisfaction, as it has on other occasions, that the State award scholarships to Mrs. Rosendo Cantú and her daughter, Yenys Bernardino Rosendo, to study in Mexican public institutions, covering all the costs of their education until the completion of their higher education, either in technical or university studies. The State's compliance with this obligation requires the beneficiaries to take certain measures to exercise their right to this measure of reparation. Consequently, those who requested this measure of reparation, or their legal representatives, have six months from notification of this Judgment to advise the State of their request for scholarships.³³

At the national level, reparations policies implemented in response to periods of massive and systematic violations of human rights or international humanitarian law in several

30 Tribunal Superior del Distrito Judicial de Bogotá, *Sala de Justicia y Paz v. Fredy Rendón Herrera*, 16 December, 2011, resolution tenth.

31 There are several experiences of educational policies implemented as a form of reparations for massive violations. See *Transitional Justice and Education: Learning Peace*, eds. Clara Ramírez-Barat and Roger Duthie (New York: Social Science Research Council, 2016).

32 IACHR, *Aloeboetoe et al. v. Surinam*, reparations and costs. Judgment of 10 September, 1993.

33 IACHR, *Rosendo Cantú et al. v. Mexico*, para 257.

countries have included educational measures for victims and/or their children. Laws passed in Chile and Peru include educational measures in addition to measures for the compensation of victims, physical and psychosocial rehabilitation, exemptions from military service, expunging criminal records, collective reparations, and memorialization policies. In both countries the laws established scholarships for victims and other special programs targeting the educational needs of victims, like adult-literacy programs. In Sierra Leone an interim reparations program funded by the UN Peacebuilding Fund included cash payments for children victims as educational bursaries.

In other countries, such as Colombia and South Africa, scholarships and payments to support educational measures have been implemented as forms of assistance to victims. These cases reflect an increasing recognition of education's potential to help victims to recover from some of the consequences of the violations they have suffered and provide better standard of living in the long term.³⁴ The same reasoning is behind reparations policies that provide access to education for children of victims of enforced disappearance or killing or direct victims of amputation, torture, or sexual violence. Similar reasoning could be used by courts when defining reparations for these types of crimes.

Satisfaction as Reparation

Satisfaction is a form of reparations usually used between states for immaterial aspects of a violation or, as the International Law Commission (ILC) has explained in its Commentaries, “for those injuries, not financially assessable, which amount to an affront to the State.” For judicial purposes, it is useful to understand them as symbolic reparations or nonmaterial reparations. According to Article 37 of the ILC Commentaries:

Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.³⁵

This notion has been expanded with regard to human rights violations, including by the UN Human Rights Commission as defined in its *Basic Principles on the Right to Remedy and Reparations*.³⁶ The eight types of satisfaction measures listed in the document are not exhaustive, nor are they exclusive. They are examples of measures that should be considered relevant for addressing the consequences of those violations when defining reparations owed to victims of human rights violations.

The most relevant and appropriate examples for cases being decided by a court (in addition to an investigation of the events) may be:

- (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;
- (d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;
- (e) Public apology, including acknowledgement of the facts and acceptance of responsibility;

³⁴ See Cristián Correa, “Education for Overcoming the Consequences and Legacies of Massive Violations of Human Rights” in *Transitional Justice and Education: Learning Peace*, eds. Clara Ramírez-Barat and Roger Duthie (New York: Social Science Research Council, 2016).

³⁵ International Law Commission, Commentaries to Article 37, para 3.

³⁶ *Basic Principles on the Right to Remedy and Reparations*, para 22.

- (f) Judicial and administrative sanctions against persons liable for the violations;
- (g) Commemorations and tributes to the victims;
- (h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

Efforts to restore the dignity and reputation of victims, including through public apologies, may be of particular relevance in cases of sexual violence. However, courts should consider the protection of victims, the risk of stigmatization in their communities, and the need for victims to be accepted by their communities when considering possible measures. In judicial cases communities may already know about the violations suffered by the victim(s) or that the victim(s) has already decided to make the violations public (particularly those who decided on their own to go to court). However, none of this can be taken as a given, and the situation and concern for each victim should be carefully assessed, including verifying victims' understanding of the risks. If victims are ready, the court could explore ways that their dignity and reputation could be restored in a public way in their communities.

One interesting example of satisfaction measures ordered by the IACHR is the publication of the court decision declaring state responsibility for certain violations. In a case involving the enforced disappearance of an indigenous leader, in addition to a printed publication of the decision in newspapers, the court ordered that a summary of the sentence be broadcasted via radio in the native language of the victim's community. In its decision, the court stated it

deems appropriate that the State gives publicity, through a radio station of ample coverage in the Department of Chimaltenango, the official summary of the Judgment rendered by the Court. The foregoing, shall be done in Spanish and Mayan Kaqchikel, and for that purpose, the State shall make the corresponding interpretation. The broadcast shall be carried out every first Sunday of the month on at least 4 occasions. For this, the State has the term of one year, after the notification of the present Judgment.³⁷

The IACHR frequently orders that public ceremonies be held during which the state's highest authorities recognize state responsibility for the violations and offer an apology to the victims. In the case of a massacre of an indigenous community for which state representatives already acknowledged state responsibility during the judicial proceedings, the court ordered

that the State must organize a public act acknowledging its responsibility for the events that occurred in this case to make reparation to the victims. The act should be carried out in the village of Plan de Sánchez, where the massacre occurred, in the presence of high-ranking State authorities and, in particular, in the presence of the members of the Plan de Sánchez community and the other victims in this case, inhabitants of the villages of Chipuerta, Joya de Ramos, Raxjut, Volcanillo, Coxojabaj, Las Tunas, Las Minas, Las Ventanas, Ixchel, Chiac, Concul and Chichupac; the leaders of these affected communities must also take part in the act. The State must provide the means to facilitate the presence of these persons in the said act.

³⁷ IACHR, *Chitay Nech et al. v. Guatemala*, preliminary objections, merits, reparations, and costs. Judgment of May 25, 2010, para 245.

Also, Guatemala must conduct this act in both Spanish and in Maya-Achí, and publicize it in the media. The State shall carry out this activity within one year of notification of this judgment.

Bearing in mind the characteristics of the case as regards those who were executed in the Plan de Sánchez massacre, carried out by State agents on July 18, 1982, the Court considers that, during this act, the State must honor publicly the memory of those executed, most of them members of the Mayan indigenous people, belonging to the Achí linguistic community, who were the inhabitants of the village of Plan de Sánchez and also the villages of Chipuerta, Joya de Ramos, Raxjut, Volcanillo, Coxojabaj, Las Tunas, Las Minas, Las Ventanas, Ixchel, Chiac, Concul and Chichupac. The State must take into account the traditions and customs of the members of the affected communities in this act.³⁸

Other forms of reparation as satisfaction for the general community that have been ordered, beyond specific rehabilitation and compensation for victims, include measures to strengthen the particular identity and culture of an indigenous community and to provide infrastructure that could guarantee better living conditions for the entire community. The court decided that

the State shall implement the following programs in these communities (in addition to the public works financed by the national budget allocated to that region or municipality): a) study and dissemination of the Maya-Achí culture in the affected communities through the Guatemalan Academy of Mayan Languages or a similar organization; b) maintenance and improvement of the road systems between the said communities and the municipal capital of Rabinal; c) sewage system and potable water supply; d) supply of teaching personnel trained in intercultural and bilingual teaching for primary, secondary and comprehensive schooling in these communities, and e) the establishment of a health center in the village of Plan de Sánchez with adequate personnel and conditions, as well as training for the personnel of the Rabinal Municipal Health Center so that they can provide medical and psychological care to those who have been affected and who require this kind of treatment.

The State must implement these programs within five years of notification of this judgment and present the Court with a detailed implementation report every year.³⁹

In addition, the IACHR ordered two different reparations measures, also of a collective nature, respecting the community's decision-making capacity as a way of reinforcing its organizational entities and autonomy:

the sum of US\$25,000.00 (twenty-five thousand United States dollars) or its equivalent in national currency, for maintenance and improvements to the infrastructure of the chapel in which the victims pay homage to those who were executed in the Plan de Sánchez massacre. Within one year of notification of this judgment, this sum must be delivered to the members of the Plan de Sánchez community or their chosen representatives, who will be responsible for administering it. This will help raise public awareness to avoid repetition of events such as those that occurred in this case, and keep alive the memory of those who died.

38 IACHR, *Plan de Sánchez Massacre v. Guatemala*, reparations, Judgment of November 19, 2004, para. 100 and 101.

39 *Ibid.*, para. 110 and 111.

Since the inhabitants of Plan de Sánchez lost their homes as a result of the facts of this case (supra para. 49(4)), the Court considers that the State must implement a housing program to provide adequate housing to the surviving victims who live in that village (supra paras. 66(a) and 68(a)) and who require it. The State must implement this program within five years of notification of this judgment.⁴⁰

Domestic courts, particularly in Colombia, have also ordered ceremonies during which institutions responsible for certain violations recognize their responsibility and offer apologies to victims or in criminal cases where perpetrators have been ordered to apologize. In a case involving the forced recruitment of 309 children, the court exhorted the Office of the Vice President to organize a public ceremony to be broadcast by state-controlled television stations during which the forced recruitment of children would be rejected and state responsibility for combating the causes for such recruitment would be acknowledged; that the abstract of the testimonies provided by some victims be read; and that the defendant acknowledge his responsibility and apologize to victims, abstaining from presenting any explanation or justification for his actions.⁴¹ In another case against two paramilitary commanders pertaining to a massacre, the same Colombian court ordered that a documentary film based on the facts established by the court decision be produced and include footage of victims being interviewed and the perpetrators, including the two defendants, offering an apology to victims.⁴²

In another case involving the responsibility of the state and the Army for a massacre, the High Administrative Court of Colombia ordered the Army battalion station in the area, which had failed to provide protection to the inhabitants of the Naya community, to acknowledge its responsibility in a public ceremony attended by members of the community and to apologize to them. In addition, the court ordered compensation to be paid to the victims.⁴³

Considerations Based on the Victim's Gender or Special Vulnerability

When assessing the consequences of violations on victims and determining appropriate reparations measures that could help victims to effectively overcome those consequences, courts have found that some characteristics of the victims need to be taken into consideration. This is particularly relevant in cases where the victim (or victims) is a woman, child, or member of an indigenous group and he or she is therefore affected differently by the violations or obstacles that makes it more difficult to recover, exercise rights, or benefit from the reparations measures that are ordered.

The judgments for two cases involving indigenous women who were raped by Mexican soldiers illustrate how the IACHR has responded to these challenges. In one, the court stated

Mrs. Rosendo Cantú is an indigenous woman, a girl at the time when the violations occurred, whose situation of particular vulnerability will be taken into account in the reparations awarded in this Judgment. Furthermore, the Court considers that the obligation to repair the damage caused in a case involving victims belonging to an indigenous community may call for measures that encompass the entire community.⁴⁴

40 Ibid., para. 104 and 105.

41 Tribunal Superior del Distrito Judicial de Bogotá, *Sala de Justicia y Paz vs. Fredy Rendón Herrera*, supra, resolution twentysixth.

42 Tribunal Superior del Distrito Judicial de Bogotá, *Sala de Justicia y Paz vs. Edwar Cobos Téllez y Uber Enrique Banquéz M.*, June 29, 2010, para 359 and resolution seventh.

43 Seventh Administrative Court of Popayán, September 4, 2013.

44 IACHR, *Rosendo Cantú et al. v. Mexico*, para. 206.

When Social Acceptance Can Be Understood as a Form of Reparations

In some situations, violations committed against a person or a group of persons cause not only physical or psychological trauma, but also lead to social stigmatization, resentment by members of their community, and other forms of social rejection. This can cause severe suffering to victims that can be particularly acute if the victim has had strong links to their community, which is frequently the case for members of indigenous communities or communities linked by strong bonds of identity, membership, and interdependence.

The most acute cases where stigma or rejection occurs is when violations affect social or community values, as with sexual violence and forced recruitment. The paradox in these situations is that victims may be blamed for violations they suffered, adding to the consequences for victims (and their children, if any) in terms of causing isolation and a broken sense of identity.

In such cases, individual reparations that do not address the biases or prejudices that have affected victims, or that do not consider the importance of restoring community links for many, can have only a limited effect. They can even be counterproductive, as rejection of victims could increase if the community believes victims are unfairly benefiting from a reparations policy that does not recognize the harms and suffering that also affected the rest of the community. This would, of course, undermine the notion of human rights and personal dignity that a reparations policy tries to affirm. However, the mere rejection of these attitudes as wrong, from a human-rights standpoint, is not enough. A responsible policy or court decision needs to consider such attitudes as a condition affecting the ability of the reparation to fully repair victims and address harms through the type of reparations measures it orders.

In the case of the forced recruitment of 309 children in Colombia, the Superior District Court of Bogotá heard from Nina Winkler, a psychologist and expert on the subject, with experience working in the Democratic Republic of the Congo and South Sudan. She affirmed that, among other consequences, forced recruitment affects both the process of how children and youth develop their social identity and the communities where they belong. This, according to her, requires working with the families of the victims and their communities.⁴⁵ The court also considered a study by Graça Machel, a world-renowned Mozambican expert on the impact of armed conflict on children.⁴⁶ Based in part on these inputs, the court concluded that forced recruitment always causes collective effects.⁴⁷ As a result, in addition to compensation, rehabilitation, and educational measures for the 309 victims, the court ordered the government to implement a program for strengthening community organizations in the affected region, so as to create a protective environment for children. It ordered that a community center be built where the paramilitary base had been located, to serve as a school or a cultural space, including in it measures to be agreed on with the community and victims—and the posting of a commemorative sign denouncing the crimes committed against children who lived there and reaffirming the responsibility of the paramilitary group and the state for not having addressed the causes that enabled the recruitment in the first place.⁴⁸

Another experience that could be considered when deciding how communities might be included in designing reparations for victims that could aid reacceptance by their com-

45 Tribunal Superior del Distrito Judicial de Bogotá, *Sala de Justicia y Paz vs. Fredy Rendón Herrera*, para. 128, 132, 133, and 134.

46 *Impact of Armed Conflict on Children*, Report of the Expert of the Secretary-General, Ms. Graça Machel, submitted pursuant to UN General Assembly Resolution 48/157, 26 August 1996 (A/51/150), particularly para. 177 and 181, www.unicef.org/graca/a51-306_en.pdf

47 Tribunal Superior del Distrito Judicial de Bogotá, *Sala de Justicia y Paz vs. Fredy Rendón Herrera*, para. 894.

48 *Ibid.*, resolutions 20, 21 and 23.

munities derives from reintegration policies designed for demobilized youth. In Sierra Leone from 1998 to 2002, the Community Education Investment Program, with the support of UNICEF, in partnership with the Sierra Leonean government, sought to enroll war-affected children in schools by covering payment of their fees and other costs. In addition to providing school kits for all children in the program, it offered schools supplies for 200 students and 20 teachers, and a recreational package for the entire school.⁴⁹ This program shows that if communities share the benefits, and the consequences of the violence they suffered are in some degree addressed, it may be easier for community members to accept those returning home. This is particularly important if communities have been affected by forced recruitment or rape of some community members.

Court-Ordered Community Reparations by IACHR

The IACHR has ordered states to implement reparations not only for individual victims who were directly affected by violations but also the communities that suffered collective harms as a result of those violations. This includes violations committed against members of a community with a strong common identity and cohesion or against leaders of such communities—or in cases of violations that affected several members of a community or that caused the displacement of the entire community.

In one of the previously discussed cases of an indigenous woman who had been raped, the IACHR found

that the victim in the present case is an indigenous woman, in a particularly vulnerable situation, and this will be taken into account in the reparations awarded in this Judgment. Furthermore, the Court finds that the obligation to make reparation to a victim belonging to an indigenous or tribal community may call for measures that encompass the community.⁵⁰

The court ordered measures that could benefit not only the direct victim, but also other members of her community. The judgment considered the special characteristics of victims who shared three particular characteristics: being young, indigenous, and female. This summed up elements described above as those of particularly vulnerable groups. The order included the creation of

a community center, which is set up as a women's center and in which educational activities are held on human rights and women's rights, under the responsibility and management of the women of the community, including Mrs. Fernández Ortega if she so desires. The State must assist State institutions and civil society organizations working in the area of human rights and gender to provide assistance for the community training activities, which must be adapted to the indigenous community's view of the world.

In addition, the court considered the condition of roads in the community and the fact that girls in the community had to walk three hours to attend middle school, a journey that involved risks of being assaulted. It had been demonstrated in the judicial proceedings that it was a disincentive for many girls to continue their education, particularly working as domestic laborers in the town where the school was located to pursue their education. As result, the court ordered

⁴⁹ UNICEF, *The Disarmament, Demobilization and Reintegration of Children Associated with Fighting Forces: Lessons Learned in Sierra Leone 1998–2002* (Dakar, 2005), 38.

⁵⁰ IACHR, *Fernández Ortega et al. v. Mexico*, para. 223.

that the State adopt measures for the girls of the community of Barranca Tecoani that currently carry out their middle school studies in the city of Ayutla de los Libres, to be provided with housing and a proper diet, in order for them to continue receiving an education at the institutions they attend. Regardless of the abovementioned, this measure can be complied with by the State if it opts to install a high school in the mentioned community.

In a case pertaining to the massacre, forced displacement, and other violations of an individual and collective nature committed against an indigenous community, the IACHR considered the adverse effects that prolonged impunity caused members of the affected community, including pecuniary effects of their continuous efforts to obtain justice and

other sufferings and harm of a psychological and physical nature and on their life project, as well as other possible changes in their social relationships and in their family and community dynamics, particularly in the case of an indigenous community.⁵¹

In that case, the IACHR ordered that the community participate in the dissemination of the judgment and the organization of a ceremony at which state authorities would issue an apology and an acknowledgement of state responsibility. It further ordered that this all be done in the relevant indigenous language, in addition to Spanish. It also ordered the state to make the following investments in the community:

(a) the improvement of the Pacux health center by the provision of permanent human resources qualified to provide physical, psychological and dental health care, medicines and equipped ambulances; (b) the design and implementation of food security and nutrition programs; (c) the improvement of the streets and avenues in the settlement; (d) the implementation of a drainage system, treatment of sewage or residual waters, and supply of potable water, and (e) the reconstruction or improvement of the elementary schools in Pacux and the establishment of a bilingual, Spanish and Maya Achí, high school education program. The State must implement the said programs within five years of notification of this Judgment. Lastly, within one year of notification of this Judgment, the State must guarantee the supply of electricity to the inhabitants of the Pacux settlement at an accessible cost.⁵²

In another case of a massacre committed by the Salvadoran Army that affected several communities, the IACHR ordered that

in these communities and irrespective of the public works included in the national budget destined to that region or municipality, the State must implement in these communities in full coordination with the victims and their representatives, a development program that includes the following: (a) improvements to the public road system; (b) access to public services of water and electricity; (c) establishment of a health care center in a place accessible for most of the villages, with adequate personnel and conditions, that can provide medical, psychological or psychiatric care to the people who have been affected and who require this type of treatment in keeping with

⁵¹ IACHR, *Río Negro Massacres v. Guatemala*, preliminary objection, merits, reparations and costs. Judgment of 4 September, 2012, para. 272.

⁵² *Ibid.*, para. 284.

paragraphs 350 to 353 of the Judgment; (d) construction of a school in a place accessible for most of the villages, and (e) construction of a center for the elderly.⁵³

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The IACHR also addressed the situation of victims who had not returned to their communities after massacres had been committed there 31 years before, ordering that

the State must guarantee adequate conditions so that the displaced victims can return to their communities of origin permanently, if they so wish. If these conditions do not exist, the State must provide the necessary and sufficient resources to enable the victims of enforced displacement to resettle in similar conditions to those they had before the events, in the place that they freely and willingly indicate within the department of Morazán, in El Salvador. The Court recognizes that the State's compliance with this measure of reparation entails, in part, that the beneficiaries indicate their intention of returning to their places of origin in El Salvador. Therefore, the Court establishes that, within two years of notification of this Judgment, the State and the beneficiaries should reach the pertinent agreement in order to comply with what the Court has ordered if the forcibly displaced victims identified in Annex "D" of this Judgment wish to return to their communities of origin.⁵⁴

The IACHR also issued a decision regarding poor living conditions at a juvenile detention center in Paraguay, which were characterized as inhuman and degrading treatment and resulted in three different fires, causing the deaths of 12 children and injuries to 19 others. The court ordered not only compensation be paid to those who had been injured and the families of those who had been killed, but also special measures for all children who had been jailed at the center during the period when the violations took place. Court-ordered measures included providing psychosocial therapy and vocational training.⁵⁵

Conclusion

When deciding on court-ordered reparations, a judge should aim to establish conditions that address all of the different consequences of the violations suffered by victims, their families, and even their communities. Providing reparations only in the form of a cash payment or only monetizing the harms can result in an unfair decision, particularly as harms can have different dimensions for people who live in a less-monetized economy. There are types of harm that can affect a victim so deeply that money by itself may be insufficient as a sole remedy. Some things money cannot replace or repair.

A judge would not be acting alone or breaking new ground by defining reparations in a more comprehensive way. There are precedents in international law and judicial decisions that support such an approach. This paper does not imply that international law should be directly applied on the domestic level; instead, it advocates for using relevant national and international precedents and decisions to better respond to unique situations that perhaps have not yet been regulated adequately by domestic law.

The precedents and decisions analyzed in this paper can be used as examples of the reasoning and considerations used by other courts, based on the strict implementation

53 IACHR, *Massacres of el Mozote and nearby places v. El Salvador*, merits, reparations and costs. Judgment of October 25, 2012, para. 339.

54 *Ibid.*, para. 345.

55 IACHR, *"Juvenile Reeducation Institute" v. Paraguay*, preliminary objections, merits, reparations and costs. Judgment of September 2, 2004, para. 318–321.

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of applicable law and detailed analysis of the condition of victims. Courts in these cases have tried to fulfill their responsibility by listening to victims and exploring what would be effective in their particular situation to provide sufficient redress. The nature of the violations examined in the cases reviewed here are fairly irreparable, but a court can still order the state to implement other measures to get closest to what justice should be for victims.

The court decisions discussed here have taken special consideration of the nature of the violations and the conditions of the victims. They have found, when appropriate, that certain violations may have a different impact when the victim is female or part of a community with strong links of identity and dependency that may be emotional, social, cultural, and economic. The examples provide possible ways for other courts, in different legal systems, to explore similar dimensions and take them into consideration when deciding how a state can provide redress for these kind of violations.