

Non-Pecuniary Damage under the American Convention on Human Rights: An Empirical Analysis of 30 Years of Case Law

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ABSTRACT

An international law on damages for human rights violations is rapidly emerging. Within this developing law, the Inter-American Court of Human Rights has become the main source of reference for the determination of non-pecuniary damage. This Article undertakes an empirical analysis of the first thirty years of this court's case law, assessing the criteria it has developed for quantifying non-pecuniary damage following a finding of a violation of the right to life. Through the use of statistical analysis, the Article tests the significance of the identified criteria for the determination of the amounts awarded to compensate the non-pecuniary damage suffered by 476 victims. The findings of the Article raise important concerns that lead to the conclusion that the Inter-American Court's practice in this area has been either inconsistent, secretive, or both.

INTRODUCTION

It is a long-standing principle of international law that every breach of an international obligation that results in harm creates a duty to make adequate reparation.¹ When applied to the international protection of human rights, this means that any action or omission attributable to a state that amounts to a violation of human rights brings about a legal duty to redress the harm suffered by the victims. Adequate reparation can adopt different forms, but the payment of compensation is certainly the most frequent of

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1. *Factory at Chorzow* (Ger. v. Pol.), Jurisdiction, P.C.I.J. (ser. A) No. 9, 21 (July 26, 1927); *Velásquez Rodríguez v. Honduras*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 7, ¶ 25 (July 21, 1989).

them.² Translating human rights violations into monetary sums to redress the suffering of the victims is a complex task that international courts are called upon to perform regularly. While the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR) have been undertaking this duty for decades, in recent years other international courts have started to engage in this activity. Such is the case of the International Court of Justice (ICJ), the African Court on Human and Peoples' Rights (ACHPR), and the International Criminal Court (ICC).³ Notwithstanding the different functions and jurisdictions of the mentioned international courts, they all have been called to quantify compensation for damages caused by breaches of international law pertaining to human rights.⁴ Together, these five courts have begun to develop what can be labelled an international law on damages for human rights violations. This is a fast-developing area of international law and is in serious need of further research.⁵

According to their recently developed jurisprudence, the ICJ, the ACHPR, and the ICC have heavily relied on the practice of the ECtHR and the IACtHR when establishing compensation for breaches of international law that entail human rights violations. All five courts seemed to be in agreement that there are two different types of damage suffered by the victims of human rights violations that need to be compensated: Damage that has a direct monetary value, most commonly labelled “pecuniary damage,” and damage that is not financial in nature, usually referred to as “non-pecuniary damage.”⁶ In general terms, “pecuniary damage” refers to the

2. *Velásquez Rodríguez*, Inter-Am. Ct. H.R. (ser. C) No. 7, ¶ 25.

3. See Ahmadou Sadio Diallo (Guinea v. Dem. Rep. Congo), Judgment, 2012 I.C.J. 324 (June 19); Reverend Christopher Meikila v. United Republic of Tanzania, No. 11/2011, Judgment, Afr. Ct. H.P.R. (June 13, 2014); Beneficiaries of Late Norbert Zongo, Abdoulaye Nikiema, Ernest Zongo and Blaise Ilboudo & the Burkinabe Movement on Human and Peoples' Rights v. Burkina Faso, No. 13/2011, Judgment, Afr. Ct. H.P.R. (June 5, 2015); Prosecutor v. Katanga, ICC-01/04-01/07-3729 (Mar. 24, 2017).

4. Although the ICC technically deals with violations of International Criminal Law and the international criminal responsibility of individuals, it is tasked with determining reparations for victims of international crimes who have suffered grave violations of their human rights.

5. The academic literature concerning the quantification of damages for human rights violations under international law is swiftly growing but has so far mostly focused on the work of the ECtHR. See OCTAVIAN ICHIM, JUST SATISFACTION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS (2015) [hereinafter ICHIM, JUST SATISFACTION]; Szilvia Altwicker-Hámori et al., *Measuring Violations of Human Rights: An Empirical Analysis of Awards in Respect of Non-Pecuniary Damage under the European Convention on Human Rights*, 76 HEIDELBERG J. INT'L L. 1 (2016); Veronika Fikfak, *Changing State Behavior: Damages before the European Court of Human Rights*, 29(4) EUR. J. INT'L L. 1091 (2019).

6. The terms *pecuniary* and *non-pecuniary damage* are the ones adopted by the ECtHR and the IACtHR. The ICJ has used *material* and *non-material injury*; the ACHPR has fluctuated between different denominations, including *pecuniary* and *non-pecuniary damage*, *pecuniary* and *moral damage*, and *material* and *moral prejudice*; and the ICC has distinguished between *material*, *physical*, and *psychological harm*, the latter two categories fitting the idea of non-financial harm. *Guinea v. Dem. Rep. Congo*, Judgment, 2012 I.C.J., ¶¶ 14, 18, 21, 25, 55, 60; *Reverend Christopher Meikila*, No. 11/2011, Judgment, Afr. Ct. H.P.R., ¶¶ 29, 35, 37, 39–40, 45; *Beneficiaries of Late Norbert Zongo*, No. 13/2011, Judgment, Afr. Ct. H.P.R., ¶¶ 61, 65, 111; *Katanga*, ICC-01/04-01/07-3729, ¶¶ 75, 79, 89, 110, 114, 116, 122, 129, 173, 226, 239.

financial consequences of the violation, including the loss of income suffered by the victim, the expenses incurred by their next of kin, and any consequential damage showing a direct causal connection with the violation.⁷ “Non-pecuniary damage” covers the harmful effects of the violation that are not immediately financial, such as the suffering and distress caused to the victim and their close relatives, and the impairment of values that are highly significant to them.⁸ Between those two categories of damage, it is actually non-pecuniary damage that is more often caused by human rights violations, as every breach of human rights can be expected to cause suffering to the victim, even if not entailing any monetary loss.⁹ It is, therefore, unsurprising that the data collected by the IACtHR reveals non-pecuniary damage to be the type of harm for which it has awarded the largest amounts of compensation.¹⁰

Within this developing law on damages, the IACtHR has become a primary source of reference when it comes to the determination of non-pecuniary damage. In 2012, the ICJ issued the second-ever judgment in which it quantified compensation.¹¹ The ruling made explicit reference to the case law of the IACtHR at various points,¹² in scenarios that the practice of the IACtHR acted as one of the main sources for justifying the need to compensate non-pecuniary damage when a violation of human rights has taken place. The ICJ quoted the definition of non-pecuniary damage developed by the IACtHR, and it explicitly adopted “equity” as a guiding principle for the quantification of compensation for this type of damage, acknowledging that it underpinned the praxis of both the IACtHR and the ECtHR.¹³ On its part, the ICC’s reliance on the jurisprudence of the IACtHR has been even stronger. In its first-ever judgment on reparations, rendered in 2017, the ICC made numerous references to the case law of the IACtHR. In particular, the ICC closely followed the Inter-American jurisprudence pertaining to reparations for non-pecuniary damage in establishing what it labelled

7. *Myrna Mack Chang v. Guatemala*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 101, ¶ 250 (Nov. 25, 2003); *Cantoral Humaní and García Santa Cruz v. Peru*, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 167, ¶ 140 (July 10, 2007).

8. “Street Children” (*Villagrán-Morales et al.*) v. Guatemala, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 77, ¶ 84 (May 26, 2001).

9. *Altwickler-Hámori et al.*, *supra* note 5, at 6.

10. A Report elaborated by the IACtHR’s Secretary reveals that compensation for non-pecuniary damage amounts to 75% of the total sums of compensation ordered by the IACtHR through the years. See Secretaría de la corte [Secretary of the Court], *La Corte Interamericana de Derechos Humanos: las reparaciones pecuniarias y su estado de cumplimiento* [The Inter-American Court of Human Rights: pecuniary reparations and their status of compliance], ORGANIZATION OF AMERICAN STATES (Mar. 2008) (unpublished edited preview) [on file], at 5.

11. The ICJ had previously quantified compensation in 1949 in the *Corfu Channel* case. *Corfu Channel* (U.K. of Gr. Brit. and N. Ir. v. Alb.), Assessment of the Amount of Compensation Due from The People’s Republic of Albania to the United Kingdom of Great Britain and Northern Ireland, Judgment, 1949 I.C.J. 244 (Dec. 15).

12. *Guinea v. Dem. Rep. Congo*, 2012 I.C.J. ¶ ¶ 24, 33, 40 (June 19).

13. *Id.* ¶ 18 and 24.

“psychological harm.”¹⁴ The ICC drew upon the practice developed by the IACtHR with regard to both the use of presumptions and the required standard of proof for determining whether the victims have experienced any harm,¹⁵ and it directly quoted excerpts from judgments in which the IACtHR applied such rules to the determination of non-pecuniary damage.¹⁶ The ICC also referred to the IACtHR’s case law to reach the conclusion that the redress of non-pecuniary damage encompasses forms of collective reparations, besides the payment of compensation.¹⁷ Furthermore, when quantifying the quantum to be paid, the ICC specifically discussed amounts that had been indicated by the IACtHR in the past—which it compared to that of other tribunals¹⁸—to then establish as the sum of compensation an amount previously ordered by the IACtHR.¹⁹

Given the similarity of the jurisdictions, it is perhaps less surprising that the ACHPR has also leaned on the case law of the IACtHR when developing its own practice concerning reparations.²⁰ Both the IACtHR and the ACHPR are regional courts tasked with monitoring states’ compliance with human rights obligations and empowered to determine reparations when violations ensue.²¹ The ACHPR began ordering reparations in 2014 and its initial rulings reveal a strong influence of the IACtHR’s case law on the adopted approach.²² The ACHPR took on the actual definitions of both pecuniary and non-pecuniary damage provided by the judgments of the IACtHR.²³ The same is true for criteria governing the admission of evidence and the use of presumptions,²⁴ in particular regarding the determina-

14. *Prosecutor v. Katanga*, ICC-01/04-01/07-3729, ¶¶ 48, 57, 61, 127–28, 230–31, 283 (Mar. 24, 2017). As indicated in *supra* note 6, the ICC has distinguished between *material*, *physical*, and *psychological harm*; hence, it is unsurprising that its reliance on the IACtHR’s case law on non-pecuniary damage aimed at supporting its determination of psychological harm.

15. *Id.* ¶¶ 48, 57, 61.

16. *Id.* ¶¶ 127–128.

17. *Id.* ¶ 283. The ICC has also made use of the IACtHR’s case law for understanding the disruption of one’s culture as a form of non-pecuniary damage in its second judgment on reparations. *Prosecutor v. Al Faqi Al Mahdi*, ICC-01/12-01/15-236, Reparations Order, ¶ 85 (Aug. 17, 2017).

18. *Katanga*, ICC-01/04-01/07-3729, ¶¶ 230–32, 236.

19. *Id.*

20. *Reverend Christopher Mtikila v. United Republic of Tanzania*, No. 11/2011, Judgment, Afr. Ct. H.P.R., ¶¶ 29, 35, 37, 39, 40, 45 (June 13, 2014); *Beneficiaries of Late Norbert Zongo Abdoulaye Nikiema, Ernest Zongo and Blise Ilboudo & the Burkinabe Movement on Human and Peoples’ Rights v. Burkina Faso*, No. 13/2011, Judgment, Afr. Ct. H.P.R., ¶¶ 24, 27, 29, 48, 52, 53, 55, 60, 61, 66, 80, 82, 86, 87, 98 (June 5, 2015); *Lohe Issa Konate v. Burkina Faso*, No. 4/2013, Judgment (Reparations), Afr. Ct. H.P.R., ¶ 58 (June 3, 2016); *Ingabire Victoire Umuhoza v. Republic of Rwanda*, No. 3/2014, Judgment (Reparations), Afr. Ct. H.P.R., ¶ 59 (Dec. 7, 2018); *Armand Guehi v. United Republic of Tanzania (Republic of Côte d’Ivoire intervening)*, No. 1/2015, Judgment, Afr. Ct. H.P.R., ¶ 191 (Dec. 7, 2018); *Wilfred Onyango Nganyi and 9 Others v. United Republic of Tanzania*, No. 6/2013, Judgment (Reparations), Afr. Ct. H.P.R., ¶ 81 (July 4, 2019).

21. Thomas Antkowiak, *Remedial Approaches to Human Rights Violation: The Inter-American Court of Human Rights and Beyond*, 46 COLUMBIA JOURNAL OF TRANSNATIONAL LAW 351, 414 (2008).

22. *Reverend Christopher Mtikila*, No. 11/2011, Judgment, Afr. Ct. H.P.R.

23. *Id.* ¶¶ 29, 35.

24. *Beneficiaries of Late Norbert Zongo*, No. 13/2011, Judgment, Afr. Ct. H.P.R., ¶¶ 52, 55.

tion of non-pecuniary damage.²⁵ The ACHPR also followed the Inter-American jurisprudence in identifying the rationale behind the quantification of compensation for non-pecuniary damage, quoting the IACtHR when referring to “equity” as a cardinal principle that guides such a task.²⁶ Moreover, the inspiration taken from the IACtHR was not limited to monetary awards but also included the adoption of other forms of reparation beyond compensation for redressing non-pecuniary damage.²⁷

It is this extensive reference to the IACtHR’s case law that places this court as a leading authority within the international law on damages for human rights violations, especially concerning the redress of non-pecuniary damage. Unfortunately, the actual criteria the IACtHR has developed for quantifying non-pecuniary damage are far from clear, and the literature has pointed out that this court’s approach to the determination of non-pecuniary damage seems inconsistent.²⁸ Although it has been establishing compensation for human rights violations for over three decades, the IACtHR has not revealed any set criteria that are regularly used for the calculation of compensation. While the ECtHR has at least affirmed to have agreed upon (unpublished) standards for determining compensation,²⁹ it remains unknown whether the IACtHR even has these confidential guidelines. Given the primordial role the IACtHR has achieved in the determination of non-pecuniary damage within international law, the lack of actual knowledge about the criteria it employs is rather worrisome.

So far, the expert literature on the IACtHR has merely offered tangential discussions on the actual criteria used by this court for quantifying compensation³⁰ without any empirical studies conducted to date.³¹ This Article seeks to rectify this knowledge gap by revealing and assessing the criteria the IACtHR has developed for quantifying non-pecuniary damage. Its purpose is to examine the factors underpinning the valuation of the awards this court has established to compensate non-pecuniary damage following a vio-

25. *Lobe Issa Konate*, No. 4/2013, Judgment (Reparations), Afr. Ct. H.P.R., ¶ 58; *Ingabire Victoire Umubozza*, No. 3/2014, Judgment (Reparations), Afr. Ct. H.P.R., ¶ 59.

26. *Beneficiaries of Late Norbert Zongo*, No. 13/2011, Judgment, Afr. Ct. H.P.R., ¶¶ 61–62.

27. *Id.* ¶ 98; *Armand Guebi*, No. 1/2015, Judgment, Afr. Ct. H.P.R., ¶ 191 (Dec. 7, 2018); *Wilfred Onyango Ngayi and 9 Others*, No. 6/2013, Judgment (Reparations), Afr. Ct. H.P.R., ¶ 81 (July 4, 2019).

28. Arturo Carrillo, *Justice in Context: The Relevance of Inter-American Human Rights Law and Practice to Repairing the Past*, in THE HANDBOOK OF REPARATIONS 504, 524 (Pablo De Greiff ed., 2006); CARLOS M. BERISTAIN, DIÁLOGOS SOBRE LA REPARACIÓN EXPERIENCIAS EN EL SISTEMA INTERAMERICANO DE DERECHOS HUMANOS: VOL. II 175–180 (2008) [hereinafter BERISTAIN, DIÁLOGOS]; THOMAS ANTKOWIAK & ALEJANDRA GONZA, THE AMERICAN CONVENTION OF HUMAN RIGHTS: ESSENTIAL RIGHTS 298 (2017).

29. *Scordino v. Italy* (No. 1), 2006-V Eur. Ct. H.R. 176.

30. See, e.g., JO M. PASQUALUCCI, THE PRACTICE AND PROCEDURE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS 265–267 (2003) [hereinafter PASQUALUCCI, THE PRACTICE]; Carrillo, *supra* note 28; Antkowiak, *supra* note 21; LAURENCE BURGORGUE-LARSEN & AMAYA ÚBEDA DE TORRES, THE INTER-AMERICAN COURT OF HUMAN RIGHTS: CASE LAW AND COMMENTARY 233 (2011) [hereinafter BURGORGUE-LARSEN, THE INTER-AMERICAN COURT OF HUMAN RIGHTS].

31. Conversely, the practice of the ECtHR has become the main focus of academic studies. See *supra* note 5.

lation of human rights. The significance of a better understanding of this is two-fold. First, as mentioned above, the IACtHR's case law in this area has acquired a preeminent role that is followed by other international courts. Hence, it is of great relevance for all international courts to comprehend the practice developed by the IACtHR. Second, obtaining a clear grasp of the IACtHR's criteria would be of enormous importance to the actual victims of human rights violations, especially to those claiming compensation for the harm suffered within the Inter-American Human Rights System. Clear knowledge of the different criteria used by this court to quantify compensation, along with the significance of each of them, can be of essential guidance for the victims as to the level of award that can be requested (and expected), as well as for the type of evidence they should provide to support their claims.

This Article explores the IACtHR's practice when determining compensation for non-pecuniary damage, undertaking a comprehensive examination of the first thirty years of this court's case law concerning the violation of the right to life; from the first-ever decision it adopted in a contentious case in 1987 until the end of 2016. The decision to focus on the right to life, in particular, is based on the fact that the majority of the cases brought before the IACtHR have dealt with arbitrary deprivations of life. That has, in fact, been the case for every judgment the IACtHR issued on the merits during its first decade of contentious jurisprudence, since each of them dealt with claims encompassing violations of the right to life, even if the Court did not find a violation of Article 4 in all of them.³² The empirical data was collected through the detailed study of the eighty-six judgments in which the IACtHR has ordered the payment of non-pecuniary damage following an arbitrary deprivation of life that amounted to a violation of Article 4 of the American Convention on Human Rights.³³ Making use of

32. Even though this study focuses specifically on the right to life, a careful examination of the totality of the judgments issued by the Court until the end of the year 2016 reveals that it has not disclosed any further criteria for the monetization of reparations other than those identified in this Article.

33. The list of 86 cases is included in App. II. There are nine cases in which the violation of Article 4 did not follow an arbitrary deprivation of life; hence, the following cases have been excluded from the analysis: *Yakye Axa Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125 (June 17, 2005); *Fermín Ramírez v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 126 (June 20, 2005); *Raxcacó Reyes v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 133 (Sept. 15, 2005); *Vargas Areco v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 155 (Sept. 26, 2006); *Boyce et al. v. Barbados*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 169 (Nov. 20, 2007); *Albán Cornejo et al. v. Ecuador*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 171 (Nov. 22, 2007); *Dacosta Cadogan v. Barbados*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 204 (Sept. 24, 2009); *Kichwa Indigenous People of Sarayaku v. Ecuador*, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 245 (June 27, 2012); *Tarazona Arrieta et al. v. Peru*, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 286 (Oct. 15, 2014); *Gonzales Lluy et al. v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 298 (Sept. 1, 2015); *Valencia Hi-*

statistical analysis, the Article evaluates the IACtHR's criteria for the determination of compensation for non-pecuniary damage in favor of 476 victims, testing the significance of each criterion mentioned by the Court when establishing these amounts.

I. THE INTER-AMERICAN COURT'S CASE LAW ON REPARATIONS

The American Convention on Human Rights entrusts the IACtHR with the task of monitoring compliance with protected human rights and with the power to order that any violation of such rights be remedied, including through the payment of fair compensation to the injured person.³⁴ In the exercise of such authority, the IACtHR has ordered states to carry out due measures of reparation in every case in which it has found a violation of human rights. From its earliest judgments, the IACtHR has affirmed that under international law reparation should ideally consist of full restitution (*restitutio in integrum*), which includes the restoration of the prior situation, the reparation of the consequences of the violation, and the award of compensation.³⁵ In cases of human rights violations, full restitution is usually impossible, and this has led the IACtHR to order a comprehensive series of measures as means of reparation.³⁶ In fact, the IACtHR has been largely praised for its innovative role in the award of reparations.³⁷ It orders measures aimed at the restitution of the right that has been violated, whenever possible (for example, reinstating a person to their job);³⁸ the rehabilitation of the victims (medical and psychological treatment);³⁹ the provision of satisfaction to the victims (acts of public apology);⁴⁰ the avoidance of recidivism (such as the amendment of domestic legislation not compliant with the Convention);⁴¹ and, of course, the payment of compensation for pecuni-

nojosa et al. v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 327 (Nov. 29, 2016).

34. Organization of American States, American Convention on Human Rights, art. 63.1 Nov. 22, 1969, O.A.S.T.S. No. 36, 1144.

35. Velásquez Rodríguez v. Honduras, Inter-Am. Ct. H.R. (ser. C) No. 7, ¶ 26 (July 29, 1988).

36. "White Van" (Paniagua Morales et al.) v. Guatemala, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 76, ¶ 76 (May 25, 2001); Bulacio v. Argentina, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 100, ¶ 72 (Sept. 18, 2003); Barrios Altos v. Peru, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 87, ¶ 25 (Nov. 30, 2001).

37. PASQUALUCCI, *THE PRACTICE*, *supra* note 30, at 289; BURGOGUE-LARSEN, *THE INTER-AMERICAN COURT OF HUMAN RIGHTS*, *supra* note 30, at 224; DINAH SHELTON, *REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW* 222 (2015) [hereinafter SHELTON, *REMEDIES*].

38. Loayza Tamayo v. Peru, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 42, ¶ 1 (Nov. 27, 1998).

39. 19 Merchants v. Colombia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 109, ¶ 9 (July 5, 2004).

40. Cantoral Benavides v. Peru, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 109, ¶ 7 (Dec. 3, 2001).

41. See *Loayza Tamayo*, Inter-Am. Ct. H.R. (ser. C) No. 42, ¶ 5.

ary and non-pecuniary damage, which remains the most frequent form of reparation under international law.⁴²

As indicated above, non-pecuniary damage refers to the detrimental consequences of a human right violation that are not monetary in nature.⁴³ In order to redress this type of damage, the IACtHR normally orders the adoption of measures of public repercussion, the delivery of goods and services, as well as the payment of a sum of money.⁴⁴ However, the IACtHR's practice in assessing the quantum of non-pecuniary damage remains a (legal) mystery at large. An initial approach to the case law developed over thirty years reveals that in cases involving an arbitrary deprivation of life, the amounts awarded to compensate the victim's non-pecuniary damage have been as low as zero and as high as 125,000 United States Dollars ("USD"), without the reasons behind such a variation being evident.⁴⁵

In the IACtHR's own words, the criteria for establishing these amounts are grounded on the "reasonable exercise of judicial discretion"⁴⁶ and on the "principle of equity."⁴⁷ Nonetheless, the vagueness of these criteria means that it is extremely difficult to foresee or to duly understand the amounts the Court awards to compensate non-pecuniary damage in a given case. This lack of clarity concerning the criteria used to calculate non-pecuniary damage is certainly problematic since even the application of the principle of equity (and of judicial discretion) requires consistency and a certain degree of predictability.⁴⁸ Former Judge de Roux Rengifo explained that when the IACtHR is to establish a quantum for compensation, it starts with a certain amount—frequently suggested by reference to preceding de-

42. Velásquez Rodríguez v. Honduras, Inter-Am. Ct. H.R. (ser. C) No. 7, ¶ 25 (July 29, 1988); see also SHELTON, REMEDIES, *supra* note 37, at 31, 230.

43. The IACtHR adopted the term "non-pecuniary damage" in place of "moral damage" in 2001. See, e.g., "White Van" (Paniagua Morales et al.) v. Guatemala, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 76, ¶¶ 105–106 (May 25, 2001); "Street Children", Inter-Am. Ct. H.R. (ser. C) No. 77, ¶ 84.

44. "Street Children", Inter-Am. Ct. H.R. (ser. C) No. 77, ¶ 84; *Cantoral Benavides*, Inter-Am. Ct. H.R. (ser. C) No. 109, ¶ 53; *Bámaca Velásquez v. Guatemala*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 91, ¶ 56 (Feb. 22, 2002).

45. The Court refused to award compensation for non-pecuniary damage in *Cruz Sánchez et al. v. Peru*, while the amount awarded in Honduran lempiras in its first two judgments was equivalent to 125,000 USD (according to the conversion made by the Inter-American Commission and acknowledged by the Court). *Cruz Sánchez et al. v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 292, ¶ 483 (Apr. 17, 2015); *Velásquez Rodríguez*, Inter-Am. Ct. H.R. (ser. C) No. 7, ¶ 52; *El Amparo v. Venezuela*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 28, ¶ 31 (Sept. 14, 1996); *Neira Alegría et al. v. Peru*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 29, ¶¶ 16, 54 (Sept. 19, 1996).

46. *19 Merchants v. Colombia*, Inter-Am. Ct. H.R. (ser. C) No. 109, ¶ 244 (July 5, 2004); *Plan de Sánchez Massacre v. Guatemala*, Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 116, ¶ 80 (Nov. 19, 2004).

47. "Street Children", Inter-Am. Ct. H.R. (ser. C) No. 77, ¶ 84; *Cantoral Benavides*, Inter-Am. Ct. H.R. (ser. C) No. 109, ¶¶ 57, 62. In the English version of the judgments, the Court seems to indistinctively use *equity* and *fairness* as the principle underlying the determination of non-pecuniary damage. However, *equity* seems to be the more precise term, given that it is the term used in the authentic Spanish version.

48. See ICHIM, JUST SATISFACTION, *supra* note 5, at 122.

cisions—and this amount is queried as to its adequacy for the case.⁴⁹ The question that then arises is what criteria are used by the IACtHR to establish the adequacy of the amount for a particular case.

It is worth emphasizing that this Article is not embarking on a quest for rigid guidelines that would render the IACtHR replaceable by a calculating machine, as wisely warned against by the former President of the Court, Cañado Trindade.⁵⁰ Nevertheless, criteria that are clearer and more concise than equity and discretion are required to provide transparency and foreseeability, and to improve confidence in the system. The Sections to follow will, first, identify which are the more tangible criteria underpinning the general principle of equity and judicial discretion that have been revealed by the IACtHR when establishing the quantum of non-pecuniary damage in each case and subsequently test through statistical analysis the association between such criteria and the actual amounts awarded.

II. SOME COMPLEXITIES BEHIND THE IACtHR'S AWARDS

Identifying and testing the criteria used by the IACtHR for determining the non-pecuniary damage awarded in favor of 476 victims was a complex task for a variety of reasons. First, some of the judgments do not state the amount of compensation awarded specifically for non-pecuniary damage. This takes place when a global amount for both pecuniary and non-pecuniary damage is either agreed upon by the parties or established by the IACtHR (and in some cases even kept a secret)⁵¹ or due to the Court ordering the state to award compensation through the pertinent domestic mechanisms. Moreover, the judgments are not uniform; they do not all follow a standardized structure. For a number of reasons, the format of the judgments has changed through time. In particular, starting in 2007 the IACtHR started issuing more concise decisions.⁵² While this can be considered a positive step to facilitate public engagement with the rulings, it also meant that the IACtHR started providing shorter explanations as to the rationale for determining compensation in its judgments.

Another factor that adds to the complexity of understanding the awards for non-pecuniary damage is that many judgments engage with multiple victims, rather than just one, such as the cases involving the systematic practice of forced disappearances or those concerning massacres.⁵³ In fact,

49. “*Street Children*”, Inter-Am. Ct. H.R. (ser. C) No. 77, ¶ 2 (May 26, 2001) (separate opinion by De Roux, J.).

50. *Id.* ¶ 37 (opinion by Cañado, J.).

51. Pacheco Teruel et al. v. Honduras, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 241, ¶ 62 (Apr. 27, 2012); García and Family Members v. Guatemala, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 258, ¶ 68 (Nov. 29, 2012).

52. Inter-American Court of Human Rights, Court Agreement 1/07.

53. For instance, *19 Merchants v. Colombia* and *Goiburú et al. v. Paraguay* are two of the many cases that concerned the forced disappearance of multiple victims; furthermore, *Mapiripán Massacre v. Colom-*

just thirty-six of the total eighty-six cases decided by the Court over thirty years concerned only one direct victim.⁵⁴ Similarly, most judgments deal with the violation of several Convention rights in addition to the right to life, generally interconnected with each other.⁵⁵ The analysis, therefore, considers that the amounts were awarded to compensate for the deprivation of life, rather than the specific violation of the right to life since it is impossible to know what portion of the amount is associated with each infringed right. Nonetheless, whether the violation of other rights surrounding a deprivation of life affects the amounts awarded is accounted for in two different ways. First, this is partly examined when evaluating the significance of the severity of the crime for determining the amount of compensation. The model for statistical analysis considers whether the specific type of crime was a case of forced disappearance, which has consistently been acknowledged by the IACtHR as a violation of multiple Convention rights since its judgment in *Velásquez Rodríguez v. Honduras*.⁵⁶ The analysis also takes into account whether the direct victim in the case was a minor or an adult, and the former engages an additional violation of the Convention, that of Article 19.⁵⁷

III. WHOSE SUFFERING AND HARM ARE ACCOUNTED FOR?

As mentioned above, within its first thirty years exercising jurisdiction in contentious cases, the IACtHR has found states responsible for the arbi-

bia and *Ituango Massacres v. Colombia* are two of the earliest cases concerning massacres decided by the IACtHR. 19 *Merchants v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 109 (July 5, 2004); *Goiburú et al. v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 153 (Sept. 22, 2006); “*Mapiripán Massacre*” v. Colombia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 134 (Sept. 15, 2005); *Ituango Massacres v. Colombia*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148 (July 1, 2006).

54. This can be appreciated in Figure 1, *infra*, where the size of the markers provides an indication of the number of victims in each case.

55. See, e.g., *Bámaca Velásquez v. Guatemala*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 70, ¶¶ 1–3, 5–7 (Nov. 25, 2000); *Juan Humberto Sánchez v. Honduras*, Preliminary Objection, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 99, ¶¶ 2–5 (June 7, 2003); *Bulacio v. Argentina*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 100, ¶ 3 (Sept. 18, 2003); *Huilca Tecse v. Peru*, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 121, ¶ 2 (Mar. 3, 2005).

56. *Velásquez Rodríguez v. Honduras*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶¶ 155–58 (July 29, 1988); *Castillo Páez v. Peru*, Merits, Inter-Am. Ct. H.R. (ser. C) No. 34, ¶¶ 1–2, 4 (Nov. 3, 1997); *Bámaca Velásquez*, Inter-Am. Ct. H.R. (ser. C) No. 70, ¶¶ 1–3, 5; 19 *Merchants*, Inter-Am. Ct. H.R. (ser. C) No. 109, ¶¶ 1–2.

57. Among many, the IACtHR found an additional breach of Article 19, due to the victims being minors, in the following cases: “*Street Children*” (*Villagrán-Morales et al.*) v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 198 (Nov. 19, 1999); *Gómez Paquiyauri Brothers v. Peru*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 173 (July 8, 2004); *Mapiripán Massacre*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 134, ¶ 163 (Sept. 15, 2005); *Servellón García et al. v. Honduras*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 152, ¶ 125 (Sept. 21, 2006).

trary deprivation of life in eighty-six cases. While it is not possible to know the exact amount awarded for non-pecuniary damage in twelve of them,⁵⁸ within the remaining seventy-four judgments, the IACtHR has awarded 64,288,675 USD⁵⁹ as compensation for non-pecuniary damage in cases concerning the deprivation of life of 554 victims.⁶⁰ Figure 1 presents the total amount of non-pecuniary damage awarded in each case in connection with the deprivation of life.⁶¹ Each marker indicates the amount awarded by a judgment, presented in the chronological order in which they were adopted by the Court, while the size of the marker represents the number of victims in the given case. Figure 1 shows that the amounts awarded by different judgments ranged from a refusal to award non-pecuniary damage to an award exceeding 7,000,000 USD.

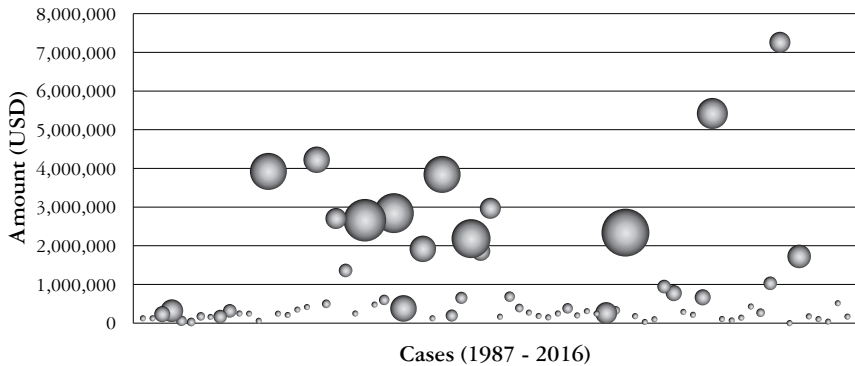
58. Benavides Cevallos v. Ecuador, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 38 (June 19, 1998); Barrios Altos v. Peru, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 87 (Nov. 30, 2001); Durand and Ugarte v. Peru, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 89 (Dec. 3, 2001); Las Palmeras v. Colombia, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 96 (Nov. 26, 2002); Tiu Tojín v. Guatemala, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 190 (Nov. 26, 2008); Pacheco Teruel et al. v. Honduras, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 241 (Apr. 27, 2012); Río Negro Massacres v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250 (Sept. 4, 2012); Massacres of El Mozote and nearby places v. El Salvador, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 252 (Oct. 25, 2012); García and Family Members v. Guatemala, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 258 (Nov. 29, 2012); Santo Domingo Massacre v. Colombia, Preliminary Objections, Merits, and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 259 (Nov. 30, 2012); Veliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 277 (May 19, 2014); Members of the Chichupac Village and Neighboring Communities of the Rabinal Municipality v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 328 (Nov. 30, 2016).

59. As indicated in *supra* note 45, in its first two cases, the IACtHR established compensation in Honduras lempiras (HNL), instead of USD. Both amounts have been converted into United States Dollars (“USD”) following the conversion made by the Inter-American Commission on Human Rights and acknowledged by the IACtHR. El Amparo v. Venezuela, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 28, ¶ 31 (Sept. 14, 1996); Neira Alegría et al. v. Peru, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 29, ¶¶ 16, 54 (Sept. 19, 1996).

60. The term “*victim*” is used to refer to the direct victim of the violation of the right to life. Other individuals who have also suffered violations, such as the close relatives of the direct victim, are referred to as “*indirect victims*.”

61. Cases might contemplate further amounts of compensation awarded for the violation of other rights that are independent of the deprivation of life, which were not accounted for here.

FIGURE 1 - TOTAL NPD PER CASE



The wide variation between amounts is explained in part by the different number of victims in each case. Figure 2 then shows the highest quantum established for a single deprivation of life per judgment. However, it is important to note that there is still a significant oscillation in the amounts awarded for non-pecuniary damage for the victims of the different cases. The first possible explanation for the variation of the quantum when only one deprivation of life is examined is that the suffering and harm considered by the IACtHR at the time of quantifying non-pecuniary damage have changed through time. The Court's earlier jurisprudence is rather confusing, as the judgments highlighted the suffering and harm experienced by the victim's next of kin,⁶² but ultimately only focused on the suffering of the direct victim when determining the amount for non-pecuniary damage.⁶³ As an example, when deciding its first two contentious cases, both of them regarding the forced disappearance of a person in Honduras, the Court established the same amount as compensation for non-pecuniary damage in the two cases, although one of the victims had fewer next of kin.⁶⁴ If the amount would have represented a quantification of the relatives' suffering,

62. *Aloeboetoe et al. v. Suriname, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 15*, ¶ 76 (Sept. 10, 1993).

63. The opposite view was proposed by Clara Sandoval-Villalba, who has affirmed that in its earlier cases, the IACtHR focused on the suffering of the relatives, rather than that of the victim, when establishing non-pecuniary damage. See CLARA SANDOVAL-VILLALBA, *The Concepts of 'Injured Party' and 'Victim' of Gross Human Rights Violations in the Jurisprudence of the Inter-American Court of Human Rights: A Commentary on their Implications for Reparations*, in REPARATIONS FOR VICTIMS OF GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY 251–252 (Carla Ferstman et al. eds., 2009).

64. See the IACtHR's decisions in the *Velásquez Rodríguez* and *Godínez Cruz* cases, in which the amount for non-pecuniary compensation was identical, while the number of close relatives was not. *Velásquez Rodríguez v. Honduras, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 7* (July 21, 1989); *Godínez Cruz v. Honduras, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 8* (July 21, 1989).

it would have been lower in the case with fewer close relatives, as would become the practice of the IACtHR in its later jurisprudence.⁶⁵

Similarly, in both *El Amparo v. Venezuela* and *Neira Alegría et al. v. Peru*, the IACtHR established the same award for non-pecuniary damage for each of the fourteen victims of the first case and each of the three victims of the second, regardless of the number of next of kin of each victim.⁶⁶ Again, this suggests that the suffering measured by the Court was that of the direct victim, not of their relatives. The awards determined in *Aloeboetoe et al. v. Suriname* confirm this interpretation.⁶⁷ The IACtHR awarded the same amount for non-pecuniary damage to six of the victims, while a higher sum was established for the seventh. As explained by the Court, the reason behind this differential award was that the seventh victim had experienced greater suffering than the others.⁶⁸ That is to say, the quantum of the amounts was determined by measuring the suffering of the direct victim (not their relatives). The suffering of the victim's next of kin was acknowledged by the IACtHR,⁶⁹ and they were entitled—as beneficiaries—to receive the monetary compensation for the suffering caused by a deprivation of life. Nevertheless, the determination of the amount of compensation was based only on the suffering of the direct victim.⁷⁰

65. As discussed below, from 1998, the Court began to consider the next of kin of the victim of arbitrary deprivation of life as victims themselves. Thus, they were entitled to have their suffering redressed in monetary terms.

66. *El Amparo v. Venezuela*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 28, ¶ 37 (Sept. 14, 1996); *Neira Alegría et al. v. Peru*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 29, ¶ 58 (Sept. 19, 1996).

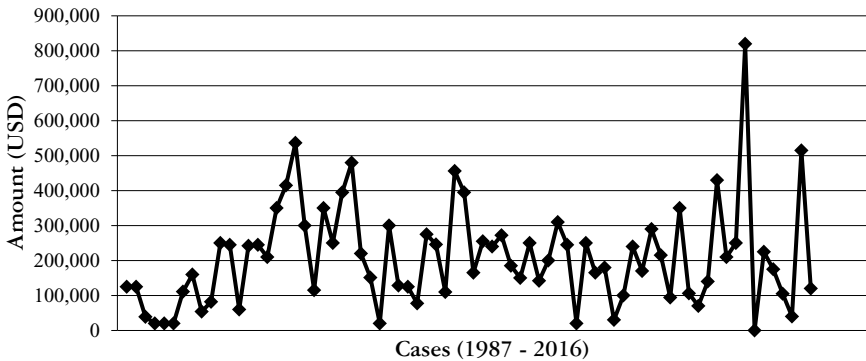
67. *Aloeboetoe et al.*, Inter-Am. Ct. H.R. (ser. C) No. 15.

68. *Id.* ¶ 91.

69. *Velásquez Rodríguez*, Inter-Am. Ct. H.R. (ser. C) No. 7, ¶¶ 50–51; *Aloeboetoe et al.*, Inter-Am. Ct. H.R. (ser. C) No. 15, ¶ 77–78; *El Amparo*, Inter-Am. Ct. H.R. (ser. C) No. 28, ¶ 35.

70. This finding could be questioned in light of the judgment on reparations in *Caballero Delgado and Santana*. However, it appears to be consistent with the IACtHR's practice during the first decade of jurisprudence on reparations. *Caballero Delgado and Santana v. Colombia*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 31 (Jan. 29, 1997).

FIGURE 2 - NPD FOR A SINGLE DEPRIVATION OF LIFE



A radical change to this approach took place in 1998 when the IACtHR started to consider that the close relatives of a person arbitrarily deprived of their life were themselves (indirect) victims, given the suffering experienced due to the loss of a loved one.⁷¹ The IACtHR established a rebuttable (*iuris tantum*) presumption that the parents, the children, and the permanent partners of the direct victim of arbitrary deprivation of life suffered a violation of their own right to personal integrity.⁷² In the Court's own words:

[A] violation of the right to mental and moral integrity of the direct next of kin of victims of certain human rights violations can be declared, applying a presumption *iuris tantum* with regard to mothers and father[s], daughters and sons, husbands and wives, permanent companions (hereinafter "direct next of kin"), provided this responds to the specific circumstances of a case, as has happened, for example, in the cases of various massacres, forced disappearance of persons, and extrajudicial executions.⁷³

Given that this is a rebuttable presumption, the state can provide evidence to disprove the non-pecuniary damage suffered by the victim's close relatives.⁷⁴ At the same time, it is also possible for other (more distant) relatives to provide evidence of their suffering and harm, becoming entitled to compensation for their non-pecuniary damage.⁷⁵ The particular situation of the

71. Garrido and Baigorria v. Argentina, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 15, ¶¶ 62–65 (Aug. 27, 1998); Loayza Tamayo v. Peru, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 42, ¶¶ 141–43 (Nov. 27, 1998).

72. Blake v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 36, ¶ 2 (Jan. 24, 1998).

73. Valle Jaramillo et al. v. Colombia, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 192, ¶ 119 (Nov. 27, 2008).

74. In fact, in certain cases, children and parents have been excluded from the award of non-pecuniary damage. *Garrido and Baigorria*, Inter-Am. Ct. H.R. (ser. C) No. 15, ¶ 65; *Gómez Palomino v. Peru*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 136, ¶ 120 (Nov. 22, 2005).

75. *Valle Jaramillo*, Inter-Am. Ct. H.R. (ser. C) No. 192, ¶¶ 116–32.

victim's siblings is rather unclear because of the oscillation of the IACtHR's jurisprudence. Starting in 2001, the Court extended to siblings the presumption of suffering due to a relative's death,⁷⁶ but later case law went back to requesting evidence of harm if non-pecuniary damage was to be awarded to siblings.⁷⁷ The most recent case law is once again establishing that, at least in cases of forced disappearances, the non-pecuniary damage suffered by the victim's siblings should be presumed.⁷⁸

Consequently, since 1998, the amount of compensation for non-pecuniary damage comprises both the suffering of the direct victim and of their next of kin (either proved or presumed). This means that a higher number of close relatives translates into larger amounts awarded for non-pecuniary damage. That is certainly one of the reasons that explains the amounts of non-pecuniary damage presented in Figure 2 and why the amounts of non-pecuniary damage awarded by the IACtHR since 1998 are generally higher than those from earlier cases.

FIGURE 3 - NPD FOR THE DIRECT VICTIM

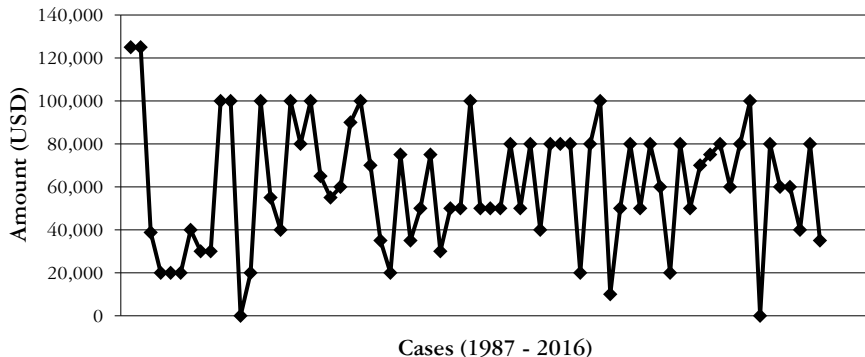


Figure 3 presents the amounts awarded exclusively for the non-pecuniary damage suffered by the direct victim in the cases under study. To allow for

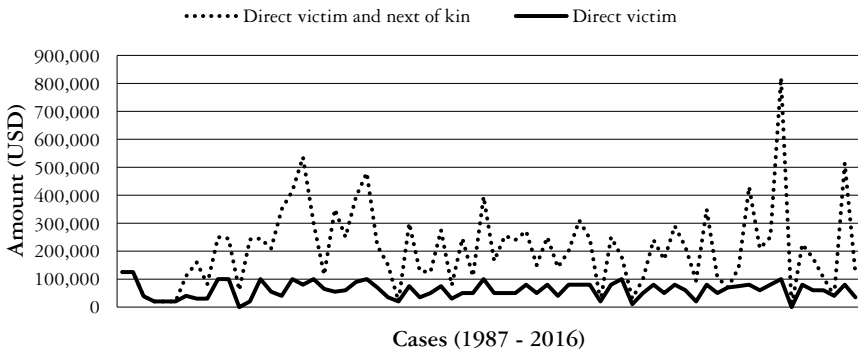
76. “White Van” (Paniagua Morales et al.) v. Guatemala, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 76, ¶ 110 (May 25, 2001) (separate opinion by de Roux Rengifo, J.); “Street Children” (Villagrán-Morales et al.) v. Guatemala, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 77, ¶ 68 (May 26, 2001); Trujillo Oroza v. Bolivia, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 92, ¶ 57 (Feb. 27, 2002).

77. *Valle Jaramillo*, Inter-Am. Ct. H.R. (ser. C) No. 192, ¶ 119; *La Cantuta v. Peru*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 162, ¶ 128 (Nov. 29, 2006); *id.*, Interpretation of the Judgment on Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 173, ¶ 31 (Nov. 30, 2007).

78. *Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 253, ¶ 286 (Nov. 20, 2012); *Osorio Rivera and Family members v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 274, ¶ 277 (Nov. 26, 2013); *Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 287, ¶ 533 (Nov. 14, 2014).

comparison with the data presented in Figure 2, in cases with several direct victims and different awarded amounts, the highest one is the one displayed. The dataset now excludes four of the seventy-four cases, since those did not provide the isolated figure of non-pecuniary damage awarded on behalf of the direct victims.⁷⁹ Even when considering the sum awarded just for the person deprived of their life, it is still possible to observe important differences in the amounts. The actual sums awarded to compensate the suffering of the persons deprived of their lives have oscillated between zero and 125,000 USD. An illustrative comparison of the data displayed in Figures 2 and 3 is offered in Figure 4. This graph presents together the amount of non-pecuniary damage awarded by the IACtHR following a single deprivation of life to compensate, on the one hand, the suffering experienced by the direct victim, and on the other hand, the harm caused to the direct victim and their next of kin.

FIGURE 4 - COMPARATIVE



IV. THE CRITERIA UNDERPINNING EQUITY AND JUDICIAL DISCRETION

The wide variation of the amounts awarded to compensate the suffering experienced by the direct victim of arbitrary deprivation of life (Figure 3) raises important questions about the rationale behind it. The lack of clarity about the method for valuing non-pecuniary damage was criticized many years ago by former Judge de Roux Rengifo, who suggested that a detailed evaluation of the different elements considered when quantifying non-pecu-

79. Either the Court awarded a global amount for the non-pecuniary damage suffered by both the direct victims and their next of kin (as in *White Van v. Guatemala*) or it did not award any amount under this heading because the victims had already been compensated under domestic law (as it happened in the other three cases). “*White Van*”, Inter-Am. Ct. H.R. (ser. C) No. 76; *La Cantuta*, Inter-Am. Ct. H.R. (ser. C) No. 162; *Valle Jaramillo*, Inter-Am. Ct. H.R. (ser. C) No. 192; Gomes Lund et al. (“*Guerilha do Araguaia*”) v. Brazil, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 219 (Nov. 24, 2010).

niary damage was to be preferred to an *en bloc* determination.⁸⁰ However, the IACtHR opted for a less transparent system in which it establishes a global sum as the fair compensation for the non-pecuniary damage experienced by the victims.

Although different elements that are accounted for have been mentioned through the years, it is rather difficult to establish the importance of each of them or the extent of their relevance across the case law. Moreover, the IACtHR has explicitly stated that not even its previous judgments establish clear guidelines, and “while case law may establish precedents, it cannot be invoked as a criterion to be universally applied.”⁸¹ Therefore, the IACtHR makes references to its jurisprudence on the topic when quantifying non-pecuniary damage and might use its past judgments as guidance for the case under consideration, but it does so without feeling obliged to follow such precedents.⁸² Besides the actual suffering of the victim and their next of kin, the judgments of the IACtHR have disclosed the following four criteria as relevant for quantifying compensation for non-pecuniary damage: the acknowledgment of international responsibility by the state; the vulnerability of the victim; the severity of the crime; and the time elapsed since the commission of the crime. Besides, different judges of the IACtHR have asserted that the number of victims in a given case is a further determining factor.⁸³

The IACtHR highlighted the relevance of the state’s acknowledgment of international responsibility when deciding on reparations in *El Amparo v. Venezuela* in 1996. It stated that this type of acknowledgment was to be considered a mitigating factor for determining the quantum of the award, which was later reiterated in other cases.⁸⁴ It is not surprising that a state’s acknowledgment of its international responsibility could be a factor for consideration when quantifying non-pecuniary damage. The IACtHR has asserted in numerous opportunities that the acknowledgment of international responsibility made by the state constitutes an important contribution to the development of the judicial proceedings before the Court and, overall, a step towards the enforcement of the principles consecrated in the American

80. “*Street Children*”, Inter-Am. Ct. H.R. (ser. C) No. 77, ¶ 3 (separate opinion by de Roux Rengifo, J.).

81. *El Amparo v. Venezuela*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 28, ¶ 34 (Sept. 14, 1996).

82. Neira Alegría et al. v. Peru, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 29, ¶ 55 (Sept. 19, 1996); “*White Van*”, Inter-Am. Ct. H.R. (ser. C) No. 76, ¶ 104; Cantoral Huamaní and García Santa Cruz v. Peru, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 167, ¶ 177 (July 10, 2007).

83. BERISTAIN, DIÁLOGOS, *supra* note 28, at 31, 178.

84. *El Amparo*, Inter-Am. Ct. H.R. (ser. C) No. 28, ¶ 34; Trujillo Oroza v. Bolivia, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 92, ¶ 82 (Feb. 27, 2002); González et al. (“*Cotton Field*”) v. Mexico, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 584 (Nov. 16, 2009).

Convention on Human Rights.⁸⁵ Indeed, a state's acknowledgment of international responsibility is in itself a form of reparation under international law,⁸⁶ and, since 2001, constitutes a habitual measure of reparation the IACtHR orders as satisfaction.⁸⁷ Nonetheless, the Court seemed to contradict the stance adopted in *El Amparo v. Venezuela* only five days later, when it assessed the suffering experienced by the victims in *Neira Alegría et al. v. Peru*. In the latter case, the Court established the same amount to compensate for the non-pecuniary damage suffered by each victim as in the former case, although the state had not recognized its international responsibility.⁸⁸

The second criterion the IACtHR has identified as relevant for the assessment of non-pecuniary damage is the vulnerability of the victims. This idea first appeared in the "*Street Children*" *v. Guatemala* case when establishing compensation following the deprivation of life of five youths, three of whom were minors.⁸⁹ It has become part of the Court's *jurisprudence constante* to emphasize that states have an additional obligation of protection with respect to children,⁹⁰ recognized in Article 19 of the American Convention, and that, when subject to a violation of human rights, minors experience suffering in a particularly intense manner due to their special vulnerability.⁹¹ This criterion has been reiterated numerous times in the IACtHR's case law.⁹² Nevertheless, it is still possible to find specific judgments in

85. Benavides Cevallos *v. Ecuador*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 38, ¶ 57 (June 19, 1998); *Trujillo Oroza*, Inter-Am. Ct. H.R. (ser. C) No. 92, ¶ 118; Carpio Nicolle *et al. v. Guatemala*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 117, ¶ 84 (Nov. 22, 2004); *González et al.*, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 584.

86. G.A. Res. A/56/83, Responsibility of States for Internationally Wrongful Acts, Resolution adopted by the General Assembly, at Articles 34 and 37.2 (Jan. 28, 2002); G.A. Res. 60/147, 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, Article 22.6 (Dec. 16, 2005).

87. Durand and Ugarte *v. Peru*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 89, ¶ 4 (Dec. 3, 2001); Cantoral Benavides *v. Peru*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 109, ¶ 7 (Dec. 3, 2001).

88. Neira Alegría *et al. v. Peru*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 29, ¶ 58 (Sept. 19, 1996).

89. "Street Children" (Villagrán-Morales *et al.*) *v. Guatemala*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 77, ¶ 91.b (May 26, 2001).

90. "Street Children" (Villagrán-Morales *et al.*) *v. Guatemala*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶¶ 194–196 (Nov. 19, 1999); Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, Inter-Am. Ct. H.R. (ser. A) No. 17 ¶¶ 87–91 (Aug. 28, 2002); Bulacio *v. Argentina*. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 100, ¶ 133 (Sept. 18, 2003); Molina Theissen *v. Guatemala*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 108, ¶ 67 (July 3, 2004).

91. Caracazo *v. Venezuela*. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 95, ¶ 102 (Aug. 29, 2002); *Bulacio*, Inter-Am. Ct. H.R. (ser. C) No. 100, ¶ 98; Pueblo Bello Massacre *v. Colombia*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 140, ¶ 258.b (Jan. 31, 2006).

92. Caracazo, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 95, ¶ 102; *Molina Theissen*, Inter-Am. Ct. H.R. (ser. C) No. 108, ¶ 67; "Mapiripán Massacre" *v. Colombia*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 134, ¶ 288.c.iii (Sept. 15, 2005); Ituango Massacres *v. Colombia*, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No.

which the youth of the direct victim has not been used to increase the amount of non-pecuniary damage,⁹³ which adds to the lack of clarity of the Court's practice.⁹⁴

The third criterion highlighted by the case law as a determinant to value non-pecuniary damage concerns the severity of the crime committed. There is a range of circumstances examined by the IACtHR in which an arbitrary deprivation of life led to a violation of Article 4. There are cases of extra-legal executions, forced disappearances, the use of the death penalty, and the commission of crimes indirectly attributed to the state (given the failure to adopt preventive measures). Although the Court has not been explicit as to whether it evaluates these situations differently to determine non-pecuniary damage, within three decades of case law regarding the right to life the highest amounts were awarded in two judgments concerning forced disappearances.⁹⁵ At the same time, when dealing with cases involving both execution and forced disappearance, only once has the Court awarded a higher amount to the next of kin of the victims of forced disappearance.⁹⁶ However, the Court made neither a distinction in the amounts in favor of the direct victims in the case,⁹⁷ nor an analogous differentiation in similar cases.⁹⁸ On its part, the academic literature has not mentioned any distinctions drawn by the Court when establishing non-pecuniary damage for extra-legal executions and forced disappearances. Nevertheless, it has highlighted a difference depending on whether the violations had been committed by state agents or indirectly attributed to the state due to the lack of adoption of preventive measures.⁹⁹

148, ¶ 390.d.iii (July 1, 2006); *Goiburú et al. v. Paraguay*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 153, ¶ 160.b.iii (Sept. 22, 2006).

93. *Aloeboetoe et al. v. Suriname*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 15 (Sept. 10, 1993); *Sahoyamaya Indigenous Community v. Paraguay*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 146, (Mar. 29, 2006); *Peasant Community of Santa Barbara v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 299 (Sept. 1, 2015).

94. The Court has also referred to the special vulnerability of victims in connection to pregnant women. However, within the case law concerning arbitrary deprivation of lives, this has so far only become relevant to the suffering experienced by the victims' next of kin. *Pueblo Bello Massacre*, Inter-Am. Ct. H.R. (ser. C) No. 140, ¶¶ 239, 258.c; *Nadege Dorzema et al. v. Dominican Republic*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 251, ¶ 288.d (Oct. 24, 2012).

95. In fact, in cases concerning this type of crime, the quantum of non-pecuniary damage has never been lower than 30,000 USD.

96. *Pueblo Bello Massacre*, Inter-Am. Ct. H.R. (ser. C) No. 140, ¶¶ 239, 258.c.

97. *Id.* ¶¶ 140, 258; see also *Rodríguez Vera et al.* (The Disappeared from the Palace of Justice) v. Colombia, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 287, ¶ 603 (Nov. 14, 2014).

98. *La Cantuta v. Peru*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 162 (Nov. 29, 2006); *Rodríguez Vera et al.*, Inter-Am. Ct. H.R. (ser. C) No. 287.

99. Antkowiak, *supra* note 21, at 397; Ruth Rubio-Marín et al., *Repairing Family Members: Gross Human Rights Violations and Communities of Harm*, in *THE GENDER OF REPARATIONS: UNSETTLING SEXUAL HIERARCHIES WHILE REDRESSING HUMAN RIGHTS VIOLATIONS* 215–290, 247 (Ruth Rubio-Marín ed. 2009).

The fourth criterion the IACtHR has stated as relevant for determining non-pecuniary damage is the time elapsed since the deprivation of life had taken place—or the forced disappearance had begun—and the moment in which the Court is quantifying the amount of compensation. This is an indication of the length of the situation of impunity surrounding the violation.¹⁰⁰ It is certainly unsurprising that the length of time it takes a state to provide justice for the victim, following an arbitrary deprivation of life, should be a determinant for establishing the amount of non-pecuniary damage that must be paid as compensation. There are, at least, two strong reasons that would justify the relevance of this factor: First, the delay in providing redress for an arbitrary deprivation of life, including identifying and prosecuting those individuals responsible for the violation,¹⁰¹ worsens the initial violation by adding on to it a deeper sense of injustice;¹⁰² second, if the sum paid as compensation is not increased as a consequence of the delay in providing redress, its value would be affected by inflation, as discussed below.

A final criterion to consider is the number of victims in a given case. While this factor has not appeared expressly in the IACtHR's judgments, as mentioned above, different judges have affirmed that the number of direct victims in a case influences the amount awarded to each of them, with higher individual sums for non-pecuniary damage in cases with fewer victims.¹⁰³ This has also been suggested by the academic literature,¹⁰⁴ where it has been proposed that, in large scale cases, the award of the typical level of compensation could place states in a situation of extreme financial hardship and even risk a lack of compliance with the reparations ordered.¹⁰⁵ In fact, during the proceedings of a case involving over 500 potential victims, a state has gone as far as to submit to the Court that if the usual level of compensation awards were to be established, that would lead to an international obligation "difficult to handle."¹⁰⁶

100. Ibsen Cárdenas and Ibsen-Peña v. Bolivia, Merits, Reparation, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 217, ¶ 283 (Sept. 1, 2010); Anzualdo-Castro v. Peru, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 202, ¶ 222 (Sept. 22, 2009).

101. El Amparo v. Venezuela, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 28, ¶ 4 (Sept. 14, 1996); Juan Humberto Sánchez v. Honduras, Preliminary Objection, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 99, ¶ 10 (June 7, 2003); Myrna Mack Chang v. Guatemala, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 101, ¶ 5 (Nov. 25, 2003).

102. *Myrna Mack Chang*, Inter-Am. Ct. H.R. (ser. C) No. 101, ¶ 156; *Id.* ¶¶ 18, 46, 47 (reasoned opinion by Cançado, J.); *Plan de Sánchez Massacre v. Guatemala*, Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 116, ¶¶ 83, 95; *Id.* ¶¶ 9, 10, 12 (separate opinion by Cançado, J.) (Nov. 19, 2004); "Mapiripán Massacre" v. Colombia, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 134, ¶¶ 238, 285, 297 (Sept. 15, 2005).

103. BERISTAIN, *DIALOGOS*, *supra* note 28, at 31, 178. See also *Plan de Sánchez Massacre*, Inter-Am. Ct. H.R. (ser. C) No. 116, ¶¶ 27, 28 (separate opinion by García-Ramírez, J.).

104. Antkowiak, *supra* note 21, at 399–400; Rubio-Marín et al., *supra* note 99, at 248.

105. Antkowiak, *supra* note 21, at 399–400.

106. Miguel Castro Castro Prison v. Peru, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 160, ¶ 412 (Nov. 25, 2006).

V. THE MODEL FOR STATISTICAL ANALYSIS

The model tests the influence of the five mentioned elements (acknowledgment of state responsibility, vulnerability of the victim, severity of the crime, length of impunity, and number of victims) on the amount of non-pecuniary damage awarded to each of the direct victims in the thirty years under examination. It consists of a multivariate hierarchical regression, nested by case, in which the dependent variable is the quantum awarded to compensate the non-pecuniary damage suffered by each of the direct victims in all the cases involving arbitrary deprivation of lives.¹⁰⁷ Since the amounts under examination have been awarded over a period of thirty years, two versions of the model have been run, one with the actual amounts determined by the Court and one with deflated amounts.

The model with deflated amounts takes into account the depreciation of the value of the awards due to inflation over the years. The use of deflated amounts helps to compare the real value of the awards by accounting for their purchasing power.¹⁰⁸ This is consistent with the actual practice of the IACtHR, since the Court has been concerned about preserving the purchasing power of the amounts of compensation awarded since its earliest case law, as it expressly stated in its first interpretation of a judgment.¹⁰⁹ That is the reason why the IACtHR developed the practice of determining the sums of compensation in USD. It realized that the use of a hard currency helps to preserve the value of the amounts awarded against inflation and the devaluation of volatile currencies.¹¹⁰ Consequently, the deflation of amounts allows for testing the significance of the different criteria while accounting for the loss of the real value of the amounts due to inflation over the years. The amounts of non-pecuniary damage were all deflated to the value of the United States Dollar at the time in which the IACtHR issued its first judgment on reparations in July 1989. For this purpose, the inflation calculator provided by the United States Department of Labor was used and the deflated amounts are represented in the Figure 5. To allow for comparison with the data presented in Figure 3, in cases in which there were several direct victims Figure 5 presents the deflated amount corresponding to the

107. The use of a two-level model, nested by case, is based on the assumption that the collected data (awarded amounts) follows a clustered structure in which the rationale for the determination of the awards within each case share (unaccounted for) reasons that are not present in other cases. Nesting the data by case allows for accounting for this closer connection of the amounts awarded within a case. The equation for the model is $Y_{ij} = \mu + \alpha_i + \beta_j$.

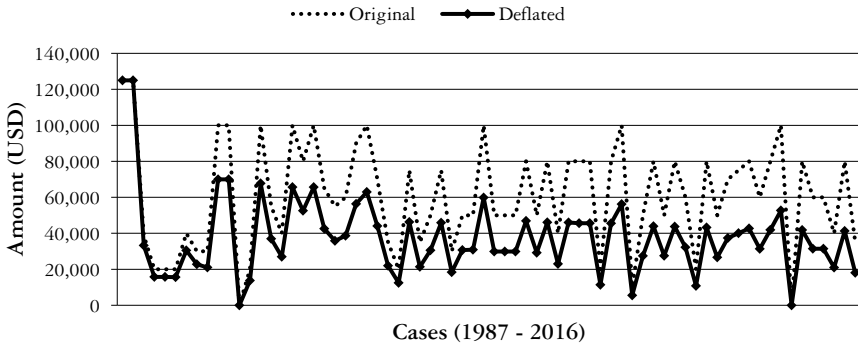
108. A quantitative study of non-pecuniary damage within the jurisprudence of the ECtHR has asserted the relevance of the purchasing power of compensation awards when quantifying the amounts. Altwicker-Hámori et al., *supra* note 5, at 20.

109. Velásquez Rodríguez, Interpretation of the Judgment of Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 9, ¶ 31 (Aug. 17, 1990).

110. *Id.* ¶¶ 41, 42.

highest amount awarded to compensate the suffering of one direct victim.¹¹¹

FIGURE 5 - DEFLATED AMOUNTS



The five independent variables are those mentioned in the Section IV, *supra*. The first is the length of impunity. It is calculated as the number of months elapsed since the deprivation of life took place—or the forced disappearance began—up to the day on which the IACtHR issued its judgment on reparations. Following the Court’s assertions, it would be expected that the lengthier the impunity, the higher the amount of non-pecuniary damage awarded. The second independent variable is the number of victims. The expectation is that a higher number of victims in a case would lead to a lower quantum of non-pecuniary damage for each of them. The third independent variable is the acknowledgment of international responsibility by the state. It is a binary variable, depending on whether the state has acknowledged its international responsibility (at least partially) before the IACtHR or not. Since the Court has affirmed that the acknowledgment of responsibility affects the amount awarded for non-pecuniary damage, the model examines whether the act of acknowledgment leads to a lower amount of non-pecuniary damage. The fourth independent variable is the vulnerability of the victim, indicated by whether the direct victim was a minor or not.¹¹² According to the IACtHR, the minority-age status of the direct victims should cause an increase in the award, compared to cases in which the victims were adults. The final independent variable refers to the severity of the crime. This has been coded through the use of two dummy variables, one indicating cases of forced disappearances and a second identifying other cases of arbitrary deprivation of lives directly attributed to the

111. The inflation calculator is available at *CPI Inflation Calculator*, BUREAU OF LABOR STATISTICS, https://www.bls.gov/data/inflation_calculator.htm [last visited Nov. 25, 2020].

112. As indicated in *supra* note 94, within the Court’s case law concerning arbitrary deprivations of life, the vulnerability of the direct victim has only been referred to when it comes to minors, as no pregnant women have been identified as direct victims.

state. The absence of both indications represents cases in which the violation of the right to life was not directly attributable to the state, but attributed due to a lack of prevention. The expectation is that amounts will be higher in the first two instances—perhaps even higher in cases of forced disappearance.

VI. THE OUTCOME OF THE MULTIVARIATE REGRESSION

The multivariate hierarchical regression was performed with the data provided by seventy judgments, encompassing a total of 476 victims.¹¹³ As discussed above, from the initial eighty-six cases, twelve could not be included in the statistical analysis as the judgments did not indicate a precise amount of non-pecuniary damage, while four others had to be excluded because the precise amount of non-pecuniary damage established in favor of the direct victims was unknown.

The outcome of the regression is extremely interesting. The most significant result is that the severity of the crime and the vulnerability of the victim appear as the most important predictors of the amount of compensation awarded to redress the non-pecuniary damage suffered by the victims. The variable indicating that the violation of the right to life took place in the context of a forced disappearance, the variable representing an execution directly attributable to the state, and the variable expressing that the victim was a minor all appear statistically significant ($p < 0.01$). Based on these results, it can be affirmed that the model supports the expectation that higher amounts for non-pecuniary damage are awarded when the violation of the right to life is directly attributed to the state compared to those cases in which it is indirectly attributed due to the lack of adoption of preventive measures in favor of the victim. The results also support the assumption that the Court determines higher awards of compensation to redress the non-pecuniary damage experienced by victims that are minors, compared to adult victims.

The model with deflated amounts had an almost identical outcome to the original one. Once again, both variables indicating the severity of the crime, as well as the one expressing the vulnerability of the victim, are statistically significant ($p < 0.01$). This reinforces the results of the original model suggesting that higher amounts are awarded for non-pecuniary damage when the arbitrary deprivation of life is directly attributable to the state, as well as when the victims are minors.

The fact that none of the other variables appear to be statistically significant is also very interesting, as it raises reasons for concern. The Court has expressly indicated in different judgments that the state's acknowledgment of international responsibility and the length of the violation were

113. The full results are presented in Appendix I.

factors considered when quantifying the compensation due for non-pecuniary damage. Similarly, different judges (as well as the academic literature) have stated that the number of victims in a given case plays a role in determining the level of award of non-pecuniary damage established by the Court. However, the results of this study do not support such claims. This calls into question the consistency of the IACtHR's practice for quantifying compensation for non-pecuniary damage.

Furthermore, the statistically significant variables appear to be insufficient to explain the practice undertaken by the Court when quantifying its awards for non-pecuniary damage. On multiple occasions, the IACtHR has established equal amounts of compensation for non-pecuniary damage in favor of victims deprived of their lives under similar circumstances, despite some of them being minors and others adults, or even cases in which the amounts awarded have been higher for adult victims than for minors.¹¹⁴ This can be observed in, among others, the case of *Peasant Community of Santa Barbara v. Peru*.¹¹⁵ The case concerned the forced disappearance of fifteen individuals, seven of them children, perpetrated by members of the Peruvian army. The attack on the Peasant Community of Santa Barbara took place amidst the systematic practice of human rights violations carried out by the state against people suspected of belonging to illegal armed groups during the internal conflict that existed in Peru from the late 1980s through 2000.¹¹⁶ The IACtHR ruled on the responsibility of Peru for the forced disappearance of the fifteen victims, including the seven minors, which began in July 1990.¹¹⁷ Although the Court emphasized the particular gravity of such a crime when committed against children, amounting to the additional breach of Article 19 of the American Convention,¹¹⁸ it then established the same amount to compensate the non-pecuniary damage experienced by all the victims, irrespective of their age.¹¹⁹ This determination of an equal amount of compensations for non-pecuniary damage for both the adult and minor victims of forced disappearance is difficult to square with the criteria discussed above and seems to indicate the existence of other factors behind these awards.

114. *See, e.g.*, *Aloeboetoe et al. v. Suriname, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 15 (Sept. 10, 1993)*; “Street Children” (*Villagrán-Morales et al. v. Guatemala, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 77 (May 26, 2001)*); *Sawhoyamaya Indigenous Community v. Paraguay, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 146, (Mar. 29, 2006)*; *Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 253 (Nov. 20, 2012)*; *Landaeta Mejías Brothers et al. v. Venezuela, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 281 (Aug. 27, 2014)*; *Peasant Community of Santa Barbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 299 (Sept. 1, 2015)*.

115. *Peasant Community of Santa Barbara, Inter-Am. Ct. H.R. (ser. C) No. 299.*

116. *Id.* ¶ 85.

117. *Id.* ¶ 191.

118. *Id.* ¶¶ 192, 194.

119. *Id.* ¶ 338.

Close attention to some of the judgments the IACtHR has issued in rather similar cases can better illustrate these concerns. For instance, compensation for non-pecuniary damage was ordered in the cases *Gómez-Palomino v. Peru* and *Ticona Estrada et al. v. Bolivia*, both dealing with forced disappearances. The first of these cases concerned the forced disappearance of Santiago Gómez-Palomino, which was part of a “systematic and generalized practice implemented by the state [of Peru] as a mechanism of anti-subversive struggle”¹²⁰ between the years 1989 and 1993.¹²¹ In July 1992, Santiago Gómez-Palomino was taken from his place of residence by a group of armed individuals in uniform. Before the IACtHR, Peru recognized that the victim was arrested by government officials and that no information was given regarding his whereabouts.¹²² Following the abduction of Santiago Gómez-Palomino, his next of kin were unable to learn the truth about his whereabouts or fate.¹²³ The second case involved the forced disappearance of Renato Ticona Estrada, which took place during the military regime that interrupted Bolivia’s democratic order between 1980 and 1982.¹²⁴ Renato Ticona Estrada was illegally detained, together with his brother, by a military patrol in July 1980. According to Bolivia’s acknowledgement before the Court, both victims were severely beaten and tortured by the military agents.¹²⁵ While Renato’s brother, Hugo, was transferred to a medical facility and later remained imprisoned until November of that year,¹²⁶ the night of their detention was the last time that Renato Ticona Estrada was seen by any of his next of kin.¹²⁷

These two cases were decided by the IACtHR three years apart, in November 2005 and November 2008, respectively. The facts of the cases are relatively similar, involving the forced disappearance of an adult victim, carried out by state agents, with both Peru and Bolivia acknowledging their international responsibility during the proceedings before the IACtHR. The length of the situation of impunity surrounding the crime does differ between the cases, being more prolonged in the case of Renato Ticona Estrada, as his forced disappearance began in 1980, while the crime against Santiago Gómez-Palomino commenced in 1992. Nonetheless, the amount of compensation ordered by the IACtHR to redress the non-pecuniary damage experienced by the victims was 100,000 USD in the case *Gómez-Palomino v. Peru* and 80,000 USD in the case *Ticona Estrada et al. v. Bolivia*. The justification for the difference between the amounts awarded is not appar-

120. *Gómez Palomino v. Peru*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 136, ¶ 54.1 (Nov. 22, 2005).

121. *Id.* ¶¶ 54.1–54.5.

122. *Id.* ¶ 93.

123. *Id.* ¶¶ 54.11, 54.19.

124. *Ticona Estrada et al. v. Bolivia*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 191, ¶¶ 45–49 (Nov. 27, 2008).

125. *Id.* ¶ 51.

126. *Id.* ¶ 52.

127. *Id.* ¶ 51.

ent, given the similarity between the cases and the lengthier period of impunity surrounding the case against Bolivia.

Overall, the results of our analysis lead to two possible explanations. The first one would be that the five factors disclosed by the case law are indeed all the criteria used by the IACtHR, but the Court has so far failed to apply them in a wholly consistent fashion when establishing the sums to compensate non-pecuniary damage.¹²⁸ An alternative (or ancillary) explanation is that the IACtHR has further criteria that are used when quantifying these awards, but has decided not to disclose them. Certainly, a lack of consistent criteria, rather than a mere lack of transparency, would be a much more serious problem. As highlighted by Dinah Shelton, inconsistent awards affect the fairness of the legal system as a whole and can erode confidence in the justice dispensed by human rights mechanisms.¹²⁹ In other words, the existence of undisclosed criteria that the IACtHR has consistently been using to determine awards would be preferable – and more reassuring – than thirty years of inconsistently determined reparations. A lack of consistency in the award of compensation for non-pecuniary damage could lead to justified feelings of injustice, as “fundamental fairness requires that similarly situated parties be treated in a similar fashion by the legal system.”¹³⁰

VII. THE SEARCH FOR FURTHER CLARITY

It would not be unprecedented if the IACtHR was to maintain undisclosed criteria for the determination of amounts of compensation for non-pecuniary damage, since this is the stance adopted by the European Court of Human Rights, as mentioned above. In 2006, the ECtHR created a special Unit within its Registry to advise this court on the level of awards to be established in its judgments, so as to provide consistency across the jurisprudence.¹³¹ It is reported that this Unit has produced a series of tables that set out the method for determining awards for non-pecuniary damage in respect of the different rights protected under the European Convention on Human Rights.¹³² Furthermore, the Unit is believed to have produced “adjustment tables”, which take into consideration the standard of living in the States Parties to the Convention and, consequently, allow for the adjust-

128. This possibility has been suggested by Carrillo, *Justice in Context*, *supra* note 28, at 524.

129. SHELTON, REMEDIES, *supra* note 37, at 376.

130. *Id.*

131. The Unit was established following the recommendations of a 2005 Report elaborated at the request of the Secretary General of the Council of Europe and the President of the European Court of Human Rights. The Right Honourable The Lord Woolf et al., *Review of the Working Methods of the European Court of Human Rights*, COUNCIL OF EUROPE (Dec. 2005), at 6, 40–41, and 68.

132. DAVID HARRIS ET AL., HARRIS, O’BOYLE AND WARWICK: LAW OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS 163–64 (2018); Ichim, *Just Satisfaction*, *supra* note 5, at 121.

ment of the level of the award to those conditions.¹³³ Nevertheless, these tables remain unpublished, reserved for the internal use of the ECtHR.¹³⁴

With respect to the IACtHR, neither the academic literature nor the Court itself have previously mentioned the existence of further undisclosed criteria. There have been no suggestions either as to the possible existence of tables pre-determining a quantum to be awarded. The actual level of awards appears to be congruent with the Court's assertion of the use of its earlier judgments as guidance for determining compensation for non-pecuniary damage in later cases, undoubtedly more so than with a precise pre-established tabulation. The data also seems to refute the possibility of the IACtHR taking into consideration states' living standards when determining the amounts for compensating non-pecuniary damage.

If we were to make conjectures as to possible undisclosed criteria the IACtHR could have been using to quantify compensation for non-pecuniary damage, we would suggest five factors, all of which could be explored in future research. None of these factors were included in the present analysis, as the underlying principle of the proposed model was to identify and test all the criteria revealed by the IACtHR within three decades of jurisprudence. However, if we were to ponder potential additional factors the Court might have used to quantify its awards, but which it has not explicitly mentioned, such factors may have included the following. The first factor is the amount requested by the victims of the given case. It would be relevant to study whether there is a correlation between the victims' requested amounts and those ordered by the IACtHR. If such a correlation existed, it could provide the victims and their representatives with further valuable tools for future litigation. A second conceivable factor is one suggested to be applicable to the ECtHR: whether the quantum of the awards is affected by the level of agreement among the judges of the case.¹³⁵ In their collective study, Altwicker-Hámori, Altwicker, and Peters asserted that the ECtHR tends to award lower amounts of compensation when the judgment is not unanimously reached.¹³⁶

A further group of potential factors relate to the remaining orders of reparation established by the IACtHR in a given case. These factors include

133. ICHIM, JUST SATISFACTION, *supra* note 5, at 159; HARRIS ET AL., *supra* note 132, at 163. This seems coincidental with the findings from the study conducted by Altwicker-Hámori et al., which indicated that the amounts awarded by the ECtHR seem to be partly determined by the Respondent State's living costs. Altwicker-Hámori et al., *supra* note 5, at 41.

134. HARRIS ET AL., *supra* note 132, at 163–64.

135. Altwicker-Hámori et al., *supra* note 5.

136. *Id.* at 39. The study by Altwicker-Hámori et al. also suggests that an additional factor influencing the ECtHR's compensation awards is whether the victim is a physical or a legal person. However, that factor could not apply to the Inter-American Human Rights System, as legal entities lack of *jus standi* before the IACtHR. See Entitlement of legal entities to hold rights under the Inter-American Human Rights System (Interpretation and scope of Article 1(2), in relation to Articles 1(2), 8, 11(2), 13, 16, 21, 24, 25, 29, 30, 44, 46 and 62(3) of the American Convention on Human Rights, as well as of Article 8(1)(A) and (B) of the Protocol of San Salvador). Advisory Opinion OC-22/16, Inter-Am. Ct. H.R. (ser. A) No. 22, ¶ 2 (Feb. 26, 2016).

the award of non-pecuniary damage for the victims' next of kin, the amount to compensate any existing pecuniary damage, and the non-financial measures of reparation ordered. As to the first of these, it is possible to wonder whether the amounts the IACtHR orders as compensation for the non-pecuniary damage experienced by the victims' next of kin is connected with the quantum ordered to redress the suffering of the direct victims themselves; in other words, if lower amounts to compensate the suffering of the direct victims correlate with higher sums in favor of their close relatives (and vice versa). Similarly, the quantum established to compensate the pecuniary damage in a case might be connected with the amount determined to redress non-pecuniary damage. While no relation between the different amounts of compensation—pecuniary and non-pecuniary—has thus far been suggested, it could be interesting to explore whether higher amounts of pecuniary damage correlate with lower amounts of non-pecuniary damage (and vice versa). Lastly, another factor that may have possibly guided the IACtHR's awards relates to the other measures of reparation ordered in a case. It would also be pertinent to examine whether lower amounts for non-pecuniary damage are justified by the determination of other measures of reparation, as the Court might be deciding that, in a given case, the suffering of the victims is better addressed by non-financial measures, with lower levels of compensation being ordered as a consequence. As mentioned above, this Article did not engage with the examination of such potential criteria, as these exceeded the motivation and scope of this study, but they could be explored in future research in the field.

Regardless of whether the IACtHR has indeed adopted secret criteria, emulating its European counterpart, or if it has been inconsistent in the application of the disclosed criteria when establishing compensation, what must be affirmed is that the general lack of clarity as to the criteria used by the IACtHR to quantify awards for non-pecuniary damage is in itself worrisome. On the one hand, given that other international courts are turning to the IACtHR's case law as a primary source of inspiration to determine non-pecuniary damage themselves, it would be desirable if the Court was to enhance the clarity of its practice, to continue to perform this leading role conferred upon it by other courts. On the other hand, the lack of certainty as to the criteria used by the IACtHR to quantify non-pecuniary damage is extremely detrimental for the victims of a violation. In particular, when it concerns an arbitrary deprivation of life, the close relatives of individuals deprived of their life who turn to the IACtHR in search of justice have to wait, on average, almost seventeen years to receive compensation for the suffering both their loved ones and themselves have experienced.¹³⁷ Following such a lengthy time, they obtain a ruling whose rationale and underlying criteria are difficult to understand.

137. This average was calculated based on the length of impunity of the cases under analysis.

The IACtHR can, perhaps, learn from the experience of the ECtHR. The creation of a division within its Secretary, which can study and harmonize the Court's case law on damages and perform an advisory role to the Court when deciding compensation for the victims of a case, could be a welcome contribution to the emerging international law on damages for human rights violations. Surely, this should not deprive the Court of its judicial discretion when determining awards on a specific case, nor turn the law on damages into the outcome of a calculating machine—to remember, once again, the wise words of a former President of the Court¹³⁸—but it could undoubtedly contribute to the consistency of the case law. The IACtHR could possibly learn as well from the criticisms addressed at the secrecy in which the ECtHR has decided to keep the outcome of the work of its special Unit¹³⁹ and opt for a more transparent policy. This would be of invaluable help not only to the victims of human rights violations approaching the Inter-American system in search of redress, but also to the other international courts that continue to look to San José (Costa Rica) for inspiration when ordering reparations themselves.

CONCLUSION

The system of reparations developed by the IACtHR within its relatively short history has displayed many praiseworthy qualities. The diversity of the measures of reparation ordered by the Court to address the violations of the American Convention on Human Rights is certainly innovative and has become a source of inspiration for other international courts. However, the lack of clarity as to the criteria used when determining compensation for non-pecuniary damage is problematic. The principles of equity and judicial discretion, while valuable, are rather vague standards that fail to provide transparency and foreseeability regarding the amounts the Court establishes to redress the suffering experienced by an individual arbitrarily deprived of their life.

A comprehensive empirical study of the IACtHR's jurisprudence, such as the present one, was required in order to ascertain and disclose problems in the Court's practice for quantifying compensation for non-pecuniary damage. After identifying the criteria the Court has highlighted as relevant for the determination of its awards to compensate non-pecuniary damage, these criteria were tested through statistical analysis to establish their ability to explain the rationales behind the different amounts awarded. The results

138. "Street Children" (Villagrán-Morales et al.) v. Guatemala, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 77, ¶ 37 (May 26, 2001) (separate opinion by Cançado, J.).

139. Izmir Declaration, adopted by the High Level Conference on the Future of the European Court of Human Rights organized within the framework of the Turkish Chairmanship of the Committee of Ministers of the Council of Europe (Apr. 27, 2011) ¶ F.2(d); ICHIM, JUST SATISFACTION, *supra* note 5, at 122, 160–63, 260; HARRIS ET AL., *supra* note 132, at 163–64.

revealed, on one hand, that some of the criteria the IACtHR has announced as determinants for calculating compensation actually lack statistical significance. On the other hand, while the findings confirm that two of the disclosed criteria—the severity of the crime at stake and the vulnerability of the victim—seem to consistently influence the Court’s awards, these criteria are insufficient to justify the actual amounts awarded. The relevance of these findings should not be underestimated. They raise fundamental questions as to the consistency of the Court’s practice and as to the existence of other factors that can help to further explain how these awards are quantified.

The findings of this Article lead to the conclusion that either the IACtHR is not revealing other criteria it uses when determining the quantum of the awards or it has been inconsistent in the application of the criteria underlying these determinations (if not both). Both possibilities require the Court to adopt future steps to strengthen the transparency and foreseeability of the system. Whether these should entail disclosing existing secret guidelines or developing a more clear and consistent practice is known only by the judges sitting at the IACtHR. Whichever the case may be, these steps will be a needed contribution to further improve the work of a court that is becoming a world-leading authority on the international law on damages for human rights violations.

APPENDIX I

Multilevel Hierarchical Models

	Model 1	Model 2
Dependent variables:	Amounts of NPD	Deflated amounts
Length	9.76 {6}	5.29 {4}
No. of victims	-328.56 {286}	-238.16 {226}
Minority status	3415.49*** {308}	2146.06*** {206}
Acknowledgment	4343.21 {6489}	-78.67 {5123}
Forced Disappearance	11717.5*** {2025}	6431.77*** {1366}
Execution	10101.99*** {1269}	5577.92*** {854}
Constant	49042.89*** {5349}	33341.95*** {4199}
Observations	476	476
No. of cases	70	70
Standard errors in brackets	*** p<0.01, ** p<0.05, * p<0.1	

APPENDIX II

List of 86 cases concerning arbitrary deprivations of life

1. Velásquez Rodríguez v. Honduras, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 7 (July 21, 1989);
2. Godínez Cruz v. Honduras, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 8 (July 21, 1989);
3. Aloeboetoe et al. v. Suriname, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 15 (Sept. 10, 1993);
4. El Amparo v. Venezuela, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 28 (Sept. 14, 1996);
5. Neira Alegría et al. v. Peru, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 29 (Sept. 19, 1996);
6. Caballero Delgado and Santana v. Colombia, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 31 (Jan. 29, 1997);
7. Benavides Cevallos v. Ecuador, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 38 (June 19, 1998);
8. Garrido and Baigorria v. Argentina, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 15 (Aug. 27, 1998);
9. Case of Castillo Páez v. Peru, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 43 (Nov. 27, 1998);
10. "White Van" (Paniagua Morales et al.) v. Guatemala, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 76 (May 25, 2001);
11. "Street Children" (Villagrán-Morales et al.) v. Guatemala, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 77 (May 26, 2001);
12. Barrios Altos v. Peru, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 87 (Nov. 30, 2001);
13. Durand and Ugarte v. Peru, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 89 (Dec. 3, 2001);
14. Bámaca Velásquez v. Guatemala, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 91 (Feb. 22, 2002);
15. Trujillo Oroza v. Bolivia, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 92 (Feb. 27, 2002);
16. Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 94 (June 21, 2002);
17. Caracazo v. Venezuela, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 95 (Aug. 29, 2002);
18. Las Palmeras v. Colombia, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 96 (Nov. 26, 2002);
19. Juan Humberto Sánchez v. Honduras, Preliminary Objection, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 99 (June 7, 2003);
20. Bulacio v. Argentina, Merits, Reparations and Costs, Inter-Am. Ct.

- H.R. (ser. C) No. 100 (Sept. 18, 2003);
21. Myrna Mack Chang v. Guatemala, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 101 (Nov. 25, 2003);
 22. Molina Theissen v. Guatemala, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 108 (July 3, 2004);
 23. 19 Merchants v. Colombia, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 109 (July 5, 2004);
 24. Gómez Paquiyauri Brothers v. Peru, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 110 (July 8, 2004);
 25. “Juvenile Reeducation Institute” v. Paraguay, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 112 (Sept. 2, 2004);
 26. Carpio Nicolle et al. v. Guatemala, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 117 (Nov. 22, 2004);
 27. Huilca Tecse v. Peru, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 121 (Mar. 3, 2005);
 28. “Mapiripán Massacre” v. Colombia, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 134 (Sept. 15, 2005);
 29. Gómez Palomino v. Peru, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 136 (Nov. 22, 2005);
 30. Blanco Romero et al v. Venezuela, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 138 (Nov. 28, 2005);
 31. Pueblo Bello Massacre v. Colombia, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 140 (Jan. 31, 2006);
 32. Sawhoyamaxa Indigenous Community v. Paraguay, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 146 (Mar. 29, 2006);
 33. Baldeón García v. Peru, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 147 (Apr. 6, 2006);
 34. Ituango Massacres v. Colombia, Preliminary Objection, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 148 (July 1, 2006);
 35. Ximenes Lopes v. Brazil, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 149 (July 4, 2006);
 36. Montero Aranguren et al. (Detention Center of Catia) v. Venezuela, Preliminary Objection, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 149 (July 5, 2006);
 37. Servellón García et al. v. Honduras, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 152 (Sept. 21, 2006);
 38. Goiburú et al. v. Paraguay, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 153 (Sept. 22, 2006);
 39. Miguel Castro Castro Prison v. Peru, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 160 (Nov. 25, 2006);
 40. La Cantuta v. Peru, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 162 (Nov. 29, 2006);

41. *Rochela Massacre v. Colombia*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 163 (May 11, 2007);
42. *Escué Zapata v. Colombia*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 165 (July 4, 2007);
43. *Zambrano Vélez et al. v. Ecuador*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 166 (July 4, 2007);
44. *Cantoral Huamaní and García Santa Cruz v. Peru*, Preliminary Objection, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 167 (July 10, 2007);
45. *Tiu Tojín v. Guatemala*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 190 (Nov. 26, 2008);
46. *Ticona Estrada et al. v. Bolivia*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 191 (Nov. 27, 2008);
47. *Valle Jaramillo et al. v. Colombia*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 192 (Nov. 27, 2008);
48. *Kawas Fernández v. Honduras*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 196 (Apr. 3, 2009);
49. *Anzualdo-Castro v. Peru*, Preliminary Objection, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 202 (Sept. 22, 2009);
50. *González et al. ("Cotton Field") v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 205 (Nov. 16, 2009);
51. *Radilla Pacheco v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 209 (Nov. 23, 2009);
52. *Chitay Nech et al. v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 212 (May 25, 2010);
53. *Manuel Cepeda Vargas v. Colombia*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 213 (May 26, 2010);
54. *Xákmok Kásek Indigenous Community. v. Paraguay*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 214 (Aug. 24, 2010);
55. *Ibsen Cárdenas and Ibsen-Peña v. Bolivia*, Merits, Reparation and Costs, Inter-Am. Ct. H.R. (ser. C) No. 217 (Sept. 1, 2010);
56. *Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 219 (Nov. 24, 2010);
57. *Gelman v. Uruguay*, Merits and Reparations, Inter-Am. Ct. H.R. (ser. C) No. 221 (Feb. 24, 2011);
58. *Vera Vera et al. v. Ecuador*, Preliminary Objection, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 226 (May 19, 2011);
59. *Torres Millacura et al. v. Argentina*, Merits, Reparations and Costs,

- Inter-Am. Ct. H.R. (ser. C) No. 229 (Aug. 26, 2011);
60. Contreras et al. v. El Salvador, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 232 (Aug. 31, 2011);
 61. Barrios Family v. Venezuela, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 237 (Nov. 24, 2011);
 62. Gonzalez Medina and family v. Dominican Republic, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 240 (Feb. 27, 2012);
 63. Pacheco Teruel et al v. Honduras, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 241 (Apr. 27, 2012);
 64. Uzcátegui et al. v. Venezuela, Merits and reparations, Inter-Am. Ct. H.R. (ser. C) No. 249 (Sept. 3, 2012);
 65. Río Negro Massacres v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 250 (Sept. 4, 2012);
 66. Nadege Dorzema et al. v. Dominican Republic, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 251 (Oct. 24, 2012);
 67. Massacres of El Mozote and nearby places v. El Salvador, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 252 (Oct. 25, 2012);
 68. Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 253 (Nov. 20, 2012);
 69. García and Family Members v. Guatemala, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 258 (Nov. 29, 2012);
 70. Santo Domingo Massacre v. Colombia, Preliminary Objections, Merits and Reparations, Inter-Am. Ct. H.R. (ser. C) No. 259 (Nov. 30, 2012);
 71. Luna López v. Honduras, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 269 (Oct. 10, 2013);
 72. Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 270 (Nov. 20, 2013);
 73. Gutiérrez and Family v. Argentina, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 271 (Nov. 25, 2013);
 74. Osorio Rivera and Family members v. Peru, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 274 (Nov. 26, 2013);
 75. Veliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 277 (May 19, 2014);
 76. Landaeta Mejías Brothers et al. v. Venezuela, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 281 (Aug. 27, 2014);

77. Rochac Hernández et al. v. El Salvador, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 285 (Oct. 14, 2014);
78. Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 287 (Nov. 14, 2014);
79. Cruz Sánchez et al. v. Peru, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 292 (Apr. 17, 2015);
80. Peasant Community of Santa Barbara v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 299 (Sept. 1, 2015);
81. García Ibarra et al. v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 306 (Nov. 17, 2015);
82. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 307 (Nov. 19, 2015);
83. Chinchilla Sandoval v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 312 (Feb. 29, 2016);
84. Tenorio Roca et al. v. Peru, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 314 (June 22, 2016);
85. Yarce et al. v. Colombia, Preliminary Objection, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 325 (Nov. 22, 2016);
86. Members of the Chichupac Village and Neighboring Communities of the Rabinal Municipality v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 328 (Nov. 30, 2016).