REPARATIONS IN THE INTER-AMERICAN SYSTEM
FOR THE PROTECTION OF HUMAN RIGHTS

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I. INTRODUCTION

International tribunals in general have within their competence to end conflicts presented by individuals with legal capacity through the issuance of judgments and opinions.¹

In International Law, judgments seek to establish the responsibility of those subject to International Law for committing an illegal act. In the case of the international human rights law, judgments seek to establish the responsibility of the States for violations of human rights provided in the

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corresponding international convention. It means that in human rights matters, there should always be an individual whose rights have been violated even when, in some cases, the individual is unable to appear before the Court directly.

If an international tribunal determines that there has been international responsibility, that judgment may establish the proper compensations to be awarded to the injured party. It may also technically punish and abstain from determining compensations until later in the legal process. Such has been the practice of the Inter-American Court of Human Rights in most of its cases. Such compensation is "[a]n effective system for the protection of the human rights which allows judgments to be more than mere moral punishment."

It is through their jurisprudence that the tribunals forge their development and it is their judicial effectiveness that allows a tribunal to achieve prestige and credibility. Hence, since the judgments of the Inter-American Court are not final and not subject to appeals, its jurisprudence must be objective and sufficiently clear so that its decisions are respected by the States Party to the American Convention on Human Rights (Convention or American Convention). Specifically, the judgments on reparations test the State’s compliance with international obligations.


3. In accordance with article 61 of the American Convention, only the State Parties to the Convention or the Inter-American Commission for Human Rights may submit a case for the consideration of the Inter-American Court of Human Rights. Unlike the European system, where individuals are allowed to go directly to the European Court of Human Rights as provided in article 3 of Protocol No. 9 of November 6, 1990.


7. American Convention, supra nota 1, art 67.

II. THE INTERNATIONAL RESPONSIBILITY OF THE STATES FOR HUMAN RIGHTS VIOLATIONS

The responsibility provisions found in regional instruments for the protection of human rights are scarce because they only define the content and extent of the violations of the established obligations. Generally, they refer to the principles and rules regarding the responsibility of the State which dictate the custom or action that created the arbitrary tribunals or the International Court of Justice of The Hague. On the other hand, this theory of international responsibility is established on the basis developed in internal law, hence such principles and rules have a civilistic connotation. The existing difficulty to construe a uniformed theory of international responsibility and even more an international codification should be added.

Even with those limitations, the international responsibility has been developed on the basis that it is inferred, as a principle of international law; that any violation of an international obligation implies that of a reparation in an adequate form.

The Inter-American System for Protection of Human Rights provided in the American Convention, embraces that fundamental principle of international law in article 63.1 which provides that:

If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the


breach of such right or freedom be remedied and that fair compensation be paid to the injured party. \(^\text{12}\)  

That international law obligation governs all aspects of the reparations such as its scope, method, and benefits. As for its scope, article 63.1 distinguishes between the behavior that a State responsible for a violation should observe from the time that judgment is entered and the consequences of that State’s attitude during the violation. As to the future, it seeks to ensure the injured party the enjoyment of the right or freedom violated, and otherwise it empowers the Court to impose reparations. \(^\text{13}\)  

Such reparation, insofar as is possible, consists of the full restitution \((\text{restitutio in integrum})\), which consist of the restoration of the prior situation and the reparation of the consequences of the violation. \(^\text{14}\) Nevertheless, that is not the only way to repair an international illegal act since there may be cases in which \(\text{restitutio in integrum}\) is inapplicable or is insufficient or inadequate. \(^\text{15}\)  

Now then, the responsibility in human rights matters is imputed to the State first; and eventually, to the individuals, insurgent groups or liberation movements in connection with violations of the Humanitarian International Law. Additionally, that international responsibility arises, not only from an internationally illegal act, but rather it should represent a violation of a human right protected under an international instrument or in customary international law, \(^\text{16}\) particularly, if it is \textit{jus cogens}. \(^\text{17}\)  

The obligation of the State to respect human rights implies an obligation to not act. Nevertheless, it also implies the duty of guaranteeing those rights, which results in an obligation to act. For example, in the cases of Velásquez Rodríguez and Godínez Cruz, the Inter-American Court affirmed, in connection with article 1.1 of the American Convention, that the obligation to "ensure" implies the right of the States Party to organize

\(^{12}\) American Convention, \textit{supra} note 1, art. 63.1.  
\(^{13}\) Aloeboetoe et al. (Reparations) (Ser. C) No. 15, para. 46.  
\(^{14}\) Velásquez Rodríguez (Compensatory Damages) (Ser. C) No. 7, para. 26.  
\(^{15}\) Usine de Chózow, \textit{supra} note 11, at 48.  
\(^{16}\) Van Boven, Theo, \textit{Informe Definitivo Presentado a la Subcomisión de Prevención de Discriminaciones y Protección a las Menorías de las Naciones Unidas}. E/CN.4/Sub. 2/1993/8 at 18; citing \textit{Restatement (Third) of the Foreign Relations (1987)} (provides that a State violates an international human rights if, as a State political issue, it practices, encourages or tolerates a) genocide; b) slavery or the trade of slaves; c) murder or be the cause for the disappearance of persons; d) torture or other punishments or cruel, inhuman and degrading treatment; e) the prolonged detention; f) the systematic racial discrimination; or g) a systematic regime of fragrant violations of internationally recognized human rights.  
\(^{17}\) \textit{Id}.
their public protection systems so that they are capable of judicially ensuring the free and full enjoyment of human rights.\textsuperscript{18}

The international responsibility for the violations of human rights responds, in any event, to that imputed to the State for acts by its agents and in exercising its functions. That for which the objective theory of responsibility operates, which does not take into account exemptions from responsibility in deceit function or negligence in the agent’s behavior, an aspect reserved to the subjective responsibility as an internal law issue. In such manner that if an agent acts in said manner, the State is always responsible for having elected or chosen the officer or agent that acted negligently (\textit{culpa in eligendo}) or the State failed to supervise the acts of its agents (\textit{culpa in vigilndo}).

For all intents and purposes, it is irrelevant to assess the individual fault of the those committing the international illegal act since the agent may not be individualized or identified. The State would only be exempt from responsibility if it did not support or tolerate the transgression. Otherwise, that even if this occurred despite having acted in a preventive manner, it made every effort to ensure that the illegal act would not go unpunished.\textsuperscript{19}

However, the objective responsibility of the State can go beyond the acts of its agents. It is possible that the State apparatus act in such a way that allows the violation to go unpunished; or that the victim’s rights not be recovered if it has tolerated that individuals or groups act free or unpunished in detriment to the human rights recognized in the Convention.\textsuperscript{20}

\section*{III. THE VICTIM’S RIGHT TO REPARATIONS}

In regards to human rights protection, the individual, and sometimes a group,\textsuperscript{21} have the right to obtain reparations for human rights violations.

It is important to highlight as a specific note to international human rights law, that the right to be repaired substantially modifies the notion of traditional international law. In this case, the State that commits the illegal act is responsible to the injured State at an interstate level and not before the individual or group of persons that suffered the damages, who are

\textsuperscript{18} Velásquez Rodríguez (Ser. C) No. 4, para. 166 and 175; Godínez Cruz (Ser. C) No. 6, para. 166, 175.

\textsuperscript{19} See Velásquez Rodríguez (Ser. C) No. 4, para. 183.

\textsuperscript{20} Id. para. 187.

\textsuperscript{21} Specially, when it involves flagrant human rights violations as victims of genocide, detentions and general executions, and others which may consist of a group of minimal humanitarian norms as for example, those indicated in article 75 of Protocelo I of the Convention of Geneva, on August 12, 1949 and the Declaration of Minimal Humanitarian Norms aproved in Turku by a group of experts on December 2, 1990 \textit{reprinted in} E/CN.4/Sub. 2/1991/55.
unable to make an international claim.\textsuperscript{22} Hence, in international human rights law, the State from which the victim is a national, does not have an inherent right to receive reparations since it does not function as a diplomatic protection.

The Inter-American Court has recognized reparations for individuals as an injured party or in its default, to the victim's relatives. In one occasion, it was attempted to obtain reparation for a group in a case where the demanded State admitted its responsibility for the facts articulated in the demand.\textsuperscript{23} Specifically, the Inter-American Commission requested that a tribe be indemnified because it found that the tribe had suffered direct moral damages,\textsuperscript{24} but the Court found that in practice, "[t]he obligation to pay moral compensation does not extend to such communities, nor to the State in which the victim participated . . . If in some exceptional case such compensation has ever been granted, it would have been to a community that suffered direct damages."\textsuperscript{25}

The theory of the Court, even when it does not grant repair to a group for indirect moral damages, does not necessarily end the possibility of repairing if it is demonstrated that, indeed, a direct moral damages is produced, since the rationale for not repairing the tribe was that the Commission failed to present evidence to prove a "racial motive" and an assumed autonomy of the tribe.\textsuperscript{26} It is necessary to wait until a situation arises where the violation of human rights is of such magnitude that it could be demonstrated that a group suffered direct moral damages. In such case, the Inter-American Court would have to interpret if the word "injured" of article 63.1 of the Convention, could cover not only the individual as "injured parties," but also a group, hence it would recognize its international subjectivity.

In my opinion, that extensive interpretation is not proper in cases dealing with civil and political rights violations. However, in situations where economic, social and cultural rights are violated, it is evident that the passive subject of the violation is the group. Thus, it is not strange to find that there is a possibility that not too long from now there would be the opportunity to present to the Inter-American Court a case with these

\textsuperscript{22} Rodley, Nigel, \textit{The Treatment of Prisoners Under International Law} 97 (1987).
\textsuperscript{23} Aloeboetoe et al. (Reparations) (Ser. C) No. 11.
\textsuperscript{24} In that case it was alleged that "[i]n the traditional Maroon society, a person is not only a member of his own family group, but also a member of the village community and of the tribal group. In this case, the damages suffered by the villagers due to the loss of certain members of its group must be redressed. Since the villagers, in practice, constitute a family in the broad sense of that term . . . they have suffered direct emotional damages as a result of the violations of the Convention." \textit{Id.} para. 19.
\textsuperscript{25} \textit{Id.} para. 83.
\textsuperscript{26} \textit{Id.} para. 84.
characteristics, in view of the requirements of the Protocol in Addition to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights.\textsuperscript{27} Said protocol establishes as mandatory a wide range of economic, social, and cultural rights. However, in order to become effective, it requires that at least eleven States ratify or adhere to it.\textsuperscript{28}

In \textit{Aloeboetoe et al.}, the Court went further since it found that although in the compensation for the heirs of the victims there is a fixed sum for education of minors until they reach a certain age, those objectives "[w]ill not be met merely by granting compensatory damages; it is also essential that the children be offered a school where they can receive adequate education and basic medical attention."\textsuperscript{29}

That method of reparation covers more than the direct benefit to the children of the victims. That is because in a certain form, an obligation was established on the demanded State which protects the social rights, as well as the right for an education and health, that undoubtedly, benefit an entire community.

IV. \textit{Locus Standi} of the Victim in the Reparation Stage

Article 61 of the American Convention clearly establishes that "[o]nly the States Party and the Commission shall have the right to submit a case to the Court."\textsuperscript{30} Accordingly, neither the victim nor the representatives are parties in the contentious process before the Court, even when granted some participation.\textsuperscript{31} Indeed, the representatives of the victim or their relatives can act as assistants of the Commission’s representative before the Court.\textsuperscript{32} Hence, the tribunal would hear its points of view in the event that the plaintiff attempts to discontinue the claim\textsuperscript{33} or when the parties have

\begin{itemize}
\item \textsuperscript{27} Protocol in Addition to the American Convention on Human rights in the area of Economic, Social, and Cultural Rights “Protocol of San Salvador” (Nov. 17, 1988) (visited on May 31, 1999) <http://www.oas.org/EN/PROG/JURIDICO/english/Treaties/a.52.html.\
\item \textsuperscript{28} \textit{Id.} at art. 21.3.
\item \textsuperscript{29} Aloeboetoe et al. (Reparations) (Ser. C) No. 15, para. 96. (establishing that Suriname is obligated to reopen the school at Gujaba and staff it with teaching and administrative personnel to enable it to function permanently as well as to reopen and make operation the existing medical dispensary).
\item \textsuperscript{30} American Convention, \textit{supra} note 1, art. 61.
\item \textsuperscript{33} \textit{Id.} at art. 43.1.
\end{itemize}
arrived at a friendly settlement. During the determination of reparations, according to article 44.2 of the Rules of Procedure, the Court is authorized to invite the victim's representatives or its relatives so that they can submit briefs regarding the application of article 63.1 of the Convention. That was the first attempt of the Inter-American system to allow the victim to have certain procedural rights in the Inter-American Court.

The Court, knowing that the objective of the American Convention is to protect individual's rights, introduced a fundamental change in the new Rules of Procedure of the Court, which became effective on January 1, 1997, upon giving * locus standi* to the victim in the reparation stage. Indeed, the Court has recognized its importance upon establishing that in that stage the "[r]epresentatives of the victims or of its relatives may present their arguments and evidence independently."

In essence, the Court will also be able to authorize its autonomous participation in reparation hearings. The reason of being that manner is that in the reparation stage, the victim or its representatives are the proper person to present to the tribunal first hand evidence of expenses and other facts which facilitate the determination of the extent and amount of the compensation. Further, it is the beneficiary or the party directly affected by the decision.

V. PROCEDURES TO DETERMINE REPARATIONS

The Inter-American Court has the ability to order reparations along with the judgment on the merits. In essence, it can theoretically punish and reserve its determination for a subsequent procedural stage. The Rules of Procedure of the Court do not provide for a specific procedure to determine reparations. The new Rules of Procedure only has an article which provides that "[w]hen the judgment on the merits does not specifically resolve the reparations, the Court will schedule that opportunity for its later decision and it will determine the procedure." Back to the process of reparations, the justification of this stage is based upon obtaining sufficient evidentiary proof, including experts, depending on the degree of difficulty of each case, the number of beneficiaries, and the nature of the violations. The general procedural practice has been to grant to the Parties, which include the Commission and the State, a reasonable period of time to reach an agreement or friendly

34. *Id.* at art. 43.2.
35. *Id.* at art. 44.2.
37. Rules of Procedure, *supra* note 34, art. 23
38. *Id.* at art. 56.
39. Godínez Cruz (Ser. C) No. 8 (the exception to this rule).
settlement, which would be reviewed and confirmed by the Tribunal. In the event that an agreement or confirmation is not reached, the procedural stage of reparations begins, for which the parties are offered a period of time to present the briefs as to the extent, content, and amount of the reparations.

As a procedural practice, the Inter-American Court holds public hearings to allow the parties to present their proof and allegations about the reparations and then issues an appropriate judgment. From there on, the parties enter into another procedural stage known as supervision of the execution of judgments, which consists on determining if the responsible State has fulfilled its obligations in the manner and anticipated time. Only the cases against Honduras have gone through this stage since the Court issued resolutions and found Honduras in compliance with the judicial orders and terminated the process. The parties had previously manifested their consent to terminate the legal proceedings in those cases.

The actions carried out by the Court while exercising its duty to supervise, depend on the nature of the issues resolved in the reparation judgments. In some cases, as those involving Honduras, it should determine the payment of a fixed amount of money as compensation to the relatives of the victims and that trust funds be established in favor of minor beneficiaries. In the case of Aloeboetoe et al., the work is more detailed since in addition to supervising, it must also analyze the annual report presented by the Aloeboetoe Foundation, created by the reparation judgment; specifically, if the resolutions ordered, such as the reopening of the School and the Medical Clinic in Gujaba continue in operation.

Perhaps the most delicate part in the system for the protection of human rights is that referred to the reparations and its compliance because of its intrinsic connection with the judicial effectiveness of the Court’s judgments. Consciously, and in order to prevent the Court’s judgments from being merely a moral sanction, the American Convention provided “[t]hat part of a judgment that stipulates compensatory damages may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the State. . .”

This provision is not analogous to any provision found in the European Convention on Human Rights, it allows for the compliance with the reparation judgment. It is a “[c]ertain disposition, which can make possible a form of enforcing judgments of the Inter-American Court, in the event that the judgment stipulates for compensatory damages, effective, fast, pursuant to the true and certain objective of the protection of human

40. Rules of Procedure, supra note 34, art. 56.2.
42. American Convention, supra note 1, art. 68.2.
Nevertheless, the true threatening force of the Court’s judgments should reside in the Member State’s agreement in the Convention, to comply with the Court’s decisions as provided in article 68.1 of the Convention. That “agreement”, may not be used to lessen the coercive force of the judgments since, on the contrary, States Party are obligated to respect the rights and freedoms observed in the Convention according to its article 1.1. In fact, the American Convention acquires an effectiveness of the highest practical importance for acting as internal right of immediate application by the organs of the States Party and for its application in the international law framework.

This does not prevent article 68.1, which is similar to article 53 of the European Agreement for the Protection of Human Rights, and that is imperative for all the States Party, would be reinforced by internal legislation because of their obligation to comply with article 2 of the American Convention, to adopt internal rights provisions to guarantee the exercise of the rights and freedoms not guaranteed under that legislation. In other words, allow the judgments of the Inter-American Court to be executory as well as mandatory.

A. Terminology for Forms of Reparation

The first thing that should be outlined when dealing with compensation or reparations, is to establish the correct terminology and determine their content and extent. The uniformed and sometimes erroneous use of the terminology in international instruments providing for reparations is evident. This way for example, article 63.1 of the American Convention establishes that when it is established that a Member State has violated the rights or freedom protected under said Convention, the Court would be allowed to fix a “just compensation” to the injured party. The term “compensation,” in strict technical sense, represents only one form or reparation, the latter being the correct generic term to refer to any means of compensation, compensation, restitution, rehabilitation, or satisfaction, which appears to be the meaning and extent of said provision.

The aforementioned implies that in applying correct legislative techniques, the American Convention should have used the word “fair reparation” as a broad term and not “compensation” which, although includes compensation for material and moral damages, it excludes restitution, rehabilitation, or satisfaction.44

Perhaps, the terminology problems forced the Inter-American Court to make a broad interpretation of the term “just compensation” in establishing that “[t]he fair compensation describes as "compensatory" in the judgment on the merits . . . includes reparation to the family of the

44. Van Boven, supra note 16, at 63.
victim for the material and moral damages they suffered..." where it compared the term "compensation" with that of "reparation" due to the incorporation of the elements of reparation which are not proper in terms of "compensation."

However, the jurisprudence of the Inter-American Court itself, in subsequent judgments has used the terms "reparations" and "compensation" indistinctly. In an effort to have uniformity in the terminology at an international level, it is worth noting the effort of Mr. Theo Boven, Special Reporter for the United Nations in proposing a project of principles and basic guidelines within the different forms of reparation would be highlighted given its character. As part of it, it includes restitution, compensation, rehabilitation, satisfaction, and guarantees against reoccurrence.

B. Determination and Extent of the Reparations

Determining a person's right to restitution, compensation or rehabilitation results in one or more human rights violations. Such a finding or confirmation is generally preceded by a judgment or opinion from an international tribunal, although in some cases there are non-jurisdictional organs and different competence that may issue resolutions or reports with recommendations in that sense. In that manner, the Inter-American Commission of Human Rights, the European Commission of Human Rights the Committee of human rights of the United Nations, the Committee for the Elimination of the Racial Discrimination of the United Nations, the Committee against the Torture of the United Nations, among others.

On the other hand, there is a general erroneous belief in that the reparations in human rights matters are based upon "flagrant violations" of human rights. That is perhaps because many United Nations international conventions on human rights have that characteristic. Nevertheless, some international instruments such as the American Convention on Human Rights, the European Agreement for the Protection of the Human Rights and the Pact of Civil Rights and Political, provide the opportunity to repair and compensate for violations that would not necessarily be considered "flagrant."

Before the victim or relatives of the victim obtain some form of reparation for a human rights violation, it is required that the illicit

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46. Aloeboetoe et al. (Reparations) (Ser. C) No. 15, para. 12; Neria Alegría et al. (Reparations) (Ser. C) No. 20, para. 5; El Amparo (Reparations) (Ser. C) No. 19, para. 5.
47. Van Boven, supra note 16.
48. Those civil and political rights, which may not necessarily be considered human rights of lower scale, do not represent violations of such seriousness as genocide, mass discrimination, disappearances.
behavior cease and if it is extended and they have the right to obtain guarantee against reoccurrence. In general, the reparation can adopt the form of *restitutio in integrum*, compensation and securities and guarantees against reoccurrence. The following classification can be made. *Restitutio in integrum* is the re-establishment of the situation to what existed before the international unlawful act. Compensation occurs when the damages cannot be compensated by means of the *restitution in integrum*. It covers any damages of economic value suffered by the injured party such as physical or mental damages, psychological or physical pain or suffering, opportunity cost; loss of wages and the capacity to earn a living; reasonable medical and other expenses in rehabilitation; damages to goods and trade; including loss earnings; damages to reputation or dignity and reasonable expert fees.

The satisfaction and the non-reoccurrence guarantees seek to obtain particular satisfaction for moral damages and it can adopt the form of an apology, in nominal damages. In the cases of flagrant violations, a compensation for damages reflects the graveness of the violation; the verification of the facts and the public revelation of the truth; a declaratory judgment in favor of the victim; an excuse and acceptance of the responsibility; the prosecution of people presumably responsible for the violations; homages to the victims; and the prevention of a reoccurrence of the violations.

The jurisprudence of the Inter-American Court has made an important development in the matter, continuing in certain form the previous sketch. For example, it has had a noted concern for the obligation of the demanded State in preventing and in essence, for restoring, which are closely linked. Thus, it has stated that:

>The State is in the juridical duty to prevent, reasonably, the violations of the human rights, of investigating seriously with the means within its reach the violations that have been made inside the environment of its jurisdiction in order to identify to the responsible ones, of imposing them the pertinent sanctions and of assuring the victim an appropriate repair.

50. *Id.*
51. *Id.*
VI. EXTENT AND CONTENT OF THE REPARATIONS IN THE JURISPRUDENCE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

The Inter-American Court has had the opportunity to determine the repairs through the interpretation and application of the article 63.1 of the American Convention. Specifically, upon developing the concept of paying a fair compensation to the victim’s relatives and upon establishing a consistent reparation in complete restitution (*restitutio in integrum*), which defined, not only the re-establishment of the previous situation, but as the possibility of repairing the consequences of the violation and the payment of a fair compensation like compensation for the patrimonial and non-patrimonial damages including emotional harm, with that which incorporated elements characteristic of the compensation concepts, rehabilitation and satisfaction.

Although the Court has not analyzed in detail the principles that should guide the pecuniary compensations, it has established criteria and guidelines. Thus, special damages and loss earnings should be appreciated reasonably with reference to their liquidation; a criteria should be applied of best benefit that the law of the responsible State offers their nationals and that of the “indexacion” or conservation of the real value of the stipulated amount when the payments should be made in quotas or long terms.

In spite of the fact that the jurisprudence of the Court has established that the reparation is compensatory and not punishing, it is true that, in comparison with the jurisprudence of the European Court of the Human Rights, it has not been very conservative, since it has focused more on the recognition of representative satisfactions in a timid view of the concept of “equal satisfactions” provided in article 50 of the Agreement of Rome.

In the cases against Honduras and Suriname, the Inter-American Court established criteria to determine the reparations, following classic civilistic limits, recaptured by the international arbitral jurisprudence.

In the most recent reparation judgments issued by the Tribunal, the previous jurisprudential criteria was changed and the establishment of reparations for patrimonial and non-patrimonial damages was adopted, which follows the system applied by the jurisprudence of the European Court of Human Rights.

55. Velásquez Rodríguez (Compensatory Damages) (Ser. C) No. 7, para. 38.
56. See Piza Rocafort, Rodolfo, RESPONSABILIDAD DEL ESTADO Y DERECHOS HUMANOS 210 (San José, Universidad de Centroamérica 1988).
57. Aloëboetoe et al., (Ser. C) No. 11, para. 50.
58. El Amparo (Reparations) (Ser. C) No. 19; Neira Alegría et al. (Reparations) (Ser. C) No. 20.
Nevertheless, for practical effects, we will analyze the jurisprudence of the Inter-American Court under the criteria of loss wages, special damages, and moral damages under the understanding that are a general approach of the right applicable to international law.59

VII. MATERIAL DAMAGES

A. Loss Earnings

As for the compensation for loss earnings, it has been understood that it equals the sum of the victim’s income or that which his successors would receive for the labor life if a human rights violations would not have occurred.60

The basis to calculate the loss earnings varies and depends on the circumstances of each case. In Velásquez Rodríguez and Godínez Cruz, the basis for calculating the liquidation was the earned income of the victims at the time of their disappearance projected until the time for mandatory retirement as provided by internal law. On the contrary, in the cases of Aloëboetoe et al., Neira Alegria et al., and El Amparo, since the victims did not depend on a fixed salary, the minimum salary or the value of the “canasta básica alimentaria” were used as basis for calculating the amount.61 The interests accrued from the time of the action and until the judgment was entered were added to the projected sum.62

In order to calculate the victim’s projected future income, the life expectancy of the corresponding country was taken into account.63 A new element introduced to the most recent jurisprudence,64 was to subtract twenty-five percent to the total sum of the projected income.

B. Special Damages

They are generally understood as the expenses incurred by the victims or their relatives as a result of their efforts to investigate and sanction the

59. The international arbitrary jurisprudence considers that the material prejudices include special damages as well as loss earnings and in addition establish that the compensation should include the moral damages suffered by the victims. Aloëboetoe et al. (Reparations) (Ser. C) No. 15, para. 50.

60. Id. para. 88.

61. Velásquez Rodríguez (Compensatory Damages) (Ser. C) No. 7, para. 46; Godínez Cruz (Compensatory Damages) (Ser. C) No. 8, para. 44; Aloëboetoe et al. (Reparations) (Ser. C) No. 15, para. 88; Neira Alegria et al. (Reparations) (Ser. C) No. 20, para. 50; y El Amparo (Reparations) (Ser. C) No. 19, para. 28.


63. Id. See El Amparo (Reparations) (Ser. C) No. 19, para 28.

64. Id.
actions that violated the victims rights. In essence, all expenses should be demonstrated with proper evidence and would be returned to the person that incurred such expenses. Even when there is insufficient proof, the Court has made compensatory estimates for expenses incurred in different actions in the country appealing to principles of equity.

The return of the costs as part of incurred expenses has been a conflicting matter. First, because in some cases it was not considered reasonable to pronounce judgment for having requested compensatory costs in the process. Subsequently, because it has been reiterated that the procedure of the case before the Inter-American Court operates by means of a system of protection of the human rights instituted in such a way that the Commission and the Inter-American Court finance their expenses within the budget of the Organization of American States. As to the first aspect, the reformation to the Rules of the Procedure, allows that even when the demanding party does not request compensation, it may at anytime.

With respect to the costs before the Court, the fact that the individual has locus standi in the stage of reparations and can act as an individual party since the Rules of Procedure became applicable, it seems to change the panorama with regards to the costs in that the individual incurs in the protection of his rights since is not forced to litigate under the aegis of the Commission in that stage and it can opt to contract private professional services.

As for the return of expenses to the victim for the process before the Commission, it appears to represent a problem since in that phase, it is the individual who should incur direct expenses before the organ. If the circumstances in the case allow for a non-governmental organization to represent it before the Commission, and if those expenses are not recognized by the Court, it may be reducing the individual to take action before the Inter-American human rights protection, because it is not necessarily an non-governmental organization may be interested to take the case, or its budget would not allow it. On the other hand, if the individual does not want an non-governmental organization to handle his case before the Commission, it would seem necessary to ask the question of whether the Court would recognize returning the expenses for contracting independent professional services.

65. Velásquez Rodríguez (Compensatory Damages) (Ser. C) No. 7, para. 41.
67. Velásquez Rodríguez, (Ser. C) No. 4, para. 193.
68. Aloeboetoe et al. (Reparations) (Ser. C) No. 15, para. 113.
69. Rules of Procedure, supra note 32, art. 44.1.
70. Id. at art. 23.
A. Moral Damages

Within this category of damages, is included in particular, compensation for moral damages by means of different forms of satisfaction. Moral damages with regards to human rights is perhaps the damage that is most justly recouped. That is because it is evidenced and human nature that all persons subjected to aggressions and taunt in violation of their human rights experience moral damages. The Court has clearly indicated that no evidence is necessary to arrive at that conclusion if the responsibility of the State is demonstrated, or if the State expressly acknowledges its responsibility.

Determining moral damages is generally approached by international tribunals in a casuistic manner. Thus, resulting in the establishment of general principles or normative rules in this field. However, some guidelines in determining moral damages and the way to recoup them can be found in the Court’s decisions. For example, in the cases Velásquez Rodríguez and Godínez Cruz, the Inter-American Court embraced the issue of compensation for moral damages in response to the Inter-American Commission’s request that the Government be ordered to pay a sum of money to the successors of the victims in reparation of the special damages, loss earnings, and moral damages. To prove the latter, it presented psychiatric experts that the Court found sufficiently established the existence of moral damages.

It is necessary to add that the burden of proof to show moral damages can shift in some cases. In the aforementioned cases against Honduras, the Court established that “[t]he Government was unable to deny the existence of the psychological problems that affected the relatives of the victim.”

When it is to the victim directly or the victim’s successors who should be compensated for moral damages, there is no doubt that evidence of damages exist. The issue is different when the successors of the victim are not the ones that should be compensated, but instead dependents not named successors. In that case, it is necessary to prove moral damages, but in the case of parents, there is a presumption that the parents have morally suffered the cruel death of their sons and daughters, since “[i]t is essentially human for all persons to feel pain at the torment of their child.”

That presumption is stronger when the psychic effects suffered by the victim’s relatives are the result of a forced disappearance of people, which

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71. Aloeboetoe et al. (Ser. C) No. 15, para. 52.
72. Id.
73. Velásquez Rodríguez (Compensatory Damages) (Ser. C) No. 7.
74. Aloeboetoe et al. (Reparations) (Ser. C) No. 15, para. 76-77.
is surrounded of dramatic circumstances, and of an uncertainty which is difficult to vanish. The Court found that the form of liquidation of the compensation for moral damages must conform to principles of equity and in all cases it has translated it to a monetary amount, but that does not mean that the Court has discretion to award them. For example, the results of the psychiatric evaluations would be important technical elements to consider.

Nevertheless, that has not been the only form of compensation of moral damages. There are many cases in which other international tribunals have agreed that the compensatory judgments per se, constitutes sufficient compensation of moral damages, especially the European Court of Human Rights. But since the human rights violations in the cases solved by the Inter-American Court are serious because it involves the right to live which represents a stronger moral suffering, it was found that a compensatory judgment is insufficient in itself, thus additional monetary compensation is allowed according to the principles of equity.

The European Court has established other forms of reparation for moral damages including restitution. For example, in the case Brigandi, the Government manifested having repaired the violation upon reinstating to the petitioner a property to which his rights had been denied.

B. Non Patrimonial Satisfaction

In the cases against Honduras, the Commission requested ordering the government to take some measures, such as the investigation of facts related to the involuntary disappearance of the victims, the punishment of those responsible, the public statements condemning the practice, and the revindication of the victim and others. The Court affirmed that such measures would become part of the reparation of the consequences of the infringement upon the rights or freedoms and not of the compensation. Nevertheless, it found that the indication in the judgment on the merits on the duty to investigate and prevent, are the duty of the responsible State until fully carried out.

Even though the Court did not consent or refer to other requests for satisfaction, it did find that the compensatory judgment, constitutes in

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75. See Velásquez Rodríguez (Ser. C) No. 7, para. 50.
76. Id. para. 27.
77. Aloëboetoe et al. (Reparations) (Ser. C) No. 15, para. 87.
80. Velásquez Rodríguez, (Ser. C) No. 7, para. 32.
81. Id. para. 33.
82. Id. para. 43, 35.
itself, a form of reparation and moral satisfaction of significance and importance for the relatives of the victims. In the case Aloeboetoe et al., the Court found that the public acknowledgment of the responsibility by means of the Court's judgment "[i]s a significant and important form of reparation and moral satisfaction for the families of the victims and the Samaraca tribe." The victim is the first person with the right to receive reparation for moral damages. However, in cases of human rights violations as serious as the disappearance, it is possible that the right to be compensated be transferred to their heirs by succession. And to demonstrate that character, it is sufficient to show the family relationship without being "required to follow the internal procedures of inheritance law."

IX. CONCLUSION

In matters of reparations, the jurisprudence of the Inter-American Court has been able to define parameters that facilitate its determination and bases for the calculation of the same. This way for example, there is uniformity within the patrimonial damages in the way of estimating it from the guidelines taken in the first cases, but mainly, in the cases El Amparo and Neira Alegria et al. With reference to moral damages, there has been a constant jurisprudence about its justification and to the determination of the beneficiaries. What has not been easy, is finding a formula for their calculation that could be applied to all the cases, due to the particularities of each matter and the type of violation. In any event, to calculate the moral damages, it is not advisable to follow the civilistic approaches used in some internal legislation that take as parameter a proportion of the patrimonial damages to calculate the moral damages, since the compensation for moral damages would be larger or smaller according to the victim's income, which does not seem to be a just approach to determine them.

As for other measures of satisfaction, the Court has been reluctant to consider them and has limited itself to issue judgments, as well as the reparation judgment itself, as appropriate forms of compensation. Lastly, as regards costs, we should await the Court's decision when it is presented with the first cases where the individual has autonomous procedural participation in the stage of reparations. Nevertheless, it will also be decisive what it decides when funds for the expenses of cases are presented.

83. Id. at para. 36.
84. Aloeboetoe et al., (Reparations) (Ser. C) No. 15, para. 31.
85. Aloeboetoe et al., (Reparations) (Ser. C) No. 15, para. 52 (indicating that it was clear that the victims suffered moral damages for it is characteristic of human nature that anybody subjected to the aggression and abuse described . . . will experience moral suffering.
86. Id. at para. 54.
87. Velásquez Rodríguez, (Compensatory Damages) (Ser. C) No. 7, para. 54.
before the Commission where patronage of some non-governmental organization does not exist. The victim's continued direct actions the Inter-American system for the protection of human rights and the American Convention fulfills its goals and objectives.