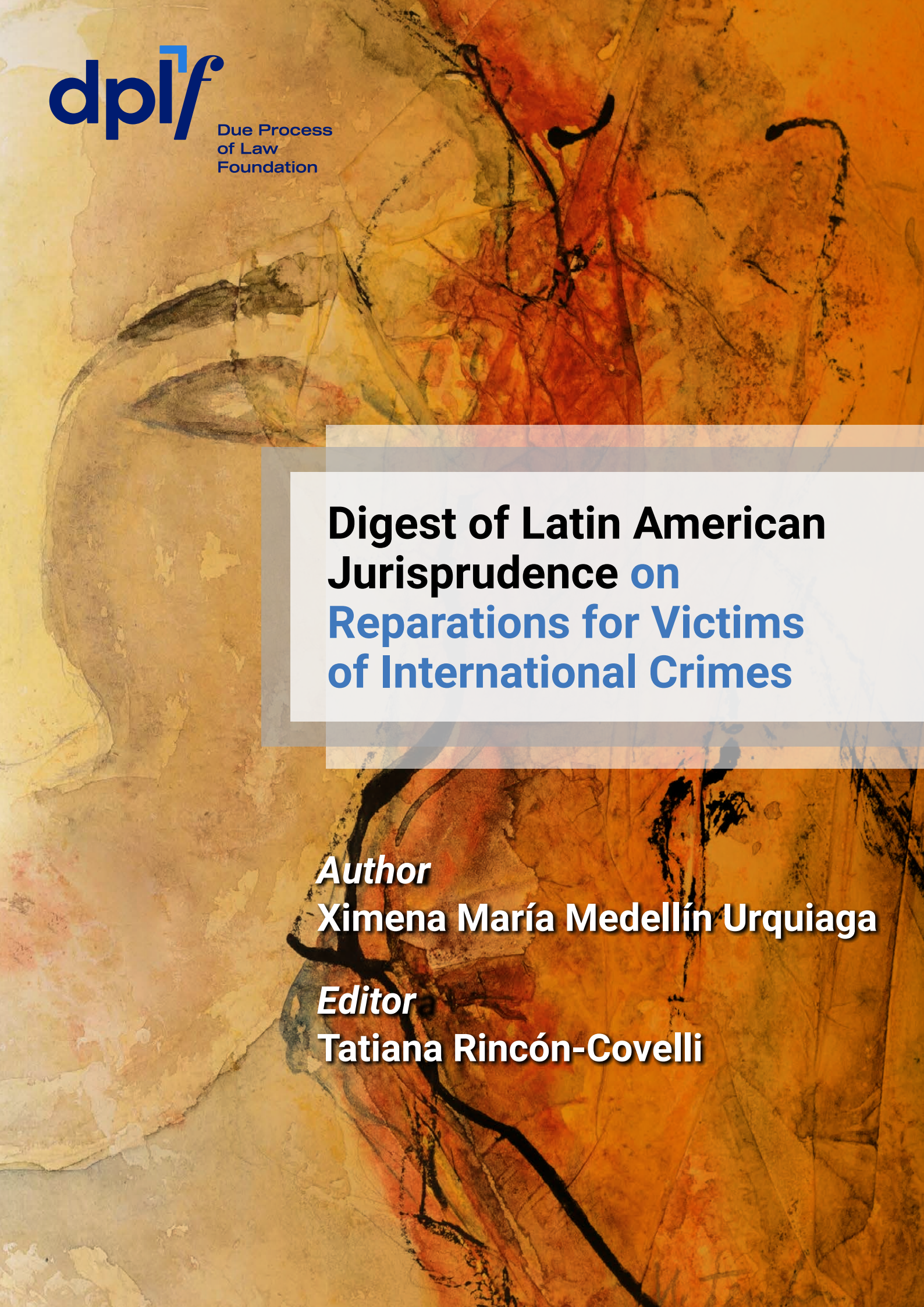

Due Process of Law Foundation

Digest of Latin American Jurisprudence on Reparations for Victims of International Crimes

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Contents

Acknowledgements

Ximena Medellín Urquiaga, a professor and researcher at the Legal Studies Division of the Center for Research and Teaching in Economics (CIDE) in Mexico, is the author of this Digest. She was in charge of developing the Digest's methodology and format, compiling and systematizing the case law, analyzing it, and writing the explanatory comments. Ximena is the author of three previous Digests, in her capacity as a consultant to DPLF: the *Digest of Latin American Jurisprudence on International Crimes Volume I,* the *Digest of Latin American Jurisprudence on International Crimes Volume II,* and the *Digest of Latin American Jurisprudence on the Rights of Victims*.

Prior to joining CIDE, Ximena was a research fellow at the Center for Civil and Human Rights at the University of Notre Dame in the United States, and at the Human Rights Program of the Universidad Iberoamericana in Mexico.

She holds a doctorate in law from the Legal Research Institute of the National Autonomous University of Mexico. Her doctoral research focused on the normative balance of victims' and defendants' rights in the adversarial criminal justice system.

In recent years, her academic work has focused on the interaction between international law on the protection of the individual—including international criminal law—and constitutional law. She has served as a consultant to national and international institutions including the International Committee of the Red Cross.

Tatiana Rincón-Covelli edited the Spanish version and worked jointly with the author on comments about substantive aspects of this Digest.

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She has been a consultant to the Inter-American Commission on Human Rights (IACHR) and the International Development Law Organization, as well as a professor of legal theory, theories of justice, and theories of legal reasoning at the Universidad del Rosario, Colombia.

Introduction

For a little over fifteen years, we at the Due Process of Law Foundation (DPLF) have been working intently on the identification, analysis and systematization of Latin American court judgments through our *Digests on International Crimes*, which address the main case law developments in the domestic prosecution of this type of crime. This time we have focused on judgments that have sought to ensure victims' right to reparation of harm.

From the perspective of the supranational legal system, one of the great achievements in the evolution of human rights law and international criminal law has been the recognition of victims' **right to reparation,** on which there is now global consensus. Although no specific international convention regulates the issue, several norms recognize this right explicitly or implicitly. Of particular note are the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, which, although not a treaty, are a cornerstone in the conceptualization of this right.

In Latin America, we have the inter-American human rights system, which is recognized as the regional protection system that has played the greatest role in expanding the content of the right to reparation through its notion of **comprehensive reparation.** Derived from Article 63.1 of the American Convention on Human Rights (ACHR), this concept includes establishing damages and granting measures of restitution, rehabilitation, satisfaction, compensation, and guarantees of non-repetition as varied as the public acknowledgement of responsibility for the facts, the investigation and punishment of the perpetrators, the search for the remains of missing persons, and even special health or education measures.

To realize this right at the domestic level in the region, there are two main ways to obtain reparations: **administrative reparations programs and court-ordered reparations.** These two complementary paths provide victims with more and better alternatives.

Obtaining reparations through administrative programs has been a practical and convenient solution in many cases. Administrative reparations programs are essential to promote reconciliation in societies severely affected by systematic human rights violations and to begin to restore public trust in institutions that may no longer have much credibility. Given their characteristics, these types of reparations can be more accessible, less complex, and in some cases more equitable, and this may be why administrative reparations programs are much more widely known and discussed.

Judicial reparation for victims of human rights violations ensures that the measures to be taken are tailored to the individual. However, despite its importance, judicial redress has been analyzed very little in several countries in the region. Most judges have been unaware of the discussions and analysis of the issue of reparations that have taken place both in administrative programs and internationally. As a result, Latin American courts have paid much more attention to the punitive component than to the restorative component when deciding cases of human rights violations, and the good practices and decisions that include reparations are not well known. Therefore, our aim with this publication is to disseminate these decisions and their main standards in order to generate an exchange of knowledge on judicial reparations.

This Digest, more forcefully than the previous ones, shows us how the application of international human rights norms at the national level, in addition to being an exercise in revising arguments, involves revisiting traditional legal practices that are resistant to the innovations taking place in this field.

Ultimately, beyond the legal perspective, we emphasize the importance of including the perspective of survivors and family members, to ensure that reparation provides a sense of dignity and justice. Knowing that the issues are usually decided in legal terms in judicial proceedings, it is essential to listen to the main actors in these cases, the beneficiaries of the reparations.

Katya Salazar Luzula
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Preliminary considerations on the selection of judgments

The judgments in this *Digest of Latin American Jurisprudence on Reparations for Victims of International Crimes* have been selected based on targeted searches of open databases as well as on suggestions or recommendations from specialists in the region and in each of the countries included. The selection is not intended to be exhaustive or even representative. It is intended only as a sample that, although incomplete, provides useful and interesting input to the legal, social, and academic debate on the reparation of harm for the commission of international crimes in Latin America.

With these clarifications in mind, we should emphasize that one of the objectives guiding the selection of judgments was to demonstrate the diversity of mechanisms that have been used in Latin America to exercise the right to reparation of harm for victims of international crimes. The selection of judgments also reflects the authors' interest in showing how well-known standards on the reparation of harm are applied to contested cases. Accordingly, this Digest has prioritized decisions handed down in specific cases or controversies, in contrast to other judicial remedies that—although undeniably relevant in many Latin American jurisdictions—focus on the abstract constitutional review or "conventionality control" of legal provisions. These remedies include, of course, unconstitutionality actions.

In general terms, this Digest includes judgments or decisions concerned with reparations for victims of international crimes handed down in:

- Criminal proceedings to determine individual responsibility, in which the victims or their representatives participate as civil parties or private prosecutors, with the ability to affect the outcome of ancillary reparations proceedings;
- Civil actions for reparation, whether connected to a previously adjudicated criminal proceeding or brought independently;
- Extraordinary appeals for review, motions to vacate, or petitions for review of a denied appeal, among others, whose purpose is to review decisions handed down by lower courts or tribunals in cases or actions that directly affect the reparation of harm arising from international crimes;
- Actions brought in administrative or labor courts seeking to redress harm suffered by the victims for acts that, in addition to being classified as international crimes, also involve the financial or administrative liability of the State or of a private company with which the victims had an employment relationship;
- Unconstitutionality actions particularly relevant to the determination, in other specific cases, of the reparation of harm for victims of international crimes.

This brief account of the type of decisions included in this Digest serves to emphasize two important points. First, the material summarized here consists exclusively of judicial decisions, whether from high courts, constitutional courts, appellate courts, or courts of first instance. It therefore excludes other types of instruments or documents relevant to reparations in contexts of mass violence, including rules, reports, rulings, or decisions issued by bodies responsible for the operation of administrative reparation programs in countries such as Argentina, Chile, Colombia, and Peru. The Digest does include court decisions interpreting the rules governing such programs or, in some cases, determining their compatibility with national constitutions or international treaties.

Second, all of the judgments or decisions selected for study relate to facts legally classified, by the courts or tribunals themselves, as international crimes. This was a key consideration for the proposed research, since its objective was to identify Latin American judicial opinions on the reparation of harm for victims of these specific crimes, in contrast to other unlawful acts that can be classified as ordinary crimes or serious human rights violations.

To be sure, quite a few national decisions in the region have developed important standards on general issues concerning the reparation of harm. These were not, however, the focus of this Digest.

As noted in the body of this work, the reparation of harm suffered by the victims of international crimes presents unique features, challenges, and dilemmas that differentiate it from reparation for other acts or behaviors considered unlawful, whether under national or international law. Judgments were selected with an explicit focus on this distinction in order to identify standards that were clearly relevant and applicable to cases of international crimes, in contrast to a broader discussion of reparation of harm resulting from other types of acts.

List of judgments

This *Digest of Latin American Jurisprudence on Reparations for Victims of International Crimes* systematizes 26 judgments issued by the courts and tribunals of seven Latin American countries. This section presents the identifying data for each decision and a brief summary of the facts on which it is based.

To unify the identifying data of the judgments in the central body of the Digest, a specific reference name has been assigned to each one. The identifying data, for the purposes of this Digest, include (i) the country in which the judgment was rendered, (ii) the type of proceeding or appeal that resulted in the judgment, and (iii) the name of the victim and/or the defendant, former paramilitary or guerrilla defendant [*postulado*], or convicted defendant.

In addition, to easily link the summaries and data included in this section, the decisions are organized by country, and within each country, ordered chronologically. Each decision in this section has a double number: the first number indicates the number of the country on the list (Argentina: 1, Chile: 2, Colombia: 3, Costa Rica: 4, etc.), and the second number indicates the order of the decision within the list for that country.2 These double numbers are cited in the body of the Digest to facilitate location of the complete citation and summary of the judgment: for example, *List of judgments 1.1*.

These summaries explain the procedural history of the decisions as well as the factual context and, more importantly, the story of the direct or indirect victims. Sometimes accurate information about the victims had to be obtained from sources outside the judgments examined. In any case, it is important to emphasize that reliable sources of information were always used, such as reports from commissions of inquiry or truth commissions, reports from civil society organizations, or investigative reports published by established media outlets.

To preserve the integrity of the extracts of the judgments included in this Digest, the original text is transcribed. In keeping with the house style of the Due Process of Law Foundation, "sic" is not used in the transcription of judgments.

1. Argentina

1.1. Extraordinary federal appeal (Susana Yofre de Vaca Narvaja, victim). Y. 43. XXXVIII, Yofre de Vaca Narvaja, Susana v. Ministry of the Interior - dec. M.J.D.H. 221/00 (File No. 443.459/ 98), Supreme Court of the Nation, October 14, 2004.

Extraordinary appeal filed by Susana Yofre de Vaca Narvaja, challenging the decision of the Fourth Division of the National Chamber of Appeals for Federal Administrative Disputes. In that decision, the chamber dismissed the claim of the plaintiff, who had asked the Ministry of Justice and Human Rights to recognize her as a victim under Law 24.043. In the chamber's opinion, the plaintiff had gone into exile voluntarily, so her situation was not comparable to that of persons who were forced into exile after being unlawfully detained.

The facts of this case occurred during the Argentine military dictatorship. In November 1975, Miguel Hugo Vaca Narvaja, the plaintiff's son and a lawyer defending political prisoners, was illegally deprived of his liberty and tortured in the Encausados prison. Months later, on March 10, 1976, Miguel Hugo Vaca Narvaja, Minister of the Interior during the presidency of Arturo Frondizi and the plaintiff's husband, was arrested by the military at his home in Villa Warcalde. On March 23, 1976, Susana Yofre de Vaca Narvaja and 26 members of her family took refuge in the Mexican embassy in Buenos Aires and later left the country with the status of political refugees. While Ms. Yofre de Vaca was in Mexico, she was informed that both her husband and son had been killed by military authorities.[1]

[1] O. Andrada, "No es un resarcimiento a la subversión," *La Nación*, October 16, 2004, https://www.lanacion.com.ar/politica/no-es-un-resarcimiento-a-la-subversion-nid645491/.

The Supreme Court of the Nation declared the extraordinary appeal admissible and reversed the judgment on appeal. Based on the debates in the National Congress and various judicial precedents, the Court found that the concept of "detention" in Law 24.043 refers to different forms of impairment of a person's freedom of movement. In this specific case, the forced confinement of an entire family in a foreign embassy, as well as their subsequent exile, must be understood as a form of "detention" for purposes of recognizing the status of victims under Law 24.043.

1.2. Extraordinary federal appeal (Ana de las Mercedes and Eleonora Lucía De Maio, victims). D. 449. XLVIII. y otro. De Maio, Ana de las Mercedes c/ M° J y DDHH art. 3° ley 24.043 – dec. 1147/09 (file 166.456/08), Supreme Court of the Nation, September 16, 2014.

Extraordinary appeals filed by Ana de las Mercedes and Eleonora Lucía De Maio against the judgment issued by the First Division of the National Chamber of Appeals for Federal Administrative Disputes. In its judgment, the chamber dismissed the claim of the plaintiffs, who had asked the Ministry of Justice and Human Rights to recognize them as victims under Law 24.043. In the chamber's opinion, although it was a proven fact that the parents of Ana de las Mercedes and Eleonora Lucia De Maio had been persecuted, the plaintiffs, both born in Venezuela, had never been deprived of their physical liberty or freedom of movement, and their lives were not in danger.

The facts of this case occurred during the Argentine military dictatorship. Tomás Alfredo De Maio and Ana Emilia del Pozo—the plaintiffs' father and mother—were detained on October 10, 1975. After their release from prison in December 1976, they both left for Bolivia and eventually settled in Venezuela, where their two daughters were born. Because they were politically persecuted, they were granted refugee status by the United Nations High Commissioner for Refugees (UNHCR).

The Supreme Court of the Nation ruled the extraordinary appeals admissible and reversed the judgment on appeal. Adopting a teleological interpretation, the Court concluded that the legislative intent underlying the enactment of Law 24.043 was to obtain comprehensive redress for those who suffered serious violations of their dignity during this period of Argentine history. ``Recognition of the right of those who had to go into exile to preserve their lives and integrity means there would be no valid rationale for denying this same right to the sons and daughters of those exiled. Here, the plaintiffs suffered a violation of their right to preserve their personal identity because, due to an involuntary decision, both were born and grew up outside the family, social, and cultural environment to which they were entitled.

1.3. Extraordinary federal appeal (Amelia Ana María Villamil, indirect victim). CSJ 203/2012 (48-V)/CS1, Villamil, Amelia Ana v. State of Argentina in re: damages, Judgment 340:355, Supreme Court of the Nation, March 28, 2017.

Extraordinary federal appeal filed by the National State against the decision of the Second Division of the Federal Court of Appeals of La Plata, Argentina. The challenged judgment allowed Amelia Ana María Villamil's appeal against the first instance judgment, in which the lower court had ruled that the action for damages against the State of Argentina for the enforced disappearance of her son, Jorge Ayastuy, and her daughter-in-law, Marta Elsa Bugnone, was time-barred.

The disappearance of Jorge Ayastuy and Marta Elsa Bugnone occurred on December 6, 1977, when the couple was taken from their home in Buenos Aires. At the time of their disappearance, Marta Elsa Bugnone was five to six months pregnant.

Amelia Ana María Villamil sued for damages on October 27, 1998—that is, 22 years after the disappearance, 15 years after the fall of the military dictatorship in Argentina, and five years after the declaration of Jorge Ayastuy's death was issued in November 1993. When she filed the action for damages, Amelia Ana María Villamil had not been the beneficiary of any other form of monetary reparation, since the reparation derived from Law 24.411 pertained to her grandson, Matías Ayastuy.

The trial court concluded that, although enforced disappearance was a continuous crime, the statute of limitations for the reparation action should be calculated from the time of the victim's death, that is, two years from November 1993. In response to this argument, the Federal Court of Appeals of La Plata upheld the non-applicability of statutory limitations to reparation actions when the damages sought resulted from an act defined as a crime against humanity.

The Supreme Court of the Nation reversed the decision of the Federal Court of Appeals of La Plata, holding that the non-applicability of statutes of limitations to an action for damages brought against the Argentine State could not be affirmed. The decision of the Federal Court of Appeales is not included in the body of this Digest.

1.4. Petition for review of denied extraordinary federal appeal (María Gimena Ingegnieros, indirect victim). CNT 9616/2008/1/RH1, Ingegnieros, María Gimena v. Techint Sociedad Anónima Compañía Técnica Internacional in re: accident – special law, Judgment 342:761, Supreme Court of the Nation, May 9, 2019.

Petition for review of the denied extraordinary federal appeal filed by Techint Sociedad Anónima against the judgment of the Fifth Division of the National Chamber of Labor Appeals. In this judgment, the National Chamber affirmed the non-applicability of the statute of limitations to actions for damages under Law 9688 (on workplace accidents), when the alleged facts constitute crimes against humanity. The court of first instance had ruled that María Gimena Ingegnieros's action seeking redress from Techint Sociedad Anónima for the company's participation in the enforced disappearance of Enrique Roberto Ingegnieros was time-barred by the statute of limitations.

The enforced disappearance of Mr. Roberto Ingegnieros and his wife, Irma María Pompa, began with their unlawful detention on May 5, 1977. Irma María Pompa, 24 years old, was abducted from her home in Campana when she was approximately three months pregnant. Enrique Roberto Ingegnieros, 27 years old, was kidnapped at his place of work: the company Techint Sociedad Anónima. Their daughter, María Gimena Ingegnieros, was handed over to the couple's neighbors at the time of her mother's arrest.

In 2008, María Gimena Ingegnieros filed the action that is the subject of this judgment. According to the plaintiff's arguments, as recounted in the judgment, [Techint Sociedad Anónima] could be held liable for the damages arising from the crime against her father [...], because he worked for that company as a draftsman and was kidnapped 'during working hours and on the work premises' by 'a task force that reported to the National Government.'

The plaintiff thus maintains that these elements are sufficient to consider that "[b]ecause this is a harmful event that occurred at work, [...] payment of the compensation provided for in the special system of compensation for work-related accidents [can be claimed] under Law 9688, which was in force when her father disappeared." In contrast to other cases, the judgment emphasizes that "the daughter of the injured worker opted for the compensation at the rate established in this special law in lieu of the compensation 'to which they might be entitled under civil law due to the employer's criminal intent [...].'"

2. Chile

2.1. Cassation appeal (Alberto Ponce Quezada, indirect victim). File No. 34.156-2015, Second Division of the Supreme Court, August 2, 2016.

Cassation appeal brought on procedural and substantive grounds by both the defendants' representatives and the Chilean Treasury against the judgment issued by the Court of Appeals of Santiago. In the first instance, the Thirty-fourth Criminal Court of Santiago acquitted Patricio Ignacio Montecinos Bustos and convicted Mario José Pizarro Cortés for the murder of Orlando Miguel Ponce Quezada. In the civil case, the court found for Alberto Ponce Quezada, the victim's brother, against the Chilean Treasury, which was ordered to pay 15 million pesos as compensation for nonpecuniary damages. On appeal, the Court of Appeals of Santiago rejected the statute of limitations argument raised by Mr. Pizarro Cortés's defense counsel and reversed the acquittal of Mr. Montecinos Bustos. In the civil matter, it modified the trial court's decision by increasing the damages from 15 million to 40 million pesos.

Orlando Miguel Ponce Quezada, 15 years old at the time of the events, was murdered on October 13, 1973, in Cerro Colorado in the municipality of Renca, after being taken there as part of a group of detainees and beaten by members of the Carabineros de Chile. The accused, Patricio Ignacio Montecinos Bustos and Mario José Pizarro Cortés, were serving at the Renca Police Station at the time of Mr. Ponce Quezada's murder.

On the issue of reparation, the Chilean Treasury argued in the cassation appeal that Law 19.123 only granted benefits to the victim's immediate family: parents, children, and spouse. Therefore, the legal framework does not recognize the right of other persons linked by kinship, friendship, or other close ties—including the victims' siblings—to seek redress. The Chilean Treasury simultaneously argued that the statute of limitations had expired on the civil action. It contended that there was no national or international rule establishing the non-applicability of the statute of limitations to the action.

The Second Division of the Supreme Court denied the cassation appeals on procedural grounds and on the merits. As it pertains to this Digest, the judgment underscored that, contrary to the assertion of the Chilean Treasury, civil actions for damages arising from crimes against humanity are not subject to any statute of limitations.

2.2. Appeal (Alejandro Vallejos Villagrán, indirect victim). Ninth Division of the Court of Appeals of Santiago, March 31, 2020.

Appeal filed by both parties against the judgment issued by the Ninth Civil Court of Santiago. In this judgment, the Chilean Treasury was ordered to pay $50,000[2] to Carlos Alejandro Vallejos Villagrán in nonpecuniary damages for the disappearance of his brother at the hands of agents of the National Intelligence Directorate (DINA) during the Chilean military dictatorship (1973–1990).

The Ninth Division of the Court of Appeals of Santiago reversed the judgment on appeal and dismissed Mr. Vallejos Villagrán's lawsuit against the Treasury. This was because domestic law limits the right to sue for damages. Such actions may not be brought by persons who are excluded by those with a better right to reparation—for example, the victim's spouse, parents, or the mother or father of the victim's children under Article 20 of Law 19.123, or the victim's successors in the order of intestate succession under Article 2315 of the Civil Code—or, absent such persons, by those who could not prove the harm suffered because of their close ties to the victim. Here, there were direct ascendants—the victim's mother—which excluded Mr. Vallejos Villagrán from being able to bring an action for damages. Moreover, in the Court's opinion, the plaintiff failed to sufficiently prove the harm suffered by reason of the close relationship between him and the victim.

2.3. Cassation appeal (Hernán Aburto Antipán, direct victim). File No. 33.475-19, Second Division of the Supreme Court, August 3, 2020.

Cassation appeal brought on procedural and substantive grounds by attorney Carlos Alegría Palazón on behalf of Hernán Aburto Antipán against the judgment issued by the Court of Appeals of Concepción. In that judgment, the lower court reduced the compensation for nonpecuniary damages to the plaintiff from 60 million to 15 million pesos. Previously, the Second Civil Court of Concepción had ordered the Chilean Treasury to pay Mr. Aburto Antipán 60 million pesos as compensation for the nonpecuniary damages caused by his illegal detention and torture.

Hernán Aburto Antipán was unlawfully detained on a public thoroughfare on October 8, 1973, and later subjected to interrogation, beatings, and torture. Mr. Aburto Antipán was released on July 26, 1974, and years later was recognized as a victim by the National Commission on Political Imprisonment and Torture. The facts of the case occurred under the military regime in Chile headed by dictator Augusto Pinochet Ugarte from September 11, 1973, to March 11, 1990.

The Second Division denied the cassation appeal for the following reasons: First, regarding procedure, contrary to the plaintiff's allegations, the court found that the contested judgment was sufficiently reasoned in terms of both

[2] Unless otherwise noted, all dollar amounts in this Digest are United States dollars.

the existence of nonpecuniary harm and the determination of the amount of compensation. As for the substantive issue, it concluded that it is up to the court's discretion to set the amount of compensation due to the purely subjective nature of the nonpecuniary harm.

2.4. Cassation appeal (Alejandro Vallejos Villagrán, indirect victim). File No. 44.389-2020, Second Division of the Supreme Court, November 9, 2020.

Substantive cassation appeal against the judgment issued by the Ninth Division of the Court of Appeals of Santiago. In the first instance, the Ninth Civil Court of Santiago ordered the Chilean Treasury to pay $50,000 to Carlos Alejandro Vallejos Villagrán in nonpecuniary damages for the disappearance of his brother. However, this judgment was appealed by both parties. On appeal, the Ninth Division of the Court of Appeals of Santiago reversed the lower court's decision and dismissed Mr. Vallejos Villagrán's lawsuit against the Treasury.

Álvaro Modesto Vallejos Villagrán, a 25-year-old medical student at the time of the events, was deprived of his liberty on July 29, 1974, by agents of the National Intelligence Directorate (DINA). The events occurred during the Chilean military dictatorship (1973–1990). DINA, formally created in 1974, was an agency whose stated purpose was "to produce the intelligence needed for policy formulation and planning and for the adoption of those measures required for the protection of national security and the development of the country."[3] The report of Chile's National Truth and Reconciliation Commission, known as the Rettig Report, makes clear that DINA was an organization with near-absolute powers. It facilitated the commission of countless human rights violations, concealed the actions of its agents, and ensured their impunity. DINA was disbanded in 1977 and replaced by the National Center for Information (CNI).[4]

The Second Division of the Supreme Court vacated the appellate judgment and issued a new judgment. In that judgment, the Court held that, in the case of a crime against humanity, a civil action for damages is not subject to the statute of limitations established under domestic civil law. That would be contrary to international human rights law. The Court further held that the only requirement for those alleging the State's responsibility for harm suffered is to demonstrate the existence of such harm. In other words, they must allege (i) the existence of the harmful act and (ii) the involvement of State agents. On this basis, the Second Division of the Supreme Court upheld the first instance judgment of the Ninth Civil Court of Santiago.

3. Colombia

3.1. Sentencing and reparations judgment (Fredy Rendón Herrera, et al., defendants) (Case of the Elmer Cárdenas Bloc). Case No. 2007 82701, Fredy Rendón Herrera. Murder of a protected person and others, Justice and Peace Division, Superior Court of Bogotá, December 16, 2011.

Sentencing judgment against Fredy Rendón Herrera, based on the partial charges filed by the 48th Prosecutor's Office of the National Justice and Peace Unit of the city of Medellín. According to the judgment, the facts established on September 23, 2011, constitute the crimes of (i) aggravated criminal conspiracy, manufacture, trafficking, and carrying of firearms or ammunition intended for the exclusive use of the armed forces; (ii) unlawful use of uniforms and insignia; (iii) unlawful recruitment of minors; (iv) murder; and (v) drug trafficking. This judgment also ruled on the petitions filed in the comprehensive reparation proceedings.

Fredy Rendón Herrera, alias "El Alemán," was military commander of the Elmer Cárdenas Bloc of the Peasant Self-Defense Forces between 1996 and 2005. At that time the bloc was under the command of Carlos Alberto Ardila Hoyos, alias "Carlos Correa." Upon the latter's death in August 2005, Fredy Rendón Herrera assumed general command of the bloc until its demobilization in August 2006.

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[3] Ministry of Justice and Human Rights of Chile, *Report of the National Truth and Reconciliation Commission*, vol. 2, p. 721, https://bibliotecadigital.indh.cl/bitstreams/c2540829-d010-4bed-843a-4f1669be9f2b/download

[4] Ministry of Justice and Human Rights of Chile, *Report of the National Truth and Reconciliation Commission*, vol. 1, p. 60, https://bibliotecadigital.indh.cl/server/api/core/bitstreams/7b2a0e4e-f308-43e3-b896-4c4acb83b117/content

The Elmer Cárdenas Bloc was one of 11 blocs established as of 1998, with the political and military consolidation and operational restructuring of the United Self-Defense Forces of Colombia (AUC). Starting in the 1980s, the self-defense groups deployed an "anti-subversive" strategy that, as the judgment notes, "rapidly, and depending on the region of the country, spread [...] and was committed to the imposition of economic models, creating new agents and interests, at the expense of displacement [...], pacification and labor standardization, and targeted killings." The Elmer Cárdenas Bloc was instrumental in the development of "agro-export economies [...] and the creation of a palm-growing region in the northern region of [Chocó], resulting in the displacement of thousands of ancestral groups."

3.2. Sentencing and reparations judgment (Salvatore Mancuso Gómez, et al., defendants) (Case of the Catatumbo Bloc). File No. 11001600253200680008 N.I. 1821, Justice and Peace Division, Superior Court of Bogotá, October 31, 2014.

Sentencing judgment against Salvatore Mancuso Gómez and six other members of the Catatumbo Bloc, for the partial charges brought by the Office of the Prosecutor General. As the judgment states, the facts established on September 23, 2011, constitute the crimes of aggravated conspiracy to commit a crime; acts of terrorism; murder of a protected person; attempted murder of a protected person; torture of a protected person; hostage-taking; destruction and appropriation of protected property; aggravated larceny; exaction or arbitrary taxation; simple and aggravated kidnapping; enforced disappearance; acts of barbarism; deportation, expulsion, transfer, or forced displacement of civilian population; inhuman and degrading treatment and biological experimentation on a protected person; acts of reprisal; obstruction of health and humanitarian work; pillage of property of persons killed or wounded on the battlefield; impersonation of a public official; trafficking, manufacture, or possession of narcotics; unlawful use of real or personal property; trafficking of substances for narcotics processing; maintenance or financing of illegal plantations; and illegal construction and use of landing strips.

Salvatore Mancuso Gómez was one of the top commanders and a member of the General Staff of the United Self-Defense Forces of Colombia. He began activities against other armed groups in 1992 through a private justice association of cattle ranchers in northern Colombia.

The Catatumbo Bloc, an integral part of the United Self-Defense Forces of Colombia, operated from March 1999 until the demobilization of its commander, Salvatore Mancuso Gómez, in December 2004. The Catatumbo Bloc's area of operation was the city of Cúcuta and adjacent areas along the Colombia-Venezuela border. According to the bloc's own documents, its objective was to confront and counteract armed organizations such as the Revolutionary Armed Forces of Colombia, the National Liberation Army, and the Popular Liberation Army. The Catatumbo Bloc forged close ties with organized groups engaged in drug trafficking to obtain sources of funding. At its inception, the bloc consisted of just 270 men. When the demobilization process began, the group had approximately 2,500 members, only 1,437 of whom demobilized.

3.3. Sentencing and reparations judgment (Edilberto de Jesús Cañas Chavarriaga et al., defendants) (Case of the Cacique Nutibara Bloc). File No. 0016000253-2007-82700 and consolidated proceedings, Trial Chamber of the Justice and Peace Division of the Superior Court of the Judicial District of Medellín, September 24, 2015.

Sentencing and reparations judgment against Edilberto de Jesús Cañas Chavarriaga, Néstor Eduardo Cardona Cardona, Juan Fernando Chica Atehortúa, Édgar Alexander Erazo Guzmán, Mauro Alexander Mejía Ocampo, Juan Mauricio Ospina Bolívar, and Wander Ley Viasus Torres, all members of the Cacique Nutibara Bloc, as charged by the Office of the Prosecutor General. According to the judgment, the established facts constitute the crimes of murder of a protected person; torture and unlawful detention and deprivation of due process; criminal conspiracy; manufacture, trafficking, and carrying of firearms or ammunition; and illegal use of uniforms and insignia, among others.

The Cacique Nutibara Bloc was one component of the Peasant Self-Defense Forces of Córdoba and Urabá, whose origins go back to the Peasant Self-Defense Forces of Magdalena Medio.

3.4. Judgment SU312/20 (Nelcy Elizabeth Jaramillo Zapata, indirect victim). File No. T-7243742, Plenary Session of the Constitutional Court, August 13, 2020.

Review of the judgment in the writ for the protection of constitutional rights [*acción de tutela*] filed by Nelcy Elizabeth Jaramillo Zapata against the Administrative Court of Antioquia, issued by the Fifth Section of the Supreme Administrative Court [Consejo de Estado]. On November 18, 2016, the Thirty-fifth Administrative Court of Medellín ruled that the statute of limitations for the claim for financial reparation brought by Nelcy Elizabeth Jaramillo Zapata against the Nation had lapsed. This decision was affirmed in February 2018 by the Administrative Court of Antioquia. Dissatisfied with these decisions, Nelcy Elizabeth Jaramillo Zapata filed a writ for the protection of constitutional rights, which was heard, sequentially, by the Fourth (first instance) and Fifth (review) Sections of the Supreme Administrative Court. In August 2019, based on Nelcy Elizabeth Jaramillo Zapata's petition for review, the Third Selection Chamber of the Constitutional Court took up the case, as it considered that there would be "a need to rule on a certain line of precedent." On this basis, the review was ultimately heard and decided by the Plenary Session of the Constitutional Court.

Luis Eduardo Jaramillo Zapata was murdered on April 22, 2006, by members of the 11th Mobile Brigade of the National Army. In the original claim for financial reparation, Nelcy Elizabeth Jaramillo Zapata stated that she knew about the participation of State agents in the murder from the time of the events. A central point in the legal analysis of the different appeals is whether the action brought by the indirect victim should be subject to the two-year statute of limitations established under administrative law, or whether, on the contrary, as the plaintiff argued, it should be considered not subject to statutory limitations because it arose from acts classified as crimes against humanity.

4. El Salvador

4.1. Unconstitutionality Action 62-2012. Judgment of the Constitutional Division of the Supreme Court of Justice, July 17, 2015.

Judgment issued by the Constitutional Division of the Supreme Court of Justice on the request for certification of a decision filed by the Chamber of the Third Section of the Central District in San Vicente. The chamber ruled, in a specific case, that the second paragraph of Article 200 of the Code of Criminal Procedure was inapplicable on the grounds that it was incompatible with the Salvadoran Constitution.[5] The part of the law alleged to be unconstitutional allowed for victims to be physically compelled, by order of the court, if they refused to cooperate voluntarily in a criminal proceeding. Although the provision refers to criminal proceedings in general, the chamber emphasized its reservation with regard to proceedings involving sexual offenses. The chamber stated that the challenged provision contradicted Articles 1, 2, and 10 of the Constitution of El Salvador in relation to respect for the human dignity, privacy, and physical integrity of victims.

The Constitutional Division held that the provision was constitutional if, before victims are compelled to appear, a court order is issued with a proportionality analysis to assess the compatibility of the measure with the victim's rights to human dignity, privacy, and physical integrity.

4.2. Unconstitutionality Actions 44-2013 and 145-2013, consolidated. Judgment of the Constitutional Division of the Supreme Court of Justice, July 13, 2016.

Unconstitutionality action brought by José Benjamín Cuéllar Martínez, Pedro Antonio Martínez González, Ima Rocío Guirola, and Jorge Alberto Amaya Hernández, challenging Articles 1, 2, and 4 of the General Amnesty Law for the Consolidation of Peace. These provisions granted "broad, absolute, and unconditional amnesty to all those persons who in any manner have taken part in committing political crimes, related common crimes, or common

[5] In the Salvadoran legal system, the Constitutional Division of the Supreme Court may hear an unconstitutionality case based on a complaint or petition by any citizen, or based on a request for certification of a decision, in cases where a court has ruled that a legal provision is inapplicable on the grounds that it is contrary to the Constitution.

crimes carried out by at least 20 persons, prior to January 1, 1992." The amnesty was extended, under Article 4 of the same law, to cover any civil liability that might arise from the commission of such crimes.

On January 16, 1992, the Salvadoran government and the Farabundo Martí National Liberation Front (FMLN) signed the Peace Accords that ended 12 years of armed conflict in El Salvador. These agreements allowed for creation of the Truth Commission, whose purpose was to investigate the grave acts of violence that had occurred since 1980. They also led to passage of the National Reconciliation Law, Article 6 of which established that persons who, according to the Truth Commission's report, had participated in grave acts of violence that occurred after January 1, 1980, would not be eligible for amnesty. However, on March 20, 1993, five days after presentation of the Truth Commission report entitled *From Madness to Hope: The Twelve-Year War in El Salvador*, the General Amnesty Law for the Consolidation of Peace was enacted, repealing the National Reconciliation Law.

The Constitutional Division declared several provisions of the Amnesty Law unconstitutional, finding that they prevented the State from fulfilling its obligations of prevention, investigation, prosecution, punishment, and reparation. This violated the rights to access to justice, judicial protection, and comprehensive reparations for victims of crimes against humanity and war crimes.

4.3. Unconstitutionality Action 44-2013 (3). Follow-up ruling, Constitutional Division of the Supreme Court of Justice, July 13, 2018.

Follow-up ruling issued by the Constitutional Division of the Supreme Court of Justice to assess compliance with the judgment issued in consolidated unconstitutionality actions 442013 and 1452013 on July 13, 2016.

After the aforementioned judgment was handed down, the Constitutional Division held several public follow-up hearings. In its order of July 7, 2017, the Court imposed specific obligations on various State bodies, as required to comply with the judgment.[6] In its decision of July 13, 2018, the Constitutional Division found that several State bodies, including the Legislative Assembly, the executive branch, and the Office of the Prosecutor General of the Republic, had failed to comply.

Central to the finding of noncompliance was the authorities' failure to sponsor or enact a new law on national reconciliation and victim assistance that would take victims' rights into account, as well as the measures needed to preserve and promote historical memory.[7] The Court also found that the executive branch had failed to meet its obligations to design and implement a comprehensive program for material and symbolic reparations focused on all victims of the armed conflict and to include an item for that purpose in the budgetary cycles after the judgment was issued.

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6 The July 7, 2017, decision orders the Legislative Assembly to enact a national reconciliation and victim assistance law requiring, at a minimum: (i) action by the armed forces to open and hand over archives documenting information related to the armed conflict; (ii) the registration of victims or cases; (iii) the creation of a victims' reparation fund; (iv) the identification of sources of financing; and (v) the inclusion in school curricula of events that occurred during the armed conflict, as a measure to safeguard historical memory. The executive branch was ordered to design, implement, and monitor State policies for the respect, protection, promotion, and guarantee of fundamental rights, as well as to ensure that priorities in the allocation and execution of resources are geared toward those ends. The Court also emphasized that the President of the Republic has the constitutional power to introduce legislative initiatives and therefore should promote the creation of a regulatory framework for transitional and restorative justice that both satisfies the needs of the victims of the armed conflict and achieves the goals of reconciliation between all sectors of society. As for the Office of the Prosecutor General of the Republic, the Court found that it had the obligation to investigate acts committed during the armed conflict that could be classified as crimes against humanity and war crimes, and to prosecute the direct perpetrators and masterminds of these crimes

7 Under the order issued by the Constitutional Division of the Supreme Court of Justice on July 7, 2017, the National Assembly was directed to pass the Law on National Reconciliation and Assistance to Victims of the Armed Conflict no later than July 13, 2019. In a follow-up decision, the Constitutional Division extended the deadline to February 28, 2020. Two days before the deadline set by the Constitutional Division, the Salvadoran Congress enacted the so-called Special Law for Transitional Justice, Reparation, and National Reconciliation. It was vetoed by President Nayib Bukele, who decided that it was unconstitutional and did not meet the demands of the victims.

5. Guatemala

5.1. *Hearing on adequate reparation (José Efraín Ríos Montt, defendant) (Genocide against Maya Ixil Communities)*. Judgment C-011076-2011-00015, First Trial Court for Criminal Matters, Drug Trafficking, and Environmental Crimes, May 13, 2013.

Decision in the hearing on adequate reparation, requested by the private prosecutors and civil plaintiffs in the criminal proceedings against José Mauricio Rodríguez Sánchez and José Efraín Ríos Montt, for crimes against humanity and genocide. On May 10, 2013, the First Trial Court for Criminal Matters, Drug Trafficking, and Environmental Crimes convicted José Efraín Ríos Montt of the two aforementioned crimes and acquitted José Mauricio Rodríguez Sánchez.

José Efraín Ríos Montt was Chief of the Second Section of the General Staff of the Guatemalan Army and the de facto Head of State of Guatemala for 17 months between 1982 and 1983. Mauricio Rodríguez Sánchez served as head of military intelligence during Ríos Montt's regime.

The facts of the case focus on, among others, 11 massacres perpetrated against Indigenous Maya Ixil communities in the municipalities of Santa María Nebaj, San Juan Cotzal, and San Juan Chajul. The court found that the acts for which Ríos Montt was convicted, including these massacres, resulted in the deaths of at least 267 victims, all members of Maya Ixil communities.

The conviction of José Efraín Ríos Montt was subsequently overturned by the Constitutional Court of Guatemala.

5.2. *First Instance Criminal Judgment (Pedro García Arredondo, defendant) (Case of the Spanish Embassy in Guatemala)*. Judgment C-01071-1980-00547 Assistant 1, First Trial Court for Criminal Matters, Drug Trafficking, and Environmental Crimes, January 19, 2015.

Criminal judgment against Pedro García Arredondo for the murder of 39 persons and attempted murder as concurrent offenses that carry cumulative sentences [*concurso real*] and crimes against humanity under a plurality of applicable criminal code provisions [*concurso ideal*].

The events that are the subject of the trial occurred during the internal armed conflict in Guatemala. As proven, on January 31, 1980, the National Police carried out a raid on the (then) Spanish Embassy in Guatemala. Days earlier, the premises had been occupied by a group of people to publicly denounce the massacres and human rights violations perpetrated by the Guatemalan Army. As the judgment describes, the orders were that no one was to leave the embassy alive. The security forces ignored the requests of the then Spanish ambassador, Máximo Cajal, who urged them not to enter the diplomatic headquarters. It was also established that the security forces prevented and obstructed any form of communication, mediation, or peaceful negotiation. During the operation, a fire broke out, and emergency services, firefighters, and the Guatemalan Red Cross were denied access to the area. The operation resulted in the deaths of 37 people. Two people, including Ambassador Cajal, were rescued alive. However, a few days later, Gregorio Yujá Xona, one of the two survivors, was kidnapped from the hospital where he was being treated and was subsequently executed.

At the time of the events, the defendant, Pedro García Arredondo, was Chief of the Special Investigations Section of the Guatemalan National Police, known as Command Six. He was responsible not only for the attack on the Spanish Embassy, but also for other crimes perpetrated thereafter, including the murders of Gregorio Yujá Xona and university students Gustavo Adolfo Hernández González and Jesús Alberto España Valle.

5.3. *First Instance Criminal Judgment (Esteelmer Francisco Reyes Girón, defendant) (Sepur Zarco Case)*. Judgment C-01076-2012-00021, First Trial Court for Criminal Matters, Drug Trafficking, and Environmental Crimes, February 26, 2016.

Criminal judgment in the case of Esteelmer Francisco Reyes Girón for crimes against the duties of humanity in the form of sexual violence, murder, and crimes against humanity in the form of offenses against personal dignity,

especially humiliating and degrading treatment; and Heriberto Valdez Asig, for crimes of enforced disappearance and crimes against humanity in the form of sexual violence.

The facts of this case took place in the context of Guatemala's internal armed conflict. Women from the village of Sepur Zarco were found to have been forced to perform "domestic" work, such as cooking or washing clothes, for soldiers and officers of the Guatemalan Army over an extended period, without pay. In these same circumstances, the women were victims of repeated physical assaults, including rape. They had to "[work their shifts] every day."

The first defendant in this case was Esteelmer Francisco Reyes Girón, a second lieutenant of artillery in the Guatemalan Army, who served as platoon commander of the Sepur Zarco military detachment in the municipality of El Estor, Department of Izabal. This detachment reported to the commander of military zone number six, "General Miguel García Granados." The judgment concludes that Mr. Reyes Girón gave his authorization and consent "for soldiers of the Guatemalan Army under his command [and effective control] to engage in sexual violence and inhuman, cruel, and humiliating treatment against women of the Q'eqchi' Maya ethnic group [...]."

Heriberto Valdez Asig, military commissioner in the municipality of Panzós in the Department of Alta Verapaz, participated in various military operations in the municipalities of Izabal, including Panzós. These operations involved the perpetration of sexual violence against women and the deprivation of liberty of several people who, as of the date of the judgment, remained missing.

5.4. First Instance Criminal Judgment (Hugo Ramiro Zaldaña Rojas, et al., defendants) (Case of Molina Theissen). Judgment C-01077-1998-00002, First Trial Court for Criminal Matters, Drug Trafficking, and Environmental Crimes, High Risk Court "C," May 23, 2018.

Trial court conviction against Hugo Ramiro Zaldaña Rojas, Francisco Luis Gordillo Martínez, Manuel Antonio Callejas Callejas, and Manuel Benedicto Lucas García for crimes against humanity and aggravated rape against Emma Guadalupe Molina Theissen, as well as the crime of enforced disappearance committed against Marco Antonio Molina Theissen.

At the time of the events, the defendants were active members of the Guatemalan Army and were assigned to the General Manuel Lisandro Barillas Military Brigade and/or the General Manuel Lisandro Barillas Military Zone of Quetzaltenango.

On September 27, 1981, Emma Guadalupe Molina Theissen was deprived of her liberty by members of the Guatemalan Army. Ms. Molina Theissen was held clandestinely until October 5, when she escaped from the military facility. While in detention, Ms. Molina Theissen was raped and tortured by members of the Guatemalan Army.

After her escape, a recapture operation was carried out on October 6, 1981. This operation involved Guatemalan Army specialists and officers from the military intelligence system. When they entered Emma Guadalupe Molina Theissen's home, they illegally deprived her 14-year-old son, Marco Antonio Molina Theissen, of his liberty. While Ms. Molina Theissen managed to escape in the midst of the operation, her son, Marco Antonio, was never found and remained missing at the time of the judgment.

The Inter-American Court of Human Rights issued judgments on the merits and reparations in this case on May 4 and July 3, 2004, respectively.

6. Peru

6.1. First Instance Criminal Judgment (Manuel Rubén Abimael Guzmán Reinoso, et al., defendants) (Case against the Leaders of the Shining Path). Consolidated Cases Nos. 560-03, Criminal case against Abimael Guzmán Reinoso and others, National Criminal Court, October 13, 2006.

Judgment of first instance handed down by the National Criminal Court in the trial against Manuel Rubén Abimael Guzmán Reinoso and 22 other persons, identified as members of the Central Committee, the Permanent Committee, and/or the Political Bureau of the organization known as the Communist Party of Peru–Shining Path [Partido Comunista del Peru–Sendero Luminoso]. The defendants were tried on charges that included aggravated terrorism against the State and murder. Most of the defendants were convicted of at least one of the aggravated terrorism charges.

The Communist Party of Peru (PCP) was founded in 1930 under the leadership of José Carlos Mariátegui. After a series of internal conflicts, ruptures, and splits, a small group from the PCP–Bandera Roja in the Ayacucho region, led by Abimael Guzmán, split completely to form the new PCP–Sendero Luminoso (PCP-SL). Moving beyond its university and intellectual origins, the PCP-SL formally initiated its armed strategy in the 1980s. This made it one of the main armed actors in Peru's internal conflict.

The PCP-SL had a highly organized structure, headed by the Central Committee, the Political Bureau, and the Permanent Committee, also called the Central Directorate. It also had the People's Guerrilla Army, which was organized on the ground through main, local, and grassroots forces. In addition to handing down the individual convictions, this judgment emphasizes that the PCP-SL was an illegal and terrorist organization "whose main activity was to carry out armed actions against different targets, both persons and property, using means capable of causing havoc, to provoke alarm, anxiety, terror, and chaos [...] in order to destabilize the social and political order and subsequently seize power and implement its political agenda."[8]

6.2. First Instance Criminal Judgment (Alberto Fujimori Fujimori, defendant) (La Cantuta, Barrios Altos, and SIE Basements Cases). File No. A.V. 19-2001, Special Criminal Division, Supreme Court of Justice of the Republic, April 7, 2009.

Judgment of first instance issued by the Special Criminal Division of the Supreme Court of Justice of the Republic in the trial against Alberto Fujimori Fujimori for the crimes of murder, bodily harm, and kidnapping. Alberto Fujimori Fujimori was President of the Republic of Peru from July 28, 1990, to November 17, 2000.

The Peruvian Supreme Court held the defendant responsible as an indirect perpetrator or "perpetrator-by-means" for the crimes of murder, serious injuries, and kidnapping in the Barrios Altos and La Cantuta cases, classified as crimes against humanity. The case is based on the theory of perpetration-by-means through the control of organized apparatuses of power.

6.3. First Instance Criminal Judgment (Daniel Cortez Alvarado and Ricardo Matta Vergara, defendants) (Teófilo Rímac Capcha, victim). File No. 0243-2010, National Criminal Division, January 19, 2017.

Judgment of first instance issued by the National Criminal Division in the trial against Daniel Cortez Alvarado and Ricardo Matta Vergara for the crime against humanity in the form of enforced disappearance, perpetrated against Teófilo Rímac Capcha. The representative of the civil party alleged at trial that these events took place during the emergency declared in 1986 in the province of Pasco after the Shining Path attacked a military convoy, killing several military personnel.

The defendants, Daniel Cortez Alvarado and Ricardo Matta Vergara, served as Chief of the Carmen Chico Military Base and Chief of the G2 Intelligence Department at the Carmen Chico Military Base, respectively. In this capacity, both defendants participated in different ways in territorial control and intelligence actions involving patrols and the detention of civilians.

Teófilo Rímac Capcha was unlawfully detained by members of the Peruvian Army on June 3, 1986. He was later taken to the Carmen Chico Military Base, where he was interrogated and subjected to acts of torture that resulted in his death. As of this judgment, Mr. Rímac Capcha's final whereabouts had not been determined.

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8 Oxford Reports on International Law in Domestic Courts (ILDC), *Peru v. Guzmán Reinoso and others*, first instance criminal decision, No. 560-03, ILDC 670 (PE 2006), October 13, 2006, p. 78.

Both defendants were found criminally responsible, as perpetrators, for the enforced disappearance of Teófilo Rímac Capcha.

6.4. Motion to vacate (Humberto Bari Orbegozo Talavera, et al., defendants, Peruvian Army, civilly liable third party) (Case of the Los Cabitos Barracks). File No. 2728-2017, Permanent Criminal Division, Supreme Court of Justice of the Republic, December 27, 2017.

Motion to vacate filed by the Public Prosecution Service; by defense counsel for Humberto Bari Orbegozo Talavera, Carlos Arnaldo Briceño Zevallos, Carlos Enrique Millones D'Estefano, Pedro Edgar Paz y Avendaño, and Arturo Moreno Alcántara; by the Office of the General Counsel of the Peruvian Army; and by defense counsel for the civil party. The contested judgment was handed down by the National Criminal Division on August 17, 2017. The crimes for which Humberto Bari Orbegozo Talavera was convicted included the arbitrary detention, kidnapping, humiliation, cruel and inhuman treatment, and enforced disappearance—all crimes against humanity—of 53 persons.

These acts were committed as part of the counterinsurgency efforts in Peru. In particular, as the Court stated, they were illegal acts perpetrated "massively against the civilian population in 1983, in the barracks known as Los Cabitos, in Ayacucho."

Humberto Bari Orbegozo Talavera, a lieutenant colonel in the Peruvian Army at the time of the events, was chief of the BIM 51 Motorized Infantry Battalion, stationed at the Domingo Ayarza Barracks, Los Cabitos. Pedro Edgar Paz Avendaño, also convicted in the same case, served as head of the Army intelligence detachment, assigned to the Department of Ayacucho by the Army Intelligence Service (SIE).

7. Uruguay

7.1. Cassation appeal (CC, victim). Judgment No. 29/1990, Supreme Court of Justice, June 22, 1990.

Cassation appeal against the judgment of the Sixth Civil Court of Appeals. The appellate court's judgment upheld the trial court's decision to allow the State's defense that the plaintiff's claim for financial reparation was time-barred.

Mr. CC was forcibly disappeared on December 17, 1975, during the military dictatorship that ruled Uruguay between 1973 and 1985. Ms. AA—the spouse of the disappeared person—filed a civil action for the declaration of Mr. CC's absence, which was issued on November 24, 1982. Subsequently, on October 23, 1987, Ms. AA and her children sued the Ministry of BB requesting financial reparation for the harm caused by the enforced disappearance of Mr. CC.

In her appeal, the plaintiff argued that enforced disappearance is a continuous crime, whose statute of limitations and expiration can be calculated only from the time the criminal conduct ceases. In this specific case, the plaintiff contends, the statute of limitations did not begin to run until the country's institutions were restored, since during the de facto regime there was a "well-founded fear" of possible reprisals.

The court dismissed the plaintiff's appeal, finding, first, that under Law 11.925, suits or claims against the State expire four years after the cause of action accrues. In cases of enforced disappearance, the granting of the declaration of absence, as well as the service of notice of that declaration on the parties, allows the victims to sue for reparations because no one can doubt the fact of the disappearance. In this particular case, the statute of limitations began to run once the declaration of absence was obtained in November 1982; so by the time the plaintiff sued in October 1987, the claim against the State was time-barred. Second, as for the "well-founded fear," the court noted that the plaintiff could not allege that material impossibility prevented her from filing suit, since the judiciary continued to administer justice independently during the de facto regime.

7.2. Appeal (Julio Castro Pérez, direct victim). Judgment No. 15/2010, First Civil Court of Appeals, March 3, 2010.

Judgment handed down by the First Civil Court of Appeals in an appeal filed by the executive branch against the final judgment in the first instance. The lower court had ordered the respondent to pay the children of Julio Castro

Pérez the sum of $200,000 in nonpecuniary damages. Counsel for the respondent argued that the amount ordered was excessive. The respondent further argued that the executive branch could not be held civilly liable for nonpecuniary damages resulting from Mr. Castro Perez's disappearance, due to the efforts made to advance the respective investigations, despite the obvious limitations.

On August 1, 1977, Julio Castro Pérez was illegally deprived of his liberty, in plain public view, by State security forces. Mr. Castro Pérez was subsequently taken to a clandestine detention center, where he was subjected to torture that led to his death on August 3, 1977. Following these events, the government hid the victim's remains and provided false information about his whereabouts. During subsequent administrations, the authorities failed to investigate the facts.

Mr. Castro Perez's children sought nonpecuniary damages from the executive branch, as they do not know the identity of the individuals or institution(s) responsible for their father's disappearance. In its decision, the Court of Appeals upheld the lower court's decision with respect to the calculation of nonpecuniary damages. However, it ruled that the executive branch was not liable for the actions of the Peace Commission, finding that its omissions did not give rise to an additional element of harm.

7.3. Appeal (Verónica Mato, indirect victim). Judgment No. 117/2010, Sixth Civil Court of Appeals, June 17, 2010.

Appeal filed by the Ministry of National Defense against the judgment issued by the First Administrative Court of First Instance. In that judgment, the respondent was ordered to pay the plaintiffs $200,000 in nonpecuniary damages, $29,250 as compensation for loss of life (*iure hereditatis*), and a sum corresponding to the lost earnings that resulted from the enforced disappearance of Miguel Ángel Mato.

Miguel Ángel Mato was unlawfully detained on January 29, 1982, during the military dictatorship in Uruguay (1973–1985). Mr. Mato was held in the clandestine prison La Tablada, where he died on March 8, 1982, in a burst of gunfire from a submachine gun carried by one of the soldiers responsible for his custody. It was not until 2003 that Irma Correa and Veronica Mato—Mr. Mato's wife and daughter—obtained reliable information about Mr. Mato's fate.

In the extraordinary appeal, the Ministry of National Defense argued that the amount of compensation for nonpecuniary damages, both in its own right and in *iure hereditatis*, was excessive. It also alleged that it was impossible to determine the existence of lost earnings.

The Court of Appeals upheld the lower court's decision in part. Only the first instance decision was reversed as regards the time limit for the lost earnings of Verónica Mato, the daughter of the disappeared person. This was based on Article 50 of the Children's Code, under which child support obligations should continue until the minor reaches 21 years of age and not 18 years of age, as the initial judgment had held.

7.4. Cassation appeal (AA, indirect victim). Judgment No. 1.072/2016, Supreme Court of Justice, July 25, 2016.

Cassation appeal challenging the judgment of the Fifth Civil Court of Appeals. This judgment upheld the lower court's decision to allow the defense asserted by the executive branch that the action for damages was time-barred by the statute of limitations.

The judgment withheld the identity of the direct victim as well as the identities of the indirect victims who sued for damages. Because of this, it is impossible to identify precise details of the facts that gave rise to the claim. In any case, the judgment specifies that they took place during the military dictatorship in Uruguay (1973–1985).

The claim for the reparation of harm was based on Law 18.596, which acknowledged the breakdown of the rule of law during the period from June 27, 1973, to February 28, 1985. This law also acknowledged the State's responsibility for practices that deprived people of their fundamental rights between June 13, 1968, and June 26, 1973, as well as the right of those victims to comprehensive reparation.

The Court dismissed the plaintiff's cassation appeal. It held that, to recover damages, the victims had to choose between two mutually exclusive tracks: judicial proceedings under ordinary civil law, or administrative proceedings as provided for in Law 18.596. Only the benefits of the latter cannot be time-barred. The Court reasoned that the plaintiff, by opting for the judicial route, lost the benefits of non-expiration of the statute of limitations, which are exclusive to the administrative route.

According to the rules governing expiration of the statute of limitations established in the law applicable to reparation proceedings, actions are time-barred four years after the cause of action accrues. In this specific case, if the plaintiff's lawsuit was filed on October 25, 2013, when the constitutional and legal guarantees for filing a legal claim for human rights violations had been in force since the formal and total reestablishment of the democratic system in Uruguay on March 1, 1985, the statutory period for filing an action for reparation had clearly lapsed.

Digest of Latin American Jurisprudence on Reparations for Victims of International Crimes

The right of every person to receive adequate and proportional reparation for the harm suffered due to an unlawful act has been widely recognized at both the national and international levels. In 1985, with the adoption of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the international community affirmed that victims and their families have the right to restitution for harm caused by criminal conduct or abuses of power. Such restitution should include, as provided in this declaration, the restoration of rights or return of property and compensation, as well as the material, medical, or psychological assistance and support that the individuals may need.[9] To this end, States should adopt the necessary measures to ensure access to appropriate and effective legal remedies or actions to seek such restitution.

On this foundation, the following decades provided the framework for the normative development of the right to reparation at the international level. Resolutions or judgments of international mechanisms such as the Inter-American Court of Human Rights or the (former) United Nations Commission on Human Rights were instrumental in the progressive consolidation of legal standards regarding the scope and content of the right to reparation in cases of gross or flagrant violations of human rights or humanitarian law. The vast number of decisions in this area makes it impossible to include even a partial account of them in this text.10 In any case, it is vitally important to acknowledge the impact that the work of mechanisms such as the Inter-American Court of Human Rights has had, at both the international and national levels, in advancing the victims' rights agenda and, specifically, the satisfaction of the right to comprehensive reparation.

Parallel to these developments within the framework of international human rights mechanisms, the push to recognize victims' right to reparation has also reached international criminal justice bodies. This gradual process of normative recognition culminated with Article 75 of the Rome Statute of the International Criminal Court. This provision expressly empowers the International Criminal Court to establish the "principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation." It was the first international provision to implicitly recognize the right of victims—individual or collective—to reparation within the international criminal justice system.

The Rome Statute also provides for the creation of a Trust Fund for Victims and their families.11 Under its operating rules, this mechanism has a broad mandate beyond implementing the individual or collective reparations ordered by the International Criminal Court in specific cases. The Trust Fund for Victims is also authorized to carry out other activities or projects benefiting communities or populations affected by the perpetration of crimes within the jurisdiction of the International Criminal Court, even if such activities have not been ordered as a form of reparation in a decision rendered by the Court. This flexibility in the reparations/assistance model of the International Criminal Court is a concrete response to the challenges involved in satisfying the rights of victims of international crimes, as discussed throughout this Digest.

These accumulated international developments were taken up more systematically in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human

[9] United Nations General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Resolution 40/34, November 29, 1985, https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse.

[10] For a more complete approach to the criteria on reparations established by international human rights mechanisms, see, e.g., A. J. Carrillo, "Justice in Context: The Relevance of Inter-American Human Rights Law and Practice to Repairing the Past," in *The Handbook of Reparations*, ed. P. De Greiff (Oxford, UK: Oxford University Press, 2006).

[11] Rome Statute of the International Criminal Court, Article 79.

Rights Law and Serious Violations of International Humanitarian Law.[12] A central theme of this Digest is the recognition of the different forms or modalities that should be considered as part of the comprehensive reparation of harm. These forms are restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. Each of these concepts is developed in greater detail in the Basic Principles and Guidelines.

The Basic Principles and Guidelines also emphasize the duty of States to provide "adequate, effective, prompt and appropriate" remedies, including reparation, in cases of gross human rights violations or serious violations of international humanitarian law. It is also recognized that, in certain contexts, States may need to create administrative reparations programs to effectively guarantee the rights of victims and their families, particularly in situations of mass or systematic violence.

The Basic Principles and Guidelines have served as a relevant model for legal analysis—both judicial and academic—on the right of victims to reparation. However, it is important to note that they refer only tangentially to international crimes. For all the richness of their content, they are not intended to respond specifically to the dilemmas, problems, or challenges involved in reparations for international crimes.

As comparative and international experience has shown, providing reparations for victims of international crimes entails particularities reflecting the specific characteristics of such crimes. Without intending to be exhaustive, we can explain at least some of the conditions that distinguish reparations for international crimes, both substantively and procedurally, from other crimes, including other types of gross or serious human rights violations.

An initial particularity, one that is to be expected, is the number of victims, which is to be expected. Beyond legal or academic debates, experience shows that acts that can be deemed international crimes are usually perpetrated in contexts of mass violence. This type of violence is characterized by the large number of people who participate, in one way or another, in its perpetration or who, at the other extreme, suffer physical or psychological harm because of it.

This has prompted some to question the suitability of the remedies traditionally used to remedy the harm caused to victims of crime, which focus primarily on the individual. In other words, these are mechanisms designed, at most, to emphasize the position of individual persons who suffer clearly identifiable harm as a result of the unlawful conduct of clearly identifiable individuals.

Besides the challenge posed by the number of victims, one must take into account the conditions of vulnerability that often characterize the individuals, groups, or communities affected by the perpetration of international crimes. As in other areas, experience has shown that the victims of international crimes are often part of historically excluded groups, marginalized because of their socioeconomic status and/or their ethnicity, sex, or gender identity. This does not mean that an underlying condition of vulnerability is a prerequisite for being a victim of international crimes. However, it is important to recognize that, in practice, contexts of mass or systematic violence tend to disproportionately affect more vulnerable communities or groups.

This condition underscores how important it is for reparations for international crimes to be complemented by actions that address the collective or structural needs of the most affected population. This possibility goes beyond the notion of reparations, which must focus on the individual or collective harm effectively resulting from an unlawful act, and enters into the field of social assistance or programs.13

The potential risks of a more robust link between reparation and support should not be overlooked. International comparative experience points to a trend in which reparation orders in cases of international crimes are part of a broader model of social assistance. This requires, however, more complex resolutions or mechanisms

[12] United Nations General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Resolution 60/147,December 16, 2005, https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation.

[13] P. J. Dixon, "Reparations, Assistance and the Experience of Justice: Lessons from Colombia and the Democratic Republic of the Congo," *International Journal of Transitional Justice* 10, no. 1 (2016): 88–107, https://doi.org/10.1093/ijtj/ijv031.

to ensure compatibility, coordination, or complementarity between actions of different types. One such complex model for enforcing reparation orders, in conjunction with assistance actions, is the International Criminal Court's Trust Fund for Victims.

A third point to underscore regarding the particularities of reparations in cases of international crimes concerns the identity of the persons responsible for their commission and, therefore, responsible for the harm suffered. In contrast to a more classical view of gross or flagrant human rights violations, international crimes can legally be perpetrated by private individuals unrelated to the State apparatus, institutions, or actors.[14] This brings an added challenge to the reparations process, considering both the large number of victims and the need for collective or structural reparation or assistance measures.

Many of the mechanisms available at the national level to determine the obligation of individuals to make reparations for the harm caused by their acts take a primarily individualistic approach, which is extremely limited in cases of international crimes. In such cases, unlike in cases of crimes perpetrated by State actors, it is not always clear that joint and several liability of the State can be established, or that an action claiming financial or administrative liability against the State can be brought.

In some jurisdictions, specific mechanisms have been introduced to make the State a party to the proceedings, even in cases in which, in principle, the State would not have participated actively in the proceedings. This also makes it possible to establish obligations on the part of State institutions or actors—whether for reparation or assistance—without going against basic procedural rules, such as the right of any party to argue on its own behalf before a binding judgment or decision is issued. It is important to emphasize that the mechanisms referred to do not necessarily entail a determination of State responsibility for the commission of international crimes. In other words, there are procedural avenues to call the State to trial, to involve it in actions for reparation or assistance to the direct or indirect victims, without the need to first determine the State's responsibility for the commission of the unlawful acts that gave rise to the harm.

These considerations are just a few of the challenges, dilemmas, and problems involved in reparations for international crimes. The various sections of this Digest will address a range of topics directly related to the general subject matter of this research.

Here, we note that Latin American jurisprudence has not always been consistent or homogeneous when it comes to some of the most delicate or complex issues. The disparity identified is, of course, related to the different socio-political contexts in each country. It also has to do with the diversity of legal avenues or tools that have been adapted to guarantee the rights of victims of atrocity crimes. While some countries have followed a path marked primarily by administrative reparation programs, others have used judicial mechanisms, whether ordinary (criminal or civil actions) or extraordinary (special courts in the context of transitional processes). In any case, this research is based on the conviction that, although diverse, the shared Latin American experience provides important guidance on ways to satisfy the rights of victims of international crimes—and, specifically, the right to comprehensive reparation.

[14] It is generally acknowledged that the international definitions of these crimes do not establish any special or specific status regarding the perpetrators. Nor do they require State actors to be linked to, tolerate, or acquiesce to the conduct of private individuals, as is the case with human rights violations, including torture or the enforced disappearance of persons. Theoretically, it has been emphasized that, in practice, the macro-criminality structures necessary for the perpetration of international crimes normally require some kind of relationship to political power or, at the very least, the intervention of quasi-State organizations with sufficient de facto power to conceive of and carry out systematic crimes. In any case, even from this approach, the State's participation in the commission of international crimes is not a necessary or sine qua non condition for such crimes. See, e.g., K. Ambos, *La parte general del Derecho Penal Internacional* (Montevideo: Temis, 2004).

1. Right to reparation for international crimes

The right to comprehensive reparation has been recognized by multiple courts throughout Latin America. This section presents some relevant opinions that highlight the comprehensiveness of reparation, considering the different components or modalities that reparation should include. On this point, Latin American courts or tribunals have echoed both the inter-American case law on reparations—consistently taking up concepts such as actual damages or lost profits, which are widely used by the Inter-American Court of Human Rights—and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

In addition to the general opinions affirming victims' right to reparation, this section also includes such topics as (i) judicial recognition of the right of family members to reparation, whether in their capacity as successors or for harm they themselves have suffered in their own right; (ii) reparation to legal entities or groups of persons; and (iii) the position of the State as jointly and severally or secondarily liable for reparations in cases of international crimes.

It should be noted, once again, that the opinions included in this section derive from a variety of judicial mechanisms, which explains some of the discrepancies between them. Similarly, it is important to highlight those sections that include examples of the application, in specific cases, of the general principles on reparations for victims of international crimes. These include, for example, reparations due to child victims of recruitment, enlistment, and participation in hostilities during a non-international armed conflict, or to women and girls who are victims of crimes against humanity or war crimes in the form of sexual crimes.

Guatemala. *First instance criminal judgment (Esteelmer Francisco Reyes Girón, defendant) (Case of Sepur Zarco)* (*List of judgments 5.3).*

REPARATIONS FOR THE VICTIMS: based on the applicable human rights conventions and treaties, the Constitution of the Republic of Guatemala, and Article 124 of the Code of Criminal Procedure, which states: Right to adequate reparation. The reparation to which the victim is entitled comprises the restoration of the right that has been affected by the criminal act, which starts with the recognition of the victim as a human being in all their aspects [and] as a rights-holder against whom a criminal act was committed, as well as all the available options for their social reintegration to enable the victim to enjoy or make use of the affected right as soon as possible, to the extent that such reparation is humanly possible, and if applicable, compensation for damages resulting from the commission of the crime [*emphasis in the original*].

Colombia. *Sentencing and reparations judgment (Fredy Rendón Herrera, et al., defendants) (Case of the Elmer Cárdenas Bloc) (List of judgments 3.1).*

Comprehensive reparation is a nationally [*footnote omitted*] and internationally [*footnote omitted*] recognized fundamental right of victims that goes beyond the former economic aspect. Since at least the beginning of the first decade of the new millennium, the Constitutional Court has recognized that comprehensive reparation is broader in scope than simple compensation. For this reason, the standard applicable to cases of serious human rights violations calls for the judiciary to rule on other elements, distinct from the aforementioned, of comprehensive reparation.

El Salvador. *Unconstitutionality actions 44-2013 and 145-2013, consolidated (List of Judgments 4.2).*

Reparation, as a victims' right and an essential component of *transitional justice,* must also have a preventive function and combat impunity; this goes beyond restitution for the consequences of the unlawful act committed by the perpetrators and the imposition of penalties and sanctions.

1.1 Modes of reparation: General considerations

Peru. *First instance criminal judgment (Alberto Fujimori Fujimori, defendant) (Cases of La Cantuta, Barrios Altos, and SIE Basements) (List of judgments 6.2).*

The Criminal Divisions of the Supreme Court have consistently held that the scope of civil damages refers specifically to financial compensation. A civil claim in domestic criminal proceedings seeks, in the vast majority of cases, to be in the nature of a conviction and, as part of that, seeks an "award" [*footnote omitted*]. Article 93 of the Criminal Code specifically states that the purpose of civil damages is the restitution of assets or, if this is not possible, the payment of their value, along with compensation for damages. In crimes such as the ones before us—which are not property crimes—there is no restitution or reparation, inasmuch as these terms refer only to property (the reparation of harm consists of making a monetary payment for the property that cannot be returned); rather, there is compensation, which means ordering the payment of an amount of money sufficient to cover all the damages caused by the crime [*footnote omitted*].

The civil party, however, without denying the validity of the compensation measures provided for in the domestic law, considers that the scope of reparation includes other measures besides compensation and restitution, namely satisfaction, rehabilitation, and non-repetition, as provided for in international human rights law.

Accordingly, as stated in paragraphs 784 to 786 [of the judgment], [the scope of the reparation] is based on the Resolution adopted by the United Nations General Assembly on March 21, 2006, at its Sixtieth Session [*footnote omitted*], *"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.*" Paragraph 2 of the recitals to the Resolution *recommends* that States consider these basic principles and guidelines, promote respect for them, and bring them to the attention of, among others, members of the judiciary. The Preamble to the Basic Principles and Guidelines *recalls* various provisions that recognize the right to a remedy for victims of violations of universal international human rights law, including Article 2 of the International Covenant on Civil and Political Rights and Articles 68 and 75 of the Rome Statute of the International Criminal Court, as well as regional international human rights law, such as Article 25 of the American Convention on Human Rights. The Preamble also *affirms* that the Basic Principles and Guidelines apply to gross violations of international human rights law and serious violations of international humanitarian law which, by their very grave nature, constitute an affront to human dignity; and it *emphasizes* that they identify mechanisms, modalities, procedures, and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law [*emphasis in the original*].

Section IX of the Basic Principles and Guidelines is devoted to "*reparation for harm suffered.*" Principle 18 states that under domestic and international law, victims shall be granted full and effective reparation in five relevant forms: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. *Restitution*, which has a broader meaning than that provided under domestic law, includes, as appropriate, restoration of liberty; enjoyment of human rights, identity, family life, and citizenship; return to one's place of residence; restoration of employment; and return of property (Principle 19). *Compensation*, which has a dimension that can be likened to domestic law, comprises all economically assessable damage (Principle 20). *Rehabilitation* includes medical and psychological care, as well as legal and social services (Principle 21). *Satisfaction*, which is not provided for in domestic law, includes various measures such as verification of the facts and full and public disclosure of the truth; a judicial decision restoring the dignity, reputation, and rights of the victim and of persons closely connected with the victim; and a public apology (Principle 22). *Guarantees of non-repetition*, which are not part of the national system, should include, among other measures, reviewing and reforming laws, educating and training public officials, and strengthening the independence of the judiciary (Principle 23) [*emphasis in the original*].

In this regard, the argument of the civil party focuses on the fact that the right to reparation must include international human rights law standards, given that the facts were characterized as extremely grave and as violations of human rights. Here we can apply the Fourth Final and Transitory Provision of the Constitution; Article 63.1 of

the American Convention on Human Rights, which refers to reparation for the consequences of the measure or situation that violated those rights and the payment of fair compensation to the injured party; and the judgment of the Inter-American Court in the case of *VELÁSQUEZ RODRÍGUEZ v. Honduras*, of July 29, 1998, paragraph 166 of which states that "… *the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible, attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation*"—a jurisprudential principle reiterated in the judgment of September 26, 2006, in *ALMONACID ARRELLANO et al. v. Chile*, paragraph 110. Based on these premises, the Inter-American Court has repeatedly ordered measures of satisfaction and guarantees of non-repetition in addition to compensatory measures for pecuniary and nonpecuniary damages.

The reparation measures ordered by the Inter-American Court are based on Article 63.1 of the American Convention on Human Rights and on its interpretation of the theory of international responsibility, under which it determines reparation measures designed to erase the effects of the violations committed. Within this treaty-based framework of the regional protection system, specific reparation measures are developed that seek to overcome the obstacles to effective reparation of the harm suffered by the victims, as well as to limit the need to provide a response that allows the case to be resolved [*footnote omitted*]. The Inter-American Court, to the extent possible, provides for the full restoration of the situation that existed before the violation was committed (*restitutio in integrum*) [*footnote omitted*]; if this is not feasible in whole or in part, the Court provides other measures aimed at guaranteeing rights, redressing the consequences, and compensating for damages, as well as ensuring that similar harmful acts are not repeated [*footnote omitted*].

In principle, the Court accepts the primacy of international human rights law as the essential basis for its decision in this area. The norms contained therein are binding and of direct and immediate application, to the extent that they contain norms more favorable to the fundamental rights of the individual than those enshrined in the Constitution [*footnote omitted*]. Therefore, it is appropriate to integrate these norms—based on their own terms—into the domestic legal system, and to apply the case law of the Inter-American Court to adjudicate, as appropriate, the competing interests expressed in the domestic venue [*footnote omitted*]. The interpretative guidelines of the American Convention on Human Rights and the jurisprudential principles derived from the Inter-American Court, therefore, not only are a necessary guide for interpreting the rights recognized in the Convention, but are also binding on this Court. This doctrine, moreover, has been expressed by the Constitutional Court in Judgment No. 0217-2002-HV.TC of April 7, 2002, reiterated in paragraph 12 of Judgment No. 2730-2006-PA/TC of July 21, 2006, and emphasized by the Supreme Court in binding Decision No. 18-2004 of November 17, 2004.

According to the case law of the Inter-American Court in relation to the American Convention on Human Rights, Peru has assumed the obligation to: ***(i)*** respect the rights and freedoms recognized by the Convention, ***(ii)*** ensure the rights and guarantees of all persons under its jurisdiction, ***(iii)*** bring its legal system and the actions of all public authorities into line with the aim of effectively guaranteeing the rights and freedoms of all citizens, ***(iv)*** take preventive measures to keep rights violations from occurring, ***(v)*** investigate rights violations and punish the perpetrators, and, *inter alia*, ***(vi)*** where appropriate, restore the violated right and repair the harm caused and, if applicable, pay compensation [*footnote omitted*].

Therefore, to the extent that the facts of the case can be characterized as "… *gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law* …" (Principle 4), the Basic Principles and Guidelines will be applicable domestically, especially if they have been incorporated into the established case law of the Inter-American Court [*emphasis in the original*].

Guatemala. *First instance criminal judgment (Hugo Ramiro Zaldaña Rojas, et al., defendants) (Case of Molina Theissen) (List of judgments 5.4).*

ADEQUATE REPARATION: Article 124 of the Code of Criminal Procedure establishes the victim's right to adequate reparation when determined in criminal proceedings. This reparation includes restoration of the right that

has been affected by the criminal act, which starts with recognition of the victim as a human being in all his or her aspects and as a rights-holder against whom a criminal act was committed; it also includes, where appropriate, compensation for the damages arising from the commission of the crime. In this case, in the hearing on adequate reparation, the Court finds that: In light of Articles 1, 2, 12, 14, 17, 155, 203, and 204 of the Constitution of the Republic of Guatemala, and given that judges may render decisions based on a contextual interpretation of the legal system, Article 112 of the Criminal Code specifically establishes the civil liability of those criminally responsible; Article 124 of the Code of Criminal Procedure also specifies the elements of adequate reparation, which consist of verifying and considering all the elements that contribute to reparation, to reintegration in terms of the specific victim who may have suffered as a result of a criminal act. [...] Adequate reparation must include measures of restitution, rehabilitation, compensation, satisfaction, and non-repetition, in line with international standards on reparation; these elements must be met when the decision on adequate reparation is made [*emphasis in the original*].

El Salvador. *Unconstitutionality actions 44-2013 and 145-2013, consolidated (List of Judgments 4.2).*

Comprehensive reparation to the victims of war crimes and crimes against humanity committed by both sides [...] entails: *(i) the reestablishment or restoration of the violated rights; (ii) restitution; (iii) compensation for the harm caused; (iv) the payment of damages; (v) the rehabilitation and readaptation of the victim; (vi) the satisfaction and vindication of the victims; (vii) guarantees of non-repetition; and (viii) public knowledge of the truth*, among other forms of reparation [*emphasis in the original*].

i. The reestablishment or restoration of the violated rights requires taking appropriate and effective measures to enable things to return to the state they were in before the violation occurred.

ii. Restitution includes the return of assets or the payment of damages, as well as the reimbursement of expenses and services incurred as a consequence of the violation.

iii. Compensation involves the delivery of assets to compensate for irreversible physical or psychological harm, such as lost opportunities in terms of individual and family life plans, education, and employment, and expenses incurred for legal or medical services.

iv. The payment of damages of a pecuniary, nonpecuniary, psychological, or social nature must be guaranteed in a manner adequate and proportional to the seriousness of the harm caused, taking into account the circumstances of each specific case, the pecuniary damage caused, and the loss of opportunities such as lost income, including actual damages, lost profits, and foregone social benefits [...].

v. The rehabilitation and readaptation of the victim and his or her relatives includes medical, psychological, social, and other assistance measures that can mitigate or overcome the effects of the violation.

vi. The satisfaction and vindication of the victims entails taking measures to apologize for the violation or harm caused to their honor and dignity, whether through the public acknowledgement of responsibility, public apologies to the victims and their families, public disclosure of the truth about what happened, or the adoption of symbolic measures in honor of the victims, such as erecting monuments or commemorating dates associated with the violations. The duty of satisfaction is also fulfilled when the facts are investigated impartially, exhaustively, and conclusively; when legal penalties are imposed against the direct and indirect perpetrators of the human rights violations; when measures are taken to search for disappeared or kidnapped persons or to locate the bodies of murdered persons; and when victims are buried and identified.

vii. The guarantee of non-repetition of human rights violations entails taking action to prevent violations and keep them from recurring, and includes such measures as: cleaning up police agencies and the armed forces; disbanding unlawful armed groups; discontinuing the use of instruction manuals on the disproportionate use of force and weapons against individuals; strengthening judicial independence; and promoting human rights education in police and military institutions, as well as in the various sectors of society.

El Salvador. *Unconstitutionality action 62-2012 (List of judgments 4.1).*

[T]he right to reparation includes the right to be "compensated for the harm derived from the punishable act, to have the harm caused by the punishable act repaired, or to have the claimed object returned," as provided in Article 106(9) [of the Code of Criminal Procedure]. Put simply, the term *reparation* is used to cover the economic measures taken by the offender (in the form of restitution, compensation, or damages), whether symbolic (offering apologies) or concrete (providing a service to the individual or collective victim).

Principle 8 of the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*—hereinafter the *Declaration of Principles*—states that "...[O]ffenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights." Therefore, its content goes beyond mere financial compensation and seeks comprehensive reparation, which should initially be paid by the perpetrator; but when this is insufficient, it is up to the State to pay for it by setting up assistance or compensation funds [*emphasis in the original*].

Uruguay. *Cassation appeal (AA, indirect victim) (List of judgments 7.4).*

[L]aw [18.596] […] acknowledges the responsibility of the Uruguayan State in the systematic practices of torture, enforced disappearance, and extrajudicial incarceration, murders, the psychophysical destruction of persons, [and] political exile or banishment from social life, during the period from June 13, 1968, to June 26, 1973, which was marked by the systematic application of the Provisional Security Measures and inspired by the ideological framework of the National Security Doctrine (art. 2).

Article 3 recognizes the right to comprehensive reparation of all persons who, by act or omission of the State, are included in the definitions provided in Articles 4 and 5.

Now, to make this right effective, the legislature not only assessed the damages, but also provided that comprehensive reparation must be carried out through adequate measures of restitution, rehabilitation, satisfaction, and guarantees of non-repetition. It also established an administrative procedure for claiming and enforcing such reparation.

1.2 Compensatory reparation

An analysis of Latin American decisions on reparations for international crimes shows that compensation remains vitally important as a specific form of reparation. Because it is so central, there are many opinions on the subject. They often have common elements that are shared across different jurisdictions. These include, for example, the concepts of pecuniary damages, nonpecuniary damages, lost profits, or actual damages.

Also noteworthy are opinions that refer to the evidentiary problems that may arise in specific cases with respect to quantifying the compensation or damages. Similarly, other opinions include guidelines specifically designed for the quantification of compensation in cases involving multiple victims.

1.2.1 General considerations

Colombia. *Sentencing and reparations judgment (Edilberto de Jesús Cañas Chavarriaga et al., defendants) (Case of the Cacique Nutibara Bloc) (List of judgments 3.3).*

a. The Court will award the compensation to which each victim is entitled under the following general rules*a.* **Actual damages** correspond to the decrease or loss of the victim's assets as a consequence of the act, the expenses incurred as a result of the act, or the value or price of the asset or thing that has been harmed.

For assessment purposes, the Court will consider the sworn appraisal and the statement of the victims, provided that they are reasonable, plausible, and consistent with the facts and other evidence presented by the Prosecutor's Office and the other parties, since under Article 206 of Law 1564 of 2012 (General Code of Procedure), "Whoever claims compensation or the payment of improvements or added value must reasonably estimate each of such items, under oath, in the lawsuit or relevant petition, specifying each item." This sworn appraisal "shall be evidence of its amount as long as the opposing party does not object to it upon receipt of notice."

This same rule applies when the income or salary earned by the direct victim is established in a sworn appraisal for the purpose of determining lost profits.

However, if the appraisal is deemed "patently unfair, illegal, or if fraud, collusion, or any other similar situation is suspected," the judge may, *sua sponte*, order the production of evidence to verify and clarify the damages. Therefore, in such a case, they must be proven in court by other means.

[In addition, based on inter-American and constitutional case law,] it follows that: (i) funeral expenses are presumed, since the victims' families must have incurred such expenses as a result of the victims' deaths; (ii) funeral expenses are variable and do not have a uniform value; and (iii) they are set at the judge's discretion, as stated in the case law of the Inter-American Court of Human Rights. [...]

b. **Lost profits** refers to monetary damages related to the profit, money, gain, or income that a person lost as a result of the crime or the harm caused to him or her.

To determine lost profits, [multiple] rules must be considered [with their respective formulas, which are detailed in the text of the judgment].[15] [...]

c. **Nonmonetary damages** pertain to the pain or suffering that the act causes to the direct victim or to his or her relatives or to persons connected to the victim by emotional or social ties. These damages are governed by their own set of rules:

i) According to the case law of the Supreme Administrative Court, nonmonetary damages "are presumed within the degrees of close kinship, since the family is the cornerstone of society under the terms defined in Article 42 of the Constitution. Therefore, the judge cannot disregard the rule of experience according to which the close family nucleus is pained or distressed by the harm caused to one of its members, giving rise to nonmonetary damages."

> *"… Proving kinship is evidence of such harm to relatives up to the second degree of consanguinity and first degree of marriage, i.e., parents, siblings, grandparents, and children of the affected person and his or her spouse or domestic partner. The through line between the fact of kinship and the circumstance that the harm caused to a person results in the pain and suffering of his or her relatives is based on the fact that: (a) human experience and social relations teach us that relatives share bonds of mutual aid and affection, and (b) family relationships are based on the equality of rights and duties of the couple and on reciprocal respect between all family members (Const. art. 42). Thus, the loss or illness of one relative causes serious pain to the others. This does not mean, in the event that kinship is not established, that one cannot prove the pain and suffering of these relatives as victims through the various types of evidence stipulated in the Code of Civil Procedure from which nonpecuniary damages may be inferred" [footnote omitted]. [...]*

[T]he assessment of nonmonetary damages should be based on current legal monthly minimum wages, and it is the judge who, unlike in the case of monetary damages, must assess and determine their amount, according to his or her prudent judgment and the principle of equity, since "it depends on the intensity of the harm." In such cases, the case law has established "as maximum compensation the sum of 100 times the current legal monthly minimum wage as of the date of judgment" [*footnote omitted*].

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[15] For reasons of space, this Digest does not transcribe all the rules and formulas detailed in the judgment. However, we recommend consulting the full text of the public version of the judgment.

The judge's discretion in making this assessment is guided "(a) by the understanding that damages are awarded in the form of compensation, not restitution or reparation; (b) by the application of the principle of equity provided for in Article 16 of Law 446 of 1998; (c) by the requirement that the damages be supported by the evidence of the harm and its intensity on record in the proceeding, and (d) by the duty to base the damages, when applicable, on other decisions in order to guarantee the principle of equality" [*footnote omitted*]. [...]

[I]n assessing nonmonetary damages, the Court should consider the number of victims, since they all have the right to compensation and should be afforded equal access to reparation, not only in keeping with these principles, but also in order to guarantee the rights to real and effective equality and access to justice. [...]

d. **Harm to health** is an adverse impact separate from pecuniary or nonpecuniary damage. It consists of a change in the physical, physiological, and psychological conditions of the person that alters his or her existence and life plan and prevents the person from properly relating to and interacting with their fellow human beings as a result of the harmful event.

This is, therefore, an impact that is only acknowledged in the case of victims who have suffered this specific harm and who can prove that the physical, physiological, or psychological injury or impairment gave rise to a loss that goes beyond purely pecuniary and nonpecuniary damage and undermines the development of their personality, independence, and autonomy as human beings, or the exercise of their rights, affecting their life plans and their relations with others.

Under the case law of the Supreme Administrative Court, assessing this type of damage requires ascertaining the severity of the harm caused to the victims.

The Court will determine harm to health based on the following table, for which it not only must consider "*the consequences of the illness or accident that reflect changes in the victim's behavior and performance within their social and cultural environment that aggravate their condition,*" but also must examine the following elements:

> "*- The loss or abnormality of psychological, physiological, or anatomical structure or function (temporary or permanent).*
> *- An anomaly, defect, or loss produced in a limb, organ, tissue, or other bodily or mental structure.*
> *- The externalization of a pathological state reflecting disturbances at the organ level.*
> *- The reversibility or irreversibility of the pathology.*
> *- The restriction or absence of the ability to perform a normal or routine activity.*
> *- Excesses in performance and behavior within a normal or routine activity.*
> *- Limitations or impediments to the performance of a given role.*
> *- Social, cultural, or occupational factors.*
> *- Age.*
> *- Sex.*
> *- Factors related to the impairment of the victim's pleasurable, meaningful, and enjoyable interests.*
> *- Others that may be evidenced in the proceedings*" [footnote omitted] [emphasis in the original].

Colombia. *Sentencing and reparations judgment (Fredy Rendón Herrera, et al., defendants) (Case of the Elmer Cárdenas Bloc) (List of judgments 3.1).*

Actual damages represent the harm caused to the injured party's financial position, taking into account the value of lost assets or their depreciation, expenses incurred to overcome the consequences of the harmful event, etc., all of which must be proven in the proceedings. Lost profits refer to the earnings, profit, or benefit that the injured party has not obtained, i.e., the increase in assets that he or she would probably have received had the harmful act

not occurred. Examples include the loss of income due to an injury resulting in the inability to work, or [loss of] the exploitation of a productive asset.

Both actual damages and lost profits can be current or future, but they should not be uncertain; the aim is to quantify them in terms of likely future consequences, provided they are certain.

Nonpecuniary damages refer to impacts on the inner life of each person, whether suffering, fear, or stress. According to the most recent decisions of the Criminal Cassation Division of the Supreme Court of Justice and the Supreme Administrative Court, such damages can be divided into two categories: (i) nonpecuniary damages and (ii) damage to personal relationships. In turn, nonpecuniary damages are divided into subjective nonpecuniary damages, understood as the pain, sadness, anguish, and distress caused by the injury to a person's individual rights; and objective nonpecuniary damages, understood as the economic repercussions that such feelings may produce, which must be demonstrably quantified by the claimant.

Finally, damage to personal relationships, or altered conditions of existence, refers to a substantial change in the victim's social relations and functioning in the community that impairs his or her personal, professional, or family development. It is an external disruption of life, while nonpecuniary damages are internal in nature. It entails losing the ability to carry out vital activities that, although they do not produce a financial return, make life enjoyable.

The Criminal Cassation Division of the Supreme Court of Justice, regarding the appellate phase of the case against Edwar Cobos Tellez and Uber Enrique Banquez Martinez, explained:

> *"In other words, this type of damage may be evidenced by a decline or deterioration of the victim's quality of life, in the loss of or difficulty in establishing contact or relating to people and things in order to enjoy an ordinary existence, or in the deprivation experienced by the affected person in performing the most basic tasks that are part of his or her daily or habitual life. It could be said that those who experience damage to their personal relationships are forced to lead a more complicated or demanding existence than others, since they have to face abnormal circumstances and barriers that can cause even the simplest things to become difficult. For the same reason, the Court emphasizes, quality of life is diminished, while possibilities, options, projects, and aspirations disappear permanently, or their level of difficulty increases considerably. Thus, from one moment to the next, the victim will, without reason, encounter obstacles, worries, and vicissitudes that were previously absent, and this closes or hinders his or her access to culture, pleasure, communication, entertainment, science, development, and, in short, to everything that a normal existence entails, with the ensuing dissatisfaction, frustration, and profound unease" [emphasis in the original].*

Peru. *First instance criminal judgment (Alberto Fujimori Fujimori, defendant) (Cases of La Cantuta, Barrios Altos, and SIE Basements) (List of judgments 6.2).*

Article 93 of the Criminal Code, as stated above, determines the extent of civil damages in criminal proceedings. It covers the restitution of assets or, if that is not possible, the payment of their value, as well as compensation for damages. Article 101 of the Criminal Code stipulates that civil damages are also governed by the relevant provisions of the Civil Code.

Article 1969 of the Civil Code contains the basic rule that *"[a]nyone who, through malice or negligence, causes harm to another has an obligation to compensate for it."* Article 1985 of the Civil Code regulates the extent of the compensation; it provides that *"[c]ompensation is for the consequences of the act or omission that gave rise to the harm, including lost profits, harm to the person, and nonpecuniary damages …"*

From a general perspective, civil liability entails the liable party's obligation to restore the respective assets to the state they were in before the violation was committed. The purpose is always to seek the fullest reparation of the damage and neutralize the effects of the criminal act, whether potential or ongoing [*footnote omitted*]. From this perspective, the national legislature has provided for three paths: restitution (which is preferable and is a way of asserting a claim in a criminal proceeding), reparation, and compensation.

The Criminal Code links *restitution* (as a means of restoring the legal status altered by the criminal offense) to *reparation* when, in the latter case, due to the deprivation of an asset as a consequence of the criminal act, restitution—which obviously includes payment for the deterioration and damaging of the asset, and which nevertheless typically constitutes compensation—is impossible. This restitution consists of payment of the value of the affected asset, which reflects the extent of the damage caused [*footnote omitted*]. This means, as the Argentine Court of Criminal Cassation—whose basic rule is similar to the Peruvian one—has stated, that restitution not only includes the return of the thing to the person deprived of it, but also consists of restoring things to the state they were in before the crime [*footnote omitted*].

Compensation, on the other hand, is designed to be a suitable means of financial redress for private damage, regardless of whether the thing harmed is a tangible asset or a different type of interest. Restitution, in any case, does not preclude compensation if the crime has given rise to damages [*footnote omitted*]. These damages must be derived directly from the criminal act (cause-effect relationship) [*footnote omitted*] and must be proven (requirement of certainty) by the party seeking compensation [*footnote omitted*], except, of course, for harm to the person and nonpecuniary damages that are clear from the facts. Judicial discretion is reasonably contemplated, but under Article 1984 of the Civil Code, the extent of the damage and the harm caused to the victim or to his or her family must be considered. There is, however, no evidence on which to establish a basis for compensation that is suitable for quantifying the appropriate sum based on economic criteria, and therefore the description of the criminal act itself must be considered [*footnote omitted*]. The economic criteria for compensation are carefully determined based on equity [see: Civil Cassation No. 47-1-1998]; Article 1984 of the Civil Code states that the assessment of nonpecuniary damages—understood as nonmonetary damages and harm to the person—is based on the extent of the damages and the harm caused to the victim or to his or her family. The nature of the affected interest must be considered in relation to the nonpecuniary nature of the legally protected interest, the determination of which will depend on the individual case and the personal circumstances of the individual entitled to compensation and should not be limited to purely mathematical calculations [*footnote omitted*]. Compensable damages include monetary/pecuniary damages and nonpecuniary damages, namely harm to the person and pain and suffering. Monetary or pecuniary damages include damage to things and physical injury, i.e., injury to economic rights, which must be remedied [in the case of criminal battery, for example, it covers health expenses, work disability, the discomfort, pain, and inconvenience caused by the injury and treatment, and the after-effects of the injuries]. Nonmonetary damages are subdivided into: (i) harm to the person, understood as the injury to the existential or non-property rights of persons—damage or injury to a right, asset, or interest of the person as such; and (ii) pain and suffering, understood as the adverse psychological impacts—including anxiety, distress, and physical suffering—endured by the victim and which is ephemeral and temporary, as defined by the Italian Constitutional Court in judgment number 148 of July 14, 1986 [*footnote omitted*].

Thus, for example, in crimes against a person's freedom, due to their nature, the imposition of a sentence ordering compensation for harm to the person and nonpecuniary damages is warranted [*footnote omitted*]. Similarly, Argentine law and scholarly opinion hold that compensation includes the totality of earnings the victim lost until the day his or her freedom was fully restored, as well as actual damages, if any, and nonpecuniary damages [*footnote omitted*].

In all other respects, monetary damages include *actual damages* and *lost profits* [*footnote omitted*]; strictly speaking, these are two categories of monetary damages. Actual damages are understood as monetary damages and personal injuries, whether physical or psychological, with or without economic repercussions; lost profits refers to the earnings that would have lawfully accrued to the victim—which, obviously, is hypothetical because it involves determining the likelihood of outcomes that would have occurred had the crime not been committed [*footnote omitted*]. In the case of the heirs—which most of the civil plaintiffs are—compensation can be broken down, following Spanish case law, into three components: health and funeral expenses, which provide a reliable evidentiary basis; economic distress, if they were financially dependent on the deceased, based on loss of sustenance and financial support; and nonpecuniary damages, which need not be proven, as they are self-evident [*footnote omitted*].

The damages established in the Criminal Code refer to the same situation: the monetary or nonmonetary loss sustained by one or more persons as a result of a criminal offense, including both expenditures and lost profits [*foot-*

note omitted]; this refers, of course, to profits that are certain, not to those that are merely possible and least of all to "aspirational profits."

In paragraph 8 of Decision No. 6-2006/CJ-116 of October 13, 2006, the Supreme Court, sitting *en banc*, held that civil damages should be understood as those negative effects that derive from harm to a protected interest, which may give rise to (1) *monetary damages* for an injury to economic rights, which must be repaired, based on the diminution of the victim's assets and on the non-increase in the victim's net worth or net capital gain (loss of assets); and (2) *nonmonetary damages*, limited to the injury of rights or legitimate existential (not economic) interests of both natural persons and legal entities, affecting the victim's intangible, nonmonetary assets.

The Criminal Divisions of the Supreme Court have consistently held that the scope of civil damages refers specifically to financial compensation. A civil claim in domestic criminal proceedings seeks, in the vast majority of cases, to be in the nature of a conviction and, as part of that, seeks an "award" [*footnote omitted*]. Article 93 of the Criminal Code specifically states that the purpose of civil damages is the restitution of assets or, if this is not possible, the payment of their value, along with compensation for damages. In crimes such as the ones before us—which are not property crimes—there is no restitution or reparation, inasmuch as these refer only to property [the reparation of harm consists of making a monetary payment for the property that cannot be returned]; rather, there is compensation, which means ordering the payment of an amount of money sufficient to cover all the damages caused by the crime [*footnote omitted*] [*emphasis in the original*].

Peru. *First instance criminal judgment (Daniel Cortez Alvarado and Ricardo Matta Vergara, defendants) (Teófilo Rímac Capcha, victim) (List of judgments 6.3).*

Article 93 of the Criminal Code provides that civil damages include (a) restitution of the asset, or if this is not possible, payment of its value; and (b) compensation for the damages caused by the criminal event. This item must be established in line with the principles of equity and reparation. It should reflect the damage caused to the victim or to his or her relatives, who, as we have stated, are people of limited financial means—mostly peasants, widows, and children—who are entitled to compensation for the nonpecuniary damages arising from the loss of their relatives. This includes not only economic retribution but also, above all, the assistance and effective reparation that the State must provide in the search, discovery, and recovery of the victims' remains, until they are handed over to their relatives. [...]

Based on the human rights case law on the nature and amount of civil damages, two fundamental principles should be mentioned: (1) the nature of the reparation depends on the pecuniary and nonpecuniary damages caused; and (2) reparation should not entail either enrichment or impoverishment of the victim or his or her successors [*footnote omitted*].

Therefore, civil damages entail above all the restitution of the legally protected interest that has been harmed; and only if such restitution is impossible should compensation be set, commensurate with the damages caused. In other words, compensation will be determined based on the pecuniary or nonpecuniary damages caused by the unlawful act.

As for civil damages, the Supreme Court has held that consideration must be given to criteria such as proof of the unlawful act (in this case the refusal to disclose the victim's ultimate fate); the harm caused; and the disappearance of a person who at the time had a family and children, and was a teacher earning an income, giving rise to monetary damages because his potential earnings to support his family were cut off (lost profits and actual damages). There were also nonpecuniary damages, which arise from the underlying feelings of not knowing the truth and from the harm to a person's life plans; this has a psychological impact on the family members when there is a causal relationship between the event and the harm caused, whether pecuniary or nonpecuniary.

El Salvador. *Unconstitutionality actions 44-2013 and 145-2013, consolidated (List of Judgments 4.2).*

With respect to compensation for nonpecuniary damages, Article 2(3) of the Constitution provides: "Compensation shall be awarded, in accordance with the law, for nonpecuniary damages." Nonpecuniary damages refers to

the nonmonetary or intangible harm suffered due to the violation of fundamental rights, such as the effects produced by grief, pain, distress, or other manifestations of emotional or psychological harm affecting the incalculable or vital interests of the person.

Because it is a form of reparation, the purpose of compensation is not to punish the unlawful conduct, but to provide financial redress for the damage it caused, especially when the victim can no longer return to the situation that existed prior to the violation of his or her rights. The right recognized in Article 2(3) of the Constitution is independent of whether anyone is punished for the violation.

This situation arises when fundamental rights are violated, in which case there is a right to demand compensation from those responsible for the nonpecuniary damages caused—possibly one of the measures that can most tangibly benefit the victims' situation.

Since it is an autonomous constitutional guarantee against violations of fundamental rights, the claim to compensation does not replace or dispense with the State's other obligations to prevent, investigate, prosecute, and punish the perpetrators, since both protection mechanisms have their own legal source and specific purpose, with the same obligatory character.

1.2.2 Assessing damages and setting the amount of compensation

Cases involving international crimes have led to the need to consider two fundamental issues in determining compensation for the harm done. First, Latin American courts have had to confront the evidentiary problems presented by these cases. As is to be expected, the secrecy that usually surrounds these acts, as well as the social and personal disturbances that a context of mass violence entails, may affect both the evidence and the conditions to be assessed in setting compensation for the reparation of harm.

Second, national courts have also had to take a position on the normative impact that characterizing an act as an international crime should have on the determination of compensation. In other words, a fundamental issue to be decided in this type of case is whether it is legally appropriate to qualify and quantify, in a differentiated manner, the harm suffered by a person on the basis of the context in which the harmful acts occurred. This is an extremely important question because it involves assessing, for the purpose of setting the amount of compensation, facts or events that do not necessarily have an impact on the harm suffered by the victim, although they do entail a different consideration with respect to the seriousness of the criminal act.

Latin American courts and tribunals have not taken a uniform position on these issues. Different opinions have been adopted even within the same jurisdictions, and the judgments presented below illustrate this diversity. However, the general trend seems to point to the importance of considering the context of the facts, in line with the characterization of those facts as an international crime, when assessing the evidence and determining compensation.

Uruguay. *Appeal (Verónica Mato, indirect victim) (List of judgments 7.3).*

The report of the Commission for Peace states that Miguel Angel Mato was arrested on January 29, 1982, in the afternoon, in the street, and that he was held in the clandestine detention center known as La Tablada until his death on March 8 of that year [...].

Although the report does not indicate the conditions in which he was detained, it is not at all unreasonable to presume that he must have endured intense suffering during his 39 days of confinement; therefore, the amount estimated for this item ($29,250) is prudent and appropriate to the circumstances of the case. [...]

[The [appeals] court also dismisses the claims asserted by the Ministry of Defense, as defendant in the lawsuit for nonpecuniary damages] [r]egarding the existence of lost profits and the basis for awarding them. [...]

[I]t is undisputed that Miguel Ángel Mato was his family's sole breadwinner and that, at the time of his disappearance, he was working at FUNSA.

[In its pleadings, the Ministry of Defense argues that] the existence of lost profits was not proven, because at the time of his arrest, Miguel Ángel Mato was an employee of the company FUNSA, whose well-known difficulties led it to cease operations. In any case, it considered that the payments awarded to the plaintiffs were excessive.[16]

The fact that this company had had difficulties that later led it to cease operations is irrelevant to estimating lost profits, given that they should have been calculated precisely from the time of Miguel Ángel Mato's disappearance. [...]

Finally, the fact that the lower court had established that the lost profits would be readjusted as from the date of the unlawful act (conclusion of law IV, p. 320) shows that the calculation formula to be followed in the assessment process is that of a capital payment, which is based on the income that the victim received at the time of his disappearance, without considering future increases or inflation. Therefore, since the income is frozen for the entire period covered by the lost profits, the readjustments should run from the date of the unlawful act and not month by month as the respondent claims. [...]

The Court has settled case law to the effect that the payment of compensation for damages in tort liability accrues interest from the date of the claim, under Article 1348 of the Civil Code [...], a position that should be maintained in this case, given that, as the respondent [...] stated, as of March 1, 1985, the date on which the legitimately elected government took office in accordance with the Constitution, the plaintiffs were in a position to file a civil suit against the State for the events at issue in this case. [...].

Colombia. *Sentencing and reparations judgment (Edilberto de Jesús Cañas Chavarriaga et al., defendants) (Case of the Cacique Nutibara Bloc) (List of judgments 3.3).*

[The Constitutional Court has established] that when there is an evidentiary problem and the evidence is insufficient to establish the amount of the damages, it is not appropriate to apply the rules of equity; rather, the rules of evidence should be relaxed. In such a case, it is not a matter of giving the judge unlimited discretion, but rather of refining the methods of weighing evidence, using public facts, sworn appraisals, presumptions, and rules of experience, and scale or differentiated models, among others.

The Court has also stated that the judge may use scale or differentiated models in cases of mass violations of human rights and international humanitarian law. In this regard:

> *"(c) The Court finds that in the case of mass human rights violations, as in the cases handled under the Justice and Peace Law, it will be particularly useful, in terms of quantifying reparations, to adopt scale or differentiated models—that is, based on the demonstration of the harm caused to specific persons, such quantification may be inferred and extended to persons who are similarly situated but have not adequately oriented their work toward proving the quantum of the damages, such as the identity of professions, age, socioeconomic or family status, etc." [footnote omitted] [emphasis in the original].*

Guatemala. *First Instance Criminal Judgment (Pedro García Arredondo, defendant) (Case of the Spanish Embassy in Guatemala) (List of judgments 5.2).*

In analyzing each item of the claim for adequate reparation, the court did not grant evidentiary value to the expert witness [presented by the victims] or report, because [the victims] failed to provide documents supporting the sums requested. Therefore, the court partially upheld the claim, granting the victims' request for nonpecuniary damages, since the case law of the Inter-American Court of Human Rights establishes that nonpecuniary damages

[16] The text in the second set of brackets is a verbatim transcription of a previous part of this same judgment, but it is inserted here for clarity of argument.

need not be proven, as the damages caused to the victims are self-evident. The court therefore: (I) Grants the claim for redress brought by the victims Rigoberta Menchú Tum, Arita Menchú Tum, Nicolas Menchú Tum, and Marta Menchú Cotoja, for which the court awards 1,500,000 quetzales as compensation for the nonpecuniary damages and suffering caused by the massacre in which their father Vicente Menchú Tum was killed. This sum shall be distributed proportionally to each victim in the family nucleus. [...] [The same amount of 1,500,000 quetzales is awarded in compensation for nonpecuniary damages to (i) Sergio Fernando Vi Escobar for the death of his father Gaspar Vi; (ii) Rodolfo Anleu Rivas for the death of his mother María Lucrecia Rivas Fernandez de Anleu in the massacre; (iii) Agustina Xitumul Manuel for the death of her husband Francisco Chen in the massacre; (iv) Rafael González Yoc for the death of his brother Juan José Yos in the massacre; and (v) Juan Lopez Camaja for the death of his father Juan Lopez Yac in the massacre.] [...] The civil action is left open so that the victims who did not assert their claims in this lawsuit may do so in the respective courts.

In contrast to the opinion of the First Trial Court for Criminal Matters, Drug Trafficking, and Environmental Crimes of Guatemala regarding the presumption in favor of nonpecuniary damages, the same judgment concludes that, without suitable evidence of psychological harm or lost profits as a result of the crime, compensation for such damages cannot be ordered.

Guatemala. *First Instance Criminal Judgment (Pedro García Arredondo, defendant) (Case of the Spanish Embassy in Guatemala) (List of judgments 5.2).*

Regarding the specific amounts of compensation for psychological harm (the cost of 81 therapy sessions at 400 quetzales each), the victim did not attach to his claim the accounting documents proving the payments. Instead, he submitted a certificate issued by Dr. Carlos Gabriel Ramila R. Although he states that he was treated by the doctor in 1989 and reports that these symptoms were a consequence of his mother's tragic death, he has not submitted the doctor's evaluation proving that the traumas arose as a consequence of his mother's death. Regarding the lost profits or damages arising from the death of Ms. María Lucrecia Rivas de Anleu, [her son] is seeking payment in the amount produced by the San Jorge farm, located in Chilasco Baja Verapaz, which was owned by Ms. María Lucrecia Rivas Hernández de Anleu, who held a logging permit [...]. It was not shown how Ms. Rivas's violent death could have affected the farm's production and subsequent auction, and since it was proven that she was working at the Spanish Embassy as a secretary, there is no logical reason why her violent death would have affected the management and production of the San Jorge farm; since there was no evidence of any contract pending signature, this cannot be used to determine the amount of reparation. As for his claim of lost profits pertaining to the victim's earnings as a secretary at the Spanish Embassy, the court had no evidence of her monthly salary, as the expert's report included no appendices in this regard. This document was not provided by the victim's attorney, nor is there any testimonial or documentary evidence of the salary Ms. Rivas was earning.

1.2.3 Compensatory reparation in specific cases

Peru. *First Instance Criminal Judgment (Alberto Fujimori Fujimori, defendant) (Cases of La Cantuta, Barrios Altos, and SIE Basements) (List of judgments 6.2).*

In the case of both victims, and following the guidelines established in paragraphs 213 to 220 of the judgment [of the Inter-American Court of Human Rights in the case of] La Cantuta, the Court has adopted the following decision-making guidelines and considerations:

A. It is understood that the State has compensated the victims, direct relatives of Marcelino Marcos Pablo Meza and Juan Gabriel and Carmen Juana Mariños Figueroa, for the nonpecuniary damages they suffered […].

B. Monetary damages must be proven [loss or detriment to the victims' income, expenses incurred as a result of the facts, and the financial consequences with a causal nexus to the facts], as stated in paragraph 213. Here, the two civil plaintiffs have failed to prove a concrete impact on both points.

C. Nonmonetary damages [pain and suffering caused to the relatives of the direct victims, the impairment of very significant personal values, as well as changes in the conditions of their existence …] of both plaintiffs, in their capacity as siblings of the murdered persons, do not require specific proof […], and their equitable amount should be set at the sum of $20,000 […]. They have not proven that they encountered irregularities in the domestic investigations and proceedings concerning their family members, or that they experienced any other harm—as is the case of other beneficiaries.

Under the doctrine set forth in paragraph 781, the Court must determine whether the civil plaintiffs—who represent 21 of the 29 victims in the Barrios Altos and La Cantuta cases—are entitled to a compensatory payment for their activity in this trial; this, of course, would not be provided for in the international proceedings, but [it is] appropriate in this criminal case.

The case law of the Inter-American Court (para. 243 of the La Cantuta judgment) establishes—updating, according to CHIOVENDA, the idea derived from Roman law [*footnote omitted*]—that "costs and expenses," which are considered separately in the new Code of Criminal Procedure and must be established autonomously, are included within the idea of reparation, since the activity undertaken by the victims to obtain justice involves costs that must be compensated when responsibility is established in a conviction [*footnote omitted*].

Bearing in mind that it is incumbent upon the Inter-American Court to directly apply the interpretive guidelines of the American Convention on Human Rights, and considering the crimes perpetrated in the Barrios Altos and La Cantuta cases as grave human rights violations, it is fitting to adhere to this doctrine and, therefore, for the category of civil damages to include a sum for the expenses that the civil parties have incurred to deal with this trial.

As for this last point, the Court has ruled that its scope must be prudently assessed based on the principle of equity, considering the circumstances of the specific case and the nature of the jurisdiction where the proceeding is taking place [para. 243, *Case of La Cantuta*].

The civil parties have provided no documents to support a specific amount, nor have they even specified or explicitly mentioned it. Therefore, it should be ascertained prudently and estimated at a total amount of $20,000, divided proportionally among the number of victims named as civil parties.

It should be clarified that these payments are to be made by the defendant, Mr. Fujimori Fujimori, as the direct perpetrator of the crimes [*footnote omitted*]. The State cannot be included because it has been neither summoned nor expressly considered as a civilly liable party [Article 100 *in fine* of the Code of Criminal Procedure] [*footnote omitted*].

In addition, the sums paid by the State in international proceedings may be recovered, in whole or in part, from the defendant in a separate proceeding because he is the perpetrator-by-means of the two criminal acts for which the State was held internationally responsible.

Peru. *Motion to vacate (Humberto Bari Orbegozo Talavera, et al., defendants, Peruvian Army, civilly liable third party) (Case of the Los Cabitos Barracks) (List of judgments 6.4).*

[Considering that the civil and criminal proceedings have been joined to safeguard a legally protected interest, compensation must be tailored to the individual and determined] prudently and in proportion to the harm caused by the crime.

Under this premise, the Superior Criminal Court rightly set different amounts considering the legally protected interest violated in each specific case. Thus, it was noted in particular that the victim Luis Barrientos Taco was murdered after being illegally detained and held at the barracks known as Los Cabitos. Furthermore, the fact that human life is not quantifiable does not preclude the setting of a monetary compensation amount. Because it is clear that the victim's next of kin suffered nonpecuniary damages and economic loss, the civil damages were set at S/250,000, which has not been questioned.

Similarly, the civil damages awarded to the direct relatives of each of the disappeared victims were set at S/200,000. Damages were also set at S/150,000 for each victim of arbitrary detention. In both cases, counsel for the civil respondent offered no argument on the matter and agreed with the amount set in the judgment, which is in line with the proposal made by the Public Prosecution Service in its written indictment and is consistent with the gravity of the acts that led to the conviction. Therefore, this point is affirmed.

Chile. *Cassation appeal (Hernán Aburto Antipán, direct victim) (List of judgments 2.3).*

[Attorney Carlos Alegría Palazón, on behalf of plaintiff Hernán Aburto Antipán, filed this formal cassation appeal in this Supreme Court] [...]. [It is alleged that,] despite admitting the claim[,] [the Court of Appeals] awarded an absurdly low amount of compensation, which does not constitute comprehensive reparation for the nonpecuniary harm suffered. Hence, the Chilean State has failed to comply with its international obligations.

He states that according to Articles 5(2) and 5(6) of the Constitution of the Republic, general principles of international human rights law, and the norms enshrined in the international treaties ratified by Chile, the State is obligated to recognize and protect the right to full reparation, as we can infer from Articles 2314 and 2329(1) of the Civil Code. He contends that, despite acknowledging that the plaintiff is the victim of a crime against humanity, the judgment awarded an amount of compensation that is unjust and inadequate. [...]

For a proper understanding of the issue raised in the motion to vacate, these factual assumptions must be borne in mind: (a) Mr. Hernán Aburto Antipán was recognized as a victim by the National Commission on Political Imprisonment and Torture ("Valech Report") [...]; and (b) The plaintiff was unlawfully detained on October 8, 1973, according to the detention certificate issued by the Chief of the Quiriquina Island Prison Camp, and was released on July 26, 1974, according to residence control card no. 1863, both of which were admitted without objection [...].

c) At all the detention sites to which he was transferred, he was subjected to interrogation, beatings, and torture. [...]

The trial court, in setting the amount of compensation payable to the plaintiff for nonpecuniary damages, stated in paragraph 14 of its conclusions of law that "[...] [t]he attached PRAIS Report (page 30) describes the psychological burden and physical damage that Mr. Hernán Aburto Antipán still suffers today as a result of the torture to which he was subjected." The third paragraph of the judges' conclusions of law added that "nonmonetary damages, being purely subjective, are left entirely to the prudent discretion of the court, which considers factors such as the circumstances in which they arose and all those that influenced the intensity of the pain and suffering experienced by the victim." However, this Court finds that the evidence is insufficient to determine the consequences suffered by plaintiff Aburto Antipán and to set compensation at the figure specified by the judge of first instance."

It cannot be inferred from the reasoning of the lower court's judgment, or from the legal provisions on which it is based, that the judges disagree with the judgment of first instance that the victims of human rights violations should receive full and effective reparation, as stated in paragraph 7 of the lower court's conclusions of law, which was upheld on appeal.

On the contrary, there is only a quantification of the amount that, in the case at hand, would be sufficient to achieve full and effective reparation. This divergence is not the result of the application or lack of application of any of the substantive norms of the international human rights system or of the national system to which the appeal refers; rather, it results from a different estimate of what should be fair reparation for the nonpecuniary harm caused to the plaintiff due to the crime perpetrated against him. This estimate was based on elements that are difficult to quantify and translate into a monetary equivalent. To ensure coherence and consistency in the decisions of the courts, as well as to ensure equal treatment among the victims who avail themselves of the courts, the judges rely on a prudential determination of the nonpecuniary damages suffered by the plaintiff, for which they must consider the criteria obtained from the study of the existing case law on the subject.

Thus, neither the application to this case of the rules of international law invoked by the appellant, nor the non-application of the rules of national law objected to by the appellant, could necessarily lead to the conclusion that the amount of compensation for nonpecuniary damages set in the judgment under review at $15,000,000 is consistent not with the former, but only with the latter. As has been stated, and as this Court has repeatedly held, the setting of nonpecuniary damages is left exclusively to the discretion of judges, given the purely subjective nature of such damages, which is based on human emotion (SCS 2289-2015, among others). The pecuniary assessment of this kind of harm can and must be undertaken prudentially by the judge, as done in this case, and so this section is not subject to review through cassation on the merits—especially in the case of a crime against humanity, given the particular nature, persistence, and characteristics of its consequences; it is not done according to precise and strict guidelines, rules, or tables established in national or international law [...]. (File No. 7372-2016 of September 13, 2016; File No. 31.777-2017 of January 23, 2018).

For background on this opinion, see:

Chile. *Cassation appeal (Alberto Ponce Quezada, indirect victim) (List of judgments 2.1).*

Regarding criticism of the prudential estimate of the restitution awarded at trial for nonpecuniary damages, this Court has indicated that the determination of such damages is left entirely to the discretion of the judges, given the purely subjective nature of nonpecuniary damages, which is based on human emotion.

Uruguay. *Appeal (Julio Castro Pérez, direct victim) (List of judgments 7.2).*

The [...] judgment [on appeal] admitted the claim and ordered the respondent to pay the plaintiffs $200,000 in nonpecuniary damages, with interest as from the date of the claim.

The respondent appealed based on the following arguments: [...]

The amount of nonpecuniary damages is excessive, beyond the limits usually applied in the case law. No objective evidence was provided for the determination of the amount of reparation.

The legal relevance of the imputation of responsibility clearly affects the nonpecuniary damages [...].

The plaintiffs—children of Julio Castro Pérez—sued the executive branch for nonpecuniary damages, since the names of those directly responsible (personally or institutionally) for the tortious act giving rise to the claim for nonpecuniary damages were unknown. For 26 years, the claimants have lived with the disappearance that occurred on August 1, 1977, when their father Julio Castro Pérez was arrested in the street by security forces at the intersection of Francisco Llambí and Rivera Streets, at approximately 10:30 a.m.

The harmful event was his illegal detention, apprehension, abduction, kidnapping, physical abuse, and subsequent death, absent any judicial process, which is not limited to the detention and subsequent murder, but continues with the concealment and deliberate dissemination of false information about his whereabouts, cover-up, and the attempt to falsely claim that he had traveled abroad. The concealment of mortal remains, prior to the return to democracy, continued during the legal government that failed for many years to investigate what had happened. [...]

As the Supreme Court of Justice has noted, determining nonpecuniary damages is a matter for the judge, based on the circumstances of each case and on his or her prudent discretion—that is, his or her discretionary powers, with moderation, wisdom, and good judgment.

Considering the severity, permanence, and duration of the harm suffered as from August 1, 1977 (p. 31) with the disappearance of their father, which has caused emotional suffering, anguish, and physical and spiritual distress, with no explanations and indeed with the release of false information about his whereabouts, the Court upholds the trial court's award of $100,000 for each claimant, for a total amount of $200,000 (pp. 517–518), which it finds to be consistent with the special circumstances of the suffering experienced by the claimants.

1.2.3.1 Compensation in cases of mass violence versus individual cases

Colombia. *Sentencing and reparations judgment (Edilberto de Jesús Cañas Chavarriaga et al., defendants) (Case of the Cacique Nutibara Bloc) (List of judgments 3.3).*

The Supreme Administrative Court has set nonmonetary damages at up to 100 times the current monthly minimum wage, and this standard applies in individual and specific cases and decisions; however, in the case of mass violations and reparations, with hundreds of thousands of victims who must be guaranteed equal access to reparations, this amount exceeds the criteria of proportionality and reasonableness that should govern an assessment of equality and does not guarantee effective reparations in a society with few resources.

Thus, the Court will set nonmonetary damages at five to 30 times the legal monthly minimum wage in proportion to the seriousness of the violation, the intensity of the harm suffered, the closeness of the connection, the existence of an intimate partnership with the direct victim, and the circumstances of each particular case [...]

In the case of mass violations of human rights and international humanitarian law, the principle of comprehensive reparation applies. This

> *"not only involves restitution for damages arising, naturally, from a violation of individual rights, recognized nationally and internationally; it also entails seeking to restore the status quo, which is why symbolic and commemorative measures are taken to restore the essential core of the right or rights violated, especially when such violations are the result of crimes against humanity" [footnote omitted] [emphasis in the original].*

Colombia. *Sentencing and reparations judgment (Salvatore Mancuso Gómez, et al., defendants) (Case of the Catatumbo Bloc) (List of judgments 3.2).*

Given the large number of direct and indirect victims to be compensated, as well as the many requests filed by the third-party plaintiffs during the ancillary proceedings, the Court finds it appropriate to set the parameters to be used for determining the award in order to avoid making repetitive or inconsistent rulings. With this understanding, the guidelines to be followed are set out below:

1. To quantify the damages caused to the victims of the criminal acts of the Catatumbo Bloc in the terms established under national case law, we will not rely on principles of equity, due to the evidentiary difficulty involved. Rather, we will determine them at law, since the legislature provided for the specific regulation of a controversy between the victim and the defendant [*footnote omitted*].

2. To adjudicate claims for damages, the evidence submitted by the third-party plaintiffs will be considered in order to prove both the occurrence of the damage or harm and the pre-existence of assets, money, or objects, based on the long-standing opinion of the Supreme Court of Justice, which has held that "*… the basic principles of the reparation of harm necessarily require that the harm be proven ...*"; so that, "*We should not lose sight of the fact that proving the harm and the resulting damages is an essential prerequisite for reparation and compensation, even more so in this matter where there is no presumption regarding the establishment of the alleged harm*" [footnote omitted] [emphasis in the original].

3. Therefore, when the parties fail to furnish proof of the causation of the harm in the aforementioned terms, the requested compensation will not be granted and the Court will proceed according to the compensation table3. The Court will take into account what the Supreme Court of Justice has reiterated [*footnote omitted*] by asserting that *the principle of the need for proof will be tempered by the nature of the crimes being prosecuted, since they constitute serious human rights violations. This means that the evidentiary threshold must be lowered, as the Court has stated on previous occasions.* To this end, the following concepts will be considered:

- A fact of which the Court can take judicial notice "*… is that which, being certain, public, widely known, and known by the judge and the general public in a given local, regional, or national time and place, does not re-*

quire legal proof (notoria non egent probatione), since it is an objective reality that judicial authorities should recognize, admit, and weigh together with the evidence in the proceedings, unless it has not been satisfactorily structured…" [footnote omitted] [emphasis in the original].

- Sworn appraisal *"… is a mechanism created to allow victims to assess the harm caused to them, applicable to the justice and peace process by virtue of the principle of complementarity…"*; nevertheless, the Court pointed out that *"… although the sworn appraisal depends to a large extent on what the plaintiff asserts and on the opposition raised by the defendant, the fact is that in these cases the judges in their proactive role cannot simply go by the plaintiff's word, as it is up to them to verify that such claims are supported by evidence, thus ensuring that form does not automatically prevail over matter and substance, as provided for in Article 228 of the Constitution"* [footnote omitted] [emphasis in the original].
- The application of scale or differentiated models, given that, based on the demonstration of harm caused to specific persons, this quantification may be inferred and extended to similarly situated persons who have not been able to prove causation of the harm.
- Presumptions will be used, for which the burden of proof will be shifted away from the victim. For example, if the worker's remuneration is unknown, it will be presumed that he or she earns the minimum wage.
- The rules of experience will be considered when dealing with similar circumstances in a specific context of time and place, to the extent that they are based on the observation and identification of a widespread and repetitive conduct [*footnote omitted*].

4. Notwithstanding the above, it is important to note that the particular conditions of the victims of the crimes committed by the Catatumbo Bloc, such as their geographic location (far from the municipal capitals), their economic situation, which was exacerbated by the wrongful acts, and their lack of knowledge about the law and legal procedures, mean that this Court, in order to ensure the effective realization of the right to reparation, will take into account the following: [...]

4.2. Consistent with the comprehensive nature of the transitional legal system [...], the Court, under a holistic interpretation of the same, highlights the importance of the principle of **good faith** on the part of the victims as to their status, the truthfulness of their statements, and what they are seeking in terms of reparation [*footnote omitted*].

In this respect, if there are evidentiary shortcomings, especially regarding the recognition of victim status, the Court will resolve them according to the principle of good faith. [...]

To determine actual damages [*footnote omitted*] when the indirect victims' proof of causation is tenuous, the jurisprudential rule adopted by the Supreme Court of Justice and the Supreme Administrative Court on the subject will be considered, "*according to which it must be presumed, in homicide cases, that there was a minimum financial loss consisting of the funeral costs incurred by the indirect victims, and that these expenses arise directly from the crime perpetrated and must be compensated by the perpetrator*" [footnote omitted] [emphasis in the original].

As for lost profits [*footnote omitted*] in relation to persons who can show financial dependence on the direct victim, in cases where it has been impossible to estimate the average monthly income through suitable evidence, it will be presumed, in the manner developed by the Court, that the victim earned the legal minimum wage in force at the time of the facts [*footnote omitted*].

However, it should be clarified that, as the Court has held, compensation for lost profits *"will only be awarded to those who can prove financial dependence on the victim … In addition, as part of each estimate of damages, 25% will be deducted from the total amount of the monthly income, evidenced or presumed, to account for the amount that the victim would have used for personal expenses and that, consequently, would not have gone to the person who demonstrated financial dependence …"* [footnote omitted] [emphasis in the original].

Regarding nonpecuniary damages in their objective and subjective forms, the Court will use the standard adopted by the Supreme Court of Justice [*footnote omitted*]; i.e., an amount equal to 100 times the minimum monthly wage

for the victim's spouse or domestic partner and for relatives in the first degree of consanguinity, and the equivalent of 50 times the minimum monthly wage for relatives in the second degree. These parameters will be reflected in the compensation table and will be used in claims for damages.

As for damage to personal relationships, which has also been defined as altered conditions of existence, it has been noted that this refers to a substantial change in the victim's social relations and behavior in the community that impairs his or her personal, professional, or family development. The recognition of compensation for this type of harm is only viable upon proof of its existence, as it is not presumed. Notwithstanding the fact that the impact takes the form of pain, sadness, grief, or distress, these characteristics are typical of nonpecuniary damages and should not be confused with those of damage to personal relationships.

For these damages to be recognized, their causation must be objectively proven and cannot be based on mere expressions or speculations not supported by evidence; hence, claims seeking compensation for damage to personal relationships that lack evidentiary support will be denied.

1.2.3.2 Compensation for crimes of endangerment

Peru. *First Instance Criminal Judgment (Manuel Rubén Abimael Guzmán Reinoso, et al., defendants) (Case against the Leaders of the Shining Path) (List of judgments 6.1).*

Here, we have specific cases of harm (deaths, injuries, property damage) that are related to the facts proven in this case and not to others, and that are a consequence of acts statutorily defined as terrorism offenses, such that we find a sufficient causal nexus as required by civil law.

We also have the codified offense of "terrorist organization," which from the criminal point of view is a conduct crime and a crime of endangerment. Essentially, the State's defense seeks to use this statutory definition to assign liability for all the damages caused by the members of the organization during its nearly 20 years of activity, forgetting that the Criminal Division, in the hundreds of cases it has adjudicated, has ordered reparations for specific, verified damages, and that no sufficient causal nexus has been established between the mere existence of the terrorist organization (damaging or harmful event or fact) and the damages and the increase in the amount claimed.

Although most scholarly opinion holds that crimes of endangerment are not likely to give rise to damages and therefore do not require compensation [*footnote omitted*], some contemporary authors such as Jesús María Silva Sánchez [*footnote omitted*] argue that there may be an assumption of damages in crimes of endangerment, but they must be related to harm arising from the mere existence of danger and not from acts that result in property damage [*footnote omitted*], and the causal nexus must be established [*footnote omitted*].

We consider that the mere existence of a terrorist organization may require the State to spend an enormous amount of money on plans and measures for the security of citizens and of public and private property, which differs from compensating for the blowing up of a bridge or an electric tower, which would necessarily require proof. We believe that the expense of providing security or maintaining public peace and order can be considered damage arising from the mere existence of a terrorist organization.

1.2.3.3 Child victims of forced or unlawful recruitment

Colombia. *Sentencing and reparations judgment (Fredy Rendón Herrera, et al., defendants) (Case of the Elmer Cárdenas Bloc) (List of judgments 3.1).*

The victims' representatives brought individual reparation claims related to the pecuniary damages sustained by the minors [illegally recruited by the Elmer Cárdenas Bloc], understood as the harm, loss, or impairment of a person's pecuniary or economic interests as a result of an unlawful harm; of course, the harm must be real, concrete, and

not merely possible or hypothetical. This monetary impact, in turn, is classified as actual damages and lost profits. [...]

Within these frameworks for reparation, the victims' representatives provided an estimate of the monetary damages incurred by the minors recruited by the Elmer Cárdenas Bloc, based on the presumption that when a worker's income is unknown, minimum wage is presumed [*footnote omitted*].

Relying on this presumption and on the respective mathematical calculations, they presented the possible monetary damages sustained by the recruited minors based on the time they spent in the Elmer Cárdenas Bloc. In other words, if the presumption is that a minor should receive a legal minimum wage, multiplied by the number of months he or she was in the organization, coupled with an adjustment based on the consumer price index and the application of other variables (the sum of the legal annual interest rate of 6% provided for in Article 1617 of the Civil Code), the result is a specific figure.

With respect to this presumption, the Court offers the following considerationI) The Supreme Administrative Court's presumption in cases where the value of a victim's income cannot be known is just that, a legal presumption, which can be rebutted by evidence to the contrary. It is not a presumption of law to which the judge must inevitably adhere. [...]

In this case, it is clear that the minors, according to their testimony at the hearing and given the context of poverty and exclusion that characterizes the municipalities of Urabá in Antioquia and Chocó, were not earning the current legal minimum wage. In fact, minors working legally in their regions did not even earn half the minimum wage, making the bimonthly "payment" of $250,000, $280,000, or even $400,000 from the Elmer Cárdenas Bloc an attractive economic alternative.

Therefore, it has been proven that none of the minors working informally within their closest circles EARNED EVEN HALF A MINIMUM WAGE. [...]

II) The expert's report offered by the victims' attorneys presents a second error; they presume that a minor, legally, can earn a full minimum wage. The equation presented by the expert accountant ignores the fact that a minor between 15 and 18 years of age can work neither eight hours a day nor the 48 hours a week regulated in the Labor Code; rather, under Law 1098 of 2006, work permits for minors may be granted only up to a maximum of 14 hours a week. [...]

Thus, starting from the presumption proposed by the victims' representatives would be unlawful, since it would entail recognizing that minors under the age of 18 work the same hours as adults and ignoring the fact that, by working a maximum of 14 hours, even under ideal conditions, their income could only be presumed to equal 14 hours per week at minimum wage. In other words, a little more than one third of the minimum wage would be a reasonable assumption.

III) Finally, a third argument arises as to the distance between the claims of the victims' advocates and the Court's considerations. If we presume that these minors could have begun their working life at age 14, as proposed by the expert accountant at the hearing, and we only quantify the minimum wages not received since age 14, the Court would be committing the worst of injustices, since it would be disregarding the fact that some of the children recruited were as young as 12. These minors, who were forcibly recruited at ages younger than 14 years, would not be protected by the proposal of the victims' advocates. Moreover, since these minors were recruited at a younger age and experienced the brutality of war at a tender age, they are, according to the expert witnesses, the ones who have suffered the greatest harm.

In conclusion, the Court does not share the presumption advanced by the victims' attorneys [...].

Regarding monetary damages, the Court sets out the following considerations:

The first is that all of the experts on the illegal recruitment of minors were unanimous in explaining that the reparation process is just that, a process. In other words, it is a series of steps and stages through which the recruited minor rebuilds or tries to rebuild his or her personal, family, community, social, and economic networks, ties, and bonds.

Rebuilding these ties or rules of conduct, destroyed by these children's involvement in a military organization, requires them to internalize the fact that in horizontal spaces, such as life in civil society, they are governed by certain community expectations regarding their behavior, self-respect, and respect for other citizens.

The experts point out that handing over sums of money as financial compensation to minors means distorting the perceptions of the residents of the municipalities where they were recruited, especially when the illegal armed groups have committed serious human rights violations. There are two reasons for this. First, the community understands the financial compensation as a reward for the minors who have harmed their towns and communities. Second, such compensation encourages other minors in the region to see recruitment by armed actors as a means of social advancement, since, in addition to being feared in their interactions with others—which the minors understand as respect—those who are recruited are rewarded by the State.

For these two reasons, the experts recommend that the Court not directly, immediately, and automatically award financial compensation to minors. It is only appropriate once the minors have, at least partially, rebuilt their social ties and acquired job and educational skills, and once they and the community regard the money as the product of individual and collective work and effort, rather than as a reward for their activity in a military organization that caused harm and in which they were harmed. [...]

[...] The Court cannot order compensation measures that would negatively affect the perceptions of other minors and future generations in the region. As noted by the experts, direct reparations to young people lead other, younger children to see participation in the war as an alternative that could later be rewarded. [...]

Ultimately, the Court, by directly awarding compensation, could undermine guarantees of non-repetition of this serious conduct.

In view of the foregoing, in the operative part of its judgment, the Court will order the Reparation Fund provided for in Article 54 of Law 975 of 2005 to directly disburse the financial compensation awarded as nonpecuniary damages to the youths only when the Colombian Agency for Reintegration or its successor certifies that the direct victims have complied fully with the reintegration plan provided for in its rules and regulations. This is to ensure that the victims understand that the only way to access wealth is through work and individual effort.

In the case of persons who have already completed the reintegration process, the Court orders the immediate disbursement to the Victims Reparation Fund of the sums awarded as nonpecuniary damages.

Nonpecuniary harm to direct and indirect victims. Understood as the pain and suffering caused in the personal, interior, or emotional sphere by the violation of individual rights. Under Article 97 of the Criminal Code, nonpecuniary damages may be assessed at up to 1,000 times the legal monthly minimum wage. This assessment will be based on "factors such as the nature of the conduct and the extent of the damage caused" [*emphasis in the original*].

During the ancillary reparations proceedings, the Court heard various experts from different social and human sciences—psychologists, anthropologists, lawyers—who addressed the behavior of illegally recruited children at times of intense fear, such as during combat or when leaving wounded or dead comrades on the battlefield, or even when they themselves are abandoned, or when they must kill or harm other people for the first time, etc. All these traumatic events affect their development in adult life and produce pain and distress every time they are relived.

Likewise, the minors who testified at the hearing said that the physical and military training was excessively hard, and that it involved, under the slogan "training is hard because war is rest," actions that included constant verbal assaults, as well as personal injuries and even torture.

Many minors also reported that, despite joining the AUC [United Self-Defense Forces of Colombia] on an ostensibly voluntary basis, they suffered because they missed their mothers, brothers, sisters, and other family members, and because they were unable to visit them.

It has therefore been proven that the children were victims of nonpecuniary harm or pain and suffering. Quantifying such damage is always debatable, but the Court notes that in situations of lifelong separation or loss of loved ones in one's immediate family circle, the Supreme Administrative Court has awarded the sum of 50 times the current legal monthly minimum wage for pain and suffering or nonpecuniary damages. Following this guideline, for the temporary separation of minors from their families, the Court will award a maximum of 25 times the current legal monthly minimum wage for those who were recruited at a younger age (under the age of 12); 20 times the current legal monthly minimum wage for those recruited between the ages of 12 and 14; and 15 times the current legal monthly minimum wage for those recruited between the ages of 15 and 16. For those who were recruited when they were over 17 years old, even when they were days away from their 18th birthday, the Court set the nonpecuniary damages at five times the current legal monthly minimum wage.

1.2.3.4 Women and girls as victims of international crimes

Colombia. *Sentencing and reparations judgment (Fredy Rendón Herrera, et al., defendants) (Case of the Elmer Cárdenas Bloc) (List of judgments 3.1).*

The girls who were recruited [illegally into the Elmer Cárdenas Bloc] also suffered emotional harm as they lived and constructed their sexual and personal identities in the highly patriarchal and hierarchical environment of an armed organization. They noted that in the best of cases, they were treated like men, i.e., they were issued their gear and sent on missions. Others said they were victims of acts that, under Law 1257 of 2008 [*footnote omitted*], are classified as forms of gender-based violence, that is, acts perpetrated against them because they were women.

For instance, several girls testified that they underwent physical and military training that was the same for everyone. Considering that it is physiologically demonstrable that girls have less muscle mass than boys or tolerate physical effort differently, it is clear that the pain and suffering caused by the training was felt more acutely by the younger girls.

It is also clear that an armed organization, in which macho values such as strength, violence, hierarchies, courage, and bravery are esteemed and promoted, is no place for a girl to form her psychological and sexual identity. It is a very hostile environment for women, as seen in the cases documented at the hearing regarding the attempted rape of minors, forced marriages to commanders, and even recurrent rape.

It is clear that this was only because of their status as women.

Add to this, for example, what this Court asked one of the victims about a subject as personal for a woman as her menstrual period. Although it appears that the Elmer Cárdenas Bloc included toiletries such as sanitary napkins in the field supplies it distributed, it was not shown that the girls were treated with particular respect at this time of the month. Firm, militarized, and hierarchical treatment was the norm.

The Court concludes that strongly hierarchical spaces, such as irregular armed groups, replicate "virile," "brave," and "fearless" values and ethics, in which disciplinary punishments for those who do not adhere to these norms are justified and seen as normal. The implications are twofold: first, for children, who assume adult roles and responsibilities as part of their development process; and second, for girls, who are assaulted by masculine ethics that justify acts objectifying women.

In general, international and constitutional scholarly opinion is clear that internal armed conflict affects women in a differentiated manner, due to, among other reasons, the fact that they are subject to historical forms of discrimination that make them more vulnerable to certain crimes.

The Inter-American Commission on Human Rights of the OAS [Organization of American States] has noted that violence against women in the context of armed conflict has differentiated effects; [discussing] its causes and consequences, the Commission has stated that "women in the Colombian conflict are more likely to be victims of various forms of physical, psychological, and sexual violence, which mainly include sexual abuse, forced recruitment, forced prostitution, and early pregnancy" [*footnote omitted*].

This statement acknowledges two things: first, that although men and women both experience violations of their rights, they generally face different forms of violence; and second, that women have been the main victims of sexual violence [*footnote omitted*].

The Court concludes that the girls who were illegally recruited suffered different—and in many cases more severe—nonpecuniary harm that put them in a situation where they were at risk of potential assault or harassment by other combatants or commanders. This is sufficient reason to determine that, regardless of age, compensation for nonpecuniary damages should be set at 20 times the minimum monthly wage [*footnote omitted*].

The Court explains that this compensation is exclusively for the nonpecuniary damages arising from the forced recruitment of the girls and its differentiated severity. Once sexual assault and indecency charges are filed and prosecuted, nonmonetary damages may be awarded for these specific acts.

In the case of this recruitment, the Court found that many of these international assessments are true. Indeed, within the paramilitary organization, the girls who were unlawfully recruited suffered violations of their sexual and reproductive rights, insofar as they had no access to contraceptive methods to exercise their right to voluntary sexuality. Finally, the Court heard about cases of girls who were subjected to sexual violence, forced marriages, and sexual slavery, and will therefore order the Prosecutor's Office to document these aspects of the facts at issue in this judgment, and in other cases that may be filed regarding forced recruitment. The Office should investigate crimes of sexual violence; cruel and inhumane treatment such as bodily harm from disproportionate physical exertion; and torture, among others.

Guatemala. *First Instance Criminal Judgment (Hugo Ramiro Zaldaña Rojas, et al., defendants) (Case of Molina Theissen) (List of judgments 5.4).*

EXTENT AND INTENSITY OF THE HARM CAUSED: [...] G.2) Offense of **AGGRAVATED RAPE:** The harm to sexual freedom arising from this type of crime, by endangering EMMA GUADALUPE MOLINA THEISSEN, who was emotionally and psychologically affected at the time of the events, caused irreversible harm to her, while at the same time violating her human rights as a woman, preventing her from enjoying an environment free of violence, and subjecting her to discrimination because she is a woman [...] [*emphasis in the original*].

1.3 Other forms of reparation for victims of international crimes: general considerations

Colombia. *Sentencing and reparations judgment (Fredy Rendón Herrera, et al., defendants) (Case of the Elmer Cárdenas Bloc) (List of judgments 3.1).*

With regard to comprehensive reparation as a human right, we note the compilation made by the United Nations General Assembly in the ***"Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law."***

This document is perhaps the most complete instrument on the international obligations of States regarding reparations to victims of serious violations of human rights and IHL [international humanitarian law]; it was adopted by the United Nations General Assembly on December 16, 2005. Starting from Principle 9 of the compilation, the document summarizes the obligations undertaken by the States with regard to reparations to victims of serious human rights violations through the mechanisms of restitution, compensation, rehabilitation, satisfaction, and guarantees

of non-repetition. As we consider these concepts to be vitally important, and because they are frequently cited in judicial decisions [*footnote omitted*], we have transcribed them here:

> *"In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.*

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

Compensation *should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as: (a) Physical or mental harm; (b) Lost opportunities, including employment, education and social benefits; (c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.*

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

Satisfaction *should include, where applicable, any or all of the following: (a) Effective measures aimed at the cessation of continuing violations; (b) Verification of the facts and* ***full and public disclosure of the truth*** *to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations; (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities; (d)* ***An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;*** *(e)* ***Public apology, including acknowledgement of the facts and acceptance of responsibility;*** *(f) Judicial and administrative sanctions against persons liable for the violations; (g)* ***Commemorations and tributes to the victims;*** *(h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.*

Guarantees *of non-repetition should include, where applicable, any or all of the following measures, which will also contribute to prevention: (a) Ensuring effective civilian control of military and security forces; (b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality; (c) Strengthening the independence of the judiciary; (d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders; (e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces; (f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises; (g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution; (h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law"* [emphasis in the original].

Article 25 of Law 1448 of 2011 develops the fundamental right to reparation for the victims of serious human rights violations: "*Victims are entitled to adequate, differentiated, transformative, and effective reparations for the harm they have suffered as a result of violations referred to in Article 3 of this Law. Reparation includes measures of restitution,*

compensation, rehabilitation, satisfaction, and guarantees of non-repetition, in their individual, collective, material, moral, and symbolic dimensions. Each of these measures will be implemented on behalf of the victim depending on the violation of his or her rights and the characteristics of the wrongful act."

Thus, comprehensive reparation comprises at least five categories in which the aim is to guarantee not only the financial element of compensation for damages but also the claim for *restitutio in integrum*. The court will rule based on this categorization [*emphasis in the original*].

Guatemala. *Hearing on adequate reparation (José Efraín Ríos Montt, defendant) (Case of genocide against Maya Ixil communities) (List of judgments 5.1).*

HEARING ON ADEQUATE REPARATION in the above-captioned case, in which the following persons are named as defendants: JOSÉ MAURICIO RODRIGUEZ SÁNCHEZ and JOSÉ EFRAÍN RIOS MONTT for the crimes of GENOCIDE AND CRIMES AGAINST HUMANITY [...].

In this case, under [Article 124 of the Code of Criminal Procedure] [...], as well as Article 119 of the Criminal Code, and considering the expert opinions and evidence produced at trial, the Court GRANTS the ADEQUATE REPARATION, requested by the private prosecutors and civil plaintiffs ASOCIACIÓN PARA LA JUSTICIA Y LA RECONCILIACIÓN and CENTRO PARA LA ACCIÓN LEGAL EN DERECHOS HUMANOS, ordering: (a) That the heads of the executive, legislative, and judicial branches of government, the Presidential Secretariat for Women, the Ministry of the Interior, and the Ministry of National Defense, personally and not through representatives, apologize to the women of the Maya Ixil People for the acts of gender-based violence, including sexual violence, perpetrated against them as a consequence of the crimes of genocide and crimes against humanity committed against them during the internal armed conflict, in a ceremony to be held: (i) at the National Palace; and (ii) in the municipal capitals of Santa María Nebaj, San Juan Cotzal, and San Gaspar Chajul. (b) That the heads of the branches of government (executive, legislative, and judicial branches), the Minister of the Interior, and the Minister of National Defense, personally and not through representatives, apologize to the Maya Ixil People for the acts of genocide and crimes against humanity committed against them during the internal armed conflict, in a ceremony to be held: (i) at the National Palace; and (ii) in the municipal capitals of Santa María Nebaj, San Juan Cotzal, and San Gaspar Chajul. (c) That the authorities responsible for education at military and police training centers or any other entity that performs prevention, intelligence, and investigation activities include continuing educational courses on human rights and international humanitarian law. They should be aimed at all personnel, so that "Never Again" in the performance of their duties will they carry out acts that violate cultural diversity, respect for human rights, or international humanitarian law. (d) That the President of the Republic and the Minister of National Defense deposit, with the municipal governments of Santa María Nebaj, San Juan Cotzal, and San Gaspar Chajul, a formal instrument containing the apologies of the government and the Army of Guatemala to the Maya Ixil People for the acts of genocide and crimes against humanity committed against them. (e) That the executive branch build a national monument, as well as one in each of the municipalities of Santa María Nebaj, San Juan Cotzal, and San Gaspar Chajul, honoring the victims of genocide and crimes against humanity committed during the internal armed conflict and highlighting the gender-based violence against Ixil girls and women, as well as the violence suffered by Ixil children. (f) That the executive branch, through the competent authorities, establish education centers at the preschool, primary school, secondary school, diversified secondary, and university levels in Santa María Nebaj, San Juan Cotzal, and San Gaspar Chajul. (g) That the executive branch, through the competent authorities, include the category of genocide and crimes against humanity in the National Reparations Program in order to ensure access to compensation. (h) That the executive branch build a cultural center in the Ixil region for the protection and promotion of cultural expressions aimed at the recovery of historical memory and the non-repetition of acts against freedom of thought and the cultural identity of peoples. (i) That the Public Prosecution Service, through a mural dedicated to the Maya Ixil People, reaffirm its commitment to fostering a justice system that respects cultural diversity. (j) That the executive branch introduce a bill to the Congress of the Republic for an Act to be passed ordering the commemoration of a National Day against Genocide on March 23 of each year. (k) That the executive branch develop a program to disseminate the contents of this judgment through both official and private media, aimed at the non-repetition of acts of genocide, the peaceful

coexistence of peoples, and respect for cultural and linguistic identity. (l) That the executive branch, through the Ministry of Education and Culture, create a traveling museum to promote respect nationally and internationally for the identity of peoples, peaceful coexistence, and the non-repetition of acts that violate international humanitarian law and human rights. Although the private prosecutors set deadlines for olonizaetion of each activity, the Court cannot establish a specific time frame, as completing each planned activity the Court has approved in this decision requires taking several steps, both legal and logistical, and entails budgetary considerations[.] [T]herefore, the Court is not setting a deadline for the completion of these activities, with the understanding that the interested persons, in this case the private prosecutors, will in due course ensure compliance when the judgment is enforced. It is also stated for the record that the State of Guatemala is not in any way being found liable[.] [T]he forms of reparation agreed upon do not constitute a judgment against the State, but rather the use of appropriate mechanisms to give effect to the victims' right to reparation.

Guatemala. *First Instance Criminal Judgment (Hugo Ramiro Zaldaña Rojas, et al., defendants) (Case of Molina Theissen) (List of judgments 5.4).*

The court **RULES UNANIMOUSLY:** to order the State of Guatemala, through its agencies, ministries, and other autonomous or decentralized entities, to strictly comply with the judgment and this ruling, under the respective legal admonitions, as ordered and provided below: [...]

XV- The State of Guatemala is ordered, through its agencies, ministries, and decentralized and autonomous entities, to strictly comply, under the respective legal admonitions, with the following comprehensive and transformative measures of reparation: **(i) Request denied,** because in paragraph XIII of the operative part of its judgment, the court ordered the continuation of the investigation into the crimes committed against Emma Guadalupe Molina Theissen and the enforced disappearance of Marco Antonio Molina Theissen, under the circumstances alleged by the complainants. **(ii) The request is denied** on the grounds that the Public Prosecution Service has the obligation, under Article 251 of the Constitution of the Republic, the Code of Criminal Procedure, and the Organic Law of the Public Prosecution Service, to allow victims to participate and to keep them informed of all actions taken by the entity in charge of criminal prosecution. **(iii)** Regarding the National Registry of Victims of Enforced Disappearance, the court orders the legislature, based on its powers and attributions and the duty to guarantee the dignity of persons, legal certainty, and the right to liberty [and] to life, and because it is part of the State of Guatemala with the obligation to make reparations to victims, to legislate within a reasonable period of time on the creation of a National Registry of Victims of Enforced Disappearance. Notice shall be given to the legislature for the respective purposes. **(iv)** Regarding the Law of Presumed Death, the court admonishes and **orders** the State of Guatemala to comply within a reasonable time with the restitution measures for adequate, comprehensive, and transformative reparation determined by the Inter-American Court of Human Rights that are pending compliance; the Office of the Attorney General of the Nation, as the representative of the State of Guatemala, has the obligation to diligently pursue and promote their effective enforcement before the appropriate authorities. In addition, the Office of the Attorney General of the Nation performs advisory and consulting functions for government agencies and entities with respect to certain decisions, in line with the legislative initiative of the executive branch. **(v)** Regarding the measures for ensuring humane treatment, this court **orders** the Human Rights Ombudsperson to attend to any request from the parties involved in this case, as well as from any person or institution related to this case that requires precautionary measures, and to process them immediately before the appropriate authorities. **(vi)** Regarding the Commission for the Search for Missing Persons, in compliance with its constitutional mandate, specifically in terms of guaranteeing personal integrity, life, and liberty, as well as the obligation to provide legal certainty, this Court orders the legislature to **pass** bill 3590, as soon as possible, through its established parliamentary mechanisms and provisions. **(vii)** With regard to measures of non-repetition, since they form part of the public policy of the State of Guatemala through the respective ministries, **the request is denied. (viii)** The request for measures of satisfaction **is denied** because they are already contained in the Final and Lasting Peace Accords of December 29, 1996, and in the public policies of the State of Guatemala. **(ix) (a) The request** for satisfaction **is denied** for lack of clarity and precision. **(b) The request** concerning the search for missing persons, the identities of abducted children, and the bodies of murdered persons, and for assistance in recovering, identifying, and reburying them according to the explicit or presumed wishes of the victim

or the cultural practices of his or her family and community, **is denied. (c) The request** for an official declaration or judicial decision that restores the dignity, reputation, and rights of the victims and the persons closely linked to them **is denied,** since the judgment of the Inter-American Court of Human Rights and the judgment reported by this court provide for reparation in terms of restoring the dignity of the victims. **(d) The request** for a public apology that includes an acknowledgement of the facts and an acceptance of responsibilities **is denied,** given the acknowledgement of the deprivation of liberty, transfer, and concealment of Marco Antonio Molina Theissen and the admission of State responsibility before the inter-American human rights system. As for the crimes charged, this already appears in the judgment of conviction in this case. **(e) The request** for the imposition of judicial or administrative penalties on the perpetrators of the violations **is denied** since this court's judgment is considered to have adjudicated the matter. **(f) The request** for commemorations and tributes to the victims **is denied;** this matter is to be considered in the manner indicated below. **(g) The request** for the inclusion of a precise description of the violations that have occurred in the teaching of international human rights and humanitarian law, as well as in teaching materials at all levels, **is denied;** the precise terms that appear below should be taken into account. **(x)(a) The request** for measures of satisfaction requiring the Ministry of Education to include the Molina Theissen case in curricula and textbooks, with an emphasis on the mass and systematic use of enforced disappearance by State security forces during the internal armed conflict, **is denied. (b)** The University of San Carlos of Guatemala **is ordered,** through the following departments: School of Legal and Social Sciences, School of Humanities, School of Political Sciences, and School of Communication Sciences, chaired by the Dean of the respective school, or his or her representative, to prepare a written and audiovisual documentary to be released to the Guatemalan public through any means of communication, and to inform and notify the aforementioned entities, as appropriate, who must report within a reasonable period of time on compliance with the order. **(c) The request** that the Ministry of Education and Culture be ordered to translate the judgment in this case into the 24 Mayan languages **is denied.** Instead, the court **orders** the Department of Indigenous Affairs of the Judiciary to translate the judgment into the Mayan language used predominantly in the Departments of Guatemala and Quetzaltenango; these translations should be added as soon as possible to this court file and will be available to the general public under the Free Access to Information Law. **(d) The request** that the Ministry of Education be ordered to guarantee that the subject of childhood is taught in schools, including content designed to inform children of their human rights, such as the right to be a child and not to be a victim of any type of violence, and to educate them on the mechanisms for the protection of their rights, **is denied. (e) The request** to order that the Ministry of Education incorporate and include the elimination of hate speech in the national educational curriculum and promote human rights education **is denied.** The denial is due to the fact that public education policies already include content related to these topics, specifically children's rights and human rights as set forth in the Convention on the Rights of the Child, the Law for the Comprehensive Protection of Children, and other laws and regulations that address these issues. **(xi)** Regarding the Marco Antonio Molina Theissen scholarship, the Ministry of Education **is ordered** to include or establish a scholarship in the name of Marco Antonio Molina Theissen within the existing scholarship program at the various levels as soon as possible. **(xii) The following requests are denied: (a) Establishing** the Emma Guadalupe Molina Theissen **award**; **(b)** designating the Campo de Marte as the Marco Antonio Molina Theissen Historical Memory Park; **(c)** awarding the Emma Molina Theissen Prize for the best graduation thesis on the phenomenon of sexual violence against women. Instead, this court **orders the Ministry of National Defense** to create an award called the Molina Theissen medal for officers and other members of the Army who have performed humanitarian work or have excelled in the observance of human rights. The Ministry of National Defense shall be given notice of this order. **(xiii)** The Ministry of the Interior **is ordered** to provide, within its budget, a financial reward for persons who provide truthful information about sites where there are clandestine cemeteries associated with the internal armed conflict. **(xiv)** The President of the Republic **is ordered** to declare October 6 the National Day of Disappeared Children to preserve and commemorate the historical memory of child victims of enforced disappearance. **(xv)** The request for the dishonorable discharge of convicted defendants Manuel Benedicto Lucas García, Manuel Antonio Callejas Callejas, Hugo Ramiro Zaldaña Rojas, and Francisco Luis Gordillo Martínez **is denied,** as it is impossible to fulfill in the terms requested by the complainants. **(xvi) The request** for the creation of a museum in commemoration of the victims of enforced disappearance and torture **is denied.** Instead, the Ministry of Culture and Sports, in coordination with the Municipality of Quetzaltenango, **is ordered** to erect a commemorative monument named after Emma Guadalupe Molina Theissen, in memory of the victim's suf-

fering in that facility, known as the Antigua Brigada and/or Zona Militar General Manuel Lisandro Barillas de Quetzaltenango. **(xvii) The request** that physical space be set aside in all military zones or facilities for the preservation in memory of the victims of enforced disappearance and that the families of the victims be given the opportunity to plant a tree in this space **is denied. (xviii) The request** that the convicted defendants jointly and severally compensate the State of Guatemala for the monetary reparations established in the judgment of the Inter-American Court of Human Rights and paid by the State of Guatemala **is denied**. The reparation sought by the complainants, in terms of the State of Guatemala recovering against those sentenced in this case, concerns a right of the State of Guatemala under the applicable constitutional and statutory law, with the clarification that reparation, dealt with before the inter-American human rights system, is the responsibility of the State; whereas the issues clarified herein pertain to individual criminal responsibility, as the request was not made specifically and concretely [*emphasis in the original*].

Peru. *First Instance Criminal Judgment (Daniel Cortez Alvarado and Ricardo Matta Vergara, defendants) (Teófilo Rímac Capcha, victim) (List of judgments 6.3).*

[I]n terms of **rehabilitative measures**, under the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" adopted by United Nations General Assembly Resolution 60/147, specifically Article 21, the court considers that it is not enough to impose a financial penalty; the State must also comply with its obligations through the institutions responsible for continuing to search for the remains of the victim Teófilo Rímac Capcha until he is properly identified and buried in accordance with the customs of his family and community. As for **measures of satisfaction and non-repetition**, based on Article 22, paragraphs (e) and (g) of the aforementioned United Nations resolution, the Peruvian State, to remedy the nonmonetary harm caused, should publicly make amends to the victim and, in addition to the payment of civil damages, should publish in a newspaper of major national circulation that Teófilo Rímac Capcha was a victim of the internal violence experienced by the country, that it has been proven that he was not linked to any terrorist or subversive organization, and that he was a champion of union, labor, peasant community, and student rights in Cerro de Pasco [*emphasis in the original*].

1.3.1 Rehabilitation as a form of reparation

Colombia. *Sentencing and reparations judgment (Fredy Rendón Herrera, et al., defendants) (Case of the Elmer Cárdenas Bloc) (List of judgments 3.1).*

It was noted at the hearing that it is important for young people to undergo psychological or psychiatric treatment when they have been exposed to multiple traumatic events involving terror or intense fear. Clinical studies were also discussed, which pointed out that child soldiers are exposed to countless events in which they face moral dilemmas or catastrophic events, which can affect the mental health of young people and future adults.

Similarly, the aforementioned international law instruments, such as the Protocol on the Involvement of Children in Armed Conflict [*footnote omitted*], or the Paris Principles [*footnote omitted*], provide that the State must ensure that minors with sequelae, or potential sequelae but who are not yet clinically diagnosable, receive medical treatment to enable them to cope with the consequences of their involvement with armed groups. [...]

[...] Therefore, the Court orders:

The implementation of a program of individualized, continuous, and personalized psychological care for each of the 309 victims of illegal recruitment, differentiating diagnoses and treatments according to criteria of identity, sexual orientation, age, disability or physical injury, ethnicity, and socioeconomic origin or life plan—rural or urban—ensuring that the beneficiaries have the opportunity to participate in and decide on their treatment, and that the Paris guidelines and directives of February 2007 are followed in the relevant areas. This individual diagnostic and treatment process must be initiated within four months of the date on which this decision becomes final.

1.3.2 Truth as a form of reparation in cases of international crimes

Colombia. *Sentencing and reparations judgment (Fredy Rendón Herrera, et al., defendants) (Case of the Elmer Cárdenas Bloc) (List of judgments 3.1).*

The Court finds, for two reasons, that it is necessary to carefully contextualize the human rights violations that will be ruled on below. First, this is not a decision in which the facts under consideration are typical of common crime. On the contrary, we are dealing with military and hierarchical apparatuses that conspired to commit crimes against humanity; that is to say, there is a compelling need under the criminal law to adequately, and therefore exhaustively, describe the facts surrounding the case. A second reason for appropriate contextualization is based on the constitutional and international obligation of the Colombian State in the search for the truth about what happened in cases of serious human rights violations. Telling the story of the grave acts perpetrated in the Urabá region of Colombia requires explaining the dynamics of our armed conflict; the position, political culture, and ideology of the actors in the conflict; and the military and strategic importance assigned to this area.

The Criminal Cassation Division of the Supreme Court of Justice has explained the role of the Justice and Peace Court in the context of the demobilization of illegal armed groups, particularly considering that it is the duty of the judiciary to promote the realization of the right to the truth, both in its individual dimension, for the victims and their families, and for all of society to know the facts and circumstances that led to the serious human rights violations that the country has witnessed. [...]

In this way, the Court must seek to pinpoint the time and place of the facts under study, determining whether they occurred during combat or military hostilities, or in a systematic and widespread context of assaults on fundamental rights and freedoms. There is an obligation, even at the Court's own initiative, to establish a context in order to arrive at a solid and detailed description of what happened.

In the process of building collective and individual truth as a tool for realizing the right to know, a preliminary issue that must be resolved is how this is defined and constructed; this is the task the Court has set out to pursue, with a view to helping to reconstruct what happened with the Elmer Cárdenas Bloc in the Urabá region.

We use the idea of "truth" in post-conflict contexts offered by the Peruvian Truth and Reconciliation Commission [*footnote omitted*]—the most recent experience, together with the Valech report in the Chilean case, in truth-building in post-authoritarian regimes.

According to the Peruvian Commission, "truth" in contexts such as those before this Court is a "reliable, ethically constructed, scientifically supported, intersubjectively corroborated, narratively connected, emotionally concerned, and improvable account of what happened in the country…" [*footnote omitted*].

"Truth" as a reliable account, in its etymological sense, refers to the fact that the reconstruction of what happened will not be the objective and only possible truth, but simply a version worthy of credence. The Court seeks, based on the evidence presented, to render a credible, plausible, and substantiated account. With this, the Court does not intend to construct the official truth of what happened; it simply intends to offer a truth based on the evidence presented in the public hearing [*footnote omitted*]. It is ethically constructed to the extent that the facts before the Court are interpreted in light of ethical and constitutional principles, such as the undertaking to guarantee and respect human rights, democratic and pluralistic values, solidarity-based justice, and honesty in the conduct of investigations. It is a scientifically supported account, since the Court listened to various social researchers, including clinical psychologists, anthropologists, political scientists, historians, sociologists, and criminal, police, military, and judicial researchers, and checked these statements against other versions of the events in order to produce a "detailed and accurate record of the acts of violence, the conditions in which they occurred, their direct participants, and their after-effects" [*footnote omitted*].

The truth about the country's serious human rights violations is also an intersubjectively corroborated account—that is, it is the result of deliberation, debate, and controversy among multiple parties in dispute. Thus, it is necessary

to hear multiple versions of what happened. The Court and the parties involved have assumed this commitment with the utmost responsibility, within the limits of their possibilities.

The Court emphasizes that these attempts to reconstruct the truth of what happened with the paramilitary blocs in various regions of the country are just that, an attempt, which must be improved, reworked, and perfected. Hence, truth and constructions about the past will never be official truths; they are just that, reconstructions, which can be formed differently based on other sources or other approaches to analysis; history and historical research can always be improved upon. The reconstruction that the Court intends to carry out is a truth that seeks to highlight the role of the victims of the conflict and of civil society as the target of attack.

1.3.3 Measures of satisfaction or symbolic measures

Colombia. *Sentencing and reparations judgment (Edilberto de Jesús Cañas Chavarriaga et al., defendants) (Case of the Cacique Nutibara Bloc) (List of judgments 3.3).*

Measures of satisfaction are aimed at compensating victims for their pain and suffering, recognizing their status, and restoring their dignity. They consist of actions aimed at restoring their status as persons with rights and obligations, restoring their dignity as such, and disseminating the truth about what happened. In their implementation, they are based on the principle of consultation with the affected population. Their objective, besides helping to alleviate the experiences of pain, is to encourage processes for recognizing the harm caused and disseminating the truth about what happened, based on the reconstruction and dissemination of the historical memory of the victims of the armed conflict [*footnote omitted*].

In particular, paragraph 22 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law states that the satisfaction of the victims should

> *"include, where applicable, any or all of the following: (a) Effective measures aimed at the cessation of continuing violations; … (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities" [emphasis in the original].*

[State obligations concerning the enforced disappearance of persons, which have an important bearing on measures of satisfaction as a form of reparation, are also recognized in] Article 15 of the International Convention for the Protection of All Persons from Enforced Disappearance [...] [and in] Article 13 of the Declaration on the Protection of All Persons from Enforced Disappearances [...].

Colombia. *Sentencing and reparations judgment (Fredy Rendón Herrera, et al., defendants) (Case of the Elmer Cárdenas Bloc) (List of judgments 3.1).*

Article 141 of Law 1448 of 2011 states: "Symbolic reparation is understood as any benefit provided to the victims or to the community in general that aims to ensure the preservation of historical memory, the non-repetition of the victimizing events, the public acceptance of the facts, a public apology, and the restoration of the victims' dignity."

According to the abovementioned set of principles and guidelines on the rights of victims of gross human rights violations, and the most recent international legal norm adopted by the United Nations General Assembly in 2005, reparation related to knowledge of the facts, restoration of the name and dignity of the victims, and measures aimed at protecting historical memory are categorized as measures of satisfaction.

These can be implemented through personal apologies, public apologies, monuments, and so on, as measures of symbolic reparation. In other words, symbolic reparation measures, without the Court intending to establish a strict and exclusive categorization, are, more often than not, specific subtypes of measures of satisfaction.

1.3.3.1 Measures of satisfaction or symbolic measures in cases of the illegal recruitment of minors

Colombia. *Sentencing and reparations judgment (Fredy Rendón Herrera, et al., defendants) (Case of the Elmer Cárdenas Bloc) (List of judgments 3.1).*

[Given] the need to break the hierarchical ties between the commander and the youths [...], this Court would be remiss to order any measure of satisfaction for the victims [in which the defendant] is in charge, [being himself responsible] for their victimization, as this would hinder the implementation of measures of non-repetition, i.e., the breakdown of hierarchies.

To clarify, this—the need to break down hierarchies—does not mean that the perpetrator's cooperation is unnecessary. It simply means that this participation must be assessed case by case, proposal by proposal, always ensuring that the Colombian State, through its institutions, is directing the reparation measure [*footnote omitted*]. Undoubtedly, public apologies to the minor victims involve acknowledging their status as victims and redefining their experience within the illegal armed group. The cooperation and participation of the convicted defendant is essential to the objective of providing redress to the minors, but this process must be led by the State.

This is for two reasons: (i) the State is internationally [*footnote omitted*] and constitutionally [*footnote omitted*] obligated to make reparations; and (ii) allowing the former commander to lead or assume a role in making far-reaching decisions about reparations for child soldiers encourages the perpetuation of military hierarchies.

Therefore, the Court did not accept the proposal presented by the defendant and the representatives of the office of the victims' ombudsperson that the defendant could undertake to build several monuments as a mechanism of symbolic reparation [*footnote omitted*].

Instead, the Court ORDERS:

1. That the Secretary of Education of Necoclí and the Secretary of Education of Antioquia build a community meeting space on the site where the "El Roble" training base was located, with the prior consultation and agreement of the local residents and victims. This could be a public school, or a cultural space in which to, among other things, denounce the acts committed in this place in violation of the rights of children, the responsibility of Elmer Cárdenas Bloc and its commander, and the Colombian State for failing to address the underlying issues that led to the recruitment of children.

2. A plaque shall be installed in a visible and central place in the space that the Mayor's Office of Necoclí decides to build, bearing quotes from several of the testimonies mentioned here—without mentioning the names of the young people—in which the cruelty of the crime of forced recruitment is made explicit.

3. The National Commission for Reparation and Reconciliation, or whoever replaces it or assumes its duties related to symbolic reparation, shall install commemorative plaques, in the same terms—containing anonymous accounts of the brutality of the crime of illegal recruitment—to be placed in the town squares of the municipalities of Urabá Antioqueño, Chocoano, and Cordobés, at the public's discretion. These plaques should be located in the town square of each municipality in a place that is visible and accessible to all citizens. As for their size, they should be conspicuous and visible to the naked eye

4. FREDY RENDON HERRERA may not develop, without the consent of this Court, reparation measures whereby he can assume direction and control over the lives of the persons found in this judgment to have been the victims of illegal recruitment.

5. To mark the International Day Against the Use of Child Soldiers on February 12, under Article 49, No. 6351, of Law 975 of 2005, and as requested by the National Commission for Reparation and Reconciliation, the Court will urge the Vice President of the Republic, as the person responsible for human rights issues and for the coordination of the intersectoral roundtable for the prevention of child recruitment, or whoever the national government may appoint, to:

5.1 Hold a public event, with coverage by state-owned television channels, repudiating the illegal recruitment of children and adolescents into unlawful armed groups and acknowledging that the State has the responsibility to tackle the underlying causes of recruitment.

5.2 This event should include the reading of excerpts from the stories of the minors who testified at the hearing, keeping their identities confidential at all times. This is so that Colombian society will be aware of the cruelty of this war crime.

5.3 At this event, FREDY RENDON HERRERA shall acknowledge his responsibility for the acts that violated the rights of children and publicly apologize to the youths, their families, and their communities, and shall refrain from presenting explanations or justifications for these acts..

5.4 Those youths who wish to do so, and who consider that their life and physical integrity are not in danger, should also apologize for the human rights violations they perpetrated when they were minors. [...]

[It is further ordered,] under Article 140 of Law 1448 of 2011, that the male victims who are the subject of this ruling and whose military situation has not been resolved should be exempt from military service. Therefore, the Ministry of Defense is ordered to immediately issue the respective military ID cards without the payment of any fees.

1.3.3.2 Measures of satisfaction or symbolic measures in cases involving the enforced disappearance of persons

Colombia. *Sentencing and reparations judgment (Edilberto de Jesús Cañas Chavarriaga et al., defendants) (Case of the Cacique Nutibara Bloc) (List of judgments 3.3).*

As the Court has held in previous rulings, enforced disappearance creates some of the most complex and painful emotional situations for the victims.

The expert psychologist emphasized the importance of symbolic rituals, since the victims have not stopped searching for their loved ones, and the lack of results produces a constant dissatisfaction that makes it difficult for symbolic expression to be effective.

She explained that such rituals become valid and effective in supporting emotional recovery when the family members are given an explanation and a demonstration of the impossibility of finding their loved one, coupled with a psychosocial process to dignify their grief and pave the way for other healing processes.

Enforced disappearance was one of the most frequent crimes committed by the Cacique Nutibara Bloc. [...]

This is a unique and urgent opportunity to redress the harm and restore the identity and dignity of the direct victims and their families, especially when the defendants have pledged and expressed their willingness to contribute as much as possible to the discovery of the victims' remains. [...]

[T]he Court is aware of the situation of La Arenera and La Escombrera, where the remains of people murdered in the city of Medellín and the surrounding metropolitan area were buried. According to the available evidence, this was a systematic and widespread practice of the Cacique Nutibara Bloc. It clearly constitutes a crime against humanity and a serious and mass violation of human rights and international humanitarian law. [...]

[C]onsistent with the aforementioned norms and case law, the Court will adopt the necessary measures to address the matter of La Escombrera in such a way as to secure the physical evidence of enforced disappearance, protect and preserve the bodies of the disappeared persons, move beyond the grave violations of the victims' human rights, and effectively guarantee the right to comprehensive reparation for the harm inflicted on the relatives of the disappeared, especially since some of the cases examined in this decision—including at least one case of enforced disappearance—are related to the events that occurred in the Comuna 13 neighborhood of Medellín. [...]

The memorial offered by the Court on April 9, 2012, in memory of those who disappeared at the hands of the Cacique Nutibara Bloc, will also be placed at the site.

Victims and their organizations will be guaranteed involvement in the preparation and definition of the plans and projects for the search, discovery, identification, and delivery of the bodies or remains of the disappeared and in the design, final components or elements, and construction site of the memorial. Their opinions will be heard and considered with the utmost respect and with the aim of redressing the harm inflicted on them, and they will be informed periodically of the activities and their status. [...]

The Minister of Justice, on behalf of the State, along with the mayors of Medellín and Itaguí and the police chief and commanders will acknowledge the responsibility of their institutions by act and/or omission in the acts perpetrated by the Cacique Nutibara Bloc under the command of Diego Fernando Murillo Bejarano. They will apologize for those acts and omissions and must agree to take all actions and measures to prevent the recurrence of such acts, publicly specifying the measures they will take to this end. They must include and expressly mention [...] cases [specifically referred to in the judgment], depending on where the event took place and where the act was perpetrated.

1.3.4 Guarantees of non-repetition

1.3.4.1 Guarantees of non-repetition in cases of the illegal recruitment of minors

Colombia. *Sentencing and reparations judgment (Fredy Rendón Herrera, et al., defendants) (Case of the Elmer Cárdenas Bloc) (List of judgments 3.1).*

In order to rule on [the] request [regarding the defendant's public apology as a symbolic form of reparation], it should be specified that as a measure of non-repetition, the hierarchical relationships that still persist among several of the young men who were recruited by the Elmer Cárdenas Bloc must be dismantled.[17]

The Court heard from several of the young people who testified that they were grateful for many of the things that FREDY RENDON HERRERA had done for them, and that they even saw him as a father. Expert Nina Winkler also explained that among the minors she interviewed, several still maintain feelings of obedience and subordination to the former commander.

As we have seen, with regard to the Paris Principles, the first guarantee of non-repetition consists of breaking or preventing the replication of the hierarchies of the illegal armed organizations in civilian life, and ensuring that the victims of this crime do not continue to identify the former commander as a superior, a role model, or a benefactor.

Colombia. *Sentencing and reparations judgment (Edilberto de Jesús Cañas Chavarriaga et al., defendants) (Case of the Cacique Nutibara Bloc) (List of judgments 3.3).*

Under Law 975 of 2005, the demobilization and dismantling of illegal armed groups and the application of penalties to the perpetrators of massive violations of human rights and international humanitarian law is integral to the guarantee of non-repetition.

However, the perpetrators must first address the State and society in order to eliminate or change the conditions that made it possible for such grave violations of human rights and international humanitarian law to be committed, thus ensuring that such violations are not repeated. Measures should be aimed at fostering an environment of protection and eliminating the risk of rights violations, as well as transforming institutions to restore trust in them.

[17] In order to fully understand the Court's argument regarding the relationship between symbolic reparation (public apologies) and guarantees of non-repetition (breaking down the hierarchical relationship between the applicant and the children who were victims of unlawful recruitment), we recommend that the reading of these paragraphs be complemented with an analysis of the portions transcribed in section 1.3.3.1 of this Digest, "Measures of satisfaction or symbolic measures in cases of the illegal recruitment of minors."

The process, as recorded in this judgment, made it possible to identify the acts and omissions of the State, the security forces, the Office of the Public Prosecutor, and other national, regional, and local institutions in terms of respecting and guaranteeing the human rights of citizens, establishing the truth about their violation, and the prosecution, investigation, trial, and punishment of the perpetrators and other persons responsible for massive violations of human rights and international humanitarian law. [...]

The defendants will participate in [the] programs [that this Court orders the various State authorities to implement] as part of their commitment to justice and their reintegration process and may visit prisons, educational institutions, youth associations, foundations, etc. [...].

1.4 Reparations for indirect victims or relatives of direct victims

It is not uncommon to find opinions, at both the national and international levels, recognizing that some relatives of the direct victims of unlawful acts are entitled to reparations as beneficiaries, successors, or heirs of the victims. The decisions presented below go a step further by incorporating international standards that recognize that family members—such as spouses, children, or parents—normally suffer their own harm, independent of the harm experienced by the victims, as a result of the perpetration of unlawful acts. These standards, common in the case law of the Inter-American Court of Human Rights,[18] are an innovative departure from the interpretation of narrower regulatory frameworks that, in many cases, govern the determination of harm at the national level.

This section also presents opinions from national courts proposing an expansive interpretation of the laws governing the reparation of harm. This allows persons who would not otherwise be considered beneficiaries or successors in interest to be considered as such, including the siblings of direct victims of international crimes.

1.4.1 Reparations for indirect victims for harm suffered in their own right

Chile. *Cassation appeal (Alberto Ponce Quezada, indirect victim) (List of judgments 2.1).*

[T]he representative of the Chilean Treasury filed a cassation appeal on the merits against the civil decision [contained in the criminal judgment for the crime of murder].

The appeal explains that Law 19.123 granted benefits to the victim's immediate family, which includes parents, children, and spouse and excludes all others linked by kinship, friendship, or close ties, including the siblings of the deceased, which is the case of the plaintiff. This assertion is supported by other provisions of domestic law with the same reasoning, such as Articles 43 of Law 16.744 and 988 et seq. of the Civil Code, from which it can be inferred as a legal principle that the law prioritizes restitution in cases such as the one before us to the victim's next of kin—which has not been the case here.

[R]egarding the alleged pretermission issue in relation to the claim, because it was filed by the victim's brother, whenever a legal order has been established regarding benefits or possible claims, there are express provisions

[18] For example, in the case of *Gomes Lund et al. v. Brazil*, the Inter-American Court of Human Rights held that "this Court has determined that it can presume a harm to the right to mental and moral integrity of direct family members of victims of certain violations of human rights by applying a presumption *iuris tantum* regarding mothers and fathers, daughters and sons, husbands and wives, and permanent companions (hereinafter 'direct family members'), when and if they correspond to the specific circumstances of the case. In the case of said direct family members, it corresponds to the State to disprove said presumption [*footnote omitted*]. In other cases, the Court should analyze whether the evidence in the case file evinces harm to the personal integrity of the alleged victim. Regarding those people whom the Tribunal will not presume a harm to personal integrity for not being a direct family member, the Court will assess, for example, if there is a particularly close connection between said persons and the victims of the case that would allow for the determination of harm to their personal integrity, and as such, a violation of Article 5 of the Convention. This Court may also evaluate if the alleged victims have involved themselves in the search for justice in the specific case [*footnote omitted*], or if they have endured suffering as a consequence of the facts of the case or because of the subsequent actions or omissions of the State authorities in light of the facts [*footnote omitted*]." I/A Court H.R., *Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 24, 2010, Series C, No. 219, para. 235.

governing the matter. This is not the case here, since the only limitation for those claiming damages arising from the actions of State agents is to demonstrate the existence of such harm, so that a formal allegation of harm and the relationship with the victim is sufficient to file the claim.

[I]n relation to the nonpecuniary damages sustained by the plaintiff due to the death of his brother—who was deprived of the right to demand the timely clarification of the facts surrounding the crime perpetrated against him—the record clearly reflects, as established in the judgment, the existence of a harmful event, a proven harm, and a connection between the plaintiff and the victim, which makes the reparation awarded appropriate [...].

Chile. *Cassation appeal (Alejandro Vallejos Villagrán, indirect victim) (List of judgments 2.4)*

[Unlike the opinion of the Court of Appeals in the contested judgment], [t]he only limitation for those claiming damages caused by State agents is to demonstrate the existence of such harm, so that it is sufficient to allege the existence of the harmful event and the effective involvement of such agents, which in this case has not been disputed.

This decision partially reversed the judgment handed down by the Ninth Division of the Court of Appeals of Santiago in Case No. 4735-2019. Because this decision helps provide a better understanding of the Supreme Court's considerations, the relevant paragraphs of the lower court's judgment (reversed) are transcribed below.

Chile. *Appeal (Alejandro Vallejos Villagrán, indirect victim) (List of judgments 2.2).*

In the domestic legal system, Article 2315 of the Civil Code provides that "this compensation may be sought not only by the owner or possessor of the thing that has suffered the harm, or by his or her heir …," so it is consistent and necessary, rather than disproportionate, to apply the rules of exclusion regarding those who would be successors under intestate succession—in this case, successors of the victim—as a limit. This is consistent, for example, with the limitation provided for in Article 20 of Law 19.123, which states that with respect to victims of human rights violations, the beneficiaries of the survivor's pension are their spouses, parents, the mother or father of their children, and their children.

It follows from the above that, in any case, to prevent an improper use of the action for damages, it seems reasonable to limit access to compensation to a circle of persons who are not excluded by those with a preferential right to be compensated, or, absent such persons, to those who have been able to demonstrate the harm suffered because of their close ties to the victim.

Here, it is the victim's brother. And according to the copies of the judgments attached to the case file (first and second instances), there are direct ascendants, namely the mother; this excludes the plaintiff, who, moreover, failed to sufficiently prove the harm suffered due to the close relationship between the victim and the plaintiff. There are only the birth certificates of the victim and the plaintiff, and the testimony, described in paragraph 5 of the conclusions of law of the first instance judgment (transcribed below), which fails to establish the causal relationship between the general harm alleged and the victim's disappearance.

Uruguay. *Appeal (Verónica Mato, indirect victim) (List of judgments 7.3).*

[The Ministry of Defense, as the respondent in the action for nonpecuniary damages arising from the enforced disappearance of Miguel Ángel Mato, argued in its appeal, *inter alia*, that] [t]he State should not be held responsible for the position taken in compliance with the mandate of Article 4 of Law 15.848, because, despite the clear limitations in conducting investigations, efforts have been made over time to ascertain the truth about the disappeared persons. [...]

The Court agrees with the lower court that the delay in the investigation of these acts added to the intensity of the nonpecuniary damages suffered by the plaintiffs, increasing the distress and anxiety that the disappearance of their husband and father caused them.

This is because it was only in 2003, with the report of the Commission for Peace, that they received a belated but credible answer about the fate of Miguel Ángel Mato. [...]

[Second, the Ministry of Defense also filed appeals challenging the amount of compensation awarded to each plaintiff.] The lower court estimated this amount at $100,000 for each claimant, an estimate with which this Court agrees.

It should be considered that it was not until 20 years later that they were able to confirm the disappearance and death of their husband and father, a fact that aggravates the nonpecuniary damages arising from the death of a loved one.

In this regard, psychiatrist Yenny Buceta said, "It is difficult to process grief without the ritual of funerals; people need to see the body, bury it, mourn it, know where it is. When someone has disappeared, the grieving process is frozen and cannot be defined" [...].

The testimonies of Raúl Gambaro [...], Jhin Gwo Cheu [...], and Gianella Sierra [...] also show the constant anguish suffered by the plaintiffs for more than 20 years, and it should be noted that, at the time of his disappearance, Miguel Ángel Mato was only 28 years old [...].

Finally, the amount set is related to the amount proposed in the bill drafted by the executive branch to compensate the families of victims of events such as this (a one-time payment of US$ 150,000 for each person deceased or declared absent), a bill cited by the defendant itself in its answer to the complaint [...].

Colombia. *Sentencing and reparations judgment (Edilberto de Jesús Cañas Chavarriaga et al., defendants) (Case of the Cacique Nutibara Bloc) (List of judgments 3.3).*

Several cases before the Court on this occasion were characterized by the level of vulnerability that resulted from or was exacerbated by the violence. Sometimes the children had to drop out of school and work or help their mothers provide for their daily needs [*footnote omitted*]. *"The brothers left their sisters-in-law alone, mothers who were heads of households. One sells mazamorra [corn pudding], Nicolás's children went to retailers and wholesalers to sell fruits and vegetables,"* stated Salvador Espinosa, whose family was the victim of one of the massacres in the neighborhood of El Limonar 2.

The expert psychologist, Natalia Bustamante, also explained the consequences for the families in this case and the different forms of psychological harm experienced by many of their members, including*i)* Symptoms of post-traumatic stress, including generalized anxiety and hypervigilance, as well as fear of motorcycles, places, and people.

ii) Depression and a perpetually low mood, which affects a person's life plan, and even severe depression, with medication and psychiatric care.

iii) Single-mother syndrome, due to the gaps and role changes brought about by the violent event, which, according to the specialist, can affect or prolong the mourning process.

In the psychologist's diagnostic assessment of the families referred to herein, the report showed that the impact has continued even years after the event. And indeed, some of the victims in these proceedings stated that they still experience feelings of confusion and pain. They say things like, "*I think I see him at the foot of my bed*" [*footnote omitted*], or as one relative of a victim of enforced disappearance put it,

> *". . . to see how my mom gets every time she has to come here, it is very hard to help her in her crisis, to think that something might happen to her, that she might lose her mind completely because she does not know where my brother is. At least if we had found my little brother's body, to bury him, the pain would be great but not as great, this is like a cancer that eats away at you. Every day we think about what it was like, what he said, what he felt, every day we imagine things, we ask ourselves questions to which we have no answer, and the only one who knows the truth is the one who committed the crime" [footnote omitted].*

Such feelings and emotions, as the psychologist explained, constitute *semi-permanent psychological harm*, from which the affected family can only recover by receiving support and, in cases of enforced disappearances, through symbolic burials, when possible and feasible.

The increased harm, she stressed, is due to the absence of support or timely intervention, as the delay in care deepens and aggravates the emotional damage. Both psychological and psychiatric services should be provided as soon as possible, when necessary, but always in a timely manner.

This psychological damage can prevent victims from being able to have appropriate relationships, not only at the family level, but also in their communities and daily environments. These effects extend to the stability of the children, to the point that one of the heads of household stated that in addition to the uncertain financial situation brought about by the death of her partner, one of her daughters has had to repeat the same grade in school three times, and her emotional stability has been affected by the violence.

In some cases, the damage can produce complex psychosocial effects and deepen the crisis within the family, for instance when alcohol is used habitually to cope with the pain of the loss. [...]

Feelings of fear and insecurity are also common among the survivors of the events now before the Court. The members of the affected families expressed their fear of staying in the places where they resided and where the events occurred, or fear that they might be targeted in another violent act as a consequence of their presence and participation in the comprehensive reparation proceedings; many of them fear that the perpetrators of the crimes might harm them again, which prevents them from going about their daily activities, as they expressed during the hearing [...] [*emphasis in the original*].

1.4.2 Reparation as successors, beneficiaries, or heirs of the direct victim

Colombia. *Sentencing and reparations judgment (Edilberto de Jesús Cañas Chavarriaga et al., defendants) (Case of the Cacique Nutibara Bloc) (List of judgments 3.3).*

[Based on the criteria established by the Supreme Administrative Court,] "whoever invokes the status (by blood, affinity, adoption, or foster care) of immediate family member in the degrees that have been presumed by this Court, and produces evidence of it in the proceedings, will benefit from the presumption of suffering that operates for close degrees of kinship and need not prove that he or she is an affected third party, i.e., through direct evidence of grief and suffering. In other words, if their status as relatives of the direct victim is proven in the proceedings, the plaintiffs will be entitled to the same presumption that operates for those who proved their relationship with documents from the registry of vital statistics" [*footnote omitted*].

Thus, indirect victims who have proven their kinship or close emotional ties to the direct victim will benefit from the presumption of suffering.

With respect to the nephews and nieces, the testimony and records proving such status are insufficient to support the awarding of nonpecuniary damages, since the presumption of suffering does not apply in their case.

Uruguay. *Appeal (Verónica Mato, indirect victim) (List of judgments 7.3).*

The lower court determined that the share due to the daughter—who was five years old at the time (p. 2)—was 25% of the victim's net income, while the wife's share was 37.5%. This Court considers both of those figures reasonable.

As for the applicable time limit, the judge determined, in the case of the wife, that it was until the dissolution of their marriage by divorce (as requested in the complaint), and for the daughter, until her 18th birthday. [...]

[In its pleadings, the Ministry of Defense—respondent in the claim for nonpecuniary damages—argued that the lower court] [failed to consider that, as of 1990, the widow had entered into a new partner relationship].[19]

We agree with the wife's solution, as the fact that she was living with Raúl Gambaro before the divorce [...] is irrelevant when determining the period of lost profits [...].

On the other hand, the plaintiff is correct as to the time limit set with respect to the daughter, with the understanding that both Article 3 of Law 16.719 and Article 50 of the Children's Code (Law 17.823) provide, as a principle, that the support obligation continues until the age of 21, unless it is proven that the beneficiary has his or her own means of support. This must be asserted and proven by the party liable for support, which the respondent has failed to do.

Consequently, the judgment for lost profits must be formulated in keeping with the general principle that support is owed until the child reaches the age of 21, it being understood that none of the aforementioned rules makes the obligation to pay support conditional on the child being in school, as this Court has held in similar cases [...].

1.5 Collective reparations

The collective dimension of international crimes has led to the legal recognition of the harm suffered by groups of individuals, communities, or even legal entities. With this recognition, various groups have benefited from judicial or administrative proceedings for the reparation of harm arising from such crimes. The challenge, then, is to determine what type of communities can claim reparation and, if they can, what measures should be taken to this end.

Since the adoption in 2002 of the Rules of Procedure and Evidence of the International Criminal Court, a broad view of the concept of victims has been incorporated into the international framework. It includes not only natural persons but also organizations and institutions that suffer harm to any of their property "which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes."[20]

This provision opened a new horizon on reparations at the international level.

In addition, the rules of operation of the International Criminal Court's Trust Fund for Victims recognize that, in many cases, the best response to the harm caused by the commission of international crimes may be collective reparation actions, programs, or projects, as opposed to an individualistic approach to reparation. These rules enable both the chambers of the International Criminal Court and the Trust Fund itself to order or implement collective measures on behalf of groups of persons or entire communities.

This brief description of some of the rules governing the reparation of harm at the International Criminal Court addresses two key points. The first is a complex view of "groups," which may include both individuals and legal entities—including religious or educational organizations—and social groups without their own legal personality. Second is the joint operation—ideally coordinated—of judicial bodies (i.e., the chambers of the International Criminal Court) and administrative mechanisms (i.e., the Trust Fund), in order to better satisfy the needs of individuals, legal entities, or groups of persons.

As in the international framework, various Latin American decisions have recognized the importance of including certain "groups" as direct beneficiaries of reparation actions following the commission of international crimes. As shown in the excerpts included in this section, collective reparation seeks not only to benefit a large number of people, but also to have a collective transformative impact within society.

[19] The text in the second set of brackets is a verbatim transcription of an earlier part of this same judgment, but it is inserted in these excerpts for clarity.

[20] International Criminal Court, Rules of Procedure and Evidence, Rule 85(b), https://www.icc-cpi.int/sites/default/files/RulesProcedureEvidenceEng.pdf.

This perspective has prompted further reflection on the relationship between collective reparation measures in cases of international crimes and social assistance actions or programs.

Colombia. *Sentencing and reparations judgment (Fredy Rendón Herrera, et al., defendants) (Case of the Elmer Cárdenas Bloc) (List of judgments 3.1).*

As was made clear at the hearing, determining the collective damages arising from the forced recruitment of minors [as well as from other international crimes] is particularly difficult [...], because the sum of individuals in a locality or municipality is often confused with a collective rights-holder.

In countries where collective reparation policies have been developed and applied, they have been applied to members of social groups that existed before the violation and that had a series of defining characteristics that gave them an identity in relation to the rest of the affected population. A good example of this is the case of Peru's comprehensive reparation proposal in the final report of the Truth and Reconciliation Commission, which is included in Law 28592 and Supreme Decree 015-2005 [*footnote omitted*].

In that collective reparation plan, qualitative methods—the strong and historical identity of some Indigenous communities—were combined with quantitative methods, in which it became evident, based on several indicators, that a practice of attacks on various individuals from a population was of such a magnitude or scope that what they really sought was to destroy the community (generally peasants).

This methodology included indicators such as damage to work tools, blocking access to water sources, theft of livestock, etc. All of them together made it possible to demonstrate an assault that was greater than the sum of attacks on individuals, and made it possible to identify, as targets of collective attacks, populations that, without having very strong historical ties, were the target of destructive tactics. As we will see, in this case, this information was not provided at the hearing.

In the matter before us, the decisions of the Constitutional Court regarding the creation of collective rights-holders entitled to special protection of their fundamental rights are relevant. This Court held in Judgment T-380 of 1993: "The protection of the new Constitution includes the acknowledgment of cultural diversity, which in turn entails the acceptance of different forms of social life and the cultural reproduction of collective rights-holders. These are not simply a collection of individuals, but a group that has a unity of meaning that emerges from different community experiences."

In the same vein, the Inter-American Court of Human Rights has ruled in cases in which the assault on rights enshrined in the American Convention clearly goes beyond the sum of individuals in a community to become an attack on the community as a whole; the Court holds that collective rights-holders (in this case ethnic communities) "[are] a factual reality, becoming full rights-holders—entitled to rights that are not reduced to the rights of their members individually considered, but are rooted in the community itself, endowed with its own uniqueness" [*footnote omitted*].

Convention 169 of the International Labour Organization also defines peoples and communities in cases where the collective entity is entitled to rights. Article 1 of the Convention defines "tribal peoples in independent countries whose ***social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;*** peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, ***retain some or all of their own social, economic, cultural and political institutions."***

Other authors have pointed out that a group entitled to collective reparation is "a group that has a unity of meaning, different from the mere sum of the individuals that make up the group, with a collective identity project. When the rights-holder exists prior to the human rights violations in question precisely because he or she is part of a group entitled to rights, it could be thought that he or she suffers harm of a collective nature" [*footnote omitted*].

The Court cites the aforementioned national and international case law, together with the case of collective reparation (Peru) and the definitions of ILO Convention 169, to illustrate that the existence of a rights-holding social group cannot be presumed simply because there are characteristics that give the appearance of homogeneity to a large number of individuals whose fundamental rights have been violated.

Rather, they must share, as in the case of Peru, **quantitative elements** to determine that an attack was not on a sum of individuals, but on a group; and **qualitative elements** that make it possible to identify—and prove—the existence of characteristics that distinguish a number of individuals as bearers of a project that identifies and differentiates them from the national project.

The Court clarifies that it cannot exclude the existence of groups with a distinct identity that emerged after the attack. For example, the country has several social organizations that bring together victims of violence.

In this case, there can be no collective reparation because, despite the ethnic identity of a large part of the population of Urabá—the Afro-descendant population—the region's children are not a group with a single history, a single project, or a community of values and traditions with strong ties, but rather diverse groups with dissimilar histories. The Court finds that, by considering the minors who are victims of forced recruitment by the Elmer Cárdenas Bloc to be entitled to collective reparation, the third-party plaintiffs are mistaking a group of individuals who enjoy heightened constitutional guarantees for a collective rights-holder entitled to fundamental rights.

Thus, a collective rights-holder, holder of a fundamental right to comprehensive reparation, cannot be constructed on the sole basis of the arithmetic sum of persons with a homogeneous characteristic: age. Considering the minors to be a group, and therefore bearers of their own identity and differentiated from other groups, could lead to errors in terms of reparation; there could be cases in which measures to restore the rights of the group are ordered and, once implemented, it is found that they have nothing in common besides their age, that the minors do not feel that they have been made whole, and that they would have preferred for all the resources to be used for individual reparation. The Court insists that granting collective reparations to a multitude of individuals who lack a set of differentiating and identifying elements is an error, since the measure intended as reparation will not have such an effect.

It could be argued that, in this case, the group is the Afro-descendant population of the Urabá region—a point not raised by any of the parties or third-party plaintiffs; **all insisted that the children were the collective rights-holder** [*footnote omitted*]. But as we mentioned in reference to the area's historical context and as one of the third-party plaintiffs explained [*footnote omitted*], in quantitative terms, the 11 municipalities in the region have dissimilar histories, each having different points of reference and projects. [...]

What happened in this case falls within the scope of what the Supreme Court of Justice defined as plural damages, which "***refers to the production of multiple specific damages that affect several rights-holders, and is the sum of individual damages, such as when the synchronous detonation of an explosive device causes personal injuries to different persons, the death of others, and damage to vehicles and buildings, in which case the claims for compensation may be heard individually and the reparations will also be individual***" [*footnote omitted*].

The Court is of course aware that recruitment has an impact on Colombian society. As evidenced at trial, the mass recruitment of minors involves, among other things, subverting the **ethics** of a society defined as democratic and participatory [*footnote omitted*] in order to defend militaristic and hierarchical values, many of which are patriarchal and objectify women and non-hegemonic forms of masculinity [*footnote omitted*].

Along with this, **attitudes** are altered. Rather than positive value being accorded the citizen who respects institutions and procedures, born of representative and participatory democracy, respect is given to the men and women who use weapons to impose their will. They command greater respect than the citizen who engages in deliberation and persuasive discourse, and who yields in debates, and they imitate models of leadership where strength is imposed and weapons are used in the face of dissent or opposition.

The Court finds it proven that the illegal recruitment of minors gives rise to collective damages, but for Colombian society—not for a distinct group with a history and project that differentiates it from Colombian nationality—as required by ILO Convention 169 [*emphasis in the original*].

Colombia. *Sentencing and reparations judgment (Edilberto de Jesús Cañas Chavarriaga et al., defendants) (Case of the Cacique Nutibara Bloc) (List of judgments 3.3).*

Article 49 of Law 975 of 2005 provides that collective reparation refers to the State's obligation to implement programs that will have a collective impact and facilitate the recovery of the institutions inherent to a society governed by the social rule of law in the areas affected by the violence.

Law 1448 of 2011 establishes that communities, organizations, and social and political groups that have suffered harm as a result of the Colombian armed conflict due to the violation of their collective rights, the serious and flagrant violation of the individual rights of their members, and the collective impact of the violation of their individual rights, are entitled to collective reparation.

In this regard, a community is understood as:

> *"[A] social group that shares identity based on practices, culture, teaching patterns, territory, or history, with an interest in generating indivisible or public goods, working together for the same objective, and also engaging in debate on the subject. Such is the case of the villages, rural districts, or municipalities whose roots are clear and well known by their inhabitants" [footnote omitted]. [...]*

The presence of paramilitary groups in these scenarios led to the fracturing of the social and community order. Their actions and methods caused the breakdown of trust and rules-based coexistence in the community, leading to illegal orders and the imposition of rules and forms of social control that provoked a constant sense of terror that persists to this day in many families who experienced this harm.

This was the objective and the effect of the targeted killings, enforced disappearances, and forced displacement, which harmed not only the individual rights of the people affected, but also the collective rights of the population to participate in shaping and exercising political power and in the decisions that affect them, to benefit from the progress and advances of society, and to enjoy and exercise their rights in safety, with no limits other than the law.

The violations referred to in this decision and in the cases in which reparations are sought show how the actions of the Cacique Nutibara Bloc not only affected the individual members of the families, but also had a collective impact as they spread terror among the population. The population was forced to live with the presence of the paramilitary group's members and under an illegal and authoritarian order that altered social ties and relationships, society's prevailing rules and order, trust in institutions, and the ability to enjoy spaces for community participation and development.

And it is precisely in this form of control that the collective harm lies.

> *"Intimidation, terror, and physical elimination are the results of 'territorial control and domination,' leading to the serious breakdown of the social fabric of the neighborhood. The paradoxical aspect of the situation is that fear acts as a strong element of social integration. The groups, gangs, militias, and paramilitaries develop their strategies of terror and intimidation, and they protect those within their territories: protection provided, loyalty demanded" [footnote omitted].*

The case of Nelson Arias, Jair Alberto Calle, and Gonzalo Múnera Blandón, who were 17 years old at the time of their deaths and were murdered on their way to their school, San Juan Bautista, illustrates this parallel order and its forms of social control. When the mothers of the young men asked the defendant, Wander Ley Viasus Torres, to tell them why he killed their sons, he [answered] that it was because they insisted on crossing through an area that was off limits to them—in other words, [crossing] the imaginary borders established by the illegal armed group.

These types of borders are one of the best examples of the armed control exerted by the Cacique Nutibara Bloc, which imposed imaginary limits restricting residents' movement and specifying not only the places where travel was permitted, but also the people who could stay or move within the controlled space. This is a process of social fragmentation that degrades community ties and solidarity, creating a deep distrust among the inhabitants. In this way, the group instilled "fear of the other."

> *"The gravity of the situation lies in the fact that, besides the never-ending history of deprivation experienced by these inhabitants, there is also the social fragmentation caused by the actions of the violent groups.*
>
> *"This is the origin of the groups and gangs that divided the city and marked invisible borders, inviolable on pain of death just for moving a few meters in a given direction. 'The crossfire combined bullets from the guerrillas, militias, self-defense groups, and State agents, reaching victims in the street and outside the school' (Zuluaga, 2002)" [footnote omitted].*

Another control mechanism was to stigmatize the residents of the neighborhoods who were identified as members or supporters of the armed insurgent groups. This also served as an excuse and rationale for massacres, targeted killings, disappearances, and forced displacement. Because of this, the victims' families have continuously expressed during the proceedings the need to restore dignity to the names of their loved ones and to clarify that they were not part of any armed insurgent group [*emphasis in the original*].

1.6 Position of the State on the reparation of harm arising from individual responsibility

The reparation of harm arising from international crimes raises complex questions about the position of the State as the liable party or duty-bearer responsible for reparation actions or measures. This is particularly the case when responsibility for such crimes is attributed to non-State actors or when collective measures of assistance are proposed that go beyond the individual harm suffered by specific persons.

Latin American court opinions on these issues are varied. They depend, to a large extent, on the status of the perpetrators, as well as on the legal nature of the mechanisms or procedural channels through which reparations are determined. In some cases, these are proceedings against persons who at the time of the events were clearly public servants or public officials. In other cases, the persons responsible for the crime and, therefore, for the harm suffered were private actors whose connection to State agents or institutions is not necessarily clear. Opinions on this subject have been rendered in civil actions or ancillary reparation proceedings linked to ordinary criminal proceedings or to specialized transitional justice procedures.

These factors have an impact, as is to be expected, on the judicial opinions on the subject. In any case, the judicial opinions reflect the possibility, subject to certain procedural requirements, of involving the State through orders or requests for reparations or measures of assistance to individual victims, groups, or communities, in cases of international crimes.

The concepts used to this end are varied. They range from joint and several or secondary liability to third-party civil liability. Some decisions establish the duty of the State to cover the damages or financial compensation awarded by the court, even when those individually responsible had no relationship to the State when they committed the acts. More interestingly, in most of the judgments, the orders issued to State authorities focus on other forms of reparation, including measures of satisfaction or guarantees of non-repetition.

With these types of decisions, the national courts of some Latin American countries seem to go beyond a strict notion of reparation—even from a collective point of view—to enter the realm of social assistance actions, measures, or programs.

The relationship between reparations and assistance, between transitional justice and development, has been widely explored in the specialized literature on the subject.[21] Although, strictly speaking, reparations should be limited to redressing the harm caused to individuals or groups in relation to specific criminal acts, transitional or transformative contexts have also been identified as opportunities to enhance the development of the most disadvantaged or historically vulnerable groups. In this sense, the objectives of large-scale reparations—typical of transitional contexts or the fight against impunity for international crimes—can coexist and even overlap with development objectives.

The risks that may be involved in combining the two objectives have not gone unnoticed.[22] Judges in the region also seem to be cognizant of the relationship between reparations measures and assistance actions. Some court opinions, particularly those ordering or urging State authorities to adopt support or assistance measures on behalf of communities, groups, or collectives, seem to be moving away from a stricter or more traditional approach to the reparation of harm and toward a development policy perspective.

Undoubtedly, the analysis of these Latin American decisions, particularly those that broadly involve the State in individual (criminal) liability proceedings, can shed significant light on this debate. This section presents some of these decisions, accompanied by excerpts from more traditional judgments in which the State takes the position of being secondarily or jointly and severally liable for the actions of its own agents or officials.

1.6.1 The State as the party primarily responsible for reparations in cases of international crimes perpetrated by State actors

Chile. *Cassation appeal (Alejandro Vallejos Villagrán, indirect victim) (List of judgments 2.4).*

[T]he civil action brought against the Chilean Treasury seeks comprehensive reparation for damages resulting from the actions of State agents, which is admissible under the international treaties ratified by Chile and the interpretation of domestic law under the Constitution of the Republic.

Indeed, this right of the victims and their families is based on general principles of international human rights law and the standards enshrined in international treaties ratified by Chile, which require the State to recognize and protect this right to full reparation under Article 5, second paragraph, and Article 6 of the Constitution. [...]

[I]t follows from the above that the State is subject to the rule of responsibility, which is not foreign to our legislation, since Article 3 of the Hague Convention of 1907 provides that "[a] belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces." This is complemented by Article 2.3 of the International Covenant on Civil and Political Rights, which states that "any person whose rights or freedoms as herein recognized are violated shall have an effective remedy," which entails the right to seek and obtain full reparation, including restitution, compensation, satisfaction, rehabilitation, and guarantees of non-repetition. In addition, Principle 15 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the Commission on Human Rights through Resolution 2005/35 of April 19, 2005, states, "In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international

[21] By way of example only, see N. Roht-Arriaza and K. Orlovsky, *A Complementary Relationship: Reparations and Development* (New York: International Center for Transitional Justice, 2009), https://www.ictj.org/publication/complementary-relationship-reparations-and-development; P. De Greiff, *Articulating the Links between Transitional Justice and Development: Justice and Social Integration* (New York: International Center for Transitional Justice, 2009), https://www.ictj.org/publication/articulating-links-between-transitional-justice-and-development-justice-and-social; Dixon, "Reparations, Assistance and the Experience of Justice," pp. 88–107; A. Balta, M. Bax, and R. Letschert, "Trial and (Potential) Error: Conflicting Visions on Reparations within the ICC System," *International Criminal Justice Review* 29, no. 3 (2019): 221–248.

[22] De Greiff, *Articulating the Links between Transitional Justice and Development*.

humanitarian law." In short, the obligation of reparation rests with the State that has violated the human rights of its citizens, an obligation that is part of the Chilean legal framework, as noted above.

[T]he system of State responsibility also derives from Article 3 of Law 18.575, the Constitutional Organic Act for the Administration of the State, which provides that the government is at the service of the people, that its purpose is to promote the common good, and that one of the principles governing its actions is the principle of responsibility. Article 4 of the Law provides that "*the State shall be liable for the damages caused by government agencies in the performance of their duties, without prejudice to the liabilities that may be incurred by the civil servant who caused such damages.*" Thus, it can only be concluded that the nonpecuniary damages caused by the unlawful conduct of the State officials or agents who committed the crimes against humanity giving rise to this action must be compensated by the State [*emphasis in the original*].

[T]he claim asserted by the Chilean Treasury contradicts the above-cited international norms. And because the domestic civil law only applies if it does not contradict those precepts, the State's responsibility for unlawful acts such as the one committed against the plaintiff's brother is always subject to the rules of international law, which cannot be breached on the basis of domestic law.

1.6.2 The State as jointly and severally liable in cases of international crimes

Guatemala. *First instance criminal judgment (Hugo Ramiro Zaldaña Rojas, et al., defendants) (Case of Molina Theissen) (List of judgments 5.4).*

[W]e must consider Article 155 of the Constitution of the Republic of Guatemala, which stipulates that when a State dignitary, official, or employee, in the performance of his or her duties, violates the law to the detriment of individuals, the State or the State institution he or she serves shall be jointly and severally liable for the damages caused.

Peru. *Motion to vacate (Humberto Bari Orbegozo Talavera, et al., defendants, Peruvian Army, civilly liable third party) (Case of the Los Cabitos Barracks) (List of judgments 6.4).*

[T]he judgment makes clear that these sums must be paid jointly and severally by the defendants and the State as a civilly liable third party. However, on this point, the Office of the Attorney General, represented by the Army of Peru, contests the judgment and, basically, questions its inclusion in this criminal proceeding.

The Inter-American Court of Human Rights has repeatedly ruled that, in the context of a systematic practice of illegal and arbitrary detentions, torture, extrajudicial executions, and enforced disappearances perpetrated by State security and intelligence forces, the international responsibility of the State is conditioned by its obligation to respect and guarantee the rights enshrined in both domestic and supranational laws. Given this unfulfilled obligation, the victims are owed fair compensation.

Given that the defendants' responsibility and the context in which the crimes were committed have been proven, as has their direct link to the State apparatus—since the defendants were military personnel (specifically, both were members of the Peruvian Army) in charge of restoring order in the city of Ayacucho, and were part of a political-military counterinsurgency plan—the attorney for the Peruvian Army is wrong to deny the institution's civil responsibility. Beyond the fact that the operations plan may have involved the joint action of other Armed Forces (Police, Navy, Air Force, etc.), it is unequivocal that the defendants were members of the Peruvian Army. Therefore, the argument asserted in this regard is insufficient to release the Army from civil liability.

Similarly, with regard to the law applicable to the civilly liable third party, the Criminal Code of 1924 was in force at the time of the events and stipulated that civil liability was joint and several only among the participants [in the] events; however, when the Code of Criminal Procedure entered into force in 1940, it provided in Article 100 [*footnote omitted*] that third parties, in addition to the defendant, could incur civil liability. Therefore, it is erroneous to assert that a procedural rule was applied that was not in force when the facts occurred.

Colombia. *Sentencing and reparations judgment (Salvatore Mancuso Gómez, et al., defendants) (Case of the Catatumbo Bloc) (List of judgments 3.2).*

[W]hen reviewing the constitutionality of Law 975 of 2005[,] [the Constitutional Court of Colombia] stated that:

"… There seems to be no sufficient constitutional reason for not applying the general principle that, in the face of mass violence, whoever causes the harm must remedy it. On the contrary, as the Court has explained, norms, scholarly opinion, and national and international case law have considered that financial reparation from the perpetrator's own assets is one of the necessary conditions to guarantee the rights of victims and to promote the fight against impunity. Only when the State is responsible—by act or omission—or when the perpetrators' own resources are not enough to pay the cost of massive reparations, does the State assume the secondary liability this entails. And this allocation of liability does not seem to vary in transitional justice processes in the pursuit of peace. It is consistent with the Constitution for the perpetrators of these types of crimes to answer with their own assets for the harm they have caused, under the ordinary rules of procedure that limit financial liability to protect the dignified livelihood of the person to whom such liability is assigned—a matter to be determined based on the particular circumstances of each individual case …" [footnote omitted] [emphasis in the original].

1.6.3 Complementary orders or requests addressed to the State in cases of individual liability

As noted at the beginning of this section, in various Latin American decisions, the courts have opted to order or call upon the State—or some specific State authorities—to take actions that, although linked to the notion of satisfaction or guarantees of non-repetition as forms of reparation, also resemble social assistance to groups, communities, or collectives. This section presents some of these judgments.

The extracts transcribed below are taken from decisions on individual criminal responsibility or, in the case of special transitional justice proceedings in Colombia, individual sentencing. In other words, these are decisions handed down by individual (non-State) responsibility mechanisms, in which the State has been summoned through different procedural channels to appear in the proceedings so it can be bound by the orders or requests for reparation or assistance. As at least some of the judgments emphasize, the fact that State authorities are ordered to comply with certain reparation/assistance measures does not necessarily entail assigning responsibility to the State for the commission of the crimes at issue in the proceeding.

Guatemala. *First Instance Criminal Judgment (Esteelmer Francisco Reyes Girón, defendant) (Caso Sepur Zarco).* (*List of judgments 5.3)*

[As part of the comprehensive reparation, in addition to the compensation to the victims of sexual violence and enforced disappearance, which will be borne by the defendant] **IX.** The Public Prosecution Service is ordered to continue the investigation to find the whereabouts of the disappeared persons in Sepur Zarco and neighboring communities, with the cooperation of the victims' families. **X.** The Ministry of Public Health is ordered to build and set up a type "A" health center in the community of Sepur Zarco in the medium term, with all the necessary medicines. **XI.** The Ministry of Education is ordered to improve the infrastructure of the elementary schools in the communities of San Marcos, Poonbaac, La Esperanza, and Sepur Zarco. **XII.** The Ministry of Education is ordered to establish a bilingual secondary school to guarantee the right to education of women and girls. **XIII.** The Ministry of Education is ordered to grant scholarships at the three levels of education for the population of Sepur Zarco. **XIV.** Given that the historical registry expert's report confirms the existence of the files processed before the INTA, which were initiated by the missing persons, the Court orders the continuation of their processing before the State institution currently responsible for them. **XV.** Through the Development Committees of Sepur Zarco, San Marcos, La Esperanza, and Poonbaac, the necessary steps shall be taken to provide basic services in the victims' communities and homes. **XVI.** The Ministry of Culture and Sports shall develop cultural projects aimed at the women of Sepur Zarco. **XVII.** The Ministry of Education is ordered to include the case of the Women of Sepur Zarco in school curricula and textbooks. **XVIII.** The Ministry of Education and the Ministry of Culture are ordered to produce a documentary on the case of

the Women of Sepur Zarco. **XIX.** The Ministry of Education and the Ministry of Culture are ordered to translate the judgment in the Sepur Zarco case into the 24 Mayan languages. **XX.** The Court orders that the institutions acting as private prosecutors take the necessary steps before the respective authorities to have February 26 recognized as the Day of the Victims of Sexual Violence and Sexual and Domestic Slavery. **XXI.** The Municipality of El Estor, Department of Izabal, is ordered to build a monument within one year to represent the search for justice for the Women of Sepur Zarco. **XXII.** The Court orders the institutions acting as private prosecutors in these proceedings to take the necessary steps before the Congress of the Republic in relation to the Law on Enforced Disappearance. **XXIII.** The Court orders the Ministry of National Defense to include courses in its military training programs on women's human rights and on laws for the prevention of violence against women. **XXIV.** The State of Guatemala, through the Ministry of the Interior, is ordered to arrange for the safety of the members of the complainant organizations, the legal team, the victims, and the victims' families, and the appropriate official letters should be issued to this end [*emphasis in the original*].

Colombia. *Sentencing and reparations judgment (Fredy Rendón Herrera, et al., defendants) (Case of the Elmer Cárdenas Bloc) (List of judgments 3.1).*

[The Paris Principles and Commitments on Children Associated with Armed Forces or Armed Groups] [...] contain provisions on reparations for minors affected by this war crime, in line with expert recommendations.

The Paris Principles refer to the process for the liberation, reintegration, and reparation (including rehabilitation, protection, and compensation) of minors, through procedures involving various public and private institutions, whereby, step by step, the minor comes to understand that personal work is the only legal means of gaining access to wealth. Rule 3.18 of the Paris Principles states that:

"3.18 Strategies and programmes should be based on a comprehensive analysis of the political, social, economic and cultural context [...]. The comprehensive analysis should include threats, deficits and weaknesses as well as opportunities, capacities and resources. […] Likewise, a comprehensive analysis should be undertaken to understand the motivations and incentives of those recruiting or using children."

It also establishes [...], in Rule 7.35, that ***"Direct cash benefits to released or returning children are not an appropriate form of assistance, as experience has repeatedly shown."*** [...]

The Court understands that providing reparation to these minors is a long-term process in which various national and regional entities, as well as public and private institutions, and even international cooperation agencies, will be involved. For this reason, this decision must be aligned with the policies already being developed, and especially with those that will follow the implementation of Law 1448 of 2011 [enacting measures of care, assistance, and comprehensive reparation to the victims of the internal armed conflict and other provisions]. [...]

The disadvantage to be overcome is the lack of professionals with expertise in caring for child victims of this war crime. The Court thus finds that the first rehabilitation measure for these victims should be for them to undergo a diagnostic assessment, as a matter of priority and urgency. This means training the professionals who must care for these minors. Therefore, the Court orders: [...]

2. The preceding requires the training of professionals in different psychological and psychosocial specialties who have experience working with victims of the armed conflict; therefore, the following entities are urged to develop this program.3. The Court also found that many of the underage victims of recruitment had already been diagnosed with physical and psychiatric injuries. Therefore, and as a rehabilitation measure, the Court orders all entities that administer or participate in the social security health system to provide the necessary medical services to treat the physical and psychiatric sequelae affecting the victims involved in the reparations proceedings. This may include things like prostheses, reconstructive surgeries, and pharmacological treatments not covered by the Subsidized Health System in which they are enrolled through the High Council for Reintegration, or whatever takes its place. The costs of these services will be covered by the Solidarity and Guarantee Fund (FOSYGA). [...]

The Court further urges the Family Welfare Institute and the Colombian Agency for Reintegration (CAR), or whatever takes its place, to strengthen the follow-up measures for minors who begin their reintegration process and are transferred to the CAR, since during the reparations hearing it was found that this transfer from one entity to the other involved misinformation and neglect of the minors. [...]

Following the recommendation of the expert witnesses and the request of the Office of the Attorney General of the Nation and the CNRR [National Commission for Reparation and Reconciliation] for the reparation of collective harm, the Court urges the Family Welfare Institute, the health departments of the Departments of Antioquia, Chocó, and Córdoba, coordinated by the Intersectoral Working Group for the Prevention of Child Recruitment, to implement a program for individual and group psychosocial care for the members of the nuclear families of the minors identified in this judgment. This should raise awareness and reframe the children's experience with the armed group while attacking the illegal socialization models and ethics. This program should allow for the participation of the victims' families [*emphasis in the original*].

Peru. *First instance criminal judgment (Alberto Fujimori Fujimori, defendant) (Cases of La Cantuta, Barrios Altos, and SIE Basements) (List of judgments 6.2).*

Finally, the civil party requests a thorough investigation into what happened to the remains, which were taken to London for DNA analysis. However, this does not fall within the scope of the comprehensive reparation to be paid by the defendant. Now, if an aspect of the fact-finding investigation—a specific investigation procedure—under the responsibility of the Public Prosecution Service is called into question, and if the objection has merit in view of the importance of the subject and the procedures involved, such as the identification of the remains in the La Cantuta case based on genetic evidence, it is reasonable for the Court to order—as it does—that this matter be investigated and that the clarification procedures be exhausted.

Guatemala. *First instance criminal judgment (Hugo Ramiro Zaldaña Rojas, et al., defendants) (Case of Molina Theissen) (List of judgments 5.4).*

Because this crime is continuous and not subject to any statute of limitations, the Public Prosecution Service is ordered to continue investigating any persons who may have perpetrated the crime of enforced disappearance against Marco Antonio Molina Theissen and other crimes, as appropriate.

As a complement to the above decisions, the following excerpts detail the rules or procedures through which, depending on the legal system, the State may be brought into a proceeding to determine individual responsibility. A review of these decisions may be useful in imagining or devising similar paths or routes in other countries in the region.

Colombia. *Sentencing and reparations judgment (Edilberto de Jesús Cañas Chavarriaga et al., defendants) (Case of the Cacique Nutibara Bloc) (List of judgments 3.3).*

[T]he Court must make some clarifications, since several of the victims' representatives have sought to have the State found jointly and severally liable [...] for the payment of compensation

i) A declaration of State responsibility is hardly a measure of satisfaction for the victims, since they have the right to know the truth, to know why and how the crimes were committed and who is responsible for them, including those who promoted, financed, supported, or facilitated their perpetration, whether public authorities or private individuals, as stipulated in Articles 7, 15, 16A, and 17 of Law 975 of 2005, as amended by Articles 10, 13, and 14 of Law 1592 of 2012. These establish the duty to disclose "the contexts, causes, and motives," to contribute to "the reconstruction of the truth and the dismantling of the power apparatus of the armed group," and to "bring to light the support and financing networks." The victims are also entitled to have the perpetrators at least contribute to their satisfaction and offer them an apology. Article 48.1 of Law 975 of 2005 also establishes as a measure of satisfaction "the public and complete disclosure of the judicial truth," which, being complete, cannot exclude specific authorities or persons;

ii) Such a declaration is not, strictly speaking, a judgment against the State or against these regional entities for a specific and concrete act—and not even generally, because if that were the case, the Court would order them to pay compensation directly and would impose on them the other obligations arising from their liability;

iii) The Court is only imposing on the State the duty to pay compensation secondarily, in the defendants' absence or default, consistent with Constitutional Court precedent, which establishes that the State's liability in this matter is secondary or supplementary; hence, the Court enters judgment against the defendant and/or the Special Administrative Unit for Comprehensive Care and Reparation for Victims and/or the Fund for the Reparation of Victims of Violence, the latter on a secondary basis;

iv) This is not the only reason the Court summoned the State, the Office of the Governor of Antioquia, and the mayors' offices of Medellín and Itaguí, through the Ministry of Justice, the Special Administrative Unit for Comprehensive Care and Reparation for Victims, and the legal representatives of the governor's office and the mayors' offices, whether directly or through their attorneys-in-fact. It did so also because this Court can issue orders or impose obligations on these parties regarding satisfaction and guarantees of non-repetition under the law and Supreme Court precedent, and can prompt them to undertake other acts of reparation involving restitution and rehabilitation, urge them to carry out such acts within a reasonable time, and follow up on those measures, in accordance with the same jurisprudence;

v) Therefore, it was necessary for them to become parties to the ancillary proceedings in order to ensure due process and the right of defense.

However, although this Court does not outright and preemptively reject the idea of bringing the State into the comprehensive reparation proceedings and entering judgment against it,

i) This must be done through one of the mechanisms or concepts provided for in the applicable procedural law, such as that of a civilly liable third party;

ii) It must be evidentially and legally supported by the parties and be litigated during the ancillary proceedings, and not simply sought generically and without the proper foundation, as was done in this case;

iii) In such a case, the State and the other institutions or entities summoned for that purpose must be informed that they have been brought into the case in this capacity and must be given the opportunity to contest their liability specifically on these terms;

iv) But it does not seem clear, or it is not yet clear to the Court, that it can, *sua sponte,* name the State and/or other entities as civilly liable third parties, or in some other capacity, to order them to pay compensation, no longer secondarily, but directly as a liable party, in any of the circumstances, modes, or degrees provided for by law; and

v) In any case, this liability must be established with respect to one or more specific acts being prosecuted, or a chain or series of such acts, since only in this way can payment of the respective compensation be ordered. And in this case, the only specific acts in which it is clear that State agents participated directly are the murder and enforced disappearance of the individual identified only as El Gato, for which compensation is not being sought, and that of the minor Jorge Mario Monsalve Guarín, in which case this point was neither supported by the law and the evidence nor litigated by the parties [*emphasis in the original*].

Guatemala. *First Instance Criminal Judgment (A Arredondo, defendant) (Case of the Spanish Embassy in Guatemala) (List of judgments 5.2).*

Based on the request filed, we judges consider that although the law of criminal procedure has undergone various reforms, at no time has the concept of the THIRD- PARTY RESPONDENT been altered, omitted, or restricted. Therefore, it is the responsibility of the investigating judges to refer the proceedings to the trial courts by making the

defendant available and identifying the defendants who will appear at trial—which did not happen in this case. Accordingly, we find that the request to summon the Office of the Attorney General of the Nation only for the hearing on adequate reparation, as the private prosecutors intend to do in this case, violates the imperative guarantee of procedural due process, given that neither THE COURTS, nor THE DEFENDANTS may alter the trial procedures, and we find that this request would alter the procedure, since the concept of THIRD-PARTY RESPONDENT was overlooked by the PRIVATE PROSECUTORS before the investigating judge, which is why neither the Public Prosecution Service nor the Office of the Attorney General of the Nation was notified during the entire course of this proceeding.

The judges are aware that this intervention, by its very nature, is **a forced intervention**, where a third party is called to appear in the proceedings; the plaintiff should have asked the court to summon the person who by direct provision of law should be liable for the damages caused by the defendant through the criminal acts for which he or she was tried and convicted. The purpose of the above is for the third party to intervene in the proceedings **AS A RESPONDENT** [...] [*emphasis in the original*].

At no time did the PRIVATE PROSECUTORS argue and prove that the Office of the Attorney General of the Nation had been previously summoned to represent the State and that the investigating judge had agreed during the investigation to the State's participation as a third-party respondent. The judges are therefore surprised by this request, which not only violates the constitutional RIGHT TO A DEFENSE, insofar as it clearly refers to the fact that the court cannot pass judgment on any person who has not been summoned, heard, and convicted at trial—a right to which the State is also entitled—but also seeks to deny [the State] the powers and guarantees needed to defend its civil interests.

In view of this omission, since the State of Guatemala is not a party to these proceedings, and only PEDRO GARCÍA ARREDONDO was prosecuted, and since there is no THIRD-PARTY RESPONDENT, the request for a summons is inadmissible BECAUSE the private prosecutors precluded this right and the court must so rule. [...]

[Consequently], the reparations to restore the dignity of the victims in the manner requested by attorney Xiloj, which require the State's intervention, are declared inadmissible by the majority, as the State was not given the opportunity to participate in this criminal proceeding. In addition, this judgment serves to acknowledge and restore dignity to the victims of violence [...].

The majority opinion in the judgment above is supported by the reasoned opinion of the Chief Judge of the First Trial Court for Criminal Matters, Drug Trafficking, and Environmental Crimes, Irma Jeannette Valdez Rodas. Given the relevance of this opinion to the topic covered in this section of the Digest, its main paragraphs are transcribed below.

Guatemala. *First Instance Criminal Judgment (Pedro García Arredondo, defendant) (Case of the Spanish Embassy in Guatemala). Separate opinion of Chief Judge Irma Jeannette Valdez Roda (List of judgments 5.2).*

[The following is] a separate opinion regarding the hearing on adequate reparation [...] [in the] case against Pedro García Arredondo, dissenting from the majority opinion denying the request of private prosecutor Sergio Fernando Vi Escobar with respect to the claims for reparation related to the following: (a) That the defendant and the [S]tate of Guatemala, jointly and severally, apologize to the victims' families in a solemn and public ceremony; (b) That the defendant and the [S]tate of Guatemala, jointly and severally, through the Ministry of Culture and Sports, produce a documentary that narrates the events that took place during the burning of the Spanish Embassy and that restores the dignity of those murdered in that act; (c) That a plaque with the text of an apology be placed in each of the main squares of the victims' municipalities of origin and that the local authorities attend the unveiling of these plaques; (d) That the land fund be used to purchase property and build a space to be used as an educational center in the municipality of Chajül, with the purpose of promoting and disseminating human rights. These requests were denied without an analysis of their content, since, in the majority's opinion, secondary or joint and several liability was not applicable to the State because it had not been named as a third-party respondent [...]. [In my opinion] the in-

tervention of the [S]tate as a third-party respondent necessarily applied in the reparation proceedings in the manner previously regulated, which no longer applies, and which required filing the claim for redress before the trial phase and lent consistency to the procedure established in Articles 135 of the Code of Criminal Procedure—a provision that has been implicitly repealed as it is inconsistent with the current reparation procedure set forth in Article 124 of the Code, which is the procedure used by the court to order reparation [...]; therefore, there is no reason to limit the right to adequate reparation and to hear the private prosecutor's claims[.] [I]n my opinion, it is appropriate to allow the claims referred to in points (a) and (b), by substituting the secondary liability of the State, as provided for in Article 1665 of the Civil Code, since the criminal acts committed by defendant Pedro García Arredondo were carried out in the performance of his duties as chief of Command Six of the National Police [...][.] [T]hat is why the State's underlying responsibility cannot be disassociated from the perpetrator's ties to and position as a member of the State security forces who was acting in compliance with the orders he received. Regarding the provisions contained in points (c) and (d), I consider that (c) is related to (a) and (b), so it would be substantial as an effect of reparation, while (d) creates a cost for the State that is unrelated to the intended restoration of the victims' dignity and therefore should have been denied. This decision is based on the independence and impartiality that must prevail in the exercise of the judicial function [...]. [I do not wish] to depart unreasonably from the approach taken by this court in other judgments --including in Case No. 1076-2010-003 against Pedro Pimentel Ríos, for the offenses of murder and crimes against humanity, issued on March 12, 2001--, in which the court granted the private prosecutors' request for reparations from the [S]tate without the State having been named as a third-party respondent at the pretrial stage[.] For this reason, having examined the context of the request, the factual and legal grounds and the legal standards applied by this court, I issue this separate opinion [...]

2. State obligation to make reparations in cases of international crimes

Along with the many court decisions on the right to reparation in cases of international crimes, Latin American courts have also ruled on the respective obligations of State authorities. As shown in the excerpts transcribed in this section, the case law or precedents of national courts have been informed by international or regional norms and standards on the subject.

Like most national legal systems, international law recognizes that the obligation to make reparation for the harm caused by an unlawful act is a fundamental principle of the legal system. Different international human rights treaties establish, as highlighted in the Latin American judgments, the obligation of the State to make direct reparations for violations attributable to the State. Complementarily, international human rights law also establishes, as part of the general obligation to ensure rights, the duty of States to provide "adequate, effective, prompt, and appropriate" remedies so that victims can have access to, *inter alia*, the reparation of harm.

This last dimension, i.e., the "guarantee" obligation, has been the main focus of Latin American opinions. In line with international instruments such as the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, various Latin American decisions emphasize that States have the obligation to take legislative, administrative, or other measures to ensure the victims' free exercise of the right to reparation. In even more concrete terms, this means establishing judicial or administrative mechanisms to enable any victim to assert his or her right to be compensated for the harm suffered as a result of an international crime.

The following section of this Digest presents, in greater detail, several opinions concerning some of the mechanisms that have been designed and implemented throughout the region to provide reparations to victims of international crimes. However, it is important to understand these mechanisms, both individually and collectively, in light of the corresponding State obligations.

There is still an open debate regarding the conditions for exercising the right to reparation in a scenario involving multiple judicial and administrative remedies. Specifically, this refers to the fact that the victims may have to claim or seek redress in different ways, either simultaneously or sequentially. This is especially so when administrative programs provide for more limited measures—given their collective rationale—which may be complemented by the individualized analysis provided for in the courts.

As mentioned earlier, this is an open debate in which there are a variety of positions. No specific standard was identified in the decisions examined. In any case, it is important to examine these issues under a robust construction of the State's obligation to guarantee the free exercise of rights for all persons.

Chile. *Appeal (Verónica Mato, indirect victim) (List of judgments 7.3).*

The State's obligation to guarantee the victim's right to reparation is enshrined in various international instruments signed or ratified by Chile, including Article 14 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ratified on September 30, 1988), under which the State "shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation." Paragraph 2 of this article adds, "Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law."

Likewise, Article 24, paragraph 4, of the International Convention for the Protection of All Persons from Enforced Disappearance of 2006 (ratified by Chile on December 8, 2009), states that "[e]ach State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation." Paragraph 5 states that "[t]he right to obtain reparation referred to in paragraph 4 of this article covers material and moral damages and, where appropriate, other forms of reparation such as: (a) Restitution; (b) Rehabilitation; (c) Satisfaction, including restoration of dignity and reputation; (d) Guarantees of non-repetition." Finally, Article 8, paragraph 2 of the same Convention stipulates that "[e]ach State Party shall guarantee the right of victims of enforced disappearance to an effective remedy during the term of limitation."

Argentina. *Extraordinary federal appeal (Amelia Ana María Villamil, indirect victim). Dissenting opinion of Justice Juan Carlos Maqueda (List of judgments 1.3).*

[W]ith specific regard to the right of victims to obtain monetary reparation for the violation of an international obligation attributable to the State, the Inter-American Court of Human Rights has held that States must prevent, investigate, and punish any violation of the rights recognized by the [Inter-American] Convention [on Human Rights]; they must also seek to restore, if possible, the right violated and, where appropriate, **provide redress for the harm caused by the human rights violation.** If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of his or her rights is not restored as soon as possible, it can be said to have failed in its duty to ensure the free and full exercise of those rights by persons under its jurisdiction [...].

[The Inter-American Court] added that, under Article 63(1) of the Convention, any breach of an international obligation that has caused harm gives rise to a duty to make adequate reparation and that, upon the commission of an unlawful act attributable to a State, the State's responsibility for the breach of the international norm in question arises immediately, **with the ensuing duty to make reparation** and to put an end to the consequences of the violation. The obligation to make reparation, which is regulated in all aspects by international law, may not be altered or breached by the obligated State by invoking provisions of its domestic law [*footnote omitted*].

[T]he Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (United Nations Commission on Human Rights, E/CN.4/2005/102/Add.1) underscores the need to adopt national and international measures with a view to securing jointly, in the interests of the victims of violations, observance of the right to know and, by implication, the right to the truth, the right to justice, **and the right to reparation,** without which there can be no effective remedy against the pernicious effects of impunity [...].

The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the United Nations General Assembly through Resolution 60/147, also recognize that, by honoring the right of victims to seek remedies and reparations, the international community keeps faith with the suffering of victims, survivors, and future generations and reaffirms the international legal principles of accountability, justice, and the rule of law.

[I]t follows from the above review that the guarantee of effective judicial protection of the human rights enshrined in international instruments extends to the right of victims and their families to know the truth, to the criminal prosecution of the perpetrators of crimes against humanity, and to the right to obtain redress for the harm suffered. And although these areas are substantively different, they are complementary rather than mutually exclusive. Thus, the State adequately and fully complies with its obligations under international humanitarian and human rights law only to the extent that it ensures the establishment of the truth, the investigation and punishment of these crimes, and the fair and appropriate financial compensation of the victims and their families [*emphasis in the original*].

Argentina. *Extraordinary federal appeal (Amelia Ana María Villamil, indirect victim). Dissenting opinion of Justice Horacio Rosatti (List of judgments 1.3).*

[I]t is an imperative of justice that the State be held "comprehensively" responsible for crimes *against humanity*, the criminal prosecution of which has been considered not subject to any statute of limitations, and that it assume all the

consequences derived therefrom, inasmuch as it cannot be ignored that such crimes have effects in other spheres that go beyond the perpetration of the criminal act and that must also be addressed by the State. In light of the above-cited opinion, we note that it is an established doctrine of the Court that the "general principle" enshrined in Article 19 of the National Constitution, according to which "*it is forbidden for 'men' to injure the rights of a third party,*" is "*intimately linked to the idea of reparation*" (see Judgments: 308:1118, 1160, and 327:3753) [*emphasis in the original*].

[T]he Court has held that the violation of the duty not to harm another creates the obligation to redress the harm caused, and that this includes any damage that can be assessed in pecuniary terms and that categorically affects another in his or her person, property, and/or rights or faculties. Reparation must be comprehensive and is not achieved if the damages persist to any extent, nor if the restitution—derived from the application of a special system of compensation or the use of discretionary powers—is of a derisory or insignificant value in relation to the reparable harm (Judgments: 335:2333, majority opinion).

[T]he comprehensive nature of this responsibility means acknowledging that the right to reparation of the victims of crimes against humanity, and, where appropriate, of their families, includes restitution for any harm caused to them. This reasoning can only lead to the conclusion that the principles and purpose that underpin—and inspired—the non-applicability of statutes of limitations to the prosecution of these crimes must inevitably extend to the monetary aspect of reparation.

[U]nder the Constitution, one of the main pillars of which is the spirit of justice, it is unreasonable and absurd that the State (although not the same government), having caused harm of the magnitude seen in this case, should hide behind the statute of limitations to avoid complying with a unique, indisputable, and essentially reparative obligation, which, although it may be intellectually separable from its criminal aspect, is morally inseparable from it.

Based on a logical and real interpretation of the factual circumstances of the case, we can conclude that if the claim for compensation does not follow the outcome of the criminal proceedings in terms of the non-applicability of statutes of limitations, the reparation sought on behalf of the victims and, if applicable, their families for the harm caused as a result of the crimes in question will certainly be ineffective, incomplete, partial, and irreconcilable with the adequate and imperative service of justice, which in matters such as this must be pursued to the fullest. [...]

[G]iven the nature of the facts giving rise to the State's obligation to answer for the damages derived from them, the uniqueness of the criminal and compensatory solutions requires a reasonable consideration of the statute of limitations at stake, since it cannot be separated from the legally actionable claim.

The solution adopted is in line with the standards developed by the Inter-American Court of Human Rights (a body created within the framework of the American Convention on Human Rights, an instrument to which the Constituent Assembly of 1994 granted constitutional status), according to which States must prevent, investigate, and punish any violation of the rights recognized by the Convention and must seek to restore, if possible, the violated right and, where appropriate, provide reparation for the damages caused by the violation [...].

In addition, the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (United Nations Commission on Human Rights, E/CN.4/2005/102/Add.1) underscores the need to adopt national and international measures with a view to securing jointly, in the interests of the victims of violations, observance of the right to know and, by implication, the right to the truth, the right to justice, and the right to reparation, without which there can be no effective remedy against the pernicious effects of impunity.

Along these same lines, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the United Nations General Assembly through Resolution 60/147, also recognize that, by honoring the right of victims to seek remedies and reparations, the international community keeps faith with the suffering of victims, survivors, and future generations and reaffirms the international legal principles of accountability, justice, and the rule of law.

2.1 State obligations regarding the reparation of harm through administrative programs

El Salvador. *Unconstitutionality Action 44-2013 (3) (List of Judgments 4.3).*

The judgment of 13-VII-2016 [consolidated Unconstitutionality Actions 44-2013 and 145-2013] held that the Salvadoran State must consider comprehensive reparation measures for the victims of crimes against humanity and war crimes committed during the civil war. This includes guarantees of satisfaction, compensation, vindication, and measures of non-repetition consistent with international standards. In other words, based on the Constitution and the various international human rights and humanitarian law instruments, the Salvadoran State is obligated to guarantee the victims' right to know the truth of what happened and to have access to the courts, as well as their right to comprehensive reparation for the harm suffered. And this reparation must include, as the judgment clearly states, various benefits such as restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. Similarly, paragraphs VII and IX of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law provide that reparation must be "adequate, effective, and prompt," but also "proportional to the gravity of the violations and the harm suffered." [...]

This Court acknowledges the efforts that the executive branch has made in relation to certain groups of victims of the conflict. But these efforts are part of the general obligations of every State to promote and protect the human rights of its citizens (Const. arts. 1 and 2). They are also insufficient, since, although the President of the Republic has the authority to do so (Const. art. 133.2), he has not yet proposed a new law on national reconciliation that considers the points mentioned in the judgment of 13-VII-2016 and that provides legal coverage to the efforts being made by the entities under his responsibility—which, incidentally, do not address the majority of the victims of the armed conflict. Furthermore, he has failed to take the necessary steps to include an item in this year's draft national budget specifically earmarked for comprehensive reparation programs for victims of the armed conflict; nor did he do so in the previous year's budget.

2.2 Obligations of the courts regarding the reparation of harm

Colombia. *Sentencing and reparations judgment (Edilberto de Jesús Cañas Chavarriaga et al., defendants) (Case of the Cacique Nutibara Bloc) (List of judgments 3.3).*

[A]rticle 21 of [Law 600 of 2000] establishes that "the judge shall adopt the necessary measures so that the effects of the crime are brought to an end, things return to their previous state, and compensation is paid for the damages caused by the crime."

Under Articles 43 and 56 of [the same] Law 600 [...], the criminal court—which this Court is—must rule on "non-criminal issues arising from the proceedings," considering the principle of the restoration of rights for those purposes, applying the rules of criminal procedure for the production and examination of evidence, and assessing the damages caused by the criminal act based on the evidence in the proceedings in order to return the victim to his or her original situation before the crime was committed.

Therefore, comprehensive reparation cannot depend solely on the request of the parties because it is the duty of the judge to award damages in such a way that the victims' rights are fully restored.

3. Mechanisms for reparations for international crimes

Several Latin American countries have incorporated into their legal systems a variety of judicial or administrative mechanisms that victims of international crimes have used to seek reparations. In some cases, such mechanisms have been designed specifically in response to historical periods of armed conflict or dictatorship. In other cases, they are ordinary actions that are available to victims of any crime or unlawful act. In the latter cases, the work of the courts has involved, at least in part, adapting the legal standards applicable in ordinary circumstances to better suit the conditions and characteristics of international crimes.

Given this complex diversity, it is important to have a comprehensive, if merely introductory, overview of the judicial or administrative mechanisms used in different Latin American countries. This overview will provide context needed to better understand the judgments included in this section.

In general terms, Latin American legal systems recognize both civil and administrative actions for the judicial reparation of harm in cases of international crimes. The conditions for the admissibility of these actions may vary, as is to be expected, from country to country.

Normally, civil actions for compensation, restitution, or reparation are brought against the person who committed the crime or, as the case may be, against a third party that the legal system considers to be civilly liable. This third party may, of course, be the State. Some of the judgments included in this Digest specifically address the possibility of considering the State as a third party civilly liable for reparations for international crimes.

An additional point to note is that civil actions, when they arise from the commission of a crime, may be brought either in the criminal court with jurisdiction to determine the individual liability of an alleged perpetrator or in an ordinary civil court. Of course, the procedural requirements for one or the other alternative depend on each national legal system. Notwithstanding the differences, it is important to keep in mind that, even in criminal judgments, courts may order reparations that are essential in cases of international crimes.

At the same time, in recent decades, several Latin American countries have incorporated administrative actions into their legal systems, allowing a person to sue for the reparation of harm caused by an act attributable to the State. Such proceedings, although undeniably relevant, should not be confused with cases in which the State is named as a civilly liable third party in a criminal trial to determine individual liability.

The same goes for actions or ancillary proceedings for the reparation of harm linked to extraordinary accountability mechanisms in the context of transitional justice. Given their nature and characteristics, these ancillary proceedings are alternative avenues, which should not be confused with civil or administrative actions for reparation.

With these considerations in mind, some examples of the legal framework governing civil actions for reparation in Latin American countries are explained in greater detail below. Such actions are not, in general, special mechanisms for cases of international crimes or serious human rights violations, but are available in cases involving any type of crime. However, in practice, they have served as an important avenue for asserting the right to reparations for international crimes in some countries.

Thus, for example, according to Article 59 of the Chilean Code of Criminal Procedure,[23] actions for restitution of the objects of the offense must be brought in the criminal proceedings. The victim may also file, within the same

[23] Law 19.696 of 2000, establishing the Code of Criminal Procedure, https://www.bcn.cl/leychile/navegar?idNorma=176595&buscar=procesal%2Bpenal&r=2.

criminal proceeding, all other civil actions "to establish the civil liabilities derived from the criminal act," as long as these actions are directed against the accused. But civil actions for reparation may not be brought in the respective criminal court to seek reparation from a civilly liable third party, and they may not be brought by anyone other than the victim.[24]

Similar models exist in several Latin American countries. Article 124 of the Guatemalan Code of Criminal Procedure provides, for example, that a civil action for adequate reparation may be brought within the criminal proceeding, without this precluding the victim's right to resort to civil proceedings if it was not brought in the competent criminal court.[25] Similarly, Argentine procedural law[26] provides that civil actions for reparation or compensation may be brought by victims or their heirs against the perpetrators or participants in the crime, in the same court in which the criminal action was brought.[27] Specific rules are also established with respect to summoning persons who, under the civil law, should be held accountable for the harm caused by the crime.[28]

Alongside the judicial mechanisms through which reparation may be sought, some Latin American countries have also established specialized administrative reparation programs for victims of international crimes.[29] The courts have repeatedly addressed the interpretation of the legal frameworks establishing and regulating these programs. Some of the decisions included in this section focus precisely on the judicial approaches through which national courts have broadened the scope of these programs.

3.1 Judicial mechanisms

3.1.1 Relationship between criminal actions and civil actions for reparation

The judicial avenues through which the victims of international crimes can seek reparation include, as stated above, civil actions. This section contains criminal court rulings on claims for reparation raised during national proceedings to determine individual responsibility for international crimes.

Although the following excerpts may seem overly general or lacking in relevance, it is important to understand them first as a useful frame of reference for other more specific precedents that will be discussed later. Moreover, these decisions are just an initial sample, the tip of the iceberg, of an indisputably relevant issue—namely, the interaction or relationship between civil and criminal actions arising from the commission of international crimes.

Needless to say, with the consolidation of international criminal law, comparative jurisprudence has included many principles with a substantive impact on the understanding of the criminal prosecution of international crimes. These principles include, for example, the non-applicability of statutes of limitations.

A key question, which will be addressed in a specific section of this Digest,[30] is whether this non-applicability of statutes of limitations can also be invoked in relation to civil actions for reparation, given that both actions are based on the same set of facts. Similarly, the way in which the relationship between civil and criminal actions is understood in these specific contexts may affect, for example, the potential for the State to be considered a civilly

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24 Law 19.696 of 2000, Article 59.

25 Decree 51-92, Code of Criminal Procedure, Article 124.

26 Decree 118/2019, enacting the Federal Code of Criminal Procedure, http://servicios.infoleg.gob.ar/infolegInternet/anexos/315000-319999/319681/norma.htm.

27 Federal Code of Criminal Procedure, Article 40.

28 Federal Code of Criminal Procedure, Articles 103–105.

29 See, e.g., Uruguay's Law 18.596 (Unlawful actions of the State between June 13, 1968, and February 28, 1985; recognition and reparation of victims), https://legislativo.parlamento.gub.uy/temporales/leytemp4607652.htm_Chile's Law 19.123 of 1992 (creating the National Corporation for Reparation and Reconciliation, establishing a reparations pension, and granting benefits to persons as indicated), https://chile.justia.com/nacionales/leyes/ley-n-19-123/gdoc/; and Colombia's Law 1448 of 2011 (ordering measures of care, assistance, and comprehensive reparation to the victims of the internal armed conflict and other provisions), https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=43043#0.

30 See section 4.1.1 of this Digest, "Non-applicability of statutes of limitations to claims for redress in cases of crimes against humanity."

liable third party, the application of international standards or precedents on reparation of harm, or the criteria for assessing the seriousness of the harm.

Guatemala. *First Instance Criminal Judgment (Pedro García Arredondo, defendant) (Case of the Spanish Embassy in Guatemala) (List of judgments 5.2).*

Article 124 of the Code of Criminal Procedure states, "Right to adequate reparation. The reparation to which the victim is entitled includes the restoration of the right violated by the criminal act, starting with the recognition of the victim as a person with all his or her circumstances as a rights-holder against whom the criminal act was committed, and also includes the alternatives available for his or her social reintegration in order to enjoy or exercise the affected right as soon as possible, to the extent that such reparation is humanly possible, and, where appropriate, compensation for the damages arising from the commission of the crime[.] [T]he following rules must be observed in the exercise of this right: 1. The action for reparation may be brought within the criminal proceeding, once a conviction has been handed down. The judge or court that hands down the judgment of conviction, when there is a victim respondent, will summon the defendants and the victim or injured party to the reparation hearing, which will take place on the third day [...]."

Here, the victims, through their attorneys, sought civil damages for the criminal acts perpetrated against their relatives. The Public Prosecution Service issued an opinion to that effect, and subsequently each party explained each of their arguments and offered [...] evidence [...].

Peru. *First Instance Criminal Judgment (Manuel Rubén Abimael Guzmán Reinoso, et al., defendants) (Case against the Leaders of the Shining Path) (List of judgments 6.1).*

Unlike the process for the attribution of criminal responsibility, civil damages are governed by the principles of tort liability. This means that there must be damage or harm as required by Article 93 of the Criminal Code, and a verifiable causal nexus or objective attribution between the damage and the harmful event [*footnote omitted*].

We agree with the State's defense that the damage covered by Article 1984 of the Civil Code includes actual damages, lost profits, nonpecuniary damages, and harm to the person. However, we find that the mere invocation of such concepts is insufficient; rather, the damages to be compensated and the causal link between the damages and the harmful event must be made explicit.

Peru. *First Instance Criminal Judgment (Daniel Cortez Alvarado and Ricardo Matta Vergara, defendants) (Teófilo Rímac Capcha, victim) (List of judgments 6.3).*

Under Peruvian law, obtaining civil damages for harm resulting from a statutorily defined criminal offense requires that the crime be established in a criminal proceeding.

Peru. *Motion to vacate (Humberto Bari Orbegozo Talavera, et al., defendants, Peruvian Army, civilly liable third party) (Case of the Los Cabitos Barracks) (List of judgments 6.4).*

Civil damages presuppose unlawful harm caused, as a result of the crime, to the holder of a legally protected interest (principle of harm), and adjudicating civil damages within a criminal proceeding protects the legal interest in its entirety and ensures the victim's timely right to compensation.

3.1.2 Specificity of the action for damages or reparation in cases of international crimes

Civil actions for reparation are available in Latin American legal systems for any person who has experienced harm as the result of a crime, unlawful act, or other conduct resulting in contractual or tort liability. In other words, these are ordinary remedies, extensively provided for under national law, which have not been specifically designed to be responsive to the particular legal characteristics of international crimes.

This circumstance has, however, given rise to important judicial opinions that seek to adapt, within the margins allowed by legal interpretation, ordinary civil actions to the social and legal reality of international crimes.

Chile. *Cassation appeal (Alejandro Vallejos Villagrán, indirect victim) (List of judgments 2.4).*

[C]ompensation for damages caused by the crime, and the action to enforce it, are of the utmost importance in the administration of justice, as they are in the public interest and involve considerations of substantive justice. In the case at hand, given the context in which the unlawful act verifiably involved the participation of State agents during a period of extreme institutional abnormality, in which they represented the government of the time, and in which—at least in this case—that power and representation were clearly abused, causing harm as serious as that being considered here, the State of Chile cannot evade its legal responsibility to make reparations for this de jure debt. It is obligated to do so under international law, reflected in conventions and treaties which, by clear constitutional provision, are binding upon the State [...].

[A]ny differentiation intended to separate the two actions [civil and criminal] arising from the same unlawful acts, and to treat them unequally, is discriminatory and prevents the legal system from maintaining the coherence and unity required of it. Therefore, attempting to apply the provisions of the Civil Code to the civil liability derived from crimes against humanity committed with the active collaboration of the State, as a civil law default for the entire legal system, would be improper today.

Furthermore, the comprehensive reparation of harm is not subject to debate at the international level, and is not only limited to the perpetrators of the crimes, but also extends to the State. [...]

[T]he claim made by the Chilean Treasury contradicts the aforementioned international norms. Moreover, because domestic civil law is only applicable if it does not contradict those provisions, the liability of the State for unlawful acts such as the one committed against the plaintiff's brother is always subject to the rules of international law, which cannot be breached based on provisions of domestic law. The only limitation for those who claim damages resulting from the actions of State agents is proving the existence of such harm, so that, procedurally, it is enough to allege the existence of the harmful act and the effective involvement of such agents—which in this case has not been disputed.

Argentina. *Extraordinary federal appeal (Amelia Ana María Villamil, indirect victim). Dissenting opinion of Justice Juan Carlos Maqueda (List of judgments 1.3).*

[I]t should be noted that in cases such as this, both the action for damages and the criminal action arise from the same factual circumstances, namely an international crime. Consequently, in recognition of the non-applicability of statutes of limitations to crimes against humanity from a criminal standpoint—since they constitute serious inhumane acts that, due to their extent and gravity, exceed the limits of what is tolerable in the international community—it would be inadmissible to maintain that the material reparation of the consequences of these crimes could be subject to any statute of limitations.

[T]he source of responsibility for crimes against humanity is found in the norms and principles of international human rights law, which seek to protect a legal interest of the highest order, human dignity. Thus, the action for damages that may arise from them is not a simple property action like those arising from contractual or tort liability, but rather is humanitarian in nature.

Hence, when ruling on pecuniary reparations for human rights violations, it is not appropriate to automatically apply norms and solutions established in the domestic legal system to address situations that are in no way comparable.

In contrast, there are cases in which the facts have not been characterized as international crimes or grave violations, and this has direct consequences for how reparations are analyzed. The following is an excerpt from the judgment of the Special Criminal Division of the Supreme Court of Justice of the Republic of Peru in the case against Alberto Fujimori Fujimori.

Peru. *First Instance Criminal Judgment (Alberto Fujimori Fujimori, defendant) (Cases of La Cantuta, Barrios Altos, and SIE Basements) (List of judgments 6.2).*

The crime of kidnapping perpetrated against Gustavo Andrés Gorriti Ellenbogen and Samuel Dyer Ampudia, as stated in paragraph 802, cannot be classified as one that is part of the corpus of international criminal law. The guidelines and criteria to be followed for the determination of civil damages are specified in paragraphs 792 to 795 below.[31]

For clarification purposes, additional paragraphs from the same judgment are transcribed below.

Consistent with the findings of the Inter-American Court of Human Rights and the Commission, it must be concluded that the facts of the Barrios Altos and La Cantuta cases fall within the scope of the Basic Principles and Guidelines of the United Nations, that is, as "… *gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law* …" [...]

This is not the case of the acts committed against GUSTAVO ANDRÉS GORRITI ELLENBOGEN and SAMUEL DYER AMPUDIA. This is not a crime under international criminal law, nor do the circumstances of its commission fall within the concept of a "*systematic and widespread pattern of human rights violations.*" It is a common crime, without the differentiating characteristics of an international crime or of crimes against human rights—as would be the case of torture and enforced disappearances, which need not be systematic or recurrent [*footnote omitted*]—since it involved two kidnappings, the first of which was limited to the execution of a "self-coup d'état" that ceased almost immediately, and the second, to a single, specific activity involving the abuse of power by an authoritarian government. Therefore, the Basic Principles and Guidelines do not apply.

[This difference] determines the scope of application of the measures of rehabilitation, satisfaction, and non-repetition [...] [*emphasis in the original*].

3.1.3 Reparation actions in transitional justice mechanisms

Colombia. *Sentencing and reparations judgment (Salvatore Mancuso Gómez, et al., defendants) (Case of the Catatumbo Bloc) (List of judgments 3.2).*

In the transitional justice process, it is important to approach the substance of justice, truth, reparation, and guarantees of non-repetition. This requires understanding these transitional justice mechanisms comprehensively and, in particular, paying attention to their internal and external consistency [*footnote omitted*], in terms of how they function in a consistent manner, each internally as well as in their relationships with each other.

Transitional justice also legitimizes the need for conditions conducive to truth, justice, and reparation [*footnote omitted*], each of which must seek to uphold the imperative—necessary for the country's reconciliation—of empowering victims to play the leading role [*emphasis in the original*].

[31] Editors' note: The paragraphs referred to in this text are transcribed in section 1.2.1 of this Digest under the heading "General considerations" (of compensatory reparation).

Colombia. *Sentencing and reparations judgment (Edilberto de Jesús Cañas Chavarriaga et al., defendants) (Case of the Cacique Nutibara Bloc) (List of judgments 3.3).*

The Constitutional Court, in judgment C-286 of May 20, 2014, declared Articles 23, 24, 25, paragraph 3 of Article 27 (partial), 33, 40, and 41 of Law 1592 of 2012 unconstitutional, since these provisions "standardize, merge, and replace the criminal proceedings for comprehensive reparation of the transitional Justice and Peace regime with administrative proceedings for comprehensive reparation, diluting the crucial differences between the two proceedings, thereby disregarding the victims' rights to avail themselves of both judicial and administrative proceedings, with these proceedings being complementary and coordinated rather than mutually exclusive" [*footnote omitted*]. The Court further established that the ancillary proceedings to identify the impacts regulated in the law "disproportionately [restricted] the victims' right to an effective judicial remedy to obtain comprehensive reparation through the courts in the special justice and peace process," as well as the rights of access to justice and due process.

Although the Court's authority to order reparation measures is limited by its case law, it establishes that this "does not preclude judicial authorities in the transitional context from establishing measures to be taken by the various State authorities to provide comprehensive reparation to the victims of massive and systematic human rights violations caused by the actions of illegal organized armed groups, for which it may require periodic reports from such entities in order to supervise their implementation" and urging "the respective entities to implement those measures within a reasonable period, since only in this way will the guarantees of restitution, rehabilitation, satisfaction, and non-repetition designed to mitigate the harm caused by the violations be deemed to have been satisfied" [*footnote omitted*]. This means that the measures ordered must be specific, effective, and monitored [*emphasis in the original*].

3.2 Administrative mechanisms

This study focuses exclusively on decisions issued by courts and tribunals in the region in cases involving reparations for international crimes. This section includes excerpts from judicial decisions that mainly examine the scope of the rules governing the administrative reparation programs that have been implemented in some Latin American countries. Through tools or methodologies of interpretation widely used in the Latin American region—such as the doctrine of consistent interpretation, the pro-victim or *pro homine* principle, the harmonious or systemic interpretation of national and international law, and others—Latin American courts have expanded the coverage of administrative reparation programs to benefit people originally deemed to be excluded from them.

Although these are individual cases brought before the courts, the judgments can have much broader effects, as they concern the normative basis for the operation of administrative programs. In any case, it is important to distinguish these types of decisions—whose main objective is generally to protect the constitutional and treaty-based right to reparation—from those in which the courts directly order reparation measures in an individual case, based on a civil or administrative action.

Undoubtedly, national courts' interpretations of the rules governing administrative reparation programs are an essential aspect of the effort to guarantee victims' rights. In the case of *Almeida v. Argentina*, the Inter-American Court of Human Rights affirmed that any reparation mechanism must "meet criteria of objectivity, reasonableness, and effectiveness to provide adequate reparations for rights violations."[32] Otherwise, there could be a direct violation of the rights to judicial guarantees and protection enshrined in Articles 8.1 and 25 of the American Convention on Human Rights.

[32] I/A Court H. R., *Case of Almeida v. Argentina*, Merits, Reparations and Costs, Judgment of November 17, 2020, Series C, No. 416, para. 48.

3.2.1 Administrative reparations programs to address international crimes

El Salvador. *Unconstitutionality Action 44-2013 (3) (List of Judgments 4.3).*

Thus, [the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law] list some measures that may be considered in the design of a reparations program that meets internationally required standards. These include: (i) measures of restitution—in cases where it is impossible to restore the victim to the situation that existed before the crime was committed, victims should be provided with identity documents, death certificates in cases of enforced disappearance, safe return to their place of residence, the facilitation of a productive activity, and the return of property taken from them during the armed conflict; (ii) measures of compensation, understood as a benefit that is appropriate and proportionate to the gravity of the violation and the circumstances of the case, including monetary compensation based on factors such as physical or mental harm caused, loss of employment opportunities, education, moral damages, and compensation for medical, psychological, and legal expenses incurred by the victims of the crime; (iii) measures of rehabilitation, including the provision of medical, psychological, and psychiatric care, legal assistance, and legal support for the victims; (iv) measures of satisfaction, which may include the full and public disclosure of the truth—without prejudice to measures for the protection of the victims and their families—as well as the search for missing persons and for the bodies of those who were killed in order to identify them (according to the wishes of the surviving victims), official statements to restore the dignity and reputation of the victims, commemorations and tributes, and the revision of curricula at all levels of education about the past armed conflict and how it was overcome through dialogue and negotiation.

Guarantees of non-repetition, according to the Basic Principles and Guidelines, include amending or repealing laws that have resulted in the violation of rights provided for in international human rights instruments and international humanitarian law; bringing civil and military proceedings into line with the procedural guarantees provided for in the Constitution and international human rights standards; promoting codes of conduct for public servants, with particular reference to law enforcement, correctional, media, and social service personnel; and promoting mechanisms to prevent, monitor, and resolve social conflicts. [...]

The effective design of a transitional justice model requires a holistic perspective. It should not consist of isolated efforts by each government institution, but should be a set of coordinated efforts under a regulatory instrument that promotes the search for the truth, the initiation of criminal investigations and the respective prosecutions, the necessary institutional reform, the opening of public archives—especially military archives—and memorials, among other very important components. A comprehensive reparation program, rather than various isolated efforts such as those listed in the reports of the executive branch, requires a legal design that contains material and symbolic measures whose implementation can cover a large part of the Salvadoran population, even when they must be implemented over the long term.

3.2.2 Broad interpretation of the legal grounds for compensatory reparation

Argentina. *Extraordinary federal appeal (Susana Yofre de Vaca Narvaja, victim) (List of judgments 1.1).*

The National Chamber of Appeals for Federal Administrative Disputes (Division IV) upheld Resolution 221/00 of the Ministry of Justice and Human Rights insofar as it denied Susana Yofre de Vaca Narvaja the benefit of Law 24.043, dismissing the claim that the status of asylum seekers or political refugees—which was the plaintiff's status—is comparable to that of those who were in the custody of the military authorities during the last de facto government [...].

In so ruling, the Chamber found that this claim exceeded the compensation framework established by Law 24.043, since the situation of those who, having been illegally detained, were forced into exile cannot be equated with that of those who chose exile because of their own assessment of the situation at the time. [...]

[I]t should be recalled that Law 24.043—which addresses the situation of persons who, during the state of siege, were handed over to the national executive branch on its orders, or who, as civilians, were detained due to acts taken by military authorities (Article 11)—is designed to remedy unjust situations typical of the absolutist approach that excluded all dissent during that not-too-distant period of the country's history, in which persecution extended not only to people who stood up to the regime, but also to their families, their property, and even their memory. [...]

In this law, as well as other subsequent complementary laws, the National Congress, while fulfilling the commitment assumed by the Republic before international organizations responsible for the protection of human rights, expressed its political will to compensate—at least monetarily—the persons unjustly deprived of their liberty during that period.

This was reflected in the debates in both chambers of Congress on the bill that later became Law 24.043. [...]

The law must be interpreted with the utmost prudence, taking care to ensure that the intelligence assigned to it does not lead to the loss of a right, or that the excessive rigor of the reasoning does not misrepresent the spirit behind its enactment (Judgments: 303:578).

It is not always advisable to adhere strictly to the letter of the law in this endeavor, since its underlying spirit must be ascertained in the pursuit of a rational application that eliminates the risk of crippling formalism; we must always seek a creditable interpretation of what the rules, legally, have intended to order, so that the admission of manifestly unjust solutions, when other, opposing solutions may be reached, is incompatible with the common purpose of the legislative and judicial task. [...]

Based on the aforementioned guidelines and the normative framework of historical reparation for the victims of human rights violations, it is appropriate to examine whether the situation raised in this case is covered by Law 24.043 and complementary provisions.

In my opinion, this question must be answered in the affirmative because of the reparative purpose of the laws under analysis. The conditions under which the plaintiff had to remain in and then leave the country—which are not in dispute—show that her decision first to take refuge under the flag of a friendly nation and then to emigrate, far from being considered "voluntary" or freely made, was the only desperate alternative she had to save her life in the face of the threat from the State itself or from parallel organizations, or at least to regain her freedom; as discussed below, I consider that at the time of her decision to leave, she was already suffering the loss of that basic right. [...]

Because detention, not only under this law but also according to common sense, refers to different forms of impairment of the freedom of movement. [...]

Moreover, the Court has considered that, for the purposes of the law, detention is comparable to ostracism, insofar as the time spent in exile by persons illegally persecuted must be factored into the calculus (and in my opinion it cannot be otherwise, if we consider that, as history shows, the punishment of exile was reserved mainly for those who disagreed with the regime, and that, because of the extreme cruelty of barring people from setting foot on their native soil, it was considered in ancient times to be the greatest of all punishments—an understanding reflected in the philosopher's thought: *how preferable death is to being deprived of the sight of Athens*) [*emphasis in the original*].

Therefore, I have no doubt that the forced confinement of an entire family—grandparents, children, spouses, and grandchildren, on the premises of a foreign embassy, and their subsequent inexorable exile as their only means to thwart the fate of death that two of their number had already suffered—is also inherent in the concept of detention in the law under analysis.

Argentina. *Extraordinary federal appeal (Ana de las Mercedes and Eleonora Lucía De Maio, victims) (List of judgments 1.2).*

[T]he First Division of the National Chamber of Appeals for Federal Administrative Disputes, upon dismissing the direct appeals filed by Eleonora Lucía and Ana de las Mercedes de Maio, upheld Resolution 1147/09 of the Ministry of Justice and Human Rights, which had denied them the benefit provided for in Law 24.043.

In reaching this decision, the Court considered, fundamentally, that even though the persecution of their parents had been proven in the case, and [the parents'] departure from the country was justified by the need to safeguard their lives, the plaintiffs were not in identical circumstances because they were born in Venezuela during their parents' exile. Thus, they had not been deprived of their physical freedom or freedom of movement, and their lives had not been at risk. [...]

[T]he issue to be decided, then, is whether the circumstances that led to the plaintiffs' birth and residence abroad as a consequence of their parents' exile are comparable to those deemed compensable under Law 24.043, as interpreted by this Court in the Yofre de Vaca Narvaja case (Judgments: 327:4241). [...]

[B]ecause the right of those who were forced to go into exile to preserve their lives and safety has been widely accepted, there is no valid rationale for denying the same right to the children of those exiles, who were prevented from being born in their parents' homeland for reasons completely unrelated to their free exercise of the right to choose their own life plan.

[T]he plaintiffs were forced, as a direct consequence of the State's unlawful conduct, to be raised in an environment that was culturally and socially different from the one to which they should have belonged, which constitutes a violation of their right to preserve their family relationships as a means of personal identity [...].

By the same token, the State's conduct led to their being born and growing up away from the culture and idiosyncrasies of their own land, with no real possibility of entering the country under safe conditions until the advent of democracy. This leads to the conclusion that their right to identity and cultural belonging has also been arbitrarily affected.

Ultimately, whether they were born in Argentina or abroad, staying in the foreign country was not a voluntary decision of any of the children of the exiles; nor was it a voluntary decision of their parents, who fled as the only alternative to preserve their lives and those of their relatives in the face of certain risk.

3.3 National versus international mechanisms

Peru. *First Instance Criminal Judgment (Alberto Fujimori Fujimori, defendant) (Cases of La Cantuta, Barrios Altos, and SIE Basements) (List of judgments 6.2).*

In a pleading dated November 12, 2007 [...] Fujimori Fujimori's defense counsel contested the civil damages awarded to the victims and injured parties in the Barrios Altos and La Cantuta cases. It asserts that the State has compensated the victims and injured parties in both cases; that it is legally impossible for the same harmful act to give rise to double compensation, since, under Article 95 of the Criminal Code, there is only one obligation to pay civil damages, even though more than one person may be jointly and severally liable; that if the State has already compensated the victims and injured parties for acts committed by public officials and public servants, it is not appropriate for the Prosecutor's Office to request new compensation for the same persons; that if the victims were already compensated by the State as a vicariously liable party, they cannot be awarded double compensation; and that the basis of the claim for civil damages is not mentioned anywhere in the 10-paragraph indictment.

In response to this challenge, made in the Barrios Altos and La Cantuta cases, the Supreme Prosecutor's Office stated the following in its charging document [...].

A. The defendant Fujimori Fujimori is one of the people directly responsible for both crimes and has paid no civil damages to the victims.

B. The degree or extent of responsibility of the State, which has apparently already paid some financial compensation, must be distinguished from the degree of responsibility of the direct perpetrator, Alberto Fujimori Fujimori, for the civil damages arising from the criminal offenses charged.

C. The Inter-American Court of Human Rights, in judgments of November 30, 2001, and November 29, 2006, concerning both cases, approved the agreement signed between the State and the victims in the Barrios Altos case and found the State internationally responsible in the La Cantuta case. The reparations awarded by the Court were based on the damages arising from the Peruvian State's failure to meet its international obligations. The Court considered the objective data on the victims' deaths and injuries, using it to establish the pecuniary and nonpecuniary damages to be compensated at the international level, which are also subject to compensation in the national criminal courts under Article 93 of the Criminal Code.

D. The amount requested by the Supreme Prosecutor's Office was based not only on Articles 92 and 93 of the Criminal Code and Article 225 of the Code of Criminal Procedure, but also on the objective data on the harm caused by the defendant's criminal conduct, quantified on the basis of objective criteria developed in tort law, which include actual damages, lost profits, harm to the person, and nonpecuniary damages. The victims' lost income and the expenses incurred as a result of the facts, as well as the suffering caused to the direct victim and their relatives and the changes in the victim's or their family's living conditions, were considered compensable losses.

E. In the case of La Cantuta, the Inter-American Court included the above as pecuniary and nonpecuniary damages (paras. 213 and 216), but assessed their extent differently. The Prosecutor's Office valued the real extent of the damages at higher amounts in view of the importance of human life, a fundamental right of every person and the essential basis of social organization, which was violated by the crime of murder. This is exacerbated considerably by the fact that the acts were perpetrated in a specific context of the illegal use of the apparatus of State power and its economic, material, and human resources, for which a military extermination group was organized.

F. In these scenarios—the Court adds—the State's responsibility is different, and they are not the same acts that Alberto Fujimori Fujimori has carried out and is criminally responsible for, and for which, as the perpetrator-by-means, he must pay civil damages. The defendant's unlawful acts have given rise to criminal and civil liability, and the overall compensation amount of 100 million *nuevos soles* is justified. In any case, the compensatory payments made may be deducted at the appropriate time.

The harmful acts committed against the victims of Barrios Altos and La Cantuta were assessed by the Inter-American Court from an international human rights law perspective. In the international case and the national criminal case—which examines the facts based on criminal law and tort law, due to the mandatory consolidation of actions, criminal and civil *ex delicto*, typical of Peruvian criminal procedure—the objective scope of the harm perpetrated against the victims is identical. The perpetrators of the harm were agents of the State who acted illegally by taking advantage of public resources. The legal basis used to determine civil damages is the same in both cases. In this regard, it suffices to compare the scope of reparation established by the Inter-American Court (para. 309.b) with the provisions of Article 93 of the Criminal Code [*footnote omitted*].

The international responsibility of the State is direct and primary, and it is based on the State's violations of Convention rights; in this case, however, the direct civil liability for the commission of a crime is borne by the perpetrator or participant in the crime, to the extent that damages are caused [*footnote omitted*]. In the former case, the State must pay damages, while in the latter case this direct obligation belongs to the perpetrator of the crime, as the person who carried it out; in principle, the criminally liable person is also the civilly liable person [*footnote omitted*].

The victims of the harm for which reparation is sought are the same; the harm arose from a single criminal act; and the judgments of the Inter-American Court have identified the victims and their next of kin and have awarded specific reparations to them all. Therefore, they cannot receive additional compensation, or double compensation, since this would result in the victims' unjust enrichment [the Court states, in this regard, that neither enrichment nor impoverishment of the victim or his or her successors can be accepted] [*footnote omitted*].

This principle has been taken up by the Inter-American Court. In its judgment in the case of the Mapiripán Massacre (v. Colombia, of September 15, 2005), the Court noted that "[...] [At the international level] the parties and the subject matter of the dispute are, by definition, different from those [at the domestic level] [...]" (para. 211) and, on the understanding that "[...] comprehensive reparation of the abridgment of a right protected by the Convention cannot be restricted to payment of compensation to the next of kin of the victim [...]" (para. 214), it specified that the outcome of the domestic proceedings must be considered in determining the appropriate reparations, as long as the decision in those proceedings has become *res judicata* and that it is reasonable under the circumstances of the case (para. 214). Thus, for example, it took into account the settlement agreements reached in the administrative proceedings for nonpecuniary damages on behalf of the relatives of three victims, and it specified that in the international venue, in any case, a flexible range should be included, such as for the harm these persons suffered directly (para. 287).

In the judgment in the case of La Cantuta (v. Peru, of November 29, 2006), regarding the judgment handed down by the military criminal courts for civil damages, the Court stated that "[...] [it] will take it into consideration for the purposes of setting reparations in this Judgment, as compensation for the monetary aspects of both the pecuniary and nonpecuniary damage sustained by the ten victims who were executed or [disappeared] [...]" (para. 210). It added that "[...] in this separate heading the Court will merely set compensation for pecuniary damage on account of the monies and personal effects lost by the next of kin and bearing a causal link to the facts of the case, considering the circumstances of the case, the evidence offered, the case law of the Court, and the parties' arguments" (para. 213).

The principle that this jurisprudential doctrine entails is clear. A double payment cannot be made for damages arising from the commission of a single act or, rather, unlawful outcome that caused reparable damage. Accordingly, it will only be possible to establish monetary awards for those items not covered in a judgment or with respect to persons not included—claimants entitled to compensation—unless the items already determined—always or exclusively in the international venue, which has a broader scope than the domestic courts—are found to be unreasonable and/or disproportionate in light of the proven facts.

The Supreme Prosecutor's Office maintains that the Inter-American Court failed to establish the precise extent of the damages, and that it is seeking higher damages in view of the importance of human life, a fundamental right of every person and the essential basis of social organization, which was violated by the crime of murder. This is exacerbated considerably by the fact that the acts were perpetrated in a specific context of the illegal use of the apparatus of State power and its economic, material, and human resources, for which a military extermination group was organized.

The Court does not agree with this statement and the claim for compensation it entails. The facts have been assessed considering their seriousness, and the key elements of tort law have been taken into account in defining the scope and the respective sums of money. We emphasize that, in the judgments cited above, the Inter-American Court understood the same fact and ruled on reparations for the group of people who were killed, disappeared, or injured.

In this regard, we should clarify that: [...] C. Marcelino Marcos Pablo Meza and Carmen Juana Mariños Figueroa, siblings of Heráclides Pablo Meza and Juan Gabriel Mariños Figueroa, respectively, were not included as beneficiaries in the La Cantuta judgment. Since this judgment identifies precisely who are beneficiaries and persons entitled to pecuniary reparations, their exclusion leaves them free to assert their claims in the domestic courts [*footnote omitted*].

4. Legal measures that may prevent reparations for victims of international crimes

In 2005, the (former) United Nations Commission on Human Rights adopted the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity.[33] These principles recognize a series of measures that serve as tools in the fight against impunity by restricting or limiting the application of legal principles or rules that normally prevail in national legal systems but which, in certain contexts, may hinder the investigation and, if necessary, punishment of international crimes or serious human rights violations. They include statutes of limitations for criminal prosecution or punishment, amnesties, asylum, or certain exemptions from criminal liability.[34]

Many of these principles have been taken up or reiterated in the case law of the Inter-American Court of Human Rights,[35] as well as in other international instruments, including the Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal.[36] Without minimizing the undeniable importance that these standards have had in the fight against impunity in Latin America, we must acknowledge that they are normally linked to procedures for the investigation and prosecution of—and, where appropriate, individual criminal punishment for—the commission of atrocities.

A related, although clearly different, discussion is the applicability of these same principles to legal actions that, while distinct in nature, ensure victims' right to reparations for international crimes. In this context, questions arise that national and international bodies must address as a matter of urgency, with a view to the full satisfaction of the rights of victims. Among them, should legal actions seeking reparation for victims of international crimes never be subject to any statute of limitations? Is it possible for statutes of limitations to apply to some actions but not to others, leaving some avenue for redress available at all times? Could a general amnesty also cover the legal remedies for seeking such redress in these specific cases?

The Latin American decisions presented in this section address some of these questions. It is important to say that, as with other aspects of the right to reparation in cases of international crimes, there is a wide diversity of opinion from one jurisdiction to another. In many cases, these opinions may even be contradictory. For example, while one country upholds the non-applicability of statutes of limitations to civil actions for redress, another rejects this standard; and in a third country the statute of limitations for ordinary actions is subject to the existence of special proceedings or administrative mechanisms to satisfy the right in question.

Given such diversity, this section seeks to represent, as accurately as possible, the approaches that still prevail in different national courts in Latin America. In any case, they must be examined in the light of international standards which, although with a certain margin of discrepancy, point to a clear objective: moving toward the full satisfaction of the right to reparation for victims of international crimes.

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33 Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, E/CN.4/2005/102/Add.1, February 8, 2005, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement.

34 Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, Principles 22–30.

35 See, e.g., I/A Court H.R., *Case of Barrios Altos v. Peru*, Merits, Judgment of March 14, 2001, Series C, No. 75; I/A Court H.R., *Case of Almonacid Arellano et al. v. Chile*, Preliminary Objections, Merits, Reparations and Costs, Judgment of September 26, 2006, Series C, No. 154; I/A Court H.R., *Case of Gomes Lund et al ("Guerrilha do Araguaia") v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 24, 2010, Series C, No. 219.

36 The Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal were adopted by the United Nations International Law Commission in 1950. See https://legal.un.org/ilv.sessions/2/.

4.1 Statutes of limitations and reparations for international crimes

International human rights law offers different opinions on the (non-)applicability of statutes of limitations to the legal actions through which victims of international crimes can access reparations for such crimes. First, the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity expressly provides that "[p]rescription shall not be effective against civil or administrative actions brought by victims seeking reparation for their injuries."[37] In addition, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law state that "[d]omestic statutes of limitations for other types of violations that do not constitute crimes under international law, including those time limitations applicable to civil claims and other procedures, should not be unduly restrictive."[38] The terms of this provision are not entirely clear. It would seem that the main difference—as far as the application of the rule of non-applicability of statutes of limitations is concerned—is the possibility that a human rights violation may also be classified as an international crime. If this were the case, all actions, criminal or civil, related to the facts in question would be exempt from statutes of limitations. On the other hand, legal remedies for violations that cannot also be included in the category of international crimes could be subject to statutes of limitations, as long as the time limits are not overly restrictive to the detriment of victims. Without an explicit provision such as the one contained in the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, the above interpretation is but a mere possibility.

In addition to these two instruments, various international human rights mechanisms have explicitly recognized that, in the case of international crimes, reparation actions—whatever their legal nature—should not be subject to statutes of limitations. In the *Case of Órdenes Guerra et al. v. Chile*,[39] the Inter-American Court of Human Rights presents a detailed account of international and even comparative case law on the non-applicability of statutes of limitations to civil actions for reparations in cases of international crimes. According to the Inter-American Court, "such [non-applicability of statutes of limitations] is justified by the State's obligation to make reparation due to the nature of the facts and does not depend on the type of legal action that seeks to enforce it."[40] In other words, based on the facts of the case, the Inter-American Court concluded that civil actions for reparation need not be linked to individual (criminal) or State (administrative) liability proceedings in order to qualify as not subject to the statute of limitations.[41]

This brief review of international standards is intended to serve as a frame of reference for the Latin American decisions included in this section. They range from arguments supporting the non-applicability of statutes of limitations to all types of remedies, to those asserting the applicability of statutes of limitations to civil actions, even when their non-applicability to criminal actions is recognized.

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37 Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, Principle 23.

38 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, para. 7.

39 I/A Court H.R., *Case of Órdenes Guerra et al. v. Chile*, Merits, Reparations and Costs, Judgment of November 29, 2018, Series C, No. 372.

40 I/A Court H.R., *Case of Órdenes Guerra et al. v. Chile*, Merits, Reparations and Costs, Judgment of November 29, 2018, Series C, No. 372, para. 95.

41 Although this judgment is highly relevant, it is also important to recognize that it seems to be intimately linked to the facts of the case and, moreover, to the judicial doctrine that has been developed over many years by the national courts in Chile. It is difficult to say, based on this judgment alone, whether the Inter-American Court of Human Rights would uphold the non-applicability of statutes of limitations to all types of reparation actions, even in a scenario where ordinary actions and special mechanisms, such as administrative programs or specialized transitional justice jurisdictions, coexist. There is always the possibility that, in these contexts, the Inter-American Court may deem reasonable the time-barring of certain ordinary actions, considering that there are other ways to ensure victims' rights.

4.1.1 Non-applicability of statutes of limitations to claims for redress in cases of crimes against humanity

Chile. *Cassation appeal (Alberto Ponce Quezada, indirect victim) (List of judgments 2.1).*

[W]ith regard to the appeal filed on behalf of the Chilean Treasury, the Court considers that, in the case of a crime against humanity—which has been found in the judgment, and the prosecution of which is not subject to any statute of limitations—it is inconsistent to hold that the civil action for damages is subject to the statute of limitations under domestic civil law. This would be contrary to the express purpose of international human rights law, which is part of the national legal system by provision of the second paragraph of Article 5 of the Constitution, which establishes the right of victims and other lawful rights-holders to obtain due reparation for all damages suffered as a result of the unlawful act. It would also be inconsistent with domestic law, as Law 19.123 explicitly acknowledged the existence of damages and awarded financial or pecuniary benefits to the relatives of victims classified as disappeared detainees and persons executed for political reasons in the context of the human rights violations committed between 1973 and 1990, as recognized in the reports of the National Truth and Reconciliation Commission and the National Corporation for Reparation and Reconciliation.

Any attempted differentiation to separate the two actions and treat them unequally is discriminatory and prevents the legal system from maintaining the coherence and unity required of it.

Therefore, attempting to apply the provisions of the Civil Code to the civil liability derived from crimes against humanity committed with the active collaboration of the State, as a civil law default for the entire legal system, would be improper today.

This absence of legal regulation for certain situations requires the judge to interpret, or rather, to integrate the existing regulations, which, if they are based on the same guidelines, may be applied by analogy. Since they do not follow the same paradigms, the regulations must be integrated with the general principles of the respective law. In this regard, Article 38.1(c) of the Statute of the International Court of Justice provides as follows: "The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: […] (c) the general principles of law recognized by civilized nations." [This includes] general principles of law recognizing the non-applicability of statutes of limitations to actions for reparations arising from human rights violations.

Moreover, the comprehensive reparation of harm is not subject to debate at the international level, and is not limited only to the perpetrators of the crimes, but also extends to the State. International law has not created a system of liability but has recognized it as it has always existed, developing the tools for liability to be determined more efficiently, simply, and effectively, according to the nature of the violation and the right violated.

[I]n the case before us, given the context in which the crime was committed—with the participation of State agents protected by a cloak of impunity created with State resources—it is not only impossible to rule, as the lower court did, that the criminal action arising from it is time-barred by the statute of limitations; it is also impossible to agree with the lower court's reasoning to find that the civil action for damages is time-barred. [...]

[The right to reparation is based on both constitutional and treaty norms.] [All] of these norms with constitutional status impose a limit and a duty to act on public authorities, and especially on national courts, which may not interpret domestic law in such a way as to render inapplicable the international law provisions establishing this right to reparation, as this could give rise to the international responsibility of the Chilean State.

For this reason, the provisions of the Civil Code on the statute of limitations for ordinary civil actions for damages are not applicable here, as the respondent Treasury Department contends, because they are contrary to international law.

[C]ompensation for damages caused by the crime as well as the action to enforce it, of the utmost importance when justice is administered, are in the public interest and involve considerations of substantive justice. The case

before us, seeking full compensation for the harm caused by the actions of agents of the Chilean State, was admitted based on these factors and as required by the good-faith application of the international treaties signed by our country and the interpretation of the rules of international law considered *jus cogens* by the international legal community. Under Article 5 of the Constitution of the Republic, and in compliance with the Vienna Convention on the Law of Treaties, these norms should be applied preferentially in our domestic legal system over those provisions of national law that would allow the Chilean State to evade liability for the criminal acts of its officials.

Chile. *Cassation appeal (Alberto Ponce Quezada, indirect victim) (List of judgments 2.1).*

[Both Article 5 and] Article 6 of the Constitution, as well as the aforementioned provision, are part of our "institutional bedrock" and therefore serve as the framework and basis for the exercise of jurisdiction. They stipulate that "[t]he actions of State bodies must adhere to the Constitution and to the laws and regulations enacted in conformity therewith," indicating the categorical duty of the national court to rule out the application of legal provisions that are inconsistent with, or contrary to, the Constitution. This same article states that "the articles of this Constitution are binding on the officials and other members of these bodies as well as on all persons, institutions, and groups," and it concludes by stating that "the breach of this norm will give rise to the responsibilities and penalties determined by law."

The domestic law provisions of the Civil Code on the statute of limitations for ordinary civil actions for damages, on which the trial judges based their decision, are not relevant in this case, because they conflict with the rules of international human rights law that protect the right of victims and their families to receive appropriate reparation. Chile has also recognized this international legal rule, which, irrespective of when it was recognized and enshrined at the domestic level, is a norm of *jus cogens*, a peremptory international norm that protects the essential values shared by the international community, and that should have been recognized by the lower court judges in their ruling on the claim. [...]

[T]his Court has repeatedly held that, in the case of a crime against humanity—which has been found in this case, and the prosecution of which is not subject to any statute of limitations—it is inconsistent to hold that the civil action for damages is subject to the statute of limitations under domestic civil law. This would be contrary to the express purpose of international human rights law, which is part of the national legal system by provision of the second paragraph of Article 5 of the Constitution, which establishes the right of victims and other lawful rights-holders to obtain due reparation for all damages suffered as a result of the unlawful act. It would also be inconsistent with domestic law, as Law 19.123 explicitly acknowledged the existence of damages and awarded financial or pecuniary benefits to the relatives of victims classified as disappeared detainees and persons executed for political reasons in the context of the human rights violations committed between 1973 and 1990, as recognized in the reports of the National Truth and Reconciliation Commission and the National Corporation for Reparation and Reconciliation.[42]

4.1.2 Statutes of limitations for civil actions for reparations in cases of crimes against humanity

Argentina. *Extraordinary federal appeal (Amelia Ana María Villamil, indirect victim) (List of judgments 1.3).*

[T]he issue raised requires us to examine whether the non-applicability of statutes of limitations to criminal actions arising from crimes against humanity, which this Court has recognized (Judgments: 327:3312 and 328:2056, among others), can be extended to the statute of limitations on actions for damages arising from such crimes. [...]

The grounds for the judgment on appeal can be summarized as follows: The court rejected the application of the statute of limitations based on two arguments. First, the statute of limitations would not apply to actions for damages arising from crimes against humanity since such crimes are not subject to any statute of limitations with respect to

[42] Because of its relevance to this Digest, the original footnote for this paragraph in the judgment of the Supreme Court of Chile is transcribed here: "Similarly, see SCS No. 20.288-2014 of April 13, 2015; No. 1.424-2013 of April 1, 2014; No. 22.652-2014 of March 31, 2015; No. 15.402-2018 of February 21, 2019; and, No. 29.448-2018 of August 27, 2019, among others."

criminal punishment. Second, it would not be feasible to calculate the statute of limitations because the enforced disappearance of persons is a continuous crime that would not cease with the declaration of absence based on the presumption of death, as this would be an unacceptable legal fiction in light of the Inter-American Convention on Forced Disappearance of Persons.

Both arguments collide head-on with precedents of this Court (Judgments: 330:4592 and 322:1888). The lower court has provided no new arguments that have not been considered by this Court and that would justify its departure from precedent; therefore, as should be expected, the lower court's decision must be reversed. [...]

Regarding the first argument, it should be noted that extending the non-applicability of statutes of limitations to criminal actions arising from crimes against humanity to the scope of compensation proposed in the appealed judgment is contrary to this Court's opinion in the Larrabeiti Yáñez case (Judgments: 330:4592), which is directly applicable here and to which we refer.[43] There [the Court] expressly rejected the argument put forward in the appealed judgment, stating that "the argument that the action for financial compensation cannot be time-barred because it arises from crimes against humanity, which are not subject to the statute of limitations from the perspective of criminal punishment, is untenable. This is because the former concerns a matter that is available and waivable, while the latter, relating to the prosecution of crimes, is based on the need to ensure that crimes of this nature do not go unpunished, i.e., on reasons that go beyond the financial interests of the individuals concerned" (conclusions of law, para. 5, first opinion of Justices Lorenzetti and Highton de Nolasco, joined in their concurring opinion by Justices Petracchi and Argibay). In sum, it was held that in one case only the financial interest of the claimants is at stake, whereas the other case involves the interest of the international community—to which Argentina belongs—in ensuring that such crimes do not go unpunished. This precludes any equivalence between the two types of cases, and, therefore, actions for damages such as the one at issue here are not subject to any statute of limitations.

In addition to the reasons stated in the precedent to which we refer, we note that there is no rule under Argentine law that is applicable to the facts underlying Ms. Villamil's claim and that establishes the non-applicability of statutes of limitations to actions for damages arising from crimes against humanity.

First, there are no domestic law provisions on the non-applicability of statutes of limitations that would support the court's finding. [...]

The Inter-American Convention on Forced Disappearance of Persons also does not provide for the non-applicability of statutes of limitations to actions for compensation arising from enforced disappearance; rather, only criminal actions cannot be time-barred (Article VII; arg. Judgments: 322:1888). None of the other international human rights treaties that have constitutional status, according to Article 75, paragraph 22 of the National Constitution, contains any norm that could serve as justification for the lower court's judgment. This Court expressly stated so with respect to the American Convention on Human Rights in the Olivares case (Judgments: 311:1490, conclusions of law, para. 80).

[43] Editors' note: The judgment of the Supreme Court of the Nation in the case of *Larrabeiti Yañez, Anatole Alejandro et al. v. Argentina* dates from October 30, 2007—that is, ten years before the judgment in the Villamil case. In general terms, *Larrabeiti Yañez* concerns the civil action brought by the son and daughter of Mario Roger Julien Cáceres and Eva Grisonas, who were arrested by security forces in an operation carried out on September 26, 1976. According to the Supreme Court's judgment, Mario Roger Julien Cáceres "was apparently killed in the shootout or was transferred to the Republic of Uruguay," while Eva Grisonas "and her two small children were detained and taken to the clandestine detention center 'Automotores Orletti.'" It states, without specifying how they arrived in that country, that the minors were found in a public square in the city of Valparaíso, Chile, in December 1976. Some time later, they were legally adopted in Chile by the Larrabeiti Yañez couple. On August 22, 1995, Claudia Victoria and Anatole Alejandro Larrabeiti Yañez sought to obtain benefits under Law 24.411, in addition to requesting a judgment of absence for the enforced disappearance of Mario Roger Julien Cáceres and Victoria Lucía Grisonas de Julien under the terms of Law 24.321. Subsequently, a tort action was brought based on the enforced disappearance of the biological parents. The case eventually made its way from the trial court to the Supreme Court of Argentina, which ruled that the tort action filed by the two plaintiffs was time-barred. In so ruling, the Court rejected the plaintiffs' argument that statutes of limitations do not apply to civil actions for reparation when such actions are related to acts that can be legally classified as crimes against humanity.

Beyond the absence of any positive norm that, at the international level, establishes the non-applicability of statutes of limitations found by the lower court, it is also impossible to conclude that the statute of limitations on actions for damages arising from crimes against humanity violates any international obligation. This is because the Inter-American Court has established the principle under which States have a "legal duty to take reasonable steps to prevent human rights violations and to use the means at their disposal to carry out a serious investigation of violations committed within their jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation," which includes "the obligation to indemnify the victims for damages" [...]. In effect, the Argentine State has sought the reparation of such damages, not only by authorizing the respective compensation actions within the statute of limitations period, but also by establishing special compensation regimes (in this case, Law 24.411 and the amendments thereto), which were successively extended (Laws 24.499, 25.814, 25.985, 26.178, 26.521) until it was ultimately declared that there was no statutory deadline for requesting these benefits (Law 27.143).

The standard established in the Villamil case has subsequently been applied in decisions arising from actions for damages brought against the National State, including the Crosatto case.[44] The argument has also been upheld in judgments that, although also dealing with the time-barring of claims for redress, were brought against a private individual in labor proceedings.

Argentina. *Petition for review of denied extraordinary federal appeal (María Gimena Ingegnieros, indirect victim) (List of judgments 1.4).*

[In the petition for review of the denial of the extraordinary federal appeal of the judgment of the Fifth Division of the National Chamber of Labor Appeals, the respondent asserted that] [i]n short, and for what concerns us here, this Court affirmed that in these actions for compensation only the financial interest of the claimants is at stake, whereas the other case involves the interest of the international community—to which Argentina belongs—in ensuring that such crimes do not go unpunished. This precludes any equivalence between the two types of cases (*Villamil*, conclusions of law, para. 9, vote of the majority, Justices Lorenzetti, Highton de Nolasco, and Rosenkrantz). [...]

[T]his Court is not unaware that, after the decision of this Court in *Villamil* [...], the Inter-American Court of Human Rights referred to the issue of statutes of limitations for civil actions arising from crimes against humanity in the case of *Órdenes Guerra et al. v. Chile* (judgment of November 29, 2018).

There, in a case in which the State had admitted to the Commission's claim, that Court held—in light of that acknowledgment—that civil actions seeking reparation for crimes against humanity "should not be subject to the statute of limitations" (para. 89). It affirmed, in this context, that the statute of limitations invoked by the State cannot preclude the domestic courts from ruling on the sufficiency or adequacy of the reparation already awarded by the respondent State (para. 90). This, the Court said, is because the State has an international obligation to investigate, punish, and make reparations for serious human rights violations (para. 95).

As we can see, the circumstances described above are substantially different from those of this case, in which neither the responsibility of the State nor the sufficiency of the reparations already awarded by the State is at issue. Therefore, the decision of the Inter-American Court is not one that can serve as a guideline for the interpretation of the American Convention [...] that is relevant to the adjudication of this matter.

The arguments that support applying the statute of limitations to actions for damages—whether civil, labor, or administrative—have been detailed by Justice Lorenzetti in his opinion in the Ingegnieros case. Because of their relevance to the analysis in this section, the pertinent paragraphs of this opinion are transcribed below.

[44] See CCF 5746/2007/1/RH1, *Crosatto, Hugo Ángel et al. v. National State Ministry of the Interior et al.* in re: damages, Supreme Court of the Nation, November 12, 2020.

Argentina. *Petition for review of denied extraordinary federal appeal (María Gimena Ingegnieros, indirect victim). Opinion of Justice Ricardo Luis Lorenzetti (List of judgments 1.4).*

[T]his Court has had the opportunity to rule on the application of statutes of limitations to reparation actions for crimes against humanity, establishing the following rules:

First, criminal actions arising from crimes against humanity are not subject to statutes of limitations (see *Arancibia Clavel*, Judgments: 327:3294; *Simón*, Judgments: 328:2056, among others).

Second, civil actions for damages resulting from such crimes are subject to statutes of limitations (*Larrabeiti Yañez*, Judgments: 330:4592; *Villamil*, Judgments: 340:345).

In its judgment in *Larrabeiti Yañez*, the Court held that "the argument that the action for financial compensation cannot be time-barred because it arises from crimes against humanity, which are not subject to the statute of limitations from the perspective of criminal punishment" was untenable (conclusions of law, para. 5). On this point, it clarified that this was because the action seeking monetary damages "concerns a matter that is available and waivable," while the action "relating to the prosecution of crimes is based on the need to ensure that crimes of this nature do not go unpunished, i.e., on reasons that go beyond the financial interests of the individuals concerned" (see Judgments: 311:1490)."

According to the grounds of opinion stated in the decision of Justices Lorenzetti and Highton de Nolasco, in which Justices Petracchi and Argibay concurred, the Court ruled that the plaintiffs' action for tort liability against the State was time-barred, without prejudice to their right to claim the economic compensation recognized by the National Congress in Laws 24.411 and 25.914; Justice Fayt concurred with the Court's holding.

[T]he Court held that criminal actions are based on a State policy of prosecuting crimes against humanity, a principle affirmed by the three branches of government at different times, so that it is part of the social contract with the Argentine people. With specific reference to crimes against humanity, "this Court has pointed out that there is no possibility of amnesty (Judgments: 328:2056), or pardon (Judgments: 330:3248), nor does the statute of limitations apply to them (Judgments: 327:3312); and prosecution is among the objectives of international law (Judgments: 330:3248)"—Judge Lorenzetti's dissent in *Bignone*, Judgments: 340:549.

Therefore, the non-applicability of statutes of limitations to criminal actions for crimes against humanity is necessary to provide an adequate solution to an issue of unquestionable institutional relevance.

In contrast, an action for damages concerns a matter that is available and waivable. This assertion was reiterated by this Court in the Villamil case (Judgments: 340:345). The Court's majority—consisting of Justices Lorenzetti, Highton de Nolasco, and Rosenkrantz—held that the lower court's reasoning contradicted *Larrabeiti Yañez* and *Tarnopolsky* (Judgments: 322:1888), finding that "the lower court has provided no new arguments that have not been considered by this Court and that would justify its departure from precedent" (conclusions of law, para. 8).

Following this doctrine, it found that in actions for compensation "only the financial interest of the claimants is at stake, whereas [the criminal prosecution of crimes against humanity involve] the interest of the international community—to which Argentina belongs—in ensuring that such crimes do not go unpunished." Therefore, it held that this significant distinction precluded "any equivalence between the two types of cases, and, therefore, actions for damages such as the one at issue here are not subject to any statute of limitations" (conclusions of law, para. 9, *in fine*). [...]

[G]iven the important similarities between *Larrabeiti Yañez* and *Villamil* and the case before us, the considerations made in those precedents are applicable here.

The plaintiffs in those cases sought damages based on tort liability under civil law, whereas the plaintiff here seeks compensation for work-related damages regulated by a special labor law (Law 9688).

Both the civil and labor actions seek the award of a compensatory sum, and both seek economic restitution.

Therefore, the plaintiff's action for monetary reparation concerns a financial interest that is exclusive to the claimant, which is available and waivable in the terms expressed by this Court in *Larrabeiti Yañez* and *Villamil* [...].

The operation of the statute of limitations is a general rule of law that releases the debtor as a consequence of the creditor's inaction. In this regard, the above precedents apply whether the respondent is a public or private sector party, because here the status of creditor or debtor is not relevant to the statute of limitations. [...]

The action based on Law 9688 is subject to the statute of limitations (art. 19), since "actions arising from this law are subject to a two-year statute of limitations, calculated from the victim's death in the case of the heirs and, in the case of the injured person, from the time he or she becomes aware of the incapacity."

The law cannot be deemed inapplicable simply because it is deemed inconvenient.

The argument that the law did not anticipate a situation involving crimes against humanity is not sound, since it expressly provided for the statute of limitations, with no distinctions.

Any exception must arise from a similar source or from a declaration of unconstitutionality. [...]

[N]or can a different conclusion be drawn by interpreting other sources of applicable law.

In *Villamil*, the Court held that "there is no rule under Argentine law that is applicable to the facts [underlying this claim] [...] and that establishes the non-applicability of statutes of limitations to actions for damages arising from crimes against humanity" (conclusions of law, para. 10). [...]

[A]s in the domestic law, there is no positive norm at the international level that establishes the non-applicability of statutes of limitations found by the lower court. The Inter-American Convention on Forced Disappearance of Persons provides that "[c]riminal prosecution for the enforced disappearance of persons and the penalty judicially imposed on its perpetrator shall not be subject to statutes of limitations," and it does not provide for the non-applicability of statutes of limitations to actions for damages arising from that offense [...].

Although the prevailing approach in Argentine case law favors the applicability of statutes of limitations to actions for reparation, Justices Juan Carlos Maqueda and Horacio Rosatti have delivered dissenting opinions arguing for their non-applicability to such actions. Given their relevance to the issue, the pertinent parts of those opinions are transcribed below.

Argentina. *Extraordinary federal appeal (Amelia Ana María Villamil, indirect victim). Dissenting opinion of Justice Juan Carlos Maqueda (List of judgments 1.3).*

[W]hile this Court has handed down rulings on the *dies a quo* of the statute of limitations period for actions similar to the one at issue in this case [...], it is my opinion that the matter must be reexamined in light of the norms and principles of the international system for the protection of human rights, as reflected in the case law developed by this Court on the investigation, prosecution, and punishment of crimes against humanity [...]. Moreover, these norms and principles were taken up by the legislature when it brought the sub-constitutional legal system into line with them through the incorporation of relevant provisions into the Argentine Civil and Commercial Code [...]

[T]he Court established that, at the time of events such as those that gave rise to this lawsuit, a system was in place, based on [the abovementioned international] conventions and international customary practice, that considered the commission of crimes against humanity by State officials to be unacceptable; it deemed such acts to be punishable by a punitive system that did not necessarily conform to the traditional principles of the national States in order to prevent the recurrence of such aberrant crimes [...].

[T]he Inter-American Court has said that it "is aware that domestic judges and courts are bound to respect the rule of law, and therefore, they are bound to apply the provisions in force within the legal system. But when a State has ratified an international treaty such as the American Convention, its judges, as part of the State, are also bound by such Convention. This forces them to see that all the effects of the provisions embodied in the Convention are not adversely affected by the enforcement of laws which are contrary to its purpose and that have not had any legal effects since their inception." In other words, the Judiciary must exercise a sort of "conventionality control" between the domestic legal provisions applied to specific cases and the American Convention on Human Rights. To perform this task, the Judiciary must consider not only the treaty, but also the interpretation thereof made by the Inter-American Court, which is the ultimate interpreter of the American Convention [...].

[F]or these reasons, this Court has held that the international system for the protection of human rights requires that the steps to investigate the truth of what happened and to punish the perpetrators of heinous crimes be taken by the national States, and that the principles commonly used at the national level to justify the application of statutes of limitations are not necessarily applicable to crimes against humanity. This is precisely because the purpose of classifying offenses [as crimes against humanity] is to punish the perpetrators wherever and whenever they are found, regardless of the limitations normally used to restrict the punitive power of the State[.] [...]

The paragraphs of Justice Maqueda's opinion on the international obligations regarding the investigation, punishment, and reparation of harm to victims in cases of crimes against humanity are understood to be incorporated by reference.[45]

[A]llowing the action for damages to be time-barred would not only prevent compliance with these principles aimed at fully restoring the violated constitutional and treaty-based rights, but would also violate the obligation of the Argentine State to ensure that the victims and their families can fully and freely exercise their rights to judicial guarantees and judicial protection, as established in Articles 1(1), 8(1), and 25 of the American Convention on Human Rights [...].

[I]n cases such as the one before us, beyond the objective of bringing unstable situations to an end, securing and strengthening rights, and determining the status of property—which is the purpose of the statute of limitations as stated by this Court (Judgments: 318:1416)—the Argentine State must prioritize its obligation to guarantee reparations to the victims so as to ensure their full realization as human beings and restore their dignity.

Argentina. *Petition for review of denied extraordinary federal appeal (María Gimena Ingegnieros, indirect victim). Dissenting opinion of Justices Juan Carlos Maqueda and Horacio Rosatti (List of judgments 1.4).*

[B]ased on a detailed review of the norms and principles referred to in paragraph 6 of the conclusions of law, the Villamil judgment says that the guarantee of effective judicial protection of the human rights enshrined in international instruments extends to the right of victims and their families to know the truth, to the criminal prosecution of the perpetrators of crimes against humanity, and to the right to obtain redress for the harm suffered. And although these areas are substantively different, they are complementary rather than mutually exclusive. Thus, the State adequately and fully complies with its obligations under international humanitarian and human rights law only to the extent that it ensures the establishment of the truth of the facts, the investigation and punishment of these crimes, and the fair and appropriate financial compensation of the victims and their families.

Therefore, allowing the action for damages to be time-barred would not only prevent compliance with these principles aimed at fully restoring the violated constitutional and treaty-based rights, but would also violate the obligation of the Argentine State to ensure that the victims and their families can fully and freely exercise their rights to judicial guarantees and judicial protection, as established in Articles 1(1), 8(1), and 25 of the American Convention on Human Rights.

[45] See section 2 of this Digest, "State obligation to make reparations in cases of international crimes."

It was also noted in *Villamil* that in this type of case both the action for damages and the criminal action arise from the same factual circumstances, namely an international crime. Consequently, in recognition of the non-applicability of statutes of limitations to crimes against humanity from a criminal standpoint—since they constitute serious inhumane acts that, due to their extent and gravity, exceed the limits of what is tolerable in the international community—it would be inadmissible to maintain that the material reparation of the consequences of these crimes could be subject to any statute of limitations.

The source of responsibility for crimes against humanity is found in the norms and principles of international human rights law, which seek to protect a legal interest of the highest order, human dignity. Thus, the action for damages that may arise from them is not a simple property action like those arising from contractual or tort liability, but rather is humanitarian in nature. Hence, when ruling on pecuniary reparations for human rights violations, it is not appropriate to automatically apply norms and solutions established in the domestic legal system to address situations that are in no way comparable [...].

Uruguay. *Cassation appeal (AA, indirect victim) (List of judgments 7.4).*

[T]he plaintiffs based their claim on Law 18.596 of September 19, 2009, whereby the Uruguayan State acknowledged the breakdown of the rule of law that prevented the exercise of fundamental rights, in violation of human rights or the norms of international humanitarian law, during the period from June 27, 1973, to February 28, 1985 (art. 1). [...]

[T]he plaintiffs assert that the Law, by acknowledging the State's responsibility for the events, acts, and omissions that occurred during the specified period and ensuring the comprehensive reparation of the harm, ended up reopening the lapsed claims under the civil law—an argument with which the Supreme Court of Justice does not agree. [...]

[Since it is important to know the appellants' arguments in order to fully understand the Court's conclusions, some of them are transcribed below].

- The Law [18.596] [...] unquestionably marks the time at which the cause of action accrues, with the statute of limitations expiring four years after its entry into force.

- Under Article 1(b) of the UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, such crimes—even if they are not violations of domestic law—are not subject to any statute of limitations.

- Law 18.831 of October 27, 2011, reestablished in our country the punitive claim of the State for crimes committed under State terrorism until March 1, 1985. Article 2 states, *"No period of limitation or expiry shall apply for the period between December 22, 1986, and the effective date of this Law, with respect to the crimes referred to in Article 1 of this Law."* And Article 3 established that *"... the offenses referred to in the preceding articles are crimes against humanity ..."* [emphasis in the original].

- Thus, it is clear from a harmonious reading of the relevant provisions of international and domestic law that actions arising from the offenses alleged in the complaint have neither expired nor been time-barred by the statute of limitations. Therefore, the civil consequences arising from such crimes cannot be extinguished; if the crime is punishable, it is inconceivable for its civil consequences to have expired.

[It is important to note that] the appellants chose to pursue their claim through the courts rather than through the Administrative Commission created by Law 18.596.

Although it was established that the right to the benefits provided for in the Law does not expire (art. 18), this should be interpreted as referring exclusively to the right to file claims through administrative channels under Articles 15 to 20 of the Law.

In other words, this solution applies only to the administrative sphere and not to the courts; not only was the judicial channel not provided for in Law 18.596, but it is also independent.

The Law does provide that, once the reparation benefits are awarded, any future action against the Uruguayan State, in any jurisdiction, whether domestic, foreign, or international, is waived (Article 22); however, this does not automatically lead to the conclusion that the claim for redress is not definitively time-barred.

This is for two reasons: first, because such a solution is ordinarily stipulated in this type of regulation, without it being a statement as to the validity of any other possible rights held by the beneficiary; and second, because in the final analysis, the decision as to whether an action or claim has lapsed is, in principle, exclusively a matter for the courts—unless the validity of the right to bring a judicial claim is recognized by the legislature.

The latter scenario was not provided for in the Law.

As described in the complaint, the period in which the victims may have been subjected to violations occurred between January 24, 1979, and January 5, 1985 [...].

Therefore, even if it is understood that the constitutional and legal guarantees to sue for human rights violations would have only come into effect with the formal and total reestablishment of the democratic system (March 1, 1985), if the lawsuit was filed on October 25, 2013 (p. 182), it is clear that any opportunity to file a judicial claim for financial reparation was prejudiced (Section 39 of Law 11.925).

The Court finds that Law 18.596 did not reopen any statute of limitations, since the text of the law does not explicitly or implicitly provide for it.

The appellants are also mistaken in their assertion that, if the criminal action is not time-barred, related civil actions also cannot be time-barred by the expiration of the statute of limitations.

It is well known that our legal system provides for total independence between civil and criminal actions (arts. 27 and 28 of the Criminal Code), so the argument presented in relation to Law 18.831 is unfounded.

Finally, the fact that the Law recognizes victims' right to comprehensive reparation (art. 3) does not mean that it reopens the possibility of exercising an expired right. As the context of the Law makes clear, such a determination is the logical precursor to the different pecuniary (assessed) and nonpecuniary benefits provided for by the Law, but it does not broaden the scope of the Law to an area not regulated therein.

4.1.3 Statutes of limitations on administrative actions for reparation from the State

Colombia. *Judgment SU312/20 (Nelcy Elizabeth Jaramillo Zapata, indirect victim) (List of judgments 3.4).*

The Constitutional Court has held that legal actions must be subject to statutes of limitations, since "the true meaning of the right of access to justice would be seriously distorted if it could be conceived as an unlimited possibility, open to citizens without conditions of any kind." Specifically, "such a notion would bring the justice system to an absolute standstill," since it would result in "the State's inability to provide citizens with real possibilities for resolving their disputes" [*footnote omitted*].

"[S]tatutes of limitations provide legal certainty, as they impose a limit within which the citizen must assert a certain right against the State," such that "the negligent attitude of the person with legal standing is not protected, since the person who exercises his or her rights within the legally established procedural deadlines will not be at risk of losing them due to the occurrence of the aforementioned phenomenon" [*footnote omitted*].

[R]egarding administrative litigation matters, in Article 164(2)(i) of the Code of Administrative Procedure and Administrative Litigation [*footnote omitted*], the Congress of the Republic provided that actions for direct repara-

tion, as a suitable judicial instrument for obtaining restitution for damages attributable to the State under Article 90 of the Code [*footnote omitted*], must be filed, under penalty of expiration, "within two years, counted from the day after the occurrence of the act or omission giving rise to the harm, or from the date on which the plaintiff had or should have had knowledge of the harm if it was later, and provided that the plaintiff proves that it was impossible to have known about it on the date of its occurrence."

4.1.4 Calculation of the statute of limitations for reparation actions in cases of crimes against humanity

4.1.4.1 Declaration of absence as the starting point for calculating the statute of limitations

Argentina. *Extraordinary federal appeal (Amelia Ana María Villamil, indirect victim) (List of judgments 1.3).*

The secondary argument offered by the lower court in support of its decision—that the Inter-American Convention on Forced Disappearance of Persons would prevent the statute of limitations from starting to run as of the declaration of absence with presumption of death of the victims—is equally inadmissible. This Court held in *Tarnopolsky* [...] that the crime of enforced disappearance of persons is a continuous crime under the Inter-American Convention on Forced Disappearance of Persons, and that, on this basis, the statute of limitations can begin—among other possibilities—on the date on which a court ruling establishes the presumed death of the victim of the crime.

Moreover, the court makes the absolutely dogmatic assertion that *"for purposes ... of the presumed start of a statute of limitations period, any 'legal fiction' becomes unacceptable given the very real existence of this continuous crime for as long as the fate or whereabouts of the victim is not established ... as the Convention clearly states"* [...]. Nothing in the text of the Convention, Article III of which states only that "[t]his offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined," allows us to conclude that it is inadmissible to determine the fate or whereabouts of the victim through standard legal procedures, such as the declaration of absence with presumption of death (governed, then, by Law 14.394), or through an ad hoc measure, such as the declaration of absence due to enforced disappearance created by Law 24.321 [*emphasis in the original*].

Uruguay. *Cassation appeal (CC, direct victim) (List of judgments 7.1).*

In this proceeding, filed on October 23, 1987, the plaintiffs, the spouse and children of CC, sued the State (Ministry BB), seeking "financial reparation of the harm caused by the enforced disappearance" of CC, which occurred on December 17, 1975 [...].

Before this lawsuit, the spouse of the disappeared person, AA, filed a petition with the respective civil court for a declaration of absence, which was issued on November 24, 1982; the petitioner was served notice of the declaration on November 29, 1982 [...].

The State answered the complaint by asserting the defense that the statute of limitations had expired after four years as provided by Article 39 of Law 11.925 of March 25, 1953 [...], and this defense was accepted by the court.

[T]he appellant challenges the judgment that allowed the defense that the statute of limitations had expired, asserting that the disappearance of her spouse is a situation similar to a continuous crime, whose statute of limitations—and if applicable, the expiration of the statute of limitations—begins when such continuity ends (Penal Code, arts. 58 and 119, respectively).

The provision invoked by the Ministry of BB in its defense, Article 39 of Law 11.925, stipulates that "all claims or suits against the State of any nature or origin shall be time-barred after four years, counted from the time at which the cause of action accrues."

Case law and scholarly opinion indicate that the four-year period begins to run from the occurrence of the harm. [...]

Once the disappearance occurred, the spouse requested and obtained a declaration of absence. At that time, the harm had not only been perpetrated, but the courts had acknowledged the harmful event, which enabled the victims to sue for the respective reparation.

In the opinion of the Civil Division, which is shared by this Court, the declaration of absence became certain for the plaintiffs once they were served notice of the decision and were able to use it as the basis of their claim at trial.

On this core aspect, the Court's majority agrees with and adopts the views expressed in the prosecutor's decision, which states that "the status of a disappeared person [...] becomes real with the declaration of absence, after which no one can question the fact of the disappearance [...]."

Once the declaration of absence had been obtained and the applicant had been informed, there was no longer any obstacle, arising from normal circumstances, to the filing of her claim for compensation.

Since she delayed doing so from November 1982 to October 1987, her claim or suit against the State was irremediably time-barred (Law 11.925, art. 39.).

4.1.4.2 Calculation of the statute of limitations in a context of widespread violence

Uruguay. *Cassation appeal (CC, direct victim) (List of judgments 7.1).*

[In her pleadings, the appellant, who originally sued the State for pecuniary liability for the enforced disappearance of her husband] contends that the statute of limitations did not expire, since it only began to run from the time she was in a position to sue, which occurred only after the country's institutions were restored.

She invokes the circumstances provided for in Articles 1.272 of the Civil Code and 321 of the Code of Civil Procedure, maintaining that, during the de facto regime, "the well-founded fear" of possible reprisals, coupled with the justice system's lack of independence, prevented her from bringing her claim. [...]

The majority of the Supreme Court considers her argument to be without merit because such exceptional circumstances have not arisen in this case. [...]

Here, it cannot be argued, based on a material impossibility, that insurmountable fear and a lack of guarantees prevented timely action.

This is evidenced by one essential consideration, which the prosecutor rightly points out in his opinion: "It is a known fact that even during the de facto regime, various actions for damages were filed against the State, all of which were processed in accordance with the law" [...].

It is also an acknowledged fact that those judges who continued to administer justice during this period continued to do so independently. This is why it is impossible to accept a critique that includes judges who tried to maintain the image of justice, judging without fear, according to the best of their knowledge and belief. There is no question that most judicial authorities fell within this category.

In short, they did not hinder the work of the justice system or prevent the litigants from bringing their claims; therefore, neither the fear of reprisals (art. 1.272, Civil Code) nor insurmountable obstacles of any other kind can justify the lengthy delay in filing the claim in this case, which has lapsed.

4.1.4.3 Calculation of the statute of limitations for administrative actions for reparation based on administrative liability

Colombia. *Judgment SU312/20 (Nelcy Elizabeth Jaramillo Zapata, indirect victim) (List of judgments 3.4).*

However, in the same provision, the legislature clarified that "the deadline for filing a claim for direct reparation derived from the crime of enforced disappearance shall be counted from the date on which the victim appears or, failing that, from the date on which the judgment in the criminal proceedings becomes final, without prejudice to the fact that the claim may be filed from the time at which the disappearance occurred."

Regarding the scope of the rule in question, the Third Section of the Supreme Administrative Court has specified that "as long as there is no evidence from which to infer that the State was involved in the act or omission that caused the harm and that the harm was attributable to the State, the statute of limitations for direct reparation is not applicable; however, if the interested party was in a position to infer such a situation and, despite this, did not avail himself or herself of this court, the administrative judge must rule—when considering the admissibility of the claim, when ruling on the motions at the initial hearing, or when issuing the judgment, as the case may be—that the right of action was not exercised in a timely manner" [*footnote omitted*]. [...]

[B]ased on Article 229 of the Constitution, the Third Section of the Supreme Administrative Court has reiterated that "the statute of limitations for a direct reparation claim is not enforceable when the rights to due process and access to justice are ostensibly affected, due to circumstances that materially hinder the exercise of the right of action and, therefore, prevent the exhaustion of the necessary actions for the filing of the lawsuit" [*footnote omitted*], as is the case when a person is a victim of kidnapping or suffers from an illness that prevents him or her from physically attending court. [...]

[I]t bears mentioning that, in relation to the applicability of the statutory deadline for direct reparation when the harmful act constitutes a crime against humanity, a war crime, or genocide, various positions have been developed in the administrative and constitutional case law [...].

[I]n its Judgment of January 29, 2020 [*footnote omitted*], the Plenary of the Third Section of the Supreme Administrative Court unified its case law, holding that, except in the case of enforced disappearance, which is subject to special legal regulation, the two-year time limit stipulated in Article 164 of the Code of Administrative Procedure and Administrative Litigation is applicable when a claim for direct reparation alleges that the harm caused was the result of a crime against humanity, a war crime, or genocide. This is because said provision allows for the possibility of calculating the statutory limitation period from the point at which the affected party had actual knowledge of the State's involvement in the damage to be compensated, which is a rule that has effects similar to the non-applicability of statutes of limitation in criminal matters.

In criminal matters, actions related to crimes against humanity, war crimes, and genocide are only deemed not subject to statutes of limitations when "the person to be prosecuted for the respective crime has not been identified; and, for purposes of administrative litigation, the statutory deadline for direct reparation is only enforceable when the affected party becomes aware that the State was involved in the act or omission that caused the harm and the harm is imputable to the State." [...]

[I]n its unification decision, the Third Section of the Supreme Administrative Court concluded that "the situations intended to be safeguarded by the non-applicability of statutes of limitations to criminal actions for crimes against humanity and war crimes are provided for in administrative litigation matters under the theory of knowledge of the harmful event," and therefore, "the statute of limitations should be imposed in these cases, but only when the interested party knew or could have known that the State had some involvement in the matter and could be sued under Article 90 of the Constitution."

[T]he Plenary of the Third Section of the Supreme Administrative Court noted that the position taken on the time limit for filing a claim for direct reparation does not disregard the November 29, 2018, judgment of the Inter-American Court of Human Rights in the case of *Órdenes Guerra et al. v. Chile*, inasmuch as:

(i) In that decision, the international court limited itself to confirming the Chilean State's admission of its responsibility for violating the right to access to justice as a consequence of the application of the statute of limitations to civil actions for reparations related to crimes against humanity and, in this regard, did not issue a binding interpretation of Articles 8 and 25 of the American Convention on Human Rights; and

(ii) In any case, for purposes of the judicial claim for the reparation of harm attributable to the State, it must be considered that "the rules of the Chilean legal system are different from those established under Colombian law, in that they do not allow for calculating the relevant time period from the time of knowledge of the State's participation, which, as explained above, is a rule that has the same effects as the non-applicability of statutes of limitation in criminal matters."

[With regard to constitutional case law], this Court has on two occasions expressly ruled on the possibility of extending the non-applicability of statutes of limitations for criminal actions for crimes against humanity, genocide, and war crimes to its analysis of statutory limitations on actions for direct reparation, but the opinions have diverged.

Specifically, [we refer here to] Judgment T-490 of 2014 [*footnote omitted*] [...] [and] [l]ater, Judgment T-352 of 2016 [...].

[Thus, considering the different opinions previously rendered on the subject,] this Court [reiterates] that under [current] administrative case law, in accordance with Article 164(2)(i) of the Code of Administrative Procedure and Administrative Litigation, it has been held that the two-year statute of limitations on claims for direct reparation only starts to run: (i) from the time the interested parties learn that the harm is imputable to the State, and (ii) as long as they are physically able to access the courts to file the respective claim [*footnote omitted*].

To unify the case law, this Court now finds that this understanding of the statute of limitations for direct reparation claims is reasonable and proportional from a constitutional and treaty perspective, even when the harm for which reparation is sought arises from a crime against humanity, a war crime, or genocide.

This Court considers that the statutory period is reasonable for the victims of human rights violations to access the justice system to obtain a judgment against the State and seek restitution for the harm suffered, because it only begins to run once the facts have been clearly established—even if years or decades have passed since the crime against humanity, war crime, or genocide that resulted in the harm. This is because it is not the date of occurrence of the act that is determinative, but rather the interested party's ability to identify the involvement of persons linked to a State authority and to file the respective claim in court.

[As noted above, this opinion is compatible with the decision of the Inter-American Court of Human Rights in the case of *Órdenes Guerra et al. v. Chile*]. [This judgment] [p]resented several considerations in support of the view that, without prejudice to [the non-applicability of statutes of limitations to actions for reparation recognized in Chilean case law], States have a national margin of appreciation to determine the appropriate means of meeting their obligation to ensure that victims of human rights violations have the right to restitution for damages, among which, for example, "administrative reparation programs are one legitimate way of satisfying the right to reparation."

This Court notes that the decision of the Inter-American Court of Human Rights is aimed at protecting victims of crimes against humanity or war crimes who have not had the opportunity to seek justice until long after the crime has occurred, and at safeguarding their right to reparation. However, the underlying objective of this decision is not to protect the interested party from his or her own negligence or carelessness with respect to a compensation claim; nor is it to undermine legal certainty by extending the non-applicability of statutes of limitations for criminal actions arising from certain criminal acts to include claims for reparation against the State.

Colombia. *Judgment SU312/20 (Nelcy Elizabeth Jaramillo Zapata, indirect victim) (List of judgments 3.4).*

[T]his Court holds that the establishment of statutory limitations on claims seeking monetary damages for harm caused by the State in connection with a crime against humanity, a war crime, or genocide does not affect the right of victims of human rights violations to access justice to obtain compensation for the harm they suffered, because: [...]

(iii) Dismissing an action for direct reparation on the grounds of expiration does not prevent the victim from obtaining financial compensation in other ways, such as through a motion for comprehensive reparation filed during the criminal proceedings against the perpetrator of the crime against humanity or through the administrative compensation process.

In the same judgment, the Constitutional Court of Colombia ruled on the importance of understanding the considerations surrounding the expiration of the direct reparation action against the State, in light of other routes or mechanisms for the exercise of the right to reparation. This includes civil actions arising from criminal acts or administrative reparation programs implemented in Colombia.

[W]hen referring to "the suitability of domestic reparation mechanisms" in the case of *Órdenes Guerra v. Chile*, the Inter-American Court of Human Rights explained that:

"[...] has considered that, in transitional justice scenarios, in which the States must assume their duty to provide massive reparations to numbers of victims that may greatly exceed the capacities and possibilities of the domestic courts, administrative reparation programs constitute one of the legitimate ways of satisfying the right to reparation. In such contexts, these reparation measures must be understood in conjunction with other truth and justice measures, provided that they comply with a series of requirements related, *inter alia*, to their legitimacy and effective capacity for comprehensive reparation. The fact of combining administrative and judicial reparations, according to each State, can be understood as different (exclusive) or complementary in nature and, in this sense, what is granted in one sphere could be taken into account in the other" [*footnote omitted*].

The existence of a time limit for bringing an action in the administrative disputes courts to obtain compensation for damages caused by State agents reflects the reality of the situation in Colombia, given that the internal armed conflict left over 8 million victims of serious human rights violations and war crimes in its wake [*footnote omitted*]. Therefore, to ensure that they receive adequate reparation in accordance with international human rights instruments, not only has the direct reparation mechanism been provided for but the Constituent Assembly established a Comprehensive System of Truth, Justice, Reparation and Non-Repetition [*footnote omitted*]. [...]

Regarding "comprehensive reparation measures for peace building," we note that these consist of a set of national government policies, programs, and plans designed to ensure the enjoyment of the rights to restitution, rehabilitation, compensation, and satisfaction of those affected by the unlawful acts perpetrated by the different actors in the armed conflict [*footnote omitted*].

It should also be noted that, through Law 1448 of 2011[184], the Congress of the Republic provided for the implementation of a set of administrative programs to compensate victims of crimes against humanity, including those who failed to exhaust the relevant judicial mechanisms in due time.

On this point, the Court reiterates that "given the reality of mass victimization in Colombia and the need to guarantee compensation for all victims without discrimination, Legislative Act 01 of 2017 then opted for the reparations program regulated in Law 1448 of 2011, which seeks broad objectives beyond rightful individual claims" [*footnote omitted*].

In sum, this Court considers that the existence of a robust transitional justice system, such as the one implemented in the country by Legislative Act 01 of 2017, allows us to conclude that the right to reparation of victims of serious

human rights violations can be guaranteed not only through the remedy of direct reparation, subject to a statute of limitations, but also through other mechanisms with longer deadlines, such as administrative compensation or the processes of investigation, prosecution, and punishment before the Special Jurisdiction for Peace.

4.2 Amnesty and reparations for international crimes

Latin America has been the scene of intense debates over the (in)applicability of general or unconditional amnesty laws or provisions to acts constituting international crimes—particularly when such provisions have been enacted by the very regimes responsible for or involved in the commission of the crimes, as a means of ensuring the impunity of high-ranking political, military, or economic actors.

Opinions on the subject have spread throughout the region through the case law of national courts and the Inter-American Court of Human Rights. Still, few precedents exist that specifically address the problem of amnesties as opposed to civil or administrative reparation actions.

In the international context, the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity expressly states that national amnesty provisions may not affect the right of victims of international crimes to reparation in any form or manner.[46] Without minimizing the importance of this principle, we note that it still leaves several issues open for debate. They include, for example, whether—as in the case of statutes of limitations—it is possible to issue an amnesty with respect to ordinary reparation actions, provided that the victims have the opportunity to access reparation through administrative programs or other extraordinary means typical of a transitional justice model.

Without a more precise international framework, comparative opinions take on even greater relevance. This section presents an important judgment from the Constitutional Division of the Supreme Court of Justice of El Salvador regarding the (in)compatibility of amnesty provisions that extend to all forms of civil liability for acts that can be classified as international crimes.

El Salvador. *Consolidated Unconstitutionality Actions 44-2013 and 145-2013 (List of Judgments 4.2).*

The following provisions of the 1993 Amnesty Law are challenged on substantive grounds:

"*Art. 1.* A full, absolute, and unconditional amnesty is granted to all persons who in any way have participated in the commission of political crimes, common crimes related thereto, and common crimes in which the number of persons involved is no less than 20 before January 1, 1992, whether or not a judgment has been issued against such persons, whether or not proceedings have been initiated for such crimes. This amnesty is granted to all persons who have participated as direct or indirect perpetrators or accomplices in the aforementioned criminal acts. This amnesty is extended to the persons referred to in Article 6 of the National Reconciliation Law, contained in Legislative Decree 147, dated January 23, 1992, published in Official Gazette Number 14, Volume 314 of the same date.

Art. 2. For the purposes of this Law, in addition to those specified in Article 151 of the Criminal Code, political crimes shall also include those referred to in Articles 400 to 411 and 460 to 479 of the Criminal Code, and those committed as a result of or as a consequence of the armed conflict, without consideration for the status, membership, affiliation, or political ideology of the parties involved.

Art. 4. The amnesty granted by this law shall have the following effects:

(e) The amnesty granted by this law extinguishes civil liability in all cases." [...]

[46] Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, Principle 24(b).

I. *1*. Essentially, the aforementioned lawsuits were admitted to determine whether the challenged law and its transcribed provisions violate the Constitution due to the following contradictions: [...] *E. Between art. 4(e) of the Amnesty Law of 1993 and Const. arts. 2(3) and 144(2), in relation to arts. 1 and 2 of the ACHR [American Convention on Human Rights]*, because, by extinguishing civil liability for the acts in question, it would preclude the exercise of the right to civil compensation for nonpecuniary damages and would violate the constitutional principle of complementarity between the Constitution and IHRL [international human rights law], insofar as the latter establishes the State's duty to respect and guarantee the rights recognized in the ACHR, as well as the obligation to take the necessary measures to make them effective.

D. Regarding Article 4(e) of the 1993 Amnesty Law, the plaintiffs stated that this provision "completely denies the possibility of obtaining justice, even under civil law, [by] eliminating the victims' ability to claim compensation through civil proceedings"; as "the only way to claim such compensation is in a court of law"; that Article 144, paragraph 2 of the Constitution, in relation to Articles 1 and 2 of the ACHR, establishes the duty to "respect and guarantee" the exercise of the rights recognized in the Convention, as well as to adopt the "legislative or other measures necessary to give effect to such rights"; and that the challenged provision "violates this obligation of the State to ensure that every person can go to court to assert his or her rights."

IV. *1*. [Based on the arguments of the parties, this Court considers that] [c]omplex conflicts arise in the transition from war to peace that must be resolved under the legal system in force. Amnesties are among the tools often used, with the effect that the perpetrators are not criminally prosecuted; other tools concern the right to justice, the right to truth, and reparation for victims of serious and systematic violations of IHL [international humanitarian law] and IHRL committed during or in connection with the conflict, attributed to both sides. Accordingly, the State is responsible for defining how to respond to cases of serious common crimes and international crimes committed during the period of armed conflict, and for determining the scope and effects of an amnesty granted in the interest of furthering the major objectives of the peace process.

In transitions driven by political negotiation between the parties to a conflict, amnesty may be a legitimate and effective tool to overcome the aftermath of war, promote forgiveness, and foster reconciliation and national unity, as long as it is compatible with the Constitution and the standards of IHRL and IHL.

While amnesty can help to achieve the goals set forth in the peace agreements after the end of an internal armed conflict, it can also become an obstacle to the achievement of those goals, by precluding the reparation of victims and by preventing the prosecution of those responsible for ordering or committing crimes against humanity and war crimes constituting serious violations of IHL, thus favoring impunity for such crimes.

An amnesty that is issued without adhering to international standards and constitutional requirements may benefit both those who have been convicted and those being prosecuted, or even those against whom criminal proceedings have not even begun; thus, in order to access the benefits of amnesty, the guilt of its beneficiaries need not have been determined. Amnesty, therefore, is more akin to forgetting the crimes committed, rather than pardoning the individuals found to have been responsible for committing the crimes. This is how it has been interpreted in the constitutional case law (Judgment of 5-XII-1968, paras. 4–68).

The way in which State obligations should shape the political choice regarding the scope of an amnesty is a complex issue, as the public interest objectives must be harmonized with the rights of those potentially affected by the final decision on the matter, especially the victims of crimes against humanity and war crimes constituting serious violations of IHL. In other words, the legislative body must balance and harmonize initially competing interests: the country's political stability—through negotiated peace and national reconciliation—and the interests of justice in the form of truth and accountability for the perpetrators of such violations. [...]

D. In view of the foregoing, it can be seen, then, that when fundamental rights are violated, whether by public officials or by armed individuals who, in exercising control over the civilian population, restrict, undermine, or even

invalidate the effective exercise of the rights of third parties, *restitution or reparation must be made for the damage or harm that such acts and omissions have caused to the victims.* [...]

The obligations emanating from the constitutional and international order with respect to fundamental rights are, therefore, incompatible with the enactment of legislative measures—such as absolute, unrestricted, and unconditional amnesties—and other measures that deny justice and reparations to the victims, conceal the truth, and foster impunity. These are crimes and violations of nonderogable fundamental rights, responsibility for which cannot be excused under the pretext that the prosecution of such crimes would hinder the attainment of peace in the country. [...]

[B]ecause it "extinguishes civil liability in all cases," Article 4(e) of the Amnesty Law of 1993 contradicts the right to compensation for nonpecuniary damages—Article 2, paragraph 3 of the Constitution—precisely because it hinders and prevents a form of reparation or remedy that the Constitution and IHRL guarantee in cases of serious violations of fundamental rights.

Likewise, the victims of crimes against humanity and war crimes constituting serious violations of IHL that occurred during the armed conflict are denied the right to comprehensive reparation recognized in IHRL and developed by the constitutional and international case law referred to in this judgment.

Therefore, *Articles 1 and 4(e) of the Amnesty Law of 1993 must be ruled partially unconstitutional*, specifically with respect to the normative content of the phrase *"full, absolute, and unconditional [amnesty is granted] to all persons who in any way have participated in the commission of […] crimes,"* contained in Article 1 of the Amnesty Law of 1993, and the phrase "extinguishes civil liability *in all cases,*" in Article 4(e) of the Amnesty Law of 1993.

As of this judgment, the phrases invalidated as unconstitutional will be deleted from the Salvadoran law and *may not be applied by any administrative or judicial authority, nor be invoked by any individual or public servant on their behalf, nor continue to have any effect in proceedings, procedures, processes, or actions related to acts constituting serious and systematic violations of IHRL and IHL committed during the armed conflict in El Salvador by both sides.*

Nor may the time such provisions have been in force be invoked as a pretext to hinder, delay, or deny the effective and immediate exercise of the victims' rights recognized under the constitutional and international norms analyzed in this judgment. [...]

The Legislative Assembly, therefore, shall, within a reasonable period: [...] (iii) consider the comprehensive reparation measures that may be necessary to guarantee the satisfaction, compensation, and vindication of the victims, as well as the measures to ensure the non-repetition of crimes against humanity and war crimes constituting serious violations of IHL, taking into account the guidelines of this judgment and the transitional justice standards developed fundamentally in the case law of the Inter-American Court of Human Rights and of this Court.

The foregoing does not prevent the judge or court in each specific case, in direct application of the Constitution and in keeping with this judgment, from adopting in its decisions such measures of reparation as it deems pertinent in order to guarantee the fundamental rights of the victims of crimes against humanity and war crimes constituting serious violations of international humanitarian law [*emphasis in the original*].

Epilogue

As we close this fourth volume of the Digest of Latin American Jurisprudence on International Crimes, we pause not only to consider the content we have meticulously examined but also to ponder the deeper meaning of this journey through the complex labyrinths of justice and memory. This compendium, laid out before us as a detailed atlas of achievements and obstacles in the field of reparations, invites each reader to immerse him or herself in a deep and comprehensive reflection on Latin American jurisprudence and its role in the global human rights landscape.

From the implementation of international principles to the realization of tangible reparations measures, this Digest emerges as an eloquent testimony to the perseverance and commitment of Latin American courts in the prosecution of crimes of international relevance. Throughout its chapters, we have witnessed how the concept of reparation has been redefined and adapted to the complexities of each particular case, always with the goal of achieving a form of justice that encompasses a broad spectrum of human rights violations.

This volume has served as a mirror, reflecting the various facets of justice, from individual compensation to collective and structural measures of redress, presenting a rich mosaic of legal approaches. We have seen innovation in the interpretation of regulatory frameworks to accommodate non-traditional beneficiaries and have followed the debate on critical issues such as the application of criminal statutes of limitations and amnesties as they relate to reparations.

Despite the significant progress documented in this compendium, it is clear that victims' right to reparation has not been fully realized in practice. The standards and rules governing reparations still lack the clarity and consistency needed for their effective implementation. The diversity of jurisdictions and the different origins of reparations—from criminal to international and civil liability—further complicate the picture.

This Digest suggests that, although some judges have been successful in granting reparations in difficult cases, such efforts should be the norm rather than the exception. It emphasizes the need for every national court judge to understand his or her obligation to grant reparations with a twofold objective: to compensate victims to the extent possible and to deter international crimes.

The first objective of victim-specific reparation may be met through monetary awards, rehabilitation, restitution, or measures of satisfaction. In other words, it must be comprehensive, and if possible, aimed at returning the person to the position they were in before the violation occurred (*restitutio in integrum*). Victims of human rights violations—or their relatives—have the right to obtain full reparation. Comprehensive reparation should not be understood as a courtesy concession, but rather as the fulfillment of a legal obligation.

With regard to the second objective, deterrence or prevention of these behaviors can be achieved through measures of non-repetition. The right to obtain reparation is related to the issue of preventing impunity. Beyond its restorative function, reparation can, if carefully designed, help prevent States from engaging in future unlawful behavior. The guarantee of non-repetition is directly related to the State's obligation to prevent serious human rights violations; this includes adopting legal, political, administrative and cultural measures to safeguard human rights.

Reparation measures should be granted based on specific criteria. Not every reparation measure meets international standards. For this to happen, reparations must be effective, appropriate, and comprehensive. It should be non-discriminatory, include a gender perspective, be transformative in cases where previous contexts have violated human rights, and serve to prevent future violations.

The effectiveness of reparation is intrinsically linked to the resources and procedures for obtaining it. These remedies in turn must comply with specific requirements such as effective access, access to legal assistance, prompt

solutions, provisional measures, access to different avenues for obtaining redress, the non-applicability of statutes of limitations to reparations, non-restrictive interpretations, and procedural flexibility in accessing reparations, access to victims, and follow-up mechanisms for the implementation of reparation measures. The obligation to provide redress requires the existence of effective remedies that are accessible to the victims. This requires that there be institutions (courts) with the necessary independence and capacity to examine the claim and make an impartial decision promptly, and that such decisions are fully implemented by the respective entities in a manner that is satisfactory to the claimant. For remedies to be effective, victims must have access to judicial protection, and the court must be able to reach a decision that is not only satisfactory but can also be reflected in tangible results.

Since these characteristics are not yet evident in most international crimes cases, the epilogue to this Digest is more than a closing. It is a call to continue the dialogue, to engage in further study and to become actively involved in developing responses to the challenges we face. The battle against impunity and for the effective reparation of victims requires the collaboration, understanding, and joint effort of our society as a whole.

With the completion of this chapter, however, our journey is far from over. Each detailed analysis, each decision documented here, represents a step forward in our aspiration toward more comprehensive and meaningful justice. This Digest is offered not only as a valuable contribution to the legal corpus but also as a source of inspiration for those committed to the defense and promotion of human rights.

Looking to the future, this volume poses a challenge: to move beyond past achievements and aspire to build societies where the right to reparation is recognized as a fundamental pillar of human dignity. The case law documented here serves as a reminder of the progress we have made, as well as of the vast horizons we have yet to explore: ensuring effective reparations for all victims of international crimes in every corner of Latin America.

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The **Digest of Latin American Jurisprudence on Reparations for Victims of International Crimes** presents a thematic systematization of landmark judgments issued by courts in Argentina, Chile, Colombia, El Salvador, Guatemala, Peru, and Uruguay. Each decision included in this volume addresses an issue relevant to a better understanding of the current state of the Latin American judicial debate on the right to redress of victims of international crimes.

Latin American history has been marked by periods of mass violence. In recent decades, different countries in the region have sought to confront the legacy of that violence, with particular emphasis on the criminal prosecution of the perpetrators of genocide, crimes against humanity, and war crimes.

Notwithstanding the importance of these accountability processes, the struggle for justice must also address the needs, interests, and rights of the victims. With these considerations in mind, the Due Process of Law Foundation (DPLF) undertook this study, which seeks to disseminate, with a solid methodological basis, judicial standards that can provide additional inputs for local actors in all Latin American countries to strengthen their work on behalf of the rights of victims of atrocity crimes.

DPLF is a regional organization dedicated to promoting the rule of law and human rights in Latin America. Headquartered in Washington, D.C., it has an office in El Salvador and a multinational team of professionals working in several countries in the region.

Working with civil society organizations throughout Latin America, DPLF provides technical legal assistance, fosters dialogue with government representatives, and creates opportunities for sharing information and experience. DPLF also conducts research and produces publications that analyze and discuss the region's main human rights challenges in light of international law and from a comparative perspective.

Founded in 1996 by Professor Thomas Buergenthal and his colleagues at the United Nations Truth Commission for El Salvador, DPLF has worked on transitional justice issues since its inception, promoting compliance with international standards and the use of inter-American and international law to improve legislation, policies, and practices in relation to the search for disappeared persons, criminal justice processes, reparations to victims, and memory policies.

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