DISSUASIVE MEASURES AND THE “SOCIETY AS A WHOLE”: A WORKING THEORY OF REPARATIONS IN THE INTER-AMERICAN COURT OF HUMAN RIGHTS

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INTRODUCTION

Addressing non-monetary remedies to the “society as a whole” is an underlying rationale of jurisprudence in the Inter-American Court of Human Rights (“Inter-American Court”); measures awarded in this context are intended to serve dissuasive purposes.

“Society as a whole” is a concept exclusive to the Inter-American System, referring to all individuals of a society, regardless of social divisions or cleavages. In recent decisions, the term “society as a whole” has been partially replaced by expressions like the “Peruvian society” or the “Colombian society.” The concept is particularly

1. The European Court of Human Rights uses the concept of “community as a whole” in relation to the “public interest” of society which has to be counterbalanced with the individual’s interest. The term “community as a whole” is thus not parallel to “society as a whole” in the Inter-American context. Broniowski v. Poland, 2004-V Eur. Ct. H.R. 1, 57, 59-60. Recent developments in European jurisprudence might in general lessen the gap between the Inter-American and European doctrines: The European Court has in some cases included more beneficiaries within the scope of reparation. See, e.g., Sejdovic v. Italy, App. No. 56581/00 (Grand Chamber Mar. 1, 2006) (suggesting that recent reforms to the Code of Criminal Procedure could be sufficient to remedy a systemic problem in the administration of justice); Broniowski, 2004-V Eur. Ct. H.R. 1. See generally Valerio Colandrea, On the Power of the European Court of Human Rights to Order Specific Non-monetary Measures: Some Remarks in Light of the Assanidze, Broniowski and Sejdovic Cases, 7 HUM. RTS. L. REV. 396 (2007).

used in the context of the right to the truth.³ Although the court does not recognize that the “society as a whole” has a right to the truth,⁴ it repeatedly states that the victims’ and next of kin’s right to the truth coincides with an expectation of the society as a whole.⁵ Apart from this explicit use of the concept, the Inter-American Court awards a wide range of measures that de facto benefit “society as a whole” rather than only or primarily the individual victim.⁶

Although the Inter-American Court explicitly excludes a punitive meaning in reparation awards,⁷ Judge Cançado Trindade argues that some reparation measures in the Inter-American system reveal a dissuasive or exemplary aspect.⁸ Dinah Shelton generally links the dissuasive function of remedies to the needs of the society: “In addition to redressing individual injury and sanctioning wrongdoers, remedies serve societal needs.”⁹ This observation allows for the following argument to be made: When a non-monetary remedy is ways to prevent similar violations in the future).

³. See Mack Chang v. Guatemala, 2003 Inter-Am. Ct. H.R. (ser. C) No. 101, ¶ 274 (Nov. 25, 2003) (reaffirming the theory that next of kin and “society as a whole” have the right to know the truth regarding human rights violations, and that this right is an important form of reparation).


⁷. See Velásquez-Rodríguez v. Honduras, 1989 Inter-Am. Ct. H.R. (ser. C) No. 7, ¶ 38 (July 21, 1989) (interpreting “fair compensation,” as used in Article 63(1) of the American Convention on Human Rights, to include damages meant to compensate the victim, but not damages designed to punish the responsible state party). But see discussion infra Part II.B (addressing the view that exclusion of punitive damages from the definition of “fair compensation” is not appropriate).


⁹. DINAH SHELTON, REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW 354 (2005).
explicitly or *de facto* directed to the “society as a whole,” it is an indication that the judge considered the immediate need to efficiently and effectively redress the violation and especially to prevent its recurrence.

Prevention of recurrence cannot be achieved without considering the wider societal, legislative, executive, and judicial measures in the respective states. Inter-American jurisprudence reveals an overall consistent “working theory”\(^\text{10}\) of dissuasive intent in the court’s orders. While the term “punitive measures” is not appropriate to describe this practice because of a misleading resemblance to its use in criminal law, the term “dissuasive measures” suitably captures the intent of the judges of the Inter-American Court. Measures ordered pursuant to Articles 1(1) and 2 of the American Convention on Human Rights (“ACHR”) exemplify this practice,\(^\text{11}\) and reparations granted pursuant to Article 63(1) of the ACHR confirm that the court orders dissuasive measures.\(^\text{12}\)

This Article analyzes the reparation jurisprudence of the Inter-American Court in such a manner as to explore these assertions, particularly focusing on the question of who is the explicit or implicit beneficiary of each measure. In addition, this Article concentrates on measures that reach beyond individual victims to their next of kin or “society as a whole.” Finally, this Article addresses the court’s aim to strengthen democracy and the rule of law.


12. See *id.* art. 63(1) (providing that where a violation of a right or freedom protected under the ACHR occurs, the Inter-American Court shall require the reinstatement of that right or freedom and, where appropriate, order remedies and fair compensation to the injured party); see also Loayza-Tamayo v. Peru, 1998 Inter-Am. Ct. H.R. (ser. C) No. 42, ¶ 164 (Nov. 27, 1998) (requiring Peru to amend domestic laws so that they conform with the ACHR); Mack Chang v. Guatemala, 2003 Inter-Am. Ct. H.R. (ser. C) No. 101, ¶ 286 (Nov. 25, 2003) (ordering the state to name a street or square after the victim and place a prominent plaque nearby referencing her activities).
I. INDIVIDUALS AS BENEFICIARIES OF REPARATION AWARDS

As a starting point, it is critical to examine the role of the individual victim in reparation decisions. Analyzing the role of the individual victim facilitates an understanding of the concept of “society as a whole” and its relation to the dissuasive purpose of measures granted by the court.

Article 63(1) of the ACHR entitles “the injured party” to the cessation of the violation, restoration of his or her rights, and reparations.\(^{13}\) In *Mack Chang v. Guatemala*, the Inter-American Court interpreted “injured party” to be coextensive with those who are considered victims of the violation.\(^{14}\) This correlation has been maintained throughout the years.\(^{15}\) Over time, however, the court’s definition of “victims of a violation” has changed, resulting in a broader interpretation of the term “injured party.”

A. THE INDIVIDUAL VICTIM

In its early jurisprudence, the Inter-American Court interpreted Article 63(1) of the ACHR as being exclusively victim-centered. In *Loayza-Tamayo v. Peru*, for instance, the court ordered the unconditional release of the victim to restore her right to freedom of movement.\(^{16}\) In the same spirit, the court held that reparations must be made “solely to those persons who suffer the immediate effects of its unlawful acts.”\(^{17}\) The court adhered to the “traditional principles

\(^{13}\) ACHR, *supra* note 11, art. 63(1).


\(^{16}\) *See* Loayza-Tamayo v. Peru, 1997 Inter-Am. Ct. H.R. (ser. C) No. 33, ¶ 84 (Sept. 17, 1997) (ordering the release of a victim who was convicted in violation of the ACHR’s prohibition against double jeopardy).

\(^{17}\) JO M. PASQUALUCCI, THE PRACTICE AND PROCEDURE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS 237 (2003) (discussing the court’s refusal to grant reparations to all individuals who claim to have been adversely affected by a state’s human rights violations); *see*, e.g., Aloeboetoe v. Suriname, 1993 Inter-Am. Ct. H.R. (ser. C) No. 15, ¶ 49 (Sept. 10, 1993) (discussing how reparations should only be made to a party who has suffered from “the immediate effects” of a human rights violation and who has a “legally recognized” injury).
on causation" to argue in favor of the victim-centered view of reparations and obligations of non-recurrence.\textsuperscript{18} Therefore, in order for additional victims to benefit from the court’s ruling, the Inter-American Commission would have to join claims and refer cases to the Inter-American Court involving multiple victims.\textsuperscript{19} \textit{Hilaire v. Trinidad & Tobago}, concerning thirty-two petitions on the death row phenomenon,\textsuperscript{20} \textit{Dismissed Congressional Employees v. Peru} and \textit{Baena-Ricardo v. Panama},\textsuperscript{21} addressing the joinder of petitions brought by members of trade unions,\textsuperscript{22} are examples of the Inter-American Commission’s attempt to join claims involving multiple victims.

Considering the court’s contentious jurisdiction over individual violations, it is not surprising that it can only award reparations to the victims of a violation.\textsuperscript{23} Admissibility criteria,\textsuperscript{24} as well as rules relating to the burden\textsuperscript{25} and standard of proof,\textsuperscript{26} are tailored to guarantee individual consideration of cases.\textsuperscript{27} However, this does not

\begin{itemize}
\item \textsuperscript{18} PASQUALUCCI, \textit{supra} note 17, at 237.
\item \textsuperscript{19} See \textit{id.} at 238-39 (noting that despite the Inter-American Commission’s efforts to increase fair treatment by referring multiple victim cases to the Inter-American Court, few victims actually receive reparations from the court’s judgments).
\item \textsuperscript{20} Hilaire v. Trinidad & Tobago, 2002 Inter-Am. Ct. H.R. (ser. C) No. 94, ¶¶ 1-3 (June 21, 2002) (resulting from the joinder of cases submitted separately to the Inter-American Court against Trinidad and Tobago).
\item \textsuperscript{21} Baena-Ricardo v. Panama, 2001 Inter-Am. Ct. H.R. (ser. C) No. 72, ¶¶ 4, 6 (Feb. 2, 2001) (recognizing 270 public employees as victims in this case).
\item \textsuperscript{23} ACHR, \textit{supra} note 11, art. 63(1).
\item \textsuperscript{24} ACHR, \textit{supra} note 11, arts. 46-47, 61-62 (requiring petitioners to pursue domestic remedies, where available, prior to applying to the Inter-American Commission); Inter-American Court of Human Rights, Rules of Procedure, arts. 33-34, Nov. 25, 2003, available at http://www.corteidh.or.cr/reglamento.cfm [hereinafter IACHR Rules of Procedure].
\item \textsuperscript{25} Velásquez-Rodríguez v. Honduras, 1988 Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 123 (July 29, 1988). See generally PASQUALUCCI, \textit{supra} note 17, at 210 (noting that according to fundamental tenets of law, the burden of proof is initially and generally on the applicant).
\item \textsuperscript{26} See PASQUALUCCI, \textit{supra} note 17, at 213 (explaining that international law generally avoids rigid standards of proof and the Inter-American Court has the ability to consider the evidence as it sees fit).
\item \textsuperscript{27} IACHR Rules of Procedure, \textit{supra} note 24, arts. 44-50 (detailing the specific procedures by which evidence and witness testimony will be admitted).
\end{itemize}
prevent the court from defining the term “victim” in a broad sense, thus permitting the possibility for a group to be the victim of a violation and hence the beneficiary of reparation.

B. THE CONCEPT OF “NEXT OF KIN”—THE GROUP VIEW ON BENEFICIARIES OF REPARATIONS

Generally, “[t]he Court considers that the expression ‘next of kin’ of the victim should be interpreted in a broad sense to include all persons related by close kinship.”\(^{28}\) The Inter-American Court employs the expression “next of kin” in two different, but related contexts. In one context, the court refers to the next of kin when deciding who will inherit the compensation that a deceased victim would normally receive as a reparation award related to Article 4 of the ACHR.\(^{29}\) Second, the concept of a victim’s next of kin may also refer to those who suffered violations of their human rights protected under Articles 5, 8, and 25 of the ACHR in their own right if the original violation was under Articles 4, 5, or 7 of the ACHR.\(^{30}\) However, in the latter context, the Inter-American Court has set several conditions that must be met, including the

existence of a relationship of regular and effective financial support between the victim and the claimant, the possibility of realistically presuming that this support would have continued if the victim had not died, and that the claimant would have had a financial need that was regularly satisfied by the support provided by the victim.\(^{31}\)

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31. Id.
The Inter-American Court has used the concept of “next of kin” in both meanings throughout its jurisprudence, and has thus consistently widened its scope. In *Velásquez-Rodríguez v. Honduras*, the court defined “next of kin” as the widow and children of a victim who disappeared. Soon after, the court adapted the concept to the special family structures of the Saramaka tribe in Suriname. The court found Suriname’s argument unpersuasive that the first and second wives of the victims, as well as their children, had to be treated on an equal footing since polygamy is the normal form of family life within the tribe. However, the court did not rule in favor of the Inter-American Commission’s request to broaden the concept of family to include the entire Saramaka tribe. The court did not grant this request, arguing that the community is “redressed by the enforcement of the system of laws.” Yet, as Shelton highlights, the order of reopening a school could nevertheless be seen as a measure of “just satisfaction” to the community as a whole.

The concept of “next of kin” has undergone further amplification throughout the years. In *El Amparo v. Venezuela*, the Inter-American Court for the first time recognized that an unmarried female companion has the same status as a wife in non-indigenous societies. Furthermore, in *Gómez Palomino v. Peru*, the court

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34. *Id.* ¶ 97(a) (granting one-third to multiple wives and two-thirds to their children of the reparations otherwise due to the deceased victims).
35. *Id.* ¶ 83 (holding that, although all individuals are part of both a family and community, “the obligation to pay moral compensation does not extend to such communities”). Compensation to the community may be in rare cases granted if it suffered direct damages.
36. *Id.* ¶ 83.
37. SHELTON, supra note 9, at 286.

granted reparations in the form of a scholarship with either the victim’s siblings or their children being eligible for its receipt.\(^{39}\)

To summarize, granting reparation measures to the “next of kin” enlarges the concept of individual redress. The fact that the ACHR considers family the basic unit of society supports this view.\(^{40}\) The court’s readiness to include grandparents, companions, non-relative dependents, and, more recently, emotionally distant siblings,\(^{41}\) demonstrates the commitment of the court to redress damages incurred by “next of kin” who have suffered as a result of a violation. Recently, the court observed in *Pueblo Bello Massacre v. Colombia* that moral damages to siblings can be assumed.\(^{42}\)

C. DEVELOPMENT PROGRAMS AND MEASURES DIRECTED TO “MEMBERS OF THE COMMUNITY”

In *Plan de Sánchez Massacre v. Guatemala*, *Moiwana Community v. Suriname*, *Yakye Axa Indigenous Community v. Paraguay*, and *Sawhoyamaxa Indigenous Community v. Paraguay*, the Inter-American Court identified a special need to grant reparation


40. ACHR, supra note 11, art. 17(1) (“The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.”); cf. SHELTÓN, supra note 9, at 245 (recognizing the court’s difficulty in accurately valuing and calculating damages for members of the victim’s family).


42. *Pueblo Bello Massacre v. Colombia*, 2006 Inter-Am. Ct. H.R. (ser. C) No. 140, ¶ 257 (Jan. 31, 2006) (“[T]he Court has presumed that the suffering or death of a person causes their children, spouse or companion, mother, father, and siblings a non-pecuniary damage that need not be proved.”).
measures to members of indigenous communities whose rights had been violated.\footnote{Sawhoyamaxa Indigenous Community v. Paraguay, 2006 Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 112 (Mar. 29, 2006); Yakye Axa Indigenous Community v. Paraguay, 2005 Inter- Am. Ct. H.R. (ser. C) No. 125, ¶ 188 (June 17, 2005); Moiwana Community v. Suriname, 2005 Inter-Am. Ct. H.R. (ser. C) No. 124, ¶ 194 (June 15, 2005); Plan de Sánchez Massacre v. Guatemala, 2004 Inter-Am. Ct. H.R. (ser. C) No. 116, ¶ 86 (Nov. 19, 2004).} It is very interesting to note that in \textit{Moiwana Community}, the court granted development measures directly to the community, although it did not consider the community a beneficiary in the relevant section of the judgment.\footnote{Moiwana Community, 2005 Inter- Am. Ct. H.R. (ser. C) No. 124, ¶ 187 (granting material damages to members of the community, but not to the community itself).} This contradiction would lead to the conclusion that a collective understanding of “the injured party” is not established jurisprudence; yet, in the recent case of an indigenous leader who was killed by military personnel, the court did not refer to the \textit{individual members} of the community when awarding development measures, but to the community. The court granted a $40,000 fund to the benefit of the community which should be used according to its customs, forms of consultation, and traditions.\footnote{Escué Zapata v. Colombia, 2007 Inter-Am. Ct. H.R. (ser. C) No. 165, ¶ 168. (July 4, 2007). In this case, the representatives of the victims had requested several measures that would enable the indigenous community to reconstruct their customs and traditions. The claim requested measures related to jurisdictional autonomy and land rights of the Nasa people. The court rejected this request, as well as the commission’s request for the establishment of a youth leadership program, arguing that the claims were not related to the facts of the case. \textit{Id}. ¶¶ 180-185.} In the light of the conception that indigenous communities have of their own social structure this interpretation should be regarded as the more adequate one.

However, it is important to remember that compensation for damages requires a higher standard of proof than general reparation measures.\footnote{Id. ¶¶ 191-192.} Therefore, in order to be eligible for damages, an indigenous community might need to specify all of its members in the claim.\footnote{Yakye Axa Indigenous Community, 2005 Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 189; Plan de Sánchez Massacre, 2004 Inter-Am. Ct. H.R. (ser. C) No. 116, ¶¶ 66-68.}
However, in an earlier decision addressing the property and land rights of a Nicaraguan indigenous community, the Inter-American Court awarded $50,000 to the Mayagna (Sumo) Awas Tingni Community, without specifying the individual members of the group.\footnote{Mayagna (Sumo) Awas Tingni Community v. Nicaragua, 2001 Inter-Am. Ct. H.R. (ser. C) No. 79, ¶ 167 (Aug. 31, 2001) (providing reparations in the form of investment in infrastructural works or services).} The “collective interest for the benefit of the Awas Tingni Community” was decisive for the court’s award.\footnote{Id. ¶ 164 (emphasis added).} But other reparation measures, such as the demarcation and legal ownership of the community’s land, were awarded to “members of the Awas Tingni Community.”\footnote{Id. ¶ 164 (emphasis added).}


In all of these cases, the Inter-American Court granted reparation measures in the form of development programs.\footnote{See, e.g., Sawhoyamaxa Indigenous Community v. Paraguay, 2006 Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 224 (Mar. 29, 2006) (ordering the State to establish a fund for educational, housing, agricultural, and health projects, and to provide potable water and sanitary infrastructure for the community); Yakye Axa Indigenous Community v. Paraguay, 2005 Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 205 (June 17, 2005) (ordering that a community fund and program be developed to provide potable water, sanitary infrastructure, and the “implementation of education, housing, agricultural, and health programs”); Moiwana Community, 2005 Inter-Am. Ct. H.R. (ser. C) No. 124, ¶ 213-214 (creating a developmental fund for “health, housing, and educational programs for the . . . community”).} These programs included development funds;\footnote{See, e.g., Sawhoyamaxa Indigenous Community, 2006 Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 224; Yakye Axa Indigenous Community, 2005 Inter-Am. Ct.}
health, production, and infrastructure programs; a program providing for subsistence needs; or communication systems for health emergencies. The court also granted resettlement measures in two cases where the communities concerned were displaced in the aftermath of violations that occurred in their villages.

Even though the concept of “next of kin,” in conjunction with the above mentioned interpretation of “community,” extends the number of beneficiaries of reparation, it does not fundamentally change the approach of the ACHR. The ACHR favors the individual that suffered a violation of his or her rights, rather than any form of collective redress that might be independent from the notion of the individual “injured party.”

The Inter-American Court is nevertheless ready to abandon its individual-centered doctrine in favor of a more encompassing approach, considering that cases frequently reveal a pattern, and not a single violation. The court does not expand the scope of the “victim” concept, but rather that of the beneficiary of reparations by chiefly referring to society’s role in pursuing the aim of non-recurrence of violations.


58. Sawhoyamaxa Indigenous Community, 2006 Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 230 (ordering Paraguay to adopt measures necessary to supply the community with potable water, healthcare, food, sanitation facilities, and educational resources).

59. Id. ¶ 232.


61. See Goiburú v. Paraguay, 2006 Inter-Am. Ct. H.R. (ser. C) No. 153, ¶ 82 (Sept. 22, 2006) (stating that state responsibility is increased when the violation is part of a systematic pattern). See generally SHELTON, supra note 9, at 154 (commenting that many states have declared general amnesties for those officials involved in disappearances, torture, or arbitrary killings).

62. See id. at 99 (remarking that the “concern for victims not part of the litigation as well as for potential victims, must be among the factors taken into account in affording remedies”).
II. REPARATION ADDRESSED TO THE “SOCIETY AS A WHOLE”

At first glance, the term “society as a whole” recalls, in a phonetic analogy, the definition attributed to *erga omnes* obligations which refer to the “international community as a whole.” The problem with this parallel is that “society as a whole” has legal consequences different from that of “international community as a whole.” For instance, the Inter-American Court does not imply that all individuals in society (parallel to “all States” in the international arena) can claim to be victims if certain human rights violations occur in their society. *Erga omnes* concerns state reaction to an internationally wrongful act, while “society as a whole” is a sociological entity to whom certain reparation measures are addressed. Society as a whole is not considered an “injured party,” as proven in the court’s rejection of the Inter-American Commission’s argument in *Urrutia v. Guatemala* that forcing someone to broadcast false statements causes damage to an entire society.

However, the court suggests a wider understanding of *erga omnes* obligations than usually accepted in general international law, asserting:

> [M]odern human rights treaties in general, and the [ACHR] in particular, are not multilateral treaties of the traditional type . . . . Their object and purpose is the protection of the basic rights of individual human beings irrespective of . . . all other contracting States. In concluding these human rights treaties, the States can be deemed to submit themselves to a legal order within which they, for the common good, assume various

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64. *See id.* (explaining that a state’s obligations to the “international community as a whole” are inherently of international concern because every state has a legal stake in such obligations).
65. *See IACHR Rules of Procedure, supra* note 24, art. 2 (defining a victim as a “person whose rights have been violated, according to a judgment pronounced by the Court”).
67. *See* SHELTON, supra note 9, at 100 (“If society as a whole is injured by human rights violations, so also may society as a whole benefit from public remedies.”).
obligations, not in relation to other States, but towards all individuals within their jurisdiction. 69

While the Inter-American Court has not explicitly interpreted society as being “all individuals within [a] jurisdiction,” it can be reasonably claimed that there is a link between the court’s reading of *erga omnes* and “society as a whole.” Shelton asserts that *erga omnes* obligations require a deterrent element in corresponding reparation awards; 70 it seems further possible to claim that the use of “society as a whole” can be interpreted as an indication for the award of dissuasive measures.

**A. THE INTER-AMERICAN COURT’S EXPLICIT USE OF THE CONCEPT**

The term “society as a whole” was introduced by the Inter-American Commission in *Aloeboetoe v. Suriname* when it argued that because the Saramaka tribe interprets family in a broad sense, the State should be required to compensate the “whole society” for the emotional damage incurred. 71 The term “whole society” in this case meant the Saramaka tribe, not the whole society of Suriname. 72

The current use of the concept “society as a whole” emanated from the Inter-American Commission’s request in *Caballero-Delgado v. Colombia*. The commission sought a public


70. Shelton, *supra* note 9, at 49.


72. *Id.* ¶ 19. See *supra* Part I.C (discussing the line of jurisprudence following this decision).
acknowledgment of state responsibility and public apology to the relatives of the victim and “society as a whole.” ¹⁷³ For the first time, the commission meant for the term “society as a whole” to refer to society at the national level. ¹⁷⁴ The Inter-American Court approved this interpretation of the concept in Trujillo-Oroza v. Bolivia, and set a precedent for its use in respect to Article 1(1): “Finally, according to the general obligation established in Article 1(1) of the [ACHR], the State has the obligation to take all necessary steps to ensure that these grave violations are not repeated, an obligation whose fulfillment benefits society as a whole.” ¹⁷⁵ The concept is mentioned in a second context of disappearance cases, this time referring explicitly to reparations according to Article 63(1): “[T]he right of the victim’s next of kin to know what has happened to the him [sic] and, when appropriate, where the mortal remains are, constitute a measure of reparation and, therefore, an expectation that the State should satisfy for the next of kin and society as a whole.” ¹⁷⁶

To date, ample use of the concept can be observed in connection with the right to the truth ¹⁷⁷ as established in Almonacid Arellano, ¹⁷⁸ Ituango Massacres v. Colombia, ¹⁷⁹ Pueblo Bello Massacre, ¹⁸⁰ and

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¹⁷⁴. Id. (requesting the State publicly acknowledge its responsibility both to “the victims’ relatives and to Colombian society as a whole”) (emphasis added).
¹⁷⁶. Id. ¶ 114 (emphasis added) (footnotes omitted); see La Cantuta v. Peru, 2006 Inter-Am. Ct. H.R. (ser. C) No. 162, ¶¶ 231-232 (Nov. 29, 2006) (placing responsibility on Peru to search for the remains of the victims and provide burial services as a form of reparation to the victims’ families).
¹⁷⁷. See Shelton, supra note 9, at 276 (citing the Chilean Truth Commission’s observation that “only the knowledge of the truth will restore the dignity of the victims in the public mind [and] allow their relatives and mourners to honor them fittingly”). Baldeón García v. Peru represents an exception; the right to the truth has only been linked to the family of the victim, although the Commission requested a more encompassing understanding. Baldeón García v. Peru, 2006 Inter-Am. Ct. H.R. (ser. C) No. 147, ¶¶ 131(n), 167 (Apr. 6, 2006).
¹⁷⁸. Almonacid-Arellano v. Chile, 2006 Inter-Am. Ct. H.R. (ser. C) No. 154, ¶ 157 (Sept. 26, 2006) (ordering Chile to make public the results of the investigation “so that the Chilean society may know the truth” about the case).
Huilca-Tecse v. Peru. In 19 Merchants, the Inter-American Court argued that knowing the truth helps a society to prevent the recurrence of such violations. The judges thus established an explicit link to the obligation to prevent repetition of the violation. In Vargas-Areco v. Paraguay and Goiburú, “society as a whole” benefited from the right to the truth. In Mack Chang, the court stated more specifically that society has a right to know about domestic judicial processes and their outcomes.

The Inter-American Court also uses the concept in the context of impunity, and states in Ituango Massacres, Pueblo Bello, and Maritza Urrutia that it is a detriment to “society as a whole” if impunity is not brought to an end in cases of serious human rights violations. Therefore, it can be said that the trial and punishment of

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140, ¶ 267 (Jan. 31, 2006) (ordering Colombia to publicize the results of criminal proceedings concerning a massacre “so that Colombian society may know the truth”). This case also provides a doctrinal analysis of the right to truth. Id. ¶ 219.


82. 19 Merchants v. Colombia, 2004 Inter-Am. Ct. H.R. (ser. C) No. 109, ¶¶ 259, 263 (July 5, 2004) (noting that investigating, identifying, and punishing the responsible parties reveals the truth about such crimes and thus prevents future occurrences).

83. Id. ¶ 259; see Ituango Massacres, 2006 Inter-Am. Ct. H.R. (ser. C) No. 148, ¶ 300 (explaining that the failure of a state to meet such an obligation results in society’s continuing ignorance of the truth).


85. Goiburú v. Paraguay, 2006 Inter-Am. Ct. H.R. (ser. C) No. 153, ¶¶ 164-165 (Sept. 22, 2006) (requiring Paraguay to conduct an investigation to identify and prosecute those responsible and then publicize the results so that the people of Paraguay can learn the truth).


a perpetrator according to the standards of justice help strengthen society’s trust in the judicial institutions and the rule of law.

Finally, the concept appears in the context of the obligation to investigate, try, and punish the perpetrators, and the right to judicial remedy: “[A]ny person who considers himself or herself to be a victim of such violations has the right to resort to the system of justice to attain compliance with this duty by the State, for his or her benefit and that of society as a whole.”

The Inter-American Court points out that individuals exist within the fabric of society, and reinforces a view taken in “Street Children” v. Guatemala when it refers to the role each individual plays in society. The court states that a child should live a
“dignified life” and that “every child has the right to harbor a project of life that should be tended and encouraged by the public authorities so that it may develop this project for its personal benefit and that of the society to which it belongs.”

After reviewing the contexts in which the court has used the term “society as a whole,” it can be inferred that the court intends for these awards to repair more than the harm to an individual victim. Combating impunity—for example, through the dissemination of the truth about past violations—attacks the roots of many violations and does not simply solve the case sub judice. The court’s broad interpretation of “society as a whole” is evidence of the dissuasive intent of certain measures awarded by the court.

B. MEASURES PURSUANT TO ARTICLES 1(1) AND 2 WITH EFFECTS ON THE “SOCIETY AS A WHOLE”

Explicit reference to the concept of “society as a whole” is the ideal means to prove the intentions of the Inter-American Court and its understanding of the concept. However, there is further evidence for an underlying working theory that assumes that some measures ordered by the court, pursuant to Articles 1(1) and 2 of the ACHR, are equally and implicitly directed to the “society as a whole.”

It is true that the treaty regime in itself has the most relevant aim of preventing violations, and thus fulfils a dissuasive, deterrent function. Nevertheless, it is suggested that these measures, inferred from Article 2 of the ACHR, cannot be regarded as punitive without falling prey to an inherent contradiction. If the distinction is made between punitive measures (relating to punishment in criminal law)

90. Id. ¶ 191.
91. Article 2, like the treaty regime itself, has as its goal the protection of rights rather than punishment of violations. See ACHR, supra note 11, art. 2 (requiring states to take “legislative or other measures . . . to give effect to those rights” protected by the ACHR). The Inter-American Court’s compensatory powers, derived from Article 63(1), are intended to be used only for reparatory purposes, not punitive ones. See, e.g., Masacre de la Rochela v. Colombia, 2007 Inter-Am. Ct. H.R. (ser. C) No. 163, ¶¶ 6-7 (Concurrent Opinion of Judge García Ramírez) (May 11, 2007); Garrido v. Argentina, 1998 Inter-Am. Ct. H.R. (ser. C) No. 39, ¶¶ 43-44 (Aug. 27, 1998) (explaining that “the Inter-American Court is not a penal court,” rather its role is to repair the effects of human rights violations); Godinez Cruz v. Honduras, 1989 Inter-Am. Ct. H.R. (ser. C) No. 8, ¶ 36, (July 21, 1989).
and dissuasive measures (relating to the concept of deterrence), Article 2 of the ACHR can be labeled dissuasive in the latter sense, but in no instance punitive in the former: compliance with basic treaty obligations cannot be regarded as punishment.92

1. Non-repetition Guarantees

When non-repetition guarantees are concerned, the Inter-American Court takes a different position than when addressing reparations to individual victims.93 This position shall be explained in detail because it reveals that the court understands redress as a more encompassing concept. Redress can also be directed to society and has an implicit, exemplary component. The same is not true for measures of cessation which are directed to restoring the individual victim’s rights, and which sometimes are considered to be a form of


93. See Brian D. Tittemore, Ending Impunity in the Americas: The Role of the Inter-American System in Advancing Accountability for Serious Crimes Under International Law, 12 SW. J.L. & TRADE AM. 429, 444-45 (2006) (distinguishing between the Inter-American Court’s use of individual reparations, premised on the right of the victim to be restored to the “status quo ante,” and non-repetition guarantees, which may be a subset of reparations but are preventative in nature). It should be noted, though, that the Inter-American Court considers that it should take into account the loss of opportunities that the violation of the right meant for the person’s “life plan.” Loayza Tamayo v Peru, 1998 Inter-Am. Ct. H.R. (ser. C) No. 42, ¶¶ 117, 144 (Nov. 27, 1998) (pointing out that the victim’s claims with respect to her career plans did not fall under the concept of restitution). See generally SHELTON, supra note 9, at 293, 304-06 (explaining circumstances in which non-monetary remedies are necessary); Daniel Bodansky, John R. Crook & Dinah Shelton, Righting Wrongs: Reparations in the Articles on State Responsibility, 96 AM. J. INT’L L. 833, 847 (2002) (explaining that, in general, non-repetition guarantees differ from reparations in being forward-looking and preventative in nature).
reparation despite the fact that they stem from obligations under Articles 1 and 2 of the ACHR.94

In Trujillo-Oroza, the court explicitly recognized that non-repetition guarantees are granted based on the general obligation to respect, protect, and fulfill Article 1(1) of the ACHR.95 The judges state: “Finally, according to the general obligation established in Article 1(1) of the [ACHR], the State has the obligation to take all necessary steps to ensure that these grave violations are not repeated, an obligation whose fulfillment benefits society as a whole.”96 In two earlier cases, non-repetition guarantees were granted in reparation decisions pursuant to Article 63(1) of the ACHR, but are explicitly linked to the general obligations arising from Article 2 of the ACHR.97 It is also interesting to note that the International Law Commission considers that non-repetition guarantees point to “reinforcement of a continuing legal relationship and the focus is on the future, not the past.”98

The court explained in Garrido: “reparation may also be in the form of measures intended to prevent a recurrence of the offending acts.”99 The question in the present argument is whether the court considers recurrence as being related only to the individual victim, or to any recurrence of the same acts without reference to the victim, as

96. Id. ¶ 110. See also Masacre de la Rochela v. Colombia, 2007 Inter-Am. Ct. H.R. (ser. C) No. 163, ¶ 277 (May 11, 2007) (mentioning the state’s commitment to comply with the obligations of non-repetition with regard to the victims, their next of kin, and society as a whole).
would stem from the general obligations under Articles 1(1) and 2 of the ACHR.

In Castillo-Páez v. Peru, the victims requested a general non-repetition guarantee, but the court failed to address the matter. Two years later in Durand v. Peru, the judges stated that, in addition to “the obligation to investigate, there is another obligation to prevent any possible commission of involuntary disappearance and punish the liable parties.” It is suggested that non-repetition guarantees stem from Articles 1(1) and 2 of the ACHR, but also fulfill the function of a reparation pursuant to Article 63(1) of the ACHR.

2. The Obligation to Investigate, Prosecute, and Punish

A similar interplay between Article 63(1) and Articles 1(1) and 2 can be found with regard to the obligation to investigate, prosecute, and punish perpetrators of human rights violations. This obligation can be interpreted as a de facto non-repetition guarantee because punishing a perpetrator deters future violations.

In Velásquez-Rodríguez, the Inter-American Court ordered the investigation, prosecution, and punishment of the perpetrators in the merits’ stage of the case, referring to the general obligation under Article 2. The court also established a general duty to prevent disappearances. This duty stems exclusively from the obligation to prevent violations that any state party incurs under operative Article 2 of the ACHR, not under the first division of Article 63.

However, the obligation has also been considered a form of reparation under Article 63(1). It was in Caballero-Delgado that the court for the first time ordered investigation of the facts and

102. See ACHR, supra note 11, arts. 1, 2, 63(1).
104. Id. ¶ 188 (explaining that party states have a duty to protect the rights identified in the ACHR, including the right to life).
punishment of the perpetrators as a form of reparation. This view is explicitly confirmed in Las Palmas v. Colombia, where the court stated that “pursuant to Article 63(1) of the [ACHR] . . . the State has an obligation to investigate the facts that caused these violations.”

Also, in recent cases, the court ordered investigations, prosecutions, and sanctions of perpetrators in the context of reparation provisions.

At this point, it is apparent that a single order may fulfill several purposes and, consequently, cannot clearly be subsumed under one category of measures. This line of reasoning can eventually explain why the court has hesitated in clearly attributing the orders to one type of reparation or to a general obligation. Still, the conceptual difficulty does not weaken the dissuasive effect that non-repetition guarantees directed to the “society as a whole” are intended to have. Judge Cançado Trindade explicitly states that non-monetary forms of reparation “have exemplary or dissuasive purposes, in the sense of preserving remembrance of the violations occurred, of providing satisfaction (a feeling of realization of justice) to the next of kin of the victim, and of contributing to ensure non-recidivism of said violations (even through human rights training and education).”

3. Granting of Legislative Measures

Non-repetition guarantees frequently take the form of legislative measures. Whereas explicit non-repetition guarantees are mostly

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106. Caballero-Delgado v. Colombia, 1995 Inter-Am. Ct. H.R. (ser. C) No. 22, ¶ 69 (Dec. 8, 1995) (reasoning that reparation decisions do allow for the consideration of other ACHR provisions, but their primary raison d’être and foundation stone is to restore the victim’s rights and freedoms).


110. See SHELTON, supra note 9, at 279 (noting that the Inter-American Court frequently requires states to amend their laws or policies in order to prevent further human rights violations).
general in terms and scope, legislative measures identify and attempt to remedy a structural wrong that the court has recognized in its examination of a case and are *de facto* non-repetition guarantees.\(^{111}\) Thus, in September 2003, the court in *Bulacio v. Argentina* ordered that the guarantee of non-repetition involve the adoption of legislative measures.\(^{112}\) Therefore, while the victim may be only one individual, all individuals in similar situations are also beneficiaries of the reparation measures.

For example, Guatemala was ordered to reform both Article 132 of the Criminal Code, which refers to the treatment of prisoners who allegedly represent a danger to the society,\(^{113}\) and Article 201 of the Criminal Code, which defines the crime of abduction and its penalties.\(^{114}\) All persons affected by these regulations would benefit from a change in the Criminal Code. The court also ordered in other cases that all necessary legislative and administrative measures be taken to ensure that a person sentenced to death can ask for penalty commutation.\(^{115}\) Due to the fact that there were thirty-five prisoners on death row who stood to benefit from the court’s order at the time, amending the law to allow for the commutation of a death sentence affected individuals other than the named victims in those cases.\(^{116}\)

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Since the *Garrido* decision, where it approved a friendly settlement including the adoption of legislation that makes disappearance a crime, the court has developed the concept of legislative measures. In a decision just two years earlier, the Inter-American Commission requested and was denied legislative measures which would have required that the Military Code of Justice of Venezuela conform to the ACHR. In another disappearance case, the court observed that Peruvian amnesty laws were an obstacle to justice. There was, however, no consequence of that finding in the operative paragraphs of the judgment. Legislative change was revisited in *Loayza Tamayo* where the parties reached a friendly settlement of the case requiring the state to amend certain laws to redefine the crimes of terrorism and treason.

But only in *Barrios Altos v. Peru* did the Inter-American Court for the first time oblige a state to change an existing national law pursuant to a violation of the ACHR in a disappearance case. In that decision, the court ordered the redefinition of the crime of extrajudicial execution as well as the ratification of the International Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity. This decision established an

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118. El Amparo v. Venezuela, 1996 Inter-Am. Ct. H.R. (ser. C) No. 28, ¶¶ 52, 60 (Sept. 14, 1996) (refusing to instruct the Venezuelan government to amend the Code of Military Justice to conform to the ACHR because the purpose of the Inter-American Court is to protect the rights of specific individuals).

119. Castillo Páez v. Peru, 1998 Inter-Am. Ct. H.R. (ser. C) No. 43, ¶ 105 (Nov. 27, 1998) (noting that the Peruvian Amnesty Law hinders investigations and prevents the victim’s next of kin from accessing the courts in order to discover the truth and obtain reparations).

120. Loayza-Tamayo v. Peru, 1998 Inter-Am. Ct. H.R. (ser. C) No. 42, ¶ 192.5 (Nov. 27, 1998) (requiring Peru to redefine such crimes so that they are in conformity with the ACHR).


122. *See id.* (obliging Peru to accomplish the reparations within thirty days of
important precedent in the development of the court’s use of legislative measures.

Since 2002, the court has granted legislative measures more often than in earlier years, including measures such as the establishment of a detainee register,\(^{123}\) the creation of a speedy mechanism to declare a person missing and presumably dead in the case of disappearances, and the establishment of necessary legislation for a genetic database to identify disappeared children.\(^{124}\) In *Hilaire*, the court ordered Trinidad & Tobago to conduct new criminal trials for certain persons and required changes to the Offences Against the Person Act.\(^{125}\) In *Blanco Romero v. Venezuela*, the State was ordered to take legislative measures to make the recourse of habeas corpus effective in cases of disappearances.\(^{126}\) The Inter-American Court did not suggest concrete legal arrangements, but added certain precise aims that the legislation should conform to international standards.\(^{127}\)

In a case against the Dominican Republic, the court ordered the government to adopt the legislative reforms necessary for a late birth registration procedure, including the availability of effective recourse to administrative decisions.\(^{128}\) In *Moiwana Community* and *Yakye Axa Indigenous Community*, the court granted changes in the regulations on indigenous land titles.\(^{129}\) In *Vargas-Areco*, legislation

\(^{123}\) Humberto Sánchez v. Honduras, 2003 Inter-Am. Ct. H.R. (ser. C) No. 99, ¶ 189 (June 7, 2003) (explaining that these records will help ensure that detainees are being held legally).


\(^{127}\) See *id.* (clarifying that such international standards include the guarantee of freedom and respect for life, as well as the prevention of forced disappearances and doubts as to a person’s place of detention).

\(^{128}\) See Girls Yean & Bosico v. Dominican Republic, 2005 Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 239 (Sept. 8, 2005) (emphasizing that such procedures are necessary to prevent individuals from continuing to live in the Dominican Republic as stateless persons).

had to be amended in order to prevent the recruitment of children into the armed forces.¹³⁰

There are also decisions in which the court ordered measures implying legislative action on the national level without mentioning that the measures necessarily have to take the form of an amendment or adoption of legislation. In Bámaca Velásquez, the court ordered the implementation of a national exhumation program if one did not yet exist,¹³¹ and in Plan de Sánchez Massacre, the court stated that amnesties and similar measures of reprieve are not allowed to preclude the ability of Guatemala to “investigate, prosecute and punish those responsible.”¹³² In the Guatemalan context, this may require a legislative change: The Ley de Amparo may need to be amended to make amnesties effectively inapplicable in the case of gross human rights violations.¹³³ Finally, in Palamara Iribarne v. Chile, the court held that Chile had to take “all measures necessary to derogate or modify internal norms that are contrary to international law on freedom of thought and expression.”¹³⁴

When linking legislative measures and the concept of “society as a whole,” it is necessary to clarify that the court never put the two terms in context; they operate separately from each other. However, pursuant to the foregoing, it is argued that there is an underlying relationship between “society as a whole” and legislative measures community that Suriname will return land once occupied by the community); Yakye Axa Indigenous Community v. Paraguay, 2005 Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 225 (June 17, 2005) (requiring Paraguay to adopt domestic measures that would allow indigenous people to effectively pursue claims to traditional territories).


¹³³ See generally Mack Chang v. Guatemala, 2003 Inter-Am. Ct. H.R. (ser. C) No. 101, ¶ 270 (Nov. 25, 2003) (calling for the legislation to be adjusted to conform to the ACHR and thus provide “an effective judicial recourse for the victims”).

that aims to reduce recidivism of violations in the entire Inter-American system.

Thus, “society as a whole” benefits when laws are amended in a way that reduces the probability of a recurrence of the facts and reduces the probability that members of vulnerable groups or “society as a whole” will fall victim to a serious human rights violation. It is difficult to imagine that such measures would not positively impact society, especially because laws are applicable to all persons under a state’s jurisdiction.

C. REPARATION MEASURES BENEFITING THE “SOCIETY AS A WHOLE”

While the placement of legislative orders in the section on reparations of the court’s decisions confirms that they also enjoy a reparative nature, the court awards measures that are exclusively based on Article 63(1) of the ACHR.135 These too are arguably intended to have certain dissuasive effects.

1. Public Apology and Institutionalized Remembrance

Society benefits from court orders requiring public apologies, the erection of monuments or memorial plaques, and the naming of streets or schools. Since 2001 when the court for the first time took the initiative to order the publication of the judgment and a public apology,136 it has consistently granted this measure “in order to prevent a repetition of these events.”137

In Plan de Sánchez Massacre, the court ordered a public apology and required that it occur in the community concerned and be

137. Id. ¶ 99.
pronounced in or translated into Maya-Achi, the victims’ language. In addition to providing moral satisfaction to the victims, a public apology serves to publicize an official account of human rights violations, and particularly state involvement therein.

With the growing frequency of acknowledgment of state responsibility, the Inter-American Court no longer orders public apologies systematically. Judge García-Ramírez notes that a public apology cannot be more than a formal one, as it is detached from a feeling of moral regret by the individual perpetrator. However, when a victim requests a public apology, the court will grant the measure as a form of satisfaction, even if there has been partial acknowledgment of state responsibility.

The Inter-American Court has ordered the naming of streets in several cases, with the idea originating from a friendly settlement between the victims and the State of Ecuador in *Benavides-Cevallos*. Often times, the court will order the naming of a school, especially when the victims were still relatively young. The court directed states to carry out such measures in *Trujillo Oroza*, “Street Children,” *Gómez Paquiyauri Bros. v. Peru* and

138. Plan de Sánchez Massacre v. Guatemala, 2004 Inter-Am. Ct. H.R. (ser. C) No. 126, ¶ 100 (Nov. 19, 2004). Furthermore, the Inter-American Court ordered that the ACHR and the judgment of the case be translated into Maya-Achi. *Id.* ¶ 102.


141. *See* Ituango Massacres v. Colombia, 2006 Inter-Am. Ct. H.R. (ser. C) No. 148, ¶¶ 403-407 (July 1, 2006) (ordering the State to also provide appropriate treatment for the next of kin of the victims, safe conditions for displaced inhabitants, and a housing program for survivors who lost their homes).


Servellón García v. Honduras. The court has confirmed that it believes that memorial activities have an important and viable effect on the society. It stated in “Street Children” that naming an educational center after murdered street children would “contribute to raising awareness in order to avoid the repetition of harmful acts such as those that occurred in the instant case and will keep the memory of the victims alive.” This statement by the court signifies that remembering the victims is considered to be a society-related, encompassing concept. Another example of the court implementing this concept occurred in Serrano-Cruz Sisters v. El Salvador where the order included the introduction of a day honoring children who have disappeared in El Salvador. Additionally, reading the names of victims in a public forum and ensuring their lasting “presence” in public spaces by naming a street or square in their honor helps to inform the public about their cases.

Much like publication of the judgment, these measures raise awareness of the state’s human rights violations in the society and how the state has dealt with past violations. Without being able to prove such an assertion empirically in the context of this article, the publicity of a case and its victims arguably encourages people to remember past violations and contributes to social reconciliation. This process should thus lead to democratic stabilization.

The effectiveness of these measures for the “society as a whole,” however, depends largely on the role the media assumes in a given country. Without the media disseminating reparation measures,

¶ 103 (May 26, 2001).


148. See Trujillo Oroza, 2002 Inter-Am. Ct. H.R. (ser. C) No. 92, ¶ 122 (reasoning that such a reparation would raise “public awareness about the need to avoid the repetition of harmful acts”).


151. See James Crawford, The ILC Adopts a Statute for an International Criminal Court, 89 A.M. J. INT’L L. 404, 407 n.19 (1995) (discussing the fact that less is done to remedy human rights violations when they are less visible through the media).
only a small number of people with a vested interest would learn about the court’s judgments and understand their implications. As mentioned above, the court has consistently ordered the publication of its judgments since Cantoral-Benavides. For example, the court required publication of the judgment in a state’s official gazette and a newspaper of national dissemination. In Palamara Iribarne, a freedom of expression case resulting in the publication of a previously censored book, the court ordered the publication of the proven facts in the official gazette and the entire judgment on the official website of the Chilean government. Pursuant to the decision in Miguel Castro Castro Prison v. Peru, the government of Peru had to broadcast the judgment several times on Peruvian radio and television.

2. Training of Public Officials, Improvement of Prison Conditions and Protection for Judicial Officials

Finally, the Inter-American Court grants three additional types of measures that are implicitly directed to the “society as a whole.” In Caracazo v. Venezuela, the court required human rights training programs for public officials, which theoretically would benefit every person who comes into contact with public officials. The second measure, the reformation of the detention system, would


directly benefit prisoners, but would also benefit “society as a whole” by facilitating the reintegration of prisoners into society.157 In *Tibi v. Ecuador*, the court held that Ecuadorian judicial and prosecution personnel, law enforcement and penitentiary officers, including medical, psychiatric, and psychological personnel, had to attend training programs in human rights standards relevant to detention facilities.158 The court specifically mentioned the importance of civil participation in the program.159

Furthermore, in *Caracazo*, the court linked the training of public officials to the general obligation of non-repetition:

It is necessary to avoid by all means any repetition of the circumstances described. The State must adopt all necessary provision [sic] to this end, and specifically those for education and training of all members of its armed forces and its security agencies on principles and provisions of human rights protection and regarding the limits to which the use of weapons by law enforcement officials is subject, even in a state of emergency.160

In *Huilca-Tecse*, the court endorsed an agreement between the parties and ordered the creation of a human rights and labor law course without designating a specific audience.161 In contrast, in *Mack Chang*, the court specified that public officials must attend professional human rights training.162

Pursuant to *Gutiérrez-Soler v. Colombia*, human rights training has to be provided for public officials in the military justice system due to the ill-treatment and torture the victim suffered while illegally

158. *Id.* ¶ 263.
159. *Id.* ¶ 264.
detained. Additionally, the court mandated that medical personnel in detention centers, as well as judges and prosecution officers, receive training on the Istanbul Protocol, a set of international guidelines that describes how officials should document and assess accusations of torture alleged by detainees. In Mapiripán Massacre, the court ordered that all-rank members of the Colombian armed forces participate in permanently established educational programs in human rights. In a case concerning prolonged illegal detention, poor detention conditions, and ill-treatment in custody, the court ordered Honduras to establish a training program for detention center employees. Additionally, prison conditions, especially alimentation and hygiene, had to be improved according to international standards. The court has granted similar measures in Montero-Aranguren v. Venezuela where it specifically mentioned that the conditions had to be improved for all prisoners.

164. See id. ¶¶ 109-110 (noting that these trainings should provide staff with the technical and scientific knowledge necessary to evaluate the bases of claims of torture or cruel, inhuman, or degrading punishment or treatment).
Very recently, the court has for the first time ordered that the state has to guarantee an adequate security and protection system in order for judicial officials, prosecutors, and investigators to be able to carry out their work of ensuring the non-repetition of massacres. The court has also ordered the protection of witnesses, victims, and their next of kin in cases of serious violations of human rights.\(^{169}\)

It is very clear in these cases that it is not the individual victim or the next of kin who benefit from the reparation measure granted, but a much larger section of society, and arguably the “society as a whole.” Moreover, often the victim is not the beneficiary of measures requiring officer training and better prison conditions because he or she will likely be unconditionally released from the prison as a consequence of an order for cessation of the violation.\(^{170}\)

This can be considered compelling evidence that the court awards measures of reparation clearly beyond the individual victim of a case, supporting the characterization of the court’s measures as dissuasive.

### III. DEMOCRACY, PARTICIPATION AND “SOCIETY AS A WHOLE”

“Society as a whole,” as a working theory, underlies not only reparation awards and measures related to cessation. The Inter-American Court’s jurisprudence on democracy and the rule of law is inspired by the same working theory as well. Although only one case has addressed an alleged violation of Article 23 of the ACHR, providing little textual evidence for such a relationship,\(^{171}\) the rationale of “society as a whole” can be understood to be linked to democracy, participation, and the rule of law.

The rule of law in a democratic society requires access to justice. The court confirmed this link in *Claude-Reyes v. Chile*,\(^{172}\) and has

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indicated that it may interpret access to justice in collective terms when granting a measure that shall provide non-discriminatory access to justice for the victim’s community.\textsuperscript{173} While the rule of law and access to justice are based on the provisions in Articles 1(1), 2, 8, and especially 25 of the ACHR,\textsuperscript{174} the reference to democracy is rooted in several separate treaty provisions and Article 23 of the ACHR.\textsuperscript{175}

In a 1986 advisory opinion, the court observed: “Representative democracy is the determining factor throughout the system of which the Convention is a part.”\textsuperscript{176} This is an intrinsic element of the purpose of the Organization of American States, as expressed in the Charter: “Representative democracy is an indispensable condition for the stability, peace and development of the region.”\textsuperscript{177} The idea is a central principle of the ACHR\textsuperscript{178} and was explained more fully in the Democratic Charter which stresses the intrinsic link between representative democracy, participation, and the rule of law.\textsuperscript{179} Article 2 of the Democratic Charter states:

\begin{quote}
(Sept. 19, 2006); Baldeón García v. Peru, 2006 Inter-Am. Ct. H.R. (ser. C) No. 147, ¶ 144 (Apr. 6, 2006); see also Ximenes-Lopes, 2006 Inter-Am. Ct. H.R. (ser. C) No. 149, ¶ 192 (recognizing that states have a duty to guarantee that individuals have access to judicial remedies if their human rights are violated).

\textsuperscript{173} See Baldeón García, 2006 Inter-Am. Ct. H.R. (ser. C) No. 147, ¶ 203.

\textsuperscript{174} See ACHR, supra note 11, arts. 1(1), 2, 8, 25 (providing judicial protection of fundamental rights, freedom to exercise fundamental rights, the right to a fair trial, and access to judicial recourse to ensure those rights).

\textsuperscript{175} See id. art. 23 (guarding the right, inter alia, to participate in government, vote, and freely choose representatives).


\textsuperscript{178} See ACHR, supra note 11, Preamble, art. 1 (recognizing that creating “within the framework of democratic institutions, a system of personal liberty and social justice” is one of the convention’s purposes).

The effective exercise of representative democracy is the basis for the rule of law and of the constitutional regimes of the member states of the Organization of American States. Representative democracy is strengthened and deepened by permanent, ethical, and responsible participation of the citizenry within a legal framework conforming to the respective constitutional order.\(^{180}\)

Article 8 acknowledges the fundamental importance of human rights for consolidation of representative democracy.\(^{181}\) Similar reasoning can be found in the European Council, where the European Court of Human Rights refers to the “public legal order,” and especially democracy, as the common form of political organization of the state.\(^{182}\)

The first contentious case concerning a violation of Article 23 of the ACHR is *Yatama v. Nicaragua*.\(^{183}\) The court decided that the requirement to run for office through a political party does not conform to Article 23 of the ACHR.\(^{184}\) In particular, the concept of a political party was found to be unfamiliar to the customs of the indigenous community concerned, effectively barring access to the passive right to vote and political participation.\(^{185}\)

In *Yatama*, the court established an indirect link between Article 23 of the ACHR, the idea of representative democracy, and “society as a whole.”\(^{186}\) The judges argued that the devices for political

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180. *Id.* art. 2.
181. *Id.* art. 8.
184. *Id.* ¶ 218-219, 229.
185. *Id.* ¶ 218.
186. *Id.* ¶ 259.
representation must permit the communities concerned to be able to intervene in the decision-making process, regarding both issues of “society as a whole” and their specific concerns. Taking into account that the Inter-American system values representative democracy, and therefore the contribution that each citizen may make to the democratic life of the countries, it seems not too far-fetched to claim that the “society as a whole” is benefiting when participation is ever more inclusive. Although the textual link between the two concepts is rather implicit, future development might shed light as to how the court understands the relationship between participation and “society as a whole.” Nevertheless, society will benefit from the reparation measure ordered in Yatama: the electoral laws of Nicaragua have to be changed in order to allow candidates from all groups of society to run for office. This measure will clearly have an effect on “society as a whole.”

CONCLUSIVE REMARKS

As has been shown, the Inter-American Court consistently orders measures that are either explicitly directed to “society as a whole,” or have important beneficiary effects on the society or vulnerable groups within the society. The court links the concept to the right to the truth and to impunity. Concern for “society as a whole” is an underlying working theory of the court.

As argued, “other forms of reparation” and, especially non-repetition guarantees, are awarded in relation to Articles 1(1) and 2 of the ACHR, and are ordered with a view towards the dissuasive effect regarding the repetition of similar violations. Such effects are most important in states where systematic and gross violations have occurred and where the past may constitute a significant obstacle to reconciliation and transition to democracy.

187. Id. (stating in the Spanish original: “[U]na representación adecuada que les permita intervenir en los procesos de decisión sobre las cuestiones nacionales, que conciernen a la sociedad en su conjunto, y los asuntos particulares que atañen a dichas comunidades . . . .” (emphasis added)).
188. Id. ¶¶ 258-259.
Up to now, the court has not considered itself competent to order
the establishment of a general reparation program. \(^{190}\) While such a
consideration might be desirable for the future, even more
importance should be assigned to non-monetary reparation measures
directed to “society as a whole.” Although the court does not
consider society as the injured party in human rights violations, it
awards measures with effects beyond the individual victim under
Articles 1(1) and 2 of ACHR. The non-monetary benefits of the
reparation measures are explicitly assigned to all members of society.
As seen throughout this article, the importance of non-monetary
measures is especially apparent when examining cases concerning
the right to the truth. Beyond what has been shown, Judges Abreu
Burelli and Garcia Ramírez assert in *The Peace Community of San
Jose de Apartadó* that provisional measures may also reach “a
plurality of persons.” \(^{191}\)

While this Article has explored the intent and legal argument
related to the “society as a whole,” juridical studies cannot provide
the necessary methods to establish whether the measures granted will
have the intended effects. It is important to note that a legal argument
cannot empirically test the causal relationship and intensity between
suggested measures and dissuasive effects. The court makes social
assumptions that cannot and shall not be tested here. The intent of
the court can, however, be clearly established. By awarding non-
monetary, structural measures instead of ordering extensive
programs for monetary compensation, the court can address the root
of violations and aim to prevent the possible “buying-off” of human
rights violations. \(^{192}\) By enlarging the group of beneficiaries of non-
monetary measures through a consistent and effective interpretation

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¶ 136(d)(xi), 144 (Sept. 26, 2006) (denying the representatives’ request for a law
offering “reparation to all victims of death, torture, abuse, and mistreatment while
in compulsory military service in Paraguay” and instead naming those found to be
injured parties).

191. Peace Community of San José de Apartadó Regarding Colombia
(Provisional Measure), 2006 Inter-Am. Ct. H.R. ¶ 8 (Considerations) (Feb. 2,
2006).

222, 239 (Nov. 29, 2006) (awarding monetary compensation to victims’ families,
while emphasizing Peru’s non-monetary obligations such as the duty to train
prosecutors and judges).
of Articles 1(1), 2, and 63(1) of the ACHR, the court can pay tribute to the need to give systemic answers to systemic problems. By intending to solve these systemic problems, reparation measures and non-repetition guarantees granted in individual cases fulfill a dissuasive and exemplary function with regard to future violations.

The Inter-American Court’s reparation jurisprudence is unique in international law, understanding both the individual and the “society as a whole” as beneficiaries of the measures it orders. The court attaches great importance to non-repetition guarantees. Such rulings are oriented toward the future and are not strictly concerned with repairing the past. In this sense, society is paramount, not as the injured party, but as the fundamental entity where respectful and peaceful life of all individuals can take place in the future, despite the past violations.