AN AFFRONT TO THE CONSCIENCE OF HUMANITY: ENFORCED DISAPPEARANCES IN THE CASE LAW OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

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Abstract

This article seeks to address a series of issues relating to the case law of the Inter-American Court of Human Rights (IACtHR) on cases of enforced disappearances. First, it will identify the separate human rights violations implicated in the perpetration of enforced disappearances and discern the IACtHR’s methodological approach on re-conceptualising enforced disappearance as a continuous and multiple human rights violation. Further, it will focus on the issue of the continuous nature of the violation and will point to certain inconsistencies that the IACtHR’s analysis appears to suffer from. Second, it will address the IACtHR’s inclusive approach when identifying the victims of enforced disappearance. Beyond the material victim, the IACtHR has created an ius ex tantum list of individuals that are potentially affected by enforced disappearance. Third, it will explore the manifold remedial schemes that the IACtHR has devised for cases of forced disappearance. Fourth, it will seek to compare the assessment of the IACtHR with that of the European Court of Human Rights (ECtHR) and of the Human Rights Committee (HRC) in some of the aforementioned themes. The purpose of this comparative exercise will be to further the analysis of the IACtHR’s case law on the basis of a horizontal comparison and will aim at illustrating the innovative approaches and solutions reached by the IACtHR.

1. INTRODUCTION

Despite the fact that the Human Rights Committee (HRC) was the first international body to address the issue of enforced disappearance in 1982,¹ it was the Inter-

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American Court of Human Rights (IACtHR) that pronounced the first ever binding judgment on enforced disappearance in the celebrated case of *Velásquez Rodríguez v. Honduras*. Since then, the IACtHR has come a long way in shaping its case law on this specific human rights violation and offers an interesting account of several themes to be considered.

2. RIGHTS IMPLICATED IN THE PERPETRATION OF ENFORCED DISAPPEARANCE

None of the normative instruments of the three bodies, i.e. the International Covenant of Civil and Political Rights (ICCPR), the European Convention on Human Rights (ECHR) and the American Convention on Human Rights (ACHR), includes a specific right not to be subjected to enforced disappearance. The drafters of the respective texts, unsurprisingly, had not envisaged the rise and proliferation of this scourge. All three bodies enunciate core civil and political rights that flourished after World War II. When confronted with the initial cases of enforced disappearance, the IACtHR, the ECtHR and the HRC attempted to address this practice by having recourse to other separate rights found in their respective treaties. For ease of reference, a table showing the rights commonly found violated in cases of enforced disappearances is provided below:

Table 1. The corresponding provisions in the three international human rights instruments.

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<tr>
<th>HRC</th>
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<tr>
<td>Right to life (Article 6)</td>
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<td>Right to liberty and security (Article 9)</td>
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<td>Prohibition of torture (Article 7)</td>
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<td>Recognition as a person before the law (Article 16)</td>
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<td>Rights of the detained (Article 10)</td>
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<td>First case of forced disappearance decided in 1982</td>
<td>First case of forced disappearance decided in 1988</td>
<td>First case of forced disappearance decided in 1998</td>
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^2 IACtHR (Judgment) 29 July 1988, *Velásquez-Rodríguez v. Honduras*. 
In the aftermath of the attention that enforced disappearance received at the UN level, the first case to be decided by the HRC, a quasi-judicial body, was that of Bleier v. Uruguay in 1982. Some of the principles articulated in that decision have been relied upon in subsequent cases by other courts, for example, those relating to the burden of proof and the probative value of evidence submitted, allowing for inferences to be drawn from them. The HRC found violations of Articles 7, 9 and 10.16 ICCPR and “that there are serious reasons to believe that the ultimate violation of Article 6 [right to life] has been perpetrated”. In its subsequent decisions, the HRC maintained the core of these violations and, depending on the particular circumstances of each case, of others as well. A major progressive leap was made in Kimouche v. Algeria, where the HRC also declared Article 16 (the right to recognition everywhere as a person before the law) to be violated.

In 1988, the IACtHR delivered its first ever judgment, the celebrated Velásquez-Rodríguez v. Honduras. This judgment related to the disappearance of Manfredo Velásquez in Honduras during the reign of the military regime in that country. Identically to the HRC, the IACtHR found violations of Articles 4, 5 and 7. As more cases were lodged with the IACtHR, its jurisprudence steadily became more elaborate and brought within its realm the violation of Article 3.

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4 “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”
5 “1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”
6 “1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”
9 IACtHR (Judgment) 29 July 1988, Velásquez-Rodríguez v. Honduras.
10 For an overview of the legal issues in the first set of disappearance cases, see S. Davidson, The Inter-American Human Rights System (Dartmouth, Ashgate 1997), pp. 206–212, 266.
The jurisprudence of the IACtHR on disappearances proved to be extremely prolific, and paved the way for many interpretative breakthroughs such as the establishment of the right to the truth, the extensive and innovative remedies it has afforded, the standing of victims, the reversal of the burden of proof and the legal characteristics of the prohibition of enforced disappearance.12

Across the Atlantic, the ECtHR was first seized with cases of enforced disappearances only in 1998, the year when it handed down its judgment on Kurt v. Turkey. Notwithstanding some initial inconsistencies in its early judgments, the Strasbourg Court has nowadays established a consolidated jurisprudence constante on enforced disappearances. As illustrated by Table 1 above, this Court usually finds violations of Articles 2 and 5, and depending on the factual background of each case, of Article 3.13 The Court has also meticulously elaborated on the distinction between the procedural and substantive parts of Articles 2, 3 and 5 ECHR and it has developed a judicial ‘test’ on the issues of ratione temporis and on drawing inferences from the probative material submitted by the parties. A significant difference from its two counterparts is that it has not found any violation of the juridical personality of an individual, which can only be taken to constitute an implied precondition for the enjoyment of rights enshrined therein.

2.1. THE RIGHT TO RECOGNITION AS A PERSON BEFORE THE LAW

Turning to this specific right, it must firstly be said that Articles 16 ICCPR14 and 3 ACHR15 explicitly prescribe the right to recognition as a person before the law. The

12 The IACtHR has classified the prohibition as jus cogens and has developed the notion of continuous nature. See IACtHR (Judgment) 22 September 2006 Goiburú et al. v. Paraguay, para. 84: “The prohibition to carry out enforced disappearance and the corresponding obligation to investigate and punish those found to be responsible have acquired the character of jus cogens.” Also, A. A. Cançado Trindade, “Enforced Disappearances of Persons as a Violation of Jus Cogens: The Contribution of the Jurisprudence of the Inter-American Court of Human Rights”, 81 Nordic Journal of International Law (2012); and J. Sarkin, “Why the Prohibition of Enforced Disappearance Has Attained the Status of Jus Cogens in International Law?”, 81 Nordic Journal of International Law (2012).

13 Contrary to IACtHR’s flexible stance on this issue, the ECtHR has developed a more stringent position. In the first case of enforced disappearance that it considered, Kurt v. Turkey, it did subscribe to the general trend of the two other bodies by finding a violation of Article 3 ECHR with respect to the mother of the disappeared person. In the judgments that followed, the Court steadfastly stated that Kurt did not establish any general principle that a family member of a “disappeared person” is automatically a victim of treatment contrary to Article 3, and went further to set out the criteria it would take into consideration in order to examine whether a family member could be deemed a victim. These are: the proximity of the family tie (a certain weight will be attached to the parent-child bond); the particular circumstances of the relationship; the extent to which the family member witnessed the events in question; the involvement of the family member in the attempts to obtain information about the disappeared person; and the way in which the authorities responded to these enquiries.

14 Article 16 ICCPR reads: “Everyone shall have the right to recognition everywhere as a person before the law.”

15 Article 3 ACHR provides: “Every person has the right to recognition as a person before the law.”
wording of both articles has its origin from the corresponding Universal Declaration of Human Rights (UDHR) provision in Article 6.\(^\text{16}\) The scope of the right is \textit{prima facie} vague and uncertain. The autonomous meaning of this right can be established in the formation and protection of the judicial personality of the individual that serves as a “prerequisite to all other rights of the individual”.\(^\text{17}\) This, in turn, stems from the dignity of the individual and explains its capacity to be holder of rights and duties. Moreover, these are rights which in their respective jurisdictional domains are categorised as non-derogable, pursuant to Articles 4(2) ICCPR\(^\text{18}\) and 27(2) ACHR.\(^\text{19}\)

The HRC was first to consider the violation of the said right. In \textit{Kimouche v. Algeria}, the Committee attached two conditions to the finding of a violation of this kind: first, the victim must last be seen in the hands of state authorities and, second, at the same time, “the efforts of his or her relatives to obtain access to potentially effective remedies, including judicial remedies (Covenant, Art. 2, para. 3), should have been systematically impeded”.\(^\text{20}\) The Committee found a violation of Article 16 ICCPR in this, as well as in other cases, concluding that:

“disappeared persons are in practice deprived of their capacity to exercise entitlements under law […] and of access to any possible remedy as a direct consequence of the actions of the State, which must be interpreted as a refusal to recognize such victims as persons before the law”.\(^\text{21}\)

The IACtHR followed suit despite the failure of initial attempts by the Inter-American Commission on Human Rights (IAComHR) to convince this Court to find a violation of Article 3 ACHR.\(^\text{22}\) A turning point in the Inter-American Court’s case law occurred in \textit{Anzualdo-Castro v. Peru}, where the Court reconsidered its position and declared a violation of said article. In doing so it stated that:

“despite the fact that the disappeared person can no longer exercise and enjoy other rights, and eventually all the rights to which he or she is entitled, his or her

\(^{16}\) Article 6 UDHR reads: “Everyone has the right to recognition everywhere as a person before the law.”


\(^{18}\) Article 4(2) ICCPR reads as follows: “No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.”

\(^{19}\) Article 27(2) ACHR provides: “The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.”


disappearance is not only one of the most serious forms of placing the person outside the protection of the law but it also entails to deny that person’s existence and to place him or her in a kind of limbo or uncertain legal situation before the society, the State and even the international community”.23

Although these two bodies have consistently found violation of this right, the juxtaposition of their positions exemplifies a point of interpretative divergence. On the one hand, the HRC places two conditions for finding a violation of this right. The more important is the systematic impediment to seeking an effective remedy. In this way the focus is shifted from the impact that the violation bears on the material victim, to the chronologically subsequent stage of seeking remedies. On the other hand, the IACtHR approach does not set any condition, but places the individual at the centre of its analysis by focusing on the consequences of enforced disappearance.

In assessing the value of the right to be recognised as a person before the law, it can be affirmed that its practical importance has remained marginal in international case law, given that it is only in recent years that it has been applied explicitly and that its application has not gained consensus, the exception being the lack of any practice on the part of the ECtHR. The normative realm of this right best serves as a moral underpinning of human existence and, in practical terms, does not notably expand the scope of actual human rights protection.

2.2. EXPANDING AND DEEPENING THE SCOPE OF PROTECTION: POSITIVE OBLIGATIONS AND DUE DILIGENCE

The IACtHR was the first international human rights tribunal to develop the “due diligence” standard for enforced disappearance cases in Velásquez-Rodríguez. There, the Court based its judicial reasoning on the general obligation to respect the ACHR’s rights, found in Article 1 ACHR.24 An implied duty of states parties flowing from this article is to organise the governmental apparatus in such a way as to ensure enjoyment of human rights. Within this duty rests the obligation to:

“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”.25

25 IACtHR (Judgment) 29 July 1988, Velásquez-Rodríguez v. Honduras, para. 166.
The duty to investigate enforced disappearance is a continuous one and should be orientated towards identifying and punishing the perpetrators, and, at the bare minimum, providing information to the relatives as to the fate and remains of the disappeared person.²⁶ This latter requirement should be read as encapsulating the core objective of any effective investigation, which, at the same time, evidences this Court’s victim-oriented approach. This core meaning can be construed as intending to restore the dignity of the victims by providing them with information, which will allow them to mourn and perform their religious duties.

The IACtHR has consistently adhered to the “due diligence” examination of enforced disappearance cases brought before it. However, it is worth noting that is has broadened the theoretical foundation of the obligation to conduct an effective investigation. From its judgment in Goiburú onwards, the IACtHR has framed its reasoning in terms of the right to “access to justice”.²⁷ Access to justice is not worded as a stand-alone right in the ACHR.²⁸ Nevertheless, this has not impeded the Court from construing it through a combined reading of Articles 1(1), 8 and 25 ACHR. The basic premise of this framing is that state obligations do not solely encompass a duty to respect human rights, but also a duty to guarantee them by means of (ex ante) diligent prevention and (ex post) investigation.²⁹ Further, such a right implies the effective determination of the facts,³⁰ which must be understood as a factor enabling claimants to substantiate their access to courts. In the IACtHR’s assessment this right has been configured into a peremptory norm of international law.³¹ These investigations must be undertaken ex officio,³² conducted in a serious, impartial³³ and expeditious manner, affording the competent authority the necessary logistical support and full access to detention centres.³⁴

Having sketched this broad-brush outline of the case law of the selected bodies, I will now turn to a theme-specific discussion cutting across the work of these three bodies: the temporal jurisdiction of the bodies examined in this article and the interrelated theme of the continuous nature of disappearances.

²⁶ Ibid., para. 181.
²⁷ IACtHR (Judgment) 22 September 2006, Goiburú et al. v. Paraguay, para. 105 et seq.
³⁰ Ibid., para. 124.
³² IACtHR (Judgment) 22 September 2006, Goiburú et al. v. Paraguay, para. 118.
3. HUMAN RIGHTS COMMITTEE

The case law of the HRC is fairly unproblematic in this respect. The communications examined under that treaty regime for the purposes of this article are all related to close relatives (usually parents and spouses) that have not given rise to *ratione personae* objections. In fact, victimhood of the close relatives in cases of enforced disappearance refers to the anguish and distress that it produces, and is of an indirect nature, as attested by the following excerpt from one of the HRC’s most recent Views:

“As to the author’s claim also to be a victim of violations of the Covenant, the Committee recalls its jurisprudence according to which the close family of victims of enforced disappearance may also be victims of a violation of the prohibition of ill-treatment under article 7. This is because of the unique nature of the anxiety, anguish and uncertainty for those to the direct victim. That is the inexorable consequence of an enforced disappearance. Without wishing to spell out all the circumstances of indirect victimisation, the Committee considers that the failure of a State party responsibly to discharge its obligations to investigate and clarify the circumstances of the harm suffered by the direct victim will usually be a factor. Additional factors may be necessary.”

3.1. INTER-AMERICAN COURT OF HUMAN RIGHTS

The IACtHR has developed a similar, but more nuanced, approach founding the relatives’ capacity as victims on a broad reading of Article 8 ACHR (right to fair trial) in combination with the United Nations Declaration on the Protection of All Persons from Enforced Disappearance, which explicitly refers to the suffering of the family of a disappeared person. In further developing its position in the later Bámaca case, the IACtHR took notice of its European counterpart’s approach on the same matter. The San Jose Court quoted extensively the criteria enumerated by ECtHR in Timurtas, but refrained from stating explicitly that it adopted them or how it otherwise transposed them. Instead, it premised its findings on the continued

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35 HRC (View) 21 July 1983, *Maria del Carmen Almeida de Quinteros et al. v. Uruguay*, Case No. 107/1981, para. 14: “The Committee understands the anguish and stress caused to the mother by the disappearance of her daughter and by the continuing uncertainty concerning her fate and whereabouts. The author has the right to know what has happened to her daughter. In these respects, she too is a victim of the violations of the Covenant suffered by her daughter in particular, of article 7.”; Nowak, *supra* n. 17, p. 661.


occupation of the applicant’s efforts to ascertain the facts, the concealment of the corpse of Bámaca Velásquez and the obstacles created by various public authorities to the attempted exhumation procedures and also the official refusal to provide relevant information.40

The current state of the law is reflected in a recent judgment of the IACtHR on enforced disappearances where the IACtHR accepts a rebuttable presumption for parents, children, spouses and permanent domestic partners to be considered as direct next of kin, so long as particular circumstances of each case permit this.41 Where such relationship is not established, the IACtHR is prepared to accept particularly close links that may exist, the degree of involvement in the search for justice or the degree of suffering caused to the alleged victims.42

3.2. EUROPEAN COURT OF HUMAN RIGHTS

Contrary to the IACtHR’s flexible stance on this issue, the ECtHR has developed a more stringent position. In the first case of enforced disappearance that it considered, Kurt v. Turkey, it did subscribe to the general trend of the two other bodies by finding a violation of Article 3 ECHR with respect to the mother of the disappeared person.43 In the judgments that followed, the Court steadfastly stated that Kurt did not establish any general principle that a family member of a “disappeared person” is automatically a victim of treatment contrary to Article 3, and went further to set out the criteria it would take into consideration in order to examine whether a family member could be deemed a victim. These criteria are: the proximity of the family tie (a certain weight will be attached to the parent–child bond); the particular circumstances of the relationship; the extent to which the family member witnessed the events in question; the involvement of the family member in the attempts to obtain information about the disappeared person; and the way in which the authorities responded to these enquiries.44 Finally, the Court stressed that:

“the essence of such a violation does not so much lie in the fact of the ‘disappearance’ of the family member but rather concerns the authorities’ reactions and attitudes to the situation when it is brought to their attention. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities’ conduct.”45

42 IACtHR (Judgment) 1 September 2010, Ibsen-Cárdenas and Ibsen-Peña v. Bolivia, para. 137; IACtHR (Judgment) 24 November 2010, Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil, para. 235.
45 ECtHR (Judgment) 8 July 1999, Case No. 23657/94, Çakıcı v. Turkey, para. 98.
The overview of the ECtHR’s case law illustrates that the most potent criterion in cases of enforced disappearances is a person’s involvement in the search for the disappeared person rather than the degree or proximity of relationship to it. The Court requires applicants to demonstrate a considerable degree of diligence and persistence in searching for the material victim, and has employed this as the touchstone of its examination. On this basis it has refused to consider as “victims” parents, siblings and children of very young age that failed to prove their active engagement in searches.46

While the HRC’s jurisprudence does not yield ground to analyse its stance on the question of who can be considered a “victim”, the judgments of the two regional courts have diverged. On the one hand, the approach underpinning the IACtHR’s judgments is a two-stage analysis: first on the basis of a categorisation, i.e. whether an alleged victim falls under the categories of parents, siblings, children, spouses and domestic partners. Second, if the alleged victim does not fall under any of the aforementioned categories, the Court will take into consideration the proximity of the ties, the degree of involvement in the search and the degree of suffering. On the other hand, the ECtHR is primarily examining the degree of involvement in the search by the alleged victim and the modus of reaction by the authorities. Thus, the ECtHR appears to adopt a “functional” approach as to who may be considered to be a victim, looking into the concrete circumstances of each instance of disappearance. This is in contrast to the automatic attribution of victim status that relatives enjoy under the ACHR regime.

Bearing in mind their conventional boundaries, it can be said that the IACtHR provides a more victim-friendly forum than the ECtHR. The threshold to be considered as a victim is lower in the former Court, while it is not exclusive to others who do not fall into this category. Employing a “functional” criterion as a second tier for victimhood operates as an inclusive criterion. The same cannot be said for the ECtHR. Within its realm, the use of the “functional” criterion operates in an exclusionary way by a reversal of the analysis. The European Court moves from the actual perpetration of enforced disappearance to attach weight to the reactions of the state authorities, provided the latter are petitioned by the relatives. Although the relatives should be expected to demonstrate a minimum degree of diligence, this undercurrent shift of attention is not consonant to a fair assessment of the actual issue in question, which is the perpetration of an enforced disappearance, and is in disharmony with the states’ obligation to undertake an investigation *ex officio* as soon as authorities are informed of such a violation. Disappearances, as other equally repugnant forms of human rights violations, have an immediate and tangible impact, which should not be primarily contingent upon a state’s follow-up reactions. After all, the governing treaties of the two Courts refer to the harm or disadvantage that victims

46 ECtHR (Judgment) 4 December 2008, Case No. 27243/03, Musikhanova and Others v. Russia, para. 81; ECtHR (Judgment) 12 March 2009, Case No. 27238/03 and 35078/04, Dzhambekova and Others v. Russia, para. 307.
suffer by the original act constituting a violation. In this respect, the founding act of the violation is the perpetration of enforced disappearance.47

4. THE CONTINUOUS NATURE OF ENFORCED DISAPPEARANCE AND THE “RATIONE TEMPORIS” RULE

An important characteristic of enforced disappearance is its continuous nature. This is a characteristic that has evolved in the jurisprudence and has also found support from other sources. Since the verdict on Velásquez-Rodríguez v. Honduras48 until its most recent judgments on Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil49 and Torres Millacura et al. v. Argentina,50 the IACtHR has referred to the continuous character of enforced disappearance. Akin, but distinguishable, to this settled case law, the ECtHR has offered sporadic references on the same issue. The HRC has not explicitly taken it up, but its decisions lend themselves to useful insights.

The continuing nature of the disappearances bears a manifold importance. Firstly, it is closely linked to the temporal jurisdiction of international (quasi-)adjudicatory bodies. Secondly, it relates to the principle of non-retroactivity in criminal law. And thirdly, as already mentioned in the previous paragraph, it is important for ascertaining the applicability of statutory limitations.

The IACtHR has explicitly described enforced disappearance as a continuous violation since the very first judgment it handed down.51 However, convergences and divergences with the case law of the HRC can be discerned. In Blake v. Guatemala, this Court made a distinction between the acts and effects of an enforced disappearance. The act of deprivation of liberty and subsequent death of the victim per se were considered to fall outside its temporal jurisdiction because they took place before the entry into force of the ACHR for Guatemala.

47 IACtHR (Judgment) 23 November 2009, Radilla-Pacheco v. Mexico, para. 161: “Specifically, in cases that involve the forced disappearance of persons, it is possible to understand that the violation of the right to psychic and moral integrity of the next of kin of the victim is a direct consequence, precisely, of that phenomenon, which causes them a severe suffering due to the fact itself, which is increased, among other factors, by the constant negative of the state authorities to provide information regarding the whereabouts of the victim or to start an effective investigation in order to clarify what occurred.”
48 IACtHR (Judgment) 29 July 1988, Velásquez-Rodríguez v. Honduras, para. 155.
49 IACtHR (Judgment) 24 November 2010, Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil, para. 17.
50 IACtHR (Judgment) 26 August 2011, Torres Millacura et al. v. Argentina, para. 94 et seq.
However, the remains of the victim were discovered subsequent to the entry into force of the ACHR, which led the IACtHR to consider that the question before it was one of enforced disappearance, producing effects extending through time:

“forced disappearance implies the violation of various human rights recognized in international human rights treaties, including the American Convention, and that the effects of such infringements – even though some may have been completed, as in the instant case – may be prolonged continuously or permanently until such time as the victim’s fate or whereabouts are established.”52

The relatives of the material victim, whose rights were violated, could be the only ones to endure the effects of the disappearance.53

Two important criteria stem from this judgment: firstly, that as long as the fate of the material victim is not known, enforced disappearance continues to generate interrupted effects, which can bring disappearance within the temporal jurisdiction of the IACtHR. Secondly, and perhaps most importantly, a distinction is drawn between the acts and effects thereof. This distinction allowed the Court to remain within the mainstream of international law by excluding from its examination the founding violations (i.e. deprivation of liberty and death). At the same time, it indirectly addressed the ramifications of enforced disappearance by bringing their consequences within the realm of its competence.

The limits of the *ratione temporis* jurisdiction of the Court were drawn in *Serrano Cruz* where the Court accepted the relevant objection raised by El Salvador.54 In this case, the State had accepted the Court’s jurisdiction by placing a specific temporal limitation to it. This limitation was deemed a substantial reason to curtail the Court’s jurisdiction and confine its examination to Articles 8 and 25 ACHR. The facts relating to these articles occurred after the entry into force and referred, according to the Court, to domestic judicial proceedings that constituted independent facts, amenable to the judicial scrutiny of the IACtHR.

One case that I believe has been dealt with in a problematic way is that of *Heliodoro Portugal v. Panama*.55 Heliodoro Portugal disappeared in 1970, while in Panama the ACHR entered into force in 1978. Panama accepted the Court’s jurisdiction in 1990. The victim’s remains were identified in 2000, but scientific examination proved that his death had certainly taken place at least 10 years before 1990. The Court set 9 May 1990, i.e. the date Panama accepted the Court’s compulsory jurisdiction, as the critical

53 The rights violated refer to: judicial guarantees set forth in Article 8(1) ACHR, in relation to Article 1(1) of the same treaty; the right to humane treatment enshrined in Article 5 ACHR; the obligation to investigate the acts denounced and punish those responsible for the disappearance and death.
date for examining its *ratione temporis* jurisdiction, and for this reason refrained from examining his extrajudicial execution as falling outside its temporal jurisdiction. However, it decided that it was competent to rule on the alleged deprivation of liberty since this was related to his alleged forced disappearance, which continued after 1990 and until his remains were identified in 2000.56

The IACtHR was called to delimit its temporal jurisdiction with regard to the substantive protection by the ACHR and the act of recognition of its jurisdiction, which is more procedural in nature. Unlike the HRC, the IACtHR considered that its jurisdiction could only be considered to initiate from the date of acceptance of its compulsory jurisdiction (i.e. 1990) and not from the date of entry into force of the ACHR (i.e. 1978). The ACHR allows in Article 62(2) for the recognition of the Court’s jurisdiction by a declaration, which may designate a “specified period” for this jurisdiction.57 In the absence of any such declaration, a correct reading of the ACHR should have placed the time limit at 1978. The Court’s decision on this issue is also inconsistent with the judgment in *Serrano Cruz*, in which case the IACtHR accepted the specific temporal limitation on the Court’s jurisdiction that El Salvador had placed.

This judgment created a conceptual paradox that led inevitably to a misapplication of the law.58 The paradox lies in the fact that the Court examined the extrajudicial execution of the victim and ascertained, beyond doubt, that Heliodoro Portugal’s death occurred at some point in time after his arrest in 1970 and certainly before 1980. The Court then went on to examine his forced disappearance and considered that it had competence to rule on the alleged deprivation of liberty, since this was related to the alleged forced disappearance, which continued after 1990, and until his remains were identified.59 In essence, what the IACtHR tasked itself to examine was the deprivation of liberty of the victim’s remains.

The Court’s poor reasoning manifests the misconceptions and problems that may arise when dealing with enforced disappearance in a fragmented manner and not as an autonomous and unitary violation. Its nature as a multiple violation that affects a series of other rights decisively determines not only the *ratione temporis* jurisdiction of adjudicatory bodies, but also other issues such as the burden of proof, the identification of victims, the determination of the kind of violation and the remedies warranted for it.60

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57 It reads: “2. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court.”


60 Cf. IACtHR (Judgment) 23 November 2009, *Radilla-Pacheco v. Mexico*. 
5. REMEDIES AT THE INTER-AMERICAN COURT OF HUMAN RIGHTS

Research on the remedies afforded by the IACtHR in cases of enforced disappearance proves that human rights adjudication can be delivered in various forms and serve different ends. The diverse nature and far-reaching potentiality of the remedial practice of the IACtHR stands in stark contrast to that of its European counterpart. The IACtHR has gradually developed a comprehensive system of remedies, which intends to grasp the full extent of human rights violations in that region.

Unrestrained by domestic law and underpinned by a philosophy of multi-level remedial goals, this Court has devised in the course of more than 20 years a spectrum of remedies that encompasses all five categories of human rights remedies, i.e. restitution, compensation, satisfaction, rehabilitation and guarantees of non-satisfaction. However, its remedial capacity and pronouncements were not built overnight.61 In its initial judgments the Court confined itself to effectively ordering compensation for material and moral damage, coupled with a reticent requirement for investigation.62

5.1. PECUNIARY DAMAGE

Starting from the remedies judgment in Neira Alegria the Court applied its own method by which to calculate for the pecuniary damage sustained by the victim. Essentially, the Court, recognising that restitutio in integrum is not possible when violations of the right to life and physical integrity are found, awards compensation by calculating the actual wage of the victim (or the minimum wage) for the rest of his or her life, based on the life expectancy in his or her country. From this amount, 25% is deducted and then the applicable current interest is applied.63

Pecuniary damage is divided into other sub-categories for its determination. A main category is that of loss of earnings or income, determined by using the aforementioned calculation method. The IACtHR employs a direct causal link between the damage and the pecuniary award it makes, depending on the specific circumstances and the characteristics of the material victim itself.

A second sub-category is "consequential damage", which is orientated at redressing the expenses incurred by persons searching for the disappeared, as well as other expenses direct consequential to the disappearance. Medical expenses for the

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63 IACtHR (Judgment) 19 September 1996, Neira-Alegria et al. v. Peru, paras. 38–49; IACtHR (Reparations and Costs) 27 November 1998, Castillo-Páez v. Peru, para. 75.
members of the family that undergo a period of anguish and anxiety due to the disappearance of their loved one, fall under this category.

Related to this sub-category is the general patrimonial damage that must be redressed. Although not often awarded, it is still a distinct sub-category and its purpose is to redress economic and other loss that a family suffers due to the disappearance. *Castillo-Páez* offers an illustration of this type of reparation: in this case the family of the disappeared had to endure the bankruptcy of the business of the victim’s father and the sale of the family home at less than its market value.\(^\text{64}\) The main point of differentiation of this category of damages is that the causality between the violation and its consequences cannot be clearly established, but can nonetheless be related. In assessing the damage, the Court resorts to equity.

### 5.2. NON-PECUNIARY DAMAGE

The IACtHR has awarded a broader array of remedies and larger sums to a wider circle of individuals for moral damages. In the case law of the Court, monetary awards and acts intended to restore the victims’ dignity can compensate moral damages and wipe out, to the extent possible, the adverse consequences of disappearance. For this reason, it has not confined itself to awarding a fixed amount of money, but it has also devised a complex set of additional remedies that complement the former.

Starting with the monetary awards, it is important to note that the Court bases its decision to award on the presumption that it is inevitable that both material victims and their next-of-kin suffer moral harm, which must be compensated. In fact, the Court’s approach is to create a two-tier system where the disappeared person is afforded greater monetary compensation than the next-of-kin. The table below demonstrates the awards made under this heading from 2008 to 2011.

**Table 2. Monetary compensation awarded for material damage (in USD)**

<table>
<thead>
<tr>
<th>Case</th>
<th>Material victim</th>
<th>Next-of-kin</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Gelman v. Uruguay</em> (2011)</td>
<td>100,000</td>
<td>80,000</td>
</tr>
<tr>
<td><em>Ibsen-Cárdenas and Ibsen-Peña v. Bolivia</em> (2010)</td>
<td>80,000</td>
<td>50,000/40,000</td>
</tr>
<tr>
<td><em>Chitay-Nech et al. v. Guatemala</em> (2010)</td>
<td>80,000</td>
<td>50,000/40,000</td>
</tr>
<tr>
<td><em>Radilla-Pacheco v. Mexico</em> (2009)</td>
<td>80,000</td>
<td>40,000</td>
</tr>
<tr>
<td><em>González et al. (&quot;Cotton Field&quot;) v. Mexico</em> (2009)</td>
<td>40,000/38,000/40,000</td>
<td>11,000–15,000</td>
</tr>
<tr>
<td><em>Anzualdo-Castro v. Peru</em> (2009)</td>
<td>50,000</td>
<td>20,000</td>
</tr>
<tr>
<td><em>Tiu-Tojín v. Guatemala</em> (2008)</td>
<td>80,000</td>
<td>52,000/50,000/60,000</td>
</tr>
<tr>
<td><em>Heliodoro-Portugal v. Panama</em> (2008)</td>
<td>66,000</td>
<td>40,000</td>
</tr>
</tbody>
</table>

\(^{64}\) IACtHR (Reparations and Costs) 27 November 1998, *Castillo-Páez v. Peru*, para. 76.
The Court’s strength does not lie solely in ordering states to pay considerable amounts of money to larger numbers of persons. Far from a strict commodification of the value of the human person, the IACtHR has created a set of non-monetary remedies that extent to fields that were normally occupied by state sovereignty. Up until 2009, the Court’s approach to enforced disappearance cases contained sporadic references to such non-monetary remedies, thus rendering impossible any effort to systematise them.

A significant turn in the Court’s jurisprudence on disappearances came with its judgment on *Trujillo-Oroza v. Bolivia*. The pattern of non-monetary awards that the Court decided in this judgment served as a blueprint for the disappearance judgments that ensued. More specifically, the Court found an obligation of the respondent state to typify enforced disappearance in its penal code; it labelled the right to truth as a remedy in itself; it ordered the publication of the judgment, the provision of training to public law-enforcement personnel and the assignment of the victim’s name to a public school.

In the judgments on disappearances that followed, the Court not only resorted to these remedies again, but it also expanded the list by adding further requirements, including: the creation of webpages for the search of disappeared persons; systematic collection of genetic information into databases; public acts of acknowledgment of responsibility and commemoration of the victim(s); typification of enforced disappearance into penal codes or undertaking legal reforms to bring domestic legislation into conformity with international human rights law; erecting monuments, placing plaques, naming streets or establishing a national day in the memory of the victim(s); medical rehabilitation programmes.

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66 Ibid., para. 114.
67 Ibid., para. 119.
68 Ibid., para. 121.
69 Ibid., para. 122.
72 Ibid., para. 192.
for the next-of-kin,\textsuperscript{81} radio broadcasts of the judgment;\textsuperscript{82} facilitation of access to public archives.\textsuperscript{83}

The previous enumeration of remedies does not suggest that the Court orders all these measures in every case of enforced disappearance. On the contrary, it opts for a differentiated approach depending on the circumstances of each particular case to order particular measures. However, the trend that should be underscored here is the gradual expansion of measures and their systematisation under different headings, which carries an intrinsic value in itself, as will be demonstrated in the following paragraphs.

For the most part of its case law, the Court had not offered a specific taxonomy of the remedies it orders. The basic division was that of monetary remedies for pecuniary and moral damages with an addition of an order for investigation, which was framed in terms of a duty to investigate under the rubric of “other forms of reparation”\textsuperscript{84} or as a measure of satisfaction.\textsuperscript{85} The Court had done a particularly bad job in meshing the requirement of investigation with various headings of reparations.

Before examining the requirement for an investigation under the IACtHR regime, it is important to note that the Court has, quite recently, changed fundamentally the structure of the remedies it orders. This allowed for a clearer understanding of its practice and clarified the legal nature of each remedy. \textit{Anzualdo v. Peru} marks a turning point in the way the Court expounds on the remedies it orders. In this judgment, the Court examined the duty of investigation as a separate issue under the section of reparations. This was followed by the heading on measures of reparation and concluded with monetary redress for the pecuniary and non-pecuniary damage suffered.\textsuperscript{86} In subsequent judgments on enforced disappearances that followed \textit{Anzualdo}, the Court clearly signposted the remedies it ordered and added, where appropriate, separate sub-headings for guarantees of non-repetition and rehabilitation.

Under the Court’s new approach, apart from the classic compensatory awards for material and moral harm, measures of satisfaction entail the publication of the judgment,\textsuperscript{87} the designation of a national day for the disappeared,\textsuperscript{88} the performance

\textsuperscript{81} IACtHR (Judgment) 29 November 2006, \textit{La Cantuta v. Peru}.

\textsuperscript{82} IACtHR (Judgment) 25 May 2010, \textit{Chitay-Nech et al. v. Guatemala}.

\textsuperscript{83} IACtHR (Judgment) 24 November 2010, \textit{Gomes-Lund et al. (Guerilha do Araguaia) v. Brazil}, para. 293; IACtHR (Judgment) 24 February 2011, \textit{Gelman v. Uruguay}.

\textsuperscript{84} IACtHR (Reparations) 22 February 2002, \textit{Bámaca-Velásquez v. Guatemala}, paras. 68, 73.


\textsuperscript{86} IACtHR (Judgment) 22 September 2009, \textit{Anzualdo-Castro v. Peru}, para. 170 et seq.


\textsuperscript{88} IACtHR (Judgment) 16 November 2009, \textit{González et al. ("Cotton Field") v. Mexico}, para. 473.
of an act of public acknowledgement of responsibility, the erection of a monument, and similar measures.

The standardisation of protocols and investigative criteria, the establishment of programmes for the search of disappeared persons, the creation of webpages for the same purpose, the creation of databases containing information for the disappeared, the performance of training in human rights, the adoption of measures for organising, systematising and accessing public documents and prompting the respondent state to ratify the Inter-American Convention on Forced Disappearance of Persons are all measures that fall under the sub-heading of guarantees of non-repetition. Particular attention is also devoted to rehabilitation measures that address the direct medical and psychological needs of persons identified by the Court as having been adversely affected through the perpetration of an enforced disappearance.

Finally, the “life plan” (proyecto de vida) is a notion introduced in Loayza Tamayo v. Peru, as a category of damages clearly distinguishable from loss of (future) earnings or income. It was subsequently considered only once in the case of Cantoral-Benavides v. Peru where the Court awarded a fellowship for advanced or university studies, covering the costs and living expenses of the victim for a degree which would prepare the victim for the profession of his choice. However, it has not been considered again in disappearance cases.

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89 IACtHR (Judgment) 5 July 2004, 19 Tradesmen v. Colombia, para. 8 of operative part; IACtHR (Judgment) 29 November 2006, La Cantuta v. Peru, para. 233; IACtHR (Judgment) 23 November 2009, Radilla-Pacheco v. Mexico, para. 353; IACtHR (Judgment) 24 November 2010, Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil, para. 277.
90 IACtHR (Judgment) 31 January 2006, Pueblo Bello Massacre v. Colombia, paras. 277, 278; IACtHR (Judgment) 16 November 2009, González et al. ("Cotton Field") v. Mexico, para. 471.
91 The reparative measures in González et al. ("Cotton Field") para. 502 et seq. are showcases of this.
92 The Court described the concept of life plan in the reparations judgment: “The concept of a ‘life plan’ is akin to the concept of personal fulfilment, which in turn is based on the options that an individual may have for leading his life and achieving the goal that he sets for himself. Strictly speaking, those options are the manifestation and guarantee of freedom. An individual can hardly be described as truly free if he does not have options to pursue in life and to carry that life to its natural conclusion. Those options, in themselves, have an important existential value. Hence, their elimination or curtailment objectively abridges freedom and constitutes the loss of a valuable asset, a loss that this Court cannot disregard.” IACtHR (Reparations) 27 November 2008, Loayza-Tamayo v. Peru, para. 148.
93 Reparation for the life plan was also considered, but the Court did not accept the claim under this heading, stating that: “the Tribunal maintains that reparation for harm to the life project is not in order when the victim is deceased, since it is impossible to restore the individual’s reasonable expectations of realizing a life project. Consequently, the Court will abstain from giving any further consideration to this point.” IACtHR (Reparations) 3 December 2001, Cantoral-Benavides v. Peru, para. 589.
94 Ibid., para. 80.
5.3. DUTY TO CONDUCT AN INVESTIGATION

The duty to investigate instances of enforced disappearances holds a prominent place in the jurisprudence of the IACtHR, straddling Articles 8(1) and 25(1) of the ACHR. In turn, these articles have been construed by the Court to form part of the right of “access to justice”. In the following paragraphs, I discuss the development of the Court’s case law on this issue and highlight its shortcomings.

Even from its very first pronouncement on Velásquez-Rodríguez the Court considered the investigation of enforced disappearances as a continuing duty incumbent upon states. The Court’s initial construction of the duty to investigate linked it primarily with Articles 1(1) and 2 ACHR. In essence, the understanding by the Court at the time was that the obligation to respect and ensure the rights enshrined in Article 1 ACHR, combined with the obligation to take legislative or other measures in order to give effect to the same rights found in Article 2 ACHR, resulted in the creation of the secondary obligation for the conduct of an investigation. Especially Article 1 ACHR, according to the Court’s opinion, calls for positive measures for the protection and effective realisation of human rights. This entails preventive measures, effective investigation into allegations of violations and reparation for the harm caused. The continuing duty for conducting an investigation must be seen in the light of the violation itself: a situation of a continuous character, which retains the fate or whereabouts of the individual unknown, must be responded to with a measure that is equally continuing, and which seeks to reverse the uncertainty about the individual’s state.

A second observation, relates to the notion of “positive measures”, which in the IACtHR’s jurisprudence, has also developed under the name of “due diligence”, which corresponds to the doctrine of “positive obligations” in the ECtHR’s case law. States within the jurisdiction of the inter-American system are required not only to respect and abstain from interfering with human rights, but must also carry out their responsibility by taking the appropriate measures within their power, to protect

95 IACtHR (Judgment) 29 July 1988, Velásquez-Rodríguez v. Honduras., para. 181: “The duty to investigate facts of this type continues as long as there is uncertainty about the fate of the person who has disappeared. Even in the hypothetical case that those individually responsible for crimes of this type cannot be legally punished under certain circumstances, the State is obligated to use the means at its disposal to inform the relatives of the fate of the victims and, if they have been killed, the location of their remains.”

96 IACtHR (Judgment) 29 July 1988, Velásquez-Rodríguez v. Honduras, para. 166. The second obligation of the states parties is to “ensure” the free and full exercise of the rights recognised by the Convention to every person subject to its jurisdiction. This obligation implies the duty of states parties to organise the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognised by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation. IACtHR (Judgment) 12 August 2008, Heliodoro-Portugal v. Panama, para. 142; IACtHR (Judgment) 24 November 2010, Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil, para. 138.
genuinely and effectively the human rights of individuals coming under their jurisdiction.

Investigation is one such measure which is simultaneously backward and forward-looking: in the former sense it is meant to establish the facts, identifying the perpetrators and clarifying the status of the disappeared. In the latter, it is intended to serve as the leitmotiv of the criminal mechanisms in order for the perpetrators to be tried and sanctioned. Hence, it is intended to have a deterrent effect. It has also been configured as a remedy for victims: for the material victim it is the single most important tool for clarifying his/her whereabouts; for its relatives, it is a means to know the truth about their loved one and to see justice being done, while for society, it serves the purpose of settling accounts with the historical truth by entrenching it in an official process.

A more nuanced approach was adopted later in Durand and Ugarte. There, the Court founded the duty to investigate on the concomitant application of Articles 8(1) and 25(1) ACHR. The Court’s reasoning shifted on two interlinked arguments: since Article 8 ACHR required an impartial and independent adjudicative body, and since such a body was non-existent (thus rendering inexistent any effective recourse), the duty to investigate was found not to have been respected.97 From Durand and Ugarte onwards the Court remained faithful to this interpretation with just one exception: that of Blake v. Guatemala in which the Court considered that Article 8 ACHR had been indeed violated, and that the relatives of the disappeared had a right to have his disappearance and death effectively investigated and those responsible prosecuted.98 However, it rejected the allegation of violation for Article 25 ACHR based on the relatives’ inaction with regard to seizing the authorities of the matter. On this particular issue, Blake is an exception in the Court’s interpretative trail, because in the remaining enforced disappearance cases the same Court has required an ex officio initiation of an investigation, while jointly examining Articles 8(1) and 25(1) ACHR.

For the Court, the conglomerate effect of the provisions relating to due process and remedies are the foundational pillars of the right of access to justice. The same Court has gone so far as to categorise this right as a peremptory norm of international law.99 As a notion, it has been met with resistance in the two other bodies under consideration. However, for the IACtHR, the duty to investigate operates within the framework of this right of access to justice.100 In fact, it was not until the Court handed

97 IACtHR (Judgment) 16 August 2000, Durand and Ugarte v. Peru, para. 130.
100 A. Seibert-Fohr, Prosecuting serious human rights violations (Oxford, Oxford University Press 2009), p. 68: “The right to justice necessarily entails a right to an investigation. Investigation is an indispensable precondition for punishing those held responsible. The right to an investigation is derived from art. 1(1) as well as from arts 8 and 25 and is accordingly considered primarily as a measure of reparation.”
down Anzualdo that the duty to investigate started to be examined as a separate item under the rubric of “access to justice”.

The Court has also considered that the corresponding obligation to investigate and punish those responsible has attained the status of *jus cogens*, owing to the particular gravity of enforced disappearance, the nature of the rights harmed and the prohibition of enforced disappearance.  

Although the Court’s reasoning is opaque, it can be inferred that the *jus cogens* status of the obligation to investigate draws not only upon the primary prohibition itself, but also upon the right of access to justice. The Court’s assessment appears to be premised on the false perception that the *jus cogens* prohibition of enforced disappearance necessarily requires that effective investigation is also vested with the same powerful norm.

In my opinion, such a categorisation by the Court is unwarranted and may very well prove to be a dead letter, thus weakening the normative force of the norm itself. Firstly, the mere baptism of an obligation as a *jus cogens* one does not automatically elevate it to a superior level, nor does it guarantee its respect and performance. It is obvious that the large-scale *de facto* or *de jure* impunity were particularly alarming for the Court. However, the attempt to address this reality cannot be premised on a pronouncement that is more pertinent to theoretical constructions and hierarchies of rules within international law.

Secondly, the labelling of this duty as *jus cogens* is all the more unfortunate, when one bears in mind that the Court has itself given a broad meaning to the obligation to investigate. The latter must be designed and conducted in order to bring perpetrators within the realm of criminal law, which already stretches extensively the ambit of the obligation.

The IACtHR has also developed a set of characteristics for this type of investigations. Hence, it must be conducted *ex officio*, with due diligence and it must be undertaken “in a serious manner and not as a mere formality”. It must also be genuine, impartial, prompt and effective, using all available legal means in its design to determine the truth. As within the European context, it is an obligation of means, not of result. However, the IACtHR considers that, at a minimum, the relatives must be told the victim’s fate and the whereabouts of his or her remains. Concordant to the “access to justice” interpretation, the lack of an investigation has been held to constitute

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102 J. Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights* (Cambridge, Cambridge University Press 2013), p. 297: “During the stage when the Court is monitoring State compliance with its judgment, the human rights violators often have not been brought to justice and continue to threaten those who testified”.

103 IACtHR (Judgment) 29 July 1988, *Velásquez-Rodríguez v. Honduras*, para. 177.


denial of justice, especially if aggravating circumstances surround the case.\textsuperscript{106} Overall, its purpose must be to lead to the identification, capture, trial and eventual punishment of the perpetrators.\textsuperscript{107}

6. CONCLUDING REMARKS

The analysis in this article dealt with the comparative development of the case law on enforced disappearances and focused on the type of remedies afforded to individuals seizing the IACtHR. The importance of the jurisprudence of this Court lies with the fact that it has successfully grappled with issues that do not lend themselves to easy answers, such as the continuous nature of enforced disappearance, the delimitation of the persons that can be considered as victims and the devising of appropriate and effective remedies for them.

The IACtHR has developed a wide array of remedies, giving practical effect to measures that had remained in the sphere of non-binding instruments. Notwithstanding the fact that it also affords monetary compensation, usually at a higher level than its European counterpart, this Court has devised meticulous reparative schemes for enforced disappearances cases. These schemes exemplify the Court’s efforts to move beyond the paradigm of individual justice to address the broader causes underlying violations and to reach wider segments of the population.\textsuperscript{108}


\textsuperscript{107} IACtHR (Judgment) 12 August 2008, \textit{Heliodoro-Portugal v. Panama}, para. 144.

\textsuperscript{108} N. Roht-Arriaza, ”Reparations decisions and dilemmas”, 27(2) \textit{Hastings International and Comparative Law Review}, para. 182.