

INTERNALIZING HUMAN RIGHTS IN LATIN AMERICA: THE ROLE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS SYSTEM

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I. INTRODUCTION

This Article focuses on the phenomenon of internalizing human rights norms within the Inter-American Court of Human Rights system—collectively comprised of the Inter-American Commission on Human Rights (“Commission”) and the Inter-American Court of Human Rights (“Court”).¹ The process of internalizing human rights norms within this system involves such parties as human rights activists, those seeking to remedy wrongs that they acknowledge exist in the society before them, and juridical actors using the powerful institutions of the Inter-American Court of Human Rights system in order to highlight and attempt to stop these practices. The process of internalization necessitates bringing into the open the harms suffered by victims of human rights violations, their families, and their communities, acknowledging the wrongs done to these victims and the impact of these wrongs, and preserving the dignity and core humanity of the victims.

As a preliminary matter, it is important to understand what is meant by “internalizing” human rights. Certainly, human rights are a part of the Commission and Court. However, because these structures, especially the Court, were created through legal apparatuses that are concerned with matters such as jurisdiction and court composition, they are not centered on the many layers of human rights violations included in the terms of the American Convention on Human Rights (“Convention”).² As such, they do not recognize and incorporate the impacts and effects of human rights violations on victims, their families, their communities, and society within the applicable State in general.³ For purposes of this Article, the

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1. Organization of American States, American Convention on Human Rights art. 33, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter American Convention on Human Rights].

2. American Convention on Human Rights, *supra* note 1; Organization of American States [OAS], *Statute of the Inter-American Commission on Human Rights*, O.A.S. Res. 447 (Oct. 1979) (articulating the structure and duties of the Inter-American Commission on Human Rights); OAS, *Statute of the Inter-American Court of Human Rights*, O.A.S. Res. 448 (Oct. 1979) (articulating the structure, duties, and jurisdiction of the Inter-American Court of Human Rights).

3. *See* sources cited *supra* note 2 (explaining the failure to incorporate the effects of human rights violations on victims and their families and communities into the Statutes for the Inter-American Court of Human Rights and Inter-American Commission on Human Rights).

concept of internalizing human rights means that these institutions, particularly the Court, have incorporated the impacts and effects of human rights into their deliberative processes through: (1) measures such as the validation of personal and familial sufferings as a result of human rights violations; and (2) remedies that recognize the true impact of human rights violations at the individual, familial, and societal levels.

Section II of this Article sets out the structural details and legal mandates of the Commission and the Court and explains their relationship within the larger structure of the Organization of American States (“OAS”). Section III discusses the role that the Commission has come to play as an advocate for those who have suffered human rights violations at the hands of a State or State actors. It asserts that, throughout the history of the Commission’s role in relation to the Court, the Commission has become increasingly active in advocating for those who allege substantial human rights violations and ensures that these victims are seen by the Court as having essential humanity as well as legal standing and rights. Section III also argues that the Commission is the proper place for human rights victims, and those who support them, to be heard.

Section IV then examines the jurisprudence of the Court to understand how the Court uses itself as a tool for human rights. This Section argues that the Court has expanded the concept of human rights protections in Latin America to take a holistic and humanity-based view rather than functioning within a formalistic legal structure. This Section asserts that the Court reflects on the reality of human rights violations, their impacts, and the importance of bringing these to light, thus validating the suffering and humanity of victims and also chastising those States and State actors responsible for committing abuses against the populations they control.

Section V concludes by summarizing the arguments and observations in the previous Sections. It reiterates the ways in which the Commission and particularly the Court have acted to internalize human rights protections and promote the understanding of the humanity that is at the core of human rights violations.

II. STRUCTURAL DETAILS

The American Convention on Human Rights (“the Convention”) created both the Commission and the Court⁴ and established the rights that are guaranteed to citizens in member States who ratified the Convention.⁵ The Convention was created as part of the OAS system, and has been an integral part of the human rights apparatus used by the OAS since it was created.⁶ There are currently twenty-five member States to the Convention.⁷ However, not all of these States have

4. American Convention on Human Rights, *supra* note 1, art. 33.

5. *Id.* art. 1.

6. See *Human Rights*, ORG. OF AM. STATES, http://www.oas.org/en/topics/human_rights.asp (last visited Apr. 10, 2012) (discussing the human rights system in the OAS member countries).

7. See *Signatures and Ratifications, American Convention on Human Rights*, INTER-AM. COMM’N H.R., OF AM. STATES, <http://www.cidh.oas.org/basicos/english/Basic4.Amer.Conv.Ratif.htm> (last visited Mar. 24, 2012)

recognized the jurisdiction of the Commission and the Court.⁸ One member State, Trinidad and Tobago, initially signed the Convention but eventually withdrew from its jurisdiction because of differences it had with the Court regarding its use of the death penalty.⁹

Under the terms of the Convention, there is a two-step process for those alleging human rights violations before they can appear before the Court.¹⁰ First, the complainant must bring a claim to the Commission.¹¹ The Commission has several options once it receives a complaint, including declaring the complaint inadmissible, issuing recommendations for potential remedying possibilities to the State involved, or, eventually, sending the complaint to the Court.¹²

In order for a complaint to be admissible, the matter must be one that is within the realm of the Convention or the associated American Declaration of the Rights and Duties of Man.¹³ It must also have been pursued at the domestic level—with some exceptions where this would be impossible—and must not be pending before other international entities, for example the Human Rights Commission.¹⁴ Additionally, there are timing-based requirements within which the complaint must be filed.¹⁵

Many complaints have been filed with the Commission, and it is important to note that not all of these complaints progress to the Court level.¹⁶ Those complaints that do progress through the Commission system can then advance to the Court,¹⁷ where the complaint must pass through initial jurisdictional steps in order to qualify for the Court's jurisdiction.¹⁸ Once this hurdle is overcome, the complaint becomes a case that the Court hears and decides.¹⁹ In this situation, the Commission represents the alleged victims, who may also be represented by

(listing the member States to the Convention).

8. *Id.*

9. *Id.*

10. *See* American Convention on Human Rights, *supra* note 1, art. 61 (stating that the procedures set forth in articles 48 and 50 must be completed before the Court may hear a case).

11. *Id.*; *see also id.* arts. 44, 48 (discussing who may petition the Commission and the procedure the Commission must follow after a petition has been filed).

12. *See id.* arts. 44-51 (stating the Commission's various options after receiving a complaint).

13. *See Statute of the Inter-American Commission on Human Rights, supra* note 2, art. 1 (stating that the human rights according to the Statute are those set forth in the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man).

14. American Convention on Human Rights, *supra* note 1, art. 46.

15. *Id.*

16. *See, e.g.,* INTER-AM. COMM'N H.R., ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 2010 32, 40 (2010) [hereinafter INTER-AM. COMM'N H.R., ANNUAL REPORT 2010] (showing that 1,598 complaints were brought to the Commission in 2010, while only 16 were forwarded to the Court).

17. American Convention on Human Rights, *supra* note 1, art. 61.

18. *Id.* arts. 61-65.

19. *Id.*

independent counsel, and the State represents itself.²⁰ During the conduct of the case hearing, witnesses can be heard and testimony from the Commission level can also be used.²¹

There are many remedy options at the Court's disposal. The Court can find that there are some violations of the Convention, but it is not required to find that all of the alleged violations occurred in order to ultimately find against the State and issue remedies in favor of the victims involved.

III. INTERNALIZING HUMAN RIGHTS: THE COMMISSION

As the first step in the human rights complaint process, the Commission hears a number of complaints that range in what violation of the Convention's terms it alleges.²² Some of these complaints are very complex, while others are seemingly simple. Though the Commission serves as a gatekeeper, it allows certain cases to progress through to the Court.²³

The gatekeeper aspect of the Commission is an important function. The Commission vets out the complaints of human rights violations it receives, determining which violations of the Convention should progress to the Court. Despite sometimes choosing to dismiss a complaint, it does so in a way that is continuously respectful of the gravity of human rights violation claims advanced.

When the Commission decides to advance a complaint through the system, it has many options. The Commission can request that the State involved in the complaint take measures to assist the complainants.²⁴ It can also require the State to take particular measures, such as releasing persons who are detained.²⁵ Furthermore, it can require that the State file follow-up reports at various times in

20. See Inter-Am. Ct. H.R. R.P. 23-24 (stating that the State may have an "Agent" of their choice represent them and the Commission is represented by a "Delegate" chosen by the Commission).

21. See Inter-Am. Ct. H.R. R.P. 51 (stating the rule for the taking of witness testimony during a hearing by the Inter-American Court of Human Rights). Nearly all of the cases before the Court involve the hearing of witnesses. See *Jurisprudence: Decisions and Judgments*, INTER-AM. CT. H.R., <http://www.corteidh.or.cr/casos.cfm?&CFID=232500&CFTOKEN=63798405> (last visited Mar. 26, 2012) (listing the judgments of the Inter-American Court of Human Rights).

22. See *Annual Reports*, INTER-AM. COMM'N H.R., <http://www.cidh.oas.org/annual.eng.htm> (last visited Mar. 28, 2012) (listing the complaints heard before the Commission each year).

23. See INTER-AM. COMM'N H.R., ANNUAL REPORT 2010, *supra* note 16, at 32, 40 (showing that, while the Commission received 1,598 petitions in 2010, it only forwarded 16 to the Court).

24. See, e.g., *Paris Roa v. Chile*, Case 1790, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.37, doc. 20 corr. ¶ 1 (1975); *Ortiz v. Paraguay*, Case 2076, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.43, doc. 21 corr. ¶ 1 (1977); *Ollero v. Argentina*, Case 4326, Inter-Am. Comm'n H.R., Report No. 50/82, OEA/Ser.L/V/II.57, doc. 6 rev. ¶ 1 (1982).

25. See, e.g., *Cochabamba Peasants v. Bolivia*, Case 1798, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.37, doc. 20 corr. ¶ 1 (1975); *Unknown v. Haiti*, Case 1944, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.43, doc. 21 corr. ¶ 1 (1977); *Chase Sardi v. Paraguay*, Case 2006, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.43, doc. 21 corr. ¶ 1 (1977); *Sosa de Forti v. Argentina*, Case 2271, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.47, doc. 13 rev. ¶ 1 (1978).

order to ascertain the progress of the complaint's resolution.²⁶ Other times, the Commission creates specific reports and fact-finding missions, examples of which include the reports on the situation of women in the Ciudad Juarez area of Mexico²⁷ and on the rights of indigenous and tribal communities throughout Latin America.²⁸

Throughout its history, the Commission has become increasingly proactive in advocating for the victims of human rights violations, particularly those who experienced forced disappearance, extra-judicial killings, and torture.²⁹ This, as will be seen, works with and supports the actions taken by the Court to protect victims and to craft holistic remedies in response to the many misfortunes that human rights violations inflict.

Since its inception, the Commission has been prolific in hearing complaints and crafting recommendations that are intended to respect the State while at the same time protecting victims of human rights violations and showing respect for their sufferings. The Commission's reports have internalized this balance and made it a significant hallmark of its practice. Rather than simply functioning as the first step toward the Court, which could easily have happened under the structure set out for the Commission and the Court, the Commission has become a source of human rights validation and protection.

IV. INTERNALIZING HUMAN RIGHTS: THE COURT

A close reading of the Court's jurisprudence provides many insights into the ways in which it has, as an institution, advanced the interests of human rights and the dignity of human rights abuse victims. Throughout the course of its jurisprudence, the Court's decisions have advanced along a path that is increasingly activist, acting as an agent of validation for the sufferings and inherent humanity of victims.

In this sense, activism on the part of the Court represents a positive step

26. "Ache" Indians v. Paraguay, Case 1802, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.43, doc. 21 corr. ¶ 1 (1977); Rice v. Argentina, Case 2450, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.47, doc. 13 rev. ¶ 1 (1978); Romero Eguino v. Bolivia, Case 2720, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.47, doc. 13 rev. ¶ 1 (1978); Stetter v. Guatemala, Case 7378, Inter-Am. Comm'n H.R., Report No. 30/81, OEA/Ser.L/V/II.54, doc. 9 rev. ¶ 1 (1980-1981).

27. INTER-AM. COMM'N H.R., THE SITUATION OF THE RIGHTS OF WOMEN IN CIUDAD JUAREZ, MEXICO: THE RIGHT TO BE FREE FROM VIOLENCE AND DISCRIMINATION, OEA/Ser.L/V/II.117, doc. 44 (Mar. 7, 2003), *available at* <http://www.cidh.org/annualrep/2002eng/chap.vi.juarez.htm>.

28. INTER-AM. COMM'N H.R., INDIGENOUS AND TRIBAL PEOPLES' RIGHTS OVER THEIR ANCESTRAL LANDS AND NATURAL RESOURCES, OEA/Ser.L/V/II, doc. 56/09 (Dec. 30, 2009), *available at* <http://cidh.org/countryrep/Indigenous-Lands09/TOC.htm>.

29. *E.g.*, Cochabamba Peasants v. Bolivia, Case 1798, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.37, doc. 20 corr. ¶ 1 (1975); Paris Roa v. Chile, Case 1790, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.35, doc. 33 corr. ¶ 1 (1975); Valdez v. Chile, Case 1858, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.37, doc. 20 corr. ¶ 1 (1975); Unknown v. Guatemala, Cases 1702, 1748, & 1755, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.37, doc. 20 corr. ¶ 1 (1975).

toward the understanding of what human rights violations mean beyond the scope of legal punishment. Thus, as a general trend, this Article argues that the Court has steadily internalized human rights through validation of human rights claims, acknowledging the sufferings involved in human rights violations. Further, the Court has crafted alternative remedies to traditional monetary damages that honor the victims in a holistic sense and protect society from such violations in the future.

Below, this Part dissects the procedures and judicial steps used by the Court in its internalization of human rights. These procedures and judicial steps range from the seemingly mundane, such as handling preliminary objections to the case and the Court's jurisdiction over it, to the extraordinary, such as the crafting of non-monetary remedies that place the victim at the heart of the remedy.

A. Preliminary Matters

After a case is sent to the Court, States may raise preliminary objections relating to any aspect of the complaint made in the course of the case. Throughout the Court's history, these claims have typically involved jurisdictional issues and questions of whether the requisite exhaustion of domestic remedies step has been fulfilled.³⁰ With very few exceptions, preliminary objections raised by the States involved in cases before the Court have either been dismissed or deemed inapplicable in the case.³¹ Even where a preliminary objection has been allowed to stand, in all but a few cases,³² the Court has continued to a finding on the merits and has incorporated the State's concerns into this finding rather than using them as a ground to dismiss the case altogether.³³ Thus, where there are potentially serious flaws in the case, the Court is willing to decide on them but usually in the context of the full case rather than at the preliminary objection phase,³⁴ thereby internalizing the concept of needing to examine human rights cases in their entirety rather than dismissing them outright. This suggests that the Court has realized the importance of getting to the crux of the claims in human rights cases rather than allowing all but the most severe threshold issues to preclude an examination on the merits.

In addition to raising preliminary objections, as an initial matter the Court can

30. *E.g.*, Velásquez-Rodríguez v. Honduras, Preliminary Objections, Inter-Am. Ct. H.R. (ser. C) No. 1, ¶ 20 (June 26, 1987); Fairén-Garbi & Solís-Corrales v. Honduras, Preliminary Objections, Inter-Am. Ct. H.R. (ser. C) No. 2, ¶ 78 (June 26, 1987); Godínez-Cruz v. Honduras, Preliminary Objections, Inter-Am. Ct. H.R. (ser. C) No. 3, ¶ 81 (June 26, 1987); Gangram-Panday v. Suriname, Preliminary Objections, Inter-Am. Ct. H.R. (ser. C) No. 12, ¶ 28 (Dec. 4, 1991).

31. *See* cases cited *supra* note 30.

32. *See* Maqueda v. Argentina, Preliminary Objectives, Inter-Am. Ct. H.R. (ser. C) No. 18 (Jan. 17, 1995) (dismissing the case because the human rights that had been violated were restored).

33. *See* cases cited *supra* note 30.

34. *See* Genie-Lacayo v. Nicaragua, Preliminary Objectives, Inter-Am. Ct. H.R. (ser. C) No. 21 (Jan. 27, 1995) (deciding to resolve a preliminary objection relative to the non-exhaustion of internal jurisdictional remedies together with the merits of the case-in-chief).

issue provisional measures geared toward protecting those involved in the particular claim. Typically, these measures are requested when there is an allegation of threatening or harassing conduct involving those who are part of the case and/or their families/personal interests.³⁵ At times, these measures are also sought when there has been actual violence involving the claimant/his family or, in at least one instance, where an attempt was made on the life of a key party to the claim.³⁶

It is rare for a State to directly oppose or openly seek to defy an order of the Court for provisional remedies. However, States have been reluctant to provide the Court with information on the protective measures it has taken in response to the Court order.³⁷ And, in some cases, the Court has been required to issue several rounds of protective measures, each more explicit than the other, so as to offer the person(s) at issue comprehensive and meaningful protection from harm in order for them to actively participate in claims before the Court.³⁸

Thus, the Court has used its ability to issue provisional measures in order to protect those who have already suffered human rights violations or those who can attest to these violations. In so doing, the Court has internalized its willingness to use this ability and also to use this ability as often as necessary in order to ensure that meaningful measures are crafted. In itself, this is a way of making the protection of knowledge, truthfulness, and life part of the institution of the Court.

B. Friendly Settlement Attempts

The Commission and the Court both stress the importance of attempting friendly settlement throughout the litigation process.³⁹ In earlier cases, friendly settlement was not as much of a factor in the outcome; however, more recent cases, particularly those involving similar issues alleged against the same regimes, have seen an increase in the use of friendly settlement.⁴⁰

35. “White Van” (Paniagua-Morales et al.) v. Guatemala, Merits, Inter-Am. Ct. H.R. (ser. C) No. 37, ¶ 54 (Mar. 8, 1998); Gomez-Paquiyaui Brothers v. Peru, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 34 (July 8, 2004); Fermín Ramírez v. Guatemala, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 126 (June 20, 2005); Ríos et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 194 (Jan. 28, 2009).

36. See García-Prieto et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 168 (Nov. 20, 2007) (ordering the protection of family members of the deceased who are bringing the claim).

37. Ríos et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 194, ¶ 416 (Jan. 28, 2009) (chastising Venezuela for not being more forthcoming about their methods to protect the freedom of expression).

38. *Id.* ¶¶ 399–401.

39. Organization of American States, *American Convention on Human Rights, ‘Pact of San Jose,’ Costa Rica*, art. 48 (Nov. 22, 1969), available at <http://www.unhcr.org/refworld/docid/3ae6b36510.html>.

40. *E.g.*, Bulacio v. Argentina, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 100, ¶ 7 (Sept. 18, 2003); Ituango Massacres v. Colombia, Preliminary Objection, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 148, ¶ 7 (July 1, 2006); Ximenes-Lopes

While the Court has encouraged the use of friendly settlement in whole or in part—such as where the State will admit to guilt for certain forms of violation of the Convention but will not accept or concede to the veracity of certain facts as a matter of law—it has not entirely endorsed the terms of the acknowledgements generated without providing additional information on the ways in which the State has committed violations.⁴¹ Indeed, these instances have typically elicited displeasure from the Court in that the States at issue attempt to settle the matter without public disclosure and also without full acceptance of the impacts and results of their human rights violations.⁴²

In this way, the Court has acted to protect human rights and the interests of victims of human rights violations by ensuring that States do not use friendly settlements as a method of hiding or minimizing the true nature of the violations committed. Additionally, the Court's issuance of a larger decision that includes but does not simply rubberstamp the parameters of the settlement ensures that the truths of what was done to the victims of human rights violations and to society in general are made public and are acknowledged. Here, the Court has acted to internalize its role as the ultimate arbiter of human rights violations in the Latin American context and also as the entity that is capable of at once protecting citizens and monitoring the attempts of States to either accept responsibility for their actions or neglect to do so.

C. Presumptions

Forced disappearances of persons and gross, systematic human rights violations have been central themes throughout the history and jurisprudence of the Court. Indeed, the overwhelming majority of the cases heard by the Court have involved some element of forced disappearance perpetuated by a State or attributable to State actors.⁴³ On several occasions, the Court went so far as to recognize that the prevalence of forced disappearance within a State at a particular time was so intense as to create a presumption of forced disappearance where the possibility had been raised.⁴⁴

In much the same way, the Court created a near-presumption of human rights violations when paramilitary groups were implicated in cases brought against Colombia.⁴⁵ This near presumption extended to the use of forced disappearances as

v. Brazil, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 149, ¶ 8 (July 4, 2006); *Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 150, ¶ 47 (July 5, 2006).

41. *Bulacio*, Inter-Am. Ct. H.R. (ser. C) No. 100, ¶¶ 107-09; *see Ximenes-Lopes*, Inter-Am. Ct. H.R. (ser. C) No. 149, ¶ 426 (discussing in judgment the importance of States' admittance of guilt).

42. *Bulacio*, Inter-Am. Ct. H.R. (ser. C) No. 100, ¶¶ 107-09.

43. *Jurisprudence: Decisions and Judgments*, *supra* note 21.

44. *Godínez-Cruz v. Honduras*, Merits, Inter-Am. Ct. H.R. (ser. C) No. 5, ¶ 84 (Jan. 20, 1989); *Blake v. Guatemala*, Merits, Inter-Am. Ct. H.R. (ser. C) No. 36, ¶ 32 (Jan. 24, 1998); *Anzualdo-Castro v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 202, ¶ 2 (Sept. 22, 2009).

45. *Nineteen Tradesmen v. Colombia*, Merits, Reparations, and Costs, Inter-Am. Ct. H.R.

well as extra-judicial killings against civilians.⁴⁶

From a legal perspective, the use of presumptions is significant, given that it reduces the burden that is placed on the claimant and the Commission in order to bring and substantiate a claim before the Court. Furthermore, it demonstrates a way in which the Court holds a State accountable for violations, both for that case specifically as well as governmental and societal practices as a whole. This presumption of human rights violations serves as another example of how the Court has internalized human rights. By its acknowledgment of these practices, it allows victims to benefit by not having to prove practices that, while often difficult to establish, are well known to have existed at an endemic level.

D. Personal/Familial Validations

One of the most striking features of the Court's jurisprudence is the impact of the human rights violations suffered by individuals and their families. By their very nature, violations of human rights are inherently personal and impact the integrity and humanity of the victim. As the cases before the Court have demonstrated, these impacts also extend to the family members of the victims—ranging from deep personal and emotional loss to the loss of economic and social benefits that were derived from the status of the victim to even the victimization of the family members themselves.⁴⁷

The Court's handling of victims and their families has been a delicate balance of respect and exposure of the harms suffered. Respect is palpable in the presentation of the facts involved in each case, which go beyond merely alleging a violation of law and sufficient elements to prove it but, instead, state the full nature of the violation suffered.⁴⁸ This is done in a way that is not sensational or salacious, but rather provides the victims with recognition and validation of their sufferings.⁴⁹ At the same time, the exposure of the harms suffered is not merely

(ser. C) No. 109, ¶ 2 (July 5, 2004); *Mapiripán Massacre v. Colombia, Merits, Reparations, and Costs*, Inter-Am. Ct. H.R. (ser. C) No. 134 (Sept. 15, 2005); *Pueblo Bello Massacre v. Colombia, Merits, Reparations, and Costs*, Inter-Am. Ct. H.R. (ser. C) No. 140, ¶ 2 (Jan. 31, 2006); *Ituango Massacres*, Inter-Am. Ct. H.R. (ser. C) No. 148, ¶ 2.

46. *See* cases cited *supra* note 45.

47. *See, e.g.,* *Aloeboetoe et al. v. Suriname, Reparations and Costs, Judgment*, Inter-Am. Ct. H.R. (ser. C) No. 15, ¶¶ 18, 28, 88 (Sept. 10, 1993) (finding that family members of the victims who were killed suffered severe psychological harm and giving reparations to the family members of the victims based on the estimated income that the victims would have received during their lives); *Neira-Alegria et al. v. Peru, Reparations and Costs, Judgment*, Inter-Am. Ct. H.R. (ser. C) No. 29, ¶¶ 13, 16, 49 (Sept. 19, 1996) (Commission alleged that the family members of the victims suffered economic and psychological damages, and the Court ordered the government to pay reparations to the victims' families); *Garrido & Baigorria v. Argentina, Reparations and Costs, Judgment*, Inter-Am. Ct. H.R. (Ser. C) No. 39, ¶ 56 (Aug. 27, 1998) (ordering reparations be paid to victims' families); *Molina-Theissen v. Guatemala, Reparations and Costs, Judgment*, Inter-Am. Ct. H.R. (ser. C) No. 108, ¶ 37(9-13) (July 3, 2004) (acknowledging that the victims' families suffered psychological and economic damages).

48. *See* cases cited *supra* note 45.

49. *Id.*

clinical or purely legalistic.⁵⁰ Instead, the Court's decisions fully present the facts of human rights violations as emotive facts that altered the victims and their families in myriad ways.⁵¹

One of the ways in which the Court has done this is through the use of physical and mental evaluations of victims. These evaluations are used not only as corroboration of the facts alleged but also to better understand the physical and mental impacts on the victims and their families at a holistic level, such as the impact of having a disappeared child on the parents and siblings of the victim.⁵² The Court's practices have internalized the expression of concrete impacts of crimes on their victims and, in so doing, holds the State/State actors involved to a standard of accountability that goes beyond criminal and into the realm of humanity. This has resulted in the internalization of both these practices and their importance within the Court's accepted practices and jurisprudence.

Another key area of personal validation used by the Court is for those who are marginalized in society, particularly the very poor, indigenous communities and individuals, criminals, and political prisoners. These are voices that many regimes have sought to silence or discount throughout the course of the Court's history, and yet the Court has successfully validated their victimization and its impact in a way that defies these attempts. For example, the Court has successfully brought to light the human rights violations committed against those who are imprisoned in a variety of States.⁵³ It has also recognized the human rights violations committed against rural—and often indigenous—communities based on the allegation of subversive activities or alliances or simply because of their ethnic identity.⁵⁴

50. *Id.*

51. *Id.*

52. *Id.*

53. *See* Neira-Alegria et al., Inter-Am. Ct. H.R. (ser. C) No. 21, ¶ 60 (Jan. 19, 1995) (requiring States to ensure that prisoners live in conditions compatible with their personal dignity); *Durand & Ugarte v. Peru*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 68, ¶ 78 (Aug. 16, 2000) (requiring States to treat their prisoners with “due respect regarding the inherent dignity of mankind”); “Juvenile Reeducation Institute” v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 112, ¶¶ 134.3-134.17 (Sept. 2, 2004) (finding that the State committed many violations of prisoners' rights); *Lori Berenson-Mejia v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 119, ¶ 102 (Nov. 25, 2004) (declaring that States must treat prisoners in a manner that upholds their fundamental rights).

54. *See* Aloboetoe et al. v. Suriname, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 15, ¶¶ 2, 51 (Sept. 10, 1993) (finding that human rights violations were committed against a rural community based on the allegation of subversive alliances); *Moiwana Village v. Suriname*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 124, ¶ 122 (June 15, 2005) (stating that it is a human rights violation to forcibly remove indigenous peoples from their traditional land); *Yatama v. Nicaragua*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 127, ¶¶ 110, 218-19 (June 23, 2005) (finding a human rights violation where indigenous peoples were prevented from participating in an election); *Ituango Massacres v. Colombia*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148, ¶¶ 110, 426 (July 1, 2006) (finding a human rights violation when inhabitants of a rural village were massacred due to their alleged affiliation with guerilla groups).

Further, the Court has been particularly solicitous of human rights violations committed against or which affect children and young adults.⁵⁵ In this context, the Court has recognized and validated the wrongfulness of violations committed against children, such as in the *Juvenile Reeducation Institute* case in Paraguay, in which the depravity of the conditions and treatment of children in a detention center were brought to light and condemned by the Court.⁵⁶ The Court has also recognized and validated the impact of disappearances and killings of parents, siblings, or other family members on children.⁵⁷ These impacts have ranged from the immediate emotional toll to the inability of children to complete a basic education or to pursue more advanced study because of the economic impact on the family.⁵⁸

The recognition and inclusion of marginalized and easily victimized communities and individuals is a way in which the Court has internalized their importance, their need for special protection and recognition, and their having suffered targeted human rights violations that are intended to erase their dignity and, in some cases, their existence. Thus, the Court has validated its role as a source of protection as well as legal interpretation.

E. Findings of Legal Violations

The Court has used the Convention to craft violations of human rights as a legal matter—these findings in themselves are quite important from a jurisprudential standpoint and, additionally, they provide a foundation upon which the Court crafts remedies. The most common violations of the Convention are violations of the obligation to respect rights;⁵⁹ the right to life;⁶⁰ the right to humane treatment;⁶¹ the right to personal liberty;⁶² the right to a fair trial;⁶³ the

55. *See* Villagran-Morales et al. v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶¶ 189, 253 (Nov. 19, 1999) (holding that a systematic pattern of aggression against children carried out by State security forces violated the American Convention on Human Rights); Bulacio v. Argentina, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 100, ¶¶ 3, 79 (Sept. 18, 2003) (deciding that Argentina violated the American Convention on Human Rights when the Federal Police detained over eighty people and a minor died as a result of being beaten while detained); Molina-Theissen v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 106, ¶ 40 (May 4, 2004) (stating that Guatemala committed human rights violations where children were abducted, killed, tortured, and raped pursuant to a State policy); Gómez-Paquiyaui Brothers v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 67 (July 8, 2004) (finding a human rights violation where two boys were tortured and killed pursuant to a State policy to execute terrorists).

56. “*Juvenile Reeducation Institute*” v. Paraguay, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 112 (Sept. 2, 2004).

57. *See* cases cited *supra* note 53.

58. *See* cases cited *supra* note 53.

59. American Convention on Human Rights, *supra* note 1, art. 1.

60. *Id.* art. 4.

61. *Id.* art. 5.

62. *Id.* art. 7.

63. *Id.* art. 8.

rights of the family;⁶⁴ the rights of the child;⁶⁵ the freedom of movement and residence;⁶⁶ and the right to judicial protection.⁶⁷ As will be discussed below, these rights have been the source of a combination of remedies that range from monetary compensation to recognition of the violations that were committed.

Furthermore, in order to fully recognize the gravity and extent of the human rights violations committed in certain cases, the Court has invoked the Inter-American Convention on the Forced Disappearance of Persons,⁶⁸ Inter-American Convention to Prevent and Punish Torture,⁶⁹ and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women.⁷⁰ These violations are all examples of the Court not only using the terms of the Convention in order to craft a traditional form of remedy, but also of internalizing the violation as a method of providing a more meaningful finding of State responsibility for the victims and for society.

The legal violations assessed by the Court have implicated certain provisions of the State's legal code and its application, particular pieces of State legislation, or even the State's constitution.⁷¹ When the Court makes such findings, it typically recommends that these domestic provisions be changed in order to ensure conformity with the Convention's requirements.⁷² In addition, the Court has repeatedly found that amnesty laws, created by certain States to absolve former regime members from criminal prosecution in exchange for truthful information, cannot be considered legally valid where they would condone violations of the Convention itself.⁷³ Again, this is an institutional method of protecting societies

64. *Id.* art. 17.

65. American Convention on Human Rights, *supra* note 1, art. 19.

66. *Id.* art. 22.

67. *Id.* art. 25.

68. Organization of American States, Inter-American Convention on Forced Disappearance of Persons, June 9, 1994, O.A.S.T.S. No. 60, 33 I.L.M. 1429 [hereinafter Inter-American Convention on Forced Disappearance of Persons], *available at* <http://www.oas.org/juridico/english/treaties/a-60.html>.

69. Organization of American States, Inter-American Convention to Prevent and Punish Torture, Dec. 9, 1985, O.A.S.T.S. No. 67 [hereinafter Inter-American Convention to Prevent and Punish Torture], *available at* <http://www.oas.org/juridico/english/treaties/a-51.html>.

70. Organization of American States, Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, June 9, 1994, 33 I.L.M. 1534.

71. *See, e.g.*, Baena-Ricardo v. Panama, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 61, ¶ 11 (Nov. 18, 1999) (showing constitutional violation); Bámaca-Velásquez v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 70, ¶ 136 (Nov. 25, 2000); Barrios Altos v. Peru, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 75, ¶ 2 (Mar. 14, 2001); Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79, ¶ 26 (Aug. 31, 2001).

72. *See* Baena-Ricardo v. Panama, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 61, ¶ 8 (Nov. 18, 1999) (recommending conformity with Convention).

73. *See* Caballero-Delgado & Santana v. Colombia, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 22, ¶ 56 (Dec. 8, 1995); Loayza-Tamayo v. Peru, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 33, ¶ g (Sept. 17, 1997) (referring to State's amnesty law); Barrios Altos v. Peru, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 75, ¶ 1 (Mar. 4, 2001) (abrogating amnesty laws in conflict with Convention); Almonacid-Arellano v. Chile, Preliminary

from attempts to hide or validate the wrongful acts of State actors in exchange for information.

F. Monetary Remedies

The Court has consistently awarded monetary damages to direct victims of human rights violations and the victims' families.⁷⁴ These damages fall into several categories. The two primary categories are pecuniary and non-pecuniary damages.⁷⁵ Additionally, the Court has awarded moral damages both to direct victims and to their families.⁷⁶

Throughout the course of its jurisprudence, the Court's methodology for determining damage awards has become highly sophisticated. Indeed, a survey of the Court's jurisprudence over time demonstrates the incorporation of complex financial calculations and determinations within the standard remedies used by the Court.⁷⁷ Part of this sophistication stems from the utilization of an economic analysis to balance personal sufferings with more tangible, realistic concepts such as probable future earnings prior to victimization.⁷⁸ Thus, the Court has internalized a custom and method of determining monetary remedies that moves beyond the assertions of the parties and instead looks deeper into the forms of damage that give rise to monetary damages.

G. Remedies of Recognition

In many of the Court's decisions, it is noticeable that the healing and dignifying powers of remedies are to be found in the non-monetary damages awarded. The Court has been consistent in its use of non-monetary remedies in order to bring about a comprehensive and meaningful remedy that reflects the full nature of the human rights violations committed against individuals, their families,

Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 154, ¶ 49 (Sept. 26, 2006) (abrogating amnesty laws in conflict with Convention).

74. Katya Salazar & Thomas Antkowiak, *Victims Unsilenced: The Inter-American Human Rights System and Transitional Justice in Latin America*, DUE PROCESS LAW FOUNDATION 19 (2007) (large monetary damages to victims).

75. *See generally Jurisprudence: Decisions and Judgments, supra* note 21 (showing the range of monetary and non-monetary damages used by Court).

76. *See* Garrido and Baigorria v. Argentina, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 39, ¶ 15(2) (Aug. 27, 1998) (awarding moral damages); *accord* Loayza-Tamayo v. Peru, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 42, ¶ 124 (Nov. 27, 1998) (awarding moral damages to next of kin); Castillo-Páez v. Peru, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 43, ¶ 69 (Nov. 27, 1998); Suárez-Rosero v. Ecuador, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 44, ¶ 15(2) (Jan. 20, 1999).

77. *See generally Jurisprudence: Decisions and Judgments, supra* note 21 (highlighting range of financial remedies used by Court).

78. *See* Garrido and Baigorria, Inter-Am. Ct. H.R. (ser. C) No. 39, ¶ 48 (awarding compensation comprised of both expenses and loss of earnings).

their communities, and society as a whole.⁷⁹ For the purposes of this Article, these non-monetary remedies are referred to as “remedies of recognition” because they recognize the full scope of the impacts that human rights violations involve.⁸⁰ While monetary remedies do recognize some measure of these impacts, they are unable to get to the crux of the injustice and arbitrary nature of human rights violations in the same way that remedies of recognition can. Within the context of remedies of recognition, there are several key sub-categories, namely: (1) public placement of the victims and the violations; (2) health as a remedy; and (3) information as a remedy.

1. Public Placement of the Victims

The most prevalent forms of human rights violations have involved forced disappearances of persons or community members and extra-judicial killings.⁸¹ The uncertainty surrounding these forced disappearances is particularly concerning. The direct victims of these crimes are removed from society, and their exact fate is unknown. They become an invisible part of the community and particularly of the lives of their family members.⁸² The State has asserted its power over the individual and the community in these instances and has claimed the ability to take away an individual without recourse or responsibility.⁸³

Torture is another recurring human rights violation found by the Court in many States and communities.⁸⁴ Similar to forced disappearances, torture is done in the private confines of the State and involves the taking of an individual from his ordinary life and community and forcing him to exist at the whim of the State.⁸⁵ After the State inflicts the most grotesque acts of torture, it leaves the victim with no recourse other than the mercy of the torturers.⁸⁶

All of these acts involve the removal of the victims from their families and communities, whether for a limited time or indefinitely.⁸⁷ The idea of public placement of the victims is to flip this relationship of the State vis-à-vis the victim

79. See Thomas M. Antkowiak, *Remedial Approaches to Human Rights Violations: The Inter-American Court of Human Rights and Beyond*, 46 COLUM. J. TRANSNAT'L L. 351, 365 (2008), available at <http://www.uchastings.edu/faculty-administration/faculty/roht-arriaza/class-website/docs/reparations/JTLremedies-1.pdf> (concerning non-monetary remedies).

80. See *id.* at 378 (“Recognition of Responsibility and Apologies”).

81. See generally Inter-American Convention on Forced Disappearance of Persons, *supra* note 68 (highlighting the scope of the problem of disappeared persons).

82. See cases cited *supra* note 45 (regarding the impact of forced disappearances on victim’s family members and their inability to determine whether the disappeared person will return).

83. See generally *supra* note 21 (defining forced disappearance).

84. See generally Inter-American Convention to Prevent and Punish Torture, *supra* note 69 (highlighting scope of torture).

85. *Preventing Torture: Examples of Cases from the Inter-American Court of Human Rights*, INTER-AM. CT. H.R., <http://www.ircr.org/Default.aspx?ID=2744> (last visited Mar. 25, 2012) (summarizing torture cases of the Inter-American Court of Human Rights).

86. *Id.*

87. *Id.*

and require that the State publicly honor and recognize the victims in an indelible way.⁸⁸

There are many examples of public placement of victims remedies ordered by the Court, and such remedies depend on the context of the case.⁸⁹ In some instances, particularly where there have been large-scale abuses, the Court has ordered that the State erect public monuments in honor of the victims.⁹⁰ This was poignantly required in *La Cantuta v. Peru*, where a disappeared university professor and his students were commemorated with a monument entitled “The Crying Eye.”⁹¹ The Court frequently orders the State to publicly display plaques with descriptions of the victim and the acts committed against her.⁹² Indeed, in *Valle-Jaramillo v. Colombia*, which involved a lawyer who was targeted for his human rights work, the Court ordered that the plaque be placed inside the courthouse as a reminder of his work.⁹³ Renaming of prominent streets in the appropriate city is another remedy that the Court has used to ensure that the victim and the place where she was removed are both made public as a matter of recourse.⁹⁴ Also, the Court in one instance ordered that a State create a national day of commemoration for disappeared children.⁹⁵

In several cases where the victims of human rights abuses were children, the Court has ordered that schools either be renamed for them or be built and then

88. See *Barrios Altos v. Peru*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 87, ¶ 44(f) (Nov. 30, 2001) (erecting public monument as form of reparation); see also *Plan de Sánchez Massacre v. Guatemala*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 116, ¶ 91(c) (Nov. 19, 2004); *Moiwana Community v. Suriname*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 124, ¶ 197(d) (June 15, 2005).

89. See generally *Jurisprudence: Decisions and Judgments*, supra note 21.

90. See cases cited supra note 88.

91. *La Cantuta v. Peru*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 162, ¶ 61(a) (Nov. 29, 2006) (reparation in form of a public memorial).

92. See *Molina-Theissen v. Guatemala*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 108, ¶ 88 (July 3, 2004) (placing a plaque in remembrance of victim); *Nineteen Traders v. Colombia*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 109, ¶ 71(j) (July 5, 2004) (requesting a plaque as reparation); *Ituango Massacres v. Colombia*, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148, ¶ 111(e)(1) (July 1, 2006) (requesting a monument as reparation); *Valle-Jaramillo v. Colombia*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 192, ¶ 227(c)(2) (Nov. 27, 2008) (installing plaque in courthouse as reparation).

93. See *Valle-Jaramillo et al. v. Colombia*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 192, ¶ 227(c)(2) (Nov. 27, 2008) (installing plaque in courthouse as reparation).

94. See *Baldeón-García v. Peru*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 147, ¶ 170(d)(4) (Apr. 6, 2006) (naming of street as reparation); see also *Servellón-García et al. v. Honduras*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 152, ¶ 199 (Sept. 21, 2006); *Chitay Nech v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 212, ¶ 249 (May 25, 2010) (designating street, square, school, town hall, or center with the name of victim).

95. *Serrano-Cruz Sisters v. El Salvador*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 120, ¶ 163(d)(ii) (Mar. 1, 2005) (designating a day of dedication).

named for them.⁹⁶ This was the case in *Contreras v. Ecuador*, where the young victims were disappeared during a recognized time of military conflict within Ecuador.⁹⁷ The Court has also ordered that scholarships be established, not only for the children or minor siblings of victims of human rights violations—who would otherwise be unable to afford school without the missing parent or family member—but also as a general matter in the name of particular individual.⁹⁸ When certain communities are targeted for systematic violence—such as the findings of systematic sexual violence against women and girls in Ciudad Juarez, Mexico⁹⁹—the Court has also required the establishment of educational training programs for potential victims.¹⁰⁰

Additionally, the Court has ordered several remedies that place the victim in the eyes of the public, but that are less permanent than the other remedies discussed in this sub-category. One such remedy is the requirement that the State produce a video documentary on the life of the victim and the victim's work,¹⁰¹ as in *Manuel Cepeda-Vargas v. Colombia*. A more common requirement is that the State, through an appropriately high-ranking State actor, publicly apologize to the family and/or community of the victim and publicly acknowledge State responsibility for the human rights violations that were committed by the State.¹⁰²

96. See *Gómez-Paquiyaqui Brothers v. Peru*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 236 (July 8, 2004) (naming a school after victims); see also *Baldeón-García v. Peru*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 147, ¶ 205 (Apr. 6, 2006); *Contreras v. El Salvador*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 232, ¶ 207 (Aug. 31, 2011).

97. See *Contreras v. El Salvador*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 232, ¶ 207 (Aug. 31, 2011) (naming school after child victims).

98. See *Barrios Altos v. Peru*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 87, ¶ 43(a) (Nov. 30, 2001) (granting scholarships to beneficiaries of victim); see also *Cantoral-Benavides v. Peru*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 88, ¶ 67(b) (Dec. 3, 2001) (considering educational costs in reparation); *Myrna Mack-Chang v. Guatemala*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 101, ¶ 43(a) (Nov. 25, 2003); *Nineteen Tradesmen v. Colombia*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 109, ¶ 72(g) (July 5, 2004) (considering educational costs in reparation).

99. *González (“Cotton Field”) v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205 (Nov. 16, 2009) (holding that there appeared to be systematic “extreme” sexual violence).

100. *Id.* ¶ 259 (establishing educational training programs for victims).

101. See *Manuel Cepeda-Vargas v. Colombia*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 213, ¶ 226 (May 26, 2010) (producing video documentary on life and career accomplishments of victim); accord *Contreras v. El Salvador*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 232, ¶ 209 (Aug. 31, 2011) (producing video documentary to inform society about disappeared children).

102. See *Cantoral-Benavides v. Peru*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 88, ¶ 66 (Dec. 3, 2001) (issuing public apology); see also *Durand & Ugarte v. Peru*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 89, ¶ 39(b) (Dec. 3, 2001); *Tibi v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 114, ¶ 76(a) (Sept. 7, 2004) (ordering official acknowledgement of victim's innocence); *Girls Yean & Bosico v. Dominican Republic*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 235 (Sept. 8, 2005)

This represents an important moment in the process of healing and recognition, although it is not as permanent for future generations or for the current members of the community as some of the other remedies crafted by the Court.

2. Health as a Remedy

It is perhaps simplistic to observe that those who have suffered torture or ill-treatment at the hands of the State will also suffer from physical effects that continue on long after their torture has stopped. As the cases before the Court demonstrate, some of these effects can be handled through basic medical attention and medication, while others have produced life-long conditions that will require constant treatment and monitoring.¹⁰³ The Court has been a consistent champion of the mental health needs of those who have suffered torture and ill-treatment.¹⁰⁴ Indeed, the mental health conditions of these victims can often be far more impacted and altered than the physical conditions of the victims.¹⁰⁵

Further, just as forced disappearances and other forms of human rights violations impact the families and communities of the victims, so too do these violations impact the physical and mental health of the families and communities involved.¹⁰⁶ The Court has been consistent in its investigation of the physical and mental health impacts of human rights violations on families and communities in order to determine what is needed to address these issues from a medical point of view.¹⁰⁷ For example, a mother whose son has disappeared might suffer physical maladies as a result of stress and might need medical treatment as well as medication.¹⁰⁸

(ordering the State to publish the opinion in the official gazette).

103. *Twelve Saramaka Clans v. Suriname*, Expert Witness, Robert Goodland Affidavit, Inter-Am. Ct. H.R. (ser. C) No. 12.338, ¶¶ 59-64 (May 2, 2007) (showing lifelong health effects on victims).

104. *Cantoral-Benavides v. Peru*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 88, ¶ 66 (Dec. 3, 2001) (issuing a public apology); *Durand and Ugarte v. Peru*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 89, ¶ 39(b) (Dec. 3, 2001); *Tibi v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 114, ¶ 76(a) (Sept. 7, 2004); *Girls Yean & Bosico v. Dominican Republic*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Am. Ct. H.R. (ser. C) No. 130, ¶ 235 (Sept. 8, 2005) (addressing mental health damages of victims).

105. *See generally* *Plan de Sánchez Massacre v. Guatemala*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 116 (Nov. 19, 2004) (highlighting extent of mental health reparations).

106. *See Cantoral-Benavides v. Peru*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 88, ¶ 66 (Dec. 3, 2001) (highlighting the extent of mental reparations, focusing on the mental harm to surviving family members).

107. *See* Karla I. Quintana Osuna, *Recognition of Women's Rights Before the Inter-American Court of Human Rights*, 21 HARV. HUM. RTS. J. 301, 301-12 (2008) (summarizing physical and mental health reparations through case study).

108. *See, e.g., Cantoral-Benavides v. Peru*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 88, ¶ 35 (Dec. 3, 2001) (explaining that a victim's mother required physical and psychiatric care relating to the wrongful detention of her son).

With these physical and mental impacts in mind, the Court has crafted remedies that specifically recognize the importance of health as a remedy in trying to holistically address and heal the wounds of human rights violations. In terms of physical health, the Court has ordered that victims and/or their families receive particular treatments for health-related issues connected to the human rights violations and that these treatments, including medications, be available to the victims free of charge.¹⁰⁹ Some Court decisions require that these services be made available to the victim for the duration of her life, while others require that the services be made available until they are no longer needed, as determined by medical professionals.¹¹⁰ Further, for those in prison, the Court has issued decisions that require proper medical treatment, especially for ongoing conditions and conditions that arise due to the overall standard of care at the place of incarceration.¹¹¹ Thus, States are required to take the physical health of prisoners into account when making such key decisions, including where to house the prisoners and the type of medical care to be given them.

Similarly, the Court has included the provision of mental health services as part of its remedies. In these remedies, the Court will require the State to provide long-term mental health services, including medication where necessary, to direct victims of human rights violations as well as to their families and others affected by the violations.¹¹² The goal here is to ensure that the victims can move forward and recover with dignity from the human rights violations they have suffered so that they can be a meaningful part of their family and larger society.¹¹³

By using the provision of physical and mental health services as remedies, the Court internalizes the understanding that human rights violations go beyond an external legal violation and violate the entire person internally.¹¹⁴ This understanding is less about compensation than it is about remediation. It recognizes that victims of human rights violations suffer a particular kind of harm

109. *E.g.*, *Nineteen Tradesmen v. Colombia*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 109, ¶ 278 (July 4, 2004); *De la Cruz-Flores v. Peru*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 115, ¶ 168 (Nov. 18, 2004); *Gómez-Palomino v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 136, ¶ 143 (Nov. 22, 2005); *Ituango Massacres v. Colombia*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148, ¶ 403 (July 1, 2006).

110. *See* *Gómez-Palomino*, Inter-Am. Ct. H.R. (ser. C) No. 136, ¶ 143 (stating that the State shall pay any medical and psychological treatment as long as it may be necessary). *But see* *Nineteen Tradesmen*, Inter-Am. Ct. H.R. (ser. C) No. 109, ¶ 72(g) (stating medical and psychological treatment are to be provided to victims' next of kin but not explicitly designating treatment be provided as long as it may be necessary).

111. *See, e.g.*, *Lori Berenson-Mejía*, Inter-Am. Ct. H.R. (ser. C) No. 119, ¶¶ 236-38 (stating victim entitled to damages for inadequate medical care and other inadequate prison conditions).

112. *See* cases cited *supra* note 110.

113. *See* Bridget Mayeux & Justin Mirabal, *Collective Moral Reparations in the Inter-American Court of Human Rights*, HUMAN RIGHTS CLINIC, THE UNIVERSITY OF TEXAS SCHOOL OF LAW 4 (2009), http://www.utexas.edu/law/clinics/humanrights/work/HRC_F09_CollectiveReparations.pdf (“[C]ollective and moral reparations are intended to restore dignity to victims.”).

114. *See id.* (stating moral reparations “re-humanize” victims and their families).

from which they cannot be made completely whole, but also recognizes that there are important ways to help victims overcome this impact and again be part of their family and community.¹¹⁵

3. Information as a Remedy

Given the nature of many of the cases heard by the Court, particularly those involving forced disappearances and extrajudicial killings, information is often withheld by the State or by State actors.¹¹⁶ Unlike a traditional murder trial—in which the fate of the victim is known and the question is who committed the crime—many of the cases heard by the Court involve State actors as the known perpetrators of a crime, with the question being what happened to the victim.¹¹⁷ In such cases, information becomes valuable; it is a prized commodity for the family of the victim and the community as a whole. Recognizing this, the Court has crafted remedies that require the State involved to locate the remains of particular victims and return them to family members,¹¹⁸ as well as remedies that require the State to establish a body of inquiry tasked with determining the location of disappeared persons.¹¹⁹ The Court has paid particular attention to the issue of disappeared children—who have in some instances been found living as children¹²⁰ of the former members of some regimes¹²¹—and ordered that particular States create mechanisms to locate children who have disappeared.¹²²

Information can be seen as a remedy for the direct victims as well as for families and society within the State as a whole. The Court has recognized this by crafting remedies that require the Court's decisions—and relevant factual

115. *See id.* (stating collective and moral reparations aid in addressing wrongs caused by human rights abuses).

116. Indeed, a review of the Court's cases reveals that this is a standard practice among States that appear before the Court, even though these States volitionally agreed to be subject to the Court's jurisdiction. *See, e.g.,* Gomes Lund v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C.) No. 219, ¶ 184 (Nov. 24, 2010) (declaring the laws governing access to information inconsistent with obligations under the American Convention); *see also* Marie Soueid, *Access to Public Information in Latin America*, THE HUMAN RIGHTS BRIEF: CENTER FOR HUMAN RIGHTS AND HUMANITARIAN LAW (Oct. 25, 2011), <http://hrbrief.org/2011/10/access-to-public-information-in-latin-america/> (stating some countries withhold information based on national security reasons).

117. *See, e.g.,* Gomes-Lund, Inter-Am. Ct. H.R. (ser. C.) No. 219, ¶ 86 (discussing disappearance of political prisoners); Chitay Nech, Inter-Am. Ct. H.R. (ser. C.) No. 212, ¶ 2 (stating case alleges actions of forced disappearance).

118. *E.g.,* Chitay Nech, Inter-Am. Ct. H.R. (ser. C.) No. 212, ¶¶ 240-41.

119. *See* Ticona Estrada v. Bolivia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C.) No. 191, ¶¶ 170-73 & n.134 (Nov. 27, 2008) (requiring establishment of Inter-Institutional Council for Clarification of Forced Disappearance to discover remains of victims subject to forced disappearance).

120. *See* Malina Theissen, Inter-Am. Ct. H.R. (ser. C.) No. 108, ¶ 68 (involving disappearance of a child and claiming State has special obligation to protect children).

121. Contreras, Inter-Am. Ct. H.R. (ser. C.) No. 232, ¶ 54.

122. Serrano Cruz Sisters, Inter-Am. Ct. H.R. (ser. C.) No. 120, ¶ 218(7).

portions—to be published widely,¹²³ particularly through the internet,¹²⁴ and in indigenous languages where appropriate.¹²⁵ Additionally, information as a remedy includes the many situations in which the Court has required permanent training for key State actors—such as prosecutors, judges, police officers, and members of the military—in human rights law.¹²⁶

The above remedies demonstrate that the Court has internalized the practice of issuing holistic remedies for human rights violations that provide for a more attenuated way of viewing and honoring victims and likewise recognize the full extent of human rights violations harms on individuals and society.

H. The Court's Recognition of Indigenous Communities

There has been a steady increase in the number of cases brought to the Court by indigenous communities within Latin America.¹²⁷ This is a notable trend because it suggests that the Court has become a place in which indigenous communities—which often suffer from a low status within their State's society and legal structure—are able to gain recognition as communities, holders of separate identities, and holders of human rights.

Cases involving indigenous communities have recognized the legality and legitimacy of indigenous community practices of holding territory as a matter of community right and the notion of territory held by the entire community rather than as the subject of individual land claims.¹²⁸ The cases have also established the

123. *E.g.*, *Yakye Axa Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 242(12) (June 17, 2005); *Acosta-Calderón v. Ecuador*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 129, ¶ 175(6) (June 24, 2005); *Mapiripán Massacre*, Inter-Am. Ct. H.R. (ser. C) No. 134, ¶ 335(14); *Palamara-Iribarne v. Chile*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 135, ¶ 269(10)-(11) (Nov. 22, 2005).

124. *Yatama*, Inter-Am. Ct. H.R. (ser. C) No. 127, ¶ 275(7).

125. *Saramaka People v. Suriname*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 214(11) (Nov. 28, 2007); *Tiu-Tojín v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 190, ¶ 136(9) (Nov. 26, 2008).

126. *See, e.g.*, *Caracazo v. Venezuela*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 95, ¶ 143(4)(a) (Aug. 29, 2002) (requiring education and training of military on protection of human rights); *Myrna Mack Chang*, Inter-Am. Ct. H.R. (ser. C) No. 101, ¶ 301(10) (requiring education and training of military and police on human rights); *Tibi*, Inter-Am. Ct. H.R. (ser. C) No. 114, ¶ 280(13) (requiring education of judiciary staff, prosecutor's office, police, and penitentiary staff on protection of human rights); *Gutiérrez-Soler v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 132, ¶ 127(4) (Sept. 12, 2005) (requiring training of military criminal court staff and police on human rights precedent).

127. *E.g.*, *Saramaka People*, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 1; *Yakye Axa Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 2 (June 17, 2005); *Mayagna (Sumo) Awas Tingni Community*, Inter-Am. Ct. H.R. (ser. C) No. 66, ¶¶ 2(a), 3.

128. *See López-Álvarez v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 141, ¶ 54(2) (Feb. 1, 2006) (explaining that there have been disputes over lands given to members of Garifuna communities in Honduras); *Sawhoyamaya Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶¶ 73(9)-(10), 120, 248(6) (Mar. 29, 2006) (stating *Sawhoyamaya* indigenous

rights of indigenous communities to have concrete, respected input into attempts to use the natural resources located on their communal land¹²⁹ and also to have a legitimate voice in proposed land use projects outside of their territory which would still have a direct impact on their territory, ways of life, and health and safety.¹³⁰

Notably, the Court has required consultations with indigenous communities as part of environmental impact assessments conducted for potential land use projects.¹³¹ Additionally, the Court has used State-financed community development funds for indigenous communities as a remedy in instances where it has found that State actions have violated the community's human rights.¹³² Further, the Court has used remedies of recognition in order to ensure that States provide health and other State-sponsored services to indigenous communities that were historically provided with subpar quality of services and limited access to services.¹³³

The Court's acts of indigenous recognition are another example of internalizing rights in that they bring communities that are often viewed as below or outside standard legal protections within the scope of human rights protections and law.

I. Remedies of Government

In essence, all of the Court's remedies are "remedies of government," given that such remedies require a State to act in a certain way and to alter its previous practices. However, what is meant here by remedies of government is the Court's practice of seeking to remedy a State's violation of such State's own governmental rights and guaranteed freedoms. For example, there have been cases where judges have been prosecuted by the State for taking stances that are not favorable to the sitting State government and where judges have been forcibly removed from their posts.¹³⁴ Other examples include the prosecution by the State of members of the

community had a right to territory and had a collective understanding of property); *Xákmok Kásek Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶¶ 85-86 (Aug. 24, 2010) (stating indigenous people have a right to traditional lands and communities have a tradition of collective ownership where land belongs to the community).

129. *See Sawhoyamaxa Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 118 (stating indigenous people have a right to natural resources that form a part of their survival and cultural identity); *Xákmok Kásek Indigenous Community* Inter-Am. Ct. H.R. (ser. C) No. 214, ¶¶ 155-57 (stating State must engage a indigenous community in a decision that effects or restricts use of their lands, including a decision to protect wooded areas).

130. *Xákmok Kásek Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 157.

131. *Saramaka People*, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶¶ 129-34.

132. *Moiwana Community*, Inter-Am. Ct. H.R. (ser. C) No. 124, ¶¶ 213-15; *Yakye Axa Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 218; *Sawhoyamaxa Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 224; *Saramaka People*, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶¶ 200-01.

133. *E.g.*, *Plan de Sánchez Massacre*, Inter-Am. Ct. H.R. (ser. C) No. 116, ¶¶ 109-10.

134. *See Constitutional Court v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am.

media for publishing pieces that question decisions made by the State government.¹³⁵

In all of these examples, the Court has found human rights violations towards individuals. Moreover, these findings also suggest that there are inherently larger issues of the State's use of its government against government interests or the interests of governmentally regulated entities.¹³⁶ Thus, the Court's decisions to address these violations represent a remedy of government by protecting the legitimate actions of governmental actors. This is an important example of the internalization function of the Court because it allows the Court to oversee government actions and to ensure that government is functioning in a way that avoids human rights violations.

V. CONCLUSION

Throughout its history, the dual system of the Commission and the Court has developed a jurisprudence that stresses respect for the dignity of the victims of human rights violations—as well as their families and communities—while still working within the concept of State sovereignty that is protected by the Convention. It has been asserted that this respect can be seen through the idea of internalizing human rights in each entity, particularly the Court, meaning that these entities have incorporated considerations of human rights into the overall institutional structure of both the Commission and the Court.

This Article has discussed the structure of the Commission and Court and their intertwined relationship. It then provided a general overview of the important aspects of human rights concerns that have been internalized by the Commission before turning to its primary focus on the internalization of human rights by the Court. The Article identified key areas in which the Court has internalized human

Ct. H.R. (ser. C) No. 71, ¶¶ 56.1-56.2, 56.25, 130(1)-(3) (Jan. 31, 2001) (deciding Peru violated various individual rights of three Peruvian justices who were impeached for a decision regarding the constitutionality of an interpretation of a presidential re-election clause); *Apitz-Barbera* (“First Court of Administrative Disputes”) v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 182, ¶¶ 2, 267(7)-(9) (Aug. 5, 2008) (deciding Venezuela violated various individual rights in connection to the removal of judges for inexcusable judicial error in denying a request of constitutional protection for protocolonization of land sale act); *Reverón-Trujillo v. Venezuela*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 197, ¶¶ 50, 209(2)-(3) (June 30, 2009) (deciding Venezuela violated a judge's individual rights concerning her arbitrary removal due to abuse or excessive use of authority).

135. See *Ríos*, Inter-Am. Ct. H.R. (ser. C) No. 194, ¶¶ 2, 416(3) (concluding Venezuela violated its obligation to guarantee right to freedom to seek, receive, and impart information of journalists and communications workers); *Perozo v. Venezuela*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 195, ¶¶ 2, 426(5) (Jan. 28, 2009) (deciding Venezuela failed to ensure the right to impart information by hindering broadcasts); *Usón Ramírez v. Venezuela*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 207, ¶¶ 37-38, 246(1) (Nov. 20, 2009) (deciding Venezuela violated the right to freedom of expression by convicting a person of slander against armed forces for discussing punishment of soldiers in television interview).

136. See cases cited *supra* notes 134-35.

rights, starting with preliminary matters and friendly settlement attempts. Following these initial steps, the Article discussed the internalization of human rights in terms of the use of presumptions in cases of forced disappearances and extra-judicial killings, personal and familial validations within the Court's findings, the findings of legal violations of the Convention—and on occasion several other human rights related instruments—made by the Court, monetary remedies, remedies of recognition, indigenous recognition, and recognition of government. Remedies of recognition were broken into impact-specific sub-categories of public placement of the victim, health as a remedy, and information as a remedy.

This Article demonstrates the importance of the Commission and the Court in the human rights context not only as an avenue for findings of strictly legalistic violations and compensatory damages but also for the recognition of the inherent dignity of the victim and of society in general. Unlike some other human rights courts¹³⁷ and the traditional adversarial legal system, the concern of the Court in particular is not so much assessing who was right and who was wrong as it is with understanding the impact of a violation on victims and on highlighting the dignity of each person even in instances of extreme human rights violations. In so doing, this Article asserts that the function of the Commission and the Court is to internalize a deep understanding of human rights and the impacts of human rights violations as acts which must be addressed holistically rather than within the confines of a traditional litigation system.

137. See Antkowiak, *supra* note 79, at 408 (discussing European Court of Human Rights limited reparations for victims of human rights abuses).