

## Non-pecuniary damage under the American convention on human rights

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**NON-PECUNIARY DAMAGE UNDER THE AMERICAN CONVENTION ON HUMAN RIGHTS:  
AN EMPIRICAL ANALYSIS OF 30 YEARS OF CASE-LAW\***

**Abstract:** An international law on damages for human rights violations is rapidly emerging. Within this developing law the Inter-American Court of Human Rights has become the main source of reference for the determination of non-pecuniary damage. However, an early examination of the Inter-American Court's case-law indicates that its practice lacks clarity and might even be inconsistent. This article undertakes an empirical analysis of the first thirty years of this court's case-law in order to identify and assess the criteria the Court has developed for quantifying non-pecuniary damage following a violation of the right to life. Through the use of statistical analysis the article tests the significance of the identified criteria for the determination of the amounts awarded to compensate the non-pecuniary damage suffered by 476 victims.

## **1. Introduction**

Translating human rights violations into monetary sums to redress the suffering of the victims is a complex task that needs to be performed regularly by international courts. While the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR) have been undertaking this duty for decades, in recent years other international courts have started to engage in this activity. Such is the case of the International Court of Justice (ICJ), the African Court on Human and People's Rights (ACHPR), and the

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International Criminal Court (ICC).<sup>1</sup> Notwithstanding the different functions and jurisdiction of the mentioned international courts, they all have been called to quantify compensation for damages caused by breaches of international law pertaining to human rights.<sup>2</sup> Together, these five courts have begun to develop what can be labelled an international law on damages for human rights violations. This is a fast-developing area of international law and is in serious need of further research.<sup>3</sup>

According to their recently developed jurisprudence, the ICJ, the ACHPR and the ICC have heavily relied on the practice of the ECtHR and the IACtHR when establishing compensation for breaches of international law that entail human rights violations. All five courts seemed to be in agreement that there are two types of damage suffered by the victims of human rights violations that need to be compensated in monetary terms: pecuniary and non-pecuniary damage.<sup>4</sup> Pecuniary damage refers to the patrimonial consequences of the violation, including the loss of income suffered by the victim, the expenses incurred by their next of kin, and any consequential damage showing a direct causal connection with the

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<sup>1</sup> Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Judgment, ICJ (Jun. 19, 2012); Reverend Christopher Mtikila v United Republic of Tanzania, No. 11/2011, Judgment, African Court on Human and People's Rights [Afr. Ct. H.P.R.] (June 13, 2014); Beneficiaries of Late Norbert Zongo, Abdoulaye Nikiema, Ernest Zongo and Blise Ilboudo & the Burkinabe Movement on Human and People's Rights v Burkina Faso, No. 13/2011, Judgment, African Court on Human and People's Rights [Afr. Ct. H.P.R.] (June 5, 2015); Prosecutor v. Germain Katanga, Judgment, ICC (Mar. 24, 2017).

<sup>2</sup> Although the ICC technically deals with violations of International Criminal Law and the international criminal responsibility of individuals, it is tasked with determining reparations in favor of victims of these international crimes, who have suffered grave violations of their human rights.

<sup>3</sup> The academic literature concerning the quantification of damages for human rights violations under international law is swiftly growing, but has so far mostly focused on the work of the ECtHR. See OCTAVIAN ICHIM, JUST SATISFACTION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS (2015); Szilvia Altwicker-Hámori et al., *Measuring Violations of Human Rights: An Empirical Analysis of Awards in Respect of Non-Pecuniary Damage under the European Convention on Human Rights* (2016) HEIDELBERG JOURNAL OF INTERNATIONAL LAW 1; Veronika Fikfak, *Changing State Behaviour: Damages before the European Court of Human Rights* (2019) EUROPEAN JOURNAL OF INTERNATIONAL LAW 1091.

<sup>4</sup> The terms *pecuniary* and *non-pecuniary damage* are the ones adopted by the ECtHR and the IACtHR. The ICJ has used *material* and *non-material injury*; the ICC has labelled them *material* and *psychological harm*; and the ACHPR has fluctuated between different denominations, including *pecuniary* and *non-pecuniary damage*, *pecuniary* and *moral damage*, and *material* and *moral prejudice*. Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Judgment, ICJ, ¶ 14, 18, 21, 25, 55 and 60 (Jun. 19, 2012); Prosecutor v. Germain Katanga, Judgment, ICC, ¶ 75, 79, 89, 114, 116, 122, 129 and 239 (Mar. 24, 2017); Reverend Christopher Mtikila v United Republic of Tanzania, No. 11/2011, Judgment, African Court on Human and People's Rights [Afr. Ct. H.P.R.], ¶ . 29, 35, 37, 39 to 40 and 45 (June 13, 2014); Beneficiaries of Late Norbert Zongo, Abdoulaye Nikiema, Ernest Zongo and Blise Ilboudo & the Burkinabe Movement on Human and People's Rights v Burkina Faso, No. 13/2011, Judgment, African Court on Human and People's Rights [Afr. Ct. H.P.R.], ¶ 61, 65, 111 (June 5, 2015).

violation,<sup>5</sup> while non-pecuniary damage covers the harmful effects of the violation that are not financial in nature, such as the suffering and distress caused to the victim and their close relatives, and the impairment of values that are highly significant to them.<sup>6</sup> From those two categories of damage it is actually non-pecuniary damage the one most often caused by human rights violations and for which the courts tend to award the largest amounts of compensation.<sup>7</sup>

Within this developing law on damages the IACtHR has become the main source of reference when it comes to determining non-pecuniary damage. In 2012, the ICJ issued the second ever judgment in which it quantified compensation.<sup>8</sup> The ruling made explicit reference to the case-law of the IACtHR at various points,<sup>9</sup> to the extent that the practice of this court acted as one of the main sources for justifying the need to compensate non-pecuniary damage when a violation of human rights has taken place, as well as for the criteria to be followed for establishing the quantum.<sup>10</sup> On its part, the ICC's reliance on the jurisprudence of the IACtHR seemed to be even stronger.<sup>11</sup> In its first ever judgment on reparations, rendered in 2017, the ICC made numerous references to the practice of the IACtHR when it came to discussing reparations for non-pecuniary damage. The ICC seemed to follow the criteria developed by the IACtHR for determining the existence of non-

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<sup>5</sup> Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 101, ¶ 250 (Nov. 25, 2003); Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 167, ¶ 140 (Jul. 10, 2007).

“Street Children” (Villagrán-Morales et al.) v. Guatemala. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 77, ¶ 84 (May 26, 2001).

<sup>7</sup> Altwickier-Hámori, *supra* note 2, 20. In fact, a Report elaborated by the IACtHR's Secretary reveals that compensation for non-pecuniary damage amounts to 75% of the total sums of compensation ordered by the IACtHR through the years. Secretary of the IACtHR, Report ‘La Corte Interamericana de Derechos Humanos: Las reparaciones pecuniarias y su estado de cumplimiento’ (March 2008) 5.

<sup>8</sup> The ICJ had previously quantified compensation in 1949 in the *Corfu Channel* case. The Corfu Channel Case (United Kingdom of Great Britain and Northern Ireland v Albania), Assessment of the Amount of Compensation Due from The People's Republic of Albania to the United Kingdom of Great Britain and Northern Ireland, Judgment, ICJ (Dec. 15 1949).

<sup>9</sup> Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Judgment, ICJ, ¶ 24, 33 and 40 (Jun. 19, 2012).

<sup>10</sup> *Ibid.* ¶ 18 and 24.

<sup>11</sup> Prosecutor v. Germain Katanga, Judgment, ICC, ¶ 48, 57, 61, 127-8, 230-1 and 283 (Mar. 24, 2017).

pecuniary damage suffered by the victims,<sup>12</sup> as well as for quantifying such harm.<sup>13</sup> It is perhaps less surprising that the ACHPR has also leaned on the case-law of the IACtHR when developing its practice concerning reparations,<sup>14</sup> given the similarity of the jurisdiction of both courts.<sup>15</sup> The ACHPR began ordering reparations in 2014,<sup>16</sup> but it was only in 2015 when it quantified compensation for the first time and, as the other mentioned courts, it made extensive use of the IACtHR's case-law when it came to the criteria that guided the determination of compensation for non-pecuniary damage.<sup>17</sup>

This extended reference to the jurisprudence of the IACtHR is placing this court as a leading authority within the law of damages for human rights violations, especially concerning non-pecuniary damage. However, the actual criteria this court has developed for quantifying non-pecuniary damage are far from clear and the literature has pointed out that the IACtHR's approach to the determination of non-pecuniary damage seems inconsistent.<sup>18</sup> Even though it has been establishing compensation for human rights violations for over three decades, the IACtHR has not revealed any set criteria that are regularly used for the calculation of compensation. While the ECtHR has at least affirmed to have (unpublished) agreed upon standards for determining compensation,<sup>19</sup> it is rather unknown whether the

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<sup>12</sup> *Ibid.* ¶ 57, 61 and 127 to 131.

<sup>13</sup> *Ibid.* ¶ 230-232 and 236.

<sup>14</sup> Reverend Christopher Mtikila v United Republic of Tanzania, No. 11/2011, Judgment, African Court on Human and People's Rights [Afr. Ct. H.P.R.], ¶ . 29, 35, 37, 39 to 40 and 45 (June 13, 2014); Beneficiaries of Late Norbert Zongo, Abdoulaye Nikiema, Ernest Zongo and Blise Ilboudo & the Burkinabe Movement on Human and People's Rights v Burkina Faso, No. 13/2011, Judgment, African Court on Human and People's Rights [Afr. Ct. H.P.R.], ¶ 24, 27, 48, 53, 55, 60 to 61 and 66 (June 5, 2015).

<sup>15</sup> Thomas Antkowiak, *Remedial Approaches to Human Rights Violation: the Inter-American Court of Human Rights and Beyond* (2008) 46 COLUMBIA JOURNAL OF TRANSNATIONAL LAW 351, 414.

<sup>16</sup> Reverend Christopher Mtikila v United Republic of Tanzania, No. 11/2011, Judgment, African Court on Human and People's Rights [Afr. Ct. H.P.R.] (June 13, 2014).

<sup>17</sup> Beneficiaries of Late Norbert Zongo, Abdoulaye Nikiema, Ernest Zongo and Blise Ilboudo & the Burkinabe Movement on Human and People's Rights v Burkina Faso, No. 13/2011, Judgment, African Court on Human and People's Rights [Afr. Ct. H.P.R.], ¶ 55 and 61-62 (June 5, 2015).

<sup>18</sup> Arturo Carrillo, *Justice in Context: The Relevance of Inter-American Human Rights Law and Practice to Repairing the Past* in *THE HANDBOOK OF REPARATIONS* (Pablo De Greiff ed. 2006) 504-538, 524; CARLOS M. BERISTAIN, *DIÁLOGOS SOBRE LA REPARACIÓN EXPERIENCIAS EN EL SISTEMA INTERAMERICANO DE DERECHOS HUMANOS* (Vol II, 2008) 175-180; THOMAS ANTKOWIAK & ALEJANDRA GONZA, *THE AMERICAN CONVENTION OF HUMAN RIGHTS: ESSENTIAL RIGHTS* (2017) 298.

<sup>19</sup> *Scordino v. Italy (no. 1) [GC]*, no. 36813/97, § 176, ECHR 2006-V.

IACtHR even has these confidential guidelines. Given the primordial role the IACtHR has achieved in the determination of non-pecuniary damage within international law the lack of actual knowledge about the criteria it uses is rather worrisome.

This article seeks to rectify this knowledge gap.<sup>20</sup> Its purpose is to examine the factors underpinning the valuation of compensation for non-pecuniary damage the IACtHR undertakes following a violation of human rights. The significance of a better understanding of this is two-fold. First, as mentioned above, the IACtHR's case-law in this area has acquired a leading role that is followed by other international courts. Hence, it is of great relevance for all international courts to comprehend the practice developed by the IACtHR. Secondly, obtaining a clear grasp of the IACtHR's criteria would be of extreme importance to the actual victims of human rights violations, especially to those claiming compensation for the harm suffered within the Inter-American Human Rights System. Clear knowledge of the different criteria used by this court to quantify compensation, along with the significance of each of them, can be of essential guidance for the victims as to the level of award that can be requested (and expected), as well as for the type of evidence they should provide to support their claims.

This article explores the IACtHR's practice when determining compensation for non-pecuniary damage, undertaking a comprehensive examination of the first thirty years of this court's case-law concerning the violation of the right to life;<sup>21</sup> from the first ever decision it adopted in a contentious case in 1987 until the end of 2016. The empirical data were collected through the detailed study of the eighty-six judgments in which the IACtHR has

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<sup>20</sup> While the practice of the ECtHR has become the subject of some academic work, only tangential discussions of non-pecuniary damage can be found in deeper studies on the IACtHR. ICHIM, *supra* note 3; Altwick-Hámori, *supra* note 3; JO M. PASQUALUCCI, *THE PRACTICE AND PROCEDURE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS* (2003) 444; LAURENCE BURGORGUE-LARSEN & AMAYA ÚBEDA DE TORRES, *THE INTER-AMERICAN COURT OF HUMAN RIGHTS: CASE LAW AND COMMENTARY* (2011) 224.

<sup>21</sup> The focus on the right to life is due to the fact that the majority of the cases brought before the IACtHR's have dealt with arbitrary deprivations of life. In fact, every case decided on the Merits by the Court up to 1997 dealt with claims encompassing violations of the right to life (even if the Court did not find a violation of Article 4 in all of them).

ordered the payment of non-pecuniary damage following an arbitrary deprivation of life that amounted to a violation of Article 4 of the American Convention on Human Rights.<sup>22</sup> Making use of statistical analysis, the article evaluates the IACtHR's criteria for the determination of compensation for non-pecuniary damage in favor of 476 victims, testing the significance of each of the criterion mentioned by the Court when establishing these amounts.

## **2. The Inter-American Court's case-law on reparations**

It is a principle of international law that every violation of an international obligation which results in harm creates a duty to make adequate reparation.<sup>23</sup> The American Convention on Human Rights codifies such a rule in Article 63.1 and, following this provision, the IACtHR has ordered States to carry out due measures of reparation in every case in which it has found a violation of human rights. From its earliest judgments, the IACtHR has affirmed that under international law reparation should ideally consist in full restitution (*restitutio in integrum*), which includes the restoration of the prior situation, the reparation of the consequences of the violation, and the award of compensation.<sup>24</sup> In cases of human rights violations full restitution is usually impossible and this has led the IACtHR to order a comprehensive series of measures as means of reparation. In fact, the IACtHR has been largely praised for its

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<sup>22</sup> The list of 86 cases is included in App. II. There are nine cases in which the violation of Art. 4 did not follow an arbitrary deprivation of life; hence, these cases have been excluded from the analysis: *Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125 (Jun. 17, 2005); *Fermín Ramírez v. Guatemala*. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 126 (Jun. 20, 2005); *Raxcacó Reyes v. Guatemala*. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 133 (Sep. 15, 2005); *Vargas Areco v. Paraguay*. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 155 (Sep. 26, 2006); *Boyce et al. v. Barbados*. Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 169 (Nov. 20, 2007); *Albán Cornejo et al. v. Ecuador*. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 171 (Nov. 22, 2007); *Dacosta Cadogan v. Barbados*. Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 204 (Sep. 24, 2009); *Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 245 (Jun. 27, 2012); *Tarazona Arrieta et al. v. Peru*. Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 286 (Oct. 15, 2014); *Gonzales Lluy et al. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 298 (Sep. 1, 2015); *Valencia Hinojosa et al. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 327 (Nov. 29, 2016).

<sup>23</sup> *Velásquez Rodríguez v. Honduras*. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 7, ¶ 25 (Jul. 21, 1989).

<sup>24</sup> *Ibid.* ¶ 26.

innovative role in the award of reparations.<sup>25</sup> It orders measures aimed at the restitution of the right that has been violated, whenever this is possible (eg. reinstating a person to their job);<sup>26</sup> the rehabilitation of the victims (eg. medical and psychological treatment);<sup>27</sup> providing satisfaction to them (eg. acts of public apology);<sup>28</sup> avoiding recidivism (eg. amendment of domestic legislation not compliant with the Convention);<sup>29</sup> and, of course, the payment of compensation for pecuniary and non-pecuniary damage, which remains the most frequent form of reparation under international law.<sup>30</sup>

As indicated above, non-pecuniary damage refers to the detrimental consequences of a violation of a human right that are not monetary in nature.<sup>31</sup> In order to redress this type of damage, the IACtHR normally orders the adoption of measures of public repercussion, the delivery of goods and services, as well as the payment of a sum of money. However, the IACtHR's practice when it comes to assessing the quantum of non-pecuniary damage remains a (legal) mystery at large. An initial approximation to the case-law developed over thirty years reveals that in cases involving an arbitrary deprivation of life the amounts awarded to compensate the victim's non-pecuniary damage have been as low as zero and as

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<sup>25</sup> PASQUALUCCI, *supra* note 20, 444; BURGORGUE-LARSEN, *supra* note 20, 224; DINAH SHELTON, *REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW* (2015) 222.

<sup>26</sup> Loayza Tamayo v. Peru. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 42, op. para. 1 (Nov. 27, 1998).

<sup>27</sup> 19 Merchants v. Colombia. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 109, op. para. 9 (Jul. 5, 2004).

<sup>28</sup> Cantoral Benavides v. Peru. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 109, op. para. 7 (Dec. 3, 2001).

<sup>29</sup> Loayza Tamayo v. Peru. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 42, op. para. 5 (Nov. 27, 1998).

<sup>30</sup> Velásquez Rodríguez v. Honduras. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 7, ¶ 25 (Jul. 21, 1989); SHELTON, *supra* note 25, 31 and 230.

<sup>31</sup> The IACtHR adopted the term 'non-pecuniary damage' in place of 'moral damage' in 2001. "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 76, ¶ 105-106 (May 25, 2001); "Street Children" (Villagrán-Morales et al.) v. Guatemala. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 77, ¶ 84 (May 26, 2001).



high as 125,000 United States Dollars, without the reasons behind such a variation being evident.<sup>32</sup>

In the IACtHR's own words, the criteria for establishing these amounts are grounded on the 'reasonable exercise of judicial discretion' and on the 'principle of equity'.<sup>33</sup> Nonetheless, the vagueness of these criteria means that it is extremely difficult to foresee or to even duly understand the amounts the Court awards to compensate non-pecuniary damage in a given case. This lack of clarity concerning the criteria used to calculate non-pecuniary damage is certainly problematic, since even the application of the principle of equity (and of judicial discretion) requires consistency and a certain degree of predictability.<sup>34</sup> Former judge de Roux Rengifo explained that when the IACtHR is to establish a quantum for compensation it starts with a certain amount – frequently suggested by reference to preceding decisions – and this amount is queried as to its adequacy for the case.<sup>35</sup> The question that then arises is what are the criteria used by the IACtHR to establish the adequacy of the amount for a particular case.

It is worth emphasizing that this article is not embarking on a quest for rigid guidelines that would render the IACtHR replaceable by a calculating machine, as wisely warned by former President of the Court, Cançado Trindade.<sup>36</sup> Nevertheless, criteria that are more clear and concise than equity and discretion are required to provide transparency and foreseeability, and to improve confidence in the system. The sections to follow will, first, identify which are the more tangible criteria underpinning the general principle of equity and

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<sup>32</sup> Cruz Sánchez et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 292, ¶ 78 (Apr. 17, 2015); Velásquez Rodríguez v. Honduras. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 7, ¶ 52 (Jul. 21, 1989).

<sup>33</sup> "Street Children" (Villagrán-Morales et al.) v. Guatemala. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 77, ¶ 84 (May 26, 2001). In the English version of the judgments the Court seems to use indistinctively *equity* and *fairness* as the principle underlying the determination of non-pecuniary damage. However, *equity* seems to be the more precise term, given that it is the term used in the authentic Spanish version.

<sup>34</sup> ICHIM, *supra* note 3, 122.

<sup>35</sup> "Street Children" (Villagrán-Morales et al.) v. Guatemala. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 77, separate opinion of judge de Roux Rengifo (May 26, 2001).

<sup>36</sup> *Ibid.* separate opinion of judge Cançado Trindade.

judicial discretion that have been revealed by the IACtHR when establishing the quantum of non-pecuniary damage in each case (Sections 3 to 5), to then test through statistical analysis the association between such criteria and the actual amounts awarded (Sections 6 and 7).

### **3. Some complexities behind the IACtHR's awards**

Identifying and testing the criteria used by the IACtHR for determining the non-pecuniary damage awarded in favor of 476 victims was a complex task for a variety of reasons. First, some of the judgments do not state the amount of compensation awarded specifically for non-pecuniary damage. This takes place when a global amount for both pecuniary and non-pecuniary damage is either agreed by the parties or established by the IACtHR (and in some cases even kept secret),<sup>37</sup> or due to the Court ordering the State to award compensation following the pertinent domestic mechanisms. Moreover, the judgments are not uniform; they do not all follow a standardized structure. For a diversity of reasons, the format of the judgments has changed through time. In particular, from 2007 the IACtHR started issuing more concise decisions. While this can be considered a positive step to facilitate public engagement with the rulings, it also meant that the IACtHR started providing shorter explanations as to the rationale for determining compensation in its judgments.

Another factor that adds to the complexity of understanding the awards for non-pecuniary damage is that many judgments engage with multiple victims, rather than just one, such as the cases involving the systematic practice of forced disappearances or those concerning massacres. In fact, just thirty-six of the total eighty-six cases decided by the Court over thirty years concerned only one direct victim. Similarly, most judgments deal with the violation of several Convention rights, in addition to the right to life, generally interconnected with each other. The analysis therefore considers that the amounts were awarded to

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<sup>37</sup> Pacheco Teruel et al v. Honduras. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 241, ¶ 62 (Apr. 27, 2012); García and family members v. Guatemala. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 258, ¶ 68 (Nov. 29, 2012).

compensate the deprivation of life, rather than the specific violation of the right to life, since it is impossible to know what part of the amount is associated with each infringed right. Nonetheless, whether the violation of other rights surrounding a deprivation of life affects the amounts awarded is accounted for in two different ways. First, this is partly examined when evaluating the significance of the severity of the crime for determining the amount of compensation. The regression model considers whether the specific type of crime was a case of forced disappearance, which has been consistently acknowledged by the IACtHR as a violation of multiple Convention rights since its judgment in *Velásquez Rodríguez v Honduras*.<sup>38</sup> Additionally, the analysis also takes into account whether the direct victim in the case was a minor or an adult, and the former engages an additional violation of the Convention, that of Article 19.

#### **4. Whose suffering and harm are accounted for?**

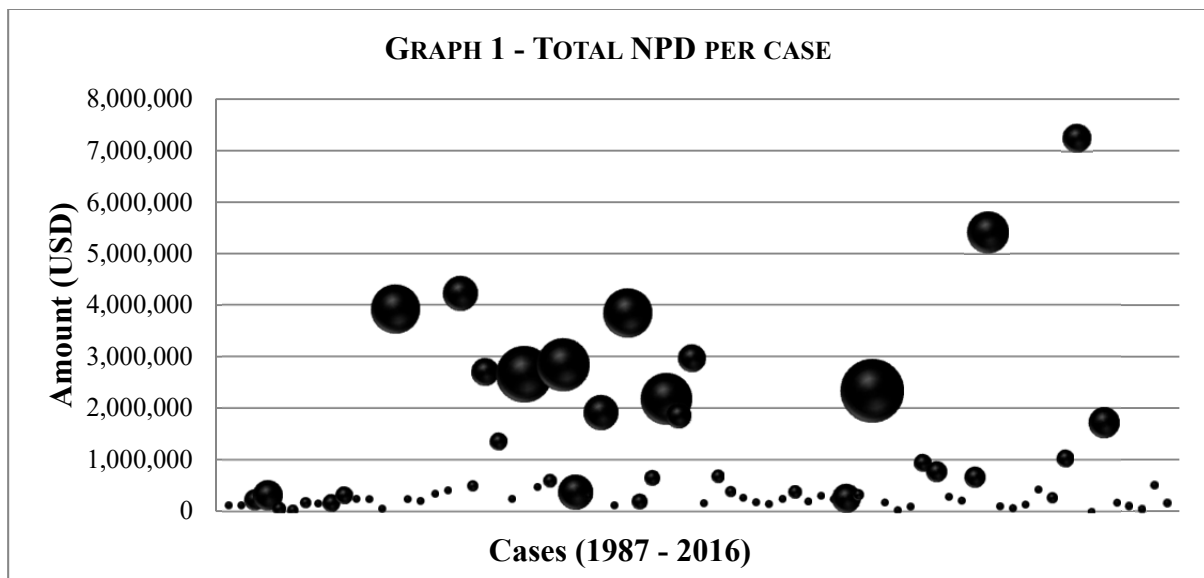
As mentioned above, within its first thirty years exercising jurisdiction in contentious cases the IACtHR has found States responsible for the arbitrary deprivation of lives in eighty-six cases. While it is not possible to know the exact amount awarded for non-pecuniary damage in twelve of them,<sup>39</sup> within the remaining seventy-four judgments, the IACtHR has awarded

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<sup>38</sup> *Velásquez Rodríguez v. Honduras*. Merits. Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 155-158 (Jul. 29, 1988).

<sup>39</sup> *Benavides Cevallos v. Ecuador*. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 38 (Jun. 19, 1998); *Barrios Altos v. Peru*. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 87 (Nov. 30, 2001); *Durand and Ugarte v. Peru*. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 89 (Dec. 3, 2001); *Las Palmeras v. Colombia*. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 96 (Nov. 26, 2002); *Tiu Tojín v. Guatemala*. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 190 (Nov. 26, 2008); *Pacheco Teruel et al v. Honduras*. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 241 (Apr. 27, 2012); *Río Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250 (Sep. 4, 2012); *Massacres of El Mozote and nearby places v. El Salvador*. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 252 (Oct. 25, 2012); *García and Family members v. Guatemala*. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 258 (Nov. 29, 2012); *Santo Domingo Massacre v. Colombia*. Preliminary Objections, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 259 (Nov. 30, 2012); *Veliz Franco et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 277 (May 19, 2014); *Members of the Chichupac Village and Neighboring Communities of the Rabinal Municipality v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 328 (Nov. 30, 2016).

64,288,675 United States Dollars<sup>40</sup> as compensation for non-pecuniary damage in cases concerning the deprivation of life of 571 victims.<sup>41</sup> Graph 1 presents the total amount of non-pecuniary damage awarded in each case in connection with the deprivation of life.<sup>42</sup> Each marker indicates the amount awarded by a judgment, presented in the chronological order in which they were adopted by the Court. The size of the marker represents the number of victims in the given case. It is possible to see that the amounts awarded by different judgments ranged from a rejection to award non-pecuniary damage to an award exceeding 7,000,000 United States Dollars.



The wide variation between amounts is partly explained by the different number of victims in each case. Graph 2 then shows the highest quantum established for a single deprivation of life per judgment. However, it is important to note that there is still a significant oscillation in the amounts awarded for non-pecuniary damage for the victims of the different cases. The first possible explanation for the variation of the quantum of non-

<sup>40</sup> In its first two cases the IACtHR established compensation in Honduras lempiras, instead of United States Dollars. Both amounts have been converted into United States Dollars following the conversion made by the Inter-American Commission on Human Rights and acknowledged by the IACtHR. *El Amparo v. Venezuela*. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 28, ¶ 31 (Sep. 14, 1996); *Neira Alegría et al. v. Peru*. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 29, ¶ 16 and 54 (Sep. 19, 1996).

<sup>41</sup> The term *victim* is used to refer to the direct victim of the violation of the right to life. Other individuals who have also suffered violations, such as the close relatives of the direct victim are referred to as *indirect victims*.

<sup>42</sup> Cases might contemplate further amounts of compensation awarded for the violation of other rights that are independent from the deprivation of life, which were not accounted for here.

pecuniary damage when only one deprivation of life is examined lies in the fact that the suffering and harm considered by the IACtHR at the time of quantifying non-pecuniary damage has changed through time. The Court's earlier jurisprudence is rather confusing, as the judgments highlighted the suffering and harm experienced by the victim's next of kin,<sup>43</sup> but ultimately only focused on the suffering of the direct victim when determining the amount for non-pecuniary damage.<sup>44</sup> As an example, when deciding its first two contentious cases, both of them regarding the forced disappearance of a person in Honduras, the Court established the same amount as compensation for non-pecuniary damage in both cases, despite the fact that one of the victims had fewer next of kin.<sup>45</sup> If the amount would have represented a quantification of the relatives' own suffering, it would have been lower in the case with fewer close relatives, as would become the practice of the IACtHR in its later jurisprudence.

Similarly, in both *El Amparo v Venezuela* and *Neira Alegría et al. v Peru*, the IACtHR established the exact same award for non-pecuniary damage for the fourteen victims of the first case and for the three victims of the second, regardless of the number of next of kin of each victim.<sup>46</sup> This again suggests that the suffering measured by the Court was that of the direct victim, rather than that of their relatives. The awards determined in *Aloeboetoe et*

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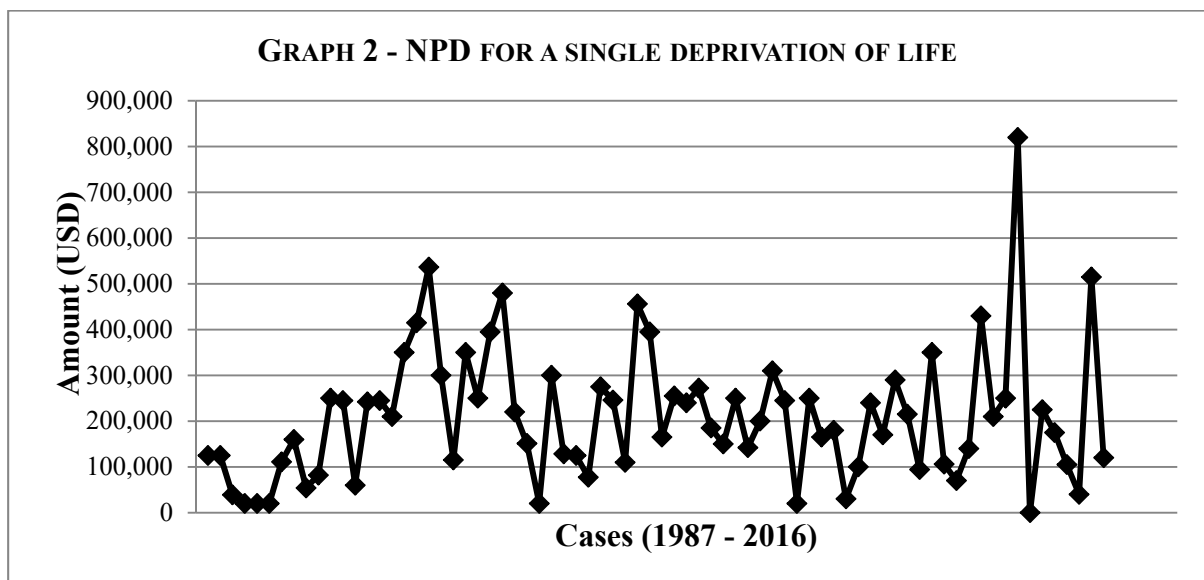
<sup>43</sup> *Aloeboetoe et al. v. Suriname. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 15, ¶ 76 (Sep. 10, 1993).*

<sup>44</sup> The opposite view was proposed by Clara Sandoval-Villalba, who has affirmed that in its earlier cases the IACtHR focused on the suffering of the relatives, rather than that of the victim, when establishing non-pecuniary damage. Clara Sandoval-Villalba, *The Concepts of 'Injured Party' and 'Victim' of Gross Human Rights Violations in the Jurisprudence of the Inter-American Court of Human Rights: A Commentary on their Implications for Reparations* in *REPARATIONS FOR VICTIMS OF GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY* (Carla Ferstman et al. ed. 2009) 243-282, 251-252.

<sup>45</sup> See the IACtHR's decisions on the *Velásquez Rodríguez* and *Godínez Cruz* cases, in which the amount for non-pecuniary compensation was identical, while the number of close relatives was not. *Velásquez Rodríguez v. Honduras. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 7 (Jul. 21, 1989); Godínez Cruz v. Honduras. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 8 (Jul. 21, 1989).*

<sup>46</sup> *El Amparo v. Venezuela. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 28, ¶ 37 (Sep. 14, 1996); Neira Alegría et al. v. Peru. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 29, ¶ 58 (Sep. 19, 1996).*

*al. v Suriname* confirm this interpretation.<sup>47</sup> The IACtHR awarded the same amount for non-pecuniary damage to six of the victims, while a higher sum was established for the seventh. As explained by the Court, the reason behind this differential award was that the seventh victim had experienced greater suffering than the others.<sup>48</sup> That is to say, the quantum of the amounts was determined by measuring the suffering of the direct victim and not that of their relatives. The suffering of the victim's next of kin was acknowledged by the IACtHR,<sup>49</sup> and they were entitled – as beneficiaries – to receive the monetary compensation for the suffering caused by a deprivation of life. Nevertheless, the determination of the amount of compensation was based only on the suffering of the direct victim.<sup>50</sup>



A radical change to this approach took place in 1998, when the IACtHR started to consider that the close relatives of a person arbitrarily deprived of their life were themselves

<sup>47</sup> *Aloeboetoe et al. v. Suriname. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 15 (Sep. 10, 1993).*

<sup>48</sup> *Ibid.* ¶ 91.

<sup>49</sup> *Velásquez Rodríguez v. Honduras. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 7, ¶ 50-51 (Jul. 21, 1989); Aloeboetoe et al. v. Suriname. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 15, ¶ 77-78 (Sep. 10, 1993); El Amparo v. Venezuela. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 28, ¶ 35 (Sep. 14, 1996).*

<sup>50</sup> While this finding could be questioned in light of the judgment on reparations in *Caballero Delgado and Santana*, it appears to be consistent with the IACtHR's practice during the first decade of jurisprudence on reparations. *Caballero Delgado and Santana v. Colombia. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 31 (Jan. 29, 1997).*

(indirect) victims, given the suffering experienced due to the loss of a loved one.<sup>51</sup> The IACtHR established a rebuttable (*iuris tantum*) presumption that the parents, the children, and the permanent partners of the direct victim of an arbitrary deprivation of life suffered a violation of their own right to personal integrity.<sup>52</sup> In the Court's own words:

...a violation of the right to mental and moral integrity of the direct next of kin of victims of certain human rights violations can be declared, applying a presumption *iuris tantum* with regard to mothers and father[s], daughters and sons, husbands and wives, permanent companions (hereinafter "direct next of kin"), provided this responds to the specific circumstances of a case, as has happened, for example, in the cases of various massacres, forced disappearance of persons, and extrajudicial executions.<sup>53</sup>

Given that this is a rebuttable presumption, the State can provide evidence to disprove the non-pecuniary damage suffered by the victim's close relatives.<sup>54</sup> At the same time, it is also possible for other (more distant) relatives to provide evidence of their suffering and harm, becoming entitled to non-pecuniary damage.<sup>55</sup> The particular situation of the victim's siblings is rather unclear, as the IACtHR's jurisprudence has oscillated. Starting in 2001, the Court extended to siblings the presumption of suffering due to a relative's death,<sup>56</sup> but later case-law went back to requesting evidence of harm if non-pecuniary damage was to be awarded to

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<sup>51</sup> Garrido and Baigorria v. Argentina. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 15, ¶¶ 62-65 (Aug. 27, 1998); Loayza Tamayo v. Peru. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 42, ¶¶ 141-143 (Nov. 27, 1998).

<sup>52</sup> Blake v. Guatemala. Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 36, op. para. 2 (Jan. 24, 1998).

<sup>53</sup> Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 192, ¶¶ 119 (Nov. 27, 2008).

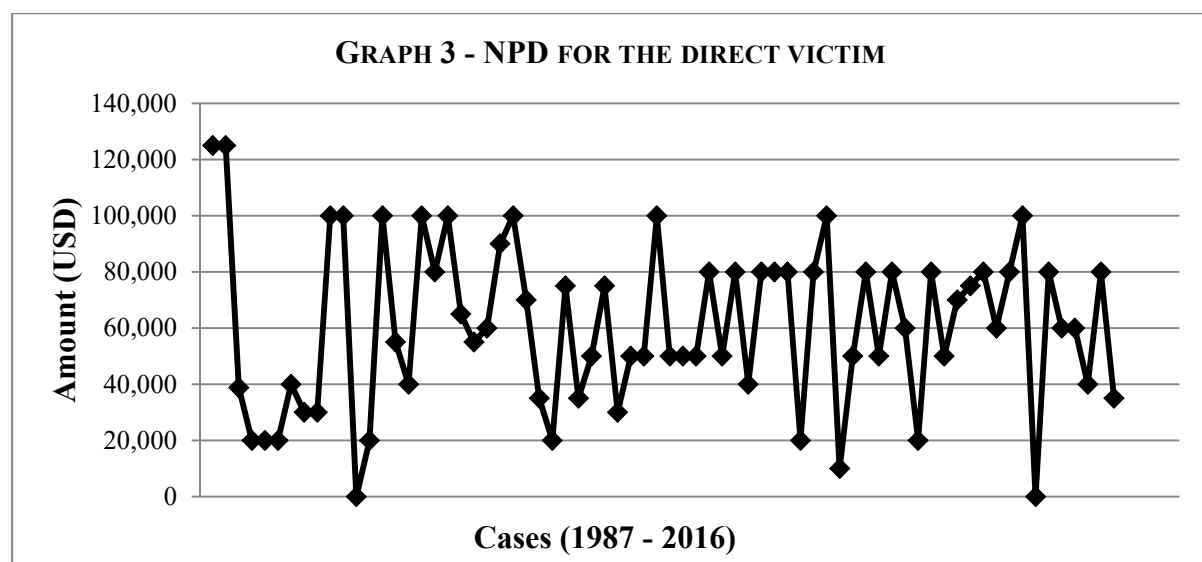
<sup>54</sup> In fact, in certain cases, children and parents have been excluded from the award of non-pecuniary damage. Garrido and Baigorria v. Argentina. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 15, ¶¶ 65 (Aug. 27, 1998); Gómez Palomino v. Peru. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 136, ¶¶ 120 (Nov. 22, 2005).

<sup>55</sup> Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 192, ¶¶ 116-132 (Nov. 27, 2008).

<sup>56</sup> "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 76, ¶¶ 110 and separate opinion of Judge de Roux Rengifo (May 25, 2001); "Street Children" (Villagrán-Morales et al.) v. Guatemala. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 77, ¶¶ 68 (May 26, 2001); Trujillo Oroza v. Bolivia. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 92, ¶¶ 57 (Feb. 27, 2002).

siblings.<sup>57</sup> The most recent case-law is once again establishing that, at least in cases of forced disappearances, the non-pecuniary damage suffered by the victim's siblings should be presumed.<sup>58</sup>

As a consequence, since 1998, the amount of compensation for non-pecuniary damage comprises both the suffering of the direct victim and that of their next of kin (either proved or presumed). This means that a higher number of close relatives translates into larger amounts awarded for non-pecuniary damage, which is certainly one of the reasons that explain the amounts of non-pecuniary damage presented in Graph 2 and, in particular, why the amounts of non-pecuniary damage awarded by the IACtHR since 1998 are generally higher than those from earlier cases.



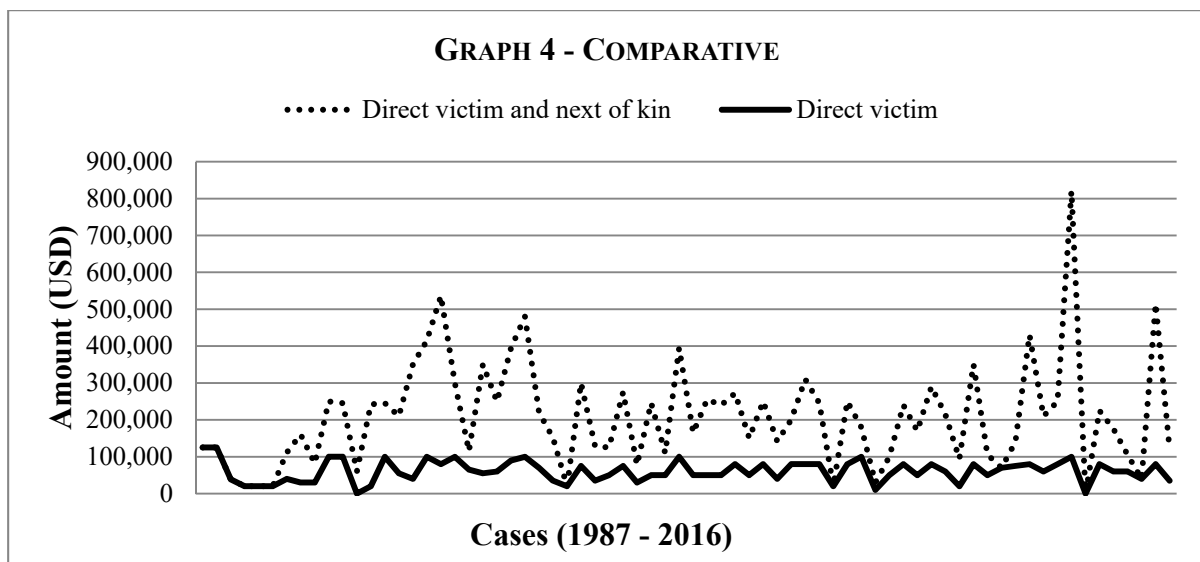
Graph 3 presents the amounts awarded exclusively for the non-pecuniary damage suffered by the direct victim in the cases under study. To allow for comparison with the data presented in Graph 2, in cases in which there were several direct victims and the amounts

<sup>57</sup> Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 192, ¶ 119 (Nov. 27, 2008); La Cantuta v. Peru. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 162, ¶ 128 (Nov. 29, 2006); La Cantuta v. Peru. Interpretation of the Judgment on Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 173, ¶ 31 (Nov. 30, 2007).

<sup>58</sup> Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 253, ¶ 286 (Nov. 20, 2012); Osorio Rivera and Family members v. Peru. Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 274, ¶ 277 (Nov. 26, 2013); Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 287, ¶ 533 (Nov. 14, 2014).



were different, the highest one is the one displayed. The data set now excludes four of the seventy-four cases, since those did not provide the isolated figure of non-pecuniary damage awarded on behalf of the direct victims.<sup>59</sup> Even when considering the sum awarded just for the person deprived of their life, it is still possible to observe important differences in the amounts. The actual sums awarded to compensate the suffering of the person deprived of their lives have oscillated from zero to 125,000 United States Dollars. An illustrative comparison of the data displayed in Graphs 2 and 3 is offered in Graph 4. This graph presents together the amount of non-pecuniary damage awarded by the IACtHR following a single deprivation of life to compensate, on the one hand, the suffering experienced by the direct victim and, on the other hand, the harm caused to the direct victim and their next of kin.



## 5. The criteria underpinning equity and judicial discretion

The wide variation of the amounts awarded to compensate the suffering experienced by the direct victim of an arbitrary deprivation of life (Graph 3) raises important questions as to the

<sup>59</sup> Either the Court awarded a global amount for both pecuniary and non-pecuniary damage on behalf of the victim, or it did not award any amount under this heading because the victims have already been compensated under domestic law. “White Van” (Paniagua Morales et al.) v. Guatemala. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 76 (May 25, 2001); La Cantuta v. Peru. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 162 (Nov. 29, 2006); Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 192 (Nov. 27, 2008); Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 219 (Nov. 24, 2010).

rationale behind it. The lack of clarity as to the method for valuating non-pecuniary damage was criticized many years ago by former judge de Roux Rengifo, who suggested that a detailed evaluation of the different elements considered when quantifying non-pecuniary damage was to be preferred to an *en bloc* determination.<sup>60</sup> However, the IACtHR opted for a less transparent system in which it establishes a global sum as the fair compensation for the non-pecuniary damage experienced by the victims.

Although different elements that are accounted for have been mentioned through the years, it is rather difficult to establish the importance of each of them, or even the extent of their relevance across the case-law. Moreover, the IACtHR has been explicit that not even its previous judgments are to be taken as establishing clear guidelines, stating that ‘while case law may establish precedents, it cannot be invoked as a criterion to be universally applied.’<sup>61</sup> Therefore, while the IACtHR makes references to its jurisprudence on the topic when quantifying non-pecuniary damage, it does so without feeling obliged to follow such precedents.<sup>62</sup> Besides the actual suffering of the victim and their next of kin, the judgments of the IACtHR have disclosed the following four criteria as relevant for quantifying compensation for non-pecuniary damage: the acknowledgment of international responsibility by the State; the vulnerability of the victim; the severity of the crime; and the time elapsed since the commission of the crime. In addition to that, different judges of the IACtHR have asserted that the number of victims in a given case is a further determining factor.<sup>63</sup>

The IACtHR highlighted the relevance of the State’s acknowledgment of international responsibility when deciding the reparations in *El Amparo v Venezuela* in 1996. It stated that

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<sup>60</sup> “Street Children” (Villagrán-Morales et al.) v. Guatemala. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 77, separate opinion of judge de Roux Rengifo (May 26, 2001).

<sup>61</sup> *El Amparo v. Venezuela*. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 28, ¶ 34 (Sep. 14, 1996).

<sup>62</sup> *Neira Alegria et al. v. Peru*. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 29, ¶ 55 (Sep. 19, 1996); “White Van” (Paniagua Morales et al.) v. Guatemala. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 76, ¶ 104 (May 25, 2001); *Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 167, ¶ 177 (Jul. 10, 2007).

<sup>63</sup> BERISTAIN, *supra* note 18, 31 and 178.

this type of acknowledgment was to be considered a mitigating factor when determining the quantum of the award, which was later reiterated in other cases.<sup>64</sup> Nonetheless, the Court seemed to contradict its position only five days after the decision in *El Amparo v Venezuela*, when it quantified the non-pecuniary damage in *Neira Alegría et al. v Peru* and determined the same amount per victim as in the former case, even though the State had not recognized its international responsibility.<sup>65</sup> The second criterion identified by the IACtHR was the vulnerability of the victims. This idea first appeared in the “*Street Children*” v *Guatemala* case when establishing compensation following the deprivation of life of five youths, three of whom were minors.<sup>66</sup> This criterion was also reiterated numerous times in the jurisprudence.<sup>67</sup> Nevertheless, it is possible to find judgments in which the youth of the direct victim has not been used to increase the amount of non-pecuniary damage,<sup>68</sup> which adds to the lack of clarity of the Court’s practice.<sup>69</sup>

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<sup>64</sup> *El Amparo v. Venezuela*. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 28, ¶ 34 (Sep. 14, 1996); *Trujillo Oroza v. Bolivia*. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 92, ¶ 82 (Feb. 27, 2002); *González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 584 (Nov. 16, 2009).

<sup>65</sup> *Neira Alegría et al. v. Peru*. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 29, ¶ 58 (Sep. 19, 1996).

<sup>66</sup> “*Street Children*” (Villagrán-Morales et al.) v. Guatemala. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 77, ¶ 91.b (May 26, 2001).

<sup>67</sup> *Caracazo v. Venezuela*. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 95, ¶ 102 (Aug. 29, 2002); *Molina Theissen v. Guatemala*. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 108, ¶ 67 (Jul. 3, 2004); “*Mapiripán Massacre*” v. Colombia. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 134, ¶ 288.c.iii (Sep. 15, 2005); *Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148, ¶ 390.d.iii (Jul. 1, 2006); *Goiburú et al. v. Paraguay*. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 153, ¶ 160.b.iii (Sep. 22, 2006).

<sup>68</sup> *Sawhoyamaya Indigenous Community v. Paraguay*. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 146, (Mar. 29, 2006); *Peasant Community of Santa Barbara v. Peru*. Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 299 (Sep. 1, 2015). The idea of vulnerability of the next of kin has also been extended to women who were pregnant at the time of the violation. *Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 140, ¶ 239 and 258.c.iv (Jan. 31, 2006); *Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 251, ¶ 288.d (Oct. 24, 2012).

<sup>69</sup> The Court has also referred to the special vulnerability of victims in connection to pregnant women. However, within the case-law concerning arbitrary deprivation of lives, this has so far only become relevant in relation to the suffering experienced by the victims’ next of kin.

*Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 140, ¶ 239 and 258.c (Jan. 31, 2006); *Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 251, ¶ 288.d (Oct. 24, 2012).

The third criterion highlighted by the case-law concerns the severity of the crime committed. There has been a range of circumstances examined by the Court in which an arbitrary deprivation of life has led to a violation of Article 4. From cases of extra-legal executions and forced disappearances to the use of the death penalty and the commission of crimes indirectly attributed to the State (given the failure to adopt preventive measures). Although the Court has not been explicit as to whether it evaluates these situations differently for the purposes of determining non-pecuniary damage, within three decades of case-law regarding the right to life the highest amounts were awarded in two judgments concerning forced disappearances.<sup>70</sup> At the same time, when dealing with cases that have involved both executions and forced disappearance only once has the Court awarded a higher amount to the next of kin of the victims of forced disappearance,<sup>71</sup> while not drawing such a distinction in the amounts in favor of the direct victim in the case,<sup>72</sup> nor an analogous differentiation in similar cases.<sup>73</sup> On its part, the academic literature has not mentioned any distinctions drawn by the Court when establishing non-pecuniary damage for extra-legal executions and forced disappearances, but has highlighted that a difference seems to exist depending on whether the violations had been committed by State agents or indirectly attributed to the State due to the lack of adoption of preventive measures.<sup>74</sup>

The fourth criterion the Court has stated as relevant for determining non-pecuniary damage is the time elapsed since the deprivation of life had taken place – or the forced

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<sup>70</sup> In fact, in cases concerning this type of crime the quantum of non-pecuniary damage has never been lower than 30,000 United States Dollars.

<sup>71</sup> *Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 140, ¶ 239 and 258.c (Jan. 31, 2006).

<sup>72</sup> *Ibid.* ¶ 140 and 258. See also *Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 287, ¶ 603 (Nov. 14, 2014).

<sup>73</sup> *La Cantuta v. Peru*. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 162 (Nov. 29, 2006); *Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 287 (Nov. 14, 2014).

<sup>74</sup> Antkowiak, *supra* note 15, 397; Ruth Rubio-Marín et al., *Repairing Family Members: Gross Human Rights Violations and Communities of Harm* in *THE GENDER OF REPARATIONS: UNSETTLING SEXUAL HIERARCHIES WHILE REDRESSING HUMAN RIGHTS VIOLATIONS* (Ruth Rubio-Marín ed. 2009) 215-290, 247.

disappearance had begun – and the moment in which the Court is quantifying the amount of compensation. This is an indication of the length of the situation of impunity surrounding the violation.<sup>75</sup> A final criterion to consider is the number of victims in a given case. As mentioned above, different judges have affirmed that the number of direct victims in a case influences the amount awarded to each of them, with higher sums for non-pecuniary damage in cases with fewer victims.<sup>76</sup> This has also been suggested by the academic literature.<sup>77</sup>

## 6. The model for statistical analysis

The model built tests the influence of the five mentioned elements (i.e. acknowledgment of State responsibility, vulnerability of the victim, severity of the crime, length of impunity, and number of victims) on the amount of non-pecuniary damage awarded to each of the direct victims in the thirty-year period under examination. It consists of a multivariate hierarchical regression in which the dependent variable is the quantum of non-pecuniary damage awarded to each of the direct victims in all the cases involving arbitrary deprivation of lives.<sup>78</sup> Since the amounts under examination have been awarded over a period of thirty years, two versions of the model have been run, one with the actual amounts determined by the Court and one with deflated amounts.

The model with deflated amounts allows taking into account the depreciation of the value of the awards due to inflation over the years. The use of deflated amounts helps to compare the real value of the awards by accounting for their purchasing power.<sup>79</sup> This is consistent with the actual practice of the IACtHR, since the Court has been concerned about

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<sup>75</sup> Ibsen Cárdenas and Ibsen-Peña v. Bolivia. Merits, Reparation and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 217, ¶ 283 (Sep. 1, 2010); Anzualdo-Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 202, ¶ 222 (Sep. 22, 2009).

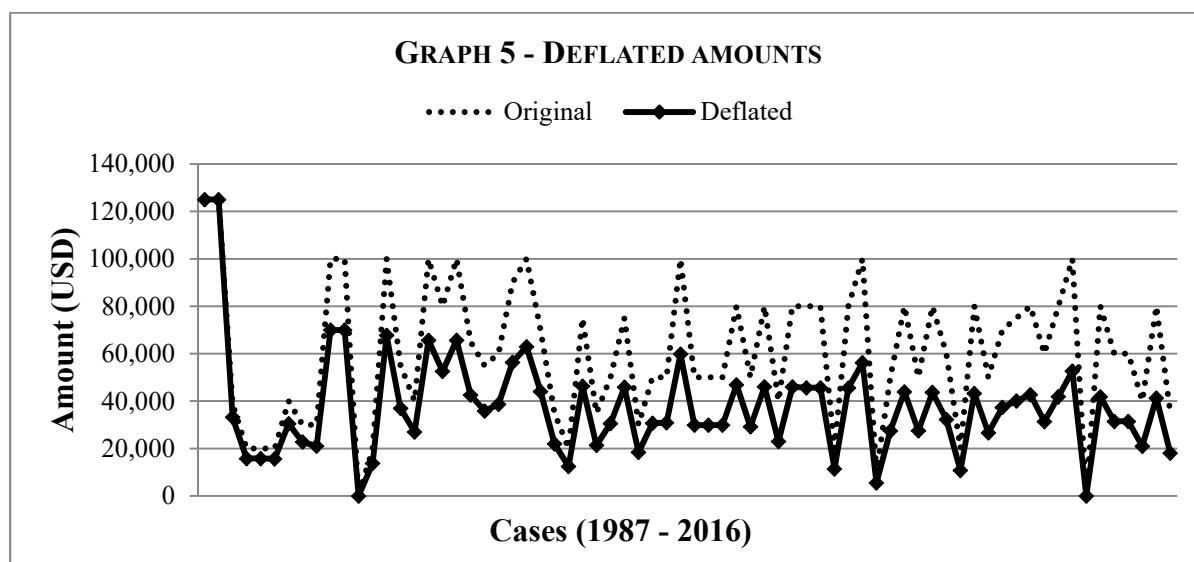
<sup>76</sup> BERISTAIN, *supra* note 18, 31 and 178.

<sup>77</sup> Antkowiak, *supra* note 15, 399-400; Rubio-Marín, *supra* note 74, 248.

<sup>78</sup> The data was nested by case. The equation for the model is  $Y_{ij} = \mu + u_i + e_{ij}$ .

<sup>79</sup> A quantitative study of non-pecuniary damage within the jurisprudence of the ECtHR has asserted the relevance of the purchasing power of compensation awards when quantifying the amounts. Altwickier-Hámori, *supra* note 3, 20.

preserving the purchasing power of the amounts of compensation awarded since its earliest case-law, as it expressly stated in its first interpretation of a judgment.<sup>80</sup> That is the reason why the IACtHR developed the practice of determining the sums of compensation in United State Dollars, understanding that the use of a hard currency helps to preserve the value of the amounts awarded against inflation and the devaluation of volatile currencies.<sup>81</sup> Consequently, the deflation of amounts allows for testing the significance of the different criteria while accounting for the loss of the real value of the amounts due to inflation over the years. The amounts of non-pecuniary damage were all deflated to the value of the United States Dollar at the time in which the IACtHR issued its first judgment on reparations in July 1989. For this purpose, the inflation calculator provided by the United States Department of Labor was used and the deflated amounts are represented in the graph below. To allow for comparison with the data presented in Graph 3, in cases in which there were several direct victims Graph 5 presents the deflated amount corresponding to the highest amount awarded to compensate the suffering of one direct victim.<sup>82</sup>



<sup>80</sup> Velásquez Rodríguez v. Honduras. Interpretation of the Judgment of Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 9, ¶ 31 (Aug. 17, 1990).

<sup>81</sup> *Ibid.* ¶ 41-42.

<sup>82</sup> The inflation calculator is available at [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm) [Last accessed 06/07/2019].

The five independent variables are the ones mentioned in the previous section. The first one is the length of impunity. This is calculated as the number of months elapsed since the deprivation of life took place – or the forced disappearance started – up to the day on which the IACtHR issued its judgment on reparations. Following the Court’s assertions, it would be expected that the lengthier the impunity, the higher the amount of non-pecuniary damage awarded. The second independent variable is the number of victims. The expectation is that a higher number of victims in a case would lead to a lower quantum of non-pecuniary damage for each of them. The third independent variable is the acknowledgment of international responsibility by the State. This is a binary variable, depending on whether the State has acknowledged its international responsibility (at least partially) before the IACtHR or not. Since the Court has affirmed that the acknowledgement of responsibility affects the amount awarded for non-pecuniary damage, the model examines whether the act of acknowledgment leads to a lower amount of non-pecuniary damage. The fourth independent variable is the vulnerability of the victim, indicated by whether the direct victim was a minor or not.<sup>83</sup> According to the IACtHR, the minority of the direct victim should cause an increase in the award, compared to cases in which the victims were adults. The final independent variable refers to the severity of the crime. This has been coded through the use of two dummy variables, one indicating cases of forced disappearances and a second identifying other cases of arbitrary deprivation of lives directly attributed to the State. The absence of both indications represents cases in which the violation of the right to life was not directly attributable to the State, but attributed due to a lack of prevention. The expectation is that amounts will be higher in the first two instances; perhaps even higher in cases of forced disappearance.

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<sup>83</sup> As indicated in *supra* note 69, within the Court’s case-law concerning arbitrary deprivations of life, the vulnerability of the direct victim has only been referred to when it comes to minors, as no pregnant women have been identified as direct victims.

## **7. The outcome of the multivariate regression**

The multivariate regression was performed with the data provided by seventy judgments, encompassing a total of 476 victims.<sup>84</sup> As discussed in Section 4, from the initial eighty-six cases twelve could not be included in the statistical analysis as the judgments did not indicate the precise amount of non-pecuniary damage determined in those occasions, while four others were excluded because the precise amount of non-pecuniary damage established in favor of the direct victims was unknown.

The outcome of the regression is extremely interesting. The most striking result is that the severity of the crime and the vulnerability of the victim appear as the most important predictors of the amount of compensation awarded to redress the non-pecuniary damage suffered by the victims. The variable indicating that the violation of the right to life took place in the context of a forced disappearance, the one representing an execution directly attributable to the State, and the variable expressing that the victim was a minor all appear statistically significant (at a probability of  $p < 0.01$ ). These results allow concluding that the model supports the expectation that higher amounts for non-pecuniary damage are awarded when the violation of the right to life is directly attributed to the State, compared to those cases in which it is indirectly attributed due to the lack of adoption of preventive measures in favor of the victim. The same holds true for the assumption that the Court determines higher awards of compensation to redress the non-pecuniary damage experienced by victims that are minors, compared to adult victims.

The model with deflated amounts had an almost identical outcome to the original one. Once again, both variables indicating the severity of the crime, as well as the one expressing the vulnerability of the victim, are statistically significant (at a probability of  $p < 0.01$ ). This reinforced the results of the first model in that higher amounts are awarded for non-pecuniary

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<sup>84</sup> The full results are presented in App. I.



damage when the arbitrary deprivation of life is directly attributable to the State, as well as when the victims are minors.

The fact that none of the other variables appear to be statistically significant is also very interesting, as it raises reasons for concern. The Court has expressly indicated in different judgments that the State's acknowledgement of international responsibility and the length of the violation were factors taken into account when quantifying the compensation due for non-pecuniary damage. Similarly, different judges (as well as the academic literature) have stated that the number of victims in a given case is determinant for the level of award of non-pecuniary damage established by the Court. However, the results of this study do not support such claims. This certainly leads to questioning the consistency of the Court's practice for quantifying compensation for non-pecuniary damage.

Furthermore, the statistically significant variables appear to be insufficient to explain by themselves the practice undertaken by the Court when quantifying its awards for non-pecuniary damage. It is possible to highlight the existence of multiple instances in which the Court has established equal amounts of compensation for non-pecuniary in favor of victims deprived of their lives under similar circumstances, despite some of them being minors and others adults, or even cases in which the amounts awarded have been higher for adult victims than for minors.<sup>85</sup>

Overall, the results seem to lead to two possible explanations. The first one would be that these five factors disclosed by the case-law are indeed all the criteria used by the IACtHR, but the Court has so far failed to apply them consistently when it comes to

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<sup>85</sup> Aloeboetoe et al. v. Suriname. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 15 (Sep. 10, 1993); "Street Children" (Villagrán-Morales et al.) v. Guatemala. Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 77 (May 26, 2001); Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 146, (Mar. 29, 2006); Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 253 (Nov. 20, 2012); Landaeta Mejías Brothers et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 281 (Aug. 27, 2014); Peasant Community of Santa Barbara v. Peru. Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 299 (Sep. 1, 2015).

establishing the sums for non-pecuniary damage.<sup>86</sup> An alternative (or ancillary) explanation is that the IACtHR has further criteria that are used when quantifying these awards, but has decided to maintain in secret. As mentioned above, this is the stance adopted by the ECtHR. However, it is worth highlighting that neither the literature, nor the IACtHR itself have previously mentioned this possibility. Certainly, a lack of consistent criteria, rather than mere lack of transparency, would be a more serious problem. As highlighted by Dinah Shelton, inconsistent awards affect the fairness of the legal system as a whole and can erode confidence in justice and in human rights mechanisms.<sup>87</sup>

Regardless of the reasons behind the situation, the general lack of clarity as to the criteria used by the IACtHR to quantify awards for non-pecuniary damage is in itself worrisome. On the one hand, other international courts are relying on the IACtHR's case-law to determine non-pecuniary damage themselves, which means that the problem can be spreading to other areas of international law, hence, affecting the emerging law on damages for human rights violations as a whole. On the other hand, the lack of certainty as to the criteria used by the IACtHR to quantify non-pecuniary damage is extremely detrimental for the victims of a violation. In particular, when it concerns an arbitrary deprivation of life, the close relatives of individuals deprived of their life who turn to the IACtHR in search of justice have to wait, on average, almost seventeen years to receive compensation for the suffering both their loved ones and themselves have experienced.<sup>88</sup> Following such a lengthy time the current situation is that they obtain a ruling that is difficult to understand as to its rationale.

## 8. Conclusion

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<sup>86</sup> This possibility has been suggested by Carrillo. Carrillo, *supra* note 18, 524.

<sup>87</sup> SHELTON, *supra* note 25, 376.

<sup>88</sup> This average was calculated based on the length of impunity of the cases under analysis.

The system of reparations developed by the Inter-American Court of Human Rights within its relatively short history has displayed many qualities that are worth praising. The diversity of the measures of reparation ordered by the Court to address the violations of the American Convention of Human Rights is certainly innovative and has become a source of inspiration for other international courts. However, the lack of clarity as to the criteria used when determining non-pecuniary damage is problematic. The principles of equity and judicial discretion while valuable are rather vague standards that do not provide transparency and foreseeability to the amounts the Court establishes to redress the suffering experienced by an individual arbitrarily deprived of their life.

This is the first empirical analysis of the IACtHR's criteria for establishing compensation for a violation of human rights. After identifying the criteria the Court has highlighted as relevant for the quantification of non-pecuniary damage, these criteria were tested through statistical analysis to determine whether they could explain the rationales behind the different amounts awarded. The results of the multivariate regression showed that – from the criteria disclosed by the IACtHR – only the severity of the crime at stake and the vulnerability of the victim seem to consistently influence the Court's determination of the amounts of non-pecuniary damage in cases concerning arbitrary deprivations of life. The lack of statistical significance of the other revealed criteria raises important questions as to the consistency of the Court's practice and as to the existence of other factors that can help to further explain how these awards are quantified.

The findings of this article lead to the conclusion that either the IACtHR is not disclosing other criteria it uses when determining the quantum of the awards or it has been inconsistent in the application of the criteria underlying these determinations (if not both). Additional research into the practice of the IACtHR for quantifying compensation can help shed light onto which of the mentioned possibilities is the correct one. Nevertheless, both

alternatives require the Court to adopt future steps to strengthen the transparency and foreseeability of the system. Whether these entail disclosing existing secret guidelines or developing a more clear and consistent practice is only known by the judges sitting at the IACtHR. Whichever the case may be, these steps will be a needed contribution to further improve the work of a court that is becoming a world-leading authority on the international law on damages for human rights violations.

## Appendix I

### Multilevel hierarchical models

	<b>Model 1</b>	<b>Model 2</b>
<b>Dependent variables:</b>	Amounts of NPD	Deflated amounts
<b>Length</b>	9.76 [6]	5.29 [4]
<b>No. of victims</b>	-328.56 [286]	-238.16 [226]
<b>Minority status</b>	3415.49*** [308]	2146.06*** [206]
<b>Acknowledgment</b>	4343.21 [6489]	-78.67 [5123]
<b>Forced Disappearance</b>	11717.5*** [2025]	6431.77*** [1366]
<b>Execution</b>	10101.99*** [1269]	5577.92*** [854]
<b>Constant</b>	49042.89*** [5349]	33341.95*** [4199]
<b>Observations</b>	476	476
<b>No. of cases</b>	70	70
<b>Standard errors in brackets</b>	*** p<0.01, ** p<0.05, * p<0.1	

## Appendix II

### List of 86 cases concerning arbitrary deprivations of life

1. Velásquez Rodríguez v. Honduras. Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 7 (Jul. 21, 1989);
2. Godínez Cruz v. Honduras. Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 8 (Jul. 21, 1989);
3. Aloeboetoe et al. v. Suriname. Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 15 (Sep. 10, 1993);
4. El Amparo v. Venezuela. Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 28 (Sep. 14, 1996);
5. Neira Alegría et al. v. Peru. Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 29 (Sep. 19, 1996);
6. Caballero Delgado and Santana v. Colombia. Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 31 (Jan. 29, 1997);
7. Benavides Cevallos v. Ecuador. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 38 (Jun. 19, 1998);
8. Garrido and Baigorria v. Argentina. Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 15 (Aug. 27, 1998);
9. Case of Castillo Páez v. Peru. Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 43 (Nov. 27, 1998);
10. “White Van” (Paniagua Morales et al.) v. Guatemala. Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 76 (May 25, 2001);
11. “Street Children” (Villagrán-Morales et al.) v. Guatemala. Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 77 (May 26, 2001);

12. Barrios Altos v. Peru. Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 87 (Nov. 30, 2001);
13. Durand and Ugarte v. Peru. Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 89 (Dec. 3, 2001);
14. Bámaca Velásquez v. Guatemala. Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 91 (Feb. 22, 2002);
15. Trujillo Oroza v. Bolivia. Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 92 (Feb. 27, 2002);
16. Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 94 (Jun. 21, 2002);
17. Caracazo v. Venezuela. Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 95 (Aug. 29, 2002);
18. Las Palmeras v. Colombia. Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 96 (Nov. 26, 2002);
19. Juan Humberto Sánchez v. Honduras. Preliminary Objection, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 99 (Jun. 7, 2003);
20. Bulacio v. Argentina. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 100 (Sep. 18, 2003);
21. Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 101 (Nov. 25, 2003);
22. Molina Theissen v. Guatemala. Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 108 (Jul. 3, 2004);
23. 19 Merchants v. Colombia. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 109 (Jul. 5, 2004);
24. Gómez Paquiyauri Brothers v. Peru. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 110 (Jul. 8, 2004);
25. “Juvenile Reeducation Institute” v. Paraguay. Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 112 (Sep. 2, 2004);
26. Carpio Nicolle et al. v. Guatemala. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 117 (Nov. 22, 2004);
27. Huilca Tecse v. Peru. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 121 (Mar. 3, 2005);
28. “Mapiripán Massacre” v. Colombia. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 134 (Sep. 15, 2005);
29. Gómez Palomino v. Peru. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 136 (Nov. 22, 2005);
30. Blanco Romero et al v. Venezuela. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 138 (Nov. 28, 2005);
31. Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 140 (Jan. 31, 2006);
32. Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 146 (Mar. 29, 2006);
33. Baldeón García v. Peru. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 147 (Apr. 6, 2006);
34. Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 148 (Jul. 1, 2006);
35. Ximenes Lopes v. Brazil. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 149 (Jul. 4, 2006);
36. Montero Aranguren et al. (Detention Center of Catia) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 149 (Jul. 5,

- 2006);
37. *Servellón García et al. v. Honduras*. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 152 (Sep. 21, 2006);
  38. *Goiburú et al. v. Paraguay*. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 153 (Sep. 22, 2006);
  39. *Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 160 (Nov. 25, 2006);
  40. *La Cantuta v. Peru*. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 162 (Nov. 29, 2006);
  41. *Rochela Massacre v. Colombia*. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 163 (May 11, 2007);
  42. *Escuá Zapata v. Colombia*. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 165 (Jul. 4, 2007);
  43. *Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 166 (Jul. 4, 2007);
  44. *Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 167 (Jul. 10, 2007);
  45. *Tiu Tojín v. Guatemala*. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 190 (Nov. 26, 2008);
  46. *Ticona Estrada et al. v. Bolivia*. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 191 (Nov. 27, 2008);
  47. *Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 192 (Nov. 27, 2008);
  48. *Kawas Fernández v. Honduras*. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 196 (Apr. 3, 2009);
  49. *Anzualdo-Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 202 (Sep. 22, 2009);
  50. *González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 205 (Nov. 16, 2009);
  51. *Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 209 (Nov. 23, 2009);
  52. *Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 212 (May 25, 2010);
  53. *Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 213 (May 26, 2010);
  54. *Xákmok Kásek Indigenous Community v. Paraguay*. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 214 (Aug. 24, 2010);
  55. *Ibsen Cárdenas and Ibsen-Peña v. Bolivia*. Merits, Reparation and Costs, Inter-Am. Ct. H.R. (ser. C) No. 217 (Sep. 1, 2010);
  56. *Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 219 (Nov. 24, 2010);
  57. *Gelman v. Uruguay*. Merits and Reparations, Inter-Am. Ct. H.R. (ser. C) No. 221 (Feb. 24, 2011);
  58. *Vera Vera et al. v. Ecuador*. Preliminary Objection, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 226 (May 19, 2011);
  59. *Torres Millacura et al. v. Argentina*. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 229 (Aug. 26, 2011);
  60. *Contreras et al. v. El Salvador*. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 232 (Aug. 31, 2011);
  61. *Barrios Family v. Venezuela*. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser.

- C) No. 237 (Nov. 24, 2011);
62. Gonzalez Medina and family v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 240 (Feb. 27, 2012);
  63. Pacheco Teruel et al v. Honduras. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 241 (Apr. 27, 2012);
  64. Uzcátegui et al. v. Venezuela. Merits and reparations, Inter-Am. Ct. H.R. (ser. C) No. 249 (Sep. 3, 2012);
  65. Río Negro Massacres v. Guatemala. Preliminary Objection, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 250 (Sep. 4, 2012);
  66. Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 251 (Oct. 24, 2012);
  67. Massacres of El Mozote and nearby places v. El Salvador. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 252 (Oct. 25, 2012);
  68. Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 253 (Nov. 20, 2012);
  69. García and Family members v. Guatemala. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 258 (Nov. 29, 2012);
  70. Santo Domingo Massacre v. Colombia. Preliminary Objections, Merits and Reparations, Inter-Am. Ct. H.R. (ser. C) No. 259 (Nov. 30, 2012);
  71. Luna López v. Honduras. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 269 (Oct. 10, 2013);
  72. Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 270 (Nov. 20, 2013);
  73. Gutiérrez and Family v. Argentina. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 271 (Nov. 25, 2013);
  74. Osorio Rivera and Family members v. Peru. Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 274 (Nov. 26, 2013);
  75. Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 277 (May 19, 2014);
  76. Landaeta Mejías Brothers et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 281 (Aug. 27, 2014);
  77. Rochac Hernández et al. v. El Salvador. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 285 (Oct. 14, 2014);
  78. Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 287 (Nov. 14, 2014);
  79. Cruz Sánchez et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 292 (Apr. 17, 2015);
  80. Peasant Community of Santa Barbara v. Peru. Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 299 (Sep. 1, 2015);
  81. García Ibarra et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 306 (Nov. 17, 2015);
  82. Velásquez Paiz et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 307 (Nov. 19, 2015);
  83. Chinchilla Sandoval v. Guatemala. Preliminary Objection, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 312 (Feb. 29, 2016);
  84. Tenorio Roca et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 314 (Jun. 22, 2016);
  85. Yarce et al. v. Colombia. Preliminary Objection, Merits, Reparations and Costs, Inter-



Am. Ct. H.R. (ser. C) No. 325 (Nov. 22, 2016);  
86. Members of the Chichupac Village and Neighboring Communities of the Rabinal Municipality v. Guatemala. Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 328 (Nov. 30, 2016).