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Article

Defining Beneficiaries of Collective Reparations: The experience of the IACtHR

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Abstract

Under international law, it is uncontested that the victims of gross and systematic human rights violations have the right to reparation. International tribunals have increasingly granted collective reparations as the most appropriate kind of reparation for these violations. This has been re-affirmed by the recent decision on reparations of the International Criminal Court in the *Lubanga* case. And indeed, s gross and systematic human rights violations involve large numbers of victims and collective reparations seek to provide redress to groups and communities. Yet, while there is a trend of international tribunals adjudicating gross human rights violations resorting to collective reparations, these reparations face numerous ambiguities such as the lack of a single definition and clear guidelines for the identification of their beneficiaries. This article examines the experience of the Inter-American Court of Human Rights, pioneer of collective reparations, in the identification of beneficiaries of gross and systematic human rights violations.

Introduction

Under international law, the obligation to repair wrongdoings has been recognised for a long time.[1] Yet, the question of reparations for gross human rights violations, which amount to crimes under international law, did not receive sufficient attention until the 1990s.[2] In 1989, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities decided to appoint Theo Van Boven as Special Reporter and entrusted him with

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[1] A. Buti, 'International Law Obligations to Provide Reparations for Human Rights Abuses', Murdoch University Electronic Journal of Law 1999-6, at: http://www.murdoch.edu.au/elaw/issues/v6n4/buti64.txt (accessed on 1 August 2012).

[2] N. Roth-Arrianza, *Combating impunity: some thoughts on the way forward,* Law and Contemporary Problems, Vol. 59, no. 4 1996, pp. 93-102.

the task of undertaking a study to provide basic principles and guidelines on the right to remedy for victims of gross violations of human rights and fundamental freedoms.[3] In his final (1993)report, Van Boven stated that:

> It is obvious that gross violations of human rights and fundamental freedoms, particularly when they have been committed on a massive scale, are by their nature irreparable. In such instances any remedy or redress stands in no proportional relationship to the grave injury inflicted upon the victims. It is nevertheless an imperative norm of justice that the responsibility of the perpetrators be clearly established and that the rights of the victims be sustained to the fullest possible extent.[4]

In this light, reparations are an imperative part of doing justice to all victims of gross human rights violations. Not only do reparations aim at restoring the victim's dignity, but also at promoting peace and reconciliation.[5] According to Van Boven's final report, there are five types of reparations for victims of gross human rights violations: restitution, compensation, measures of satisfaction, rehabilitation and guarantees of non-repetition. These forms of reparations can be granted on an individual or a collective basis. [6] A detailed explanation on the aforementioned types of reparations will be given in the following section of this article.

It is important to note that when dealing with gross and systematic abuse, non-judicial and judicial bodies have opted for granting collective reparations. For instance, the Peruvian Reconciliation and Truth Commission, in its final report, concluded that as a consequence of the armed conflict and the political violence between 1980 and 2000, almost 70 000 people were killed or had disappeared a great number of these victims were members of poor and marginalised indigenous communities. The commission recommended to the State of Peru, inter alia, the creation of an Integral Reparation Plan, which included collective reparations.[7] Likewise, the Inter-American Court of Human Rights (IACtHR) has granted collective reparations in cases involving gross violations of human rights, which in turn imply a large number of victims. For instance, in the *Plan de Sánchez* case, the Court determined that the State of Guatemala was responsible for a massacre against a Mayan community which involved the murder of more than 250 persons.[8] The Court granted collective reparations to the survivors of the massacre.[9]

The International Criminal Court's recent decision on reparations in the *Lubanga* case[10] seems to follow the trend of granting collective reparations when dealing with gross human rights violations. In this decision, the Trial Chamber of the International Criminal Court

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[3] Final Report submitted by Mr. Theo Van Boven to the 45th Session of the United Nations Commission on Human Rights, UN Doc. E/CN.4/Sub.2/1993/.
[4] Idem, § 131.
[5] T. van Boven, 'Reparations: a requirement of justice', in: *Memoria del Seminario: El sistema interamericano de protección de los derechos humanos en el umbral del siglo*, Costa Rica: CDIH 1999, p. 668.
[6] Roth-Arrianza 1996, supra note 3.
[7] International Centre for Transitional Justice, *The Rabat Report: The Concept and Challenges of Collective Reparations*, 2009.
[8] T.M. Antkowiak, 'Remedial Approaches to Human Rights Violations: The Inter-American Court of Human Rights and Beyond', *Columbia Journal of Transnational Law* 2008-315, p. 353.
[9] I/A Court H.R., *Plan de Sánchez Massacre v. Guatemala*, Reparations and Costs, Judgment of November 19, 2004, Series C No. 116, § 93-111.
[10] On 14 March 2012, Thomas Lubanga Dylo was found guilty of the war crimes of enlisting and conscripting children under the age of 15 years. See: ICC, Lubanga Case, ICC-01/04-01/06-2842, 14 March, 2012.

(ICC) granted collective reparations not only to the relatively small group of victims participating in the proceedings[11] but to all direct and indirect victims who could prove a link between their victimisation and the *Lubanga* case.[12] It is important to highlight that the ICC ordered that the reparations programmes would be decided in consultation with their beneficiaries.[13] This approach mirrors the recommendations on reparations by the Peruvian Truth and Reconciliation Commission as well as the Guatemalan counterpart. What makes things difficult however is that the ICC did not provide any guidelines as to how and when the identification of beneficiaries would be compensated.

In contrast to the ICC, the IACtHR usually indicates a period of time and procedures under which the identification of victims must be conducted. This is of utmost importance because if the beneficiaries are not identified, the effective implementation of any collective reparations would be very unlikely.

The need for clear guidelines in order to effectively implement collective reparations calls for the addressing of the procedural rules and the timeframe for defining or identifying beneficiaries of collective reparations. This article analyses the experience and best practices of the Inter-American Court of Human Rights, pioneer of collective reparations, in order to advance the effectiveness of the implementation of collective reparations in relation to the ICC and as such.

Before delving into the subject matter of this article, a brief recollection of the right to reparation is deemed necessary.

I. The Right to Reparations

Under international law, states have the duty to make reparations when they commit wrongful acts. This obligation was established as a principle of international law by the Permanent Court of International Justice (PCIJ) in the often-quoted *Chorzow Factory* case: "[i]t is a principle of international law that the breach of an engagement involves an obligation to make a reparation in an adequate form."[14] The PCIJ also established that the ultimate purpose of reparations is to achieve *restitutio in integrum*: "so far as possible, wipe-out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed."[15]

In the opinion of the International Court of Justice (ICJ), this obligation of a state *vis-à-vis* another state also exists in the relationship between states and individuals.[16] Therefore, this obligation was incorporated into the confines of international human rights law. Once a state's responsibility for acts or omissions amounting to human rights violations has been established, that state has the duty to repair the harm inflicted against individuals.[17]

It is important to note that, under international human rights law, reparations are not only a state's obligation but also a right that victims are entitled to. This has been elaborated in the 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of

[11] ICC, Lubanga Case, ICC-01/04-01/06, 7 August 2012, §187. It is important to mention that 129 victims were allowed to participate in the proceedings in *Lubanga* case.
[12] Idem, § 194-201.
[13] Idem, § 282.
[14] Permanent Court of International Justice, *Chorzow Factory* case, 1928 Ser. A. No. 9, § 29.
[15] Idem, § 47.
[16] International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,* Advisory Opinion, 9 July 2004, § 152-153.
[17] International Commission of Jurists, *The Right to a Remedy and to Reparations for Gross Human Rights,* Geneva: Practicioner's Guide, Series 2, 2006, p. 9.

International Humanitarian Law (2005 UN Van Boven Principles).[18] This document re-affirms the victim's right to obtain reparations and remedies, which is in turn a state's duty, and elaborates on the modalities in which reparations could take place in order to achieve the ultimate goal of reparations, *restitutio in integrum*.

The right to reparation is enshrined in global and regional human rights instruments.[19] However, most of the instruments that recognise the right to reparations refer to 'effective remedy' instead.[20] This is because the right to an effective remedy has two dimensions: a procedural and a substantive one.[21] The procedural dimension refers to the legal means by which an independent and impartial authority addresses an allegation of human rights violations. On the other hand, the substantive dimension refers to adequate, prompt and effective reparation for the harm suffered. Against this backdrop, the Human Rights Committee has stated that:

> without reparations to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy [...] is not discharged. [22]

Having established that the right to obtain reparations is one side of the coin of an effective remedy by means of which victims make their rights enforceable,[23] we could conclude that reparations are a crucial element in delivering justice to victims.[24] Thus, this right has achieved a non-derogable status.[25]

Interestingly, the scope of the right to reparations has developed in different ways among human rights bodies and human rights courts. Nevertheless, the 2005 UN Van Boven Principles are meant to be a source of inspiration for states and international tribunals when granting reparations. According to this document, reparations can take place in five different forms:

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[18] UN GA A/RES/60/147, 21 March, 2006, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/496/42/PDF/N0549642.pdf?OpenElement (accessed on 25 August 2012).

[19] Declaration of Human Rights (UDHR), art. 8; International Covenant on Civil and Political Rights (ICCPR), art. 3, 9.5; International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), art. 13, 14; International Convention on the Elimination of All Forms of Racial Discrimination (CERD), art. 6; UN Convention on the Rights of the Child (CRC), art. 9; European Convention on Human Rights (ECHR) art. 5, 50; American Convention on Human Rights, art.10, 25, 63(1).

[20] This is not the case in the European Convention on Human Rights and the American Convention on Human Rights. Both documents have provided the right to an effective remedy and to obtain reparations in separate provisions.

[21] D. Shelton, *Remedies in international Human Rights Law,* New York: Oxford University Press 2005, p. 7.

[22] General Comment No. 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 16

[23] T. Van Boven, 'Victims' Rights to a Remedy and Reparations: The New United Nations Principles and Guidelines', in: C. Ferstman, M. Goetz & A. Stephens, *Reparations for victims of genocide, war crimes and crimes against humanity: systems in place and systems in the making*, Leiden: Martinus Nijhoff 2009, p. 21; C. Bassiouni, *International Recognition of Victims' Rights in Human Rights*, Oxford Law Review 2006-6, pp. 203-279

[24] Bassiouni 2006, supra note 23, p. 231.

[25] Human Rights Committee, General Comment 29, States of Emergency (art. 4), U.N. Doc. ICCPR/C/21/Rev.1/Add.11 (2001), § 14-15.

1) Restitution should restore the victim to the original situation before the violation took place. This measure includes: "restoration of liberty, enjoyment of human rights, identity, life and citizenship, return of property".[26]
2) Compensation 'should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation'. The damage assessable should include material and moral damage as well as lost opportunities.[27]
3) Rehabilitation should "include medical and psychological care, as well as legal and social services". [28]
4) Satisfaction "includes a broad range of measures, from those aiming at cessation of violations to truth seeking, the search for the disappeared, the recovery and the reburial of remains, public apologies, judicial and administrative sanctions, commemoration, and human rights training".[29]
5) Guarantees of non-repetition "should include institutional reforms oriented to strengthening the independence of the judiciary, promoting the observance of norms, promoting mechanisms for preventing and monitoring social conflicts and their solutions".[30]

Inspired by this declaration, the IACtHR has granted reparations to the victims in a holistic approach.[31] The unique and to a great extent creative approach of this Court, has been globally praised by scholars and practitioners.[32]

II. The Right to Reparations under the IACtHR

In this section I will briefly discuss the IACtHR's approach towards reparations after gross human rights violations. This Court is particularly instructive regarding adjudication in cases of gross violations of human rights. Since its first judgment in the early 1980s, the IACtHR has constantly addressed human rights violations of a widespread and systematic nature.[33] This is because Latin America was home to authoritarian regimes and violent conflicts during the 1970s and (early) 1980s, which led to numberless gross violations of human rights.[34]

Before delving into the matter, an introduction to the Inter-American System of Human Rights is appropriate. The Inter-American System is composed of several international human rights instruments[35] and two principal bodies: the Inter-American Commission of Human Rights (IACmHR) and the Inter-American Court of Human Rights as established in the American Convention on Human Rights (AC). The former is an autonomous organ of the Organisation of American States (OAS), whose principal functions are the promotion of the observance and defence of human rights and to serve as an advisory body to the OAS in

[26] International Commission of Jurists 2006, supra note 18, principle 19.
[27] Idem, principle 20.
[28] Idem, principle 21.
[29] Idem, principle 22.
[30] Idem, principle 23.
[31] International Centre for Transitional Justice 2009, supra note 8.
[32] L. Oette, 'Bringing Justice to Victims? Responses of Regional and International Human Rights Courts and Treaty Bodies to Mass Violations', in: C. Ferstman, M. Goetz & A. Stephens, *Reparations for victims of genocide, war crimes and crimes against humanity: systems in place and systems in the making*, Leiden: Martinus Nijhoff 2009, p. 236.
[33] C. Medina-Quiroga, *The battle of human rights: gross, systematic violations and the Inter-American system*, Leiden: Martinus Nijhoff Publishers 1988, pp. 369
[34] Ibid.
[35] See list of Basic Documents of the Inter-American System, at: http://www.cidh.oas.org/Basicos/English/Basic.TOC.htm (accessed on 12 April 2012).

this area,[36] and the latter is an autonomous judicial institution whose main purpose is the interpretation of the American Convention on Human Rights through its adjudicatory and advisory function.[37] The common objective of these two autonomous bodies is the promotion and protection of human rights within the region.

Under the Inter-American System, not only the victim of a violation of a right enshrined in the AC may file a petition before the IACmHR, but a group of people or a non-governmental organisation (NGO) can do so as well.[38] Upon receiving an individual complaint, the Commission decides on the admissibility of the complaint. If there is a decision on admissibility, the Commission would seek a friendly settlement among the parties by issuing a recommendation to the state.[39] If the state fails to fulfil the recommendations, the Commission may lodge a case before the IACtHR.[40] It is worth mentioning that whenever the Court finds state responsibility, it will order reparations to be made to the victims.

However, reparations are not a task exclusive to the IACtHR. The Commission, in its recommendations, has also granted reparations to victims of human rights violations. Both organs have developed a progressive victim-oriented approach towards reparations due, to a great extent, to the kind of cases before them.[41] Owing to space constraints, this section will only focus on the interpretation of the IACtHR regarding the right to reparations.

The Inter-American Court of Human Rights' legal basis to grant reparations is found in article 63(1) of the ACHR:

> If the Court finds that there has been a violation of a right or freedoms protected by its Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

Likewise, the PICJ, the IACtHR, established from its first judgment the aim that reparations are be made to provide *restitutio in integrum*:

> Reparation for damage caused by a breach of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of re-establishing the previous situation. If that [is] not possible, the international court must order that steps be taken to guarantee the rights infringed, redress the consequences of the infringements and determine payment of indemnification as compensation for damage caused.[42]

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[36] Rules of Procedure of the Inter-American Commission on Human Rights, art. 1.
[37] American Convention on Human Rights, art. 61-65.
[38] Idem, art. 44.
[39] These recommendations entail forms of reparations.
[40] American Convention on Human Rights, art. 41(b); Rules of Procedure of the Inter-American Commission on Human Rights, art. 40-43.
[41] Most of the cases adjudicated by the Court have been cases related to gross and systematic violations of human rights.
[42] I/A Court H.R., *Velásquez-Rodríguez v. Honduras,* Reparations and Costs, Judgment of 21 July 1989, Series C No. 7, § 26.

The Inter-American Court of Human Rights has been very innovative in the reparations it awards to victims. When dealing with gross human rights violations and large numbers of victims in particular,[43] the Court has been vocal in the need to provide 'integral reparations.' A good example of the great creativity as well as authority of the IACtHR can be found in the *Serrano Cruz's Sister* case.[44] This is a case that deals with the forced disappearances of two children. During the Salvadorian civil war in early 1980s, several military operations were conducted where children were abducted, taken from their families and given up for adoption in exchange for money. These military operations were tolerated by the State. In this specific case, two sisters were abducted by soldiers and given to a family. The sisters' relatives never heard about their whereabouts after the abduction andbrought the case before the IACmHR. Thanks to the Commission itbecame an IACtHR case. The IACtHR ordered El Salvador to create a "system of genetic information that allows genetic data that can contribute to determining and clarifying the relationships and identification of the disappeared children and their next of kin to be obtained and conserved."[45] In addition, in the *Alboeboetoe v. Suriname* case, in which the IACtHR dealt with the extrajudicial killing of seven members of the Saramaccan Maroon boatmen by military forces, the IACtHR ordered the State to reopen a school and establish a medical dispensary.[46]

Collective reparations have become an important development in the jurisprudence of the IACtHR. However, the Court has not elaborated on the meaning of this kind of reparations. In fact, under modern international law, there is ambiguity as to what collective reparations are. The following section will elaborate on this.

III. Collective Reparations

It is of the utmost importance to note that under international law, there is no single definition of collective reparations. Nevertheless, collective reparations are a modality of reparations which international courts increasingly resort to.

For the purposes of this article, I will borrow the concept of collective reparations provided by Friedrich Rosenfeld: "collective reparations [are] the benefits conferred on collectives in order to undo the collective harm that has been caused as a consequence of a violation of international law."[47]

Rosenfeld, further identifies four elements of collective reparations:

1) Benefits which can take place in a variety of different forms. These benefits encompass symbolic (public apologies, memorials) or material reparations (development programmes).

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[43] In this light, the Court usually awards collective reparations in cases involving indigenous peoples. See: D. Contreras-Garduno & S. Rombouts, 'Collective Reparations for Indigenous Communities Before the Inter-American Court of Human Rights', Utrecht Journal of International and European Law 2010-27, pp. 4-17.

[44] I/A Court H.R., *Serrano-Cruz Sisters v. El Salvador*, Merits, Reparations and Costs, Judgment of 1 March 2005, Series C No. 120.

[45] Idem, § 193.

[46] I/A Court H.R., *Case of Aloeboetoe et al. v. Suriname*, Reparations and Costs, Judgment of 10 September 1993, Series C No. 15, § 96.

[47] F. Rosenfeld, *Collective Reparations for victims of armed conflicts*, International Review of the Red Cross 2010, p. 732.

2) The beneficiaries are collectives or groups.[48]
3) They aim at redressing a 'collective harm' which victims who 'share certain bonds, such as common cultural, religious, tribal, or ethnic roots' suffered.
4) The harm resulted from a violation of international law.

Collective reparations are not a product of jurisprudential creation. Both the 2005 UN Basic Principles[49] and the Updated Set of Principles to Combat Impunity[50] support the idea of granting reparations to individuals *or collectives*. The Rome Statute also provides the ICC with the possibility of awarding collective reparations when the "number of victims and the scope" make this form of reparations "more appropriate".[51] In addition, the Extraordinary Chambers in the Courts of Cambodia are empowered to order "collective and moral" reparations.[52]

Regardless of the ambiguity of the term 'collective reparations', we can see those reparations are granted more often than individual reparations. Not just international tribunals have called for them when dealing with gross and systematic violations of human rights, but so have quasi-judicial bodies such as the Truth and Reconciliation Commissions (TRCs). It is a common feature among TRCs that their final recommendations embrace reparations in the form of development programmes as well as symbolic measures.[53] For instance, the Peruvian Truth and Reconciliation Commission (PTRC) recommended the establishment of an Integral Plan of Collective Reparations which aimed at:[54]

1) institutional consolidation;
2) improvement of trade and economic infrastructure;
3) support of the resettlement of displaced people, and
4) improvement of basic social services.

Likewise, the TRCs established in Sierra Leone and Timor-Leste recommended development programmes; they focus on education and health.[55]

In transitional justice processes, the implementation of collective reparations is a key element in moving forward in re-building relationships among individuals and communities.[56] At the time of writing, collective reparations are a central point of discussion in Colombia's transitional process.[57]

However, most of the collective reparations recommended in those processes amount to people being granted certain social services, and those services should be granted because

[48] For a concept of collective victims see M.C. Bassiouni, 'The Protection of Collective Victims in International Law', *New York Law School: Human Rights Annual* 1985-2.
[49] International Commission of Jurists 2006, supra note 18. Preamble: Noting that contemporary forms of victimisation, while essentially directed against persons, may nevertheless also be directed against groups of persons who are targeted collectively.
[50] Principle 32, ECOSOC, E/CN.4/2005/102/Add.1, 8 February 2005, at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement (accessed on 10 August 2012).
[51] Rule 98(3) of the ICC Rules of Procedure and Evidence reads as follows: "The Court may order that an award for reparations against a convicted person be made through the Trust Fund where the number of the victims and the scope, forms and modalities of reparations makes a collective award more appropriate."
[52] ECCC Internal Rules, rule 23 quinquies.
[53] International Centre for Transitional Justice 2009, supra note 7.
[54] Peruvian Truth and Reconciliation Commission, *Final Report* 2003.
[55] International Centre for Transitional Justice 2009, supra note 7, p. 14.
[56] L. Margarell, *Reparations in Theory and Practice*, New York: ICTJ Reparative Justice Series, International Center for Transitional Justice 2007, pp. 2-3.
[57] Rodrigo Uprimny at his inaugural lecture accepting the UNESCO Chair of 'Education for Peace, Human Rights and Democracy', 21 October 2009, Utrecht, the Netherlands.

every human being is entitled to social, economic and cultural rights to secure a dignified and decent existence, and not because they are victims of gross human rights violations. It seems that the only difference between social or development programmes and collective reparations as understood by TRCs is their label. Without the label, it is difficult to think that victims would see those programmes as a measure of reparations. This is also a problem for the reparations programmes carried out in Peru.[58] Uprimny has stated that the beneficiaries of those reparations often see the reparations as 'development aid' or better protection of their economic and social rights instead of reparations as such. Along with the label, collective reparations should be accompanied by symbolic measures such as a monument or a genuine apology. Combining symbolic and collective social reparations, beneficiaries could find it easier to a see the reparations as part of a justice process for past abuses.

Collective reparations, however, face more challenges than distinguishing between social programmes and the collective reparations programmes. For instance, the mere objective of reparation seems to be challenged by collective reparations as it is difficult to argue that those kind of reparations will wipe out the harm of the victims. As explained in the second section of this paper, reparations aim at wiping out the consequences of the human rights abuses. Unfortunately, it is clear that the harm cannot be erased. Instead, "reparations for human rights violations only provide the victims the means to attenuate their suffering, making it less unbearable, perhaps bearable."[59]

A crucial question arises from this complicated situation: would collective reparations such as health programmes or the improvement of infrastructure attenuate the suffering of victims of gross human rights violations? Ezequiel-Malarino has answered this question negatively. He has expressed that: "Only when putting a lot of effort, one could argue that the construction of a sewage system, a water system or improving roads, to cite a few examples, 'repair' the victims of a massacres." [60]

Nevertheless, it is fairly clear that there is no single form of reparation that would be guaranteed to reduce suffering. Would providing a sum of money directly to victims be a better measure to make their suffering more bearable?

Similarly, the IACtHR has granted social programmes as part of collective reparations. The following paragraphs discuss the IACtHR's approach to collective reparations.

IV. Collective Reparations under the IACtHR

It is important to distinguish collective reparations as an important feature of the IACtHR's jurisprudence. However, we have to bear in mind that the IACtHR grants not only collective

[58] International Centre for Transitional Justice 2009, supra note 7, p. 32.
[59] I/A Court H.R., *Case of Bulacio v. Argentina*, Merits, Reparations and Costs, Judgment of 18 September 2003, Series C No. 100, Judge Cançado Trindade, § 25.
[60] E. Malarino, 'Activismo Judicial, Punitivización y Nacionalización. Tendencias Antidemocráticas y Antiliberales de la Corte Interamericana de Derechos Humanos', in: *Grupo Latinoamericano de Estudios sobre Derecho Penal International, Sistema Interamericano de Protección de los Derechos Humanos y Derecho Penal Internacional* 2010-1, p. 69. Original text: "Solo con mucho esfuerzo podría sostenerse que la construcción de una red de alcantarillado, de un sistema de agua potable o la mejora de carreteras, para citar unos pocos ejemplos, "reparan" a las víctimas de una masacre." [translated by the author]

reparations but also individual ones, in the form of measures of satisfaction or non-repetition guarantees, which benefits 'society as a whole'.[61]

IV.1 Reparations that Benefit Society as a Whole

The IACtHR, when addressing individual complaints, often orders measures of satisfaction or non-repetition in order to prevent further violations of the same kind in a given country.[62] These are intended to benefit the victim of the case and 'society as a whole'.[63]

In this light, the IACtHR, when dealing with individual complaints, has ordered states to enrol the victims of a case in a school;[64] to provide human rights education programmes for the staff of the judiciary[65] or members of armed forces,[66] or to offer a public apology.[67]

At first glance these measures seem to suggest that the IACtHR has ordered collective reparations in favour of a given society. However, the IACtHR has pointed out in its jurisprudence that according to Article 1(1) of the American Convention,[68] states have acquired *erga omnes* obligations and, therefore, bear the duty to prevent violations of the rights protected by the Convention.[69] In this light, the reparations directed to 'society as a whole' stem from an *erga omnes* obligation and they do not aim at being collective reparations but dissuasive measures.[70]

Nevertheless, more research should be conducted in relation to the remedial approach that those measures convey and its relation with the concept of collective reparations.

IV.2 Collective Reparations

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[61] J. Schonsteiner, 'Dissuasive Measures and the "Society as a Whole": A Working Theory of Reparations in the Inter-American Court of Human Rights American University', *International Law Review* 2007-23, pp. 127-164.

[62] The Court has implicitly stated that when it refers to 'society as whole', it refers to the society of that country. I/A Court H.R., *Pueblo Bello Massacre v. Colombia*, Merits, Reparations and Costs, Judgment of 31 January 2006, Series C No. 140, p. 217.

[63] It is important to note that it was the IACmHR and not the IACtHR who first brought this concept to the table. See: I/A Court H.R., *Caballero-Delgado and Santana v. Colombia*, Reparations and Costs, Judgment of 29 January 1997, Series C No. 31, § 21.

[64] I/A Court H.R., *Trujillo-Oroza v. Bolivi,* Reparations and Costs, Judgment of 27 February 2002, Series C No. 92, §122; I/A Court H.R., *'Street Children' (Villagrán-Morales et al.) v. Guatemala*, Reparations and Costs, Judgment of 26 May 2001, Series C No. 77, § 103.

[65] I/A Court H.R., *Tibi v. Ecuador,* Preliminary Objections, Merits, Reparations and Costs, Judgment of 7 September 2004, Series C No. 114.

[66] I/A Court H.R., *Mapiripán Massacre v. Colombia,* Merits, Reparations and Costs, Judgment of 15 September 2005, Series C No. 134, § 316.

[67] I/A Court H.R., *Cantoral-Benavides v. Peru.* Reparations and Costs, Judgment of 3 December 2001, Series C No. 88, § 99. It is also important to mention that a public apology can be a collective reparation.

[68] Art. 1 of the AC reads as follows: "The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

[69] Malarino 2010, supra note 60.

[70] Schonsteiner 2007, supra note 61, pp. 139-140.

As previously stated, the IACtHR is a pioneer in granting collective reparations when dealing with gross human rights violations. The Court has granted those reparations in a form of development programmes. For example, in the *Plan* de *Sánchez* case the Court ordered the State to develop the following programmes:

> a) study and dissemination of the Maya-Achí culture in the affected communities through the Guatemalan Academy of Mayan Languages or a similar organization; b) maintenance and improvement of the road systems between the said communities and the municipal capital of Rabinal; c) sewage system and potable water supply; d) supply of teaching personnel trained in intercultural and bilingual teaching for primary, secondary and comprehensive schooling in these communities, and e) the establishment of a health center in the village of Plan de Sánchez with adequate personnel and conditions, as well as training for the personnel of the Rabinal Municipal Health Center so that they can provide medical and psychological care to those who have been affected and who require this kind of treatment.[71]

Likewise, in the *Ituango Massacres* case, the IACtHR ordered the State, among other reparations, to "implement a housing program to provide appropriate housing to the surviving victims who lost their homes and who need this." [72]

Similar reparations were also granted in cases dealing with indigenous communities, with the only but significant difference that in these cases, the IACtHR ordered the state to establish a fund to implement those reparations.[73] The Court has also ordered the state to delimit, demarcate, and grant collective title over the indigenous community territory.[74]

From the jurisprudential development in this matter, it seems clear that:

1) The IACtHR usually grants collective reparations to victims of gross human rights violations.
2) Those reparations seem to meet the four elements of the definition of collective reparations given by Rosenfeld

From the IACtHR jurisprudence, one can observe that collective reparations: i) take place in different forms; ii) victims of gross human rights violations are implicitly seen as a group; iii) aime to 'repair' a collective harm. Moreover, iv) there is causal link between the collective harm and the State's responsibility.

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[71] Antkowiak 2008, supra note 8; *Plan de Sánchez,* supra note 9, § 110.
[72] I/A Court H.R., *Ituango Massacres v. Colombia*, Preliminary Objection, Merits, Reparations and Costs, Judgment of 1 July 2006, Series C No. 148, § 407.
[73] I/A Court H.R., *Moiwana Community v. Suriname,* Preliminary Objections, Merits, Reparations and Costs, Judgment of 15 June 2005, Series C No. 124, §214; I/A Court H.R., *Saramaka People. v. Suriname,* Preliminary Objections, Merits, Reparations, and Costs, Judgment of 28 November 2007 Series C No. 172, § 201.
[74] Idem, §209-210; Idem, §194; I/A Court H.R., *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations and Costs, Judgment of 31 August 2001, Series C No. 79, §164.

Yet, the IACtHR has neither explicitly recognised victims of mass crimes as a group (unless they are indigenous communities), nor in all cases acknowledged the existence of 'collective harm' when awarding collective reparations.[75] This seems to suggest that it is not necessary to suffer 'collective harm' to be accorded collective reparations; therefore, one can well wonder how the IACtHR defines who the beneficiaries of collective reparations are and whether there is any difference between the concept of victim and beneficiary.

In order to answer these questions, a definition of 'victim' seems appropriate. The following section will elaborate on this definition. Subsequently, this article will address how the IACtHR has understood the concept of 'beneficiary'.

V. The Definition of Victim under the IACtHR

V.1 The Definition of Victim under International Law

The right to reparations presumes the existence of a victim whose rights were violated.[76] Therefore, a definition of 'victim' is a central key in defining beneficiaries of reparations of a given violation.

Unfortunately, defining the term 'victim' is not an easy task. Doak has observed that debates about defining victims usually raise more controversy than answers.[77] At first glance, labelling individuals as victims would seem quite simple. However, in reality there is a clear lack of consensus in defining victims. "The term 'victim', in the singular or the plural, has different functions depending on who is using it, when and with what intentions."[78]

It is worth mentioning that while there is no certainty as to what the meaning of 'victim' is, the protection of the rights of victims under international law has evolved.[79] Nowadays, it is universally recognised that victims are entitled to, *inter alia*, protection, assistance, participation and reparations.

Most binding human rights documents fail to provide a definition of 'victim'. there are two exceptions. They are the Convention against Torture (CAT) and the International Convention for the Protection of all Persons from Enforced Disappearance (ICCPED). The CAT establishes in article 14 that a victim is a person who has suffered an act of torture as defined by article 1.[80] The ICCPED states in Article 24(1) that 'victim', for the purposes of

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[75] *Aloeboetoe case,* supra note 46, § 83 (In the case of Aloeboetoe, the Court refused to acknowledge the moral harm of the community, but nevertheless ordered reparations which benefit the community), *Saramaka case,* supra note 73, §188.

[76] L. Zegveld, 'Remedies for victims of violations of international humanitarian law', *International Review of the Red Cross* 2003, p. 501.

[77] J. Doak, *Victims' rights, human rights and criminal justice*, Oxford: Hart 2008.

[78] V.M. Meredith, 'Victim identity and respect for human dignity: a terminological analysis', *International Review of the Red Cross* 2003, p. 269.

[79] M.C. Bassiouni, *International Criminal Law: International Enforcement*, Leiden: Martinus Nijhoff Publishers 1987, p. 636.

[80] Art. 1(2), CAT reads as follows: For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

this Convention, "means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance".

One important question arises: how is it possible that while human rights instruments provide victims with rights such as the right to obtain reparations, there is no uniform definition of the term 'victim'? How can we ensure the rights afforded to victims if we do not know who is a victim? Despite the fact that there are only a few binding human rights documents defining victims,[81] there are two universal declarations that spell out the concept of victim. The 1985 UN Declaration on Basic Principles of Justice for Victims of Crimes and Abuse of Power (1985 UN Victims' Declaration)[82] offers the following declarations:

A definition of victims in articles 1, 2 and 18: [83]

> Article 1. 'Victims' means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.
>
> Article 2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term 'victim' also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.
>
> Article 18: "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.

It is interesting to note that this definition makes reference to direct and indirect victims and individual and collective victims. However, this definition in article 1 contradicts article 18 The former establishes that the acts or omissions that give rise to violations must be proscribed in the positive law of a given country. On the other hand, article 18 states that it is sufficient that the acts or omissions are considered a crime under international human rights law.

The 2005 UN Van Boven Principles offer a definition of victims that mirrors the 1985 UN Victims Declarations. Principle 8 establishes that:

> […] victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial

[81] Convention against Torture, art.14 and International Convention for the Protection of all Persons from Enforced Disappearance, art. 24.
[82] UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UNGA Res.40/34 of November 1985.
[83] See: http://www2.ohchr.org/english/law/victims.htm (accessed on 24 August 2012)

> impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, […] the term 'victim' also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

Furthermore, Principle 9 adds that:

> A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.

It is important to note that the 1985 UN Victims Declaration is intended to spell out the rights of victims of domestic crimes, while the 2005 UN Van Boven Principles are intended to protect the rights of victims of international crimes, in other words, of the state: gross human rights violations.

Regardless of their soft-law nature, the two instruments have served as a source of inspiration for the definition of victims and their entitlements. For instance, the Rules of Procedure and Evidence of the International Criminal Court mirror the definitions given by the two victim declarations. Rule 85 of the RPE, however, expands the definition of victims beyond natural persons:

> (a) "Victims" means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court;
> (b) Victims may include organisations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.

In this light, I conclude that a victim is: "Any person (natural or legal) who, individually or collectively and directly or indirectly, has suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violations of criminal laws or international law".

V.2 Definition of Victim under the IACtHR

Similar to most binding human rights instruments, the American Convention on Human Rights does not provide a concept of victims. Despite the fact that there is no provision of the American Convention on Human Rights which articulates a concept of victims, the Inter-American Court has defined the term 'victim' throughout its jurisprudence, affirming that a 'victim' is any natural person whose rights were violated.[84] This definition mirrors the definition of victims given by the two UN Declarations on victims' rights. It is necessary to highlight that the Court has also recognised the existence of victim groups in addition to natural persons. According to the Court, there are cultural reasons to assert that certain

[84] I/A Court H.R., *Juvenile Reeducation Institute v. Paraguay,* Preliminary Objections, Merits, Reparations and Costs, Judgment of 2 September 2004, Series C No. 112, §106.

violations of human rights against an individual affect a group in its entirety.[85] This approach however has been applied only to indigenous cases.

V.3 Direct and Indirect Victims

The IACtHR has made a tacit distinction between direct and indirect victims by means of distinguishing between 'victims' and 'next of kin' and affirming that 'next of kin' who suffered harm as a consequence of the violations inflicted to the 'victim' may be afforded reparations.[86] Similar approach is found under the European Court's jurisprudence.[87]

In recent IACtHR jurisprudence, the distinction between 'victim' and 'next of kin' as two different categories of victims who suffer directly or indirectly seems obsolete. This is because the Court has come to the conclusion that 'next of kin', who suffered indirect harm such as anguish, distress or denial of justice from a violation inflicted directly to a relative, are also victims. [88]

V.4 Potential Victims

The definition of 'potential victims' has been elaborated by the European Court of Human Rights. According to the ECtHR, 'potential victims' are persons whose rights are at risk as a consequence of the existence of enacted legislation. In principle, the IACtHR does not embrace the notion of potential victims as it has stated that it has no contentious jurisdiction to review petitions regarding laws that have not affected certain individuals.[89] Yet, in its Advisory Opinion No. 14, the Court did change its approach and established that "self-executing laws, as defined above, the violation of human rights, whether individual or collective, occurs upon their promulgation. Hence, a norm that deprives a portion of the population of some of its rights - for example, because of race - automatically injures all the members of that race."[90]

To conclude, the IACtHR tacitly accepts the notion of potential victims insofar as the case is related to self-executing laws depriving a group of individuals certain rights.

V.5 Injured Party

It is nevertheless important to note that article 63 of the American Convention entitled the 'injured party' to obtain reparations when their rights or freedoms were violated. Since it is universally recognised that victims are entitled to obtain reparations and under the AC all 'injured parties' are entitled to obtain reparations, we could assume that an 'injured party' is a synonym of 'victim'. In the same vein, Judge Cançado Trindade has stated that the concept

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[85] I/A Court H.R., *Yakye Axa Indigenous Community v. Paraguay*, Merits, Reparations and Costs, Judgment of 17 June 2005, Series C No. 125, §176.

[86] I/A Court H.R., *Velásquez-Rodríguez v. Honduras,* Merits, Judgment of 29 July 1988, Series C No. 4, § 192.

[87] E/ Comm'n H.R., *X v. Federal Republic of Germany,* App. No. 4185/69, 35, Reports of Judgments and Decisions 142 (1970).

[88] E/Court H.R., *Kurt v. Turkey*, Judgment of 25 May 1998, Reports of Judgments and Decisions 1998.

[89] I/A Court H.R., *Genie-Lacayo v. Nicaragua,* Preliminary Objections, Judgment of 27 January 1995, Series C No. 21, §50.

[90] I/A Court H.R., *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (arts. 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94 of 9 December 1994, Series A No. 14, § 43.

of 'injured party' is '*prima facie* more ample, [but] corresponds in the end, […] to the concept itself of *victim lato sensu* (covering the direct, indirect, and possible victims).'[91]

All in all, we could conclude that the IACtHR has recognised direct, indirect and potential victims as an 'injured party' in order to nominate them beneficiaries of reparations. This raises the question of what the procedures and rules are and what they should be in order to identify the injured parties who in turn are beneficiaries of reparations.

VI. Defining Beneficiaries of Collective Reparations: IACtHR

VI.1 Beneficiaries of reparations under the IACtHR

Unfortunately, the founding document of the IACtHR does not provide any guidelines whatsoever as to how the identification of 'beneficiaries' should be conducted. Because of the lack of guidelines, the IACtHR 'created' a rule that established that the Commission is obliged to identify the 'alleged victims' of a given case; in other words, the potential beneficiaries of reparations. The IACtHR has established that alleged victims "must be properly identified and named in the application that the Inter-American Commission files with this Court".[92] Thus, if the Commission does not succeed in identifying all victims at that very early stage, they cannot include more victims in later stages. This approach has also been applied to cases related to gross violations of human rights.[93]

Significantly, this jurisprudential creation is, according to the Court, founded on article 50 of the AC and article 33.1 of the Rules of Procedure of this Court. [94] Since no one has, even with a great amount of imagination, found a link between these two provisions and the determination of who bears the duty to identify victims, we could conclude that the Court basically wants to pass the buck to the Commission.

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[91] I/A Court H.R., *La Cantuta v. Peru*, Interpretation of the Judgment of Merits, Reparations and Costs, Judgment of 30 November 2007, Series C No. 17, Judge Cançado Trindade, §61.

[92] I/A Court H.R., *Juvenile Reeducation Institute v. Paraguay,* Preliminary Objections, Merits, Reparations and Costs, Judgment of 2 September 2004, Series C No. 112, §109.

[93] *Ituango Massacres v. Colombia*, supra note 72, § 98; *Plan de Sánchez,* supra note 9, § 48.

[94] Art. 50 of the American Convention reads as follows: 1. If a settlement is not reached, the Commission shall, within the time limit established by its Statute, draw up a report setting forth the facts and stating its conclusions. If the report, in whole or in part, does not represent the unanimous agreement of the members of the Commission, any member may attach to it a separate opinion. The written and oral statements made by the parties in accordance with paragraph 1.e of art. 48 shall also be attached to the report. 2. The report shall be transmitted to the states concerned, which shall not be at liberty to publish it. 3. In transmitting the report, the Commission may make such proposals and recommendations as it sees fit.

Art. 33.1 of the Rules of Procedure reads as follows: 1. The case shall be presented to the Court through the submission of the report to which art. 50 of the Convention refers, which must establish all the facts that allegedly give rise to a violation and identify the alleged victims. In order for the case to be examined, the Court shall receive the following information: a. the names of the Delegates; b. the names, address, telephone number, electronic address, and facsimile number of the representatives of the alleged victims, if applicable; c. the reasons leading the Commission to submit the case before the Court and its observations on the answer of the respondent State to the recommendations of the report to which Art. 50 of the Convention refers; d. a copy of the entire case file before the Commission, including all communications following the issue of the report to which Art. 50 of the Convention refers; e. the evidence received, including the audio and the transcription, with an indication of the alleged facts and arguments on which they bear. The Commission shall indicate whether the evidence was rendered in an adversarial proceeding; f. when the Inter-American public order of human rights is affected in a significant manner, the possible appointment of expert witnesses, the object of their statements, and their curricula vitae; g. the claims, including those relating to reparations [This art. was amended in the New Rules of the Court of 2009 and the entirely text is currently found in art. 35.].

Having established that it is the Commission's duty to identify the victim and that the procedural time to indicate it is the moment of referring the case to the IACtHR, the Court has also accepted some exceptions. It has agreed to include victims in a later stage when dealing with cases involving large numbers of victims because of the complexity of the nature of the cases.[95] In addition, the Court has also 'sometimes' been flexible in including victims in later stages in 'some cases' that do not deal with gross violations of human rights.[96] Yet, the Court has not been so coherent as to elaborate criteria in which it can accept the inclusion of victims during the proceedings before it, when those victims or individuals were not mentioned in the application and report of the Commission.[97] This situation leads to uncertainty and presents an obstacle to victims to claiming their right to reparations as it is not clear when they can do it.

In short, the IACtHR created a rule in which established that alleged victims must be indicated in the report and application lodged by the Commission. If an application fails to identify all alleged victims, the Commission will not be able to include more alleged victims in later stages of the proceedings. However, there are some exceptions. One of the exceptions is cases involving a large number of victims (cases related to indigenous communities and gross violations of human rights such as massacres). In these cases, the Court has accepted the inclusion of more alleged victims at later stages of the proceedings. If the Court rules that there is sufficient evidence to determine that violations of rights enshrined in the American Convention took place against the alleged victims, these victims automatically become beneficiaries of reparations.

VI.2 Beneficiaries of collective reparations under the IACtHR

Although it has established that in order to become a beneficiary of reparations someone has to be identified as a victim, the IACtHR has also established, when dealing with large numbers of victims amounting to collectives or groups, that it is not possible to identify all members of those collectives or groups.[98] Nevertheless, the IACtHR considers the collective or group as beneficiary[99] and awards it collective reparations.[100] Does this imply that the group was a victim?

Likewise, in cases of massacres, the Court has decided that "non-identification of all the next of kin of the victims is due to the very circumstances of the massacre and to the deep fear they have suffered"[101] but that such identification should be done after the judgment is delivered within a fixed period of time.[102] The Court also has stated that:

> to make individual identification effective and feasible, the State must publish an announcement by means of a radio broadcaster, a television broadcaster and a newspaper, all of them with national coverage, stating that it is attempting to identify the victims executed or made to disappear during the [...] Massacre, as well as their next

[95] *Mapiripán,* supra note 66, §183; *Ituango,* supra note 72, § 91; *Sawhoyamaxa Indigenous Community v. Paraguay,* Merits, Reparations and Costs, Judgment of 29 March 2006, Series C No. 146, §73.
[96] *Moiwana*, supa note 73, §72-74.
[97] I/A Court H.R., *Reverón-Trujillo v. Venezuela,* Preliminary Objection, Merits, Reparations, and Costs, Judgment of 30 June 2009, Series C No. 197, §158.
[98] *Sawhoyamaxa*, supra note 97, § 73.
[99] Idem, §204.
[100] Idem, §230-232.
[101] *Mapiripán*, supra note 66, §183.
[102] Idem, § 257, *Ituango Massacres v. Colombia*, supra note 72, § 358; *Plan de Sánchez,* supra note 9, § 67.

> of kin, with the aim of recovering the remains of the former and delivering them to the latter together with the pertinent reparations.[103]

Those publications 'must be made for at least three non-consecutive days and within six months of notification of [the] Judgment.'[104] Finally, victims could be nominated as beneficiaries for a period of two years after the notification of the judgment.[105]

Conclusion

Pursuant to article 63 of the American Convention, the Inter-American Court of Human Rights has awarded collective reparations to victims of cases related to gross violations of human rights on a large scale.

Although one of the elements in the concept of collective reparations put forward by Rosenfeld is the existence of collective harm, the practice of the IACtHR shows that this suggestion is not entirely followed. The IACtHR has granted collective reparations to a group or collective when there is a determination of the existence of collective harm, but also when there is not a determination of collective harm. Since the concept of 'victim' developed by this Court requires the existence of harm, we could conclude that under the IACtHR, the beneficiaries of collective reparations are not always victims.

Furthermore, the IACtHR has acknowledged the difficulty of identifying all victims when dealing with gross human rights violations and it has therefore opted to grant collective reparations to groups or collectives whose members have not been identified but are identifiable. In those situations, the Court has suggested that states identify victims after the judgment has been delivered and has established a fixed period of time for such identification.

This allows us to conclude that in the light of IACtHR jurisprudence, the procedures for identification of beneficiaries of collective reparations, as a necessary stage for the effective implementation of collective reparations, should be flexible and that the only guideline that can be provided to states is a fixed period of time.

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[103] *Mapiripán*, supra note 66, § 306.
[104] Idem, § 307.
[105] Idem, § 311.