Choosing Remedies: Law and Politics in the Inter-American Court of Human Rights

Wayne Sandholtz[*] *and Nicolás Albertoni*[**]

The Inter-American Court of Human Rights ("IACtHR") is widely recognized for its innovative and far-reaching remedies orders. Most research on IACtHR remedies focuses either on the Court's remedies jurisprudence or on state compliance. This study seeks to uncover the factors—at the case, country, and IACtHR levels—that influence the Court's choice of remedies. Our core assumption is that the Court's fundamental priority is the construction of a regional legal order promoting respect for human rights. That mission entails fashioning remedies that aim to (1) repair the harms suffered by victims, to the extent possible, and (2) promote measures that address systemic problems that underlie violations in the respondent state, so as to guard against their repetition. The analysis focuses on two types of remedies for which the IACtHR has been seen as an innovator: (1) orders to provide services (e.g., medical, psychological) to victims; and (2) orders to investigate, prosecute, and punish perpetrators ("IPP") of violations. We argue that the assignment of both types of remedies does not depend on whether the respondent state is democratic. We also test the proposition that the Court is more likely to order IPP remedies when the respondent state has accepted responsibility and that it is likely to assign both types of remedies when states have been found to have violated physical integrity rights. We test our propositions using a dataset of all IACtHR remedies through 2020. The results of the data analysis are consistent with our expectations.

[*] Gould School of Law, University of Southern California

[**] Catholic University of Uruguay

I. INTRODUCTION

Remedies in international human rights courts often seek both to provide redress to the victims of violations and to motivate states to alter the conditions that led to abuses, so as to discourage their repetition.[1] The Inter-American Court of Human Rights (IACtHR, "the Court") is widely recognized for its innovative and far-reaching remedies orders.[2] The Court's remedies practices have naturally attracted scholarly attention, most of which focuses either on the remedies jurisprudence of the IACtHR[3] or on state compliance with its remedies orders.[4] A substantial body of research has also focused on compliance with judgments of the European Court of Human Rights ("ECtHR").[5] What has not been analyzed systematically, however, is the IACtHR's remedies choices, that is, why it assigns particular remedies in particular cases.[6] Scholarship on remedies at the ECtHR can offer little guidance on the choice of remedies

---

[1] For a general treatment of the theory and jurisprudence of remedies in international human rights, see DINAH SHELTON, REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW 16 (2006). In this study, we use the term "remedies" as an equivalent for "reparations" (*reparaciones*).

[2] *See e.g.*, Ximena Soley, *The Transformative Dimension of Inter-American Jurisprudence, in* TRANSFORMATIVE CONSTITUTIONALISM IN LATIN AMERICA: THE EMERGENCE OF A NEW IUS COMMUNE 337, 338 (Armin von Bogdandy et al. eds., 2017).

[3] *E.g.*, Thomas M. Antkowiak, *Remedial Approaches to Human Rights Violations: The Inter-American Court of Human Rights and Beyond* 46 COLUM. J. TRANSNAT'L L. 351, 365 (2008); David L. Attanasio, *Extraordinary Reparations, Legitimacy, and the Inter-American Court*, 37 UNIV. PA. J. INT'L L. 813, 823 (2016); LAURENCE BURGORGUE-LARSEN & AMAYA ÚBEDA DE TORRES, THE INTER-AMERICAN COURT OF HUMAN RIGHTS: CASE LAW AND COMMENTARY 3 (R. Greenstein trans., 2011); Douglass Cassel, *The Expanding Scope and Impact of Reparations Awarded by the Inter-American Court of Human Rights, in* OUT OF THE ASHES: REPARATION FOR VICTIMS OF GROSS AND SYSTEMATIC HUMAN RIGHTS VIOLATIONS 191, 191 (Koen De Feyter et. al. eds., 2005); *see generally* CLAUDIO NASH ROJAS, LAS REPARACIONES ANTE LA CORTE INTERAMERICANA DE DERECHOS HUMANOS (1988 - 2007) [REPARATIONS BEFORE THE INTER-AMERICAN COURT OF HUMAN RIGHTS (1988-2007)] (2009); *see generally* Jo M. Pasqualucci, *Victim Reparations in the Inter-American Human Rights System: A Critical Assessment of Current Practice and Procedure* 18 MICH. J. INT'L L. 1 (1996).

[4] *See generally* DAVID C. BALUARTE & CHRISTIAN M. DE VOS, FROM JUDGMENT TO JUSTICE: IMPLEMENTING INTERNATIONAL AND REGIONAL HUMAN RIGHTS DECISIONS (2010); *see generally* COURTNEY HILLEBRECHT, DOMESTIC POLITICS AND INTERNATIONAL HUMAN RIGHTS TRIBUNALS: THE PROBLEM OF COMPLIANCE (2014); Aníbal Pérez Liñán, Luis Schenoni & Kelly Morrison, *Compliance in Time: Lessons from the Inter-American Court of Human Rights*, 25 INT'L STUD. REV. 1 (2023); *see generally* ARMIN VON BOGDANDY ET AL., CUMPLIMIENTO E IMPACTO DE LAS SENTENCIAS DE LA CORTE INTERAMERICANA Y EL TRIBUNAL EUROPEO DE DERECHOS HUMANOS [COMPLIANCE WITH AND IMPACT OF THE JUDGMENTS OF THE INTER-AMERICAN COURT AND THE EUROPEAN COURT OF HUMAN RIGHTS] (2019).

[5] *See generally* BALUARTE & DE VOS, *supra* note 4; *see generally* Veronika Fikfak, *Changing State Behaviour: Damages before the European Court of Human Rights,* 29 EUR. J. INT'L L. 1091 (2018); *see generally* Darren Hawkins & Wade Jacoby, *Partial Compliance: A Comparison of the European and Inter-American Courts of Human Rights*, 6 J. INT'L. L. INT'L. RELAT. 35 (2010).

[6] Staton and Romero seek to explain the Court's choices with respect to the *clarity* of its remedies orders, as opposed to the *substance* of those orders; Jeffrey K. Staton & Alexia Romero, *Rational Remedies: The Role of Opinion Clarity in the Inter-American Human Rights System*, 63 INT'L STUD. Q. 477, 478 (2019).

because the ECtHR has limited itself almost entirely to the judgment as satisfaction and to monetary compensation.[7]

This study seeks to identify factors that influence the Inter-American Court's remedy choices. In assigning remedies, the Court has two major objectives that can, in some instances, be in tension with each other: (1) to advance respect for rights through muscular remedies, and (2) to see those remedies implemented by states. As it seeks to attain both purposes, the Court can exercise discretion in its choice of remedies. To be clear, our argument focuses not on the Court's judgments on the merits but on the remedies it assigns once it finds states responsible for violating rights.

We first review the role of remedies in international human rights law. We then provide an overview of the IACtHR's approach to remedies and discuss the broad patterns of IACtHR remedies over time. In a subsequent section, we offer an explanatory framework and derive from it propositions regarding two types of remedies for which the IACtHR has been seen as an innovator: orders to provide services (medical, psychological, social) to victims, and orders to investigate, prosecute, and punish ("IPP") perpetrators of rights violations.

Our starting assumption is that the Court's fundamental priority is the construction of a regional legal order promoting respect for human rights. In any given case, that mission entails fashioning remedies that aim to (1) repair the harms suffered by victims, to the extent possible, and (2) promote measures that address systemic problems in the respondent state that underlie the violations, so as to guard against their repetition. The IACtHR will therefore order remedies that address both dimensions: reparations for victims and institutional change in the respondent state. That latter purpose requires the Court to take into account political-institutional contexts in respondent states in order to assign appropriate structural remedies.[8] That is, though the Court does not tailor its merits judgments in light of the political and administrative conditions in the respondent state, we suggest that it does take into account domestic contexts when assigning remedies.

We explore three propositions related to the Court's choice of remedies, using a dataset of all IACtHR remedies through 2020 and a set of potential explanatory variables. The analysis focuses on two types of remedies for which the IACtHR has been seen as an innovator: (1) orders to provide services (e.g., medical, psychological) to victims; and (2) orders to investigate, prosecute and punish perpetrators (IPP) of violations. We examine three propositions: (1) that the assignment of both types of remedies does not depend on whether the respondent state is democratic; (2) that the Court is more likely to order IPP remedies when the respondent state has accepted responsibility; and (3) that it

---

[7] Antkowiak, *supra* note 3, at 357 (noting the ECtHR generally leaves the specification of individual and general remedial measures to the Council of Europe's Committee of Ministers, which identifies additional steps – "action plans" — that states must implement to undo the consequences of rights abuses and to prevent future violations of the same kind. The Committee of Ministers then supervises states' compliance with those remedies).

[8] *See* Wayne Sandholtz & Mariana Rangel Padilla, *Law and Politics in the Inter-American System: The Amnesty Cases*, 8 J.L. CTS. 151, 151 (2020).

is likely to assign both types of remedies when states have been found to have violated physical integrity rights. The results of the data analysis are consistent with our expectations.

II. REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW

The founder of judicial review in the United States, Chief Justice John Marshall, wrote that the new country could not enjoy the "government of laws, and not of men . . . if the laws furnish no remedy for the violation of a vested legal right."[9] Of course, the underlying principle—*ubi ius ibi remedium est* (where there is a right, there is a remedy)—is much older than Marshall and is foundational in a variety of legal systems, including international law. Remedies—or reparations—in public international law are tied to the notion of state responsibility. Treaties and customary international law generally establish mutual obligations between states. Violation of such an obligation harms the other state and "[t]he state committing the wrongful act incurs state responsibility and the duty to make reparations for the harm caused."[10]

Human rights obligations differ from the traditional, contractual model of interstate agreements. States' human rights treaty obligations are toward individual persons and to the international community as a whole.[11] Remedies for contravening international human rights norms also differ from reparations in other areas of international law. Remedies in international human rights law typically have regard for both the victims of violations—who are entitled to redress—and the (usually state) perpetrators, who must be held accountable in order to end the abuse and discourage repetition.[12]

Still, international law provides only general guidance with respect to reparations for the violation of human rights instruments. The International Covenant on Civil and Political Rights ("ICCPR"), for example, obligates states parties to "ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy," to guarantee that the remedy will be determined by a "competent authority" of the state, and to ensure that those remedies are carried out.[13] The Human Rights Committee—the treaty body associated with the ICCPR—has declared that, in addition to "appropriate compensation," "reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to

---

[9] Marbury v. Madison, 5 U.S. 137, 163 (1803).

[10] SHELTON, *supra* note 1, at 97 (quoting from the Inter-American Court of Human Rights Advisory Opinion "Other Treaties" Subject to the Consultative Jurisdiction of the Court (Article 64 ACHR), Inter-Am. Ct. H.R. (ser. A) No. 1, ¶ 140 (Sept. 24, 1982)).

[11] *Id.*; *see* Inter-Am. Ct. H.R., *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75)*, at ¶ 153, Advisory Opinion No. OC-2/92 (Sept. 24, 1982)).

[12] *See* SHELTON, *supra* note 1 (covering a general treatment of the theory and jurisprudence of remedies in international human rights).

[13] G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights (ICCPR), at art. 2(3)(a–c) (Dec. 16, 1966).

justice the perpetrators of human rights violations."[14] The U.N. General Assembly, in a 2005 resolution, identifies a range of potential remedies: cessation of violations, restitution, compensation, rehabilitation, "measures of satisfaction," and guarantees of non-repetition.[15] The American Convention on Human Rights ("ACHR") parallels the ICCPR with respect to remedies: "[e]veryone has the right to simple and prompt recourse" in case of a violation of rights and states are obligated to enforce remedies.[16] More recently, the Rome Statute of the International Criminal Court ("ICC") mandates the creation of principles of reparation to victims, including "restitution, compensation and rehabilitation" as well as the creation of a trust fund for the compensation of victims.[17]

The ECtHR, the most established and influential of the international human rights courts, already had developed remedies practices and case law before the IACtHR issued its first judgment. The European Convention on Human Rights is quite minimalist on the subject of reparations, mentioning only compensation for victims and "just satisfaction."[18] In practice, remedies granted by the ECtHR typically involve "declarative relief" (the judgment itself as "satisfaction") and monetary compensation, including costs. The ECtHR has rarely ordered forms of direct relief, leaving the mode of restitution to the Council of Europe's Committee of Ministers[19] and the violating state's domestic legal system.[20] Research on damages awards at the ECtHR does, however, touch on broader themes that are relevant to our analysis. According to one study, the ECtHR has directed its remedies mostly toward the respondent state (its record of human rights conduct) rather than to the needs or circumstances of the victim.[21] As discussed below, the IACtHR typically orders both: remedies that address the harms suffered by victims and remedies that address the conditions in the respondent state that led to violations.

---

[14] U.N. Human Rights Comm., General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev. 1/Add. 13 (Mar. 29, 2004).

[15] Gerald L. Neuman, *Bi-level Remedies for Human Rights Violations*, 55 HARV. INT'L L.J. 323, 323 (2014).

[16] ICCPR, *supra* note 13, at art. 25; *see also* EURO. COUNCIL HUM. RTS., CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (ECHR) (1950) (noting the right to an effective remedy).

[17] Rome Statute of the Int'l Criminal Court arts. 75 and 79, July 17, 1998, 2187 U.N.T.S. 3.

[18] ECHR, *supra* note 16, at art. 41.

[19] Hillebrecht, *supra* note 4, at 46 (noting the Committee of Ministers is composed of the foreign affairs ministers of the member states and is the primary decision-making body of the Council of Europe).

[20] Staton & Romero, *supra* note 6; s*ee* Antkowiak, *supra* note 3, at 357; Fernanda G. Nicola, *Remarks: Reparations in the Inter-American System: A Comparative Approach*, 56 AM. UNIV. L. REV. 1375, 1378 (2007).

[21] Veronika Fikfak, *Non-pecuniary Damages Before the European Court of Human Rights: Forget the Victim; It's All About the State* 33 LEIDEN J. INT'L L. 335, 360 (2020).

III. REMEDIES AT THE INTER-AMERICAN COURT: THE BROAD PICTURE

As noted at the outset, the IACtHR is widely seen as an innovator with respect to remedies. Indeed, judges on the Court have highlighted its far-reaching remedies jurisprudence. Former judge Ventura Robles writes that the Inter-American Court has produced the most "innovative and progressive" remedies jurisprudence of any international court.[22] Another former judge, Sergio García Ramírez, has written that the IACtHR has "constructed a true doctrine of reparations, which goes beyond the simple reiteration of traditional compensation measures."[23] Scholarly assessments agree. As Soley puts it, "reparations are without a doubt a core instrument used by the Court to give its jurisprudence transformative effects. No other international court has ever resorted to such a broad array of reparatory measures."[24] The Inter-American Court has built "a uniquely 'activist' remedial regime—in all its recent rulings, it orders extensive and detailed equitable remedies alongside compensation."[25] Grossman has remarked that the IACtHR has developed "perhaps the most comprehensive legal regime on reparations developed in the human rights field in international law."[26] Indeed, the IACtHR is "the only international tribunal with binding jurisdiction that has ordered all [the types] of remedies outlined in the UNGA, HRC, and ICC documents."[27] Pasqualucci views the Court's innovative remedies jurisprudence as "perhaps its most important contribution to the evolution of international human rights law."[28] And Cassel writes that the "Inter-American Court of Human Rights has pioneered an expanding range of international judicial remedies for human rights violations."[29]

The Inter-American Court has adopted an expansive view not just of the substance of remedies but also of their purpose and function. Von Bogdandy and Urueña refer to the Court's "transformative constitutionalism," one of whose objectives "is to transform realities in the region—in particular to address

---

[22] Manuel E. Ventura Robles, *Impacto de las Reparaciones Ordenadas por la Corte Interamericana de Derechos Humanos y Aportes a la Justiciabilidad de los Derechos Económicos, Sociales y Culturales [Impact of Reparations Ordered by the Inter-American Court of Human Rights and Contributions to the Justiciability of Economic, Social and Cultural Rights]*, 56 REVISTA IIDH 139, 142 (noting title translated by author).

[23] Sergio García Ramírez, *La Jurisprudencia de la Corte Interamericana de Derechos Humanos en Materia de Reparaciones [The Jurisprudence of the Inter-American Court of Human Rights on Reparations]*, *in* LA CORTE INTERAMERICANA DE DERECHOS HUMANOS: UN CUARTO DE SIGLO: 1979-2004 [THE INTER-AMERICAN COURT OF HUMAN RIGHTS: A QUARTER CENTURY: 1979 – 2004] 3 (C.I.D.D. Humanos ed., 2005) (noting titles translated by author).

[24] SOLEY, *supra* note 2, at 346; *see also* CASSEL, *supra* note 3, at 95.

[25] Alexandra Huneeus, *Courts Resisting Courts: Lessons from the Inter-American Court's Struggle to Enforce Human Rights*, 44 CORNELL INT'L L.J. 493, 501 (2011).

[26] Claudio Grossman, *Reparations in the Inter-American System: A Comparative Approach Conference*, 56 AM. UNIV. L. REV. 1375, 1376 (2007).

[27] Antkowiak, *supra* note 3, at 364.

[28] Pasqualucci, *supra* note 3, at 289.

[29] CASSEL, *supra* note 3, at 91.

structures of violence, exclusion, and weak institutions."[30] The Court thus orders remedies that are intended to bring about changes in domestic law, institutions, and practices so as to prevent future rights violations. The goal is not just to identify rights violations and compensate victims but to promote reforms that will reduce the likelihood of similar abuses in the future.

Though multiple excellent analyses of the IACtHR's remedies jurisprudence exist, this study offers an initial empirical analysis of the Court's remedies practices. The IACtHR has been more innovative than its European sister court with respect to remedies in part because the American Convention on Human Rights affords a more open-ended discretion. The Convention instructs the Court to "rule that the injured party be ensured the enjoyment of his right or freedom that was violated" and to rule that the "consequences" of the violation be remedied.[31] Second, as compared with the ECtHR, the Inter-American Court was immediately confronted with grave violations of physical integrity rights (torture, disappearance, political imprisonment, and extrajudicial killing) and impunity for perpetrators in the states concerned.[32] Addressing systemic abuses and the absence of accountability demanded a more robust remedies regime. As Judge García Ramírez put it:

> [I]t is understood that what we are doing with the judgments and with the reparations is more than just compensating the victims monetarily for economic harm . . . It is necessary to establish new conditions for the reestablishment of the legal order. In essence, the measures we order attempt to contribute to establishing these conditions and the integrity of the legal order.[33]

Given the context in which it was emerging, the IACtHR expanded its approach to remedies over time. That expansion moved in multiple directions. As Cassel puts it, "Until 1998 the Court rarely awarded significant relief other than monetary compensation. . . . [H]owever . . . the Court has become far more disposed to order measures of access to justice, restitution, rehabilitation, satisfaction and guarantees of nonrepetition, and access to information."[34]

In addition to assigning a widening range of remedies, the Court expanded the categories of persons entitled to remedies. The Court's early practice was to

---

[30] Armin von Bogdandy & René Urueña, *International Transformative Constitutionalism in Latin America*, 114 AM. J. INT'L L. 403, 408 (2020).

[31] Organization of American States, American Convention on Human Rights art. 63, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123.

[32] Basak Çali, *Explaining Variation in the Intrusiveness of Regional Human Rights Remedies in Domestic Orders,* 16 INT'L J. CONST. L. 214, 229 (2018).

[33] Sergio García Ramírez, *Reparations in the Inter-American Human Rights System: A Comparative Approach*, 56 AM. U. L. REV. 1375, 1433 (2007).

[34] Cassel, *supra* note 3, at 92.

order remedies only for the direct victim.[35] For example, in a 1993 judgment on reparations, the Court declared that the "responsible party [must] make reparation for the *immediate effects* of such unlawful acts."[36] The next step was to include family members as eligible for remedies, not just as heirs of the "direct victim" but as "victims in their own right."[37] Procedural reforms in 2009 required that all alleged victims must be identified in the Commission's initial application, essentially delegating to the Commission the task of specifying who may receive reparations from the Court.[38] In practice, the Commission and the Court have recognized that even persons who are not close relatives but who have suffered violations of their right to the truth, or their right to mental and moral integrity, or to a fair trial and judicial protection, are entitled to remedies.[39] The final step in this expansion was to recognize inhabitants of a village or members of an indigenous community as deserving recipients of reparations.[40]

The Inter-American Court also broke new ground by being the first international human rights court to proactively monitor state compliance with its remedies orders. In its first judgment on the merits, the Court declared at the reparations stage that it would monitor the state's compliance with its order to pay compensation and that the case would not be closed until that compliance was complete.[41] The Court announced its intention to verify systematically the fulfillment of remedies in a 2001 judgment.[42] Since then, the IACtHR has issued periodic compliance reports for most of its judgments, often extending over a period of years with respect to a particular case.[43] As a point of comparison, the European Court of Human Rights does not itself oversee compliance with its remedies orders; that function is in the hands of the Committee of Ministers of the Council of Europe.

Finally, the Court has focused its remedies on two overarching objectives: (1) making victims and their families whole, to the extent possible (often referred

---

[35] J.M. PASQUALUCCI, THE PRACTICE AND PROCEDURE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS 237 (2003); Judith Schönsteiner, *Dissuasive Measures and the "Society as a Whole": A Working Theory of Reparations in the Inter-American Court of Human Rights,* 23 AMER. U. INT'L L. REV. 127, 131 (2011); BURGORGUE-LARSEN & ÚBEDA DE TORRES, *supra* note 3, at 225.

[36] Aloeboetoe et al. v. Suriname, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 15, ¶ 49 (Sept. 10, 1993) (emphasis added).

[37] BURGORGUE-LARSEN & ÚBEDA DE TORRES, *supra* note 3, at 226.

[38] *Id.* In the Inter-American System, all petitions asserting violations of rights are submitted to the Inter-American Commission on Human Rights, which then seeks to bring the two parties (the victim and the accused state) to an agreed resolution. If the Commission is unable to facilitate a settlement, it then submits the claim to the Inter-American Court.

[39] *Id.* at 227.

[40] *Id.* at 227–28.

[41] Velásquez-Rodríguez v. Honduras, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 59 (July 21, 1989).

[42] *See* Baena Ricardo v. Panama, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 72 (Feb. 2, 2001).

[43] *See generally Orders on the Monitoring Compliance with Judgment*, INTER-AM. CT. H.R., https://corteidh.or.cr/supervision_de_cumplimiento.cfm?lang=en (last visited Sept. 30, 2024).

to as "restitution" or the "reparative" purpose); and (2) to correct structural deficiencies in states that give rise to repeated violations.[44] With respect to reparative remedies, monetary compensation for damages has become a regular feature of IACtHR reparations when the victim cannot be restored to her condition before the rights violation. The Court has been particularly innovative with respect to non-material damages, which encompass "psychological and emotional pain and suffering." The IACtHR's concept of "damage to the life project" illustrates its expansive approach.[45] Damage to the life plan of a victim goes beyond traditional concepts of material damage (actual losses, including future income). The Court laid out the basic principles early on, in *Loayza-Tamayo v. Peru* (1997). María Elena Loayza-Tamayo was arrested in February 1993, accused of being a collaborator of the terrorist group "Shining Path," held incommunicado for ten days, and tried before a military tribunal and subsequently by a civil court. During her imprisonment Loayza-Tamayo was subjected to beatings and simulated drowning. The Court found that she had suffered cruel, inhuman or degrading treatment, that her fundamental right to due process was violated, and that she had been subjected to double jeopardy, having been tried in both military and then civil courts.[46] As the Court has explained, life plan "deals with the full self-actualisation of the person concerned and takes account of her calling in life, her particular circumstances, her potentialities, and her ambitions . . ."[47]In other words, the Court has recognized harm to the victim's "life plan," which essentially covers the ways in which rights violations erode or curtail the capacity of a person to fulfill her hopes, expectations, and ambitions. Harm to one's life project is a long-term, ongoing form of non-material damage.

In addition to compensation for material and non-material harms, the Court has ordered a broad range of services for individuals and affected communities. These have included medical care (sometimes for life), psychological treatment (sometimes in perpetuity), housing, and education. In *"Las Dos Erres" Massacre v. Guatemala* (2009), the Court required that Guatemala provide the medical and psychological treatment required by survivors of the massacre.[48] The Court ordered Colombia, in *Ituango Massacres v. Colombia* (2006), to "implement a housing program, to provide appropriate housing to the surviving victims who lost their homes."[49] At the community level, the Court has ordered the construction of monuments, clinics, and community centers. For example, the Court instructed Guatemala to construct "a health center in the village of Plan

---

[44] Sergio García Ramírez, *The Relationship between Inter-American Jurisdiction and States (National Systems): Some Pertinent Questions*, 5 NOTRE DAME J. INT'L & COMP. L. 115, 149 (2015).

[45] *See* BURGORGUE-LARSEN & ÚBEDA DE TORRES, *supra* note 3, at 229–31.

[46] Loayza-Tamayo v. Peru, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 33, ¶ 55, 58, 76–77 (Sept. 17, 1997).

[47] Loayza-Tamayo v. Peru, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 42, ¶ 147 (Nov. 27, 1998).

[48] "Las Dos Erres" Massacre v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 211, 82 ¶ 310 (Nov. 24, 2009).

[49] Ituango Massacres v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148, 144 ¶ 426 (July 1, 2006).

de Sánchez with adequate personnel and conditions, and also training for the personnel of the Rabinal Municipal Health Center."[50] In a case involving the rape and torture of an indigenous woman, the IACtHR ordered Mexico to provide "the necessary resources so that the indigenous Me'paa community may establish a community center, to be considered a Women's Center."[51]

Regarding structural remedies, the IACtHR frequently orders measures aimed at bringing about systemic changes in the countries concerned, so as to prevent similar violations in the future.[52] These kinds of remedies are often referred to—by the Court and by observers—as directed toward "non-repetition."[53] They include legal and institutional reforms (for instance, legislation and the training of officials) and orders to investigate, prosecute and punish perpetrators of serious violations. For example, in 1994 and 1995, police in Rio de Janeiro carried out raids in the favela Nova Brasilia, in the course of which they killed 26 residents and committed acts of torture and sexual violence.[54] In holding Brazil responsible, the Court ordered that the state "implement, within a reasonable time, a permanent and mandatory program or course for all ranks of the Civil and Military Police of Rio de Janeiro and officials who provide health care on the assistance that should be given to women victims of rape."[55]

The Court's structural remedies have garnered admiration but have also led some to view the Court's remedies as "highly intrusive."[56] The Court has made the principles underlying systemic remedies explicit in its jurisprudence. It has expressed the view that in order to provide full restitution, sometimes reparations must have a "transformative" effect, promoting "structural changes" that will undo social conditions that generate ongoing infringements of rights.[57] In other words, the Court sees itself as addressing not just the after-effects of violations but the "underlying causes of human rights violations."[58] Or, as Judge García Ramírez has put it:

> The Latin American orientation toward this topic favored the *structural character of reparations*, without losing their

---

[50] Plan de Sánchez Massacre v. Guatemala, Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 116, 97 ¶ 125 (Nov. 19, 2004).

[51] Fernández Ortega et al. v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 215, 83 ¶ 308 (Aug. 30, 2010).

[52] JACQUELINE SINAY PINACHO ESPINOSA, EL DERECHO A LA REPARACIÓN DEL DAÑO EN EL SISTEMA INTERAMERICANO [THE RIGHT TO REPARATION OF HARM IN THE INTER-AMERICAN SYSTEM] 56 (Comisión Nacional de los Derechos Humanos ed., 2019).

[53] Schönsteiner, *supra* note 35, at 145–147; Antkowiak, *supra* note 3; Attanasio, *supra* note 3, at 827–828.

[54] Favela Nova Brasilia v. Brazil, Preliminary Objections, Merits, Reparations and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 333, ¶ 1 (Feb. 16, 2017).

[55] *Id.* at ¶ 369

[56] Çali, *supra* note 32, at 217.

[57] Atala Riffo and Daughters v. Chile, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 254, ¶ 267 (Nov. 21, 2012).

[58] Attanasio, *supra* note 3, at 825.

> traditional role in compensating victims for damages suffered. What has been sought by Inter-American jurisprudence— as can be seen by comparing it to its European counterpart—is to act not only on the individual factors, but the *general factors leading to human rights violations*.[59]

IV. CHOOSING REMEDIES: FRAMEWORK AND PROPOSITIONS

The Inter-American Court seeks to implement in its assignment of remedies two broad purposes that can sometimes be in tension. On the one hand, the Court has taken an approach to remedies that emphasizes their role in bringing about pro-rights systemic changes. We label this approach the "structural" perspective, noting that the Court is likely to order remedies that will lead states not just to offer reparations to the victims of abuses but to undertake reforms that will make future violations less likely. This perspective foregrounds the assumption that international human rights courts are motivated to adhere to their fundamental mission—advancing human rights by holding states accountable for violations—even at the risk, sometimes, of provoking state resistance.[60] On the other hand, international courts also have a fundamental interest in seeing that the remedies they order are implemented.[61] The Court's remedies choices can affect the likelihood that a state will implement the measures ordered in a judgment. We label this motivation "pragmatic", which suggests that the Court may take into account current political and administrative conditions in the respondent state and assign remedies such that the government in power would be more likely to implement them. To be clear: we are not arguing that the Court will adjust its judgment on the merits in light of political conditions in the respondent state. The IACtHR has been absolutely consistent, and often quite assertive,[62] in finding state violations. We suggest that the Inter-American Court may take into account domestic circumstances when it assigns remedies to states that have been judged to have violated rights.

Some research on the ECtHR illustrates the pragmatic perspective, finding that "concerns about compliance may affect the setting of damages" at the ECtHR; the Court appears to weigh what the state "may be able to comply with."[63] However, evidence also suggests that the European Court of Human Rights "exercises restraint" in judgments involving established democracies that

---

[59] Ramírez, *supra* note 44, at 149 (emphasis added).

[60] *See* Alec Stone Sweet & Wayne Sandholtz, *The Law and Politics of Transnational Rights Protection: Trusteeship, Effectiveness, De-delegation*, 36 GOVERNANCE 105, 106, 119 (2022); ALEC STONE SWEET & WAYNE SANDHOLTZ, THE LAW AND POLITICS OF INTERNATIONAL HUMAN RIGHTS COURTS 238 (2024).

[61] Neuman, *supra* note 15, at 348.

[62] As, for example, in its judgments nullifying amnesties enacted by states. *See* Sandholtz & Padilla, *supra* note 8, at 153, 154.

[63] Fikfak, *supra* note 5, at 359.

have been critical of the Court.[64] The ECtHR would be less likely to soften its judgments regarding states in which democracy is weaker or under challenge.

Implementation of remedies may also have a legitimacy dimension. As Staton and Romero put it, "All else equal, we might presume that judges prefer to have their decisions respected; and it is certainly possible that noncompliance, especially so if frequent, might undermine judicial legitimacy or judicial power itself."[65] That is, a court might fear losing legitimacy if it orders remedies that are substantial but routinely ignored. Thus, though the Inter-American Court has incentives to assign remedies that advance systemic, pro-rights change, it may also be motivated to take into account the likelihood that its remedies will be carried out.

Applied to the IACtHR, the pragmatic perspective suggests that the Court may take into account the state of democracy in the respondent state. Elected governments in stable democracies may be more likely to accept and implement remedies ordered by the IACtHR. For states that have recently undergone a democratic transition, the logic may be different. In a state that has recently democratized, the government may consider, for example, that investigating and prosecuting members of the prior, non-democratic government for rights abuses could be politically destabilizing. Members of the previous, authoritarian government may seek to return to power rather than to have their past actions investigated and prosecuted. In fact, in "pacted" transitions, an outgoing military government sometimes requires amnesty laws that prohibit prosecutions of ex-officials as a condition for giving up power.[66]

The experience of Argentina in 1986-87 offers an illustrative example. In response to the prosecution of military officers for serious rights violations carried out under the previous military government, soldiers at a pair of army bases in Buenos Aires and near Córdoba mutinied in the spring of 1987.[67] In June 1987, the Alfonsín government enacted the "Law of Due Obedience", conferring immunity on officers implicated in investigations of crimes against humanity.[68] The Court, in the pragmatic perspective, may take into account the sometimes delicate politics that follow democratic transitions and may therefore be reluctant to order newly democratizing governments to investigate and prosecute officials from the previous regime. Under this logic, the Court would order Services remedies but not IPP remedies for states that have recently undergone democratic transitions.

---

[64] Øyvind Stiansen & Erik Voeten, *Backlash and Judicial Restraint: Evidence from the European Court of Human Rights,* 64 INT'L STUD. Q. 770, 770 (2020).

[65] Staton & Romero, *supra* note 6, at 478.

[66] Sandholtz & Padilla, *supra* note 8, at 157.

[67] ALISON BRYSK, THE POLITICS OF HUMAN RIGHTS IN ARGENTINA: PROTEST, CHANGE, AND DEMOCRATIZATION 83 (1994); Kathryn Lee Crawford, *Due Obedience and the Rights of Victims: Argentina's Transition to Democracy*, 12 HUM. RTS. Q. 17, 27 (1990); Carlos S. Nino, *The Duty to Punish Past Abuses of Human Rights Put into Context: The Case of Argentina*, 100 YALE L.J. 2619, 2628 (1991).

[68] BRYSK, *supra* note 67, at 83.

We have argued that the IACtHR often orders remedies that, in addition to restoring or compensating victims, would bring about structural changes in states to reduce the likelihood of future violations (the structural logic). But, we argue, the Court in some instances also adjusts its remedies to what the respondent state might be willing and able to carry out (the pragmatic logic). In the next sections, we offer more specific arguments as to when the Court is likely to apply the two approaches.

A. Types of Remedies

The IACtHR since its beginning has taken an expansive approach to assigning remedies when it finds violations of rights identified in the American Convention on Human Rights and related human rights treaties. The number of remedies per judgment ranges from one to 17, for an average of 6.5 remedies per judgment. Table 1 offers an example the full set of remedies ordered by the IACtHR in one case, *Goiburú et al. v. Paraguay* (2006).[69] For all IACtHR judgments through 2020 that awarded remedies, we assigned each remedy to a category.[70]

Table 1: Remedies ordered in *Goiburú et al. v. Paraguay* (2006)

Remedy	**Remedy category**
Investigate the violations and punish those responsible	Investigate, prosecute & punish
Locate the remains of the victims and deliver them to the next of kin	Executive or administrative
Provide human rights training to the Paraguayan police forces	Executive or administrative
Modify definitions of the crimes of torture and forced disappearance to conform with international human rights law	Legislative
Pecuniary damages to the next of kin	Financial
Non-pecuniary damages to the next of kin	Financial
Costs and expenses	Financial
Provide health services to the next of kin	Services
Conduct a public act acknowledging responsibility for the violations	Symbolic
Publish the IACtHR judgment	Symbolic
Construct a monument to the victims	Symbolic

[69] Goiburú et al. v. Paraguay, Merits, Reparations and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 153, ¶ 10, 11, 13 (Sep. 22, 2006).

[70] We assigned each remedy to one of eight categories: (1) investigate, prosecute, and punish; (2) other judicial remedies (e.g., nullification of a domestic judgment); (3) executive or administrative; (4) legislative; (5) financial; (6) services (medical, housing, education, etc.); (7) judgment as reparation (satisfaction); and (8) symbolic (e.g., placing a plaque or monument).

This study focuses on two types of remedies for which the IACtHR is justly famous: (1) orders to provide services (medical, psychological, educational, and so on) to individuals or groups of victims (Services); and (2) orders to investigate, prosecute and punish (IPP) violations of rights. The selection of these two types of remedies is analytically useful in two key respects. First, both types have been central to the Court's remedies jurisprudence. But second, they differ widely in the type of state capacity they require for implementation. The first requires financial, administrative, and technical capacity to carry out the provision of services to victims or their family members. The second IPP relies primarily on prosecutors and courts to bring perpetrators to justice and assign punishment in case of guilt.

An example of the first type of remedy—Services—is found in the Court's judgment in *Caesar v. Trinidad and Tobago* (2005).[71] Winston Caesar was convicted of rape in 1991 and sentenced to prison. His detention included corporal punishment by flogging with a cat-o'-nine-tails, which resulted in severe physical and psychological harm. Caesar argued that the flogging constituted torture and inhumane treatment. The IACtHR agreed, finding violations of Caesar's right to humane treatment and personal integrity[72] and to judicial protection,[73] in that the state provided no legal avenue through which he could challenge the conditions of his detention. The Court ordered Trinidad and Tobago to provide Caesar with the necessary medical and psychological care through its national health services for as long as needed to address the harm suffered due to the flogging and the conditions of his detention.[74]

The judgment in *Espinoza González v. Peru* (2014) illustrates the Court's remedy of ordering states to investigate, prosecute, and punish those who have committed serious rights violations.[75] Gladys Espinoza González was arbitrarily detained, tortured, and sexually assaulted by state agents in 1993. The IACtHR held Peru responsible for violating Espinoza González's right to humane treatment,[76] among other infringements. In addition to instructing the state to provide free and comprehensive medical, psychological, or psychiatric treatment to Ms. Espinoza González and to all women who were victims of sexual violence perpetrated by government personnel between 1980 and 2000, the Court ordered

---

[71] Caesar v. Trinidad and Tobago, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 123, ¶ 4 (Mar. 11, 2005).

[72] Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 397.

[73] *Id.*

[74] Caesar v. Trinidad and Tobago, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 123, ¶ 143 (Mar. 11, 2005).

[75] Espinoza González v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 7, ¶ 308 (Nov. 20, 2014).

[76] Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 397.

Peru to engage in a thorough investigation of the violations and to prosecute those found to be responsible for the abuses.[77]

The two types of remedies are also grounded in different logics of reparation. Orders to investigate, prosecute and punish go to the heart of the Court's mission of promoting a human rights legal order in the Americas. The Court declared the state's obligation to investigate, prosecute and punish rights violators in its first judgment in a contentious case[78] and has affirmed it in its jurisprudence ever since.[79] The obligation to investigate, prosecute and punish serves society's right to the truth (through a proper investigation) and thereby advances the goal of promoting non-repetition of violations.[80] As the Court has put it, "[s]ociety has the right to know the truth regarding such crimes [that violate basic physical integrity rights], so as to be capable of preventing them in the future."[81] Thus IPP remedies have a powerful structural purpose: prosecutions aim to prevent the repetition of violations by deterring future potential perpetrators. This is why the battle against impunity (for example, through amnesties that prevent investigation, prosecution and punishment)[82] has been one of the consistent features of the Court's work.[83] In general, given their centrality to the Court's oft-expressed mission and purpose, we do not expect national contextual factors to affect the likelihood of IPP remedies. Rather, the Court will assign IPP remedies when states are found to have violated fundamental physical integrity rights by torturing, disappearing, or killing people.

Services remedies have a primarily reparative purpose. They aim to restore victims (and sometimes their survivors, family members, or communities) to a condition closer to what would have been theirs had the rights violations not occurred. This category of remedy is also sometimes referred to as "rehabilitation"[84] or "rehabilitative services."[85] Services remedies therefore require the commitment of public resources and the administrative capacity to provide them.

---

[77] Espinoza González v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 7, ¶ 10-11, 13 (Nov. 20, 2014).

[78] Velásquez-Rodríguez v. Honduras, Merits, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 7, ¶ 32-5 (Jul. 21, 1989).

[79] Antkowiak, *supra* note 3, at 364; Pasqualucci, *supra* note 3 (2003), at 8.

[80] Antkowiak, *supra* note 3, at 367; Cassel, *supra* note 3, at 96.

[81] Bámaca Velásquez v. Guatemala, Merits, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 91, ¶ 77 (Feb. 22, 2002).

[82] *See* Sandholtz & Padilla, *supra* note 8, at 151–152 (regarding the development of the Court's amnesty jurisprudence).

[83] BURGORGUE-LARSEN & ÚBEDA DE TORRES, *supra* note 3, at 706–708 (noting that the right to the truth also has an individual dimension, in the right of victims or their families to clarification of the facts, that is, their right to know what happened).

[84] Attanasio, *supra* note 3, at 826; Pérez Liñán, Schenoni & Morrison, *supra* note 4, at 6.

[85] Cassel, *supra* note 3, at 95; Daniel Ricardo Vargas Díaz, *Cumplimiento de Medidas de Rehabilitación ordenadas en sentencias de la Corte Interamericana de Derechos Humanos por parte del Estado Colombiano [Compliance with Reparations Measures Ordered in Judgments of the Inter-American Court of Human Rights with Respect to the State of Colombia]*, 41 DIÁLOGOS DE SABERES 89, 89, 90, 92 (2014).

Orders to provide services and orders to investigate, prosecute and punish thus pose different kinds of challenges. The provision of services requires the commitment of financial and institutional resources, which will generally come from the executive branch of government. IPP orders entail a different set of demands. The perpetrators will often have committed the violations under a previous regime (cases involving deaths, disappearances, and torture often relate to events that occurred 15 or 20 years earlier). In addition, prosecutions could bring back to public memory the political divides and hostilities that surrounded the violations in the first place.

Data on fulfillment of IACtHR remedies illustrate the important differences between IPP and service-oriented remedies. According to one analysis, "non-monetary economic reparations" (essentially similar to our "services" category) attained 30 percent full compliance and IPP orders only attained compliance rates of around 10–14 percent.[86] Employing a new method of measuring compliance with IACtHR remedies, one recent analysis reports an "estimated time to full compliance" of 37 years for "Rehabilitation" remedies (similar to our "services" category) and 83 years for prosecution orders (indicating a low probability of compliance).[87] These findings are consistent with those from more qualitative assessments.[88]

B. Propositions

We can now offer a set of propositions regarding when the Court is likely to assign IPP and services remedies in a given judgment. Given its desire to see states carrying out remedies (the pragmatic incentive), the Court will take into account domestic political conditions in the respondent state when assigning remedies. Because democracies are in general more committed to respecting rights, the Court may be more likely to assign demanding remedies when the state is democratic. However, under the structural perspective, the Court will be motivated consistently to uphold its foundational legal principles and reaffirm its commitment to human rights norms established in its jurisprudence. In this view, the Court will not adjust its remedies to the democratic status of the respondent government. The following two propositions set out our empirical expectations; both are framed in terms of the pragmatic perspective. The structural perspective would expect both elements of Proposition 1 to be unsupported in the empirical results.

---

[86] F.F. Basch et al., *La Efectividad del Sistema Interamericano de Protección de Derechos Humanos: Un Enfoque Cuantitativo sobre su Functionamiento y sobre el Cumplimiento des sus Decisiones [The Effectiveness of the Inter-American System of Human Rights Protection: A Quantitative Focus on its Functioning and on Compliance with Its Decisions]*, 7 SUR: Revista Internacional de Direitos Humanos 9, 19 (2010) (noting report compliance rates for two types of orders to investigate, prosecute and punish: those that also require legal reforms and those that do not. The rate of full compliance for the first (with legal reforms) was 14 percent and the compliance rate for the latter was 10 percent).

[87] Pérez Liñán, Schenoni & Morrison, *supra* note 4, at 17.

[88] James L. Cavallaro & Stephanie E. Brewer, *Reevaluating Regional Human Rights Litigation in the Twenty-first Century: The Case of the Inter-American Court*, 102 AM. J. INT'L L. 768, 781 (2017).

> *Proposition 1a: The Court will be more likely to assign IPP remedies when the respondent government is democratic (pragmatic perspective).*
>
> *Proposition 1b: The Court will be more likely to assign Services remedies when the respondent government is democratic (pragmatic perspective).*

The second proposition relates to states' acceptance of responsibility for rights violations. States that accept responsibility may be more willing to implement IPP remedies than states that do not accept responsibility for violations. The investigation and prosecution of former state officials for major rights violations can raise politically sensitive questions. States that have accepted responsibility for violations may be more likely to investigate and prosecute former officials; under the pragmatic perspective, the Court may therefore be more willing to order IPP remedies. In the structural perspective, state acceptance of responsibility should not affect the Court's willingness to order IPP remedies.

> *Proposition 2: The Court is more likely to assign IPP remedies when states have accepted responsibility for violations (pragmatic perspective).*

Finally, we offer some expectations regarding remedies in cases involving the violation of physical integrity rights (torture, disappearances, extrajudicial killing, and similar offenses). In the Court's interpretation, Article 1 of the ACHR requires states to ensure the rights to (1) the clarification of the facts surrounding a violation of rights, and (2) prosecution and punishment of violators. In *Velásquez Rodríguez v. Honduras* (the first merits judgment in a contentious case), the Court declared that "the State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, [and] to impose the appropriate punishment."[89] Where national laws do not provide for fulfillment of the state's duty to investigate, prosecute and punish, states must, under Article 2 ACHR, take whatever measures are necessary—legislative, judicial, executive—to close that gap.[90] Indeed, the battle against impunity (for example, through amnesties that prevent investigation, prosecution and punishment) has been one of the consistent, defining features of the Court's jurisprudence since the beginning.[91]

We argue that, because impunity threatens the Court's core mission, the IACtHR will order IPP remedies in cases involving physical integrity rights violations. Not doing so would, given the Court's consistent perspective, place in jeopardy its essential mission and, indeed, its identity. Thus, as Seibert-Fohr argues, the obligation to investigate, prosecute and punish applies definitively to serious human rights violations, though administrative sanctions may suffice

---

[89] Velásquez Rodríguez v. Honduras, Merits, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 174 (Jul. 29, 1988).

[90] BURGORGUE-LARSEN & ÚBEDA DE TORRES, *supra* note 3, at 245.

[91] Sandholtz & Padilla, *supra* note 8, at 182.

for other kinds of violations.[92] Given the seriousness of physical integrity rights abuses in Latin America, and the consequences subsequently felt in their aftermath, the Court should also be inclined to order Services remedies in cases involving those kinds of violations. For instance, in *V.R.P., V.P.C., et al. v. Nicaragua* (2018), the Court confronted the sexual abuse of two sisters by their father.[93] The IACtHR held Nicaragua responsible for the violations as its judicial system failed to protect the victims and failed to provide justice, as the perpetrator was never effectively investigated or prosecuted. The Court ordered Nicaragua to provide comprehensive medical and psychological care to the victims and their male siblings and to investigate any public officials who contributed through their actions to the "acts of revictimization and institutional violence" and to "apply the consequences established by law."[94] For the following proposition, the substantive and pragmatic perspectives lead to similar expectations.

> *Proposition 3: The Court is likely to assign both IPP and Services remedies in cases involving violations of physical integrity rights*.

V. DATA

In this section we briefly describe the variables used in the analysis. Each observation in the data is a judgment in a contentious case decided by the IACtHR. Country-level variables represent indicators for the respondent state in the year of the judgment or, for some variables, in preceding years.[95]

A. Outcome Variables

Our data include 277 IACtHR judgments that ordered remedies from 1988 through the end of 2020.[96] The total number of remedies in these judgments is 1812.[97] The outcome variable is binary, indicating whether (1) or not (0) a given judgment includes at least one remedy of the type in question. Thus, *IPP* takes a value of "1" if the judgment includes at least one remedy requiring the state to

---

[92] ANJA SEIBERT-FOHR, PROSECUTING SERIOUS HUMAN RIGHTS VIOLATIONS 72 (2009).

[93] V.R.P., V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 350, ¶ 1 (Mar. 8, 2018).

[94] *Id.* at ¶ 448(14).

[95] Summary statistics are available in the appendix.

[96] Our data excludes cases in which the Court did not find violations and cases in which the judgment did not order remedies. We are extremely grateful to Stiansen, Naurin and Boyum for sharing a preliminary version of their dataset. *See* Øyvind Stiansen et al., *Law and Politics in the Inter-American Court of Human Rights: A New Database on Judicial Behavior and Compliance in the IACtHR*, 8 J.L. CTS. 359, 359–79 (2020). We have updated and, in some instances, recoded that early data. We also acknowledge with appreciation the foundational work of the Inter-American Court of Human Rights Project at Loyola Law School (Los Angeles), directed by Cesare Romano. *The Inter-American Court of Human Rights Project,* LOYOLA L. SCHOOL (2023), https://iachr.lls.edu/.

[97] These numbers are calculated after excluding remedies that are repeated across multiple victims. For example, if a judgment orders pecuniary compensation for 25 different victims, we count that as one remedy (compensation) rather than 25. Otherwise, the number of remedies per judgment would be inflated for cases involving larger numbers of victims. We are more interested in the distinct kinds of remedies.

investigate, prosecute, and punish those responsible for the violations, "0" otherwise. *Services* is coded in the same way. Each judgment can potentially include both IPP and Services remedies, which we model separately.

B. Additional Variables

Democracy: a continuous variable ranging from 0 to 5, with higher scores indicating greater democracy.[98]

State responsibility: We coded each judgment as to whether the respondent state had acknowledged responsibility for the violations. The variable takes three values: 0, no acknowledgement of state responsibility; 1, acknowledgement of partial responsibility; and 2, acknowledgement of full state responsibility.

Physical integrity rights: We coded each judgment as to whether (1) or not (0) it includes at least one violation of *Physical integrity rights* (torture, disappearances, extra-judicial killings, and similar abuses).

Additional controls: The models include a binary variable, *Democratic transition*, indicating whether (1) or not (0) the state experienced a transition to democracy within the previous five years. We include *GDP per capita* (natural logarithm) as a measure of the level of economic development. *Post-2001* is a binary variable intended to control for the significant 2001 modifications in the rules of procedure of both the Commission and the Court. Among the most important of the 2001 reforms were those (1) giving the petitioner a role in the process at the Inter-American Commission leading up to submission of a case to the Court and (2) granting victims or their representatives autonomy from the Inter-American Commission in proceedings before the Court.[99] *Total remedies* is a count of the number of distinct remedies included in each judgment. *Country cases* is a count of the number of IACtHR judgments involving the respondent state, prior to the current judgment.

VI. ANALYSIS

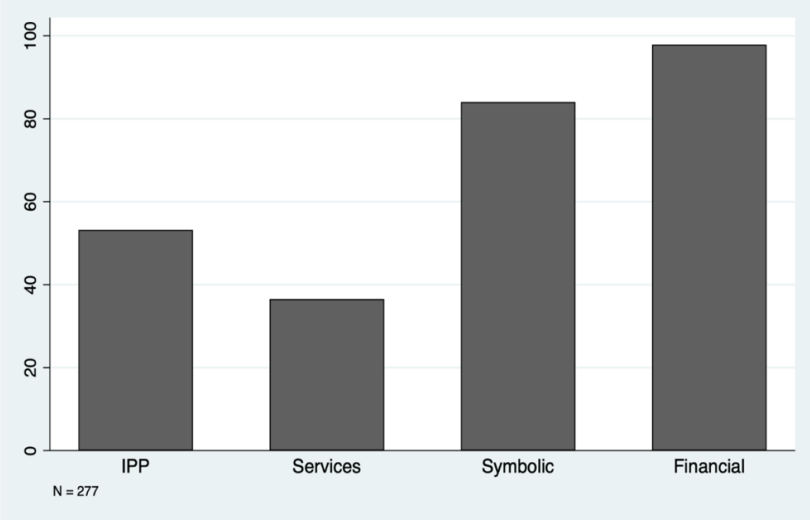
We first provide a broad descriptive picture of the types of remedies ordered by the Court, in the aggregate and over time. The first figure depicts the percentage of all IACtHR judgments, 1988–2020, that include remedies of various types. The analysis will focus on the first two (IPP and Services), but we include Symbolic and Financial remedies for purposes of comparison. Whereas the Court assigns IPP remedies in just over half of its judgments and Services remedies in just under 40 percent, it orders Symbolic remedies in more than four out of five judgments and Financial remedies in nearly all. The presence of Symbolic and Financial remedies in the vast majority of judgments makes it difficult to discern the attributes of cases that make those remedies more likely. They appear to be included almost automatically.

---

[98] *V-Dem Country-Year Dataset v11.1*, VARIETIES OF DEMOCRACY (V-DEM) PROJECT, https://www.v-dem.net/data/dataset-archive/ (last accessed Nov. 1, 2024). The original V-Dem variable ranges from about -2.5 to 2.5. We adjusted the range to 0 – 5.

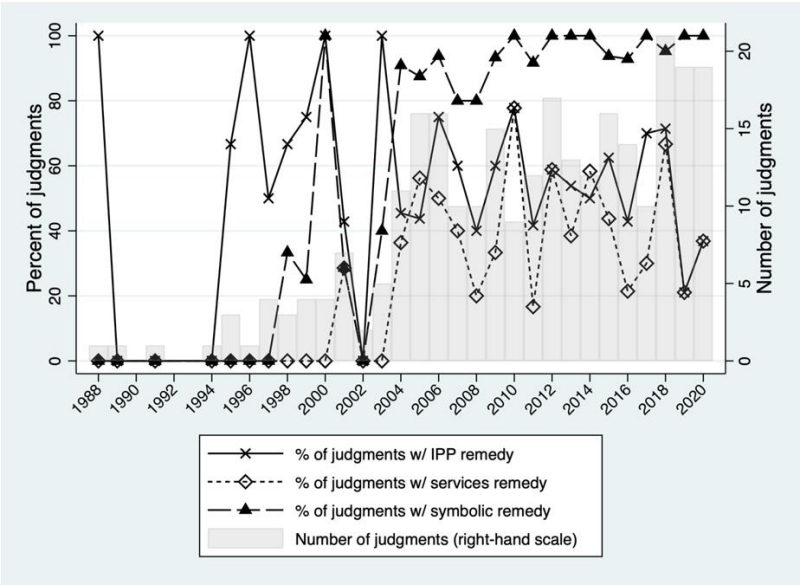
[99] Christina M. Cerna, *Introductory Note to IACHR: Rules of Procedure*, 40 INT'L LEG. MAT. 748, 749 (2009).

Figure 1: Percentage of judgments with remedy types, 1988 - 2020



We also view the Court's use of each category of remedy over time, as a percentage of judgments each year that include that category. Figure 2 depicts the record for IPP, Services, and Symbolic remedies.[100] Though the Court started early in ordering IPP remedies, its deployment of Services and Symbolic remedies has risen dramatically since the late 1990s. The pattern of remedies stabilized substantially after 2002.

Figure 2: Remedy categories, 1988–2020



[100] Financial remedies are omitted from the graph because the line would be virtually identical to the line for symbolic remedies, especially after 2001.

To probe our propositions, we model the likelihood that a judgment will include a specified remedy, given the set of explanatory variables. Given that our outcome variables are binary, we estimate logistic models. Table 2 presents the results.

Table 2: Effects on IPP and services remedies

	Effect on the odds of including IPP and services remedies in a judgment	
Variable	IPP	Services
Democracy	no significant effect	no significant effect
State acknowledges responsibility	+ 136%	- 40%
Physical integrity rights violations	+ 305%	+ 677%

Recall the "pragmatic" perspective, in which the Court calibrates remedies in light of the nature of the regime in the respondent state. *Democracy* is not significantly related to the likelihood of ordering IPP or Services remedies (propositions 1a and 1b). In other words, the Court does not appear to assign these remedies depending on the democratic status of the respondent state.[101] This result, with respect to IPP remedies (proposition 1a), is consistent with the structural argument that the Court will order states to investigate, prosecute, and punish rights violations, whatever their domestic political and institutional context. Similarly, the Court also appears to assign services remedies regardless of the status of democracy in the respondent state. Nor does the Court appear to treat recently democratized states differently with respect to IPP and services reparations orders.

We suggested, in proposition 2, that state acceptance of responsibility for violations would be associated with a higher likelihood of IPP remedies (we had no expectation regarding Services remedies). The acknowledgement that state agents committed rights violations is a necessary first step toward states holding officials accountable. The analysis is consistent with that proposition. When the state acknowledges responsibility for violations, the odds of the Court ordering the state to investigate, prosecute and punish perpetrators are multiplied by nearly two and a half. We did not offer a proposition regarding the effect of state acceptance of responsibility on the likelihood that the Court will order services remedies. State acknowledgement of responsibility decreases the likelihood of services remedies. One possible explanation, which would have to be further

[101] *See* Sandholtz & Padilla, *supra* note 8, at 163–164 (noting that although the Court does not assign remedies based on domestic status, it may adjust the timing of when it hears a particular case in light of domestic conditions in the respondent state).

developed and tested, would be that states that have accepted responsibility for rights violations have often already undertaken to provide services to the victims.

Finally, proposition 3 suggested that violation of physical integrity rights would increase the likelihood of both IPP and Services remedies. That proved to be the case, with a particularly large increase in the likelihood of Services remedies. Clearly, the Court places a high value on both types of remedies when states are responsible for deaths, disappearances, torture, and similarly grave violations of physical integrity. Indeed, respect for basic physical integrity rights is a prerequisite for the enjoyment of all other rights.

VII. CONCLUSION

The IACtHR is known for producing innovative and wide-reaching remedies orders. We analyzed the Court's remedies choices in light of characteristics of the respondent state (its level of democracy and whether it is recently democratized, and whether it has acknowledged responsibility for violations) and whether it was found to have violated physical integrity rights. The Inter-American Court's remedies orders serve two central objectives: (1) providing restitution or recompense for victims of rights abuses, and (2) promoting systemic change in states so as to reduce the likelihood of future violations. Instructing the state to provide services to the victims or their families aims to fulfill the first objective. Orders to investigate, prosecute and punish the perpetrators of serious violations serve the second by encouraging states to ensure accountability, establishing norms and practices that state officials will have to take into account going forward.

We offered propositions regarding the IACtHR's remedies choices. IPP remedies directly implicate the Court's core mission of ending impunity so as to promote systemic change. Consistent with the structural objectives of the Court, the nature of the state's political regime (democratic or not) does not appear to affect the inclusion of remedies requiring states to investigate, prosecute and punish perpetrators. Similarly, the Court orders Services remedies—providing assistance to victims of rights violations and their families and communities—regardless of the nature of the political regime in the respondent state. The Court does appear to view state acceptance of responsibility for violations as an indication that a state may be more willing to investigate and prosecute perpetrators of rights violations, consistent with proposition 2. And when it confronts violations of basic physical integrity rights (proposition 3), the Court tends to assign both IPP and services remedies. Deploying both types of remedies may be a sign that the Court recognizes that respect for physical integrity rights is a necessary precursor to all other rights and that, as a consequence, violations must be investigated and prosecuted, whatever the nature of the regime in the respondent state. The abuse of physical integrity rights will also entail that victims and their families require physical and emotional healthcare. The Court is even more likely to order medical and psychological care for victims of violations of physical integrity rights and their families.

Of course, many questions about the Inter-American Court's remedies choices remain. For instance, the Court tracks the extent to which states comply with remedies ordered by the Court. Have the Court's findings related to compliance affected how it assigns remedies? Additional investment in data and analysis could shed further light on that question.

Appendix

Though we focus on two types of remedy, we coded all of the remedies in every judgment in a contentious case through 2020. We assigned each remedy in each judgment first to one of eighteen "types" and then grouped the types into eight "categories." Two of those categories—(1) investigate, prosecute, and punish, and (2) services—are the subject of the analysis reported here. Table A1 lists the two categories that are the focus of our analysis, with illustrative examples of "Services." Table A2 summarizes the variables deployed in the analysis and table A3 lists the sources of the data. The final table, A4, presents the regression results.

Table A1: IPP and Services Categories with Examples

IPP	Investigate, prosecute and punish those responsible for violations	
Services	Provide medical treatment	Improve infrastructure
	Provide psychological treatment	Establish a vocational assistance program
	Provide education	Create a community development fund

Table A2: Variables

Variable	Observations	Mean	Std. Dev.	Min	Max
IPP remedy	277	0.5395683	0.4993308	0	1
Services remedy	277	0.3705036	0.4838106	0	1
Democracy	277	3.250629	0.7962445	1.045	4.555
Democratic transition	277	0.0647482	0.2465248	0	1
State acknowledges responsibility	277	0.5107914	0.724675	0	2
Physical integrity rights violation	277	0.6978417	0.4600216	0	1
Total remedies	277	6.517986	2.930858	1	17
Cumulative cases (country)	277	13.52158	11.60657	1	50
GDP/capita (ln)	277	8.632824	0.5801922	7.172114	9.806918
Post-2001	277	0.8920863	0.3108309	0	1

Table A3: Data Sources	
Variable	Source
IPP remedy	Authors' coding
Services remedy	Authors' coding
Democracy	Varieties of Democracy (V-Dem) Project, *V-Dem Country-Year Dataset v11.1*, available at https://www.v-dem.net/en/data/data/v-dem-dataset-v111/
Democratic transition	Varieties of Democracy (V-Dem) Project, *V-Dem Country-Year Dataset v11.1*, available at https://www.v-dem.net/en/data/data/v-dem-dataset-v111/
State acknowledges responsibility	Authors' coding
Physical integrity rights violations	Authors' coding
Total remedies	Authors' coding
Cumulative cases (country)	Authors' coding
GDP/capita (ln)	World Development Indicators, available at https://datacatalog.worldbank.org/search/dataset/0037712
Post-2001	Authors' coding

Table A4: Odds of IACtHR remedies, IPP and Services		
	IPP	Services
Democracy	0.839	1.377
	(0.210)	(0.414)
Democratic transition	0.749	1.243
	(0.503)	(0.979)
State acknowledges responsibility	2.360***	0.602*
	(0.566)	(0.171)
Physical integrity rights violations	4.046***	7.770***
	(1.445)	(4.113)
Total remedies	1.490***	1.976***
	(0.105)	(0.188)
Country cases (cumulative)	1.015	1.031*
	(0.014)	(0.016)
GDP/capita (ln)	0.662	0.979
	(0.230)	(0.401)
Post-2001	0.494	6.619**
	(0.278)	(5.997)
Observations	277	277
Log-likelihood	-127.6	-100.4
X^2	126.90	164.8
p	0.0000	0.0000
Pseudo-R^2	0.3322	0.4508
Logistic regressions, odds ratios reported *** p<0.01, ** p<0.05, * p<0.1		