Do States comply with the compulsory judgments of the Inter-American Court of Human Rights? An empirical study of the compliance with 330 measures of reparation

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I. Introduction

Every State that has ratified the American Convention on Human Rights and has accepted the jurisdiction of the Inter-American Court of Human Rights is under the international obligation to comply with the judgments issued by the Court. In fact, the States' compliance with the judgments against them is the main aim of the Inter-American Human Rights System. That is to say, when the States do not conform to the Court's rulings, the System is not achieving its goal of protecting human rights in the Americas.

The overall level of compliance by the States with the Court's judgments is far from perfect. According to the 2012 Annual Report of the Inter-American Court, by the end of that year the Court had convicted the States in 153 cases and only 17 of them have been fully complied with by the States,[1] leaving 138 judgments at the stage of monitoring of compliance.[2] However, as I stated in a previous article,[3] and as the Court

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[1] The 17 cases fully complied with by States are: Case of Velásquez-Rodríguez IACtHR Series C 1 (1987) at para 41; Case of Godínez-Cruz IACtHR Series C 3 (1987); Case of Aloeboetoe et al. IACtHR Series C 11 (1991); Case of Gangaram-Panday IACtHR Series C 12 (1991); Case of Genie Lacayo IACtHR Series C 21 (1995); *Case of "The Last Temptation of Christ" (Olmedo*-Bustos et al.) IACtHR Series C 73 (2001); Case of the Mayagna (Sumo) Awas Tingni Community IACtHR, Series C 79 (2001); Case of Herrera-Ulloa IACtHR Series C 107 (2004); Case of Ricardo Canese IACtHR Series C 111 (2004); Case of Lori Berenson-Mejía IACtHR Series C 119 (2004); Case of Acosta-Calderón IACtHR Series C 129 (2005); Case of Claude-Reyes et al. IACtHR Series C 151 (2006); Case of Kimel IACtHR Series C 177 (2008); Case of Tristán-Donoso IACtHR Series C 193 (2009); Case of Escher et al. IACtHR Series C 200 (2009); Case of Abrill-Alosilla IACtHR Series C 223 (2011); Case of Mejía-Idrovo IACtHR Series C 228 (2011).

[2] Inter-American Court of Human Rights, Annual Report 2012.

[3] González-Salzberg (2010) 'The effectiveness of the Inter-American Human Rights System: a study of the American States' compliance with the judgments of the Inter-American Court of Human Rights' 16 (1) International Law: Revista Colombiana de Derecho Internacional, 115-142.

itself started highlighting from its 2010 Annual Report onwards,[4] this high level of non-compliance with the judgments, which reached 90% by the end of 2012, does not mean that the States are indifferent to the Court's rulings. Indeed, in most cases the States have taken actions to comply with the measures of reparations imposed upon them by the Court, even if they have not fully complied with all of them.

The relevance of the level of compliance with the judgments of the Inter-American Court as an object of analysis can be attested by the increasing attention given to the topic. In fact, two original empirical works on compliance with the decisions of the organs of the Inter-American System were published in 2010.[5] While my article focused exclusively on the judgments of the Court, the work of the Association for Civil Rights covered selected rulings of the Court, together with certain decisions of the Inter-American Commission. Furthermore, another interesting article was published in 2011 that conducted a comparative empirical analysis of the case law of both the European and the Inter-American Courts of Human Rights.[6] The empirical method as a tool to examine the work of the Inter-American Court was used once again in a paper published in 2012.[7] Moreover, an increasing number of articles have focused on compliance with the Court's judgments by specific States.[8]

Notwithstanding the attention given to this topic, the present paper will not only offer a much needed up-to-date empirical study of the level of compliance with the judgements of the Court, but it will also provide an original comparative approach to

[4] Inter-American Court of Human Rights, Annual Report 2010, p. 12; Inter-American Court of Human Rights, Annual Report 2011, p. 14; Inter-American Court of Human Rights, Annual Report 2012, p. 13.

[5] González-Salzberg, supra n 3; Basch et al. (2010) 'La efectividad del Sistema Interamericano de Protección de Derechos Humanos: un enfoque cuantitativo sobre su funcionamiento y sobre el cumplimiento de sus decisiones' 7 (12) Sur – Revista Internacional de Derechos Humanos, 9-35.

[6] Hawkins and Jacoby (2011) 'Partial compliance: a comparison of the European and Inter-American Courts of Human Rights' 6 (1) Journal of International Law and International Relations, 35-85.

[7] Baluarte (2012) 'Strategizing from compliance: the evolution of a compliance phase of Inter-American Court litigation and the strategic imperative for victims' representatives' 27 (2) American University International Law Review, 263-321.

[8] Huneeus (2010), 'Rejecting the Inter-American Court: judicialization, national courts, and regional human rights' Legal Studies Research Paper Series No. 1167; González-Salzberg (2011) 'La implementación de las sentencias de la Corte Interamericana de Derechos Humanos en Argentina: un análisis de los vaivenes jurisprudenciales de la Corte Suprema de Justicia de la Nación' 8 (15) Sur – Revista Internacional de Derechos Humanos, 117-135; Rosato and Correia (2011) 'Caso Damião Ximenes Lopes: mudanças e desafios após a primeira condenação do Brasil pela Corte Interamericana de Direitos Humanos' 8 (15) Sur – Revista Internacional de Dereitos Humanos, 92-113; Bernardes (2011) 'Sistema Interamericano de Direitos Humanos como esfera pública transnacional: aspectos jurídicos e políticos da implementação de decisões internacionais' 8 (15) Sur – Revista Internacional de Dereitos Humanos, 134-156; Helander-Capalbo (2011) 'Efectos de las sentencias de la Corte Interamericana y del Tribunal Europeo de Derechos Humanos, con especial referencia a Uruguay y España' 55 (1) Revista del Instituto Interamericano de Derechos Humanos, 207-231; Ivanschitz-Boudeguer (2013) 'Un estudio sobre el cumplimiento y ejecución de las sentencias de la Corte Interamericana de Derechos Humanos por el Estado de Chile' 11 (1) Estudios Constitucionales, 275-332.

my previous work. This will allow not only evaluating the level of effectiveness of the Court in a comprehensive manner, but it will also show how the effectiveness of the system has progressed within the last four and a half years.

In brief, the present article analyses a total number of 330 measures of reparation, ordered in 112 judgments issued by the Inter-American Court. The study will show the level of States' compliance with the measures of reparation imposed by the Court, in order to propose the lessons that can be learned from this experience. Section Two of the article will offer the necessary background for understanding the reparations ordered and the mechanism developed by the Court for monitoring compliance with them. Section Three will then explain the method followed by the article, so as to measure the degree of compliance, and it will also present the 330 measures analysed. Section Four will focus on the five types of measures under analysis and will evaluate the level of compliance with each of them. Lastly, Section Five will propose the conclusions to be drawn from the analysis conducted.

II. Compliance with the measures of reparation

A. Measures of reparation

The Inter-American Court of Human Rights is a judicial body whose main purpose is to judge and decide cases concerning the violation of human rights protected by the American Convention on Human Rights. The Court's rulings in the exercise of this adjudicatory role are binding upon the States Parties in the case in question, since States that ratified the Convention and accepted the Court's jurisdiction have undertaken the obligation to comply with them.[9] Furthermore, the Court not only has the authority to decide that a State has violated human rights, but it also has the power to rule on the reparations due for such a violation.

Since its earliest judgments, the Court has stated that it is a principle of international law that any violation of an international obligation that results in harm entails the responsibility to make adequate reparation.[10] As defined by the Court, reparations is a generic term that covers the various ways a State may make amends for the international responsibility it has incurred.[11] In particular, the Convention granted

[9] American Convention on Human Rights, article 68.1.
[10] Case of Velásquez-Rodríguez IACtHR Series C 7 (1989) at para 25.
[11] Case of Loayza-Tamayo IACtHR Series C 42 (1998) at para 85.

the Court a broad competence concerning the ability to order reparations, and the Court has made use of it. The Convention reads:

> If the Court finds that there has been a violation of a right or freedom protected by this 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.[12]

Following Shelton, it is possible to affirm that this prescription shows the extensive remedial competence granted to the Court, clearly not limited to the ability to order the payment of pecuniary compensation, and which has allowed the Court to decide a wide range of non-monetary remedies.[13] Indeed, the development of the scope of reparations for the violation of human rights is one of the greatest contributions of the Inter-American Court to international law.[14]

The Court has affirmed that, whenever it is possible, the reparation of the damage resulting from the violation of an international obligation should adopt the form of full restitution (restitutio in integrum), which consists in the re-establishment of the previous situation.[15] Nevertheless, if that were not possible, the Court must establish a series of measures, in order to guarantee the rights infringed, redress the consequences of the infringements, and determine payment of indemnification as compensation for damage caused.[16]

Traditionally, the Court has split the analysis of the reparations due in a case into three sections, respectively covering the pecuniary damages to be awarded in the case; the non-pecuniary damages; and a final section labelled "other forms of reparation".[17] Regarding the category of pecuniary damages, this comprises the loss or detriment to the income of the victim; the expenses incurred by the victim or their next of kin due to

[12] American Convention on Human Rights, article 63.1.
[13] Shelton (1998) 'Reparations in the Inter-American System' in Harris and Livingstone (eds.) The Inter-American System of Human Rights (Oxford: Clarendon Press), pp. 152-153; Shelton (2000) Remedies in International Human Rights Law (Oxford: Oxford University Press), pp 172-173.
[14] Pasqualucci (2003), The Practice and Procedure of the Inter-American Court of Human Rights (Cambridge: Cambridge University Press), p. 444.
[15] Case of Cesti-Hurtado IACtHR Series C 78 (2001) at para 33; Case of the Constitutional Court IACtHR Series C 71 (2001) at para 119.
[16] Case of Cesti-Hurtado, supra n 15 at para 33; Case of Barrios Altos IACtHR Series C 87 (2001) at para 25.
[17] Case of Loayza-Tamayo, supra n 11; Case of Cesti-Hurtado, supra n 15; Case of Myrna Mack-Chang IACtHR Series C 101 (2003).

the violation suffered; and the pecuniary consequences causally linked to the facts. The redress for pecuniary damages takes the form of a compensatory amount aimed at compensating for the economic consequences of the violations suffered by the victim.[18]

Concerning the non-pecuniary damages, this involves the injurious effects of the violation suffered by the victim that are not financial in nature, such as the suffering and affliction caused to the victim and their next of kin and the alterations to their conditions of life. Given the impossibility to assign a precise monetary equivalent to non-pecuniary damages, and in consideration of the importance of the integral reparation to the victims, the Court has recognised that there are only two ways in which such damages can be compensated. First, the Court orders the payment of an amount of money of a significant financial value, which is established based on considerations of fairness and determined by the exercise of judicial discretion. Secondly, the Court orders the execution of acts with public impact, aimed at attaining effects such as the acknowledgement of the dignity of the victim; the dissemination of a message of official disapproval of human rights violations; or the commitment to avoid recidivism.[19] These public acts aimed at redressing non-pecuniary damages are the measures that the Court has labelled as "other forms of reparation".[20]

From 2007 onwards, the Court has changed the structure in which it presented the orders of reparation, splitting the analysis into only two sections, a first section comprising monetary compensation, for both pecuniary and non-pecuniary damages; and a second section, comprising measures of satisfaction and guarantees of non-repetition.[21] Under the analysis of these "other forms of reparation" or the "measures of satisfaction and guarantees of non-repetition", the Court has ordered a wide variety of measures.

As will be analysed throughout the article, it became usual for the Court to order the States to investigate the violations of human rights, in order to prosecute and punish those responsible for such violations.[22] Another typical measure ordered by the Court has been the amendment of domestic legislation to bring it into conformity with the

[18] Case of Juan Humberto Sánchez IACtHR Series C 99 (2003) at para 162; Case of Myrna Mack-Chang, supra n 17 at para 250.
[19] Case of Juan Humberto Sánchez, supra n 18 at para 168; Case of Trujillo-Oroza IACtHR Series C 92 (2002) at para 77; Case of the Caracazo IACtHR Series C 95 (2002) at para 94.
[20] Case of Myrna Mack-Chang, supra n 17 at 268; Case of Bulacio IACtHR Series C 100 (2003) at 105.
[21] Case of the Rochela Massacre IACtHR Series C 163 (2007); Case of Kimel IACtHR Series C 177 (2008).
[22] Case of Juan Humberto Sánchez, supra n 18 at op para 10; Case of Bulacio, supra n 20 at op para 4; Case of Myrna Mack-Chang, supra n 17 at op para 5.

provisions of the American Convention on Human Rights.[23] Similarly, two traditional orders of the Court regarding measures of satisfaction are the publication of certain parts of the convicting judgment, and the obligation to perform an official and public act of acknowledgment of the State's responsibility and apology towards the victims.[24]

However, the measures of reparation decided by the Court have been very diverse. For instance, the Court has imposed upon States the obligation to provide the victim or their next of kin with medical and psychological treatment.[25] Also, States have been ordered to provide education regarding human rights in the training course of their security forces.[26] Other recurrent measures have been the obligation to reinstate the victim in their job, or the order to provide the victim or their next of kin with a scholarship to undertake studies.[27] Moreover, the Court has ordered States to nullify criminal convictions that have been imposed in violation of the American Convention.[28] Additionally, it became usual for the Court to impose upon States the duty to memorialise the victims through the construction of monuments in cases of grave violations of human rights.[29]

B. Compliance

As affirmed in the Court's Annual Report of 2010, the key element of the Inter-American Human Rights System is the implementation of the Court's decisions, since the System is rendered illusory without the States' effective compliance with the judgments.[30] Indeed, compliance with the measures of reparation ordered by the Court

[23] *Case of "The Last Temptation of Christ" (Olmedo*-Bustos et al.), supra n 1 at op para 4; Case of Lori Berenson Mejía IACtHR Series C 119 (2004) at op para 1; Case of Herrera-Ulloa IACtHR Series C 107 (2004) at op para 5.
[24] Case of the Caracazo, supra n 19 at op para 5; Case of Bámaca-Velásquez IACtHR Series C 91 (2002) at op para 3; Case of Myrna Mack-Chang, supra n 17 at op para 7; Case of Durand and Ugarte IACtHR Series C 89 (2001) at op para 4; Case of Cantoral-Benavides IACtHR Series C 88 (2001) at op para 7.
[25] Case of the 19 Tradesmen IACtHR Series C 109 (2004) at op para 9; *Case of the "Mapiripán Massacre"* IACtHR Series C 134 (2005) at op para 10; Case of Cantoral-Huamaní and García-Santa Cruz IACtHR Series C 167 (2007) at op para 13.
[26] Case of Myrna Mack-Chang, supra n 17 at op para 10; Case of Blanco-Romero IACtHR Series C 138 (2005) at op para 11; *Case of the "Mapiripán Massacre"*, supra n 25 at op para 13.
[27] Case of Loayza-Tamayo, supra n 11 at op para 1; Case ofApitz-*Barbera et al. ("First Court of Administrative Disputes")* IACtHR Series C 182 (2008) at op para 17; Case of Loayza-Tamayo IACtHR Series C 42 (1998) at para 85; Case of Escué-Zapata IACtHR Series C 165 (2007) at op para 11; Case of Valle-Jaramillo et al. IACtHR Series C 192 (2008) at op para 19.
[28] Case of Castillo-Petruzzi et al. IACtHR Series C 52 (1999) at op para 7; Case of Cesti-Hurtado, supra n 15 at op para 8.
[29] Case of the Pueblo Bello Massacre IACtHR Series C 140 (2006) at op para 14; *Case of the "Las Dos Erres" Massacre* IACtHR Series C 211 (2009) at op para 15; Case of Kawas-Fernández IACtHR Series C 196 (2009) at op para 12.
[30] Inter-American Court of Human Rights, Annual Report 2010, p. 9.

in its judgment is the materialisation of justice for the specific case.[31] Consequently, the mechanisms for monitoring and encouraging compliance with the Court's rulings are an essential part of the System.

Unlike the European System, where the Convention provides for a specific political body to monitor compliance with the judgments of the European Court, the American Convention was silent on the matter.[32] This silence had to be filled by the Court through a comprehensive analysis of the American Convention. In particular, article 65 of the American Convention establishes the obligation of the Court to submit an annual report to the General Assembly of the Organization of the American States (OAS) concerning the work of the Court and this report has to specify the cases in which a State has not complied with the Court's judgments.[33] The Court considered that in order to be able to inform the OAS General Assembly, it was necessary for the Court itself to know the degree of compliance with its decisions.[34] Hence, only by monitoring compliance with its judgments can the Court comply with the mandate established in article 65.[35]

Therefore, in the Inter-American System, the Court had to assume the task of monitoring compliance with its own judgments. As explained, the Court has interpreted that the authority to perform the essential activity of monitoring compliance with its judgments is within its jurisdiction.[36] Furthermore, the Court has reaffirmed that its ability to monitor compliance is not only to be found in the Convention, but its authority and the procedure adopted have also became grounded in customary law, through the practice followed by the Court and the States.[37]

The Court has monitored compliance with its judgments since the earliest ones.[38] Nonetheless, the actual procedure to monitor compliance has changed through time. The traditional practice of the Court consisted of requesting information from the States regarding the measures taken to comply with its judgments, and of requesting the

[31] Case of Baena-Ricardo et al. (Competence) IACtHR (2003) at para 72.
[32] Id., at para 87-88.
[33] American Convention on Human Rights, article 65.
[34] Case of Baena-Ricardo et al. (Competence), supra n 31at para 101.
[35] Id., at para 90 and 101.
[36] Id., at para 72.
[37] Id., at para 102.
[38] Inter-American Court of Human Rights, Annual Report 1991, p. 9; Inter-American Court of Human Rights, Annual Report 1996, p. 18; Inter-American Court of Human Rights, Annual Report 1997, p. 13; Inter-American Court of Human Rights, Annual Report 1998, p. 30.

victims and the Commission for their observations on the matter.[39] After examining the information provided, the Court evaluated the degree of compliance with each measure and issued an Order concerning the compliance with the judgment. However, from 2007 onwards, the Court started conducting private hearings as part of the procedure to monitor compliance with individual judgments.[40] This procedure was amended in 2010, and since then the Court is holding private hearings concerning more than one case against a given State, provided the cases had at least a similar measure of reparation pending compliance.[41] The current Rules of Procedure of the Court, approved in November 2009,[42] regulate the procedure for monitoring compliance with the Court's judgments, establishing that it is a procedure based on written reports, but explicitly allowing the Court to convene hearings when it deems it appropriate.[43]

III. Measuring compliance with 112 judgments

A. The method to measure compliance

The method used in this article for the classification of the measures of reparation ordered by the Court and for measuring their degree of compliance is an amended version of the method developed in my previous work.[44] The analysis will be focused on five types of reparation traditionally ordered by the Court: compensation, publicity of the judgment, act of acknowledgement of the State's responsibility, prosecution of the individuals responsible for the violations committed, and amendment of domestic legislation. Compared to my analysis from 2010, the category of "costs and expenses" has been suppressed. The reason for this is that in certain cases the Court has ordered the payment of expenses as a category belonging to compensation.[45] Hence, it was difficult to accurately assess the degree of compliance with the payment of "costs and expenses" as, in many cases, it was dependent upon the compliance with the payment of compensation.

[39] Order of the Inter-American Court of Human Rights, Supervision of Compliance with Judgments (Applicability of Article 65 of the American Convention on Human Rights), 29 June 2005, para 8.
[40] Inter-American Court of Human Rights, Annual Report 2010, p. 5.
[41] Id., at p.10.
[42] Order of the Inter-American Court of Human Rights, Supervision of Compliance with Judgments (Applicability of Article 65 of the American Convention on Human Rights), 29 June 2005.
[43] Rules of Procedure of the Inter-American Court of Human Rights, Approved by the Court at its LXXXV Regular Period of Sessions (2009), article 69.
[44] González-Salzberg, supra n 3.
[45] Case of Neira-Alegría IACtHR Series C 29 (1996) at para 61; Case of Aloeboetoe et al. IACtHR Series C 15 (1993) at para 94, 05 and 111; Case of El Amparo IACtHR Series C 28 (1996) at para 21 and 41.

The determination of the degree of compliance with each measure, as in my previous study, continues to be assessed as either complied with (C), non-complied with (N), or partially complied with (P). Regarding the decision to measure partial compliance, this is based on the tradition of the Court to consider certain measures as being partially complied.[46] Nonetheless, as an improvement from my previous work, I decided to specify the criterion used to establish when a measure has been partially complied with. Regarding the payment of compensation, this measure will be considered as partially complied with, when at least one of the payments ordered as compensation has been made by the State. As to the publication of the judgment, this measure is considered to have been partly complied with, when at least one of the publications has been completed. Concerning the public act of acknowledgment of international responsibility, due to the nature of the measure, which requires the performance of one particular public act, this is the only measure in which partial compliance cannot take place. In relation to the investigation of the facts and the judgment and prosecution of those individually responsible, this measure will only be considered to be partially complied with when, after the ruling of the Court, at least one person has been sanctioned. Lastly, the duty to amend domestic legislation will be labelled as partially fulfilled in those cases in which more than one piece of internal legislation should have been passed and one of them has already been enacted.

On the other hand, the decision to measure partial compliance does not mean a complete agreement with the Court doing so. In fact, the compulsory nature of the judgments may well suggest that they should be considered by the Court as non-complied with until the measure is completely fulfilled. Moreover, if the Court decides to continue measuring partial compliance, it can be suggested that the criterion for deciding when a specific order should be seen as partially fulfilled, instead of plainly unfulfilled, should be made explicit.

The analysis that follows covers all judgments on reparations issued by the Court before mid-2011 that have been monitored by the Court up to mid-2013, making it a total of 114 judgments. This total number comprises every judgment issued by the Court from the Velásquez Rodríguez case in 1989 to the Vera Vera case in 2011,

[46] Case of Durand and Ugarte (Monitoring Compliance with Judgment) IACtHR, 5 August 2008, op para 3; Case of Bulacio (Monitoring Compliance with Judgment) IACtHR, 26 November 2008, op para 1; Case of La Cantuta (Monitoring Compliance with Judgment) IACtHR, 20 November 2009, op para 2; Case of Heliodoro Portugal (Monitoring Compliance with Judgment) IACtHR, 19 June 2012, op para 2; Case of the Ituango Massacres (Monitoring Compliance with Judgment) IACtHR, 21 May 2013, op para 1.

excluding the five cases in which the State has not been convicted by the Court,[47] and the 13 cases in which the Court has not issued an Order monitoring compliance with the judgment before mid-2013.[48] Furthermore, the two cases against Trinidad and Tobago are displayed in Table I,[49] but they have not been included in the subsequent statistical analysis, given that the State abandoned the Inter-American System and did not report to the Court on the compliance with the judgments. Consequently, the analysis will be carried out over 112 judgments.

The total number of measures under examination is 330 and the results of the empirical study will be processed in eight Tables, which will show the level of compliance with 112 judgments of the Court. This analysis will allow conclusions to be drawn about the behaviour of the States regarding the different types of measures ordered by the Court during over 20 years. Moreover, the results regarding compliance with these 330 measures will be compared to the data from my 2010 article, which measured compliance with 187 measures ordered in 68 judgments.

B. Complying with 112 judgments

Table I shows the total number of cases supervised by the Court divided according to the 20 States against which the judgments were issued, and it illustrates the percentage of full compliance with judgments by each State. As can be seen, Costa Rica appears at the top of the Table as the State with the best compliance rate, since it has fully complied with the only conviction against the State. In the second place of the Table it is shown that Nicaragua has fully complied with two out of three convictions, having a compliance rate of 67%, and then both Suriname and Chile present a compliance rate of 50%. Conversely, 16 out of 20 States have fully complied with less than half of the

[47] The cases Cayara and Alfonso Martín del Campo-Dodd were dismissed due to the admission of preliminary objections entered by the States, and the case Maqueda was dismissed due to the discontinuance of the action brought by the Inter-American Commission. The cases Fairén-Garbi and Solís-Corrales and Nogueira de Carvalho are the only two cases in which the Court has found no violation of the American Convention by mid-2011. Case of Cayara IACtHR Series C 14 (1993); Case of Alfonso Martín del Campo-Dodd IACtHR Series C 113 (2004); Case of Maqueda IACtHR Series C 18 (1995); Case of Fairén-Garbi and Solís-Corrales IACtHR Series C 2 (1987); Case of Nogueira de Carvalho et al. IACtHR Series C 161 (2006).

[48] Case of Acevedo-Jaramillo et al. IACtHR Series C 144 (2006); Case of Yvon Neptune IACtHR Series C 180 (2008); Case of Ríos et al. IACtHR Series C 194 (2009); Case of Perozo et al. IACtHR Series C 195 (2009); Case of Reverón-Trujillo IACtHR Series C 197 (2009); Case of Anzualdo-Castro IACtHR Series C 202 (2009); Case of Barreto-Leiva IACtHR Series C 206 (2009); Case of Usón Ramírez IACtHR Series C 207 (2009); Case of Xákmok Kásek Indigenous Community IACtHR Series C 214 (2010); Case of Fernández-Ortega et al. IACtHR Series C 215 (2010); Case of Rosentdo-Cantú IACtHR Series C 216 (2010); Case of Gomes-Lund et al. (Guerrilha do Araguaia) IACtHR Series C 219 (2010); Case of Cabrera-García and Montiel-Flores IACtHR Series C 220 (2010).

[49] Case of Hilaire IACtHR Series C 80 (2001); Case of Caesar IACtHR Series C 123 (2005).

judgments against them. In particular, on the lower part of the Table, it can be seen that nine out of the 20 States have not complied fully with a single judgment.

Table II shows graphically the 330 measures of reparations ordered by the Court in 112 judgments and the States' degree of compliance with them.[50] The Table indicates the State against which the Court ordered each measure and in which cases the measures were ordered. It shows the degree of compliance with each measure, indicating whether it was complied with (C), partially complied with (P), or non-complied with (N). The Table also highlights in bold letters the 16 cases that have been fully complied with by the States,[51] which means that all measures ordered by the Court have been complied with and not only the five types of reparation analysed by the article.[52]

TABLE I – CASES FULLY COMPLIED WITH BY STATE

STATE	CASES SUPERVISED	CASES FULLY COMPLIED WITH
COSTA RICA	1	100% (1)
NICARAGUA	3	67% (2)
SURINAME	4	50% (2)
CHILE	4	50% (2)
HONDURAS	6	33% (2)
BRAZIL	3	33% (1)
PANAMA	4	25% (1)
ARGENTINA	6	17% (1)
PARAGUAY	6	17% (1)
ECUADOR	9	11% (1)
PERU	24	8% (2)
GUATEMALA	14	0
COLOMBIA	11	0
VENEZUELA	5	0
MEXICO	3	0
BOLIVIA	3	0
EL SALVADOR	2	0
BARBADOS	2	0
DOM. REP.	1	0
URUGUAY	1	0
TOTAL	**112**	**14% (16)**

[50] The only case that does not show any indications regarding compliance is the Cantos case and this is because none of the measures ordered by the Court belonged to the types of reparations analysed in this work. Case of Cantos IACtHR Series C 97 (2002).
[51] A full list of these cases can be seen supra n 1.
[52] It is worth highlighting that the Castañeda-Gutman case does not appear as fully complied with, since its full compliance was not confirmed by the Court until after mid-2013. Case of Castañeda-Gutman (Monitoring Compliance with Judgment) IACtHR, 28 August 2013.

TABLE II – THE 330 MEASURES ORDERED

		Pecuniary compensation	Publicity of judgment	Public acknowledgement	Prosecution	Amendment of legislation
PERU	Neira-Alegría	C				
	Loayza-Tamayo	C			N	C
	Castillo-Páez	C			C	
	Castillo-Petruzzi					C
	Cesti-Hurtado	P			P	
	Durand and Ugarte	C	P	C	N	
	Cantoral-Benavides	C	C	C	N	
	Constitutional Court	P			N	
	Ivcher-Bronstein	C			P	
	Barrios Altos	P	C	C	P	P
	"Five Pensioners"	C			N	
	Gómez-Paquiyauri	C	C	C	N	
	De La Cruz-Flores	C	C			
	Lori Berenson	-	**C**	-	-	**C**
	Huilca Tecse	C	C	C	N	
	Gómez Palomino	P	C		N	N
	García-Asto	P	P			
	Baldeón-García	N	C	N	N	
	Aguado-Alfaro	N				
	Castro-Castro Prison	N	N	N	N	
	La Cantuta	P	P	C	P	
	Cantoral-Huamaní	P	N	N	N	
	Acevedo Buendía	P	C			
	Abrill-Alosilla	**C**	**C**	-	-	-
GUATEMALA	Blake	C			P	
	"White Van"	P			N	
	"Street Children"	C			N	C
	Bámaca-Velásquez	C	C	C	N	P
	Myrna Mack-Chang	C	C	C	P	
	Maritza Urrutia	C			N	
	Plan de Sánchez	P	C	C	N	
	Molina-Theissen	C	C	C	N	N
	Carpio-Nicolle	C	C	N	N	
	Fermín Ramírez					N
	Raxcacó-Reyes		C			N
	Tiu-Tojín		C		N	
	"Las Dos Erres"	P	C	C	P	N
	Chitay Nech	C	P	N	N	
COLOMBIA	Caballero-Delgado	C			N	
	Las Palmeras	C	C		P	
	19 Tradesmen	P		C	N	
	Gutiérrez-Soler	C	C		N	
	Mapiripán	P	C		P	

	Pueblo Bello	P	C	C	N	
	Ituango	C	C	N	P	
	La Rochela	P	C		P	
	Escué-Zapata	P	P	C	P	
	Valle-Jaramillo	C	C	N	P	
	Cepeda-Vargas	C	C	C	N	
ECUADOR	Suárez-Rosero	P			N	
	Benavides-Cevallos	C			N	
	Tibi	C	C	C	N	
	Acosta-Calderón	**C**	**C**	-	-	-
	Zambrano-Vélez	P	C	C	N	C
	Chaparro-Álvarez	P	P			P
	Albán Cornejo	C	C			
	Salvador-Chiriboga	P	P			
	Vera Vera	C	P			
ARGENTINA	Garrido-Baigorria Cantos	C			N	
	Bulacio	C	C		P	P
	Bueno-Alves	P	C		N	
	Kimel	**C**	**C**	**C**	-	**C**
	Bayarri	C	C		N	
PARAGUAY	**Canese**	**C**	**C**	-	-	-
	Juvenile Reeduc. Instit.	P	C	N		
	Yakye Axa	P	N	C		N
	Sawhoyamaxa	P	P			N
	Goiburú	P	C	N	P	N
	Vargas-Areco	C	C	C	N	C
HONDURAS	**Velásquez-Rodríguez**	**C**	-	-	-	-
	Godínez-Cruz	**C**	-	-	-	-
	Juan H. Sánchez	P	C	C	N	
	López-Álvarez	C	C		N	
	Servellón-García	C	C	C	P	
	Kawas-Fernández	C	C	C	N	
VENEZUELA	El Amparo	C			N	
	The Caracazo	C	C		N	
	Blanco Romero	N	N		P	N
	Montero-Aranguren	N	N	N	N	N
	Apitz-Barbera	N	N			N
PANAMA	Baena	P				
	Heliodoro-Portugal	C	C	C	N	P
	Tristán-Donoso	**C**	**C**	-	-	-
	Vélez Loor	C	C		N	
SURINAME	**Aloeboetoe**	**C**	-	-	-	-
	Gangaram Panday	**C**	-	-	-	-
	Moiwana	C		C	N	N
	Saramaka People	P	C			N
CHILE	**The Last Temptation**	-	-	-	-	**C**
	Palamara-Iribarne	C	C			P
	Claude Reyes	-	**C**	-	-	**C**
	Almonacid-Arellano		C		N	N
MEXICO	Castañeda-Gutman		C			N
	“Cotton Field”	C	C	C	N	
	Radilla-Pacheco	C	C	C	N	N
NICARAGUA	**Genie-Lacayo**	**C**	-	-	-	-
	Mayagna	**C**	-	-	-	**C**
	Yatama	P	P			N
BOLIVIA	Trujillo-Oroza	C	C		N	C
	Ticona-Estrada	C	C		P	

	Ibsen-Cárdenas	C	C		P	
BRAZIL	Ximenes-Lopes	C	C		P	
	Escher	**C**	**C**	-	**C**	-
	Garibaldi	C	C		N	
TRINIDAD	Hilaire	?				?
	Caesar	?				?
EL SALVADOR	Serrano-Cruz	C	C	C	N	
	García-Prieto	C	C		N	
BARBADOS	Boyce					N
	Dacosta-Cadogan					N
DOM. REP.	Yean and Bosico	C	C	N		N
COSTA RICA	**Herrera-Ulloa**	**C**	-	-	-	**C**
URUGUAY	Gelman	C	C	C	N	P

IV. Measuring compliance with 330 measures

A. Paying compensation

The payment of compensation for both pecuniary and non-pecuniary damages is the oldest measure of reparation ordered by the Inter-American Court, and it has been constant in the Court's case law since it was ordered in the judgments on reparations in the Velásquez Rodríguez and Godínez Cruz cases.[53] As can be seen in Table II, only 12 of the 112 judgments on reparations have not established the payment of compensation as a measure of reparation, making this type of reparation the one most frequently ordered.

With the exception of the first two rulings on reparations, in which the Court ordered the payment of compensation in Honduran lempiras,[54] the payment has always been established in United States dollars. Furthermore, since the judgment on reparation in the case El Amparo in 1996, the Court has adopted an additional measure aimed at protecting the payment in favour of the victim, consisting in the obligation of the State to pay an interest in case of arrears.[55] This makes pecuniary measures the only ones in which the Court has developed an automatic mechanism of sanction in case of non-compliance.

Table III shows the level of compliance with this measure. It can be seen that it has a relatively high degree of full compliance (65%) and a very low degree of non-compliance (6%). In fact, from the 20 States ordered to pay compensation, only two of them (Venezuela and Peru) have actually not made any payments in specific cases.

[53] Case of Velásquez-Rodríguez, supra n 10; Case of Godínez-Cruz IACtHR Series C 8 (1989);
[54] Case of Velásquez-Rodríguez, supra n 10 at op para 1; Case of Godínez-Cruz, supra n 53 at op para 1.
[55] Case of El Amparo, supra n 45 at para 49.

Nonetheless, Paraguay is the State that shows the lowest level of full compliance with this measure (only 33%). Conversely, a total of eight out of 20 States have fully complied with this measure every time it was ordered against them. To summarise, it is fair to say that the overall degree of States' compliance with the payment of compensation is relatively high.

TABLE III – PECUNIARY COMPENSATION

STATE	TIMES ORDERED	FULLY COMPLIED WITH	PARTLY COMPLIED WITH	NOT COMPLIED WITH
BOLIVIA	3	100% (3)	0	0
BRAZIL	3	100% (3)	0	0
CHILE	1	100% (1)	0	0
COSTA RICA	1	100% (1)	0	0
DOM. REP.	1	100% (1)	0	0
EL SALVADOR	2	100% (2)	0	0
MEXICO	2	100% (2)	0	0
URUGUAY	1	100% (1)	0	0
HONDURAS	6	83% (5)	17% (1)	0
ARGENTINA	5	80% (4)	20% (1)	0
PANAMA	4	75% (3)	25% (1)	0
SURINAME	4	75% (3)	25% (1)	0
GUATEMALA	11	73% (8)	27% (3)	0
NICARAGUA	3	67% (2)	33% (1)	0
ECUADOR	9	56% (5)	44% (4)	0
COLOMBIA	11	55% (6)	45% (5)	0
PERU	22	50% (11)	36% (8)	14% (3)
VENEZUELA	5	40% (2)	0	60% (3)
PARAGUAY	6	33% (2)	67% (4)	0
BARBADOS	0	-	-	-
TOTAL	**100**	**65% (65)**	**29% (29)**	**6% (6)**

B. Acknowledging human rights violations

This Section will analyse two different measures of satisfaction usually ordered by the Court in its case law: the obligation to publish certain parts of the judgment convicting the State, and the duty to conduct a public act of acknowledgment of the State responsibility. The Court started ordering these two measures on December 3rd 2001, when it issued the judgments on reparations in the cases Cantoral-Benavides and Durand and Ugarte.[56] In Durand and Ugarte, the Court approved an agreement on

[56] Case of Durand and Ugarte, supra n 24 at op para 4; Case of Cantoral-Benavides , supra n 24 at op para 7.

reparations between the State of Peru and the next of kin of the victims.[57] One of the measures contemplated in the agreement was the publication of the judgment on the merits of the case in the Peruvian Official Gazette. Similarly, in the Cantoral-Benavides judgment on reparations, the Court ordered the State to publish the operative part of the judgment on the merits in both the Official Gazette and another newspaper with nationwide circulation.[58]

The same happened in respect of the obligation to perform an act of public apology or, at least, public acknowledgement of the States' responsibility for violations of human rights. In the Durand and Ugarte case, the State and the victims' next of kin agreed that the decree that would order the publication of the agreement on reparations would include a public apology to the victims for the grievous injuries caused.[59] The Court imposed a similar measure in the order of reparation in the Cantoral-Benavides case, deciding that the State should make a public apology, acknowledging its responsibility for the violations committed in the case.[60]

The measure of publication of certain sections of the judgments against the States usually consists in the publication of the parts of the judgment regarding the proven facts and the operative paragraphs in both the Official Gazette of the State and another newspaper with national circulation.[61] Nevertheless, on certain occasions, this type of measure has presented some peculiarities, such as the obligation to translate the judgment into the language Maya-Achí and the publication of the relevant parts both in Spanish and Maya-Achí.[62] Also, the dissemination of the judgment has been ordered through other media, such as radio and television.[63] In fact, in cases concerning indigenous and tribal communities, it has become frequent for the Court to order the dissemination of the judgment in the language of the community through newspapers, radio and television.[64]

[57] Case of Durand and Ugarte, supra n 24 at para 41.
[58] Case of Cantoral-Benavides, supra n 24 at op para 7.
[59] Case of Durand and Ugarte, supra n 24 at op para 4.
[60] Case of Cantoral-Benavides, supra n 24 at op para 7.
[61] Case of Molina-Theissen IACtHR Series C 106 (2004) at op para 4; Case of the Gómez-Paquiyauri Brothers IACtHR Series C 110 (2004) at op para 11; Case of Ricardo Canese IACtHR Series C 111 (2004) at op para 8.
[62] Case of the Plan de Sánchez Massacre IACtHR Series C 116 (2004) at op para 4 and 5.
[63] Case of Chaparro-Álvarez and Lapo-Íñiguez IACtHR Series C 170 (2007) at para 262, 265 and op para 10.
[64] Case of the Yakye Axa Indigenous Community IACtHR Series C 125 (2005) at para 227 and op para 12; Case of the Saramaka People IACtHR Series C 172 (2007) at op para 11 and 12; Case of Chitay Nech et al. IACtHR Series C 212 at op para 14.

As can be observed in Table IV, the order to publicize the State conviction has become a very frequent measure of reparation. It has been ordered by the Court in 79 cases out of the 112 under analysis (just over 70% of the cases). This measure appears to have been complied with to a high extent, as its degree of full compliance is 80%. Moreover, the measure has been imposed upon 18 States and it has been complied with in all of the cases by 11 of them. Indeed, only the State of Venezuela shows a significant level of resistance to fulfilling this measure, showing a non-compliance rate of 75%.

Concerning the public acknowledgment of the States' responsibility, this measure traditionally consisted of a public act performed by some of the highest authorities of the State in the presence of the victims and their next of kin.[65] On numerous occasions, the Court clarified that the main purpose of this public act was to apologise to the victims and their next of kin.[66] As is shown in Table V, this type of measure has been ordered by the Court in 40 out of the 112 judgments under analysis. The level of full compliance with this measure, which by its own nature does not admit partial compliance, is relatively high at 73%. Actually, this measure has been imposed upon 14 States and eight of them have fully complied with it in every occasion that it has been ordered.

TABLE IV – PUBLICITY OF THE JUDGMENT

STATE	TIMES ORDERED	FULLY COMPLIED WITH	PARTLY COMPLIED WITH	NOT COMPLIED WITH
ARGENTINA	4	100% (4)	0	0
BOLIVIA	3	100% (3)	0	0
BRAZIL	3	100% (3)	0	0
CHILE	3	100% (3)	0	0
DOM. REP.	1	100% (1)	0	0
EL SALVADOR	2	100% (2)	0	0
HONDURAS	4	100% (4)	0	0
MEXICO	3	100% (3)	0	0
PANAMA	3	100% (3)	0	0
SURINAME	1	100% (1)	0	0
URUGUAY	1	100% (1)	0	0
COLOMBIA	9	89% (8)	11% (1)	0
GUATEMALA	9	89% (8)	11% (1)	0
PERU	15	67% (10)	20% (3)	13% (2)
PARAGUAY	6	66% (4)	17% (1)	17% (1)

[65] Case of Myrna Mack-Chang, supra n 17 at op para 8; Case of the 19 Tradesmen, supra n 25 at op para 8; Case of the Serrano-Cruz Sisters IACtHR Series C 120 (2005) at op para 8.
[66] Case of Tibi IACtHR Series C 114 (2004) at op para 12; Case of Huilca-Tecse IACtHR Series C 121 (2005) at op para 1.b; Case of the Moiwana Community IACtHR Series C 145 (2006) at op para 6.

ECUADOR	7	57% (4)	43% (3)	0
VENEZUELA	4	25% (1)	0	75% (3)
NICARAGUA	1	0	100% (1)	0
BARBADOS	0	-	-	-
COSTA RICA	0	-	-	-
TOTAL	**79**	**80% (63)**	**13% (10)**	**7% (6)**

TABLE V – PUBLIC APOLOGY

STATE	TIMES ORDERED	FULLY COMPLIED WITH	PARTLY COMPLIED WITH	NOT COMPLIED WITH
ARGENTINA	1	100% (1)	0	0
ECUADOR	2	100% (2)	0	0
EL SALVADOR	1	100% (1)	0	0
HONDURAS	3	100% (3)	0	0
MEXICO	2	100% (2)	0	0
PANAMA	1	100% (1)	0	0
SURINAME	1	100% (1)	0	0
URUGUAY	1	100% (1)	0	0
GUATEMALA	7	71% (5)	0	29% (2)
COLOMBIA	6	67% (4)	0	33% (2)
PERU	9	67% (6)	0	33% (3)
PARAGUAY	4	50% (2)	0	50% (2)
DOM. REP.	1	0	0	100% (1)
VENEZUELA	1	0	0	100% (1)
BARBADOS	0	-	-	-
BOLIVIA	0	-	-	-
BRAZIL	0	-	-	-
CHILE	0	-	-	-
COSTA RICA	0	-	-	-
NICARAGUA	0	-	-	-
TOTAL	**40**	**73% (29)**		**27% (11)**

C. Prosecuting human rights violators

One of the most characteristic measures of reparations decided by the Court is the obligation for the domestic authorities to conduct investigations into the facts that constituted human rights violations, in order to prosecute those individually responsible for the violations and impose upon them due legal sanctions. Within the context of this measure, the Court has specified that States must guarantee the effectiveness of domestic proceedings aiming at prosecuting and punishing those responsible for serious human rights violations.[67] In particular, the Court has clearly stated through its case law that, in cases of grave violations of human rights -for instance in cases of forced disappearances, extrajudicial killings, or torture-, States must abstain from resorting to

[67] Case of the Gómez-Paquiyauri Brothers, supra n 61 at para 232; Case of Huilca-Tecse, supra n 66 at para 108; Case of the Moiwana Community, supra n 66 at para 206.

legal figures such as amnesty laws, statutes of limitations, or presidential pardons, to prevent criminal prosecution or suppress the effects of a conviction.[68]

The obligation to prosecute and sanction was ordered for the first time in the judgment on reparations in the case of El Amparo on 14th September 1996.[69] Since then, it has become very frequent for the Court to order this type of measure, having been imposed upon States in 72 out of the 112 judgments under analysis (64% of times). However, this type of reparation is the one with the lowest level of compliance of all the measures ordered by the Court with a full compliance rate of only 3%.

As can be seen in Table VI, only in two cases has the Court considered this measure to have been fully complied with. However, only on one of these two occasions did the prosecution and conviction took place, which happened in the Castillo Páez case.[70] The second fulfilled order refers to the Escher case, in which the Court accepted the application of the statutory limitations, since the case did not concern a grave violation of human rights, but a violation of the right to privacy.[71] Moreover, the level of partial compliance -cases in which at least one person has been sanctioned by the domestic authorities following the Court's order- is also relatively low, at a level of only 28%. In conclusion, the lack of compliance with this measure in 50 out of the 72 times in which it has been ordered, makes this measure of reparation the most unfulfilled one, with a rate of non-compliance of 69%.

TABLE VI – PROSECUTION

STATE	TIMES ORDERED	FULLY COMPLIED WITH	PARTLY COMPLIED WITH	NOT COMPLIED WITH
BRAZIL	3	33% (1)	33% (1)	33% (1)
PERU	16	6% (1)	25% (4)	69% (11)
BOLIVIA	3	0	67% (2)	33% (1)
COLOMBIA	11	0	55% (6)	45% (5)
PARAGUAY	2	0	50% (1)	50% (1)
ARGENTINA	4	0	25% (1)	75% (3)

[68] Case of the Gómez-Paquiyauri Brothers, supra n 61 at para 232; Case of Huilca-Tecse, supra n 66 at para 108; Case of the Moiwana Community, supra n 66 at para 206. Even though some authors have raised concerns regarding the scope of the obligation to prosecute, due to the limitations of the defendant's rights, I do not fully agree with such concerns. Basch (2007) 'The Doctrine of the Inter-American Court of Human Rights regarding States' Duty to Punish Human Rights Violations and its Dangers' 23 American University International Law Review, 195-229; Malarino (2012) 'Judicial Activism, Punitivism and Supranationalisation: Illiberal and Antidemocratic Tendencies of the Inter-American Court of Human Rights' 12 International Criminal Law Review, 665-695.

[69] Case of El Amparo, supra n 45 at op para 4.

[70] Case of Castillo Páez (Monitoring Compliance with Judgment) IACtHR, 3 April 2009, at op para 1.

[71] Case of Escher et al. (Monitoring Compliance with Judgment) IACtHR, 19 June 2012, at para 21 and op para 2.

GUATEMALA	12	0	25% (3)	75% (9)
HONDURAS	4	0	25% (1)	75% (3)
VENEZUELA	4	0	25% (1)	75% (3)
CHILE	1	0	0	100% (1)
ECUADOR	4	0	0	100% (4)
EL SALVADOR	2	0	0	100% (2)
MEXICO	2	0	0	100% (2)
PANAMA	2	0	0	100% (2)
SURINAME	1	0	0	100% (1)
URUGUAY	1	0	0	100% (1)
BARBADOS	0	-	-	-
COSTA RICA	0	-	-	-
DOM. REP.	0	-	-	-
NICARAGUA	0	-	-	-
TOTAL	**72**	**3% (2)**	**28% (20)**	**69% (50)**

D. Adapting domestic legislation.

The last measure of reparation under analysis is the one concerning the amendment of domestic legislation. This measure was adopted by the Court for the first time in the judgment on reparations in the Loayza Tamayo case, in which it ordered the State of Peru to adapt two pieces of criminal legislation to make them conform to the American Convention.[72] Since that ruling, the Court has ordered this measure in 39 out of the 112 judgments examined. The legal basis for this type of measure is to be found in the general obligation established upon each State by the American Convention to adapt its domestic legislation to the provisions of this treaty, in order to guarantee the rights protected thereby. This includes the obligation to suppress legislation of any kind not conforming to the Convention and the duty to adopt legislation leading to the effective observance of the protected human rights.[73]

As is shown in Table VII, the overall level of compliance with this measure is relatively low, having a full compliance rate of only 31%, and remaining not-complied with in 51% of the cases. The level of partial compliance with this measure (18%) shows the cases in which more than one measure was ordered, either the adoption or the suppression of a piece of domestic legislation, and where at least one measure was already adopted, but not all of them. In Table VII it can also be observed that this measure has been ordered against 16 States, but only Bolivia and Costa Rica have fully complied with it on all occasions. In fact, 13 States show a level of full compliance of 50% or lower, and five of them have a rate of 100% of complete non-compliance.

[72] Case of Loayza-Tamayo, supra n 11 at op para 5.
[73] *Case of "The Last Temptation of Christ" (Olmedo*-Bustos et al.), supra n 1 at para 85; Case of Lori Berenson Mejía, supra n 23 at para 220; LTC 85.

TABLE VII – AMENDMENT OF LEGISLATION

STATE	TIMES ORDERED	FULLY COMPLIED WITH	PARTLY COMPLIED WITH	NOT COMPLIED WITH
BOLIVIA	1	100% (1)	0	0
COSTA RICA	1	100% (1)	0	0
PERU	5	60% (3)	20% (1)	20% (1)
ARGENTINA	2	50% (1)	50% (1)	0
ECUADOR	2	50% (1)	50% (1)	0
CHILE	4	50% (2)	25% (1)	25% (1)
NICARAGUA	2	50% (1)	0	50% (1)
PARAGUAY	4	25% (1)	0	75% (3)
GUATEMALA	6	17% (1)	17% (1)	66% (4)
PANAMA	1	0	100% (1)	0
URUGUAY	1	0	100% (1)	0
BARBADOS	2	0	0	100% (2)
DOM. REP.	1	0	0	100% (1)
MEXICO	2	0	0	100% (2)
SURINAME	2	0	0	100% (2)
VENEZUELA	3	0	0	100% (3)
BRAZIL	0	-	-	-
COLOMBIA	0	-	-	-
EL SALVADOR	0	-	-	-
HONDURAS	0	-	-	-
TOTAL	**39**	**31% (12)**	**18% (7)**	**51% (20)**

V. Past and future compliance

A. Comparative compliance

Table VIII displays comparatively the degree of compliance with the different measures of reparation under analysis. The payments of compensation, the publicity of the judgments, and the public act of apology to the victims show a relatively high level of compliance, having a rate of full compliance, of respectively 65%, 73% and 80%. It can be observed that the fact that only the payment of compensation has a specific sanction for non-compliance -the payment of an interest in case of arrears-, allows inferring that the lack of a specific sanction does not seem to be a key element to explain the high degree of compliance. On the other hand, the obligation to prosecute and the duty to amend the domestic legislation show a much lower degree of compliance. The first of these measures has a rate of total non-compliance of 69%, while the second one has been completely unfulfilled in 51% of the cases.

To summarise, it can be said that the degree of compliance with the different measures ordered by the Court is quite dissimilar. This can be explained by the higher

level of difficulty to fulfil the measures of reparations concerning judicial prosecution and amendment of legislation. It is easy to understand that, even when the State is willing to comply with the measures ordered by the Court, it will take a longer time to obtain a judicial conviction following due process of law, or to achieve the amendment of domestic legislation by a collective legislative body, than the time that will be needed for performing an act of public apology by the executive branch of government. Nonetheless, the need for a longer or a more difficult procedure should never be used as an excuse for the States to avoid complying with all the measures of reparations ordered by the Court.

As said in the Introduction, I have conducted an earlier empirical analysis of the Court's case law, which was published in 2010.[74] That work analysed all the judgments issued by the Court up to the end of 2006 that had been supervised by the end of 2008, covering a total of 187 measures ordered in 68 judgments. In order to be able to compare the numbers obtained in such a study with the ones contained in this paper, it is imperative to adapt some of the previous data to make it conform with the criterion used in this work for assessing the partial compliance with a specific measure, as explained before I adopted a stricter criterion this time. Having conducted these amendments, Table IX shows the level of compliance with the judgments of the Court by the end of 2008.

It can be observed that the degree of compliance with the Court's judgments has improved between 2008 and mid-2013. This is true for every one of the analysed measures. In particular, the publication of judgments has improved by 19% (from 61% to 80%). Similarly, the compliance with the order to amend domestic legislation is 10% higher than in 2008 (31% from 21%). The rest of the measures, those regarding the public apology, the payment of compensation, and the obligation to prosecute, have respectively improved by 5%, 4% and 3%.

Furthermore, it is interesting to note that the reparations concerning prosecution and the amendment of legislation, which have the lower level of compliance, not only show an increase in the level of full compliance, but they also present an important decrease in their rate of complete non-compliance. The complete non-compliance with the obligation to judge and sanction those individually responsible for human rights violations has decreased from an extremely high 86% in 2008 to a 69%. Concerning the

[74] González-Salzberg, supra n 3.

complete non-compliance with the duty to amend domestic legislation, this has decreased by 20%, from 71% to 51%. This important decrease means that even when States are still failing to comply with the measures ordered by the Court, their level of commitment towards the Court's orders has improved. Hence, it is fair to affirm that States do not remain indifferent to the Court's judgments.

TABLE VIII – COMPARATIVE COMPLIANCE 2013

	TOTAL	COMPLIED WITH	PARTIALLY COMPLIED WITH	NOT COMPLIED WITH
PECUNIARY COMPENSATION	100	65% (65)	29% (29)	6% (6)
PUBLICITY OF THE JUDGMENT	79	80% (63)	13% (10)	7% (6)
PUBLIC APOLOGY	40	73% (29)	0	27% (11)
PROSECUTION	72	3% (2)	28% (20)	69% (50)
LEGISLATION	39	31% (12)	18% (7)	51% (20)

TABLE VIII – COMPARATIVE COMPLIANCE 2008

	TOTAL	COMPLIED WITH	PARTIALLY COMPLIED WITH	NOT COMPLIED WITH
PECUNIARY COMPENSATION	61	61% (37)	31% (19)	8% (5)
PUBLICITY OF THE JUDGMENT	38	61% (23)	29% (11)	10% (4)
PUBLIC APOLOGY	22	68% (15)	0	32% (7)
PROSECUTION	42	0	14% (6)	86% (36)
LEGISLATION	24	21% (5)	8% (2)	71% (17)

B. Improving the level of compliance

It has been said that the degree of compliance with the Court's orders has improved within the last four and a half years. However, the overall compliance with the judgments remains extremely low at an overall level of full compliance of 14%. Moreover, as highlighted before, the compliance with specific measures, such as the

obligation to judge and sanction those who have committed the human rights violations, and the obligation to amend the domestic legislation, is particularly low at 3% and 31%, respectively. Consequently, there is a clear need to continue improving the level of compliance with the Court's judgments.

Former President of the Court, Cançado Trindade, has been the most important supporter of the idea to create a political body for the supervision of judgments, which should be composed of representatives of the States who have ratified the American Convention and have accepted the jurisdiction of the Court.[75] Nevertheless, the political interest of States to create an organ with the authority to supervise their conduct concerning the compliance with the judgments is doubtful. A clear sign of the States' lack of interest in reinforcing the Inter-American System can be inferred from their collective behaviour in 2012 and 2013 given the denunciation of the Convention by Venezuela and its consequential abandonment of the System. Indeed, it was worrisome that the governments of the System displayed an almost complete lack of public concern regarding the decision of Venezuela to deprive the people within its jurisdiction of the protection of the Inter-American Court. This questionable decision of the government of Venezuela has been criticised by human rights bodies, such as the Office of the High Commissioner for Human Rights and the Inter-American Commission on Human Rights, and by diverse non-governmental organisations.[76] However, the governments of the region have been mostly silent on the issue.

Regarding the Court itself, as mentioned above, it has established specific strategies to improve the compliance with its judgments. The most important one has been the process developed for monitoring the compliance of its rulings, while it is also important to highlight the imposition of pecuniary sanctions for the lack of compliance with the payment of compensation. Nonetheless, a mechanism the Court could develop

[75] Cançado Trindade (2003), Informe: Bases para un Proyecto de Protocolo a la Convención Americana sobre Derechos Humanos, para Fortalecer Su Mecanismo de Protección, Tomo II, 2a. ed. (San José: Corte Interamericana de Derechos Humanos), pp. 47-48, 664, 795 and 919-921.

[76] UN High Commissioner for Human Rights (2013), 'UN warns of negative effects of Venezuela's withdrawal from rights convention'. Available at: http://www.un.org/apps/news/story.asp?NewsID=45808&Cr=venezuela&Cr1#.Um16ElOq98c [last accessed 27 October 2013]; Inter-American Commission of Human Rights (2013), 'IACHR Deeply Concerned over Result of Venezuela's Denunciation of the American Convention'. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2013/064.asp [last accessed 27 October 2013]; Amnesty International (2013), 'Venezuela's withdrawal from regional human rights instrument is a serious setback'. Available at: http://www.amnesty.org/en/news/venezuela-s-break-regional-human-rights-court-affront-victims-2012-09-12 [last accessed 27 October 2013]; International Coalition of Human Rights Organizations in the Americas (2013), 'Denunciation of the American Convention on Human Rights by Venezuela Weakens Protection of the Fundamental Rights of its Citizens'. Available at: http://cejil.org/en/categoria/pais/venezuela-0 [last accessed 27 October 2013].

further would be the applicability of article 65 of the Convention. This article establishes the Court's obligation to periodically inform the General Assembly of the OAS about the cases in which a State has not complied with its judgments,[77] a duty which the Court performs by means of its Annual Report indicating the list of judgments pending compliance.

Furthermore, the provision also grants the Court the faculty to make specific recommendations and the Court has taken advantage of this power in specific cases, highlighting the lack of compliance with certain cases and requesting the General Assembly to urge the State to fully comply with such rulings.[78] The main idea behind this power of the Court is to take an important step towards the collective enforcement of its rulings, seeking the help of a political body to guarantee the practical effects of the American Convention and to prevent the whole System from being at the discretion of the internal organs of a State.[79] However, it seems that some Members of the Court have conflicting views regarding the circumstances that justify the full applicability of article 65. On the one hand, current President García-Sayán considers that this faculty shall be exercised by the Court only when the State has expressly indicated that it will not comply with the measures ordered.[80] On the other hand, Judge Vio Grossi seems to be more flexible regarding the circumstances in which the Court should resort to informing the General Assembly regarding non-compliance, requesting political measures to be adopted.[81]

This debate regarding the applicability of article 65 is certainly welcome and deserves due attention from everyone interested in the issue of compliance with the

[77] American Convention on Human Rights, article 65.

[78] Inter-American Court of Human Rights, Annual Report 1999, pp 42-43; Inter-American Court of Human Rights, Annual Report 2003, pp. 42-43; Inter-American Court of Human Rights, Annual Report 2012, p. 62; Case of Benavides Cevallos (Monitoring Compliance with Judgment) IACtHR, 27 November 2003, at op para 3; Case of Hilaire, Constantine and Benjamin et al. (Monitoring Compliance with Judgment) IACtHR, 27 November 2003, at op para 5; *Case of Apitz Barbera et al. ("First Administrative Court")* (Monitoring Compliance with Judgment) IACtHR, 23 November 2012, at op para 1.

[79] *Case of Apitz Barbera et al. ("First Administrative Court")* (Monitoring Compliance with Judgment), supra n 78 at para 47.

[80] Case of Blanco Romero et al. (Monitoring Compliance with Judgment) IACtHR, 22 November 2011, concurring opinion of Judge Diego García-Sayán at para 8; Case of Servellón García et al. (Monitoring Compliance with Judgment) IACtHR, 22 November 2011, concurring opinion of Judge Diego García-Sayán at para 8; Case of the Saramaka People (Monitoring Compliance with Judgment) IACtHR, 23 November 2011, concurring opinion of Judge Diego García-Sayán at para 8.

[81] Case of Blanco Romero et al. (Monitoring Compliance with Judgment), supra n 80, concurring opinion of Judge Eduardo Vio Grossi; Case of Servellón García et al. (Monitoring Compliance with Judgment), supra n 80, concurring opinion of Judge Eduardo Vio Grossi; Case of the Saramaka People (Monitoring Compliance with Judgment), supra n 80, concurring opinion of Judge Eduardo Vio Grossi. Blanco Romero.

reparations ordered by the Court. It would certainly be important for the Court to agree on specific criteria that would allow resorting to article 65. Nevertheless, this criterion cannot be as extreme as depending on an express refusal of the State to comply with the Court's judgments. If a reasonable criterion is to be developed by the Court, the applicability of article 65 could prove to be an effective mechanism to improve the level of compliance with the Court's judgments.

Lastly, as highlighted in previous articles, I continue to believe that the pressure from within States remains fundamental for improving the compliance of the Court's judgments.[82] A conscientious civil society that acknowledges the importance of the subsidiary protection of human rights offered by the Inter-American System is vital for pressurising the States to comply with their international obligations concerning human rights. Indeed, governments would be forced to take every possible step to comply with the Court's orders if the political support of the public depended on the former's attitude towards complying with human rights obligations.

V. Conclusion

There is a widespread concern about the level of compliance with the judgments of the Inter-American Court of Human Rights, as can be inferred from the increasing level of attention the topic is obtaining from different authors. The comprehensive empirical analysis conducted within this article shows relatively optimistic data. While the overall level of full compliance with the Court's judgments reached an impressive 90% of non-compliance by the end of 2012, the article shows that compliance with specific measures ordered by the Court is much higher.

Nonetheless, the optimistic data regarding compliance is limited to certain measures and does not cover all of them. The compliance with the orders concerning the payment of compensation, as well as the orders regarding the public acknowledgement of the States' responsibility is relatively high. Conversely, the measures ordering criminal prosecution and the amendment of domestic legislation show a much lower level of compliance.

On the other hand, the comparative analysis of the degree of compliance with the Court's orders is interesting, as it shows that during the last years the States have

[82] González-Salzberg, supra n 3, p. 133; González-Salzberg, supra n 8, p. 118.

improved their level of compliance with the judgments. The data provided in this article illustrates that the percentage of compliance with every measure under analysis is higher than it was four and a half years earlier. Therefore, there is another reason for optimism, as the attitude of the States towards the Court's judgments has improved.

In any case, as proven by the decision of Venezuela to abandon the System, the overall attitude of the States cannot be generalised. Following the steps of Trinidad and Tobago, Venezuela became the second State to denounce the American Convention, depriving the individuals under its jurisdiction from the protection of the Court. Moreover, the lack of general objections over this decision raised publicly by the rest of the States is also a reason for concern. Indeed, without an improved political commitment of the States to the value of the Inter-American System, it would be extremely difficult to continue increasing the level of compliance with the judgments issued by the Court, which should be a goal of all the actors of the System.