

The Accuracy Deficit in Human Rights Committee Reparations: A Call to Counter Regressivity and the Challenge of State Compliance

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Introduction: The Challenge of Comprehensive Reparations

Article 2.3 of the **International Covenant on Civil and Political Rights (ICCPR)** enshrines the right to an effective remedy for any person whose rights have been violated. The Human Rights Committee (hereinafter referred to as the Committee), the body responsible for monitoring compliance with the Covenant, gives concrete expression to this obligation through its Views under the Optional Protocol, urging States Parties to provide an effective remedy whose content implies **full reparation** of the damage.

The historical practice of the Committee and its evolution in this area have produced an invaluable body of case law. However, the present reflection raises a critical concern: the recent trend of the Committee towards **insufficient or abstract and imprecise** reparation recommendations.

This recent practice, which contrasts with the richness of its own historical precedents, and of the Guidelines that the Committee adopted on the subject in November 2016 ([available here](#)), poses serious challenges to the effectiveness of its decisions, the right of victims, and the ability of States to properly fulfil their treaty obligations.

To illustrate this regressivity and the difficulty it imposes on state compliance, we will analyze the recent ruling in the case *López vs. Venezuela* (Communication No. 3053/2017).

Regressivity in the Reparation Mandate (Art. 2.3)

The recognized legal basis for comprehensive reparation to be granted in respect of any violation of human rights requires compensation, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. While the Committee often employs standard phrases such as that the state must provide victims with an "effective remedy including **full reparation**," the specific formulation of measures is often limited to abstraction.

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This vagueness is particularly worrying when compared to the Committee's own record. The Committee has had the opportunity to develop precise and detailed recommendations on reparation. The failure to incorporate this precision in recent opinions leads to a **regression of the *lex specialis*** of the Committee itself. By not specifying "do or don't do" actions in concrete terms, the Committee leaves excessive discretion to the wrongdoing State, providing minimal interpretations that do not satisfy comprehensive reparation, on the one hand, and by forcing the Committee itself to continue with open cases and unnecessary follow-ups - on the other hand.

López v. Venezuela: The Abstract Restitution of Violated Rights

In the *López v. Venezuela* decision, the Committee found violations of rights contained in the ICCPR, including the right to liberty and security of person (art. 9), due process (art. 14) and political rights (art. 25).

At the time of ordering reparations, and following the hypothesis of this article, ambiguity became evident, especially regarding the **restitution of political rights and the annulment of the process**. The restoration of violated political rights naturally required a clear order to lift any political disqualification that might weigh on the victims. Similarly, when violations of due process are found, the most basic remedy is the revision in domestic law of the sentence and, if appropriate under domestic law, **the retrial respecting all the guarantees of the Covenant**.

The absence of this explicit and precise mandate, leaving the door open to generic reparation, was the starting point for criticism from some members. The **separate vote of Member Rodrigo Carazo** in this opinion, although focused on the assessment of facts and evidence, can be taken as an example of the need for greater rigor and precision in the work of the Committee.

An important criticism that naturally arises from the reading of the opinion is that the reparation of rights of such high rank cannot be resolved by abstract statements about an "effective remedy," except with clear restitution and non-repetition mandates that overturn the effects of the violation.

The Subsumption of Rights: A Prejudice to the Victim's Statement

Another recurring practice of the Committee is **the right subsumption**, where a violated right is left unexamined because it is already covered by the violation of another right, or that having found one violation, no longer needs to be referred to another.

For example, if a violation of due process is found (art. 14), the Committee sometimes fails to consider whether the same conduct constituted a specific violation of the right to freedom of expression (art. 19), on the grounds that the impairment has already been recognized.

This practice, however, violates the fundamental right of the victim to obtain a **specific statement** on all alleged rights. Comprehensive reparation not only seeks to make good the material damage, but also provides satisfaction through public recognition of the violation. Leaving rights unanalyzed implies that the state is not held **fully** responsible for the total damage caused, which weakens the force of the order of non-repetition. The Committee's practice must evolve to analyze and rule on each right invoked, unless analysis is not strictly necessary for the overall conclusion.

In the specific matter of reparations, the criticism is obvious: repair is a consequence of damage ; failure to fully identify the damage makes repair insufficient.

Consequences for State Compliance: The Example of Ecuador

The imprecision of the Committee's recommendations has direct and severe consequences for domestic enforcement mechanisms.

The case of **Ecuador** is paradigmatic: its Constitution provides for "**action for non-compliance**" with rulings and resolutions of international human rights bodies. This mechanism is designed to ensure the execution of clear mandates. If the Committee merely orders the State to provide an "effective remedy," action for non-compliance the action for non-compliance becomes ineffective or its use is greatly hindered, since the mechanism requires **the identification of specific actions to be taken or not taken**.

Without clarity on the action to be taken, such a high-level mechanism becomes useless, frustrating the possibility of rapid and effective compliance. As a body that acts on the basis of international law and seeks the cooperation of the State, the Committee should facilitate, rather than hinder, the work of domestic compliance mechanisms.

Conclusion: Toward Fairer and More Enforceable Reparations

The doctrine and practice of the Human Rights Committee in applying Article 2.3 of the ICCPR faces the risk of harmful regressivity. While the Committee enjoys unquestionable moral and legal authority, the effectiveness of its work is ultimately measured by the quality of the reparations obtained by victims.

It is imperative that the Committee:

1. Restore Historical Accuracy: Incorporate the richness of your own jurisprudence on comprehensive reparations, translating the mandate of "effective remedy" into concrete mandates for restitution, rehabilitation, satisfaction, and non-repetition—in addition to financial compensation.

2. Be Explicit in Restitution: In cases of violations of political rights and due process, order the annulment of acts or judgments and the restitution of rights with the clarity necessary to be enforced at the domestic level.

3. Abandon Excessive Subsumption: Specifically analyze the rights invoked by victims to guarantee the right to full declaration of state responsibility.

Only through more robust, detailed, and less abstract recommendations will the Committee be able to not only fully comply with its mandate under the ICCPR, but also facilitate the work of democratic states that have implemented high-level mechanisms for the execution of its decisions.

