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CORTES

INTERAMERICANA, EUROPEIA E AFRICANA:

Avaliando a Eficácia dos Direitos Humanos
Através dos Continentes



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ISBN 978-65-6006-175-0



9 786560 061750 >



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Direção Executiva: Luciana de Castro Bastos

Direção Editorial: Daniel Carvalho

Diagramação e Capa: Editora Expert

Revisão: Do Autor

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Dados Internacionais de Catalogação na Publicação (CIP)

SILVA, Carla Ribeiro Volpini (Org.)

POZO, Carlos Francisco Molina Del (Org.)

HORTA, José Luiz Borges (Org.)

Cortes Interamericana, Europeia e Africana: Avaliando a Eficácia dos Direitos Humanos Através dos Continentes - (Belo Horizonte): Editora Expert, 2025. 314 p.

ISBN: 978-65-6006-176-7

1. Direitos Humanos. 2. Sistema Interamericano de Direitos Humanos. 3. Corte Interamericana de Direitos Humanos. 4. Corte Europeia de Direitos Humanos. 5. Corte Africana dos Direitos Humanos e dos Povos. I. Título. II. SILVA, Carla Ribeiro Volpini, (Org.). III. POZO, Carlos Francisco Molina Del, (Org.). IV. HORTA, José Luiz Borges, (Org.).

CDD: 341.481 CDU: 341.231.8

Índices para catálogo sistemático:

Direitos Humanos / Direito Internacional

341.48 / 341

Pedidos dessa obra:

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AN ELUSIVE GOAL: UNDERSTANDING THE EFFECTIVENESS OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

UM OBJETIVO ELUSIVO: COMPREENDENDO A EFETIVIDADE DA CORTE INTERAMERICANA DE DIREITOS HUMANOS

*Par Engstrom*⁵³

*Edward Pérez*⁵⁴

ABSTRACT: This chapter discusses the effectiveness of the Inter-American Court of Human Rights. Building upon the existing literature on the effectiveness of international courts, we emphasise the role of expectations regarding a court's role and function that shape the criteria used to assess its performance. We argue that understanding the effectiveness of an international human rights court requires a careful examination of both its normative and empirical dimensions. Normative expectations, which reflect our beliefs about what a court should do, provide a framework for evaluating the Court's actions and (in)actions. Empirical analysis, which focuses on the court's actual practices and the outcomes of its activities, allows us to assess how well it meets these expectations. By considering these two interconnected perspectives, we can develop a more comprehensive and meaningful understanding of the effectiveness of international courts in advancing human rights. With respect to the Inter-American Court specifically, we offer brief illustrations of the Court's engagement with two distinct thematic areas crucial for its institutional development: the prohibition of amnesties for gross human rights violations and indigenous land rights. Within this context, we discuss considerations for evaluating the Court's effectiveness in four key dimensions: its

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institutional objectives, the tools and functions it employs, the range of stakeholders it engages with, and the timelines within which its actions unfold.

Keywords: Inter American Court of Human Rights; effectiveness; international human rights courts.

RESUMO: Este capítulo discute a efetividade da Corte Interamericana de Direitos Humanos. Baseando-se na literatura existente sobre a efetividade das cortes internacionais, enfatizamos o papel das expectativas em relação ao papel e à função de uma corte, que moldam os critérios usados para avaliar seu desempenho. Argumentamos que compreender a efetividade de uma corte internacional de direitos humanos exige um exame cuidadoso de suas dimensões normativa e empírica. As expectativas normativas, que refletem nossas crenças sobre o que uma corte deveria fazer, fornecem uma estrutura para avaliar as ações e (in)ações da Corte. A análise empírica, que se concentra nas práticas reais da corte e nos resultados de suas atividades, permite avaliar o quão bem ela atende a essas expectativas. Ao considerar essas duas perspectivas interconectadas, podemos desenvolver uma compreensão mais abrangente e significativa da efetividade das cortes internacionais na promoção dos direitos humanos. Em relação à Corte Interamericana especificamente, oferecemos ilustrações breves do envolvimento da Corte com duas áreas temáticas distintas e cruciais para seu desenvolvimento institucional: a proibição de anistias para violações graves de direitos humanos e os direitos territoriais indígenas. Nesse contexto, discutimos considerações para avaliar a efetividade da Corte em quatro dimensões principais: seus objetivos institucionais, as ferramentas e funções que emprega, a gama de partes interessadas com as quais se engaja e os prazos dentro dos quais suas ações se desenvolvem.

Palavras-chave: Corte Interamericana de Direitos Humanos; efetividade; direitos humanos internacionais.

INTRODUCTION

The effectiveness of international human rights courts has been a subject of considerable scholarly debate, against a background of widespread concerns and scepticism regarding their legitimacy and impact. For some, there is a fundamental question about these courts' viability and their ability to meaningfully advance human rights. Critics argue that international tribunals may offer "hollow hopes", providing a veneer of justice, at best, without prompting any substantive change. Concerns also exist regarding potential negative consequences of international judicial activism. These include the risk of backlash against human rights, the undermining of democratic legitimacy through judicial overreach, and the crowding out of more effective local strategies for promoting human rights. Moreover, in some contexts the high costs associated with operating international human rights courts have led to questions about their cost-effectiveness and whether the benefits justify the often-significant expenditures required to run international institutions.

A fundamental challenge in evaluating international human rights courts is the lack of a universally agreed-upon definition of the notion of institutional effectiveness. Our expectations regarding its role and function shape the criteria used to assess a court's performance. This chapter argues that understanding the effectiveness of an international human rights court requires a careful examination of both the normative and empirical dimensions of its performance. Normative expectations, which reflect our beliefs about what a court should do, provide a framework for evaluating the Court's actions and (in)actions. Empirical analysis, which focuses on the court's actual practices and the outcomes of its activities, allows us to assess how well it meets these expectations. By considering these two interconnected perspectives, we can develop a more comprehensive and meaningful understanding of the effectiveness of international courts in advancing human rights.

In this chapter, we offer an assessment of the effectiveness of the Inter-American Court of Human Rights (IACtHR), one of the regional human rights tribunals currently in operation alongside its African and European peer institutions. A critical examination of the Court's effectiveness requires a nuanced understanding of the specific human rights challenges that have defined its institutional mandate and development. The regional context of the Americas, characterized by significant power disparities, uneven patterns of support for regional human rights mechanisms, pervasive violence and multiple forms of inequalities, and intense political contestation over the value of human rights, significantly influences the Court's operations and effectiveness. The combination of these distinctive regional features shape the Americas' unique identity, which, in turn, has profoundly informed the structure and functioning of the regional human rights system, including the Inter-American Court.

This chapter is divided into three parts. The first part establishes a basic conceptual framework for assessing court effectiveness, including a discussion of relevant methodological considerations. The second part introduces the Inter-American Court of Human Rights and examines its institutional design and evolution, and how these factors influence our understanding of its effectiveness. The third part provides empirical illustrations through thematic case studies of the Inter-American Court's engagement with amnesties in transitional justice contexts and indigenous land rights. The conclusion offers reflections on the implications for the study of the institutional effectiveness of international human rights courts.

I. CONCEPTUALIZING EFFECTIVENESS OF INTERNATIONAL HUMAN RIGHTS COURTS

In the scholarly literature, the effectiveness of an international court is generally assessed on the basis of four sets of criteria. First, a court's specific goals are identified, representing the desired outcomes

the court is mandated to achieve. A second criterion is determining the court's available tools or functions for realizing its goals. Third, relevant, and potentially prioritized, stakeholders are identified. Finally, a reasonable timeframe for fulfilling these objectives is established. Taken together, an effective international court is broadly understood as one that achieves its predetermined objectives, using available tools and functions, within a specified timeframe, as defined by its relevant constituencies.⁵⁵

Beyond this basic definition, however, the notion of court effectiveness remains contested. Dunoff and Pollack, for example, highlight that “the functions of international courts are multiple and contested, criteria are rarely identified neutrally or uncontroversially, and different courts fulfill different functions.”⁵⁶ In the first instance, an international court may have several institutional objectives, including the reinforcement and promotion of international norms and standards, the provision of mechanisms for resolving disputes between states or other international actors, the support of the functioning and effectiveness of international regimes, and the enhancement of the legitimacy of international law and institutions.⁵⁷ Moreover, the institutional goals that courts are mandated to pursue often involve conflicting priorities. For example, an international human rights court may face a complex balancing act between norm compliance, norm development, and institutional legitimacy. In some instances, a court might issue a far-reaching ruling with the aim of advancing normative development, even at the risk of non-

55 Yuval Shany, *Assessing the Effectiveness of International Courts* (Oxford: Oxford University Press, 2014), 6.. Yuval Shany, ‘Assessing the Effectiveness of International Court: A Goal-Based Approach’, *The American Journal of International Law* 106, no. 2 (2012): 244–47, <https://doi.org/10.5305/amerjintelaw.106.2.0225>.

56 Jeffrey L. Dunoff and Mark A. Pollack, ‘International Judicial Performances and the Performance of International Courts’, in *The Performance of International Courts and Tribunals*, ed. Andreas Follesdal et al., *Studies on International Courts and Tribunals* (Cambridge: Cambridge University Press, 2018), 261, <https://doi.org/10.1017/9781108348768.009>.

57 Shany, *Assessing the Effectiveness of International Courts*, 6; Shany, ‘Assessing The Effectiveness Of International Courts’, 244–47.

compliance by the state involved. While such non-compliance may appear damaging to a court's authority, it could also potentially draw international attention to the state's failure to adhere to the underlying norm, ultimately leading to greater compliance over time. The establishment of high normative standards can also contribute to both the court's effectiveness and its legitimacy.⁵⁸

Similarly, international courts have a variety of tools or functions available to them to achieve their objectives. These may range from adjudication, which is generally the primary function of many international courts applying international law to specific cases; providing advisory opinions on legal questions referred to them by states or international organizations; to capacity-building activities, which may include dissemination of legal standards to legal professionals. The multiplicity of objectives and instruments employed by international courts raises questions regarding the appropriate criteria for evaluating their effectiveness and the specific aspects of their operations that should be prioritized in such assessments.

International courts are also subject to a plethora of expectations emanating from diverse constituencies.⁵⁹ These expectations inevitably vary, often reflecting conflicting interests and preferences. This raises the inherently contentious question of whose interests and demands should be prioritised by international courts. Shany contends that courts should align with the expectations and preferences of what he refers to as their “mandate providers”, which in most cases of international courts are state actors. According to Shany, these expectations and preferences represent “plausible conceptions of generally shared socially desirable ends.”⁶⁰ From a more pragmatic perspective, there is a strong rationale for international courts to

58 Shany, ‘Assessing The Effectiveness Of International Courts’, 262.

59 As Shany aptly observes, “International courts involve a multiplicity of stakeholders—states, international organizations, court officials, members of the legal community, the general public, and others—that typically possess divergent interests and wishes. Shany, 241.

60 Shany, *Assessing the Effectiveness of International Courts*, 8.

consider the preferences of states, as the courts' continued operation depends on their support.

In the context of international human rights courts, however, central stakeholders also include individuals and groups whose rights are at stake. It is precisely this aspect of human rights courts that make them a distinct category within the broader universe of international courts. While international courts are generally designed to regulate interstate relations, human rights courts are uniquely concerned with advancing the realization of the rights of people under their jurisdiction. Unlike other forms of international law aimed at addressing transnational issues such as trade, finance, the environment, or security, human rights law is primarily concerned with the regulation of fundamentally domestic political activities. Moreover, in contrast to most international courts that rely on interstate enforcement mechanisms, human rights regimes primarily empower individual citizens and groups to assert their rights directly against their own governments.⁶¹ From this perspective, for many, the effectiveness of a human rights court should be evaluated primarily from the perspective of its primary beneficiaries, the rights holders, and as such, its success would lie in its ability to advance the realisation of their rights.

Beyond the challenges of reaching a consensus on a practical definition of effectiveness for international (human rights) courts, the difficulties associated with measuring such effectiveness are also substantial. In human rights scholarship, there is significant scepticism regarding the reliability of commonly employed proxies for assessing court effectiveness, including judgement compliance, usage rate, and impact on state conduct. Compliance, typically defined as conformity between behaviour and a legal standard, has been a particular focal point of scholarly inquiry.⁶² This can partially

61 Andrew Moravcsik, 'The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe' *International Organization*, vol. 54, no. 2, 2000. p.217.

62 Kal Raustiala and Anne-Marie Slaughter, 'International Law, International Relations and Compliance', in *Handbook of International Relations* (London: SAGE Publications

be attributed to the relative ease with which it can be empirically measured, facilitated by the growing availability of data on the implementation of court judgements. Compliance may gauge the extent to which a state implements the measures specified in a court ruling. As such, compliance can provide insights into the degree to which a state respects the authority of an international court. As is well documented, compliance rates can be misleading, however, as they may indicate high levels of compliance with relatively straightforward orders or requests, resulting in limited effective change. By contrast, states are less likely to comply with more challenging orders, which, if implemented, could lead to more significant change. Indeed, partial compliance is a common outcome of international human rights courts.⁶³ Similarly, compliance offers limited insight into the efficacy of a given rule or judgement in addressing the underlying problem that they are designed to address.⁶⁴

While compliance is generally not a reliable indicator of court effectiveness, other commonly used measures may also be problematic. A high volume of cases or usage rate may or may not signal court effectiveness. Repeated litigation could suggest the court's limited capacity to resolve disputes and provide effective remedies. Similarly, a court's impact on state conduct does not inherently reveal the desirability of such influence. In addition, establishing a causal link between the operations of international courts and long-term

Ltd, 2002), 538–58, <https://doi.org/10.4135/9781848608290.n28>.

63 Darren Hawkins and Wade Jacoby, 'Partial Compliance: A Comparison of the European and Inter-American Courts of Human Rights Engagement and Escape: International Legal Institutions and Public Political Contestation', *Journal of International Law and International Relations* 6 (2011 2010): 35–86.

64 Compliance remains, nonetheless, a significant consideration. International courts are unlikely to achieve effectiveness without a degree of compliance. Adherence to certain measures is likely to be essential for effective court operations. Still, while compliance might be necessary for an international court to have an impact, it is generally not sufficient. Par Engstrom, ed., *The Inter-American Human Rights System: Impact beyond Compliance* (London: Palgrave Macmillan, 2019).

processes of norm internalization and changes in state conduct is a formidable empirical challenge.⁶⁵

Building on this last point, human rights court effectiveness can be evaluated at multiple levels and against a variety of benchmarks. For example, as highlighted above, the goals of public organizations, including courts, are often ambiguous, and the public goods they generate, such as justice and legal certainty, are difficult to quantify.⁶⁶ The goals may also evolve throughout the lifespan of an international court. Such shifts can be attributed to its actual or perceived performance record, which may influence constituency expectations, or to changes in the external environment, including fluctuations in court resources, the emergence of other domestic or international institutions with overlapping mandates, and the evolving needs of relevant stakeholders.⁶⁷

Similarly, any assessment of court effectiveness is significantly influenced by the chosen unit of time for evaluation. Different institutions exhibit varying lifecycles and fluctuations in performance over time, which can be attributed to a range of internal and external factors. Equally, effectiveness can be considered in relation to specific measures, general measures, immediate redress, narrow effects within a specific case, or broader effects beyond a case, including the provision of reparations. Additionally, even if there is general agreement that the interests and demands of rights-holders should be prioritised in an assessment of a human rights court, the beneficiaries of court effectiveness can still vary, encompassing individual victims, other victims not directly involved in the court case, past victims, and potential future victims. In short, for researchers investigating the effectiveness of international (human rights) courts, the selection of evaluative standards or benchmarks is consequential.⁶⁸

65 Shany, *Assessing the Effectiveness of International Courts*, 6.

66 Shany, 'Assessing The Effectiveness Of International Courts', 239.

67 Shany, 235.

68 Shany, 233.

Moreover, in addition to assessing the effectiveness of international courts, a comprehensive evaluation of court performance also needs to consider their efficiency and cost-effectiveness. Efficiency entails examining the overall impact of these courts, including any unintended consequences, while cost-effectiveness involves weighing the balance between resource inputs and judicial outcomes. With regards to the latter, the inputs of a court include the tangible and intangible resources or assets available to the court to enable it to meet its objectives. It is also important to distinguish between a court's outputs and outcomes. Outputs are the direct products of a court's activities (e.g., decisions, hearings, outreach), while outcomes are the effects of these outputs on the external environment.⁶⁹ Similarly, both processes and outcomes are essential when evaluating court performance. The organisational processes or procedures of a court are those designed to support its goals. Outcomes are fundamentally shaped by procedures, especially over the long term. Legal victories achieved through flawed or questionable procedures can damage a court's legitimacy in the medium to long term. Conversely, even with impeccable procedural standards, a lack of tangible results for those affected can also undermine a court's legitimacy.

Finally, any evaluation of an international court's effectiveness must acknowledge its inherent limitations. Assessment analysis tends to rely on rationalist assumptions, positing that a court's influence is directly linked to its measured effectiveness. However, international courts, including human rights courts, frequently exert diffuse social impacts that may not be immediately apparent or easily quantified.⁷⁰ These often-indirect effects can significantly influence societal norms, legal frameworks, and political discourse, even in the absence of

⁶⁹ Shany, 248.

⁷⁰ For this argument with respect to criticisms of the International Criminal Court (ICC), see: Geoffrey Thomas Dancy, 'The Hidden Impacts of the ICC: An Innovative Assessment Using Google Data', *Leiden Journal of International Law* 34, no. 3 (September 2021): 729–47, <https://doi.org/10.1017/S0922156521000194>.

direct judicial intervention. We will return to this crucial point in our discussion of the Inter-American Court below.

II. THE INTER-AMERICAN COURT OF HUMAN RIGHTS: INSTITUTIONAL DESIGN, EVOLUTION AND EFFECTIVENESS

The protracted institutional history of the Inter-American Court of Human Rights has fundamentally shaped its institutional design, evolution and jurisprudential approach. Although envisaged at the time of the enactment of the American Declaration of the Rights and Duties of Man in 1948, it took the member states of the Organisation of American States (OAS) until 1969 to agree to the adoption of the American Convention of Human Rights. It took nearly another decade, however, for the Convention to enter into force in 1978 and with it the creation of an Inter-American Court of Human Rights. The Court handed down its first ruling in 1986 concerning enforced disappearances in Honduras, in what has become known as a paradigmatic case concerning state responsibilities for enforced disappearances.⁷¹

As originally designed, the Court had jurisdiction in cases brought by states and the Inter-American Commission. Individuals did not have standing before the Court. The Commission, in turn, handled individual petitions alongside a broad set of non-adjudicatory functions. In the early years, the Court dealt with very few cases, but there was a shift following the Commission's procedural change to submit cases by default to the Court. Subsequent to procedural reforms implemented in 2001, individuals have been granted the opportunity to participate in proceedings before the Court, although cases can still only be submitted by the Commission. The Court has also made use of its advisory jurisdiction to develop authoritative judicial interpretations. In terms of composition, the Inter-American

71 Claudio Grossman, 'Chapter 3 Promoting Social Change through Treaties and Customary International Law: The Experience of the Inter-American Human Rights System' (Brill, 2020), https://doi.org/10.1163/9789004417021_004.

Court is comprised of seven judges, elected by the OAS General Assembly based on nominations submitted by OAS member states. Judges serve six-year terms, with the possibility of one re-election. The Court possesses the authority to grant remedies and to issue interim measures (provisional measures), requiring states to undertake specific actions.⁷²

In terms of the Court's workload and activities, since its creation the Court has delivered 527 judgements (as of October 2024). In 2023, according to its annual report, the Court received a record number of new cases, including thirty-four new cases and two major advisory opinion requests on climate change and the right to "care". The backlog of processing cases has progressively increased in the last decade (21 months in 2013, to 26 months in 2023). In principle, the Court is responsible for setting and administering its own budget. However, with a 2023 budget of approximately seven million USD (with five million USD from the OAS regular fund and the remaining two million USD from voluntary contributions), the Court operates on a significantly smaller scale than its European peer's 2024 budget of 85 million euros (approximately 93 million USD, according to its annual report). This suggests that OAS member states either prioritize cost-effective justice or, less charitably, seek to provide international justice, if at all, on the cheap.

The regional context in which the Inter-American Court has been embedded since its creation has had a profound impact on its institutional design, evolution and, ultimately, institutional effectiveness. Most notably, despite its ambitious and far-reaching goals, the Inter-American Human Rights System, including the Court, has never been endowed with the necessary tools or authority to effectively achieve its objectives. In its original design, OAS member states established a Court with limited enforcement powers, lacking the political enforcement mechanisms present in the European

72 Jo M. Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights*, 2nd ed. (Cambridge: Cambridge University Press, 2012), <https://doi.org/10.1017/CBO9780511843884>.

system. The OAS General Assembly has historically been reluctant to act on Court rulings, and OAS member states have offered only limited political support to the Court. Moreover, numerous examples exist of governments attempting to undermine the Court's authority.⁷³ Relatedly, the Court has been confronted with states that have engaged with the Inter-American System in a manner characterized by subterfuge and bad faith. As highlighted by Zuloaga, this has necessitated the Court's development of a body of jurisprudence that interprets the law to address violations as experienced by victims, adapts procedural rules to counteract the bad faith of states, and establishes mechanisms to protect victims and witnesses from reprisals.⁷⁴ A crucial question that arises in this context is how to assess the effectiveness of an institution that is faced with intransigent stakeholders actively resisting its efforts and working to undermine its effectiveness.

While it would be an oversimplification to claim that the Court was intentionally designed to fail, it is clear that the Court (and the IAHRs more generally), despite the ambitious goals articulated in the American Convention's preamble, was not equipped with the means to fully realize its vision of "consolidating in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man."⁷⁵ In contrast, the Court has consistently been tasked with adjudicating cases involving egregious and systemic human rights violations.

73 Ximena Soley and Silvia Steininger, 'Parting Ways or Lashing Back? Withdrawals, Backlash and the Inter-American Court of Human Rights', *International Journal of Law in Context* 14, no. 2 (June 2018): 237–57, <https://doi.org/10.1017/S1744552318000058>. See, also: Ministerio de Relaciones Exteriores de Paraguay, 'Gobiernos de Argentina, Brasil, Chile, Colombia y Paraguay Se Manifiestan Sobre El Sistema Interamericano de Derechos Humanos', 23 April 2019, <https://www.mre.gov.py/index.php/noticias-de-embajadas-y-consulados/gobiernos-de-argentina-brasil-chile-colombia-y-paraguay-se-manifiestan-sobre-el-sistema-interamericano-de-derechos-humanos>.

74 Patricia Palacios Zuloaga, 'Judging Inter-American Human Rights: The Riddle of Compliance with the Inter-American Court of Human Rights', *Human Rights Quarterly* 42, no. 2 (13 May 2020): 408, <https://doi.org/10.1353/hrq.2020.0022>.

75 American Convention Preamble, signatory states: "Reaffirming their intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man"

The persistent and severe nature of these systemic violations poses significant challenges for both the Court and the broader Inter-American System. Another critical question then concerns the challenge of evaluating institutional effectiveness in responding to particularly entrenched and politically contested human rights abuses.

Moreover, assessing the effectiveness of the Inter-American Court needs to grapple with the fact that the Court has established a multifaceted set of mechanisms to promote human rights. While the Court's contentious jurisdiction and the impact of specific rulings have garnered substantial attention, these constitute only a fraction of its available instruments. The Court's advisory opinions have also significantly shaped the development of human rights standards in the region. Furthermore, the Court conducts public and private hearings, compliance hearings, and country visits to monitor compliance with judgements. Additionally, it engages in capacity-building activities with domestic judiciaries, state officials, and academic stakeholders. Notably, the Court's orders and rulings have become progressively more elaborate and exacting over time. This evolution is particularly evident in the Court's increasingly detailed and demanding reparation policies, which have made compliance challenging for states.⁷⁶ Put differently, partly through its own actions and evolving jurisprudence, and partly in response to growing demands from external stakeholders, the Court has progressively raised the bar for effectiveness by requiring states to demonstrate a higher degree of accountability for human rights violations. As a result, any effort to evaluate the Court's institutional effectiveness would require a careful consideration of which tools to assess, whether in their entirety or individually, and how the Court's toolset and demands on states have evolved over time.

76 Alexandra Huneus, 'Reforming the State from Afar: Structural Reform Litigation at the Human Rights Courts', *Yale Journal of International Law* 40, no. 1 (2015); Clara Sandoval, 'Two Steps Forward, One Step Back: Reflections on the Jurisprudential Turn of the Inter-American Court of Human Rights on Domestic Reparation Programmes', *The International Journal of Human Rights* 22, no. 9 (21 October 2018): 1192-1208, <https://doi.org/10.1080/13642987.2016.1268439>.

Another crucial political aspect of assessing the Inter-American Court's effectiveness is the duration of proceedings between the initial violation and the Court's final ruling. In many cases, this process extends over several years, leading to situations where states receiving adverse rulings may not be governed by the administrations responsible for the initial violations. This can occasionally result in governments being more inclined to respond positively to adverse rulings (as it may be politically expedient to blame their predecessors for violations). However, this temporal factor introduces complexities into the evaluation of the Court's effectiveness, as determining an appropriate timeframe for assessing its impact is not straightforward. While some may equate delayed justice with denied justice, others may perceive the long arc of the moral universe to be long, but ultimately bending towards justice.

A similar important contextual consideration in understanding the evolution and effectiveness of the Inter-American Court concerns the intense engagement of civil society organizations with the Court over several decades.⁷⁷ Recognizing the dynamic interplay between states, civil society, and the Inter-American System is essential for understanding the multidirectional flow of ideas and practices between the actors involved. This understanding is also instrumental in explaining why the Court, and the System more broadly, have emerged as sources of some of the most progressive human rights jurisprudence globally. The Inter-American System is characterized by an open-petition system, whereby petitioners need not be direct victims or have a close relationship with them. This open-petition model significantly influences the petitions process, particularly for marginalized communities who may otherwise lack access to

77 Par Engstrom and Peter Low, 'Mobilising the Inter-American Human Rights System: Regional Litigation and Domestic Human Rights Impact in Latin America', in *The Inter-American Human Rights System: Impact Beyond Compliance*, ed. Par Engstrom, Studies of the Americas (Cham: Palgrave Macmillan, 2019), 23–58, https://doi.org/10.1007/978-3-319-89459-1_2.

justice.⁷⁸ It has also created a dynamic human rights ecosystem, with significant implications for any assessment of the Court's institutional effectiveness.⁷⁹ Inevitably, civil society actors turning to the Inter-American System, and the Court, are consistently shifting the goalposts for the Court, increasing expectations on what the Court should be able to deliver.

Overall, then, only a contextualized, historically attuned analysis of the Inter-American Court can provide a comprehensive evaluation of its actual performance. Context is instrumental in understanding the unique institutional developments of a regional human rights court, and ultimately, its effectiveness. For instance, the distinct regional environments in which the European and Inter-American Courts of Human Rights operate significantly influence the institutional setting of objectives, determine their relative capabilities, dictate specific choices regarding both the formulation of substantive judgements and the design of remedies, and potentially generate different legitimacy-enhancing strategies, such as incremental dialogue versus public shaming.⁸⁰ Similarly, cross-regional comparisons are inherently challenging due to the distinct characteristics of each region. For example, assessing how well the European Court of Human Rights, in its current form, would perform in the regional context of the Americas would likely be a futile endeavour. One primary reason for this is that regional human rights courts are inherently shaped by their regional historical, political, and socioeconomic circumstances. This does not imply that everything is relative. After all, regional courts often look to peer institutions for inspiration, adopting and adapting approaches and jurisprudential interpretations developed by their counterparts.

78 Zuloaga, 'Judging Inter-American Human Rights', 412.

79 Par Engstrom, 'Inter-American Human Rights Experimentalism', in *Impact within the Human Rights Framework*, eds. Yves Haeck and Clara Burbano Herrera (Edward Elgar, forthcoming).

80 Shany, 'Assessing The Effectiveness Of International Courts', 269.

Put differently, regional human rights courts, do not operate in isolation, but are part of a broader global human rights eco-system.⁸¹

III. ASSESSING THE EFFECTIVENESS OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

We consider this contextualised perspective vital in any assessment of the Inter-American Court's effectiveness. The Court's effectiveness can be conceptualized as the extent to which its decisions and actions contribute to the improvement of human rights conditions in the region. Clearly, the evaluation of court effectiveness can be undertaken at multiple levels and against a variety of benchmarks. It is crucial to assess the Inter-American Court's effectiveness within its specific regional context, characterized by significant political contestation over human rights issues and the IAHRs itself. Assessing its effectiveness requires considering how the Court works in practice and its responsiveness to the needs and expectations of rights-holders. It is also crucial to acknowledge that international human rights courts, including the Inter-American Court, can have subtle and far-reaching social impacts that may not be immediately apparent or easily measured. These indirect effects, which can significantly shape societal norms, legal frameworks, and political discourse, can be influential even without direct judicial intervention.

The question of how to empirically assess the Inter-American Court's effectiveness is therefore complex. In theory, the Court's effectiveness can be assessed empirically by a decrease in the frequency and severity of human rights abuses, a reduction in the likelihood of the repetition of abuses, and the establishment of effective remedies for victims of violations. From this perspective, assessing the Court's effectiveness encompasses a range of outcomes, from providing

81 Wayne Sandholtz, 'Human Rights Courts and Global Constitutionalism: Coordination through Judicial Dialogue', *Global Constitutionalism* 10, no. 3 (November 2021): 439–64, <https://doi.org/10.1017/S2045381720000064>.

redress to victims of past human rights abuses to improving present human rights conditions and preventing future violations. Clearly, this is a demanding standard and establishes a stringent set of benchmarks. Human rights change is inherently shaped by multiple factors. It is rarely linear but often manifests as a cascade of effects, where one positive outcome can trigger a series of subsequent improvements. Moreover, sustainable improvements in human rights conditions often require sustained engagement over an extended period. Additionally, the Court's effectiveness tends to vary according to the specific issue area, the characteristics of the rights at stake, as well as the identities of the relevant stakeholders involved.

Given this broader context, this part provides a concise overview of several key considerations that must inform any empirical assessment of the Inter-American Court's effectiveness. It does so through brief illustrations of the Court's engagement with two distinct human rights issue-areas: the prohibition of amnesties for gross human rights violations, and indigenous land rights. These themes serve as paradigmatic examples within the Court's jurisprudence, highlighting how its case law has evolved and adapted in different contexts. Amnesty cases generally involve historical civil rights violations committed by past regimes and demand that present governments hold perpetrators accountable, even in the face of opposition from powerful actors and institutions that benefit from ongoing impunity. The persistence of such injustices continues to cause suffering for victims and their families. In contrast, indigenous land rights cases highlight the ongoing struggle of marginalized rural communities for land, resources, and self-determination.⁸² These cases often trace their origins to historical injustices stemming from colonial land policies and practices. The Court must not only address these past wrongs but

82 Par Engstrom and Edward Perez, 'Confronting Extractivism: The Inter-American Human Rights System and Indigenous Rights in Latin America', in *The Rule of Law, Development and Democracy in Latin America*, eds. Jacqueline Behrend and Laurence Whitehead (Routledge, forthcoming).

also ensure the protection of indigenous rights in the context of the demands of modern resource extraction and development.

The discussion below underscores the importance of defining the role and expectations of the Court to reliably assess its effectiveness. Ultimately, evaluating the Court's performance requires a nuanced, historically informed perspective, facilitated by an examination of the Court's effectiveness across four key dimensions: its institutional objectives, the tools and functions it employs, the range of stakeholders it engages with, and the timelines within which its actions (or inactions) unfold.

First, the Inter-American Court is subject to a multiplicity of occasionally conflicting objectives, highlighting the challenges in evaluating its effectiveness. For example, the complex relationship between the Court's institutional objectives of norm development, compliance, and institutional legitimacy has been particularly apparent with respect to its jurisprudence on amnesty laws.⁸³ Characteristically, these laws were enacted just before or just after transitions from military governments back to democratic governments, issuing legal immunity for perpetrators of human rights violations under authoritarian rule. Most prominently, in its 2001 *Barrios Altos* judgement, the IACtHR determined that two self-amnesty laws enacted by the Peruvian Fujimori regime violated victims' rights of access to justice and that gross human rights violations could not be covered by amnesty laws.⁸⁴ *Barrios Altos*, together with subsequent cases related to amnesty provisions in several Latin American

83 Pablo González-Domínguez and Edward J Pérez, 'Desafíos de La Jurisprudencia de La Corte Interamericana de Derechos Humanos Sobre Leyes de Amnistía En Contextos de Justicia Transicional', *Persona y Derecho*, no. 80 (March 2020): 81–106, <https://doi.org/10.15581/011.80.81-106>.

84 *Case of Barrios Altos v. Peru*. Merits. Series C No. 75. (IACtHR 14 March 2001).

countries (Brazil,⁸⁵ Uruguay,⁸⁶ Guatemala,⁸⁷ El Salvador,⁸⁸ Argentina,⁸⁹ Chile,⁹⁰ and Colombia⁹¹) have consolidated the Court's position on impunity. In these cases, the substantive goal the IACtHR has sought is to prevent impunity for gross human rights violations, as it “fosters the chronic repetition of human rights violations”⁹² and further implies “the total defenselessness of the victims and their next of kin, who have the right to know the truth about the facts”.⁹³ Over time, the Court's engagement with amnesties has given rise to a broad set of obligations that public institutions have to ensure accountability and reparations. The key norms and principles that the Court has developed include: a victim-oriented approach; the right to effective judicial remedy – i.e. right to a fair trial and judicial protection – in other words, access to justice; the right to truth; and increasingly comprehensive and ‘holistic’ reparation policies.

However, while developing norms related to amnesties and by progressively increasing its normative ambitions, the Court has also raised the bar for state compliance with its rulings. As a result,

85 Case of Gomes Lund et al. (‘Guerrilha do Araguaia’) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs. Series C No. 219. (IACtHR 24 November 2010).

86 Case Gelman v. Uruguay. Merits and Reparations. Series C No. 221. (IACtHR 24 February 2011).

87 Case of the Río Negro Massacres v. Guatemala. Preliminary Objection, Merits, Reparations, and Costs. Series C No. 250. (IACtHR 4 September 2012).

88 Case of the Massacres of El Mozote and surrounding areas v. El Salvador. Merits, Reparations and Costs. Series C No. 252. (IACtHR 25 October 2012).

89 Case of Julien Grisonas Family v. Argentina. Preliminary Objections, Merits, Reparations and Costs. Series C No. 437. (IACtHR 23 September 2021).

90 Case of García Lucero et al. v. Chile. Preliminary Objection, Merits and Reparations. Series C No. 267. (IACtHR 28 August 2013).

91 Case of Members and Militants of the Patriotic Union v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Series C No. 455. (IACtHR 27 July 2022).

92 Humberto Cantú Rivera, ‘Transitional Justice, Human Rights and the Restoration of Credibility: Reconstructing Mexico's Social Fabric’, *Mexican Law Review* 7, no. 1 (1 July 2014): 57–81, [https://doi.org/10.1016/S1870-0578\(16\)30008-7](https://doi.org/10.1016/S1870-0578(16)30008-7).

93 Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs. Series C No. 140. (IACtHR 31 January 2006).

the Court's anti-impunity standard has encountered resistance.⁹⁴ In Brazil, for example, state representatives before the Court has argued that complying with the Inter-American standard on amnesty laws is "impossible" due to enduring domestic political and judicial support for its own 1979 amnesty law.⁹⁵ Similarly, the Court's development of increasingly detailed and comprehensive human rights norms and standards with respect to amnesties has raised important legitimacy questions. Most notably, with respect to Uruguay's 1986 amnesty law, the Inter-American Court argued in *Gelman*⁹⁶ that the law is incompatible with the American Convention on Human Rights and the Inter-American Convention on Forced Disappearance of Persons, and therefore lacked legal effect, despite the law having been upheld in two referenda following the country's transition to democracy.⁹⁷ Critics of the Court have argued that the IACtHR has demonstrated a disdainful judicial attitude towards Uruguayan democracy specifically and that the Court's judgements exhibit insufficient deference to democratic states in the region, thereby undermining its own institutional legitimacy.⁹⁸ Regardless of the merits of these critiques, the main point here is that the Inter-American Court's amnesty law jurisprudence illustrates clear tensions between the Court's different institutional objectives, thereby complicating any assessment of its effectiveness in this influential issue-area for the Court.

Second, the Court's multiple and continually evolving set of institutional mechanisms - its toolkit, as it were - presents complex

94 González-Domínguez and Pérez, 'Desafíos de La Jurisprudencia de La Corte Interamericana de Derechos Humanos Sobre Leyes de Amnistía En Contextos de Justicia Transicional'.

95 Case of Herzog et al. v. Brazil. Monitoring Compliance with Judgement. Order of the Inter-American Court of Human Rights. (IACtHR 30 April 2021).

96 Case Gelman v. Uruguay. Merits and Reparations. Series C No. 221.

97 Roberto Gargarella, 'Democracy and Rights in Gelman v. Uruguay' 109 (January 2015): 115–19, <https://doi.org/10.1017/S2398772300001276>.

98 Jorge Contesse, 'The International Authority of the Inter-American Court of Human Rights: A Critique of the Conventionality Control Doctrine', *The International Journal of Human Rights* 22, no. 9 (21 October 2018): 1168–91, <https://doi.org/10.1080/13642987.2017.1411640>.

challenges in evaluating its effectiveness. At its inception, the IACtHR's toolset was restricted to issuing individual rulings, adopting advisory opinions, and implementing provisional measures. However, its capabilities have broadened considerably over time. For example, neither the American Convention on Human Rights nor the IACtHR's own statute provide any explicit provisions concerning the Court's powers after a judgement is issued, beyond a reference to Convention Article 65, which authorises the Court to send a case for consideration to the OAS General Assembly. Nonetheless, the IACtHR has not only assumed jurisdiction to monitor compliance with its judgements but has also asserted its competence to interpret and clarify its rulings and to provide guidance to parties regarding subsequent steps in the compliance process.⁹⁹ Moreover, in 2015, the IACtHR formalized these procedures by establishing a dedicated compliance unit within its Secretariat.¹⁰⁰ The Court's monitoring compliance "toolkit" includes the power to assess compliance of each remedy, request information from States parties concerning the actions that they have done to achieve compliance, summon hearings to debate before the Court the circumstances that surround compliance of one or more remedy, or more recently, requesting the States to allow the Court to visit its territory to obtain information on site concerning the different remedies it has issued.¹⁰¹

Another prime example of the Court's innovative approach is the use of hearings to foster compliance with stalled remedy orders. In *Awas Tingni*, which concerned Nicaragua's failure to recognise

99 Case of Baena Ricardo et al. v. Panama. Competence. Series C No. 104. (IACtHR 28 November 2003).

100 Edward Jesus Perez, 'La Supervisión Del Cumplimiento de Sentencias Por Parte de La Corte Interamericana de Derechos Humanos y Algunos Aportes Para Jurisdicciones Nacionales', *Anuario de Derecho Constitucional Latinoamericano*, 2018, 337–62; Lucas Sanchez de Miguel, 'Supervisión de La Ejecución de Sentencias. Un Análisis Comparado de Los Sistemas Europeo e Interamericano de Derechos Humanos', *Anuario de Derecho Constitucional Latinoamericano*, 2018, 275–309.

101 Perez, 'La Supervisión Del Cumplimiento de Sentencias Por Parte de La Corte Interamericana de Derechos Humanos y Algunos Aportes Para Jurisdicciones Nacionales'.

indigenous land rights and its subsequent granting of logging concessions,¹⁰² Nicaragua initially provided only a minimal response to the Court's judgement. Following the adoption of provisional measures in 2002¹⁰³ and the convening of a compliance hearing in 2007, representatives of Nicaragua and the Awas Tingni community, under the auspices of the IACtHR, reached a negotiated agreement to comply with the Court's judgement.¹⁰⁴ The Court has also developed the practice of conducting on-site visits to obtain firsthand information directly from relevant actors in specific cases.¹⁰⁵ Illustrative examples are the cases concerning the *Yakye Axa*, *Sawhomaxa* and *Xákmok Kásek*, where the IACtHR addressed the settlements on indigenous ancestral lands.¹⁰⁶ In these cases, the Court played a significant role in promoting the implementation of its decisions through dialogue with local stakeholders.¹⁰⁷

In addition to its innovative use of existing mechanisms, the Court has proactively developed new tools to enhance its institutional capacity for impact. The Court's development of the doctrine of "conventionality control" is a prominent illustration of the emergence

102 Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, Reparations and Costs. Series C No. 79. (IACtHR 31 August 2001).

103 Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Provisional Measures. Order of the Inter-American Court of Human Rights (IACtHR 6 September 2002).

104 Edward Pérez and Clara Sandoval, 'Compliance Hearings before the Inter-American Court of Human Rights: Unleashing the Dynamics of Implementation', in *Research Handbook on Implementation of Human Rights in Practice* (Edward Elgar Publishing, 2022), 273–90, <https://www.elgaronline.com/edcollchap/book/9781800372283/book-part-9781800372283-24.xml>.

105 Perez, 'La Supervisión Del Cumplimiento de Sentencias Por Parte de La Corte Interamericana de Derechos Humanos y Algunos Aportes Para Jurisdicciones Nacionales'.

106 Joel E. Correia, 'Infrastructures of Settler Colonialism: Geographies of Violence, Indigenous Labor, and Marginal Resistance in Paraguay's Chaco', in *Reimagining the Gran Chaco: Identities, Politics, and the Environment in South America*, ed. Silvia Hirsch, Paola Canova, and Mercedes Biocca (University Press of Florida, 2021), 0, <https://doi.org/10.5744/florida/9781683402114.003.0008>.

107 Cases of the Yakye Axa, Sawhoymaxa and Xákmok Kásek Indigenous Communities v. Paraguay. Monitoring Compliance with Judgement. Order of the Inter-American Court of Human Rights (IACtHR 30 August 2017).

of new institutional mechanisms shaping the Court's effectiveness. In *Almonacid Arellano*, pertaining to Chile's 1978 amnesty law, the Court developed for the first time this doctrine,¹⁰⁸ which stipulates that all state actors must review laws under the American Convention, and not apply laws found to be in violation of it. The Court's fundamental objective with this doctrine is to induce states to directly apply the Court's standards, obviate the need for victims to undergo lengthy litigation before the Inter-American System, and guarantee accessible remedies at the local level.¹⁰⁹ Despite its potential to enhance effectiveness, this doctrinal initiative elicited considerable criticism from OAS member states, however, who contend that it represents an unwarranted form of overreach of the Court's authority.¹¹⁰ Nonetheless, the development of numerous tools, albeit sometimes contentious, demonstrates the Court's adaptability in pursuing its objectives. As additional tools are developed to facilitate greater engagement with states and other stakeholders, however, a wider array of elements need to be considered in assessing the Court's effectiveness. Furthermore, the development of new tools may occasionally lead to tensions between competing institutional objectives. This also underscores the complexity of evaluating the Court's effectiveness, as it must reconcile its institutional legitimacy with its pursuit of broader impact.

Third, with respect to the Court's diverse stakeholders, similarly complex questions arise regarding the assessment of its effectiveness. Inevitably, stakeholders possess diverse motivations for engaging with the Court and have often conflicting expectations about its operations. When dealing with states, a key challenge is assessing the effectiveness of an institution facing intransigent stakeholders. In the

108 Case of *Almonacid Arellano et al. v. Chile*. Preliminary Objections, Merits, Reparations and Costs. Series C No. 154. (IACtHR 26 September 2006).

109 Pablo González-Domínguez, *The Doctrine of Conventionality Control: Between Uniformity and Legal Pluralism in the Inter-American Human Rights System*, vol. 11, Law & Cosmopolitan Values (Intersentia, 2018), <https://doi.org/10.1017/9781780686660>.

110 Ministerio de Relaciones Exteriores de Paraguay, 'Gobiernos de Argentina, Brasil, Chile, Colombia y Paraguay Se Manifiestan Sobre El Sistema Interamericano de Derechos Humanos'.

case of *Gomes Lund*¹¹¹, for example, related to Brazil's 1979 amnesty law, the Inter-American Court ordered the Brazilian state to remove all practical and judicial obstacles to investigating relevant human rights crimes, to establishing the truth as well as the responsibility of those involved. The Court also emphasised the right to access information, including the principle of maximum disclosure and the need to justify any refusal to provide information.¹¹² However, just a few months before the Inter-American Court's ruling in *Gomes Lund*, the Brazilian Supreme Federal Tribunal upheld the amnesty law. In its 7-2 vote the Tribunal considered the amnesty law to be primarily a political matter, and it recommended that the Brazilian Congress takes up the issue and considers the future status of the law. Furthermore, in 2019, within the context of the compliance procedures for *Herzog*, the Brazilian executive argued that it was "impossible" to comply with the Inter-American Court's order to annul the amnesty laws.¹¹³ While there certainly are contrasting cases – such as the example of El Salvador, where the country's Constitutional Court annulled an amnesty law and ordered the legislature to enact a new law that adhered to the standards enshrined in *El Mozote*¹¹⁴ – the fact remains that numerous exogenous variables, such as the often capricious nature of governmental and state support, also determine the Court's effectiveness.

The role of civil society actors before the Court further exemplifies the role of increasing stakeholder expectations in shaping its effectiveness. Civil society actors have progressively pushed for

111 Case of *Gomes Lund et al. ('Guerrilha do Araguaia') v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Series C No. 219.

112 In *Gomes Lund v. Brazil*, the Inter-American Court found that Brazil violated its obligations under the American Convention, including the rights to life, liberty, and personal security (Articles 1, 4, and 7), juridical personality (Article 3), humane treatment (Article 5), fair trial (Article 8), and judicial protection (Article 25) by forcibly disappearing the victims and withholding access to truth and information from their families.

113 Case of *Herzog et al. v. Brazil*. Monitoring Compliance with Judgement. Order of the Inter-American Court of Human Rights.

114 Case of the Massacres of El Mozote and surrounding areas v. El Salvador. Monitoring Compliance with Judgement. Order of the Inter-American Court of Human Rights. (IACtHR 31 August 2017).

developments in the IACtHR's case law and institutional mechanisms towards achieving their own strategic goals. Through various advocacy tools, including strategic litigation, civil society actors have exerted pressure on the Court to expand its established jurisprudence.¹¹⁵ The explicit objective of strategic litigation, for example, is to extend the Court's influence beyond individual cases. Examples in the IAHRs abound, but in the area of indigenous rights these include the titling of the land rights in favour of the *Awes Tingni* in Nicaragua,¹¹⁶ the adjudication of lands to the Paraguayan *Yakye Axa*, *Sawhoyamaya* and *Xákmok Kásek* indigenous communities,¹¹⁷ as well as of the issuance of Law 445 by Nicaragua in the context of the *Awes Tingni* case, indirectly benefitting more than 20 indigenous communities by enhancing the legal protections afforded to their traditional lands.¹¹⁸ Similarly, civil society actors have also pushed the Court to make creative use of existing institutional mechanisms. For example, civil society actors have increasingly made requests to the Court for provisional measures, particularly in high-profile amnesty cases (*Barrios Altos*, Peru; *El Mozote*, El Salvador; and *Chichupac*, Guatemala). In *Barrios Altos*, civil society organizations required the Court to order Peru, in an unprecedented manner, to prevent former President Fujimori's release from prison under a humanitarian pardon. Although Fujimori was ultimately released from prison¹¹⁹, the fact that civil society

115 Engstrom and Low, 'Mobilising the Inter-American Human Rights System'.

116 Case of the Mayagna (Sumo) *Awes Tingni* Community v. Nicaragua. Monitoring Compliance with Judgement. Order of the Inter-American Court of Human Rights. (IACtHR 3 April 2009).

117 Cases of the *Yakye Axa*, *Sawhoyamaya* and *Xákmok Kásek* Indigenous Communities v. Paraguay. Monitoring Compliance with Judgement. Order of the President of the Inter-American Court of Human Rights. (IACtHR 1 September 2016).

118 Joe Bryan, 'For Nicaragua's Indigenous Communities, Land Rights in Name Only: Delineating Boundaries among Indigenous and Black Communities in Eastern Nicaragua Was Supposed to Guaranteed Their Land Rights. Instead, It Did the Opposite.', NACLA Report on the Americas 51, no. 1 (29 March 2019): 55, <https://doi.org/10.1080/10714839.2019.1593692>.

119 Case of *Barrios Altos* and Case of *La Cantuta* v. Peru. Request for Provisional Measures and Monitoring Compliance with Judgement. Order of the Inter-American Court of Human Rights. (IACtHR 19 December 2023).

actors, with the support of the IACtHR, were able to successfully oppose successive Peruvian governments and prevent his pardon through years of legal proceedings is a testament to both the tenacity of Peruvian civil society and the Court's impact on the country.

Moreover, recognising the diversity of victims and stakeholders engaging with the Inter-American Court provide additional perspectives for assessing the Court's effectiveness. One example of this dynamic is the effects of the Court's jurisprudence on victim groups that are not subject to any Court proceedings themselves, as seen for example in the impact of *Barrios Altos* in the Argentine Supreme Court's decision to annul that country's impunity laws¹²⁰, or the role of *El Mozote* (and particularly Diego García Sayán's concurrent opinion in that ruling¹²¹) in shaping political and legal debates in the Colombian peace process concerning sanctions for perpetrators of human rights violations.¹²² Another dynamic pertains to conflicts between different rights-holders in cases before the Court. In the Paraguayan indigenous land rights cases of *Yakye Axa*,¹²³ *Sawhoyamaxa*¹²⁴ and *Xákmok Kásek*¹²⁵, the IACtHR ordered Paraguay to either return ancestral territories to indigenous communities or provide alternative lands that were identified and agreed to by the affected communities. However, the Court's compliance proceedings exposed the complexities of balancing the rights of long-established settlers with the rights of

120 Par Engstrom and Gabriel Pereira, 'From Amnesty to Accountability: The Ebbs and Flows in the Search for Justice in Argentina', in *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives*, ed. Leigh A. Payne and Francesca Lessa (Cambridge, U.K.: Cambridge University Press, 2012).

121 Diego García-Sayán and Marcela Giraldo Muñoz, 'Reflexiones Sobre Los Procesos de Justicia Transicional', *EAFIT Journal of International Law* 7, no. 2 (2016).

122 Ashley Collins, 'Justice in the Time of Peace: Evaluating the Involvement of International Courts in Colombia Notes', *Georgetown Journal of International Law* 53, no. 3 (2022 2021): 513–40.

123 *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Series C No. 125. (IACtHR 17 June 2005).

124 *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Series C No. 146. (IACtHR 29 March 2006).

125 *Case of the Xákmok Kásek Indigenous Community. v. Paraguay*. Merits, Reparations and Costs. Series C No. 214. (IACtHR 24 August 2010).

indigenous communities to their ancestral lands.¹²⁶ The challenges of compliance have gradually subsided in these cases, but the diversity of claims and interests reflect the multiplicity of stakeholders affected. In *Sawhoyamaxa*, for instance, the lack of willingness of settling communities to return the traditional lands to the Sawhoyamaxa led to an expropriation process, which continues to be strongly contested before domestic courts. In *Xákmok Kásek*, affected settlers were willing to negotiate with the state, which ultimately favoured an expedited process of compliance. In *Yakye Axa*, the construction of a road leading to new *Yakye Axa* lands was heavily contested as it required access to the private property of a third party, who initially refused to grant such permission.¹²⁷ These examples clearly illustrate the divergent interests that underpin specific Court rulings, leading to substantial and varied challenges in compliance, even in comparable cases where a political will to comply is present.

Finally, the determination of an appropriate timeframe for assessing the Court's institutional effectiveness may vary significantly, encompassing a range of potential time horizons. Time matters because, as already referred to, evolving standards change the normative criteria for assessing the Court's effectiveness. Clearly, these shifts are responsive to a multitude of factors, including the dynamic nature of human rights conditions in the region, the perceived efficacy of prior judgements, advocacy initiatives undertaken by diverse stakeholders, including civil society organizations and states, as well as ongoing scholarly legal debates.

This evolution is evident in the continuing refinement of the Court's approach to the protection of indigenous land rights. In *Garifuna Punta Piedra*, the Court built upon the precedent established in *Awas Tingni*, further raising the standard of protection for indigenous land rights. This included not only the obligation to delimit

126 Correia, 'Infrastructures of Settler Colonialism'.

127 Cases of the *Yakye Axa*, *Sawhoyamaxa* and *Xákmok Kásek* Indigenous Communities v. Paraguay. Monitoring Compliance with Judgement. Order of the President of the Inter-American Court of Human Rights of September 1, 2016.

and demarcate such lands but also to guarantee that these titles were free from any potential third-party claims.¹²⁸ This new benchmark has been reiterated recurrently in the Court's most recent indigenous case law.¹²⁹ A similar example can be found with respect to the Court's amnesty laws jurisprudence, as seen in the increasingly contextualised understanding of amnesties adopted by the Court.¹³⁰ The key point here is that the evolution of the IACtHR's standards has resulted in a corresponding evolution of stakeholder expectations. The extent to which these expectations are fulfilled may influence assessments of effectiveness. The increased expectations of various stakeholders within the area of indigenous land rights, for example, have compelled the Court to develop novel human rights standards, building upon prior precedents and applying broader normative criteria. Following *Awás Tingni*, the Court proceeded to incorporate the humanitarian consequences of forced displacement from indigenous lands into its analysis; it elaborated on the implications of extractive industries on indigenous land rights;¹³¹ and more recently, the Court extended its analysis of similar cases to encompass environmental rights in the context of land disputes.¹³² This jurisprudential dynamic reveals the manner in which each new case contributes to the Court's evolution, thereby influencing stakeholder expectations regarding the future development of its case law. The extent to which these expectations are fulfilled influence stakeholders' assessments of Court effectiveness.

128 Case of the Garífuna Punta Piedra Community and its members v. Honduras. Preliminary Objections, Merits, Reparations and Costs. Series C No. 304. (IACtHR 8 October 2015).

129 Case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina. Merits, Reparations and Costs. Series C No. 400. (IACtHR 6 February 2020); Case of the Xucuru Indigenous People and its members v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Series C No. 346. (IACtHR 5 February 2017).

130 Collins, 'Justice in the Time of Peace: Evaluating the Involvement of International Courts in Colombia Notes'.

131 Case of the Community Garífuna of San Juan and its members v. Honduras. Preliminary Objections, Merits, Reparations and Costs. Series C No. 496. (IACtHR 29 August 2023).

132 Case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina. Merits, Reparations and Costs. Series C No. 400.

Time is also significant because it requires careful consideration of temporal demarcations for evaluating effectiveness. The IACtHR's proceedings are invariably lengthy. In some instances, an immediate impact following Court action may be followed by a protracted period of stagnation or even a subsequent backlash against the Court. In other cases, an initial lack of political will by a government to adhere to a Court ruling may shift due to various endogenous factors. Pérez Liñán et al. suggest, for example, that states are “most likely to comply with more immediate remedies within 3 years of the decision”.¹³³

A central question, then, in any assessment of the Court's effectiveness concerns what constitutes a ‘reasonable’ timeframe for an evaluation of the Court's effectiveness? Put differently, at what point does a delay constitute a “denial of justice”? A cursory examination of the compliance dynamics in *Gelman* highlights the complexities of time when evaluating Court effectiveness. In the immediate aftermath of the judgement, the Uruguayan judiciary issued ambiguous and contradictory decisions, occasionally invoking the country's amnesty law and contesting the constitutionality of legislative measures (Law 18.831) designed to implement *Gelman*.¹³⁴ The IACtHR issued successive resolutions indicating that Uruguay had failed to comply with *Gelman*, notwithstanding legislative efforts, as the judiciary continued to adopt a stance that undermined the implementation of the ruling.¹³⁵ However, over time, the Uruguayan judiciary progressively embraced the standards articulated by the IACtHR, implementing Law 18.831 and acknowledging the principle that crimes against humanity are imprescriptible.¹³⁶ In basic terms, an evaluation of the IACtHR's

133 Aníbal Pérez-Liñán, Luis Schenoni, and Kelly Morrison, ‘Compliance in Time: Lessons from the Inter-American Court of Human Rights’, *International Studies Review* 25, no. 1 (1 March 2023): 17, <https://doi.org/10.1093/isr/viac067>.

134 Case of *Gelman v. Uruguay*. Monitoring Compliance with Judgement. Order of the Inter-American Court of Human Rights. (IACtHR 19 November 2020).

135 Case of *Gelman v. Uruguay*. Monitoring Compliance with Judgement. Order of the Inter-American Court of Human Rights.; Case of *Maidanik et al. v. Uruguay*. Merits and Reparations. Series C No. 444. (IACtHR 15 November 2021).

136 Martín Risso Ferrand et al., ‘Cumplimiento de la sentencia *Gelman vs. Uruguay* de la Corte Interamericana de Derechos Humanos. Especial referencia al punto

effectiveness through *Gelman* conducted shortly after the adoption of the ruling would have yielded markedly different results compared to a later contemporary assessment, which suggests a growing and substantial resemblance to full compliance. In other words, although immediate compliance proved challenging in *Gelman*, the passage of time facilitated a gradual harmonization of national standards with those articulated by the Court.

CONCLUSION

Assessing the effectiveness of the Inter-American Court of Human Rights is an elusive goal. We started this chapter by highlighting a basic definition of an effective international court as an institution that successfully realises its predetermined goals within a specified timeframe, as delineated by its relevant stakeholders. However, the multifaceted nature of international human rights courts, encompassing diverse objectives and employing a range of instruments, requires careful consideration of appropriate evaluation criteria and the specific operational aspects of courts to prioritise in such assessments. One key feature of the Inter-American Court in this respect is its continually evolving and expanding jurisprudence and procedural innovations, which have meant that the Court has progressively raised the bar for state accountability for human rights violations. Additionally, the temporal dimension of evaluation is central to any assessment of court effectiveness. Determining the appropriate timeframe for evaluating the IACtHR is far from self-evident, and assessments of effectiveness are subject to change over time. For a human rights court, we argue that the primary focus of evaluation should be the perspective of rights holders, with the court's success measured by its ability to advance the realisation of their rights. However, the IACtHR engages with a diverse range of

resolutivo 11 y al Poder Judicial', *Revista de Derecho*, no. 27 (17 March 2023), <https://doi.org/10.22235/rd27.3222>.

stakeholders with different and occasionally competing claims and interests. Moreover, as civil society actors, in particular, consistently turn to the Court with escalating expectations, the standard for the Court's performance is continually being raised.

The Court is also embedded within the Inter-American Human Rights System (IAHRS), alongside the Inter-American Commission on Human Rights. The IAHRS itself, moreover, is part of a wider human rights landscape in the Americas, encompassing a diverse array of relevant stakeholders and actors, as well as being an integral component of a broader global human rights ecosystem. Ultimately, therefore, the effectiveness of the Inter-American Court is a product of the intricate and dynamic interplay between international and national human rights standards, norms, institutions, and political practices both within its region and beyond. Nevertheless, assessing the effectiveness of an institution confronted by intransigent stakeholders actively working to undermine its efficacy in a region characterized by deeply entrenched and politically contested human rights abuses presents significant methodological, empirical, and political challenges. Effectiveness, especially in the context of international human rights courts, encompasses the broader, often diffuse, social and political changes that these institutions regularly inspire over time.

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