



Inter-American Human Rights Network

## *Reflective Report*

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# STRENGTHENING THE IMPACT OF THE INTER-AMERICAN HUMAN RIGHTS SYSTEM THROUGH SCHOLARLY RESEARCH

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## EXECUTIVE SUMMARY

This Report contains the collective findings of the Inter-American Human Rights Network, a multi-disciplinary group of international scholars of the Inter-American Human Rights System (IAHRS) brought together to gain richer insights into three sets of issues with particular salience for the IAHRS:

**1. Compliance and Impact:** The IAHRS has significant and demonstrable positive effects on domestic human rights that go beyond state compliance in individual cases. While ‘impact’ is shaped by a number of factors, research indicates that the IAHRS is likely to be most effective where its various mechanisms are employed in a coordinated fashion; where domestic actors utilise its rulings and precedents to further their own efforts to bring about national-level policy change; and where its decisions attract significant media attention.

**2. Institutional Politics:** The IAHRS has confronted multiple and consistent challenges to its institutional development since its inception. Yet, the IAHRS has expanded as human rights organisations have strengthened, as its jurisprudence has accumulated and as the System has built up its institutional legitimacy over time. As the impact of the IAHRS grows, so, too, do the political challenges to its authority. The IAHRS will need to adapt and innovate if it is to maintain its impact on rights protections in the region.

**3. Cross-Regional Comparison:** There is an increasing demand for learning and diffusion between regional human rights regimes. Increased cross-fertilization of regional standards has the potential to advance human rights protections, meaningful judicial dialogue and academic research. There is a largely unexplored potential to learn broader lessons from comparisons of implementation mechanisms and best practices in different regional contexts.

The Report concludes with a formulation of a future research agenda and a set of concrete contributions that scholars can make to genuinely strengthen the IAHRS.

## OVERVIEW OF THE NETWORK

The Inter-American Human Rights Network (the Network, hereinafter) was formed in June 2014 with funding from the Leverhulme Trust to promote collaborative inter-disciplinary research into the development, effectiveness and impact of the Inter-American Human Rights System (IAHRS). Network members are all leading or emerging scholars of the IAHRS from the Americas, Europe and Africa. Since its formation, the Network has held a series of workshops – at the Instituto de Investigaciones Jurídicas, Universidad Nacional Autónoma de México, and Instituto Tecnológico Autónomo de México (Mexico); the Institute of the Americas, University College London (UK); and at the Human Rights Centre, Ghent University (Belgium) – which brought together scholars and practitioners to debate a range of topics relating to the operation of the Inter-American and other regional human rights mechanisms.

The method of working together has been to pool together the diverse and varied methods, findings and insights of Network scholars and practitioners in order to gain leverage on analysis of certain fundamental issues. In this way, studies born of the discipline of political science in Brazil, for example are put into conversation with Mexican legal scholars or US historians, yielding a richer understanding than could be gained from any single discipline on, for example, the question of the impact of the IAHRS. The strength of the Network is in bringing together distinct projects, scholars and practitioners, and encouraging debate between them. Ours is a ‘meta project’ in this sense. In other words, we have not collectively embarked on a defined research project, and we are not here reporting the findings of a particular study. Rather, we have sought to combine a range of insights from a variety of scholars on three issues with particular salience for the IAHRS, and for human rights in the Americas more broadly: compliance and impact; institutional politics; and cross-regional comparison.



# #1 ASSESSING COMPLIANCE AND IMPACT

**Summary:** Assessing the impact of the IAHRs has been one of the consistent research themes of the Network. While ‘impact’ is shaped by a number of factors, research indicates that the IAHRs is likely to be most effective where its various mechanisms are employed in a coordinated fashion; where domestic actors utilise its rulings and precedents to further their own efforts to bring about national-level policy change; and where its decisions attract significant media attention. The Network’s research on the topic of impact has focused on approaches to assessing compliance and other impacts, and on understanding the role of domestic actors in facilitating impact.

## Key point 1: The Inter-American System has significant and demonstrable positive effects on domestic human rights

**There are significant differences in patterns of compliance with the IAHRs.** A major challenge in assessing compliance with IAHRs decisions is the absence of adequate data to allow for the development of reliable indicators and measurements of the effects of the System. This is a particularly pressing problem with regards to mechanisms such as precautionary measures and friendly settlements, where data is even less available than for other areas, such as Court judgments. Based on the available data, research by the Network has empirically demonstrated that general compliance rates with both the Commission and the Court are very low. Partial compliance with the System’s rulings and recommendations are a common outcome, meaning that states will comply with some of the IAHRs’ requirements but not all of them. Such findings are regularly seized upon to highlight a ‘compliance crisis’ within the IAHRs, in which governments in the region frequently refuse to abide by, or simply ignore, the rulings and orders issued by the Inter-American Commission and the Inter-American Court.

**Focusing exclusively on the IAHRs’ general compliance record conceals the important effects that the System has on domestic human rights.**

Although the ‘compliance crisis’ of the IAHRs is real, there is significant variation in compliance patterns across mechanisms and orders. Complementarity of IAHRs mechanisms also has positive effects on implementation and impact. Research highlights in this area include:

**Significant variation in ‘compliance pull’ is manifested between different IAHRs mechanisms.** For example, states tend to comply more readily with the provisions of friendly settlements than they do with the rulings of the Inter-American Court. Research indicates that this is explained by the fact that states have agreed to undertake remedial action during a negotiation process, rather than having it imposed upon them by a court ruling.

**The higher the degree of complementarity between mechanisms, the greater the effects.** The potential impact of the IAHRs is greatest when the IAHRs mechanisms are used in a coordinated fashion and as part of a coherent strategy. A notable example of this has been in the area of women’s rights where the IAHRs has used all the various instruments at its disposal, including treaty-making (the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, “Convention of Belém do Pará”), rapporteurships, in-country visits, the petitioning process and Court rulings to achieve highly significant outcomes. When used strategically and in tandem, the System’s mechanisms can be mutually reinforcing and amplify the impact of one another. Impact has been more muted when the mechanisms are used in isolation.

**The concept of ‘compliance’ does not capture the full impact of the IAHRs on domestic human rights.** The research conducted by the Network demonstrates that there are multiple ways in which the IAHRs matters that are not captured by traditional compliance models. In particular, the Network’s research has highlighted the important conceptual and empirical difference between compliance with a particular ruling and the impact of that ruling, as well as the impact of the IAHRs more broadly. For some, the patchy compliance record demonstrates the limited impact of the Inter-American System in ways that undermine its



legitimacy and authority. Nevertheless, there is an increasing demand for the IAHRs, as demonstrated in the rising number of complaints submitted against states by individuals and organisations across the region. Indeed, the demand for the System has never been higher as its caseload continues to increase year by year. This suggests that there are significant 'extra-compliance' effects of the IAHRs that merit closer scrutiny. Network scholars, in their assessments of little-studied cases of friendly settlements, precautionary measures, as well as strategic litigation by human rights organisations, have consistently confirmed the existence of such effects, which reach beyond the degree of state compliance in individual cases.

## Key point 2: The impact of the IAHRs is facilitated by domestic actors and institutions

**The interaction between the IAHRs and domestic constituencies determines the System's impact.** Understanding the factors that determine the impact of the IAHRs is particularly important given the absence of effective enforcement mechanisms by the political organs of the Organization of American States (OAS). Human rights practitioners and policymakers have been forced to turn their attention elsewhere for ways to strengthen the impact of the IAHRs. The Network's research has identified the important role that domestic actors and institutions can play here. Network scholars have studied the interaction of the Commission and the Court with organised civil society, state institutions, domestic judiciaries and the media. The research suggests that there is variation, not only across states in their willingness and ability to comply with the IAHRs, but also across domestic institutions within any particular state.

### **Organised civil society has become the lifeblood of the IAHRs.**

Human rights organisations (HROs) play an increasingly important role in nearly all IAHRs activities. Network research shows that the IAHRs has had a highly significant impact on rights advocacy strategies in Latin America, and that HROs' domestic mobilisation around

IAHRs mechanisms has advanced the realisation of human rights. While the use of the System by HROs is a positive development, Network debates have also highlighted that IAHRs stakeholders need to be mindful that the interests of HRO petitioners may not always perfectly coincide with those of victims. While HROs often pursue actions and reforms that aim to bring about structural human rights reforms, victims may prioritise obtaining remedy for their own suffering. These divergent aims could adversely affect victims' confidence in the ability of HROs, and the IAHRs more generally, to address their areas of greatest concern.

### **State institutions are crucial actors in the effective implementation of IAHRs rulings and standards.**

Recent scholarship has highlighted how international human rights institutions rely on different state constituencies both to garner compliance with particular judgments, and to make human rights relevant in domestic politics. Network research has brought this insight to bear in studies of the Inter-American Court in particular. Due to its creative remedial regime that emphasizes equitable relief, the Court frequently issues orders that require action from state actors other than the executive. This creates unique opportunities for the Court to have interactions with, and to try to influence the behaviour of, many different types of state institutions – much more than other international courts. States are not monolithic entities and there is often a degree of divergence – both within and between the different branches of government – regarding the relative weight institutions ascribe to human rights considerations. Network research demonstrates that embattled 'pro-rights' constituencies in some contexts have utilised rulings, statements and legal precedents set by the IAHRs to lend international weight to their efforts to bring about domestic policy change. Where utilised effectively, recourse to IAHRs instruments can help shift the balance of power in favour of domestic pro-rights constituencies. Network research has examined the role of National Human Rights Institutions (NHRIs), legislatures, prosecutors and military judicial system actors, among others, in strengthening the domestic impact of the IAHRs.





With regards to NHRIs, specifically, Network scholars have shown that there is ample scope for strategic alliances between the IAHRs and credible and effective NHRIs, often known as Defensorias del Pueblo, in processes of implementation.

***Domestic judiciaries are increasingly in the spotlight following far-reaching doctrinal developments by the Inter-American Court.***

A unique aspect of the Inter-American Court's relationship to domestic judiciaries is the doctrine of conventionality control, which says that all state actors must review laws under the American Convention, and not apply laws found to be in violation of it. Through this doctrine, the Court seeks to enlist all state actors in monitoring compliance with the Convention, as interpreted by the Court. Conventionality control has the potential to extend the shadow of the Court far beyond its relatively small docket. Network scholars have been able to bring empirical data to bear on the question of how conventionality control works, noting how it is constrained by the institutional limits of the Court, the capacity of and resources available to domestic judiciaries, as well as the politics of distinct state actors on the ground.

***The media is an important, yet often overlooked, actor influencing the domestic impact of the IAHRs.***

The extent of traditional and social media coverage generated by IAHRs activities has a significant influence on the domestic impact of the system. Network research and debates have highlighted that media attention helps raise awareness of particular rights issues, and has often increased pressure on authorities to comply with IAHRs decisions, or to rectify human rights problems at both the individual and structural level. This tends to be the case for rights issues where the public is already convinced of the need for change. In contrast, coverage of more contentious issues, such as prisoners' rights, has done little to persuade more sceptical populations and officials of the need for reform. Media interest has generally been highest for the rulings of the Inter-American Court, with more limited coverage of developments in other areas, such as friendly settlements and precautionary measures. As such, the structural impact of these alternative mechanisms is often more limited in scope than Court rulings, even though compliance rates may indeed be higher.

## #2 THE POLITICS AND PRACTICE OF INSTITUTIONAL AND LEGAL CHANGE

**Summary:** The IAHRs has confronted multiple and consistent challenges to its institutional development since its inception. Yet, the System has expanded as human rights organisations have strengthened, as its jurisprudence has accumulated and as the System has built up its institutional legitimacy over time. Although the most recent reform process – the so-called 'strengthening process' – has now concluded, the IAHRs continues to face a number of challenges, and it will need to adapt and innovate if it is to maintain its impact on rights protections in the region. The Network's research and activities in this area have focused on the factors that explain the institutional expansion of the IAHRs since its creation, resistance to the IAHRs, historical perspectives on the System's institutional development, and practices of institutional and legal innovation and adaptation.

### Key point 3:

#### **The drivers of institutional change at the IAHRs are a combination of structural and agency-driven factors**

**Broad structural factors have shaped the institutional development of the IAHRs.** The IAHRs has gradually expanded the scope and scale of its actions, developing from a quasi-judicial entity with an ill-defined mandate to a legal and judicial regime, which formally empowers individuals and groups to challenge the human rights performance of states in the Americas. Numerous factors have encouraged this expansion, including broad structural political changes in the region of Latin America (political democratization). The development of the IAHRs also has been facilitated by constitutional reforms in countries across the region, which, in turn, have led to the widespread incorporation of international human rights standards, including those developed by the IAHRs, into national systems.

**Agency matters as well.** Network research indicates that agency-driven factors also offer powerful explanations for the institutional changes



that the IAHRs has undergone. Non-governmental organisations (NGOs), in particular, have played a fundamental role in shaping the System's institutional evolution. Moreover, individual Commissioners, judges and officials at the IAHRs itself have proved fundamental to the expansion of the System by pushing the institutional boundaries of its mandate and by advancing new initiatives that build on the human rights standards and jurisprudence accumulated over time.

#### Key point 4:

### As the impact of the IAHRs grows, so, too, do the challenges to its authority

**Regional challenges to the IAHRs have their roots in the shifting regional politics of Latin America.** In recent years, a number of states in the region have become increasingly strident in their challenges of the system, particularly when IAHRs decisions have run counter to important geopolitical and economic policy objectives. The rise of sub-regional organisations, such as UNASUR, has seen other incipient human rights mechanisms expand into areas that were previously the exclusive institutional remit of the IAHRs. Officials within these new institutions point to the exclusion of the United States and the organizations' firm grounding in Latin America as reasons for prioritizing these alternatives to the IAHRs. Relatedly, Network debates suggest that the continued lack of universal ratification of the System's major human rights instruments, particularly by Anglophone parts of the region, is likely to remain a source of criticism for those seeking to undermine IAHRs decisions and operations. Moreover, unlike in earlier periods of the System's institutional development, the region's governments are today nearly universally elected by popular vote. Network research highlights that the democratic credentials of governments have made the balancing act for the IAHRs between its role as a supranational human rights arbiter on the one hand, and the principle and practice of subsidiarity on the other, increasingly delicate. Such challenges have been evident in, for example, the Court's deliberations in relation to the applicability (or otherwise) of domestic reparation programmes, the rule of exhaustion of domestic remedies, and decisions handed down by domestic courts regarding reparations.

**Transnational and domestic challenges to IAHRs jurisprudence risk damaging the IAHRs' authority and legitimacy in the eyes of its key stakeholders.** At the transnational level, Network scholars point to cross-national resistance movements that target the System's developing jurisprudence and practice on particular human rights standards, such as women's or LGBTQ rights. Challenges at the domestic level can take many forms, from overturning IAHRs-inspired legislation to fomenting citizens' dissatisfaction with their experience with the IAHRs.

#### Key point 5:

### A historical perspective on the development of the IAHRs contributes to understandings of contemporary forms of resistance to the IAHRs

**Throughout its history, the IAHRs has regularly been subject to fierce criticisms, and it has operated in an often politically hostile regional context.** Network scholars have developed historical analyses of the IAHRs to understand the sources of legitimacy and authority of the System. This scholarship has clearly established that the System has faced challenges on this front historically. One of the reasons why the Commission struggled in its early days, for example, was the perception that it had been created by the United States as part of its efforts to undermine the Cuban revolution. The System has also faced challenges from states and officials hostile to its expansion and/or to certain rulings. One crisis in the late 1990s arose as a result of attempts by the government of Alberto Fujimori in Peru to withdraw from the Court's jurisdiction. Over the past few decades, Brazil, Dominican Republic, Ecuador, Nicaragua, Peru, Trinidad and Tobago, and Venezuela have all variously suspended payment of organisational dues, (temporarily) withdrawn their ambassadors, claimed not to be bound by a particular Court judgment, and threatened to or actually denounced the American Convention following contested decisions.

**A longer-term perspective on the IAHRs also helps us to understand contemporary political challenges facing the IAHRs.** For example, while the threat of backlash from states is real,



the Network's research and debate suggests that it is important to differentiate between backlash and routine domestic judicial and political processes. Resistance may, in part, be an inevitable consequence of being an international human rights institution fulfilling its institutional mandate of monitoring and scrutinizing the human rights records of states. Further, the resurgence of backlash reminds us that compliance is neither final nor finite. States can move away from implementing human rights standards just as they can move towards it.

### Key point 6:

## The IAHRS has undertaken important institutional innovations and adaptations in response to persistent political challenges

**Innovative practices: novel responses to contemporary human rights crises.** The Network's research and activities have found widespread recognition in the scholarship that some of the procedural reforms the IAHRS has undergone have been positive. For example, changes to the reporting on compliance monitoring from written reports only to private hearings are credited with increasing institutional impact. Procedural changes are unlikely to be sufficient, however, as the historical record of the IAHRS indicates. New initiatives in recent years, such as creating a working group of experts to investigate the disappearances of students in Ayotzinapa, Mexico, have enabled impact in real time, rather than only as a result of years of extended legal proceedings. This institutional innovation could provide a model for future activities. Network scholars have also debated how the IAHRS could draw inspiration from other successful institutional models, such as that of the International Commission against Impunity in Guatemala (CICIG), as ways of lending expertise to the strengthening of domestic institutional responses.

**Fostering institutional support: civil society participation in appointment procedures.** There is important comparative scholarship on international tribunals that looks into the process and politics of appointments procedures. There has been less research, however, on the impact that particular judges and commissioners have

on their institutions, and how this shapes, in turn, the impact of the Inter-American System. Network scholars indicate that the appointments process in the IAHRS is becoming more politicized and that states are using appointments as a way to shape the Commission and Court into more deferential organs. These efforts to constrain the influence of the System and to exert more subtle political control of its institutional development can be seen in attempts to secure appointments of officials who favour a minimalist system to both the Commission and the Court. At the same time, civil society groups are pushing to create more avenues for weighing in on appointments debates, and are focusing themselves on particular campaigns, such as the GQUAL campaign that advocates for gender balance in appointments (<http://www.gqualcampaign.org>). The Network has debated the need for clarity and transparency in the selection of individual cases as well as in the criteria and procedures for the appointments of officials. Important advances, external to the IAHRS, have recently taken place in this regard, as manifested, for example, in the work of the Independent Panel for the Election of Inter-American Commissioners and Judges.

**The limited resources made available to the IAHRS is a major concern, making effective mitigation strategies critical.** Network scholarship has highlighted the extent to which the IAHRS remains subject to considerable political and resource constraints. Consistent underfunding of the system continues to limit the scope for conducting proactive rights work and investigations. Moreover, the limited resources available to the IAHRS and, in particular, the Commission, have contributed to the emergence of a several-year long backlog of petitions. Such difficulties are likely to worsen given the consistently increasing workload of both the Commission and the Court. Assuming stagnant or only modestly rising funding in the coming years, the development of new models of action will inevitably mean that personnel and funds will be diverted away from existing areas of activity. Previous institutional changes – for example, expanding the work of the Commission's Rapporteurs – resulted in greater pressure being put on resources for processing petitions. Additionally, decisions to prioritise particular areas or activities are often not subject to the System's autonomous discretion. Institutional initiatives are often dependent on external donors,



whose priorities may not necessarily align with those of the IAHRs. This is manifested, for example, in the current difficulties of the Commission to secure funding for its newly established Unit on Economic, Social and Cultural Rights. Seeking to boost funding from extra-regional donors, whether that entails state donors or private foundations, may appear attractive in the short-term, although such fundraising efforts may generate significant legitimacy and authority challenges from the System's detractors.

## #3 CROSS-REGIONAL PERSPECTIVES ON HUMAN RIGHTS SYSTEMS

**Summary:** The three regional human rights regimes — in Africa, Europe and the Americas — as well as the United Nations' human rights system, have begun to stress the importance of cross-system learning and diffusion. The potential of such exchanges is tremendous. Yet, important questions remain as to how to facilitate cross-regional learning, and what the objectives of such exchanges should be. More generally, these comparative perspectives are important not least because research and policy/advocacy communities have become overwhelmingly specialised, thereby preventing sustained and substantive cross-regional dialogues on issues of mutual concern. Network scholars' research highlights the potential of and challenges to learning between regional systems in the following areas: cross-fertilization of human rights standards and judicial dialogue; and comparisons of implementation mechanisms and best practices in different regional contexts.

### Key point 7:

**Increased cross-fertilization of regional standards has the potential to advance human rights protections, meaningful judicial dialogue and academic research**

**Examples of cross-regional diffusion of human rights jurisprudence have multiplied in recent years.** Network scholars have examined

instances of cross-regional diffusion of human rights standards with particular reference to the advanced jurisprudence of the Inter-American Court on issues such as indigenous rights and the admissibility of amnesty laws, and its use by the European Court of Human Rights in specific cases. The scope for more extensive, regular, and purposeful processes of cross-fertilization is significant, particularly with regards to rights of vulnerable groups. Network debates have identified several issues that would need to guide any regionally comparative research and advocacy work in this area, including: the similarities and differences of approaches to, and the relevant standards affecting, same groups in different regional systems; the mechanisms of diffusion of standards, interpretations, and practices between systems; different understandings of vulnerability; its effects on concerned groups and how they vary according to regional context; and, the extent to which regional systems affect the relationships between vulnerable groups, dominant rights-violating norms and/or majority societies. Network scholars have also addressed the relevance of debates in international law regarding the effects of legal fragmentation as human rights jurisprudence expands in different regional systems.

**The potential of judicial dialogue both between regional human rights courts and between international and domestic courts, remains largely untapped.** Regional human rights systems operate in a fertile environment of interlegality characterised by a plurality of domestic and international legal and judicial systems. This provides ample scope for judicial dialogue and exchange. Network research demonstrates that a degree of judicial dialogue is taking place, as evidenced in human rights jurisprudence on issues such as same sex marriage and the applicability of amnesties. Network debates on this topic suggest that genuine and substantive dialogue between judicial bodies must go beyond mere citations of other systems' jurisprudence. To fulfil its potential to advance rights protections, judicial dialogue must involve interactions of a more sustained and consistent nature. Diffusion and learning, however, are attractive but ambiguous concepts. For cross-regional learning to be effective, scholars and practitioners alike need to specify: what is to be learned; how learning takes place; and how to assess whether learning has occurred or not.





## Key point 8:

### There is a largely unexplored potential to learn broader lessons from comparisons of implementation mechanisms and best practices in different regional contexts

**Regional human rights systems would benefit from sustained dialogue regarding policy responses and administrative practices.** Network research highlights in this area include:

**Comparative insights:** Network scholars have conducted research on interim measures (precautionary and provisional measures in the IAHRs) that illustrate the important general lessons that can be learned from comparing the same type(s) of mechanisms in different regional contexts.

**Insights from the European Court of Human Rights:** Network research has examined the use of pilot cases/leading cases in the European System, and the utility of such procedures for the IAHRs. The IAHRs regularly issues structural reform orders in the operative section of its judgments. It has also experimented with prioritisation of structural cases, with more limited success to date. The experience of the European System shows that such procedures, when carefully implemented, can bring advances in particular thematic areas. Similarly, in the European system, the 'margin of appreciation' doctrine has been developed in the practice of the Court and extensively applied. The Inter-American Court has historically avoided this doctrine in its jurisprudence, but some judges have, in recent years, expressed increasing willingness to consider its application in the region.

**Insights from the IAHRs:** Network scholars have also shown the importance of substantive civil society participation in the IAHRs, and the stark contrasts in this regard with the European System. The central monitoring organ of the Council of Europe, the Committee of Ministers, has traditionally operated in a generally non-transparent manner, with highly limited access for civil society participation to its proceedings. The lessons learned from civil society participation in the IAHRs are therefore very significant for the European System.

**Collaborative practices:** The evolving practice of issuing joint press releases by independent experts of the UN, the IAHRs, and the African System, provides important opportunities to develop joint responses to particularly pressing, and common, human rights challenges. More permanent means of sharing information between regional and universal bodies could allow for the design of more effective institutional responses to current and future human rights challenges.

**Regional context matters.** The regional systems share a number of common challenges, notably their increasing workloads in the context of changing rights environments, particularly in Europe and the Americas. Cross-regional collaboration serves to exchange significant experiences, policy responses to human rights challenges of mutual concern, and best practices. Despite the broad potential of cross-system learning and diffusion, context still matters, and due consideration to regional and local specificities need to be given. Network scholarship has demonstrated the importance for scholars and practitioners alike to understand the ways in which different contexts can change or alter the way that particular mechanisms and practices perform "on the ground."

## Key definitions:

**Compliance:** Human rights compliance broadly refers to the process by which a state conforms with a specified legal rule, and more narrowly to the implementation of an international Court ruling.

**Impact:** Human rights impact is an inherently complex process and the outcome of multiple forces. As such, Network scholars have eschewed an abstract understanding of 'impact' of the IAHRs on domestic human rights. Rather, they have developed a grounded and contextual understanding of how the IAHRs influences the politics and struggles between actors and institutions seeking to advance the realisation of human rights and those who resist such social and political change.



# IMPLICATIONS AND FUTURE RESEARCH PRIORITIES

The Network's research and activities outlined in this Reflective Report have generated the following research priorities for Network members and for scholars working on the IAHRs:

## A. *Assessing Compliance and Impact*

1. Continue to identify best practices for compliance and assess how best to facilitate their dissemination across domestic actors, states, and even across regional and international human rights systems.
2. Strengthen the capacity of researchers and the IAHRs to conduct regular, empirically-based, assessments of the relative effects of different IAHRs mechanisms through the development of dedicated database projects.
3. Develop further insights on the potential of and obstacles to a range of domestic actors and institutions to act as 'agents' of implementation/compliance, especially the media, which previously has not been a topic of much research.
4. Examine the factors that enable and constrain the impact of strategic litigation before the IAHRs.
5. Advance existing scholarly research on public support for human rights in the form of large-scale surveys, in-depth qualitative research and focus groups, among other methods, to generate insights on the perceived legitimacy and functioning of the IAHRs.
6. Examine the effect of strategic coordination among IAHRs mechanisms and consider how the composite mechanisms of the IAHRs may best coordinate and complement each other's activities.

## B. *The Politics and Practice of Institutional and Legal Change*

7. Advance understandings of which types of cases and contexts are most likely to incite backlash and resistance, which actors on the international, regional and domestic scales engage in backlash, and the forms that such backlash takes.

8. Examine how backlash to the IAHRs affects its impact and assess how the IAHRs can best respond to mitigate the effects of backlash.

9. Promote ways to share lessons on dealing with backlash across the various regional and international human rights systems, all of whom are dealing with their own forms of state resistance.

10. Support the strengthening of inter-disciplinary scholarship on the history and contemporary institutional development of the IAHRs, including by developing a more robust historiography of the IAHRs on the basis of archival research and oral histories.

11. Evaluate the effectiveness of the IAHRs' innovative institutional responses to urgent human rights situations.

## C. *Cross-Regional Perspectives on Human Rights Systems*

12. Advance scholarly research on policy diffusion to explore the processes and procedures that best enable cross-system learning and to assess which lessons-learned and best practices are most likely to 'travel' across human rights systems and why.

13. Develop indicators to assess if and how cross-system learning and diffusion has taken place.

14. Construct platforms to allow for the systematisation and publication of human rights mechanisms' operational information, with a view to increasing transparency and allowing more rigorous scholarly comparative analysis of the effectiveness of the various internal processes and procedures.

15. Support cross-regional dialogues concerning the utility of a variety of procedures, policies and practices, in different regional contexts.

16. Create ongoing collaboration with other human rights systems. There is ample scope for the IAHRs to strengthen institutional collaboration with other human rights systems in order to develop mechanisms to share and disseminate best practices and institutional experiences. A permanent means of sharing information between regional and universal bodies would allow both to design more effective solutions to current and future human rights challenges. Improved collaboration between the IAHRs and other human rights mechanisms would enable joint evaluation of current and upcoming challenges, as well as the development and dissemination of best practice techniques to address them.



## SCHOLARLY CONTRIBUTIONS TO THE IAHRHS

The Network has identified a set of broad contributions that scholarly research on the IAHRHS can make, including:

**1. Systematisation and publication of the IAHRHS' operational information.** The absence of systematised and comprehensive data on many areas of the IAHRHS' activities continues to prevent rigorous analysis of the System. This shortcoming makes it challenging for the IAHRHS to accurately identify and rectify problematic areas of its activities and to promote evidence-based reform. Strategic partnerships with academic institutions and individual scholars with the required expertise would significantly strengthen the capacity of the IAHRHS to conduct such assessments.

**2. Improving access to the IAHRHS' archives and operational information for researchers.** The transparency of the IAHRHS' activities and increasing availability of operational information would enable more comprehensive scholarly assessment of the effectiveness of the various internal processes and procedures, which could both inform future policy debate and help respond to criticism levelled against rights mechanisms by their opponents. In this endeavour, improving scholarly access to the IAHRHS' archives and operational information would advance the robust, empirically-based research needed to inform policy decisions, though any such initiative would undoubtedly need to respect the confidentiality of much of the information processed by the IAHRHS. In concrete terms, scholars can bring their expertise and practical experiences to bear on effective systematisation of information and database management, as well as reliable safe-keeping of historical records and communications. Moreover, this is not only an issue of overcoming an impediment to empirically-based research of the IAHRHS;

it is also a principled matter of transparency. For an institution that regularly exhorts governments to improve access to information, to disseminate the truth about violations, and that seeks to promote freedom of expression and other related values, imposing undue restrictions on access can prove damaging to its legitimacy.

**3. Support the strengthening of a community of scholarship on the IAHRHS.** The IAHRHS enjoys the backing of a growing community of critical supporters who continuously review its various activities. There is a pressing need for such regular monitoring of IAHRHS operations and for a sustained sober assessment of its performance. Although important work is already taking place in this regard, increased critical deliberation of the IAHRHS' activities is required in order to contribute to the ongoing process of quality control of the System.

**4. Academic multi-disciplinarity.** As a human rights system based on international law, legal and jurisprudential analysis of the System is obviously indispensable. But any robust assessment of the System requires contributions from other scholarly disciplines as well. From critical evaluations of the impact of the activities of the IAHRHS on domestic human rights protections, to strategic assessments of the political opportunities and constraints it faces, multi-disciplinary perspectives on the System are vital.

**5. Fostering cross-regional exchanges and learning.** The importance of communication and cooperation across regional human rights mechanisms has become increasingly clear. Permanent mechanisms for sharing information between regional and universal bodies should be established to allow the design of more effective solutions to current and future human rights challenges. Such mechanisms could include new exchanges, training visits, dissemination tools and better methods for sharing jurisprudential developments among the various human rights mechanisms. Scholars and academic institutions could contribute their expertise and practical experiences to such endeavours through training and institutional support, and by offering vital platforms for critical and evidence-based discussions.



# Annex

## Background on the Inter-American System

### **The Inter-American Human Rights System (IAHRS):**

The Inter-American Human Rights System (IAHRS) comprises a series of mechanisms and structures designed to protect and promote the rights of individuals and groups in the Americas. Its principal components are the Inter-American Commission on Human Rights (“the Commission” or “the IACHR”) and the Inter-American Court of Human Rights (“the Court” or “the IACtHR”). Both institutions fall within the broader organisational structure of the Organization of American States (OAS); a regional body with 35 member states from across the Americas.

### **The Inter-American Commission on Human Rights (IACHR):**

The main role of the Commission – created in 1959 and based in Washington D.C. – is to assess petitions concerning allegations of human rights abuses filed against member states of the OAS. Complaints can be lodged by petitioners concerning alleged violations of any of the civil, political, social, economic and cultural rights contained in the various human rights instruments developed by the Inter-American System. For cases to be admitted, petitioners must have first exhausted all domestic legal channels. Following the admission of a petition, the Commission will seek, wherever possible, to guide the petitioners and the respondent state to a mutually acceptable resolution (referred to as a friendly settlement) of the issue. If this proves unsuccessful, the Commission will make non-binding recommendations for remedial action on the part of the state involved and can, in certain circumstances, refer the case to the Inter-American Court of Human Rights. In serious

and urgent situations, the Commission may also request that a state adopt so-called precautionary measures to prevent irreparable harm to persons. In addition to these, largely responsive, mechanisms, the Commission performs a number of more proactive functions including carrying out in-country visits, conducting research, and raising awareness of particular rights issues and areas of concern.

### **The Inter-American Court of Human Rights (IACtHR):**

For a case to be heard by the Inter-American Court – set up in 1979 and based in San José, Costa Rica – it must either be brought by one OAS member state against another or, in the case of non-state actors, have already completed the petition procedure before the Commission. The Court has jurisdiction only over the approximately two-thirds OAS member states that have ratified the American Convention on Human Rights, and that have additionally accepted the Court’s contentious jurisdiction. Unlike the Commission, the Court is able to order states to make compensation payments to victims of human rights violations. In addition, the Court can instruct states to take other steps to rectify violations, such as publicly acknowledging their liability for offences, initiating domestic criminal proceedings against perpetrators, and/or making amendments to problematic areas of domestic legislation. The Court may also issue advisory opinions on the interpretation of the American Convention or of other treaties on the protection of human rights in the Americas. Similar to the Commission, when individuals are deemed to be at immediate risk of serious harm, the Court may call on states to implement emergency protective measures (so-called provisional measures).

## Information on the Authors

This Report is based on the collective input from all members of the Inter-American Human Rights Network. The analysis contained in this Report, however, does not necessarily reflect the views of all members of the Network, or any of the institutions that Network members are affiliated with. The report has been prepared by the following Network members:

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## About the Inter-American Human Rights Network

The Inter-American Human Rights Network is an international research project which seeks to examine the development and impact of the regional human rights system of the Americas. The network is funded by the Leverhulme Trust under its International Networks programme and its membership comprises leading and emerging scholars of the Inter-American system from across the globe.

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