THE POLITICAL POWER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

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ABSTRACT

Karina Yuri Ito: The Political Power of the Inter-American Court of Human Rights
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The Inter-American Court of Human Rights was created in 1969 with the purpose to protect and interpret the American Convention on Human Rights and other treaties. Like any international court, it lacks traditional measures to enforce its decisions, having to resort to the willingness of states to have its judgments fulfilled. In this context, does the Inter-American Court have political power? What would be the indicators of the effectiveness of the Court in fulfilling its mandate? In this research, I rely on the lessons learned from the European Court of Justice and the European Court of Human Rights and identify five variables which are regarded as evidence of an international court’s power: compliance with judgments, increase in caseload, legal doctrines, supremacy of rulings and domestic courts’ support. I find significant evidence to corroborate the theory that the Inter-American Court has political power to apply and improve human rights in the Americas.
To my parents, the greatest influences in my life, who taught me to always shoot for the moon, and who never doubted I could make it.
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I. INTRODUCTION

In 1948, the Universal Declaration of Human Rights recognized the inherent dignity and the equal and inalienable rights of all human beings. Besides establishing a common standard of achievement for all peoples and nations, it called for progressive measures to ascertain the effective recognition and protection of those rights.\(^1\) Since then, there have been three main types of action to make this a reality. Countries have pledged to adjust their national laws to conform to this international standard; they have ratified multilateral treaties on the subject; and also, more relevant to the purpose of this research, there has been a proliferation of agreements in different regions of the world creating international courts to regulate the implementation of such rights beyond the state.

In this context, and recognizing the challenges of protecting human rights in the Americas, the Ninth International Conference of American States considered that “no right is genuinely assured unless it is safeguarded by a competent court.”\(^2\) The Inter-American Court of Human Rights (IACrtHR) was then created and had its first hearing in 1979. However, like other international courts, the IACrtHR lacks traditional mechanisms, such as the ones that national

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courts have, for enforcing its decisions. There are no civil or criminal sanctions for disobeying a court order, and there is no police force to regulate behavior. Compelling member states to act against their interests and sovereignty can be a challenge, so the relevance of international courts is questionable.

This thesis addresses the question of how effective the Inter-American Court of Human Rights is in effectively protecting human rights. Given its limited capacity to enforce its decisions, does it serve the purposes for which it was created or is it a mere puppet in the hands of its member states? How can one measure the power of the Court?

Hitherto, there has been no comprehensive analysis of the political power of the Inter-American Court from either the political science or legal perspectives. This is most likely due to the fact that the Court is relatively young and like any institution, its presence will take time to be consolidated. Moreover, the statistical data provided by the Court enables only a superficial analysis of its functioning, making it necessary to open case by case in the search for evidence. In this thesis, I resort to the literature on the power of the European Court of Justice and the European Court of Human Rights, two tribunals with more years of existence and about which there have been extensive research and debate, in order to identify which variables are regarded as evidence of an international court’s power.

Based on this literature, I analyze five measures that have been used to identify and measure the political power of the European international courts: a) compliance with decisions; b) increase in caseload; c) legal doctrines which increase cooperation and the court’s scope; d) supremacy of international court’s rulings over domestic courts’; and, e) domestic courts’ support. For the purpose of evaluating the power of the IACrtHR, I observed how each of
these five variables has contributed to the European courts’ power, and examined whether a similar mechanism can be found in the Americas. I relied on the secondary literature, annual reports of the courts, available statistical information, as well as contentious cases brought before the Inter-American Court by examining all existing complaints, remedies and monitoring reports until 2009, a total of 360 documents.

The research for this thesis uncovered important similarities between the three international courts in terms of compliance and increase in caseload. Also, several of the doctrines present in the European courts are also present in the Inter-American Court, including the supremacy of rulings. Most importantly, I found strong evidence of domestic court support for this international Court’s decisions in a case study involving amnesty laws in the Americas. All of these facts attest of the political power of the Inter-American Court of Human Rights. It has not yet acquired the power of its European siblings, but is on its way to achieving it.

This paper is divided into 5 sections. First, is a brief history of the Inter-American dual system of protection of human rights, with a focus on the Court’s purposes and procedure. I will then analyze the literature on the European experience with international courts, the measures of political power which have been used therein, and the appropriateness of applying the same measures in the Americas. The third part of the paper will focus on the power of the Inter-American Court, with an examination of the five proposed variables through statistical data and case studies. The fourth part of the paper offers some suggestions for the improvement of the Court and the fifth is the conclusion.
II. HISTORY OF THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS IN THE AMERICAS

Shocked by the atrocities that plagued the world during World War II and in response to the necessity of recognizing and ascertaining certain inner rights pertaining to human nature, in 1948 the United Nations Commission on Human Rights designed the Universal Declaration of Human Rights (UDHR). ³

Eleanor Roosevelt, chairman of the Commission, remarked at the time on the nonbinding character of this document that would serve as a common standard of achievement for all peoples and all nations. That meant that in case signatory states did not strive to live up to their pledge by adjusting their constitutions or by ratifying the covenants that would follow, the rights protected by the Declaration would be unenforceable. For this feature, the UDHR received a lot of criticism. However, as Mary Ann Glendon (2001) affirmed “though many human rights supporters had had doubts about the effectiveness of a ‘nonbinding standard’ … ideas are as real as tanks.”⁴ Indeed, the ideals and principles of a universal standard of protection of the rights of all men spread throughout the world.


Human rights were gaining momentum when the inter-American human rights system was born in Bogotá, Colombia, in April 1948 at the ninth international conference of American states. This gathering produced the Charter of the Organization of American States (OAS)\(^5\) and the American Declaration of the Rights and Duties of Man.\(^6\) Then in 1969, the American Convention on Human Rights (Pact of San José, Costa Rica) was adopted recognizing that “the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states.”\(^7\) It also established in Art. 33 the dual institutional structure of human rights protection in the Americas: the already existing Inter-American Commission on Human Rights (hereinafter IACHR) and the Inter-American Court of Human Rights (hereinafter IACtHR or the Court).


The Dual Institutional Structure of the Inter-American Human Rights System

The IACHR was created in 1959 and held its first session in 1960. Since then and until 2009, this permanent and autonomous body composed of 7 members elected on their personal capacity, i.e. not as representatives of their member states, has held 134 sessions, carried out 69 on-site visits, received thousands of petitions which resulted in approximately 14,000 cases, and produced several reports.

In 1965, the IACHR had its functions and authority broadened by OAS Resolution XXII which authorized it to examine petitions related to human rights cases. The American Convention on Human Rights confirmed this power in Art. 44 by determining that “Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.” Besides individuals and NGOs, state parties might also denounce other state parties’ violations provided that, according to Art. 45, the defendant state recognizes the competence of the Commission to examine these claims.

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8 The Commission was created before the American Convention on Human Rights which established the Court and the dual system.


According to the IACHR’s statistical information, more than 13,000 complaints were submitted to its appreciation from 1997 to 2009, and this number has been increasing gradually.\textsuperscript{11}

So, which states can be challenged by these complaints before the Commission? The OAS member states that have ratified the American Convention on Human Rights. All 35 independent states of the Americas have ratified the OAS Charter.\textsuperscript{12} Out of the 35 OAS member states, 25 have ratified the American Convention on Human Rights. They are: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Perú, Suriname, Trinidad and Tobago (for cases submitted to the Court until one year after May 26, 1998, when the state denounced the Convention), Uruguay and Venezuela.\textsuperscript{13}


Cuba was excluded from participation in the OAS in 1962 by 14 votes in favor, 1 against and 6 abstentions. Among the reasons why it happened, its Marxism-Leninism was considered incompatible with the purposes of the inter-American system. This exclusion was lifted in June 3, 2009. For more information, please see: Organization of American States. “Six Report on the Situation of Political Prisoners in Cuba.” December 14, 1979. Accessed on February 25, 2011. Available from \url{http://www.cidh.oas.org/countryrep/Cuba79eng/intro.htm}.

When the IACHR receives a petition, it has to inform the accused state party, examine the admissibility of the claim, verify the facts and propose a friendly settlement on the basis of respect for human rights.\(^\text{14}\) If a settlement is not reached, the Commission prepares a report on the case and makes recommendations to the defendant state in a first report.\(^\text{15}\) In a period of three months after the report is transmitted, three options are available:

a) Settlement between parties provided that human rights are respected;

b) The Commission decides by absolute majority of its members if the state has taken adequate measures according to its recommendations. A second report might be drafted offering the state more time to complete the recommendations.

c) The case is referred by the Commission to the Inter-American Court. This is only an option if the defendant state has recognized the jurisdiction of this Court.\(^\text{16}\) The member states of the OAS that have declared its acceptance of the powers of the IACtHR are: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Perú, Suriname, Trinidad and Tobago (for cases submitted to the Court until 1 year after May 26, 1998), Uruguay and Venezuela.\(^\text{17}\)

The ratification by the USA of the Convention and its acceptance of the Court’s jurisdiction would offer great support to the Inter-American system of human rights protection. However,

\(^{14}\) American Convention on Human Rights, Art. 48

\(^{15}\) American Convention on Human Rights, Art. 50

\(^{16}\) American Convention on Human Rights, Art. 62

neither of these actions was taken. This is probably due to the American policy of not submitting itself to the jurisdiction of any international courts, including the International Criminal Court (ICC), and only recognizing the Supreme Court of the United States as the highest body to examine claims. The recognition of the jurisdiction of the Inter-American Court is viewed as a compromise of sovereignty that the USA is not willing to accept, especially in human rights matters following a tradition of Brickerism.\footnote{KARNS, Margaret P. MINGST, Karen A. “The United States and Multilateral Institutions: Patterns of Changing Instrumentality and Influence.” Boston: Unwin Hyman, 1990. P. 185}

There have been recent indicators of a possible change in such international policy, at least towards the ICC, since secretary of State Hillary Clinton expressed that it was a great regret that the USA was not a member of such court.\footnote{The Huffington Post. “Clinton suggests US could join International Criminal Court”. Accessed on April 11, 2011. Available from http://www.huffingtonpost.com/2009/08/06/clinton-suggests-us-could_n_252614.html} Perhaps this could foster hopes for a future acceptance of the jurisdiction of the Inter-American Court.

\textit{The Inter-American Court of Human Rights}

The IACrtHR is “an autonomous judicial institution whose purpose is the application and interpretation of the American Convention on Human Rights.”\footnote{Inter-American Commission on Human Rights. “Statute of the Inter-American Court of Human Rights”, Preamble. Accessed November 11, 2010. http://www.cidh.org/basicos/English/Basic19.Statute percent20of percent20the percent20IA percent20Court.htm} It was established when the American Convention on Human Rights entered into force in July 18, 1978 with the 11\textsuperscript{th}}
deposit of ratification by Grenada.\textsuperscript{21} It is a non-permanent Court currently holding four regular sessions per year, composed of seven judges from the OAS member states and located in San José, Costa Rica.\textsuperscript{22}

In order to fulfill its mandate, the Court has three major roles: advisory jurisdiction, adjudicatory/contentious jurisdiction and the ability to issue precautionary or provisional measures. Combined they represent the means by which the Court can improve and protect human rights in the Americas.

The first role refers to the power to pronounce its opinion on human rights matters. Any member State, organization or any organs of the OAS listed in Chapter X of the Charter may consult with the Court on the Convention itself or on any other treaty related to the protection of human rights in America. States may even ask the Court to check their domestic laws’ compatibility with other human rights instruments.\textsuperscript{23}\textit{Exempli gratia}, as related to a consultation referent to the interpretation of the Convention requested by the IACHR, the Court was asked to clarify the question on the exhaustion of domestic remedies in case of indigents constrained by economic reasons or fear. The Court concluded that if such


\textsuperscript{23} American Convention on Human Rights, Art. 64
conditions prevented these persons from invoking domestic measures, they were not required to exhaust such remedies.  

About the scope of these advisory opinions, the Court, pronouncing on a consultation requested by Perú in September 24, 1982, recognized that “Article 64 of the Convention confers on this Court an advisory jurisdiction that is more extensive than that enjoyed by any international tribunal in existence today.” Following this statement, the IACrtHR proceeded to address the Peruvian question on the how the phrase “other treaties concerning the protection of human rights in the American states” should be interpreted. The Court concluded that it had the competence to produce advisory opinions *ratione materiae* which involves all treaties about human rights and also *ratione personae*, or in other words, treaties whose party or parties are signatory to the OAS.

Another interesting feature of the Court is that within its advisory powers, it has secured, by means of *amici curiae*, “a considerable participation by academic institutions, non-governmental organizations and individuals (…)”. This demonstrates good will towards

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other human rights groups and their opinions. From 1979, when the Court started functioning, until 2009, it had produced 20 advisory opinions.\(^{28}\)

The second role of the Court is the issuance of provisionalary measures to protect persons from irreparable damages in case of extreme gravity and urgency.\(^{29}\) According to Christian Tomuschat (2003), “the Court not only enjoys a competence to take action, but is bound to do so.”\(^{30}\) There are two moments in which the Court can perform such task:

a) When a case is before the Commission, still not under the jurisdiction of the Court. In this type of case, the Commission itself requests provisional measures before the Court which presumes them to be necessary. For instance, on July, 22, 1997, the Court was requested by the Commission to secure the life and the physical integrity of the members of the Association of Relatives of Detainees-Disappeared Persons of Colombia et al.\(^{31}\)

b) When a case is already pending under the jurisdiction of the Court. For example, in a recent decision in the Case of the 19 Tradesmen v. Colombia, the Court granted

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\(^{29}\) American Convention on Human Rights, Art. 63 (2)


provisional measures to secure, once again, the right to life and personal integrity of a child.\textsuperscript{32} 

The number of provisional measures being submitted to the Court has been increasing as it will be discussed further in this paper. Out of the 81 provisional measures adopted until 2009, 38 were being monitored.\textsuperscript{33} These facts, according to the Court’s former president Mr. Antônio Augusto Cançado Trindade (1998), attest to the development of this institution. “The granting of those measures has become an increasingly important aspect of the contemporary case-law of the Court, given the emergency relief it has secured and indeed the lives it has saved, thus demonstrating clearly the preventive function of the international protection of human rights.”\textsuperscript{34}

The third and last role of the IACrtHR is its adjudicatory or contentious jurisdiction, which grants every state party to the American Convention on Human Rights and the IACHR the right to submit cases before the Court. As previously mentioned, when petitions are initiated by individuals or NGOs, they must be first submitted to the Commission for an initial quasi judicial process. The Commission then might refer these cases to the IACrtHR. The alleged victims represented by NGOs or individuals have locus standi, i.e. the right to participate in all proceedings before the Court, but they lack jus standi, the right to have direct access to


the Court. To this date, no state has initiated a complaint against another, but 120 cases brought by the Commission on behalf of individuals were submitted to the appreciation of the IACrtHR.

Which rights can be invoked before the Court? Art. 64 of the American Convention on Human Rights establishes that the IACrtHR has jurisdiction over the human rights present in the American Convention and other treaties concerning the protection of human rights in the American states. According to the 2009 Report of the IACrtHR, the five most commonly violated rights under the Convention present in contentious claims before the Court are: a) Art. 1: Obligation to respect the rights and freedoms without discrimination – 113 cases; b) Art. 8: Right to a fair trial – 94 cases; c) Art. 25: Right to judicial protection – 93 cases; d) Art.5: Right to humane treatment and to be free from torture, cruel, inhuman, or degrading treatment or punishment – 76 cases; e) Right to personal liberty and to be free from arbitrary arrest or imprisonment – 56 cases.

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36 American Convention on Human Rights, Art. 64: “The member states of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states. Within their spheres of competence, the organs listed in Chapter X of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, may in like manner consult the Court.”

The treaties in the Inter-American system which refer to the protection of human rights are the: a) Inter-American Convention to Prevent and Punish Torture; b) Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights; c) Protocol to the American Convention to Abolish the Death Penalty; d) Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women; e) Inter-American Convention on Forced Disappearance of Persons; f) Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities. Physical integrity is the most commonly disrespected right in American Treaties. Out of the 18 articles violated by member states, 8 articles are violations in the Inter-American Convention to Prevent and Punish Torture - 45 cases; 8 articles are violations in the Inter-American Convention on Forced Disappearance of Persons - 20 cases; 2 articles are the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women - 3 cases.

When examining these claims, the Court’s procedures include the following:

a) Preliminary Objections: examination of the exhaustion of domestic remedies in case of individual human rights violations brought before the Commission

b) Merits Phase: presentation of the case by parties through written submissions

c) Public Hearing of Testimony


d) Deliberation in Private

e) Issuance of an Unappealable Decision

In case the IACtHR finds a state party guilty of violating human rights, its decision is **final and binding** i.e. states have the obligation to comply with the decision which is unappealable. This is explicitly determined by Art. 62 of the American Convention on Human Rights which states that: “A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.”

Until the early 90s, the judgments only involved financial compensation for violations. After that, the Court started to request other types of obligation from the state such as:

a) Publicly acknowledge international responsibility;

b) Offer a public apology;

c) Publish the decision in Official Gazette, newspaper of national circulation or radio broadcast the decision;

d) Build a monument or name a street, square or park on behalf of victims;

e) Designate a day in celebration of victims;

f) Conduct criminal investigations and punish offenders;

g) Nullify judicial decisions that did not follow the due process of law;

h) Adapt domestic legislation to international human rights standards;

i) Create educational courses on human rights violated, usually targeted at offenders;

j) Reimburse legal costs and fees;
k) Pay pecuniary and non-pecuniary compensations;

l) Offer scholarships to victims’ dependents;

m) Pay medical, psychological and psychiatric care for victims and their dependents;

Although, in theory, states must comply with the decision, in practice, two options are open. States can declare their intent to abide by the decision, or they can declare their refusal to comply.

The first option is set according to Art. 68 (1) of the American Convention on Human Rights which determines that “The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.” What this means is that states abide in good faith to the principle of *pacta sunt servanda* by which one complies with the obligations one previously agreed to obey.

After the judgment is passed, states enter the monitoring stage. Cases are not closed and archived until the Court has evidence of full compliance. Of the 120 cases submitted since its creation until 2009, 104 are still under the stage of monitoring compliance.

The second option, refusal to abide by the decisions, constitutes a violation of the obligations contracted by the state party. It is contrary to the Inter-American purpose since such is not a possibility contemplated on the text of the American Convention on Human Rights. In the history of the Court, only two states that have ratified the American Charter on Human

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Rights and accepted the jurisdiction of the Court have publicly declared their refusal to comply with the decision: Trinidad and Tobago and Perú. The former state did so with the purpose to retain its right to capital punishment, and the latter state did so during the Fujimori era, in an attempt to avoid compliance with future Court’s decisions.

The American Convention on Human Rights only describes how a state can accept the jurisdiction of the Court (Art. 62), and nowhere in its text does it mention how to renounce or withdraw this acceptance. Responding to the Peruvian attempt, the IACrtHR declared that “the only avenue the State has to disengage itself from the Court’s binding contentious jurisdiction is to denounce the Convention as a whole” in the form prescribed by its Art. 78, i.e. with a one-year notice. Before the denunciation is effective one year after its deposit, the state still has to comply with all the obligations it had previously agreed to. In other words, the withdrawal from the American Convention is not immediate. “Subsequently, a state consenting to the jurisdiction of the IACrtHR remains legally obligated to recognize the

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44 American Convention on Human Rights, Art. 62: “1. A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention. 2. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court. 3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.”

Court’s jurisdiction until the date that the withdrawal becomes effective.”

Trinidad and Tobago eventually denounced the whole Convention on May 26, 1998. Perú did not go that far and, during the government of Valentin Paniagua, returned to the Court’s jurisdiction.

When a state fails to comply with a Court’s decision, all the IACrtHR can do, according to Art. 65 of the American Convention on Human Rights, is continue monitoring and submit its report to the General Assembly of the OAS to discuss cases publicly and use political measures to promote obedience. “While there is no provision in the OAS dealing with the ultimate sanction of expulsion of a state from the Organization as in the Statute of the Council of Europe, the Organization’s practice with regard to Cuba suggests that there is a de facto power to exclude a government which fails to comply with its obligations under the Charter, although this is by no means firmly established at law.”

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49 American Convention on Human Rights, Art. 65: “To each regular session of the General Assembly of the Organization of American States the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations.”

III. LITERATURE REVIEW

How can the power of courts be measured? If one considers domestic courts, their power is based on the efficiency by which they perform the essential functions of conflict resolution, social control and lawmaking. National courts base their decisions on domestic laws and precedents, and they rely on the support of the state through an enforcement apparatus in the form of sanctions, civil and criminal. In simple terms, a violation is found, the judiciary passes a judgment, and the fulfillment of the requested obligations is enforced by the state.

Does this describe international courts? Doubtfully so. In the case of international human rights courts, the defendant is not an individual or an organization, but the state itself. Conflict resolution needs to take into consideration the interests and expectations of the individual who had his rights violated, of the state which failed to protect him, and of the court which represents the international community may diverge, making compliance almost utopian. Before any social control can be exerted, states need to accept the authority and jurisdiction of the international court and be willing to alter their laws to adjust international human rights standards. The lawmaking feature of these courts is constrained by power politics and the defiance of states in an attempt to preserve their sovereignty.
Measuring the political power of international courts is therefore a more complicated endeavor. The main difference between domestic courts and international courts is enforcement. While national courts count with police force and other measures to implement civil and criminal penalties, international ones depend heavily on the willingness of states to abide by decisions. Due to the lack of enforcement capacity, they will be perceived as powerful based on their ability to prove their credibility to hear cases, to constrain defendants to abide by their decisions (no matter how powerful the defendant is or how bitter the order might be) and also on the capacity to promote change toward the improvement of human rights. The question then is how to make this assessment possible for the Inter-American Court of Human Rights.

In order to answer this question, it is useful to examine the European Court of Justice (hereinafter the ECJ) and the European Court of Human Rights (hereinafter the ECHR), and then identify the measures of power that could be applied to the IACrtHR. These two European tribunals are the closest international courts to the IACrtHR, and their political power has been examined and measured. Observing some of the mechanisms through which these European international courts established their power can shed light into the Inter-American case.

The Inter-American dual system of human rights protection is a very recent one. The IACtHR, started functioning less than three decades ago,\textsuperscript{52} and there is no published analysis of its political power.

The initial question one needs to ask is if the measures of power of the international courts in Europe can be transplanted to other parts of the globe.\textsuperscript{53} Is it appropriate to measure the power of the IACtHR by observing the same mechanisms which the literature has used in the European international courts? Several characteristics make the European experience with international courts a unique one. It is marked by a tradition of strong liberal democracies and the rule of law; European member states share common social, political and legal values and also the hopes of economic integration. They have also endured the experience of two World Wars. For some authors, the ECJ and the ECHR are not to be used as models for other international courts because they owe their “success to the high level of political and economic unification among European states.”\textsuperscript{54} They argue that independent tribunals do not lead to political unification. Political unification is what enables independent tribunals to excel. According to these authors, in the absence of such unity international tribunals have better compliance ratings when they act consistently with the interests of state members.


In spite of that, a great part of the literature contends that “European tribunals have been at least the partial architects of their own success and that their experience can form the basis of a potentially universalizable model. What is needed is a theory of effective supranational adjudication, an effort to isolate the various factors that have contributed to the European success story and to identify those that can be replicated beyond Europe.”

Despite the many differences that these three courts, the ECJ, the ECHR and the IACrtHR have, not to mention the fact that the OAS and the EU can hardly be comparable in terms of regional organization, there are many similarities among the two European international courts and the IACrtHR which justify having the European experience as a reference. The Inter-American Court, like the ECHR, is in a position of hierarchy related to domestic courts. Neither of these human rights tribunals can communicate directly with national courts. All three international courts are supranational actors which lack enforcement powers and depend on the goodwill of member states to have their decision enforced. All of these courts struggle with imperfect compliance.


56 European Commission. “Treaty of Rome.” Art. 177: (...) Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgement, request the Court of Justice to give a ruling thereon. Where any such question is raised in a case pending before a court or tribunal of a Member State, against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice. Accessed on March 03, 2011. Available from http://ec.europa.eu/economy_finance/emu_history/documents/treaties/rometreaty2.pdf

Also, by looking at the history of these three international courts, one will notice that before the ECHR or the IACrtHR were created, the only international permanent court dealing with the protection of human rights was the ECJ. When the ECHR was created in 1950, cases were submitted to the European Commission of Human Rights before they reached it, a similar system as the one existing now in the Americas. The ECJ now uses the decisions of the ECHR as guidance.

Further, the inter-American system of protection of human rights was inspired by the existing model in Europe. René Cassin, father of the Universal Declaration of Human Rights and one of the legal experts who helped draft the American Convention on Human Rights, “exemplified the methods and virtues of a genuine comparison of the systems, not only sharing the accumulated wisdom of his own experience but also engaging in a self-reflective criticism based on his encounter with a different reality as well.” As it can be observed, the American Convention on Human Rights has European DNA, and so does the Inter-American Court.

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Measures of Political Power of International Courts

In addition to the question of the appropriateness of extending the European experience to other parts of the world, there are also questions about how the power of international courts can be perceived and which variables account for this success. These discussions will serve as a reference for the discussion of the power of the IACrtHR.

According to the more legalist doctrine, power is a matter of compliance. If statistics reflect the fulfillment of the judgments, there is effectiveness and the international court is relevant. But what if full compliance is still missing? Is the international court completely devoid of power if it lacks high compliance?

If one is to measure power through compliance alone, none of these three international courts, the ECJ, the ECHR or the IACrtHR can be considered powerful simply because there is no such a thing as perfect compliance in international courts. Rationally, why would member states abide by every single decision enacted by these international courts when it involves compromising their understanding of sovereignty and adopting laws and policies that go against their interests? There is no clear sanction for partial compliance with decisions allowing member states to be at the monitoring stage indefinitely.

The fact is that even when such ideal rates of compliance are missing, an international court can be considered powerful. For instance, even if compliance with the decisions of the ECJ is far from perfect, it is considered powerful because inter alia “a surprising large number of adverse ECJ decisions are followed by national governments.” 60 Accordingly, conflating the

effectiveness of international courts with compliance ratings alone is a gross mistake. As Helfer and Slaughter (2005) note, the “fundamental problem of relying on compliance as an indicator of effectiveness is that it fails to consider the nature of the commitments that states have asked the tribunal to police.”\textsuperscript{61} Undoubtedly, if numbers reveal massive compliance with an international court’s decision, this shall not be considered as a negative factor when measuring power. However, simply observing the number of decisions fulfilled does not say much about how such courts achieved such results or why states chose to abide by its decisions. The changes that a judgment requests a member state to implement might not be as demanding as one might expect (e.g. monetary compensation or public apology).

Thus, an international court’s power has to be measured in terms of effective adjudication i.e. the “power to compel a party to a dispute to defend against a plaintiff’s complaint and to comply with the resulting judgment.”\textsuperscript{62} As one can observe, this analysis is based on the perception people have of the tribunal and also the tools it has to bring positive change. It is indeed the result of a combination of a number of legal, political, social and cultural factors pushing for the protection and improvement of human rights.

Besides compliance, the literature indicates that several factors have contributed to the enhancement of the political power of the ECJ and the ECHR. The level of proficiency of jurists, their independence, incrementalism (or the ability to build on previous cases), regime


type and common legal traditions are examples of these factors. Among them, four emerge as having more leverage in accounting for the political power of international courts. They are:

a) Increase in caseload: No international court, no matter how well equipped or funded, can survive without cases. They are a reflection of these tribunals’ legitimacy, so an increase in the caseload does not only mean an increase in the number of violations which happen in a member state, but more important, an increase in the trust placed upon their authority and efficiency.

b) Legal doctrines which enhance cooperation and increase the court’s scope: Legal doctrines created and enforced by the ECJ and the ECHR served to establish the scope of their power and to motivate compliance. The doctrine of direct effect and the doctrine of EC law supremacy, paved the path to a uniform rule of law in Europe. According to the first doctrine, EC law creates rights for individuals everywhere in Europe, which can be claimed in domestic courts. The second doctrine prohibits national governments from applying domestic laws which are contrary to EC law.

The margin of appreciation doctrine and the principle of proportionality offered European states a chance to improve human rights by having cultural and political aspects taken into consideration.


c) Supremacy of international courts’ rulings over domestic courts.

d) Support by domestic courts: National courts have become the greatest advocates for the ECJ and the reaffirmation of their rulings in the national arena consolidated the principles and reasoning therein. “Disobeying an ECJ decision now meant disobeying national courts, and all the enforcement power of the national courts could be used in the enforcement of EC law.”

The examination about compliance and these four factors are the main means through which the power of European international courts can be assessed. These factors will guide this research in evaluating if the IACrtHR has political power.

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IV. THE POWER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

Even if compliance is not perfect, an international court can nevertheless be powerful. According to Helfer and Slaughter (1997), “over the past few decades, it has become increasingly clear that the ECJ and the ECHR have convinced national governments, individual litigants, and the European public to endorse and participate in frequent and often high-stakes adjudication at a level above the nation-state”67.

Other authors agree that European courts have leverage in constraining behavior and bringing change in spite of member states’ wishes. I argue that the IACrtHR is crafting its political power through some of the same means that their European siblings have. To observe if this is the case, I will assess the power of the Inter-American Court by some of the standards applied to the European international courts. If variables such as caseload increase, legal doctrines which affirm and enhance the scope of the international court, supremacy of decisions and domestic courts’ support can be observed in the IACrtHR, then this international court may not yet have the same status as the European ones, but it has the potential to achieve it.

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First, if the caseload of the Inter-American Court has been increasing, especially in the exercise of its contentious jurisdiction, it is because individuals and NGOs perceive this tribunal as legitimate for hearing their claims, producing a fair decision and constraining the behavior of member states. If the IACrtHR has been regarded as an improper and powerless venue to have rights enforced, the caseload will reflect it and decrease.

Second, if the IACrtHR produces doctrines which enhance the scope of their power and at the same time encourage compliance by being considerate of member states’ cultural and political situations, it is affirming its authority. Each of these doctrines reveals a facet of the Court’s philosophy and consolidates its scope. These doctrines are means through which the IACrtHR is engineering its power acquisition.

Third, if the IACrtHR’s rulings are superior to national rulings, it affirms a hierarchy among courts and the superiority of the international one over sovereign national supreme courts. This fact not only assures legal safety to human rights, but has a means to place the protection of human beings under a uniform standard. It is indeed recognition of the authority of the Court as the supreme interpreter of laws, and of human rights as beyond the scope of obstacles of sovereignty.

Finally, if domestic courts embrace this international court’s decisions, they not only reaffirm the superiority of the IACrtHR, but also consolidate that uniform view on how to interpret and improve human rights. The change in law and policy then comes from within the member states themselves, which institutionalize the model decision at a national level, where orders can be enforced through civil and criminal penalties.
These four variables are ways to assess the Court’s ability to build its power and pave the path for better compliance.

**Compliance at the IACrtHR**

As discussed, a first way to assess the power of international courts is to examine compliance ratings in the European courts to observe the extent to which they owe their success to these numbers. The reality is that nor the ECJ neither the ECHR count with perfect compliance. In the ECJ, from 1952 to 2009, 3420 actions were taken for member state failure to fulfill its obligations. Italy leads the non-compliance ratings with 615 cases, followed by France with 389 cases and Greece with 365 cases. I could find no information on the number of decisions passed by the court per year and by country.

The statistical information provided by the ECHR’s Annual Report in 2009 divides the numbers into pre-1998 and post-1998. This is due to the fact that until this year, contentious cases, like in the Americas, had to be submitted to the commission which had the power to decide if it should be sent to the ECHR. From 1999 on, according to Protocol 11, the

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Commission continued active for its remaining powers, but petitions started being submitted directly to the ECHR.

The ECHR does not offer complete information on compliance statistics\(^\text{70}\) leading critics to assert that it needs to “better monitor the execution of its judgments.”\(^\text{71}\) Data on the execution of judgments of the ECHR is only available since 2007.\(^\text{72}\) What can be obtained from the Annual Reports of the ECHR and its Survey of Activities are the total numbers of judgments per country, and the state of execution of cases as of December 17, 2010.\(^\text{73}\)

Although there is a lack of systematic evidence, most scholars agree that the compliance levels of the European courts is high.\(^\text{74}\) Perhaps this is due to the fact that during the initial 40 years of activity of the ECHR, if a violation of the European Convention on Human Rights was found, the court “had no power to quash the decisions of the national authorities or to

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order consequential measures." The only remedies it could award were less demanding obligations such as financial compensations for damages and reimbursement of court costs and fees, at the supervision of the Committee of Ministers. According to a quantitative study performed by Zorn and Winkle (2000), between 1960 and 1994, the ECHR examined 445 cases of which 292 violations of the European Convention on Human Rights were found (66 percent). Out of these 292 cases, in only 48 (16.4 percent) were actions initiated for noncompliance. That reveals an impressive 83.6 percent of compliance with judgments, at least until Protocol 11.

Other studies present opposite results, such as the one by Posner and Yoo (2005), who criticize the existing data as unreliable. According to these authors, in the ECJ’s case, noncompliance is difficult to assess because countries tend to conceal disobedience. Besides that, out of the 1000 petitions brought before the ECHR until 1999, only in 294 cases was domestic law changed.

Compliance numbers in Europe, as revealed by such studies and annual reports, is relative. If only financial compensations are taken into consideration, the ECJ and the ECHR count with

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massive obedience by member states. When domestic law change is examined, the support diminishes.

What is compliance like in the Inter-American Court? Chart 1, constructed from data in the Inter-American Court’s annual reports,\(^79\) shows the number of contentious cases per country, referred by the Commission to the Court until 2009. The black bars are the number of cases being monitored. The grey bars are the number of cases closed and archived.

Chart 1

![Contentious Cases per Country](chart)

Out of the 16 cases that were closed and archived, five were dismissed for being groundless. Out of the 11 remaining cases, only three required the state to change domestic law and none

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required further criminal investigation.\textsuperscript{80} Chile is responsible for two of the domestic law change cases: one involved access to information and the other censorship.\textsuperscript{81} Nicaragua is responsible for the other one in a case that involved indigenous property rights.\textsuperscript{82}

As one can observe, the three states with the highest number of claims before the Court are: Perú with 26 cases; Guatemala with 13 cases and Colombia with 10 cases. These are also the countries with the worst rates of compliance. Guatemala and Colombia have not fully complied with any of the judgments passed against them. Perú has one case closed and archived, but it was due to dismissal.

So why does Perú top the list of countries with the highest number of cases before the Court? One explanation which can be given is related to time. The country ratified the Convention in 1978 and accepted the jurisdiction of the Court in 1981. The conflict with the government’s death squad and ethnic groups happened from 1980 to 2000, so \textit{ratione temporis}, the Court has the ability to examine cases which happened during the peak of atrocities in Peruvian history. This is unlike in other Latin American states, which ratified the Convention and accepted the jurisdiction of the Court years after their dictatorships or conflicts were over.

\textsuperscript{80} Please, refer to Annex 1

\textsuperscript{81} For more information, please see: Claude-Reyes et al v. Chile and Olmedo Bustos et al v. Chile (The Last Temptation of Christ) available from: Inter-American Court of Human Rights. “Jurisprudence by country.” Chile. Accessed November 12, 2010. \url{http://www.corteidh.or.cr/pais.cfm?id_Pais=4}

\textsuperscript{82} For more information, please see: Mayagna (Sumo) Awas Tingni Community v. Nicaragua available from: Inter-American Court of Human Rights. “Jurisprudence by country.” Nicaragua. Accessed November 12, 2010. \url{http://www.corteidh.or.cr/pais.cfm?id_Pais=15}
The states with the lowest number of cases before the Court are: Costa Rica, Dominican Republic and Haiti, each with one case; Barbados, Bolivia, El Salvador and Trinidad and Tobago, each with two cases. Both states with the highest number of cases and states with the lowest number of cases before the Court have a zero rate of full compliance with judgments passed.

If one is to analyze closure due to either dismissal or full compliance, the highest number of cases are the ones in which Honduras was a defendant – three cases archived, followed by Chile, Nicaragua and Suriname – two cases each. If closure is observed in terms of proportion of cases archived per cases submitted to the Court, Nicaragua has the best record with two-thirds of its cases closed. It is followed by Chile and Suriname with 50 percent of cases closed. Argentina, Brazil, Honduras, Mexico and Perú were the defendants in the 5 dismissed cases. All the others were fully complied with the Court’s decision, which shows that Nicaragua, Chile and Suriname are the three most successful cases when compliance is measured.

Due to the fact that a case is not closed until the entire decision has been fulfilled, it is important to observe which parts of the decisions have been complied with. The 104 cases still under monitoring have parts which have been satisfied and observing the decision in parts can offer a more accurate account of the stage of compliance before the IACtHR. In general, states are reluctant to change national legislation and conduct criminal investigations and trials, two features of the judgment which could potentially bring change not only to the direct victims, but to the whole nation. Public apologies, reimbursement of judicial costs and fees and payment of pecuniary and non pecuniary damages are usually the first parts of the
decision to be fulfilled. According to the 2009 Annual Report of the IACrtHR, 81 of the costs and expenses requested have been fully or partially complied with. 83 percent of the indemnizations have been totally or partially fulfilled\textsuperscript{83}. Is compliance found in the IACrtHR? Just like in Europe, it depends on which part of the judgment one is referring to.

What’s crucial for this research is that European courts are considered powerful and successful in spite of the inflated numbers or the lack thereof.\textsuperscript{84} This leads to the conclusion that the power of international courts, or more specifically the IACrtHR, is not simply a function of compliance statistics. Other variables account for the Inter-American situation such as the ones which will be discussed below.

\textit{The Caseload of the IACrtHR}

As previously mentioned, the IACrtHR has three major mandates: advisory jurisdiction, adjudicatory/ contentious jurisdiction and the competence to issue precautionary or provisional measures. An increase in the caseload of all three aforementioned areas demonstrates an increase in the credibility of the Court. Credibility is not only a reflection of how the IACrtHR is perceived by the public, but also a measure of its power.


\textsuperscript{84} See Helfer and Slaughter (1997) and Alter (1998)
Advisory Opinions

An increase in the demand for advisory jurisdiction proves that member states are willing to use the Court’s understanding of human rights as an interpretation to be applied in either controversial or general matters. These states have the option and discretion to request the Court’s opinion or not, and the very fact that they choose to do so can be regarded as evidence of the political power of the Court. It also demonstrates that civil society places its trust in the rationale offered by the Court.

The European experience with advisory opinions is small. From 1953 until 2009, the ECJ which has “the power to interpret European Union law at the request of national courts” only issued 19 opinions. The ECHR has since 1970 only been requested to produce three advisory opinions, which according to Art. 47 of the European Convention on Human Rights can only be provided at the request of the Committee of Ministers. Out of the three requests, only two were found admissible and delivered in 2008 and 2010.


In the Americas, any member State, organization or any organs of the OAS listed in Chapter X of the Charter may consult with the Court on the Convention itself or on any other treaty related to the protection of human rights in the continent. According to Thomas Buergenthal (1985), advisory opinions “by their very nature do not stigmatize the state as a lawbreaker and permit a delinquent government to make its compliance appear to be a voluntary act.”

Similar to the European experience, from 1982 until 2009, mere 21 advisory opinions were requested from the IACrtHR. These requests have not been increasing over time, but instead, they have been quite unstable as Chart 2 demonstrates:

Chart 2

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In neither cases presented are international courts gaining more credibility because of their advisory jurisdiction. This is mainly because as time passes, the rights protected by human rights conventions and their correct interpretation become institutionalized in the state parties. Only in very controversial matters will these states feel the necessity to consult with international courts. If the caseload of advisory opinions increased over time, one would have to wonder why there is such a demand for clarification in interpreting laws according to human rights treaties. Overall, the demand in advisory opinions, although important to be observed, is not the most relevant jurisdiction in informing about the credibility of the Court.

**Provisional Measures**

Provisional measures are intended to prevent irreparable damages to persons in case of extreme gravity and urgency\(^ {91}\). They are similar to injunctions, and grant temporary relief until a final decision can be reached by a court.

In the ECJ, such instruments are called Interim Measures. These “seek suspension of the operation of measures which an institution has adopted and which form the subject-matter of an action, or any other interim order necessary to prevent serious and irreparable damage to a party.”\(^ {92} \) The total number of applications for Interim Measures before the ECJ increased from the beginning of its operations until the end of the 1980’s. There were 11 interim measures issued by the ECJ in the 1950’s, 25 in the 1960’s, 47 in the 1970’s, 178 in the

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\(^{91}\) American Convention on Human Rights, Art, 63 (2)

1980’s. The numbers decreased during the 1990’s until the last statistical report in 2009. In the 1990’s, there were 57 interim measures issued by the ECJ, and from 2000 to 2009, only 31.\textsuperscript{93} Perhaps this is due to the fact that EU law and jurisprudence has consolidated after initial years of the functioning of the ECJ and only a few new issues are left in need for Interim Measures which cannot be offered by domestic courts.

An amendment by the ECHR in its rules in July 4, 2005 introduced Rule 39 which allows the Chamber or the President, at the request of a party or any other persons concerned, to offer Interim Measures.\textsuperscript{94} In its 2005 Annual Report, the ECHR justified the introduction of this jurisdiction by referring to decisions by the International Court of Justice, the Human Rights Committee of the United Nations and, more impressively, the Inter-American Court of Human Rights. Building on these tribunals’ work, the ECHR reviewed its previous jurisprudence in Mamatkulov and Askarov v. Turkey.\textsuperscript{95} The number of applications for these measures has increased since then. In 2007, 262 measures were granted; 2008, 747; 2009, 654; and in 2010 it reached its peak at 1440.\textsuperscript{96}


The IACrtHR also has the power to concede Provisional Measures at the request of the Commission, before the case is brought to its judicial appreciation. In 2009, 10 provisional measures were requested. Out of 10, six were granted, two were rejected and two other were pending a decision.

Chart 3

In general there has been an increase in the number of provisional measures requested before the Court. Out of the 96 submissions until 2009, 38 were still active and being monitored. What does the experience of the IACrtHR with these measures reveal?

One of the most important findings one can obtain from an analysis of the Interim/Provisional Measures is that the American experience with them has been so relevant for the protection of rights that it has motivated the ECHR to adopt them through Rule 39. When the European court broadened its mandate it cited a previous recognition by the IACrtHR.

Another conclusion is that interim measures offer credibility to the power of the IACrtHR, which is not limited to issuing only final decisions, but has the ability to protect human rights while such are impending. An increase in usage of these measures means that the Court is increasingly assuring the people in the Americas that urgent reparations are not a simple possibility, but a reality.

Adjudicatory/Contentious Jurisdiction

Adjudicatory/Contentious jurisdiction is the most important mandate of any court. It refers to the ability to solve disputes between a plaintiff and a defendant, and restore the injured party. In human rights matters, international courts can not only extend a hand to injured plaintiffs, but also request the defendant states to correct their behavior and prevent future infractions from happening.

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The usage of contentious jurisdiction by European international courts has been increasing with time. The contentious jurisdiction of the ECJ is measured by the number of direct actions which has continued to boost since the beginning of its activities.\textsuperscript{98} It started at mere four applications in 1953, and during the 1950’s, this court examined a total of 142 actions. This number increased in the 1960’s to 407, in the 1970’s to 1892 and in the 1980’s to 2213. In the 90’s the number decreased to 1773, but increased again from 2000 to 2009 to 2038.\textsuperscript{99}

Likewise, the number of applications allocated to a judicial formation in the ECHR has also been increasing from 8,400 in 1999 to a peak of 61,300 in 2010.\textsuperscript{100}

If the ECHR is to be observed when it worked under the same Inter-American dual system, one needs to take into consideration the first years of activity of the ECHR. According to the Survey of Forty Years of Activity of the ECHR, from 1959 until 1998, there were 45,000

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The statistical information provided by the ECHR’s Annual Report in 2009 divides the numbers into pre-1998 and after-1998. This is due to the fact that until this year, contentious cases, like in the Americas, had to be submitted to the Commission which had the power to decide if the case should be sent to the ECHR. From 1999 on, according to Protocol 11, the Commission continued active for its remaining powers, but petitions started being submitted directly to this court.

Since the IACrtHR started functioning until 2009, it has judged 120 contentious cases, and the number of submissions has increased according to Chart 4:

Chart 4


By comparing the first years of functioning of the ECJ, the ECHR and the IACrtHR, one will observe similar patterns of increase. A shy rise in the first decade, followed by a non-constant but strong one in the following years. What do these numbers reveal?

The increase in the number of cases being submitted to the IACrtHR reflects an increase in the number of cases brought before the Inter-American Commission. Due to the fact that the IACrtHR is a Court of last resort, the conclusions one can make are that: a) Human rights protection by the law of member states is insufficient, which leads individuals to recourse to this Court; b) Domestic courts sometimes are not enough to grant rights to citizens or they rule in a different manner than the IACrtHR considers proper; c) the people in the Americas have come to trust the IACrtHR as an efficient venue to have their human rights fulfilled.

It may be possible that all of these conclusions are correlated with the increase in caseload of the Court. However, the last conclusion is the most important if one is looking for evidence of the credibility of the Court. If trust on the IACrtHR was considered to be lacking thereof, individuals and NGOs would not be increasing the use of this channel to promote the protection of rights. The lack of human rights protection in member states or the inefficiency of their domestic courts cannot alone motivate plaintiffs to bring cases before the Commission and then the Court. The rise in the number of contentious cases shows that the IACrtHR is perceived as an authoritative and legitimate venue to find justice.

The increase in the number of advisory opinions, provisional measures and contentious cases by the IACrtHR follows a similar pattern as the ones in the ECJ and the ECHR. Although the number of advisory opinions has not increased, the number of provisional measures and also the number of contentious cases has increased. If an increase in the caseload of European

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Courts is perceived as a positive factor in the perception of effective of those tribunals, the same can be said about the IACtHR.

_Doctrines and Landmark Cases_

ECJ Doctrines and Landmark Cases

The success of the ECJ as a supranational court is due, in great part, to its own efforts, despite of the desires of member states.\textsuperscript{103} These efforts are evident in the consolidation process of two main doctrines enforced by the ECJ: The doctrine of direct effect of EU Law and the doctrine of supremacy of EU Law which were affirmed and reaffirmed through a number of landmark decisions.

In deciding a case known as Van Gend and Loos in 1963, the ECJ established the doctrine of direct effect. The issue involved the proper application of Art. 12 of the Treaty of Rome which prohibits member states from introducing “any new customs duties on imports or exports or any charges having equivalent effect, and from increasing those which they already apply in their trade with each other.”\textsuperscript{104} The Court ruled that such article was “applicable without any preliminary incorporation in the national legislation of Member States (...) Infringement of it adversely affects the fundamental principles of the Community,

\textsuperscript{103} ALTER, Karen J. “The European Union’s Legal System and Domestic Policy: Spillover or Backlash?” _International Organization_, Vol. 54, No. 3, Legalization and World Politics (Summer,2000): 489-518. p. 491

and individuals as well as the Community must be protected against such infringements.”

Besides clarifying the scope of the law, this decision “made the Treaty of Rome a constitutional document that created immediately enforceable rights for private actors and higher-order legal obligations for governments.” It is a great conquest for mankind when international human rights can be claimed in national courts, which possess enforcement mechanisms that go beyond mere reliance on cooperation.

In 1964, in Flaminio Costa v. ENEL, the ECJ once again produced a groundbreaking decision in the issue of compatibility of national laws with the Treaty of Rome. It determined that community law has precedence over national law. According to the understanding of the Court, “this provision, which is subject to no reservation, would be quite meaningless if a State could unilaterally nullify its effects by means of a legislative measure which could prevail over Community law.”

The two decisions described above mark the birth of the doctrines of direct effect and the doctrine of EU law supremacy. They establish the supremacy of EU law over domestic law.

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and the ECJ as the supreme court to dictate its application. These doctrines were later confirmed in several other decisions.\(^{108}\)

Why did member states not push to reverse the two aforementioned doctrines and blocked national courts from enforcing decisions against their interest? Did they ever notice the threat that was being institutionalized against their sovereignty? In fact, they did. Alter (1998) notes that in the early years of the EU, whenever an unwanted legal decision was made, national politicians tried to find a way to circumvent it through extralegal means. “They asserted the illegitimacy of the decisions in a battle for political legitimacy at home, instructed national administrations to ignore ECJ jurisprudence, or interpreted away any difference between EC law and national policy.”\(^{109}\) However, the moment that national courts started enforcing ECJ’s jurisprudence, those avenues no longer worked.

It is through these doctrines, more specifically their consolidation in landmark cases and the support by national courts that the political power of the ECJ was solidified.

**ECHR Doctrines and Landmark Cases**

The ECHR did not adopt the doctrine of direct effect or the doctrine of supremacy of European Convention. According to Carl Lebeck (2007), “The absence of any direct effect has been a way to avoid conflicts between domestic legal systems and the requirements of

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the European Convention on Human Rights.” Moreover, the Court’s website informs that because the Convention has been incorporated into national law, domestic courts must support and apply this Law, otherwise, “the European Court of Human Rights would find against the State in the event of complaints by individuals about failure to protect their rights.” This accountability by the ECHR is performed through the Margin of Appreciation doctrine and the Proportionality doctrine.

The Margin of Appreciation refers to “the latitude a government enjoys in evaluating factual situations and in applying the provisions enumerated in international human rights treaties.” It takes into consideration the particularities of a member state, its culture, traditions and political situation when applying European human rights standards.

In 1976, the ECHR confirmed this doctrine in a decision in Handyside v. UK, a case which involved censorship in a children’s book and freedom of expression. The Court pronounced: “The domestic margin of appreciation (...) goes hand in hand with a European supervision. Such supervision concerns both the aim of the measure challenged and its necessity; it covers

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The doctrine was adopted by the European Convention of Human Rights in articles 5, 6, 8 – 11, 14, 15 and Art. 1 of the First Protocol.
not only the basic legislation but also the decision applying it, even one given by an independent court.”

By affirming the margin of appreciation, the ECHR is offering member states a range within which the application of human rights will be acceptable. This reflects its understanding and tolerance of cultural diversity at the same time it lures member states to slowly adapt to the European standard. By offering flexibility in the enforcement of human rights, the court is encouraging compliance. What can be viewed as lenience to some may be a demonstration of this court’s attempt to attract support.

The Doctrine of Proportionality refers to the balance that must exist between the rights of an individual and the interests of the community. According to this principle, guaranteeing a human right to a person involves considering him as part of a society to which he belongs. It was implicitly mentioned in the first judgment of the ECHR – Lawless v. Ireland, and then explicitly in the Belgian Linguistic case, in Handyside v. UK and in Sunday Times v. UK.\(^\text{115}\)

The Sunday Times case involved freedom of expression. The famous newspaper published a number of articles informing the public of a marketed drug which had caused deformation in babies. The attorney-general of the UK obtained an injunction to block the publications and stop the results of the research from being disseminated. The newspaper presented its claim before the ECHR which decided that the social need in the matter was not “sufficiently


pressing to outweigh the public interest in freedom of expression.”\textsuperscript{116} In other words, the potential negative effects of the publication of the article were not enough to justify a constraint in the right to freedom of expression.

The doctrine of proportionality reflects a relative tolerance of the ECHR in terms of granting fundamental rights to individuals \textit{vis à vis} the social interest. It understands that there is a greater scenario to be considered in the protection of human rights. By being proportional, this court is demonstrating that once again it is taking social imperatives within a member state into consideration.

\textbf{IACrtHR Doctrines and Landmark Cases}

Can these European doctrines or similar ones be found within the IACrtHR? Their presence can demonstrate that the Inter-American Court is attempting to consolidate its power through similar avenues to the ones used in Europe.

- The IACrtHR and the Margin of Appreciation Doctrine

In 1984, Costa Rica asked the Inter-American Court for an advisory opinion on proposed amendments to provisions of naturalization in its constitution. The member state wanted the Court’s opinion on the compatibility between the amendments and the American Convention

http://cmiskp.echr.coe.int/tkp197/view.asp?item=3&portal=hbkm&action=html&highlight=sunday percent207C percent20times&sessionid=66239262&skin=hudoc-en
on Human Rights, especially Art. 29 which prohibits the restriction of the enjoyment and exercise of human rights.

The Court affirmed in its advisory opinion OC-4/84 regarding amendments to the naturalization provision of the Constitution of Cost Rica, that “it is possible to identify circumstances in which considerations of public welfare may justify departures to a greater or lesser degree from the standards articulated (…). One is here dealing with values which take on concrete dimensions in the face of those real situations in which they have to be applied and which permit in each case a certain margin of appreciation in giving expression to them.”117

The IACrtHR explicitly incorporated the margin of appreciation doctrine. It declared in the above case that states did enjoy this margin when deciding on matters of the acquisition of nationality118 and concluded that the amendments in question did not violate the Convention and did not constitute discrimination.

Just like in the European case, this demonstrates the flexibility of the IACrtHR in producing decisions and jurisprudence which offer the member state a margin within which their compliance can be considered acceptable. This recognition is encouraging and reflects a maneuver used by the Court to attract obedience.


The IACrtHR and the Doctrine of Proportionality

According to Yutaka Arai-Takahashi (2002), the doctrine of proportionality was implicitly incorporated into limitation clauses in the American Convention on Human Rights. According to these clauses, restrictions on the exercise of human rights can only be permitted to justify legitimate public purposes.\(^{119}\)

In 1985, the government of Costa Rica once again asked the Court to produce an advisory opinion on the issue of compulsory membership prescribed by law in order to practice journalism. The Court did not mention the concept of proportionality explicitly, but in examining the matter, it considered that the restrictions on freedom of expression must be necessary to ensure certain legitimate goals, and not simply useful\(^{120}\). It then decided that the compulsory licensing of journalists was in violation of Art. 13 of the American Convention on Human Rights.

In determining if the full exercise of a certain human right can be compromised, the Court considered both the individual right and the social imperative in asserting it. Proportionality is a demonstration of the IACrtHR’s broad understanding of the necessity to protect individual human rights given the collective interest.

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The IACrtHR and the Duty to Punish Doctrine

The doctrine of direct effect, just like in the ECHR, was not incorporated by the Inter-American system as it exists in the ECJ. Although some member states of the OAS have ratified the American Convention, which is an explicit commitment to protecting and enforcing the rights therein, the OAS does not have enough unity to demand the direct effect of its laws at a national level. In spite of the absence of this doctrine, another very similar one was created by the IACrtHR and it can serve as an adaptation to the Inter-American context. It is the Duty to Punish Doctrine.

According to Fernando Felipe Basch (2007), “the court's duty to punish doctrine not only governs states' international responsibility for human rights violations and victim redress in a traditional, compensatory approach, but also asserts that offenders must be punished. This approach applies to cases of grave human rights violations, as well as to every violation of any of the rights protected by the American Convention.”

The doctrine was established in Art. 2 of the Convention, and declared in the very first contentious decision of the Court in 1988. In 1981, Manfredo Velásquez, a student at the National Autonomous University of Honduras, “was violently detained without a warrant for

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122 Inter-American Commission on Human Rights. “American Convention on Human Rights – Pact of San José, Costa Rica.” Art. 2: “Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.” Accessed February 10, 2011. http://www.cidh.org/basicos/english/Basic3.American percent20Convention.htm
his arrest by members of the National Office of Investigations (DNI) and G-2 of the Armed Forces of Honduras.” He was accused of political crimes and subjected to “harsh interrogation, cruel treatment and torture.”\(^{123}\) Officials denied that the plaintiff had been detained. He was never found.

The judgment of 1988 declared that the government of Honduras was responsible for the violation of the rights of personal liberty, humane treatment and life, and condemned the state to pay compensation to the next of kin to the victim.\(^{124}\) The Court determined that according to Art. 1 of the Convention, member states have the duty to ensure that the exercise of the rights in the convention to every person under its jurisdiction. “As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.”\(^{125}\) The judgment was fully complied with.

As of 2009, the duty to punish doctrine was reaffirmed in several other contentious cases before the IACrtHR such as Godinez Cruz v. Honduras, 19 Tradesmen v. Colombia and Tibi v. Ecuador. Among such cases, Bulacio v. Argentina can be considered as the stepping stone


in the consolidation of the scope of the duty to punish doctrine. In 1991, the Argentine Federal Police conducted a massive detention of more than 80 persons around the stadium Club Obras Sanitárias de la Nación during a rock concert. 17 year old Walter David Bulacio was arrested, taken to the local police station and beaten during interrogation. He died because of the injuries.\textsuperscript{126}

The government of Argentina was declared guilty of violating the rights of life, humane treatment, personal liberty, child rights, fair trial and judicial protection. The Court then requested the state to complete an investigation, adjust domestic law to international human rights laws, publish the decision in its daily gazette, pay compensation for pecuniary and non pecuniary damages and pay for legal costs and expenses. As of 2008, the State had only partially complied with the order to continue investigation and change domestic laws.

The most striking feature of this case, however, was not the change and compensation it brought for the victims against the state of Argentina, but the definition of the scope of the duty to punish doctrine. According to Basch, three main issues were clarified in Bulacio:\textsuperscript{127}

a) The duty to punish doctrine encompasses and is not limited to gross violations. It refers to every human right recognized by the Convention.


b) The doctrine rejects any domestic legal provision or institution which is perceived as an obstacle to the full exercise of human rights or that impedes the investigation and punishment for violations.

c) When the rights of plaintiffs and defendant member states are in conflict, the former have primacy.

The duty to punish doctrine is a variation of the direct effect doctrine, adapted to the American reality. Every right contained in the Convention or the other treaties establish human rights which are entitled to recognition and protection in the national jurisdictions. This is affirmed by Art. 1 of the Convention and confirmed by the duty to punish.

- The IACrtHR and the Supremacy of the American Convention on Human Rights and treaties over national laws

Just like the ECJ, the IACrtHR affirms that the American Convention on Human Rights and international treaties take precedence over domestic laws. In several decisions it not only explicitly declared so, but went as far as demanding that the member state adjust its legislation to fit international human rights standards.

Of the 120 contentious cases decided until 2009, the Court requested member states adjust domestic laws to international human rights standards in 24 cases.\(^\text{128}\) 4 of these decisions

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\(^{128}\) The request to adapt domestic laws appeared in 24 judgments until 2009. The cases were (in alphabetic order by member state defendant): Argentina v. Bulacio (partial compliance), Argentina v. Kimel (complied), Chile v. Claude Reyes (complied), Chile v. The Last Temptation of Christ (complied), Chile v. Palamara (no compliance), Dominican Republic v. Yean and Bosico Girls (no compliance), Ecuador v. Zambrano Velez (complied), Guatemala v. Bacama Velasquez (no compliance), Guatemala v. Dos Erres Massacre (2009)
were passed in 2009 and still need time to be implemented. In 5 of the judgments, the request to adapt domestic legislation was fully complied with. In 2, the request was partially complied with. In the remaining 13, the adaptation has not occurred.

Paniagua Morales et al. v. Guatemala was the first case in which the Court requested domestic legislation adaptation. It involved torture, arbitrary detention and the murder of 11 victims who were abducted in a white van by the police during 1987 and 1988. The state of Guatemala was declared guilty of violating the rights to life, to humane treatment, to personal liberty, to a fair trial and to judicial protection. The Court requested the state to pay pecuniary and non pecuniary damages, investigate facts, transfer mortal remains, reimburse Court costs and fees and change domestic law. The Court considered that: “in accordance with Article 2 of the Convention, Guatemala must implement in its domestic law, the legislative, administrative and any other kind of measures that are necessary in order to adapt Guatemalan legislation to the provisions of the Convention on the rights to personal liberty, to a fair trial and to judicial guarantees, in order to avoid cases such as this one in the future.”

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Although such adaptation of domestic law is still to be implemented, the IACrtHR declared that it had the power to monitor the duty of member states to adapt their legislation and to request it in judgments. Hitherto, there were 5 judgments which requested domestic law adaptation which were fully complied with. They promoted improvement in the rights of freedom of expression (Argentina), access to information (Chile), censorship (Chile), criminal procedure (Ecuador) and property rights (Nicaragua).

As an example, on Kimel v. Argentina, the IACrtHR established a landmark precedent against insult laws and for freedom of expression. Eduardo Kimel, a journalist who specialized in the political history of Argentina, published a book called “La Masacre de San Patricio” revealing his research on the murder of five clergymen. A judge who was implicated in the case sued Kimel for libel. The journalist was convicted and sentenced by Fourth Court of the National Appeals Chamber for Criminal Matters to one year imprisonment and payment of twenty thousand pesos in damages.

Kimel presented the case before the Commission which directed it to the Court. The IACrtHR 2008 requested the State to remove all criminal records, reimburse legal costs and fees, hold a public acknowledgment of responsibility and change domestic legislation. Two features make this case interesting on the matter of national law adaptation:

http://www.corteidh.or.cr/docs/supervisiones/panigua_27_11_07_ing.pdf

http://www.corteidh.or.cr/docs/casos/articulos/seriec_177_ing.pdf
a) The IACrtHR, in considering access to justice, built on a previous case it had decided – Castillo Petruzzi v. Perú, and reaffirmed that “the formalities inherent to certain branches of domestic law do not apply under International Human Rights Law, the main purpose of which is the due and adequate protection of such rights.”

Although Perú has still not complied with the request to its change domestic law, the Court did not feel intimidated in citing the case and pushing for improvement. This is evidence that the IACrtHR stands by its decisions and is capable of judging uniformly in spite of non-compliance.

b) The Argentinean state acknowledged its failure by declaring: “the lack of sufficient accuracy in the criminal legislation punishing defamation and preventing the infringement of the right to freedom of thought and expression entails the State’s failure to comply with the obligation to adopt domestic measures as provided for in Article 2 of the American Convention on Human Rights.” The Court then ordered the state to bring its domestic laws in conformity with the international human rights standards by eliminating the lack of accuracy with regard to defamation and libel so that the full exercise of the rights of freedom of thought and expression could be exercised. Argentina fully complied with that request.

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One could observe such facts and argue that changes in domestic laws happened because they were in the self-interest of the state. However, it is important to emphasize that the IACrtHR is a Court of last resort. Before cases are examined by it, they need to have exhausted all possible domestic avenues. A member state that was in favor of changing its laws would have settled with the injured parties and amended its laws before it reached the Inter-American Court.

The very fact that the Court had to request the change in domestic law is evidence that the member state would not have done otherwise. This is a demonstration of the power of the Court. It did cause improvement in human rights by establishing the supremacy of the Convention and the Court.

So far, this paper examined compliance, the increase in caseload, doctrines and landmark cases and the supremacy of the American Convention. The next part of the paper discusses the last proposed variable, which is the reception of judgments and doctrines of the IACrtHR by domestic courts.

Domestic Court’s Support – the IACrtHR v. Amnesty Laws

Monica Feria Tinta (2000) points out that “A crucial aspect of the law concerning the international protection of human rights is its relationship with domestic legal systems. Whether it is a case of domestic courts having to take into account international law in their

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decisions or of international courts having to scrutinize domestic rulings and assess their fitness under international law, the relationship between national and international courts often does not appear to be an easy one; clashes seem unavoidable.\textsuperscript{137}

In the case of the ECJ, member states intended to create a court which would not compromise their sovereignty and interests, and they attempted to retain control through every means possible. However, the moment that national courts started enforcing international jurisprudence against their own governments, those avenues no longer worked.\textsuperscript{138} The same can be said about the ECHR\textsuperscript{139}.

So, do domestic courts in the OAS support the IACrHR’s decisions? Do they acknowledge the Court’s right to interpret international human rights? Such questions can be answer positively if one can find evidence of domestic courts in the Americas citing the IACrHR’s judgments to overturn previous precedents or to declare the illegality of certain established laws which go against the Pact of San José.

The confidence by which one can affirm the presence of domestic court’s support for the IACrHR is directly linked to the seriousness of the matter in question and the self interest of the state. If the matter is considered unimportant by the member state, the rebuttal to the presence of support would be that the country probably would have implemented such


change anyhow because the change, besides satisfying the international standard, does not conflict with the country’s self interest.

In order to avoid all of these possible counterarguments, I examine how the IACrtHR, with the support of domestic courts, is on the path of eliminating Amnesty Laws in the Americas. The choice of theme satisfies the relevance requirement because it reveals a matter that is not easily eliminated from domestic laws for it exposes the military and former government leaders to possible prosecution. For this reason, it would be hardly plausible to affirm that eliminating amnesties has the support of the state.

Even if one claimed that it was within the self-interest of a newly elected government to punish the previous administrations for its mistakes, the fact that allowing it to happen through the elimination of Amnesty Laws can bring instability not only to the adversary, but also to the current administration.

Domestic courts have the option to rely on the international court’s decision or not. By doing so, they are recognizing its superiority. If supreme courts cite such decisions to justify a modification in established national precedents and laws, what would prevent future requests to adapt domestic laws from following the same path? In fact, once the gates of domestic court support have opened, it becomes difficult to justify additional changes from following the same path.
Amnesty Laws in Latin America

The transition towards democracy is a topic which is of high interest to many authors focusing in the Americas. Pion-Berlin (2001) affirms that “[a]ll South American authoritarian regimes were military in nature. Thus transition from dictatorship meant military extrication from office and consequently foreshadowed a large military role in the transition particularly because they would be blamed for the regime’s failures and crimes, these armed forces found added incentive to manipulate the transition in order to secure protection from retribution for themselves and their members before exiting.”

One of the several ways the military secured its privileges was by negotiating Amnesty Laws. They were passed in Argentina, Brazil, Chile, Paraguay, Perú and Uruguay. Most were regarded as a necessary means to achieve peace and to promote understanding. What they actually promoted was an unjust and unreasonable protection offered to criminals and a blockage to the right to truth of the family members of thousands of victims of human rights atrocities.

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Barrios Altos v. Perú before the Inter-American Court of Human Rights

When Alberto Fujimori became the president of Perú in 1990, he faced the difficult tasks of controlling “incipient hyperinflation and massive insurrectionary violence.”142 The country was plagued by armed insurrections, brought by the conflict among the communist party of Perú – Shinning Path (“Sendero Luminoso”), the Tupac Amaru Revolutionary Movement and the National Intelligence Service (“Servicio de Inteligencia Nacional”) represented by the paramilitary death squad group “La Colina.”

Fujimori aggressively combated the guerrilla movements. In 1992, the president promoted a self-coup which counted with approval ratings of 82 percent of the population.143 According to the Truth and Reconciliation Commission Report on the conflict between guerrilla movements and the state, from 1980 to 2000, more than 69,280 victims were killed of which 79 percent were peasants and 75 percent had Quechua or other native language as their mother tongue. The conflict also “caused enormous economic losses through the destruction of infrastructure and deterioration of the population’s productive capacity, and came to involve the society as a whole.”144

One episode of such violence is the one described by the Barrios Altos v. Perú case before the Inter-American Court of Human Rights. According to the merits judgment of the


Court\textsuperscript{145}, on November 3, 1991, the residents of the poor neighborhood Barrios Altos in Lima were having a \textit{pollada}, a party to collect funds to repair a building. At approximately 11:30 pm, six heavily armed individuals came out of two police cars, invaded the building forcing residents to lie down. The individuals fired at them for about two minutes, killing 15 and injuring four. The attackers were later identified as belonging to La Colina, and the attack was considered a retaliation against the Shinning Path.

The case would not be investigated until 1995, when prosecutor Anna Cecilia Magallanes accused five army officers of being responsible for the massacre. Among these officers were some who had already been convicted for the “La Cantuta massacre”.\textsuperscript{146} The formal investigation was then started by Judge Antonia Saquicuray before the Sixteenth Criminal Court in Lima.

Following the indictment, a number of political and legal maneuvers blocked the prosecution. First, the Supreme Military Courts prevented these men and other senior military officers from giving statements before any judicial organ other than a military court. The military courts then “filed a petition before the Supreme Court claiming jurisdiction in the case, alleging that it related to military officers on active service.”\textsuperscript{147}


In 1995, even before the matter could be examined by the Peruvian Supreme Court, Fujimori was reelected and passed Law 26.479 granting amnesty to all members of security forces and civilians undercover as a consequence of the fight against terrorism, during the period of May 1980 to June 14, 1995. After the president was sworn into office, he asked for a minute of silence and declared: “We must pacify our hearts, and forget the past and honor the memory of all of our deceased, because all of us, right or wrong, are Peruvians! The amnesty law is necessary to build peace, and so Peruvians must not look back but instead to the future.”

After the law was passed, Judge Saquicuray, following her constitutional imperative not to apply laws which are contrary to the Constitution, decided to continue with the case and convicted those she found responsible for the massacre. The sentence was appealed by defendants’ lawyers and taken before the Lima Superior Court. Again, before the matter could be decided, Law 26492 was passed declaring that no Amnesty Laws were to be revised judicially, expanding the existing protection to all members of the military, police and civilian officials. The sentence by the lower court judge was overturned, and the constitutional standing of Amnesty Laws in Peru was affirmed.

On June 30, 1995, the Inter-American Commission received a petition regarding the Barrios Altos case. On July 9, 1999, the state of Peru deposited with the General Secretariat of the

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Organization of the American States (OAS) a declaration of withdrawal of the recognition of the jurisdiction of the Inter-American Court of Human Rights (IACtHR), in an attempt to avoid having to comply with the decision of the Court in several cases being examined by it, including Barrios Altos.\^151 The Court affirmed that its jurisdiction had already been asserted and rejected the withdrawal declaring that in case Perú decided to stand by its decision, it would have to denounce the whole Convention as Trinidad and Tobago did in May 26, 1998,\^152 besides having to wait one year before such “withdrawal could take effect, for the sake of juridical security and continuity”\^153 according to Art. 68 (1) of the American Convention on Human Rights. Perú would not go that far. On June 8, 2000, the Commission referred the Barrios Altos case to the IACtHR.

After such attempts to block prosecution, Fujimori fled to Japan because of a corruption scandal. The Congress elected Valentin Paniagua president and Perú started a transition toward democracy, formally reaffirming its acceptance of the jurisdiction of the IACtHR.\^154

In examining the Barrios Altos case, the IACtHR found the state to have violated the right to life, the right to humane treatment and the rights to a fair trial and judicial protection


established by the American Convention on Human Rights. In a judgment of November 30, 2001, the Court approved the agreement on reparations accorded by Perú and the victims, requested the state to pay for the healthcare expenses and education of the victims and their next of kin, publish part of the judgment through radio, TV and newspaper in national broadcast, erect a monument on behalf of the victims, publish the judgment in official gazette, initiate the procedure to sign and ratify the International Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, and most importantly, the IACrtHR declared Amnesty Laws ineffective and incompatible with the Convention.155 In fact, since the merits phase, the Court had already declared that Amnesty Laws lacked legal effect and could no longer continue to block investigation and the right to truth, and prevent justice.

The decision will celebrate its 10th anniversary this year and the case is still under monitoring. According to the latest examination of compliance conducted in November 20, 2009, the state had fully complied with its obligation to acknowledge responsibility and build a monument; it had partly complied with the obligations to conduct criminal investigation, locate mortal remains, publish decision in official gazette, create education programs and pay compensation for pecuniary damages.156

The lack of total compliance by the state of Perú may be considered evidence of the lack of power of the Court to compel change. Also, the fact that the member state has not formally


declared its Amnesty Laws invalid can be seen as an act of defiance. However, there are four main effects brought by the judgment which contradict this argument.

First, Barrios Altos v. Perú and La Cantuta v. Perú before the IACrtHR provoked international outcry to the extent of having Fujimori extradited by Chile, and prosecuted and convicted by the Peruvian Supreme Court and sentenced to 25 years of imprisonment for corruption and human rights abuses. It was the first time a democratically elected president had been found guilty of such crimes in his own country. Together with the former dictator, other military leaders and officials were sentenced for the massacres which happened during his administration. 157

Second, the Court did not feel intimidated to cite its Barrios Altos judgment in other cases brought before it against Perú. 158 This fact was acknowledged by Samuel Abad Yupanqui, an expert witness in La Cantuta v. Perú and an expert in Peruvian constitutional Law, who regarded Amnesty Laws in Perú as legally invalid. He affirmed that Barrios Altos “definitely opened […] the way towards justice […] in all the remaining cases.” Therefore, “the fact that the amnesty laws have not been formally abolished does not prevent the judges from investigating and punishing those held responsible, since in Perú all judges have the constitutional power to give prevalence to the constitution over the laws, and consequently

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they are authorized not to apply amnesty laws.“\textsuperscript{159} Thus, according to the Court, there is no need for formal removal of these laws by the state of Perú. This is the reason why the Court chose to declare such laws invalid and not request the member state to do so.

Third, Barrios Altos was cited as a precedent in decisions of the IACrtHR against other states. In the case of Almonacid-Arellano et al. v. Chile, Amnesty law DL 2191 was passed on April 19, 1978 during the Pinochet years, making no distinction between common crimes and politically motivated crimes. It declared in its preamble that such law’s purpose was to “strengthen the ties that bind Chile as a nation, leaving behind hatred that has no meaning today, and fostering all measures that consolidate reunification of all Chileans.”\textsuperscript{160} In this case, the Court followed the same line of reasoning as in the Peruvian case to declare the lack of legal validity of self-amnesties.\textsuperscript{161} The same happened in Hilaire, Constantine,


Benjamin et al. v. Trinidad and Tobago\textsuperscript{162}, and more recently in Gomes Lund et al. v. Brazil.\textsuperscript{163}

In the Chilean case, amnesty laws were never formally derogated, but national courts offered their support for the decision of the IACrtHR. Trinidad and Tobago, as previously mentioned, withdrew its ratification of the Convention and its acceptance of the jurisdiction of the Court. In the Brazilian case, unlike any of the previous cases, the member state attempted to avoid the jurisdiction of the Court \textit{rationetemporis}. Brazil ratified the American Convention on Human Rights in 1992 and accepted the jurisdiction of the Court in 1998. The crimes examined by the Court which are insulated by Amnesty Laws happened during the dictatorship years (1964 – 1985), so technically, the Court could not adjudicate disputes which happened before the American Convention was ratified by the State or the jurisdiction of the Court was accepted.

In the midst of the legal battle, the Brazilian Bar association requested the Brazilian Supreme Court to reexamine Amnesty Law 6683/79. The Supreme Court declared in April 29, 2010 by 7 votes against 2 that it was the not up to the Judiciary to remove the law which had been passed in a special political context. On the same lines of justification usually traced to

\textsuperscript{162} Inter-American Court of Human Rights. “Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago

promote and support Amnesties, this court declared that “only a superior society qualified by the most elevated sentiments of humanity is able to forgive.”\footnote{Supremo Tribunal Federal. “STF é Contra Revisão da Lei de Anistia por Sete Votos a Dois,” April 29, 2010. Accessed in February 15, 2011. \url{http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=125515}}

The heart of the counterargument to the \textit{ratione temporis} claim and also to the decision of the Brazilian Supreme Court is the right to truth, recognized by the U.N. Human Rights Council as inalienable and essential to end impunity and promote respect for human rights in situations involving missing persons, forced disappearances, and other serious or gross human rights violations.\footnote{Open Society Justice Initiative. “Amicus Curiae Submission in the Case of Gomes Lund and Others v. Brazil.” p. 4. Accessed in February 15, 2011. \url{http://www.soros.org/initiatives/justice/litigation/brazil/araguaia-amicus-english-20100601.pdf}}

The Inter-American Court, in a historical ruling on November 24, 2010, declared that the sections of the Brazilian Amnesty Law which impede the investigation and prosecution of serious human rights violations are incompatible with the American Convention on Human Rights, lack legal effect, cannot continue to block investigation and punishment, and cannot have further impact on any other cases of human rights violations in Brazil.\footnote{American Court of Human Rights. “Caso Gomes Lund e outros ("Guerrilha do Araguaia") vs. Brasil. Sentença de 24 de Novembro de 2010 (Exceções Preliminares, Mérito, Reparações e Custas).” p. 114. Accessed in February 15, 2011. \url{http://www.corteidh.or.cr/docs/casos/articulos/seriec_219_por.pdf}} Again, the Court did not request the member state to act on it. It simply refused to accept the legality of such laws and declared them ineffective. According to the International Center for Transitional Justice, this decision “vindicates the families of the disappeared, civil society leaders and pioneering prosecutors who have affirmed for decades that the 1979 amnesty
cannot be interpreted as protecting military agents who committed serious human rights abuses.”

The fourth and final effect brought by the IACrtHR’s fight against Amnesty Laws is the support given by domestic courts to the international judgment. In Argentina, Law 25779/2003 nullified 2 amnesty laws known as the “full stop law” (law 23492/86) and the “due obedience law” (law 23521/87) which had been established to protect the military from being prosecuted for crimes which happened during the dictatorship. On June 14, 2005, the Argentine Supreme Court, by 7 votes against 1, struck down such laws by citing the Barrios Altos case as a legal precedent. It justified that: “The laws of full stop and due obedience present the same vices which led the Inter-American Court to reject the Peruvian Laws of ‘self amnesties’.”

The reliance on the jurisprudence and authority of the IACrtHR can also be found in Uruguayan courts. Law 15.737 of 1985 granted amnesty to all political, civil and military crimes committed from January 1st, 1962.

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15.848, known as Expiry Law or Ley de Caducidad. It established a statute of limitations for punishing crimes committed by the military and the police until March 1, 1985.\textsuperscript{171}

These laws were controversial not only legally but they also divided public opinion. There were two referendums consulting Uruguayans about the legitimacy of Law 15.848. The first on in 1989 revealed 58 percent of public approval of the law.\textsuperscript{172} The second one in 2009, received 53 percent approval.\textsuperscript{173} At the time of the second public consultation, José Miguel Vivanco, Americas director of Human Rights Watch, released a statement affirming that although such results were disappointing, “accountability is not a popularity contest that should be decided by majorities.”\textsuperscript{174}

When the Inter-American Commission on Human Rights decided to refer the case of María Claudia García Iruretagoyena de Gelman\textsuperscript{175} to the IACrtHR, the state anticipated what would be a decision with negative international repercussions. Despite the two referenda, on November 1\textsuperscript{st}, 2010, the Uruguayan Supreme Court ruled, with the precedent of the IACrtHR

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and the Supreme Court of Argentina, that such law was unconstitutional for blocking victims’ rights to truth.176

The Constitutional Court of Colombia also overturned amnesty laws on November 24, 2010, for violating the right to truth, justice and reparation.177

In sum, domestic courts do offer support for the decisions of the IACrtHR. In the case of Amnesties, domestic courts have leaned on the power of the Inter-American Court to eliminate a legal error against political pressure to maintain it.


V. SUGGESTIONS FOR THE IMPROVEMENT OF THE IACRTHR

This research focused in finding what components strengthened the ECJ and the ECHR, and then observing if the same features could be found in the IACrTHR. Evidence shows that the caseload of the Inter-American Court has been increasing significantly over the past years. Also, similar legal doctrines to enhance cooperation and authority can be found in the IACrTHR. The supremacy of the legal decisions of the Inter-American Court and the supremacy of the American Convention have been affirmed and established. Domestic support for this Court’s decisions and opinions can be found in cases before domestic courts all over the Americas.

If European courts were the creators of their own success, there is great support for the thesis that the Inter-American Court is on the same path, for it has the same tools to craft its strength. In spite of that, after observing the many characteristics of this Court and its relationship with member states, it is also clear that the IACrTHR has not achieved its full potential. This part of the paper will focus on suggestions for the improvement of the Court and it will be divided into 3 parts: a) the Court’s functioning; b) access to the Court; c) the monitoring capacity of the Court.
Functioning Capacity

The first and maybe one of the most polemic topics evolving around the effectiveness of the Court is related to its functioning. Tomuschat (2003) writes that the IACrtHR “has a limited working capacity, given the small number of judges as well as the fact that it is not a permanent institution.”

In 2009, 7 judges sat at the Court. They are elected on their individual capacity for a period of 6 years with the possibility of one reelection and do not receive salary for their work, but only a *per diem* and an emolument for rapporteurships.

The Inter-American Court of Human Rights, unlike the European Court of Human Rights, schedules sessions which happen according to necessity. The period of the sessions from 1980 to 2005 has increased considerably. Until 1990, the sessions lasted on average 22 days. From 1991 until 2000, that number increased to 37. From 2001 to 2005, it went up to 54 days, in 2005 breaking the record with 69 days. In 2009, the Court held 4 regular sessions and 3 special sessions, a total of 64 days. The boost in the number of days spent during

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session directly reflects both the complexity of the cases and mainly, the increase of the number of cases and requests for advisory opinions brought before it.\textsuperscript{183}

The need to turn the Court into a permanent body is not simply grounded on the fact that its European cousins are permanent. It has to do with the ability to cope with its increasing caseload in a proper manner. Making the Court permanently in session not only improves its capacity but it also represents an investment in its future functioning.

About this issue, one of the judges of the Court, Mr. Manuel E. Ventura Robles proposes, inter alia, the conversion of the Court into a semi-permanent tribunal with sessions of 16 weeks, and then, as a final stage, a permanent Court. According to him, only when this stage is reached there will be a true system of protection of human rights.\textsuperscript{184} In order to transform the IACrtHR into a permanent functioning body, the OAS needs to increase its funding, which has not been the case as Chart 5 indicates:


The greatest disparity between the percentage increase in caseload and budget happened from 2001 to 2005. After that, although the percentage increases do not differ that much, the gap between them had already been established. An increase in investment in the Court, reflected on the payroll of judges and other staff would pave the path to transform the IACtHR into a permanent body.

**Individual Access**

Only State parties to the Convention and the Commission can directly bring cases to the Court. Once again, unlike the ECJ and the ECHR, and also unlike the African Charter on Human and People’s Rights of the African Union\(^\text{185}\), individuals lack the capacity according to the American Convention, to have direct standing in a suit in the Inter-American Court of Human Rights.

Contrary to the position reflected in this Convention, human rights belong to the person, not the State neither the Commission. Rene Cassin, one of the most influential minds in the creation of the Universal Declaration of Human Rights, in his own draft, Chapter 4, Art. 15 recognized that “Every individual has a legal personality everywhere.”\(^\text{186}\)

It is preferable to acknowledge that individuals can submit their claims before a court under certain restrictions\(^\text{187}\), like in the case of the European Court of Human Rights, than to completely deny such right. Understandably, nowadays, since the Court is not permanent and the number of judges and officials is small, to name a few obstacles, granting individuals such right is a challenge.

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Since the Court’s Rules of Procedure entered into force in 2001, the individual has had *locus standi in judicio*\(^{188}\) or in other words, the right to participate in the proceedings. According to the former president of the Court, Mr. Antônio Augusto Cançado Trindade (2000), granting individuals *locus standi* is not enough. They should have *jus standi* as well. In his words, “The day when we achieve this evolution, the ideal of complete juridical equality will be fulfilled before the Inter-American Court, between the individual as a true plaintiff, and the State as a defendant. Every true jus internationalist in our hemisphere has the inevitable duty to give his contribution to this evolution.”\(^{189}\)

Today’s Inter-American system reflects the same issues that the European system did years ago. The increasing number of cases, the proceedings time getting longer, the lack of enforcement of the Court’s decisions and its complicated structure all call for the unification of the jurisdiction of contentious cases under the authority of the Court. This could be performed within a transitional period in which the Commission would still examine cases brought before it, but after a while, this competency would belong only to the Court. After that, the Commission in the Inter-American system, unlike the one in the European system which was abolished, could persist with its remaining functions.

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\(^{189}\) TRINDADE, Antônio Augusto Cançado. *El Nuevo Reglamento de la Corte Interamericana de Derechos Humanos (2000) y su protección Hacia el Futuro: La Emancipación del Ser Humano como sujeto del Derecho Internacional*. p. 103 [http://www.corteidh.or.cr/docs/libros/Futuro.pdf](http://www.corteidh.or.cr/docs/libros/Futuro.pdf) “El día en que alcancemos este grado de evolución, estará realizado el ideal de la plena igualdad jurídica, ante la Corte Interamericana, entre el individuo como verdadera parte demandante, y el Estado como parte demandada. Todo verdadero jusinternacionalista en nuestro hemisferio tiene el deber ineludible de dar su contribución a esta evolución.”
One could argue at this point that by doing so, just like the ECHR, the IACrtHR would become the “victim of its own success”, unable to effectively provide for the avalanche of cases brought before it. However, even if the Inter-American Court found itself in a similar position, the right to individual standing should not be undermined. And this ability to cope with an increase in caseload brought by *jus standi* is, once again, tied to the increase in investment in the Court.

*Monitoring Capacity*

If one is to compare judgments passed by the beginning of the activities of the Court in the 1980’s, to the ones passed in recent years, they will notice great changes. The Court now not only determines states to pay compensation, but goes further in requesting change in domestic legislation, public acknowledgment of responsibility and education for public officials. What is still common is that parts of decisions remain unfulfilled.

It is a fact that states will struggle with complying with the Inter-American Court’s decisions regardless. This is due to the fact that if they agreed with them, or did not completely oppose them, they would have provided the protection they failed to do in the domestic arena, or through an agreement before the Commission. Instead, if they fight until the ultimate level to avoid protecting human rights, it is because it is not within their interest to agree that they are guilty of violating them.

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An interesting feature of recent decisions is that they started establishing a deadline linked to parts of the judgment. For example, in Gomes Lund v. Brazil, the Court ordered the state to allow the victims of a massacre to present their indemnization claims within the period of 6 months. It also requested the State to, within the period of 24 months, summon the family of the victims to present evidence to help with the identification of the bodies.

The obligations which are linked to a deadline usually refer to obligations of the victims or their family. What I would suggest is that the Court start establishing a deadline for all the obligations it requests a state to perform. Such policy would not be so demanding to fulfill. Even when the Court requests a member state to conduct investigations and punish the responsible ones, the maximum amount of time in which such acts can be performed domestically can be determined by an examination of domestic procedural codes or legal experts.

Until 2009, of the 120 contentious cases submitted to the Court, 104 were still under monitoring. Certain cases have been under this final stage for more than a decade, even two decades, without closure. And unless one opens case by case, one will never know which part of the judgment was enforced by the state.

Attaching a time limit to each part of the judgment would offer a more accurate picture of the status of compliance, inform the public and create pressure to enforce remaining orders.

According to Art. 68 of the American Convention on Human Rights, “States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they
are parties.” If this provision is true, not only in theory but especially in practice, introducing a time limit to orders is necessary.
VI. CONCLUSION

The Inter-American Court of Human Rights has still not achieved its full potential. However, notwithstanding the different political systems of member states, its history of human rights violations, its division into different economic blocks, the failures of the dual-system itself and innumerable other reasons for its “natural handicap”191, this research found substantial evidence to affirm that the IACrHR has enough political power to defend and improve human rights in the Americas.

First, compliance with the Court’s decisions, the first variable to be examined, reveals that member states generally abide by obligations to apologize and offer financial compensation to victims, but are very reluctant to alter national laws. Domestic legislation amendment is a difficult goal to attain, since it requires defendant states to reduce its sovereignty on behalf of human rights. In spite of such unwillingness, there is great value in public apologies and the payment of damages which would probably not happen if it was not for the Court’s request.

Second, there has been a strong increase in the contentious caseload of the IACrHR, which is a direct consequence of the increase in the caseload before the Inter-American Commission, the lack of adequate protection offered by member states and perhaps most important, the trust that people in the Americas have in the ability of the Court to bring justice.

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Third, many of the same doctrines which are regarded as having increased the power of European international courts are present in the IACrtHR. The Margin of Appreciation doctrine offers member states the boundaries within which several measures of compliance would be considered acceptable. The doctrine of proportionality ascertains member states that in the protection of individual rights, social imperatives are taken into consideration. Both of these doctrines have the means to motivate obedience by offering flexibility. Although the doctrine of Direct Effect is not present in the IACrtHR, the Court established the Duty to Punish doctrine, which requires member states to punish human rights violations according to the Convention and its interpretation, offered by the Court.

Fourth, just like the European international courts, the IACrtHR holds that human rights treaties and conventions are superior to any domestic law. Since the Inter-American Court is the organ responsible for the interpretation and application of the American Convention on Human Rights is becoming the supreme ruler on human rights matters.

Finally, on the matter of IACrtHR v. Amnesty Laws, there is evidence of domestic courts support for the IACrtHR’s rulings.

The presence of these five variables are evidence that the IACrtHR has power to bring justice to human rights case. What this research demonstrated is that “deeper cooperation can come from little enforcement. This can occur whenever the underlying game changes in such a way that there is less incentive to defect from a given agreement.”192 Indeed, the public perception of the power of the Court, the doctrines it uses to increase its scope, the supremacy of its

rulings and domestic courts’ support all combined have changed the rules of the game in the Americas, and the Court is gaining momentum.
## APPENDIX

### Contentious Case at the Stage of Monitoring Compliance until 2009

<table>
<thead>
<tr>
<th>STATE</th>
<th>CLAIMANT</th>
<th>HISTORY</th>
<th>SENTENCE</th>
<th>LACK OF COMPLIANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>Maqueda</td>
<td>Dismissed</td>
<td>2008</td>
<td><a href="#">The State must pay damages, pay medical fees, conclude the criminal action, publish the decision in the official gazette, eliminate criminal records against plaintiff, train security forces against the use of torture and cruel, inhumane or degrading treatment or punishment.</a></td>
</tr>
<tr>
<td>Argentina</td>
<td>Bayarri</td>
<td>“Mr. Bayarri was deprived of his liberty for almost 13 years based on a confession obtained under torture. Despite the fact that the Federal National Criminal and Correctional Appeals Chamber of Argentina found it proved that he had been subjected to torture, the Argentine State has not provided an adequate judicial response to Mr. Bayarri in relation to the criminal responsibility of the authors and has not provided any reparation for the violations he suffered, even though 16 years have elapsed since the facts occurred.”</td>
<td>2008</td>
<td>[The State has not set aside the criminal sentence or held a public acknowledgment of responsibility].</td>
</tr>
<tr>
<td>Argentina</td>
<td>Bueno Alves</td>
<td>Bueno-Alves was subjected to torture consisting in, inter alia, beating his ears with hollowed hands, while he was at the police station on the dawn of April 6, 1988, so as to force him to declare against himself and his lawyer, which was informed to the judge hearing the case. As a consequence of the beatings, Mr. Bueno-Alves allegedly suffered a hearing impairment of his right ear and the loss of his balance function.</td>
<td>2007</td>
<td>[The State must pay compensations, conduct investigations, publish the decision in official gazette]</td>
</tr>
<tr>
<td>Argentina</td>
<td>Bulacio</td>
<td>April 19, 1991, the Argentine Federal Police conducted a massive detention or “razzia” of “more than eighty persons” in the city of Buenos Aires, near the stadium Club Obras Sanitarias de la Nación, where a rock music concert was to be held. One of the detainees was Walter David Bulacio, a seventeen year-old, who after his detention was taken to the 35th Police Station, specifically to its “juvenile detention room”. At this place, police agents beat him. He died because of injuries.</td>
<td>2003</td>
<td>[The State must complete investigation, adjust domestic law to international human rights laws, publish decision in official gazette, pay compensation for pecuniary and non pecuniary damages, pay legal costs and expenses.]</td>
</tr>
<tr>
<td>Argentina</td>
<td>Cantos</td>
<td>The revenue department of the province where plaintiff lived conducted searches in the business owned by plaintiff, which resulted in financial losses. Carlos initiated several lawsuits, and because of them he started suffering persecution and harassment by state agents. The Supreme Court of Argentina ruled against trial court and Cantos.</td>
<td>2002</td>
<td>[The State must lift the order of plaintiff to pay for filing fees, pay attorney fees, lift the attachments, encumbrances and other measures ordered against the properties and businesses of plaintiff, set supreme court fees at a reasonable amount].</td>
</tr>
<tr>
<td>Argentina</td>
<td>Garrido and Baigorria</td>
<td>Plaintiffs taken by police and disappeared.</td>
<td>1996</td>
<td>[The State must pay for reparations, pay for court fees, conduct investigation, prosecution and punishment, search and identify the two natural children of Baigorria]</td>
</tr>
<tr>
<td>Argentina</td>
<td>Kimel</td>
<td>Eduardo Kimel is a famous journalist who exposed failures in the prosecution in the murder of 5 clergymen. One of the judges accused by Kimel initiated criminal proceedings against him for libel. Kimel was sentenced to 1 year of imprisonment and pay damages.</td>
<td>2008</td>
<td>[The State has to remove all criminal records, reimburse legal costs and fees, hold a public acknowledgment of responsibility, change domestic legislation]</td>
</tr>
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**TOTAL** 7
<table>
<thead>
<tr>
<th><strong>STATE</strong></th>
<th><strong>PLAINTIFF</strong></th>
<th><strong>HISTORY</strong></th>
<th><strong>SENTENCE</strong></th>
<th><strong>LACK OF COMPLIANCE</strong></th>
</tr>
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<tbody>
<tr>
<td>Barbados</td>
<td>Boyce et al.</td>
<td>Victims were sentenced to death without due process of law.</td>
<td>2007 (The state must commute the death sentence, adjust national legislation, improve conditions of detention, reimburse court costs and fees)</td>
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<tr>
<td>Barbados</td>
<td>DaCosta Cadogan</td>
<td>Victims were sentenced to death without due process of law.</td>
<td>2009 (The state must commute the death sentence, adjust national legislation, conduct psychiatric evaluation of accused ones, reimburse court costs and fees)</td>
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<td><strong>TOTAL</strong></td>
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<tr>
<td>Bolivia</td>
<td>Ticona Estrada</td>
<td>Disappearance of victim conducted by Army patrol, denial of justice, impunity, torture, murder</td>
<td>2008 (The state must conduct criminal investigation, search for one of the victims, publish sentence in official gazette, provide medical and psychological care for victims, pay pecuniary and non pecuniary compensation)</td>
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<tr>
<td>Bolivia</td>
<td>Ibsen Cardenas and Ibsen Pena</td>
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<tr>
<td>Bolivia</td>
<td>Trujillo Oroza</td>
<td>Forced disappearance, torture, murder, lack of due process and fair trial</td>
<td>2002 (The state acknowledged international responsibility during trial. The state must pay compensation, investigate crime, locate victim)</td>
<td>2009 (Pending compliance: locate the remains of victim, investigate and punish the responsible ones for the crime)</td>
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<td><strong>TOTAL</strong></td>
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<td>3</td>
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<tr>
<td>Brazil</td>
<td>Nogueira de Carvalho et al</td>
<td>Dismissed</td>
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<tr>
<td>Brazil</td>
<td>Escher et al.</td>
<td>Unlawful telephone interception and monitoring by State of Parana Military, denial of justice and proper reparation.</td>
<td>2009 (The state must pay non pecuniary damages, publish decision if official gazette, investigate the facts, pay court fees)</td>
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<tr>
<td>Brazil</td>
<td>Garibaldi</td>
<td>Lack of police investigation in the murder of Garibaldi at an extrajudicial eviction operation in Hacienda Sao Francisco in Parana.</td>
<td>2009 (Publish sentence in official gazette, conduct investigation effectively, pay pecuniary and non pecuniary damages, reimburse costs and expenses)</td>
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<tr>
<td>Brazil</td>
<td>Ximenes Lopes</td>
<td>1999: inhuman and degrading hospitalization conditions of Damiao Ximenes-Lopes, a person with mental illness; the alleged beating and attack against the personal integrity of the alleged victim as a result of the action of the Officers of Casa de Reposo Guararapes (Guararapes Rest Home) (hereinafter “Casa de Reposo Guararapes” or “the hospital”); his death while held under psychiatric treatment; and the alleged lack of investigation and respect for the right to a fair trial that derived in the impunity surrounding such case.</td>
<td>2006 (Investigate, publish sentence in official gazette, develop education and training program, pay pecuniary and non pecuniary damages, pay and reimburse court fees)</td>
<td>2010 (The state has partially complied with the obligation to investigate and develop training and educational programs)</td>
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<td><strong>TOTAL</strong></td>
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<tr>
<td>STATE</td>
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<td>HISTORY</td>
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<tr>
<td>Chile</td>
<td>Claude Reyes et al</td>
<td>State's alleged refusal to provide Marcel Claude Reyes, Sebastián Cox Urrejola and Arturo Longton Guerrero with all the information they requested from the Foreign Investment Committee on the forestry company Trillium and the Río Condor Project, a deforestation project to be executed in Chile's Region XII that &quot;could be prejudicial to the environment and to the sustainable development of Chile.&quot; The Commission stated that this refusal occurred without the State &quot;providing any valid justification under Chilean law&quot; and, supposedly, they &quot;were not granted an effective judicial remedy to contest a violation of the right of access to information&quot;; in addition, they &quot;were not ensured the rights of access to information and to judicial protection, and there were no mechanisms guaranteeing the right of access to public information.&quot;</td>
<td>The state must provide information to victims, publish decision in official gazette and newspaper of national circulation, adopt domestic law with regard to access to information, provide training to respond to requests on State held information, reimburse costs and expenses</td>
<td>FULL COMPLIANCE!!!</td>
</tr>
<tr>
<td>Chile</td>
<td>The Last Temptation of Christ - Olmedo Bustos et al</td>
<td>Judicial censorship of the cinematographic exhibition of the film &quot;The Last Temptation of Christ&quot;, confirmed by the Supreme Court of Chile [...] on June 17, 1997</td>
<td>The State must amend domestic law to eliminate censorship, reimburse expenses</td>
<td>FULL COMPLIANCE!!!</td>
</tr>
<tr>
<td>Chile</td>
<td>Almonacid Arellano</td>
<td>Extralegal execution, failure to investigate and punish based on Amnesty Law.</td>
<td>2006 (State has to stop hindering further investigation, reimburse costs and expenses, publish decision)</td>
<td>2009 (The State still has to take measures to annul and amend domestic provisions on freedom of thought and freedom of expression, modify domestic system, guarantee the due process of law in the military)</td>
</tr>
<tr>
<td>Chile</td>
<td>Palamara ribarne</td>
<td>State blocked the publication of a book about military intelligence, seized copies of the book, original, floppy discs, hard disc</td>
<td>2005 (The state must allow the publication, restitute damages, publish sentence in official gazette, leave without effect the military conviction against plaintiff, annul and amend domestic provisions which contradict international human rights law, align domestic legal system, pecuniary and non pecuniary damages)</td>
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<td>TOTAL</td>
<td>4</td>
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<tr>
<td>Colombia</td>
<td>Manuel Cepeda Vargas</td>
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<tr>
<td>Colombia</td>
<td>19 Tradesmen</td>
<td>Detention, disappearance and execution of merchants by a paramilitary group in 1987.</td>
<td>2002 (Investigate, locate victims, build a monument, organize a public act of acknowledgement and international responsibility, medical care for next of kin, guarantee protection of witnesses, create environment for the return of the family from exile, pay pecuniary and non pecuniary damages, pay court costs and expenses)</td>
<td>2009 (The state has only complied with payments for minors, located the victims and reimbursed court costs and expenses)</td>
</tr>
<tr>
<td>Colombia</td>
<td>Caballero Delgado and Santana</td>
<td>Torture, imprisonment, disappearance, execution by the army</td>
<td>1995 (The state must pay pecuniary compensations, locate remains of victims, continue judicial prosecution, reimburse court costs and fees)</td>
<td>2009 (The state still needs to comply with the criminal investigation and location of victims remains)</td>
</tr>
<tr>
<td>Colombia</td>
<td>Mapiripán Massacre</td>
<td>State, deprived of their liberty, tortured, and murdered at least 49 civilians, after which they destroyed their bodies and threw their remains into the Guaviare River, in the Municipality of Mapiripán, Department of Meta</td>
<td>2005 (The state must investigate, identify victims, guarantee the security of the next of kin, build monument, implement education in human rights, publish sentence in official gazette, pay court costs and expenses, pay pecuniary and non pecuniary damages)</td>
<td>2009 (The state has published the decision in official gazette, implemented education programs and partially paid pecuniary and non pecuniary damages)</td>
</tr>
<tr>
<td>Colombia</td>
<td>Pueblo Bello Massacre</td>
<td>Forced disappearance, extrajudicial execution, paramilitary groups</td>
<td>2006 (conduct investigation, locate and identify victims, medical and psychological care to victims, guarantee security of displaced persons, public act of apology, build monument, publish sentence in official gazette, pay pecuniary and non pecuniary damages, pay court costs and fees)</td>
<td>2009 (The state has just complied with the obligation to publicly acknowledge responsibility and publish sentence in official gazette)</td>
</tr>
<tr>
<td>STATE</td>
<td>PLAINIFF</td>
<td>HISTORY</td>
<td>SENTENCE</td>
<td>LACK OF COMPLIANCE</td>
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<tr>
<td>Colombia</td>
<td>Ituango Massacres</td>
<td>collaboration of law enforcement with paramilitary group, assassination, robbery, terror and displacement, no fair trial, killing</td>
<td>2006 (Conduct investigation, provide medical care to families, guarantee safety of displaced persons, public acknowledge, provide housing to victims, erect a plaque, educate the colombian armed forces, publish in official gazette, pay pecuniary and non pecuniary damages, pay court fees)</td>
<td>2009 (The state has only complied with training programs of the colombian armed forces, publish in official gazette and paid court fees)</td>
</tr>
<tr>
<td>Colombia</td>
<td>&quot;La Rochela Massacre&quot;</td>
<td>Estrajudicial execution of civilians by paramilitary groups, acquiescence of state agents, murder of judicial officials investigating 19 tradesmen, no criminal investigation, no punishment</td>
<td>2007 (The state entered an agreement on the payment of reparations of victims, conduct criminal proceedings, guarantee the safety of judges, lawyers, law enforcement, medical and psychological treatment of family, promote programs of human rights education, pay pecuniary and non pecuniary damages, build a monument, national tv transmission of details of the case)</td>
<td>2010 (The state has complied with: publish case in national circulation and educate colombian armed forces)</td>
</tr>
<tr>
<td>Colombia</td>
<td>Escué Zapata</td>
<td>Colombian National Army tortured and murdered the victim. No due process in investigations. Zapata was governor of the indigenous district of Jambalo.</td>
<td>2007 (Pay pecuniary ad non pecuniary damages, reimburse court fees, conduct criminal proceedings, create a fund with the name of the victim for the indigenous community, scholarship for daughter, medical, psychological and mental treatment to relatives, publish sentence in official gazette and in newspaper of national circulation, publick acknowledge international responsibility)</td>
<td>2010 (The state has paid pecuniary and non pecuniary damages, reimbursed court fees, carried out a public act of acknowledgement)</td>
</tr>
<tr>
<td>Colombia</td>
<td>Gutiérrez Soler</td>
<td>Governmental officials arrested, tortured and forced the confession of the victim. The family was forced to exile.</td>
<td>2005 (The state must provide free health and psychological care for the family, publish sentence in daily gazette and newspaper of national circulation, implement education for military and police, pay pecuniary and non pecuniary damages, pay court fees and expenses, protect the victims and families, conduct criminal investigation)</td>
<td>2009 (the state has paid damages and reimbursed court fees)</td>
</tr>
<tr>
<td>Colombia</td>
<td>Las Palmeras</td>
<td>National police conducted armed operation with army. They opened fire from a helicopter, detained and killed children, workers, teachers. After that, they erased evidence. Proceedings started but were never concluded. Nobody was ever charged.</td>
<td>2000 (Complete criminal investigation, identify victims, publish sentence in official gazette and newspaper of national circulation, pay pecuniary and non pecuniary damages, reimburse costs with judicial proceedings)</td>
<td>2010 (criminal investigations have not been conducted, and neither have identification of bodies)</td>
</tr>
<tr>
<td>Colombia</td>
<td>Valle Jaramillo et al.</td>
<td>Murder of Jesus Maria Jaramillo. Other victims threatened and forced to exile. Members of paramilitary forces in connivance with the Army wanted to silence possible reports of human rights violations.</td>
<td>2008 (The State must pay damages, pay medical fees, conclude the criminal investigation, publish the decision in the official gazette, publicly acknowledge responsibility, place a plaque with the name of the victim, pay educational grant, guarantee the safety of plaintiff in case he wants to return to Colombia)</td>
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<tr>
<td>TOTAL</td>
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<td>10</td>
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<tr>
<td>Costa Rica</td>
<td>Herrera Ulloa</td>
<td>criminal sentence against Ulloa for publishing accusations against a diplomat for committing grave offenses in La Nacion.</td>
<td>2004 (The state must adjust national legislation, pay non pecuniary damages, reimburse court fees)</td>
<td>2009 (The state has only paid damages and reimbursed court fees)</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
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<td>1</td>
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<tr>
<td>Dominican Republic</td>
<td>Yean and Bosco Girls</td>
<td>State failed to offer birth registration and nationality to Yean and Bosco children. One of the girls could not attend school for a year because of the lack of documents.</td>
<td>2005 (Publish decision in official gazette and national newspaper, publicly acknowledge international responsibility and apologize to the victims, change domestic law, pay non pecuniary damages, pay court costs and fees)</td>
<td>2009 (the state has paid non pecuniary damages and reimbursed court fees)</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
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<td>1</td>
</tr>
<tr>
<td>STATE</td>
<td>PLAINTIFF</td>
<td>HISTORY</td>
<td>SENTENCE</td>
<td>LACK OF COMPLIANCE</td>
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<tr>
<td>Ecuador</td>
<td>Acosta Calderon</td>
<td>on November 15, 1989, the Customs Military Police arrested Mr. Acosta Calderon, of Colombian nationality, under suspicion of drug trafficking. Supposedly, the statement of Mr. Acosta Calderon was not received by a Judge until two years after his detention, he was not notified of his right to consulate assistance, he was in custody pending trial during five years and a month, he was condemned on December 8, 1994 without the alleged drugs appearing at any time, and he was released on July 29, 1996 for having served part of his sentence while he was in prison pending trial.</td>
<td>Publish sentence in official newspaper and other newspaper of national circulation, eliminate criminal record, pay pecuniary and non pecuniary damages and reimburse expenses)</td>
<td>FULL COMPLIANCE!!!</td>
</tr>
<tr>
<td>Ecuador</td>
<td>Salvador Chiriboga</td>
<td>Inheritance issue</td>
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<tr>
<td>Ecuador</td>
<td>Albán Comejo et al.</td>
<td>The State has failed to offer access to fair trial to the plaintiffs who wanted to investigate their daughter’s death due to medication.</td>
<td>2007 (The state must publish the decision in official gazette, divulge the rights of patients, implement education and training in human rights, pay pecuniary and non pecuniary damages, reimburse court costs and expenses)</td>
<td>2010 (The state has only paid monetary compensations and reimbursements)</td>
</tr>
<tr>
<td>Ecuador</td>
<td>Benavides Cevallos</td>
<td>Arrest, detention, torture and muder by state agents.</td>
<td>1998 (pay damages, investigate and punish offenders)</td>
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</tr>
<tr>
<td>Ecuador</td>
<td>Chaparro Álvarez and Lapo</td>
<td>Anti-narcotics Police officials seized a shipment of fish belonging to the company “Mariscos Oreana Maror” in Guayaquil’s Simón Bolivar Airport that was going to be sent to Miami, United States of America. Victims were considered a trafficant, had his factory seized without a writ, victims were detained for too long and without lawyers</td>
<td>2007 (The state must eliminate criminal records of defendants, eliminate private records of conviction, publicize judgments, pay damages, reimburse court fees, adapt internal legislation, disseminate judgment by tv)</td>
<td>2010 (the state has fully complied with the obligations to eliminate private records and change national legislation)</td>
</tr>
<tr>
<td>Ecuador</td>
<td>Suárez Rosero</td>
<td>Arrest, Incommunicado detention and lack of due process and fair trial.</td>
<td>1999 (remove the name of plaintiff from criminal records, pay pecuniary and non pecuniary damages, reimburse court fees and costs, investigate crime)</td>
<td>2009 (the state failed to provide information on the stage of compliance, pay damages to minor and conduct criminal investigation)</td>
</tr>
<tr>
<td>Ecuador</td>
<td>Tibi</td>
<td>Arrest, detention by police without court order, torture, seizure of property</td>
<td>2004 (pay pecuniary and non pecuniary damages, acknowledge responsibility in newspaper, conduct criminal investigation, create a committee to educate state staff on human rights, reimburse court fees)</td>
<td>2009 (The state has paid pecuniary and non pecuniary damages and reimbursed court fees)</td>
</tr>
<tr>
<td>Ecuador</td>
<td>Zambrano Vélez et al.</td>
<td>Extrajudicial execution of plaintiffs by national police and military and no investigation</td>
<td>2007 (acknowledge responsibility, publish sentence in official gazette and newspaper, change domestic legislation, implement educational programs on human rights, reimburse legal costs and fees, pay pecuniary and non pecuniary damages, conduct investigation)</td>
<td>2009 (the state still needs to comply with the obligation to pay pecuniary and non pecuniary damages for families and conduct investigation)</td>
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<td>Ecuador</td>
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<td>El Salvador</td>
<td>Serrano Cruz Sisters</td>
<td>Capture, abduction and forced disappearance of two girls (7 and 13) during a military operation called Operacion Limpeza.</td>
<td>2005 (Publish decision in official gazette and national newspaper, carry out investigation, establish commission to trace young children who disappeared during conflict, create a genetic information system, provide medical and psychological care, create a webpage to find disappeared persons, acknowledge responsibility, designate a day for the disappeared children, pay pecuniary and non pecuniary damages, reimburse court costs and fees, pay for repatriation)</td>
<td>2010 (the state has paid damages, reimbursed costs, designated a day, acknowledged responsibility and published in official gazette)</td>
</tr>
<tr>
<td>El Salvador</td>
<td>García Prieto et al.</td>
<td>Murder of plaintiff, threatening of his family</td>
<td>2007 (bring the pending investigation to a conclusion, publish sentence in official gazette and newspaper, provide medical and psychiatric care, pay pecuniary and non pecuniary damages and court fees)</td>
<td>2010 (The state published the decision, paid pecuniary and non pecuniary damages and reimbursed court fees)</td>
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<td>STATE</td>
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<tr>
<td>Guatemala</td>
<td>Chitary Nech et al</td>
<td>Disappearance, torture, extrajudicial execution, lack of impartial and effective investigation</td>
<td>2000 (change domestic legislation, locate mortal remains, investigate, publish in official gazette and newspaper, pay pecuniary and non pecuniary damages, pay court costs and expenses)</td>
<td>2009 (the state needs to comply with the obligation to change domestic legislation, locate mortal remains and investigate facts)</td>
</tr>
<tr>
<td>Guatemala</td>
<td>Bámaca Velásquez</td>
<td>Disappearance and murder conducted by civil police in domestic conflict. Other people in his staff also killed. No criminal investigation.</td>
<td>1998 (the state must investigate, pay fair compensation and reimburse them of expenses)</td>
<td>2009 (The state has only reimbursed court fees)</td>
</tr>
<tr>
<td>Guatemala</td>
<td>Blake</td>
<td>Disappearance and murder committed by civil police in domestic conflict.</td>
<td>1998 (The state must investigate, pay fair compensation and reimburse them of expenses)</td>
<td>2009 (The state has only reimbursed court fees)</td>
</tr>
<tr>
<td>Guatemala</td>
<td>Carpio Nicolle et al</td>
<td>Politician and journalist plaintiff killed by 15 armed men. No criminal investigation.</td>
<td>2004 (investigate facts, remove obstacles to punishment, improve investigatory capacity, publish sentence, pay pecuniary damages, non pecuniary damages and court fees)</td>
<td>2009 (The state has paid damages and reimbursed court fees)</td>
</tr>
<tr>
<td>Guatemala</td>
<td>Dos Erres Massacre</td>
<td>lack of due diligence in the investigation, prosecution, and punishment of those responsible for the massacre of 251 inhabitants of the community (parcelamiento) of Las Dos Erres, la Libertad, Department of Petén</td>
<td>2009 (the state must investigate facts, change domestic law, locate and identify bodies, create training courses in human rights, publish sentence, create monument, create webpage to search abducted children, hold public acts, pay pecuniary, non pecuniary damages and court fees.</td>
<td>2009 (The state has paid damages and reimbursed court fees)</td>
</tr>
<tr>
<td>Guatemala</td>
<td>“Street Children” (Villagrán Morales et al.)</td>
<td>Kidnapping, murder and torture of street children.</td>
<td>2001 (pay pecuniary and non pecuniary damages, change domestic legislation, transfer mortal remains, name educational center after victims, reimburse court costs and fees, measures of reparation)</td>
<td>2009 (The state has not adjusted domestic jurisdiction, conducted investigation)</td>
</tr>
<tr>
<td>Guatemala</td>
<td>Fermin Ramirez</td>
<td>Imposition of death penalty without due process or defense</td>
<td>2005 (hold a new trial, change criminal code of guatemala (Art. 132), abstain from executing plaintiff, provide medical care, improve conditions of prisons, reimburse court expenses)</td>
<td>2008 (the state has reimbursed court costs, held a new trial and not executed plaintiff)</td>
</tr>
<tr>
<td>Guatemala</td>
<td>Maritza Urrutia</td>
<td>arbitrary detention and torture</td>
<td>2003 (investigate, pay pecuniary, non pecuniary damages and reimburse court fees)</td>
<td>2009 (the only pending item is investigation)</td>
</tr>
<tr>
<td>Guatemala</td>
<td>Plan de Sánchez Massacre</td>
<td>Massacre of 268 persons, intimidation and discrimination of family</td>
<td>2004 (investigate facts, publicly acknowledge responsibility, translate the American Convention on Human Rights to the indigenous language, publish, improve infrastructure of chapel, provide medical treatment, provide adequate housing of victims, build infrastructure, pay pecuniary and non pecuniary damages, reimburse court costs and fees)</td>
<td>2009 (The state has published the sentence and improved the infrastructure of chapel)</td>
</tr>
<tr>
<td>Guatemala</td>
<td>Molina Theissen</td>
<td>forced disappearance, extra judicial killing of minor/ child</td>
<td>2003 (find and deliver mortal remains, investigate facts, publish sentence, publicly acknowledge responsibility, name an educational center after the victim, expedite procedure to declare absence and death, create a genetic information system, pay pecuniary and non pecuniary damages, reimburse court costs and fees)</td>
<td>2009 (The state has paid compensation, reimbursed and published)</td>
</tr>
<tr>
<td>Guatemala</td>
<td>Myma Mack Chang</td>
<td>Extralegal execution, failure to investigate and punish the military</td>
<td>2003 (the state must investigate, remove legal and non legal obstacles, publish, publicly acknowledge responsibility, publicly honor life of police investigator, train courses for police, establish a scholarship. Name a street or square after victim, pay pecuniary and non pecuniary damages, reimburse court costs and fees)</td>
<td>2009 (The state has to locate and punish Juan Valencia Osorio)</td>
</tr>
<tr>
<td>Guatemala</td>
<td>Paniagua Morales et al.</td>
<td>acts of abduction, arbitrary detention, inhuman treatment, torture and murder committed by agents of the State of Guatemala against eleven victims</td>
<td>1988 (pay pecuniary and non pecuniary damages, investigate facts, transfer mortal remains, change domestic law, reimburse court costs and fees)</td>
<td>2007 (The state has complied with payment of costs with burial of mortal remains)</td>
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<td>STATE</td>
<td>PLAINTIFF</td>
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<td>Guatemala</td>
<td>Raxcacó Reyes</td>
<td>Imposition of a mandatory death sentence on Ronald Ernesto Raxcacó Reyes for the crime of kidnapping or abduction, for which this punishment was not provided for by law at the time Guatemala ratified the American Convention; the allegedly disproportionate punishment imposed on him; the prison conditions in which he is being kept, and the alleged ineffectiveness of the judicial remedies filed before the local courts.</td>
<td>2005 (change penal code, abstain from applying the death penalty for those convicted of kidnapping or abduction, create a procedure for appeals, annul the punishment of plaintiff, improve prison conditions, provide medical and psychological care for victim, allow plaintiff to receive visits, create measures for the readaptation of plaintiff, publish, reimburse expenses)</td>
<td>2008 (the state has complied with obligation to set aside sentence, not execute, publish sentence, reimburse court expenses)</td>
</tr>
<tr>
<td>Guatemala</td>
<td>Tiu Tojín</td>
<td>Disappearance of victim and her daughter conducted by the military and civil police. They are members of the mayan indigenous people. No investigation.</td>
<td>2008 (the state has to investigate, locate the victims, publish, broadcast in radio, reimburse court costs and fees)</td>
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<td>TOTAL</td>
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<td>38</td>
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<tr>
<td>Haiti</td>
<td>Yvon Neptune</td>
<td>Threats made to a politician - accused of having participated in a massacre</td>
<td>2008 (define the jurisdictional situation of the plaintiff, regulate the procedures of the high court of justice, publish, improve haiti prisons, pay pecuniary and non pecuniary damages and reimburse court fees and costs)</td>
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<td>Honduras</td>
<td>Velásquez Rodrigues</td>
<td>Manfredo Velásquez, a student at the National Autonomous University of Honduras, &quot;was violently detained without a warrant for his arrest by members of the National Office of Investigations (ODI) and G-2 of the Armed Forces of Honduras.&quot; The detention took place in Tegucigalpa on the afternoon of September 12, 1981. According to the petitioners, several eyewitnesses reported that Manfredo Velásquez and others were detained and taken to the cells of Public Security Forces Station No. 2 located in the Barrio El Manchén of Tegucigalpa, where he was &quot;accused of alleged political crimes and subjected to harsh interrogation and cruel torture.&quot; The petition added that on September 17, 1981, Manfredo Velásquez was moved to the First Infantry Battalion, where the interrogation continued, but that he police and security forces denied that he had been detained</td>
<td>Pay compensation to next of kin</td>
<td>FULL COMPLIANCE!!!</td>
</tr>
<tr>
<td>Honduras</td>
<td>Fairen-Garbi and Solís-Corrales</td>
<td>on January 14, 1982, Francisco Fairen Garbi, a 28-year-old student and public employee, and Yolanda Solís Corrales, also 28 and a teacher, both Costa Rican nationals, disappeared in Honduras on December 31, 1981, while in transit through that country on their way to Mexico. It was also claimed that the authorities denied that the Costa Ricans had ever entered Honduras, whereas reports from the Government of Nicaragua certified their departure for Honduras through the Las Manos border post at 4:00 p.m. on December 31, 1981.</td>
<td>Dismissed</td>
<td></td>
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<tr>
<td>Honduras</td>
<td>Godínez Cruz</td>
<td>Saul Godínez Cruz, a schoolteacher, disappeared on July 22, 1982 after leaving his house by motorcycle at 6:20 a.m. and while in route to his job at the Julia Zelaya Pre-Vocational Institute in Monjarás de Choluteca. The petition states that an eyewitness saw a man in a military uniform and two persons in civilian clothes arrest a person who looked like Godínez Cruz. They placed him and his motorcycle in a double-cabin vehicle without license plates. According to some neighbors, his house had been under surveillance, presumably by government agents, for some days before his disappearance.</td>
<td>Pay compensation to next of kin</td>
<td>FULL COMPLIANCE!!!</td>
</tr>
<tr>
<td>Honduras</td>
<td>Juan H. Sánchez</td>
<td>Kidnapping, torture and execution.</td>
<td>2009 (pay pecuniary and non pecuniary damages, investigate, transfer mortal remains, implement a record of detainees, publicly acknowledge responsibility, reimburse court costs and fees)</td>
<td>2009 (the state has failed to pay non pecuniary damages, investigate facts and implement a record of detainees)</td>
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<td>STATE</td>
<td>PLAINTIFF</td>
<td>HISTORY</td>
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<td>Honduras</td>
<td>Kawas Fernández</td>
<td>Murder of the president of an organization which had denounced human rights violations. Impunity.</td>
<td>2009 (pay pecuniary and non pecuniary damages, initiate criminal proceedings, publish, publicly acknowledge international responsibility, build a monument, provide psychological and psychiatric care, conduct national awareness and sensitivity campaign)</td>
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<tr>
<td>Honduras</td>
<td>López Álvarez</td>
<td>Imprisonment of victim accused of possession and illegal trafficking of drugs.</td>
<td>2006 (investigate, publish, improve conditions of prisoners, pay pecuniary and non pecuniary damages, reimburse court costs and fees)</td>
<td>2008 (The state has published, paid damages and court costs)</td>
</tr>
<tr>
<td>Honduras</td>
<td>Servellón García et al.</td>
<td>Inhumane and degrading conditions of prisons, attack in personal integrity, murder, fail to investigate</td>
<td>2006 (investigate, publish, publicly acknowledge, name a street of plaza after victims, create a program for training and formation of police, create a campaign for the protection of children and youngsters, create a unified database of crimes against children and youngsters, pay pecuniary and non pecuniary damages, reimburse court costs and fees)</td>
<td>2008 (The state needs to comply with the investigation and creating a campaign)</td>
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<td>Mexico</td>
<td>Alfonso Martin del Campo-Dodd</td>
<td>Victim “was illegally arrested on May 30, 1992, and subjected to torture by agents of the Judicial Police of Mexico’s Distrito Federal, to make him confess that he had committed the double homicide of both, his sister, Patricia Martín-del-Campo-Dodd, and his brother-in-law, Gerardo Zamudio-Aldaba.” The Commission stated that “said confession is the only element supporting the sentence to 50 years in prison imposed by Mexico’s Judicial Authorities”</td>
<td>Dismissed</td>
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<td>Mexico</td>
<td>Rosendo Cantu and other</td>
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<td>Mexico</td>
<td>Fernández Ortega et al</td>
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<tr>
<td>Mexico</td>
<td>González et al</td>
<td>2009 (disappearance and subsequent death” of the Mss. Claudia Ivette González, Esmeralda Herrera Monreal and Laura Berenice Ramos Monárez (hereinafter “Mss. González, Herrera and Ramos”), whose bodies were found in a cotton field in Ciudad Juárez on November 6, 2001. The State is considered responsible for “the lack of measures for the protection of the victims, two of whom were minor children, the lack of prevention of these crimes, in spite of full awareness of the existence of a pattern of genderrelated violence that had resulted in hundreds of women and girls murdered, the lack of response of the authorities to the disappearance […], the lack of due diligence in the investigation of the homicides […], as well as the denial of justice and the lack of an adequate reparation)</td>
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<td>Mexico</td>
<td>Campo Algodonero</td>
<td>Inexistence in the domestic sphere of a simple and effective remedy to claim the constitutionality of political rights and the consequent impediment for Jorge Castafieda Gutman […] to register his independent candidacy for the presidency of Mexico” in the elections held in July 2006.</td>
<td>Provisional Measures</td>
<td>2008 (The state must adapt its domestic law, publish sentence in official gazette, reimburse court costs and expenses)</td>
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<td>Mexico</td>
<td>Castafieda Gutman</td>
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<td>2009 (The state has not adjusted domestic jurisdiction)</td>
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<td>STATE</td>
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<td>Mexico</td>
<td>Radilla Pacheco</td>
<td>Forced disappearance of victim caused by members of the army</td>
<td>2009 (conduct investigation, locate remains of victims, change military jurisdiction and the IACtHR, publish, publicly acknowledge responsibility, prepare a bibliographical sketch of victim, provide free psychological and psychiatric care, pay pecuniary and non pecuniary damages, reimburse court costs and fees)</td>
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<tr>
<td>Nicaragua</td>
<td>Genie-Lacayo</td>
<td>at approximately 8:35 in the evening of October 28, 1990, the youth Jean Paul Genie-Lacayo, age 16, resident of the city of Managua, was traveling by car to his home in the Las Colinas subdivision. After having stopped at a restaurant, he took the road to Masaya and between kilometers 7 and 8 he came upon a convoy of vehicles transporting military personnel who, in response to his attempts to pass them, fired their weapons at him. The victim did not die immediately but was abandoned on the highway and died from hypovolemic shock</td>
<td>Pay compensation to next of kin</td>
<td>FULL COMPLIANCE!!!</td>
</tr>
<tr>
<td>Nicaragua</td>
<td>Mayagna Sumo Awas Tingni</td>
<td>Community protested the possibility of a concession on its lands being granted to Sol del Caribe S.A. (SOLCARSA), without it previously having been consulted; the State, through MARENA, granted a 30-year concession to SOLCARSA to exploit approximately 62,000 hectares of tropical forest in the Atlantic coast region on land claimed by the Community</td>
<td>The state must adopt domestic law, grant property rights to the community, pay non pecuniary damages and reimburse</td>
<td>FULL COMPLIANCE!!!</td>
</tr>
<tr>
<td>Nicaragua</td>
<td>YATAMA</td>
<td>Indigenous candidates prohibited from participating in municipal elections.</td>
<td>2006 (publish, publish in official website, broadcast in radio station, reform recourse system to supreme court, reform electoral act, pay pecuniary and non pecuniary damages, reimburse court fees and costs)</td>
<td>2010 (state has complied with the obligation to publish, publish in official website, and only partial with payments)</td>
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<tr>
<td>Panama</td>
<td>Baena Ricardo et al.</td>
<td>270 government employees who had participated in a demonstration for labour rights, and who were accused of complicity for perpetrating a military coup, were arbitrarily dismissed. No due process.</td>
<td>1999 (pay pecuniary and non pecuniary damages, reinstate the workers)</td>
<td>2010 (individual payments still pending)</td>
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<tr>
<td>Panama</td>
<td>Heliodoro Portugal</td>
<td>Disappearance, torture, extrajudicial execution, lack of impartial and effective investigation</td>
<td>2008 (pay pecuniary and non pecuniary damages, investigate, publish, public acknowledge, medical care. Define the crimes of torture and forced disappearance, reimbursement of court costs and fees)</td>
<td>2010 (the state still needs to investigate, provide medical care and define offenses)</td>
</tr>
<tr>
<td>Panama</td>
<td>Tristan Donoso</td>
<td>Tristan donoso, a lawyer, had a conversation wiretapped, recorded and disclosed. He was convicted for defamation.</td>
<td>2009 (pay non pecuniary damages, set aside criminal investigations, publish, reimburse court costs and fees)</td>
<td>FULL COMPLIANCE!!!</td>
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<td>Paraguay</td>
<td>Ricardo Canese</td>
<td>during the electoral debates leading up to the 1993 Paraguayan presidential elections, Ricardo Canese questioned the suitability and integrity of Juan Carlos Wasmosy, who was also a presidential candidate, when he stated that the latter “was the Stro[e]ssner family's front man in CONEMPA” (Paraguayan Building Companies Consortium) (hereinafter “CONEMPA”), a company that took part in developing the Itaipu bi-national hydroelectric initiative, and whose President, at the time when the statements were made, was Mr. Wasmosy. The statements were published in several Paraguayan newspapers. The Commission indicated that, as a result of these statements and based on a complaint filed by some members of CONEMPA, who had not been named in the statements, Mr. Canese was tried, sentenced in first instance on March 22, 1994, and sentenced in second instance on November 4, 1997, for the offenses of slander to two months' imprisonment and a fine of 2,909,000 guaranís</td>
<td>The state has to pay non pecuniary damages, reimburse expenses, publish sentence in Official Gazette and another newspaper</td>
<td>FULL COMPLIANCE!!!</td>
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<td>STATE</td>
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<td>HISTORY</td>
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<td>Paraguay</td>
<td>XÁKMOK KÁSEK</td>
<td>property rights of the indigenous community, nutritional, medical and health care.</td>
<td>2006 (publication, property rights to the community within 3 years, community development fund, pay non pecuniary compensation, reimburse court costs and fees, while landless the state must provide basic supplies for survival, install communication system, registration and documentation program, change domestic laws)</td>
<td>2008 (the state has partially complied with payments, registration program and publication)</td>
</tr>
<tr>
<td>Paraguay</td>
<td>Sawhoyamaxa Indigenous Community</td>
<td>property rights of the indigenous community, nutritional, medical and health care.</td>
<td>2005 (grant property rights, provide basic services for the members of the community as long as they remain landless, set up a fund for the purchase of land, implement community development program, publish, publicly acknowledgement, change domestic legislation, pay pecuniary damages and reimburse court costs and fees)</td>
<td>2008 (The state has complied with the obligation to publicly acknowledge responsibility and partially paid compensation and reimbursement)</td>
</tr>
<tr>
<td>Paraguay</td>
<td>Yakye Axa Indigenous Community</td>
<td>Illegal and arbitrary detention, torture and forced disappearance of plaintiffs by state agents.</td>
<td>2006 (the state must investigate, locate bodies, publicly acknowledge responsibility, publish, medical treatment to family, build monument, implement permanent programs of human rights, define torture and involuntary disappearance, pay pecuniary and non pecuniary damages, reimburse costs with court)</td>
<td>2009 (the state has published, implemented educational programs and reimbursed court costs)</td>
</tr>
<tr>
<td>Paraguay</td>
<td>Goiburú et al.</td>
<td>Death of minors at a Juvenile institute due to fire, bullet wound, injuries and smoke inhalation. Overpopulation, overcrowding, lack of sanitation, inadequate infrastructure, and a prison guard staff that was both too small and poorly trained.</td>
<td>2004 (The state must publish judgement on official gazette, carry out an act of public acknowledgement of international responsibility, provide psychological treatment, vocational guidance and special education programmes, ensure protection to witnesses, pay pecuniary and non pecuniary damages, reimburse court costs and fees)</td>
<td>2009 (The state has only published the sentence on official gazette).</td>
</tr>
<tr>
<td>Paraguay</td>
<td>Vargas Areco</td>
<td>Minor recruited to military service, failed to return after Christmas, ran to flee punishment after being treated for nose bleeding, was shot on the back.</td>
<td>2006 (investigate, public apology and acknowledgement, provide medical, psychological and psychiatric treatment for family, publish, change domestic legislation on the recruitment of minors, pay pecuniary damages, non pecuniary damages and court costs and fees)</td>
<td>2008 (The state has partially complied with the obligations to pay damages, reimburse, adapt domestic legislation, publish, created educational programs)</td>
</tr>
<tr>
<td>Peru</td>
<td>Cayara</td>
<td>extrajudicial executions, torture, arbitrary detention, forced disappearance of persons and damages against public property and the property of Peruvian citizens, who were victims of the actions of members of the Peruvian army, beginning on May 14, 1988 in the District of Cayara, Province of Víctor Fajardo, Department of Ayacucho</td>
<td>Dismissed</td>
<td></td>
</tr>
<tr>
<td>Peru</td>
<td>Acevedo Buendía et al. (&quot;Dismissed and Retired Employees of the Comptroller’s Office&quot;)</td>
<td>Failure to pay salaries and wages; benefits; and bonuses received by the active employees of that office performing functions identical, similar, or equivalent to those that the discharged or retired employees performed&quot;, regarding the two hundred and seventy-three [273] members of the Association of Discharged or Retired Employees of the Comptroller General of the Republic.</td>
<td>2009 (pay pecuniary, non pecuniary damages, reimburse court costs and fees, comply with the order of the constitutional court of Peru, publish)</td>
<td></td>
</tr>
<tr>
<td>Peru</td>
<td>Acevedo Jaramillo et al.</td>
<td>Employees dismissed because they participated in a strike, without pay.</td>
<td>2006 (reinstate workers, pay compensation for lost wages, pay pension, retirement, social security, non pecuniary damages, reimburse court costs and fees, provide legal counselling to victims)</td>
<td>2009 (all reinstatement and other points under execution by national courts)</td>
</tr>
<tr>
<td>Peru</td>
<td>Anzualdo Castro</td>
<td>Forced disappearance, possible execution and destruction of body.</td>
<td>2009 (conduct criminal proceedings, search body, make efforts to locate persons disappeared during internal conflict, change legislation, implement education, publish, acknowledge responsibility, erect a plaque, provide health care to family, pay pecuniary, non pecuniary damages and reimburse court costs and fees)</td>
<td></td>
</tr>
</tbody>
</table>

**TOTAL**

Paraguay: 2
Peru: 4

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**STATE PLAINTIFF HISTORY SENTENCE LACK OF COMPLIANCE**

**Paraguay**
- XÁKMOK KÁSEK: 2006 (publication, property rights to the community within 3 years, community development fund, pay non pecuniary compensation, reimburse court costs and fees, while landless the state must provide basic supplies for survival, install communication system, registration and documentation program, change domestic laws)
- Sawhoyamaxa Indigenous Community: 2005 (grant property rights, provide basic services for the members of the community as long as they remain landless, set up a fund for the purchase of land, implement community development program, publish, publicly acknowledgement, change domestic legislation, pay pecuniary damages and reimburse court costs and fees)
- Yakye Axa Indigenous Community: 2006 (the state must investigate, locate bodies, publicly acknowledge responsibility, publish, medical treatment to family, build monument, implement permanent programs of human rights, define torture and involuntary disappearance, pay pecuniary and non pecuniary damages, reimburse costs with court)
- Goiburú et al.: 2004 (The state must publish judgement on official gazette, carry out an act of public acknowledgement of international responsibility, provide psychological treatment, vocational guidance and special education programmes, ensure protection to witnesses, pay pecuniary and non pecuniary damages, reimburse court costs and fees)
- Vargas Areco: 2006 (investigate, public apology and acknowledgement, provide medical, psychological and psychiatric treatment for family, publish, change domestic legislation on the recruitment of minors, pay pecuniary damages, non pecuniary damages and court costs and fees)

**Peru**
- Cayara: Dismissed
- Acevedo Buendía et al. ("Dismissed and Retired Employees of the Comptroller’s Office"): 2009 (pay pecuniary, non pecuniary damages, reimburse court costs and fees, comply with the order of the constitutional court of Peru, publish)
- Acevedo Jaramillo et al.: 2006 (reinstate workers, pay compensation for lost wages, pay pension, retirement, social security, non pecuniary damages, reimburse court costs and fees, provide legal counselling to victims)
- Anzualdo Castro: 2009 (conduct criminal proceedings, search body, make efforts to locate persons disappeared during internal conflict, change legislation, implement education, publish, acknowledge responsibility, erect a plaque, provide health care to family, pay pecuniary, non pecuniary damages and reimburse court costs and fees)
<table>
<thead>
<tr>
<th>STATE</th>
<th>PLAINTIFF</th>
<th>HISTORY</th>
<th>SENTENCE</th>
<th>LACK OF COMPLIANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peru</td>
<td>Baldeón García</td>
<td>Military forces arrested victim during church service in community. He was a farmer. They tied him upside down, whirled and submerged him in water tanks.</td>
<td>2006 (investigate, publish, public apology, acknowledge responsibility, name street park or school after victim, pay medical care for family, pay pecuniary and non pecuniary damages, reimburse court costs and fees)</td>
<td>2009 (The state has only fully complied with the obligation to publish and name a street, park or school after victim. The state has partially provided medical care)</td>
</tr>
<tr>
<td>Peru</td>
<td>Barrios Altos</td>
<td>Nov. 3, 1991: poor lima neighborhood Barrios Altos organize to make a fundraiser (pollada) to help replace pipes and drains that were making their children sick; 11:30 pm 6 masked men come out of a vehicle; they fire silencers in the crown, killing 15 including an 8 year old child running to his father's aid; 4 people seriously wounded.</td>
<td>2005 (The state has to remove Amnesty Laws, pay damages, provide scholarships and free health care to the victims, change domestic law, build a monument, publish the case through all channels of media available)</td>
<td>2009 (Fujimori's imprisonment, the state has paid damages, court fees, but the court needs more information on compliance with regard to the other topics)</td>
</tr>
<tr>
<td>Peru</td>
<td>Cantoral Benavides</td>
<td>Detention and torture of victim by army. Accusation of terrorism. Faceless tribunal.</td>
<td>2001 (pay pecuniary damages, non pecuniary damages, court costs and fees, revert conviction, nullify any condemnation against plaintiff, provide fellowship, publish, provide medical treatment, investigate)</td>
<td>2009 (the state still needs to fulfill its obligation to provide scholarship, provide medical care, conduct investigation)</td>
</tr>
<tr>
<td>Peru</td>
<td>Cantoral Huamani and García Santa Cruz</td>
<td>Kidnapping, torture and execution by army</td>
<td>2007 (investigate, publish, publicy acknowledge responsibility, provide study grant, provide psychological treatment, pay pecuniary non pecuniary and reimburse)</td>
<td>2009 (the state has only partially complied with its obligation to pay some compensation)</td>
</tr>
<tr>
<td>Peru</td>
<td>Castillo Páez</td>
<td>abdution and disappearance by police</td>
<td>1998 (pay damages, investigate, reimburse court costs and fees, locate remains)</td>
<td>2009 (the state still needs to locate remains)</td>
</tr>
<tr>
<td>Peru</td>
<td>Castillo Petruzi et al.</td>
<td>Plaintiffs prosecuted in military court and convicted of treason. Sentenced to life imprisonment.</td>
<td>1999 (change domestic law, reimburse court costs and fees)</td>
<td>1999 (no compliance)</td>
</tr>
<tr>
<td>Peru</td>
<td>Casti Hurtado</td>
<td>Arrest and judgment by the military depriving victim of liberty in spite of habeas corpus.</td>
<td>2001 (annual military proceedings, pay pecuniary and non pecuniary damages, reimburse court costs and fees, investigate facts)</td>
<td>2010 (the state has only reimbursed court costs and fees)</td>
</tr>
<tr>
<td>Peru</td>
<td>&quot;The Five Pensioners&quot;</td>
<td>non-compliance with the judgments of the Supreme Court of Justice and the Constitutional Court of Peru &quot;that ordered the organs of the Peruvian State to pay the pensioners a pension in an amount calculated as established in the legislation in force when they began to enjoy a determined pension regime&quot;</td>
<td>2003 (right to property should be determined by national courts, investigate, pay non pecuniary damages, reimburse court costs and fees)</td>
<td>2006 (the state has only reimbursed)</td>
</tr>
<tr>
<td>Peru</td>
<td>De La Cruz Flores</td>
<td>Detention, judgment by faceless judge, convicted of crime of terrorism)</td>
<td>2004 (conduct new trial with due process, pay pecuniary damages, non pecuniary damages, medical care, reinstate victim, offer her a grant, register in retirement, publish, reimburse)</td>
<td>2010 (The state has published and paid)</td>
</tr>
<tr>
<td>Peru</td>
<td>Miguel Castro Castro Prison</td>
<td>cruel, inhumane and degrading treatment to inmates</td>
<td>2006 (investigate, guarantee the delivery of remains to family, return the remains of inmates to families, public act of acknowledgement, public apology, medical care, education program, monument, publish, pay pecuniary and non pecuniary damages, reimburse court costs and fees)</td>
<td>2009 (State has failed to provide information. The court will keep proceedings of monitoring open)</td>
</tr>
<tr>
<td>Peru</td>
<td>Constitutional Court</td>
<td>Fujimori dissolved congress and court in 92. They returned later, and were harassed and threatened. Some justices were removed.</td>
<td>2001 (investigate human rights violations, pay arrears of salaries and other benefits, reimburse court costs and expenses)</td>
<td>2008 (the state has paid arrears but not interest)</td>
</tr>
<tr>
<td>Peru</td>
<td>Durand and Ugarte</td>
<td>Detention of victims, accusation of terrorism, incarceration, riots in many prisons, many wounded and dead inmates.</td>
<td>2001 (pay pecuniary and non pecuniary damages, provide health care, apologize to victims, publish, locate remains, investigation)</td>
<td>2008 (the state has fully complied with the obligation to apologize)</td>
</tr>
<tr>
<td>Peru</td>
<td>García Asto and Ramírez Rojas</td>
<td>Detention by police with no arrest warrant or flagrante delicto. Judgment conducted by faceless judge, convicted of the crime of terrorism.</td>
<td>2005 (provide free medical care, provide scholarships, pay pecuniary and non pecuniary damages and reimburse court costs and fees, publish)</td>
<td>2007 (No information by the state. Proceedings open)</td>
</tr>
<tr>
<td>Peru</td>
<td>Gómez Palomino</td>
<td>Forced disappearance and murder</td>
<td>2005 (investigatem locate remains, publish, provide medical care, education program, change legislation, pay pecuniary and non pecuniary damages and reimburse court costs and fees)</td>
<td>2009 (The state has partially complied with publication, payment of damages and reimbursements)</td>
</tr>
<tr>
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<td>PLAINTIFF</td>
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<tr>
<td>Peru</td>
<td>Gómez Paquiyauri Brothers</td>
<td>detention, torture and execution of minor brothers by police.</td>
<td>2004 (investigate, publicly acknowledge, apologize, publish, name a school after victims, provide scholarship to family, pay pecuniary and non pecuniary damages, reimburse costs and expenses, register daughter of victim)</td>
<td>2008 (the state has named an education center and registered daughter)</td>
</tr>
<tr>
<td>Peru</td>
<td>Huilca Tesse</td>
<td>Extrajudicial execution of trade union leader by Death squad Collina</td>
<td>2005 (investigate, public acknowledgement, publish, create a course on human rights and labor law under the name of victim, celebrate the work of victim in 1may celebrations, erect a bust, provide medical care, pay pecuniary and non pecuniary damages)</td>
<td>2006 (the state has published, publicly acknowledged responsibility and paid damages)</td>
</tr>
<tr>
<td>Peru</td>
<td>Ishcer Bronstein</td>
<td>Bronstein was president of Channel 2. He denounced grave human rights violations and corruption and was removed from editorial control.</td>
<td>2001 (The state must should investigate, identify and punish the responsible ones, reinstate Bronstein as shareholder of the channel, pay moral damages, reimburse court costs and expenses)</td>
<td>2009 (The state has only paid compensations and reimbursements)</td>
</tr>
<tr>
<td>Peru</td>
<td>La Cantuta</td>
<td>Invasion of Universidad Enrique Guzman y Valle, 10 captured and taken to Boca del Diablo where they were executed and buried; Newspaper repercussion; no information given to families; dean and families file 3 habeas corpus which were dismissed as groundless; criminal complaints filed by family in 1992; Henry Pease Garcia, a progressive congressman, receives Leon Dormido; congressional committee is formed; military tanks stationed near the congress; In 1993, Peruvian General Rodolfo Robles Espinoza links La Cantuta to La Colina (exiled); Newspaper Si receives a hand drawn map with location of bodies;</td>
<td>2006 (The state must conduct and complete criminal investigations, locate mortal remains, build a memorial, publish decision in official gazette, provide health care to family members, human rights education for members of the Armed Forces, pay pecuniary and non pecuniary damages, reimburse court costs, publicly acknowledge its liability)</td>
<td>2009 (The state has fully complied with its obligation to acknowledge liability and built a monument; it has partly complied with investigation, location of mortal remains, publish decision in official gazette, created education programs and paid compensation for pecuniary damages)</td>
</tr>
<tr>
<td>Peru</td>
<td>Loayza Tamayo</td>
<td>Arrest, torture, cruel an inhumanean treatment, violation of judicial guarantees</td>
<td>1998 (reinvestigate plaintiff to teaching, guarantee retirement benefits, nullify judicial decisions against her, pay pecuniary and non pecuniary, change terrorism laws and treason laws, investigate, pay court costs and fees, publicly acknowledge responsibility)</td>
<td>2008 (the state paid damages and court costs and fees)</td>
</tr>
<tr>
<td>Peru</td>
<td>Lori Berenson Mejia</td>
<td>Accusation of terrorism, imprisonment, violation of judicial guarantees</td>
<td>2004 (adapt domestic legislation, publish, medica; care, forgive civil debt, improve prison, pay pecuniary damages, reimburse court costs and fees)</td>
<td>2006 (the state has forgiven civil debt, published and reimbursed court costs and fees)</td>
</tr>
<tr>
<td>Peru</td>
<td>Neira Alegría et al.</td>
<td>Detention, accusation of terrorism, riots</td>
<td>1996 (pay compensations, create trust funds, locate remains, publicly acknowledge responsibility)</td>
<td>2009 (repairs are pending compliance)</td>
</tr>
<tr>
<td>Peru</td>
<td>Dismissed Congressional Employees</td>
<td>Dismissal of 257 employees from the Congress</td>
<td>2006 (conduct trial to analyze the dismissal, pay non pecuniary damages, reimburse court costs and fees)</td>
<td>2009 (the state needs to pay damages and conduct trial)</td>
</tr>
<tr>
<td>TOTAL</td>
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<tr>
<td>Suriname</td>
<td>Aloeboetoe et al</td>
<td>Ih Atjoni, more than 20 male, unarmed maroons (bushnegroes) were beaten with rifle-butts by soldiers who had detained them under suspicion that they were members of the Jungle Commando. Some of them were seriously wounded with bayonets and knives. They were forced to lie face-down on the ground while the soldiers stepped on their backs and urinated on them</td>
<td>The state must pay non pecuniary compensation, create two trust funds, reimburse expenses of the foundation, reopen school, make medical facility operational</td>
<td>FULL COMPLIANCE!!!</td>
</tr>
<tr>
<td>Suriname</td>
<td>Gangaram-Panday</td>
<td>Mr. Asok Gangaram Panday was detained by the Military Police when he arrived at Zanderij Airport in Paramaribo. The Military Police at Fort Zeeland, where he was detained, subsequently reported that he had hanged himself.</td>
<td>The state must pay compensation to the widow and his children</td>
<td>FULL COMPLIANCE!!!</td>
</tr>
<tr>
<td>Suriname</td>
<td>Moiwana Community</td>
<td>Massacre of 40men, women and children by armed forces. Exhile or internal displacement of survivors.</td>
<td>2006 (investigate, locate remains, guarantee property rights, establish a community fund, acknowledge international responsibility, apologize, build memorial, build pecuniary and non pecuniary damages, reimburse court costs and fees, guarantee safety of people who decide to return)</td>
<td>2007 (The state has publicly acknowledged responsibility, paid damages and reimbursed court costs and fees)</td>
</tr>
<tr>
<td>STATE</td>
<td>PLAINTIFF</td>
<td>HISTORY</td>
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</tr>
<tr>
<td>Suriname</td>
<td>Saramaka People</td>
<td>Failure to recognize the juridical personality of the Saramaka People.</td>
<td>2007 (grant property rights, grant legal recognition, change legislation, consult people in every decision involving their land, minimize environmental damage, translate into Dutch and publish, pay compensation, reimburse court costs and funds)</td>
<td>2010 (no information)</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trinidad and Tobago</td>
<td>Caesar</td>
<td>Plaintiff suffered corporal punishment (allowed by domestic legislation), was not tried within reasonable time</td>
<td>2005 (pay moral damages, health care, abrogate corporal punishment act, amend constitution, improve prison, pay pecuniary and non pecuniary damages)</td>
<td>2007 (The state denounced the convention, and the IACtHR declared that it still needs to comply)</td>
</tr>
<tr>
<td>Trinidad and Tobago</td>
<td>Hilaire, Constantine, Benjamin et al.</td>
<td>&quot;mandatory nature of the death penalty&quot;; the process for granting amnesty, pardon or commutation of sentence in Trinidad and Tobago; the delays in certain alleged victims' criminal proceedings; the deficiencies in the treatment and conditions of detention of certain alleged victims; the due process violations during some of the alleged victims' pre-trial, trial and appeal phases; and finally, for certain alleged victims, the denial of access to legal aid for the purpose of pursuing domestic remedies for the violations of their rights</td>
<td>2002 (conduct a retrial according to new criminal law, abstain from executing plaintiffs, pay non pecuniary damages, improve prison, reimburse expenses)</td>
<td>2003 (The state refused to comply and a report was sent to the OAS.)</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Venezuela</td>
<td>Apitz Barbera et al.</td>
<td>Removal of judges from office - accusation that they made a mistake in analyzing law</td>
<td>2008 (pay damages, reimburse, reinstate positions, publish, pass a judicial code of ethics)</td>
<td>2009 (No information from state)</td>
</tr>
<tr>
<td>Venezuela</td>
<td>Barreto Leiva</td>
<td>Plaintiff, former director general of the office of the president, was dismissed and convicted for crime against property. No due process.</td>
<td>2009 (grant the plaintiff the change to appeal, adapt domestic legal system, publish, pay non pecuniary damages and reimburse expenses)</td>
<td></td>
</tr>
<tr>
<td>Venezuela</td>
<td>Blanco Romero et al.</td>
<td>Plaintiffs had their homes invaded by DISIP officers, were hit and taken. Disappearance.</td>
<td>2005 (investigate, locate, publish, change legislation to accommodate habeas corpus, reform criminal laws, educational and training courses, facilitate minor’s department from Venezuela, pay pecuniary and non pecuniary damages, reimburse expenses)</td>
<td>2009 (The state has done NOTHING)</td>
</tr>
<tr>
<td>Venezuela</td>
<td>El Caracazo</td>
<td>extrajudicial execution of 35 persons, the disappearance of two persons and the injuries to three during the events of February and March 1989</td>
<td>2002 (investigate, locate remains, pay for burial, educate, adjust public operations against disturbances, physical means to tame disturbances under control, publish, pay pecuniary damages, non pecuniary damages, reimburse court costs and fees)</td>
<td>2009 (the state has reimbursed expenses and paid damages)</td>
</tr>
<tr>
<td>Venezuela</td>
<td>El Amparo</td>
<td>16 fishermen travelling were stopped by the military, and 14 were killed - operation Anguilla III</td>
<td>1997 (pay reparations, create trust fund, investigate)</td>
<td>2010 (the state still needs to investigate)</td>
</tr>
<tr>
<td>Venezuela</td>
<td>Montero Aranguren et al.</td>
<td>extrajudicial execution of 37 detainees at the Detention Center of Catia, located in the city of Caracas, Venezuela, at dawn, on November 27, 1992. These facts might have occurred after the second attempt of a coup d’état in Venezuela</td>
<td>2006 (investigate, locate remains, change domestic laws, improve prisons, educate, publicly acknowledge international responsibility and ask for forgiveness, publish, pay pecuniary and non pecuniary damages, reimburse expenses)</td>
<td>2009 (the state has done NOTHING)</td>
</tr>
<tr>
<td>STATE</td>
<td>PLAINTIFF</td>
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<tr>
<td>Venezuela</td>
<td>Perozo et al.</td>
<td>statements made by public officers, acts of harassment and physical and verbal assault, as well as hindrance to broadcast, committed by State agents and private individuals, to the detriment of forty-four (44) people associated with Globovisión television station</td>
<td>2009 (conduct investigation, publish, remove impediments to freedom of information, reimburse costs and expenses)</td>
<td></td>
</tr>
<tr>
<td>Venezuela</td>
<td>Reverón Trujillo</td>
<td>arbitrary dismissal from judicial position</td>
<td>2009 (reinstate victim, remove dismissal from file, approve ethics code, change domestic legislation, publish, pay pecuniary, non pecuniary and reimburse)</td>
<td></td>
</tr>
<tr>
<td>Venezuela</td>
<td>Ríos et al.</td>
<td>20 people, all of them journalists or social communication workers that are or have been linked to RCTV, subject to several threats, acts of harassment, and verbal and physical abuse, including injuries caused by gunshots, and that there were attempts against the installations of the RCTV television station</td>
<td>2009 (investigate, publish, eliminate impediments to freedom of information, reimburse costs and fees)</td>
<td></td>
</tr>
<tr>
<td>Venezuela</td>
<td>Usón Ramírez</td>
<td>filing of a criminal action before the military court due to the crime of Slander against the National Armed Forces, to the detriment of Retired General Francisco Usón Ramírez […] and the subsequent judgment of deprivation of liberty for five years and six months as a consequence of certain [alleged] statements that Mr. Usón made in a television interview</td>
<td>2009 (leave criminal trial without effect, limit competence of military tribunals, change organic code of military justice, publish, pay pecuniary and non pecuniary damages, reimburse court costs and expenses)</td>
<td></td>
</tr>
</tbody>
</table>

**TOTAL** 10


Inter-American Court of Human Rights. “Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago Judgment of June 21, 2002 (Merits, Reparations and Costs)”,

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