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**JUDGING INTER-AMERICAN HUMAN RIGHTS:  
THE RIDDLE OF COMPLIANCE WITH THE INTER-AMERICAN COURT OF HUMAN RIGHTS**

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*Abstract*

*The use of compliance studies to evaluate the effectiveness of international human rights courts can produce misleading results because a focus on compliance considers the behaviour of only one stakeholder in the dynamic that is human rights adjudication: the state. A survey of petitioners in cases before the IACtHR, together with a review of literature surrounding strategic litigation before the Inter-American system, demonstrate how civil society organisations value the declarative justice provided by the Court, how they mobilise around human rights litigation and how adept they are at deploying rulings in such a way as to produce impact beyond compliance and even in the absence of any compliance at all.*

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**1. Introduction**

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In this article I engage critically with the idea that compliance rates alone can be used to gauge the effectiveness of an international human rights court. I highlight several conceptual and practical difficulties encountered in trying to measure compliance and in trying to use it to evaluate international human rights courts and ultimately I hold that compliance is too narrow an indicator of the impact that these courts have because it looks at the way that they affect only one stakeholder in the international adjudicative process: the state. I hold that in order to understand the dynamics through which human rights courts impact realities on the ground it is important to widen the scope of study to include broader non-compliance impacts that affect or are brought about by other recipients of international rulings, principally the civil society organisations that mobilise around the international adjudicative process and deploy pro-human rights rulings domestically in myriad ways.

Thinking of the impact of human rights courts in this more extensive way allows us to understand why the Inter-American Court of Human Rights (IACtHR) is experiencing a consistent increase in relevance (as evidenced by increasing use of its individual petitions process against a steady number of states) while the rates of compliance with its rulings remain relatively low. Cases alleging violations of human rights that reach the Inter-American Court are characterised by the important role played by civil society organisations in them, as petitioners, litigants and *amici curiae*. After surveying civil society petitioners in cases that reached the Inter-American Court I discovered a pattern whereby Latin American civil society organisations deployed litigation before the Inter-American system as part of a broader advocacy strategy and once they received a favourable ruling from the Court they

were generally very adept at using it to push for pro-human rights change domestically from the bottom up. This finding is supported by recent literature describing NGO involvement in the Inter-American human rights system and by published narratives of strategic litigation before the system. Both the survey and the aforementioned literature bolster my finding that, while compliance is important, the rulings of international human rights courts can have impacts beyond compliance and indeed, in the absence of any compliance at all from states.

In the Latin American context in which the IACtHR operates, the focus on impact beyond and in the absence of compliance paints a more realistic portrait of how international adjudication in the field of human rights manages to alter realities on the ground. It also illuminates the ways in which human rights advocates have adapted to harness as much impact as possible in the context of states that are reluctant to comply with their human rights obligations. Finally, it clarifies the way in which the Inter-American individual petitions process operates in practice and counters the narrative that holds that the Inter-American Court is not an effective tribunal.

## **2. The Paradox: Low compliance vs rising relevance in the Inter-American system**

A few years ago, while researching theories of international adjudication, I came across an article written by Eric Posner and John Yoo that engaged critically with the notion of judicial independence in international law<sup>1</sup>. They were writing in response to Lawrence Helfer and Anne-Marie Slaughter who had held, some years earlier, that judicial independence was key to what they called “effective supranational adjudication”<sup>2</sup>. Contrary to this assumption,

Posner and Yoo held that the most successful international adjudicative bodies were in fact those that were dependent on the will of the states that came before them. They developed an assessment tool that looked at three separate elements that could determine the success of the international court or tribunal: a) rates of compliance with the rulings of the body; b) usage rates and; c) overall success of the treaty regime. They said that international courts that were dependent on the will of states were used frequently by states and their rulings were generally complied with by those states. They applied their model to two regional human rights courts: the European Court of Human Rights and the Inter-American Court of Human Rights. While the European Court did not emerge unscathed from their analysis, the evaluation of the success of the Inter-American Court was particularly damning: “given the low usage and compliance rates, we can be reasonably confident in concluding that the IACHR has not been an effective tribunal”<sup>3</sup>. They had stated earlier that “[i]f a tribunal is ineffective, states will stop using it”<sup>4</sup>.

As someone who was studying the Inter-American system of human rights this idea did not sound right. Over the years since the beginning of the Inter-American Court’s operation 22 states have recognised the binding jurisdiction of the Court and only two have permanently withdrawn from the Court’s monitoring<sup>5</sup>. In addition, when I looked at the rate of individual petitions to the Inter-American system, the first step in the international procedure that could end in a ruling from the Court, I found that in the 29 years since the Court’s first merits ruling in the *Velásquez Rodríguez* case, petitions to the system have increased eighteen-fold<sup>6</sup>. It appears that while compliance with the Court’s rulings is admittedly low, usage continues to increase on the part of petitioners and against a stable number of states. If compliance is a measure of effectiveness, and effectiveness determines usage, then this

pattern of low compliance and increasing relevance of the Inter-American system is a paradox. Far from falling into disuse, the system is currently struggling to manage an ever increasing caseload of individual petitions against a steady number of Latin American and Caribbean states.

The question that arises then is: why are petitioners using the Inter-American system at increasing rates when compliance with the Inter-American Commission's recommendations and the Court's rulings is low? Put differently, what are petitioners getting out of the individual petitions process that makes going through a long, difficult, expensive and often dangerous procedure<sup>7</sup> to get a case to the Court worthwhile?

### **3. Impact as Compliance in human rights adjudication**

#### **a. The importance of compliance**

Compliance is a central element in several analyses of international law and of international adjudication. In general terms, these studies hold that compliance can tell us something important about the effectiveness of the law in general and of international monitoring bodies in particular. Compliance seems to be particularly captivating in international law because of the need that international lawyers have to convince others that international law is, in fact, law even though it is not enforced in the same way as other law is<sup>8</sup>. When international law demonstrates a high rate of compliance it is easier to argue that it is law<sup>9</sup>. In addition there is the question of how *useful* the law is and consequently, whether it is worth the effort. International law may fit the bill in terms of formality and content, but if it

doesn't *work* (meaning: if it doesn't change the thing that we want changed) then why bother?

A focus on compliance has led to several different sub-areas of study in the field of international human rights. Some scholars are interested in determining how much compliance exists with the law and with monitoring bodies<sup>10</sup>. Likewise, others seek to understand why states comply with the law<sup>11</sup>. Finally, others attempt to develop strategies to increase state compliance, with scholars approaching the topic from several strategic positions, such as regime design<sup>12</sup> and strategies that courts themselves can undertake to improve compliance<sup>13</sup>. In all of these works compliance features as something that should be conceptualised, measured and ultimately pursued. If we understand that the recipient of international human rights law is the state, then compliance can become the law's most important impact.

Studies that measure compliance purport to tell us how effective law and the institutions that enforce the law are in fulfilling their purpose. When it comes to the compliance levels of international human rights courts, a court that achieves compliance has been understood as a well-functioning, effective court<sup>14</sup>, which is an idea that requires us to believe that courts are actually *doing something* to bring compliance about. For example, Anne-Marie Slaughter and Laurence Helfer "measure the effectiveness of a supranational tribunal in terms of its ability to compel compliance with its judgments by convincing domestic government institutions, directly and through pressure from private litigants, to use their power on its behalf"<sup>15</sup>.

Compliance also appears to tell us something useful about states. Part of the power that international law has is that states like to be seen as good neighbours and respectful of the rule of law. A state that complies with international rulings may be perceived as law-abiding and trustworthy and may then be invited to participate in more and more international agreements. In contrast, a state that is openly hostile to complying with international rulings may not be considered by other states as a dependable trading partner, for example. States' level of respect for international human rights law in particular affords them reputational benefits. In particular, states that are transitioning from authoritarian rule are often eager to rehabilitate their international images through human rights treaty ratification, submission to international monitoring and compliance with rulings.

It would appear then, that the centrality of compliance in studies about the effectiveness or impact of international human rights law and adjudication is because it is considered a useful tool in evaluating the performance of the law and its monitoring bodies and of states. It therefore becomes imperative to understand what the term compliance means and to understand its virtues and its limitations.

**b. The problem with defining compliance.**

If compliance is such an important tool with which to measure the effectiveness of law and of adjudication, it is surprising how resistant it is to definition and thus, that most compliance studies do not specify their understanding of what the term means. Instead, studies that rely on compliance often appear to understand it as “conformity of behavior

with legal rules"<sup>16</sup> which is a concept that is too vague to anchor something as important as effectiveness.

Kingsbury argues that it is not possible to understand compliance without first locating it within a theoretical understanding of the law. Compliance, in this sense, will mean different things to different theorists<sup>17</sup>. In addition, to be able to study and to quantify compliance, we need a clear understanding of several practical factors, for instance: what does the international norm prescribe, who decides on the meaning of the norm, how will we evaluate the behaviour of the obligated party, who will determine if the behaviour displays characteristics that can be described as compliance? In this sense, Howse and Teitel point out that there is too little attention paid to interpretation in deploying compliance as an evaluative tool in international law<sup>18</sup>.

Compliance in international human rights adjudication poses additional questions that become important when we look at characteristics of human rights reparations measures. One issue is determining how long states should take to comply. It seems obvious that once a reparations order is handed down, states should start to take steps to comply with it. But, what if they take too long? At what point in time does compliance become meaningless for the purposes of evaluating effectiveness? Take for example a state that has been ordered to pay monetary damages to a victim. Is payment in two months equal to payment after two years? What about ten years? If compliance is a tick-box exercise then on paper there is no difference between these options, but in practice the experience is very different for the victim who is to be compensated.



*How much* compliance is also an issue in international human rights adjudication; payments of damages appear straightforward enough for states but consider, for example that the state has been ordered to amend its constitution<sup>19</sup> or reform its prison system<sup>20</sup>. How much behaviour conformity are we going to require of states and at what point are we going to consider the ruling complied with? Is it enough that the executive introduce a bill of constitutional reform or criminal justice reform into congress or will we wait until the political process, which can take years, runs its course? What if the end result does not fully implement the reparations ruling? Do we tick the box or not?

**c. Compliance is a spectrum.**

Part of the problem in conceptualising compliance is understanding it as a binary. In evaluating the effectiveness of the Inter-American Court, Posner and Yoo considered only full compliance as compliance at all<sup>21</sup>, even though they recognised that the Court ordered several different types of reparations measures<sup>22</sup>. Choosing to consider only full compliance as relevant for the appraisal of an adjudicative body is a decision that's theoretical underpinnings need to be explained because the ramifications of this methodological choice can radically change the way we evaluate the said adjudicative body. For example, one can argue that the gravity of human rights violations justifies withholding the label of compliant from states that have not secured full compliance yet, but this understanding is political and should be explicit in any study that uses this particular methodology precisely because it contributes to obscuring what human rights compliance looks like in practice.

A focus on only full compliance invisibilises different behaviours that have an impact on how human rights law operates on the ground. First, it invisibilises the practice of the adjudicative body that makes the decision to order multiple reparations measures in the same ruling and/or to order reparations measures that are hard to comply with. If Courts are evaluated based on their effectiveness and effectiveness is made up in large part of compliance rates, they could improve their evaluations by only ordering that states pay damages to victims, which is a reparation measure that states comply with more than others<sup>23</sup>. If they don't choose this path and instead they require states to make structural changes in an effort to prevent violations from recurring, their compliance rates will likely be low, but does this mean that their rulings are not having an impact on the ground? I will explain *infra* why I believe that it does not. Courts can be presumed to be fully aware of the difficulties that states will face in implementing their decisions and so their choice to require complex and sometimes structural change denotes an ethos that needs to be acknowledged and studied.

Second, a focus only on full compliance also invisibilises the state behaviour that can be classed as partial compliance. For example, under the full-compliance model, a state that has paid damages and apologised to victims but has not enacted prison reform is equally in compliant as a state that has completely ignored the ruling. In practice, there is a wide gap between these two states that is relevant for victims, advocates and for observers of the law. The focus on full compliance thus paints a picture of states that is not an accurate reflection of their efforts to repair victims and it paints a picture of human rights law implementation that is not a real representation of the effects that a ruling has on the life of victims.

It seems clear then that recognising partial compliance is important in order to get a real understanding of the impact that human rights rulings are having in practice. Having said that, while a focus on full-compliance allows unduly negative labels to be attached to courts and to states, if partial compliance is understood as compliance-enough, the opposite issue could occur. Where reparations are many and include measures that are complex or difficult to implement, states presumably know that full compliance will be hard to achieve and that partial compliance is easy. A state can wear the hat of partial compliance if it implements just one of the many measures it has been ordered to comply with. For example, it can apologize (a relatively easy task for an executive to accomplish) and then claim to have partially complied without ever having so much as paid damages to the victims. Hillebrecht is right then that in a scheme where partial compliance exists in an undistinguished mass, states are incentivized to “comply with the lowest hanging fruit rather than to implement more durable human rights safeguards”<sup>24</sup>.

The decision to deploy compliance rates as a tool to measure effectiveness should be taken with caution and should always be accompanied with a methodology that takes into account the nuances described above. That said, there are good reasons to consider that the use of even the most nuanced compliance studies paints an incomplete picture of the effectiveness of an international court and of the impact of the law generated by that court.

**d. Compliance is a limited indicator of impact.**

There has been a push-back in recent years against the use of compliance as a measurement of effectiveness or impact<sup>25</sup>. Scholars have sought to develop more nuanced methodologies that address some of the shortcomings that a compliance approach has when used to evaluate international tribunals.

The first big limitation of compliance studies is that they only look at the effect that adjudication has on one actor in the international legal dynamic. They focus on whether or not the ruling is able to change the behaviour of a particular state and therefore they invisibilise the effects that that ruling has on other actors. If we decide to look only at whether states decide to behave one way or another, we are failing to take into account the several other actors that contribute to the global legal order, the actions or inactions that they undertake and the impacts that the law has on their behaviour<sup>26</sup>. Compliance tells us nothing about the effects that the ruling has on petitioners who present the claim being adjudicated, on the court that has handed down the ruling, on international organisations that may have a stake in the adjudicative process. It likewise says nothing of the effects that the ruling has on other courts (domestic or international), on other states, other potential petitioners or on civil society. It tells us nothing about how the ruling is or is not used by academics or advocates; it tells us nothing of how the media cover the ruling or how it impacts domestic or international politics.

Furthermore, studies that attempt to quantify compliance may be able to tell us whether a state has carried out the orders of an international court, but they don't tell us why. Political scientist Lisa Martin pointed out that the biggest problem with using compliance as an indicator of the effectiveness of law is that it does not deal with the issue of causality,

meaning that while a state may comply with a legal rule there is no accompanying indication of whether the compliant behaviour was actually caused by the rule under study or not<sup>27</sup>. Further, as I stated above and as Kingsbury points out: “the assumption that conformity and non-conformity are binary is not an adequate reflection of international practice, in which degrees of conformity or non-conformity and the circumstances of particular behavior often seem more important to participants”<sup>28</sup>.

Concretely, for the purposes of this paper, studies that look at the compliance rate of the Inter-American Court of Human Rights cannot explain the fact that the relevance of the Inter-American individual petitions process continues to increase among petitioners. For Posner and Yoo, low rates of overall compliance are correlated with low usage rates and yet petitions are increasing and states are almost all staying bound. Even if we look at more nuanced compliance studies that seek to quantify and describe partial compliance, we find that the measures most often complied with by American states are still complied with less than half of the time<sup>29</sup>. And yet more and more petitioners are turning to the Inter-American system to resolve their claims of human rights violations. If we consider that taking a case through the individual petitions process is a slow, resource intensive and often dangerous process<sup>30</sup>, partial compliance seems like an inadequate incentive for petitioners. It stands to reason, therefore, that petitioners perceive the Inter-American system as capable of producing an impact that goes beyond its ability to influence state behaviour in a particular case.

#### **4. Impact beyond compliance in human rights adjudication**

**a. New approaches to international court evaluation**

While compliance does appear to be one facet of the impact that international adjudication can have, it is by no means the only facet. Academia is beginning to realign around several iterations of broader understandings of effectiveness as goal attainment, as impact or as authority. Shany, for example, constructs international court effectiveness around the ability of the court in question to attain the goals set for it by those that provided the court with its mandate<sup>31</sup>. While this notion is broader than that of state compliance with rulings, it still only looks at the interests of limited stakeholders, and because international courts are set up by states – or international organizations that are made up of states – it remains a state-centric theory in that it ignores the ways in which international courts can influence other stakeholders.

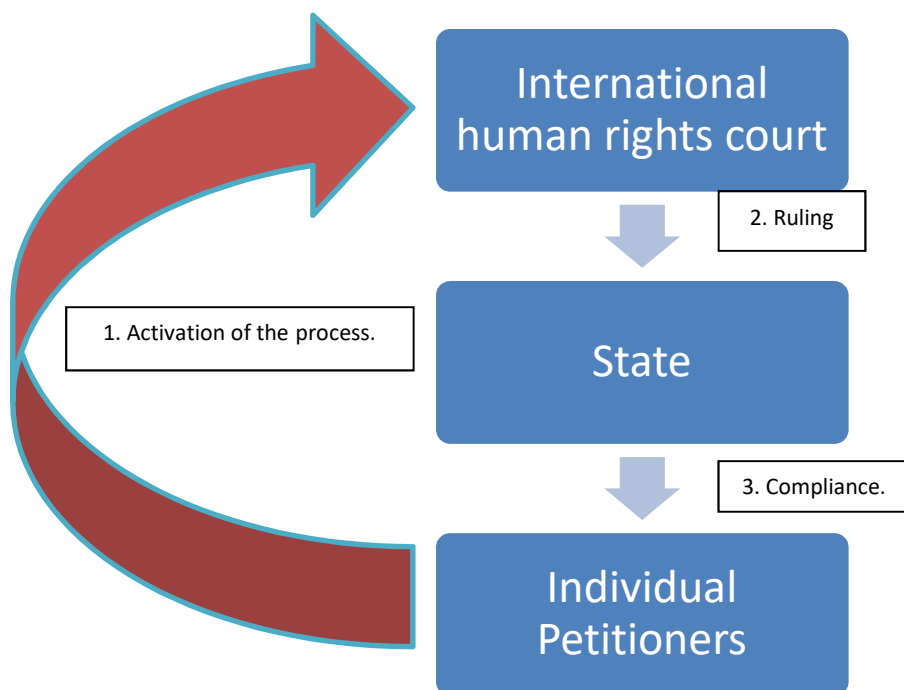
Engstrom, on the other hand broadens the spectrum of evaluation of court performance enormously by saying that the Inter-American system “matters even in ways that are not captured through an examination of the impact of individual rulings and decisions”<sup>32</sup>. While I agree with his proposal to appreciate impact broadly to incorporate the many ways in which the system can produce effects, he does not offer a concept of impact so we are left to wonder where to draw the line in determining which effects are important enough to tip the scales in favour of the adjudicative body in question. Alter, Helfer and Madsen do attempt to provide such a framework by evaluating international courts according to their authority, which is understood as “a court’s ability to project its ideas and values about the law and to have these projections reflected by, or even internalised in, the actions of individuals, groups and organisations within society”<sup>33</sup>. This understanding has the virtue of

including a court's impact on more stakeholders than just the state but its focus is on the court that, for whatever reason, is perceived to be authoritative with no regard to the content of the court's rulings. What matters in this model is the court and "its ideas and values" and how the court behaves to make others adopt those ideas and values. It does not refer to the sometimes complex dynamic that exists in international law, between courts, states, international organisations and civil society. In human rights law, for example, it is often not the case that the ideas and values included in a court ruling originated in the court. They may have originated in a treaty or in a petition to the court, so whether or not they are picked up and implemented by a stakeholder may have little to do with how authoritative the court is and more to do with that stakeholder having had the ideas and values to start off with.

**b. How necessary is compliance to achieve impact?**

Engstrom states that "[c]ompliance might be necessary for effectiveness, but it is not sufficient"<sup>34</sup>. This reflects the current trend of expanding the concept of effectiveness to include but go beyond compliance. However, I hold that international human rights adjudication can have impact even in the complete absence of any compliance at all. This is because I understand the recipients of international court rulings to include many more constituents than just the states that receive adverse rulings from human rights courts.

In a traditional state centric understanding of the way in which international adjudication works, the mechanisms that produce impact on the ground require action from the state that is obligated to implement the ruling. That model would look like this:



In this model, petitioners activate the process by presenting a claim that their human rights have been violated, the international court makes a ruling that recognises that violation and that requires the state to make reparations, and the state implements the decision thereby benefitting the original petitioners. Impact in this model requires that the state comply. Consequently, where no compliance exists, no impact exists.

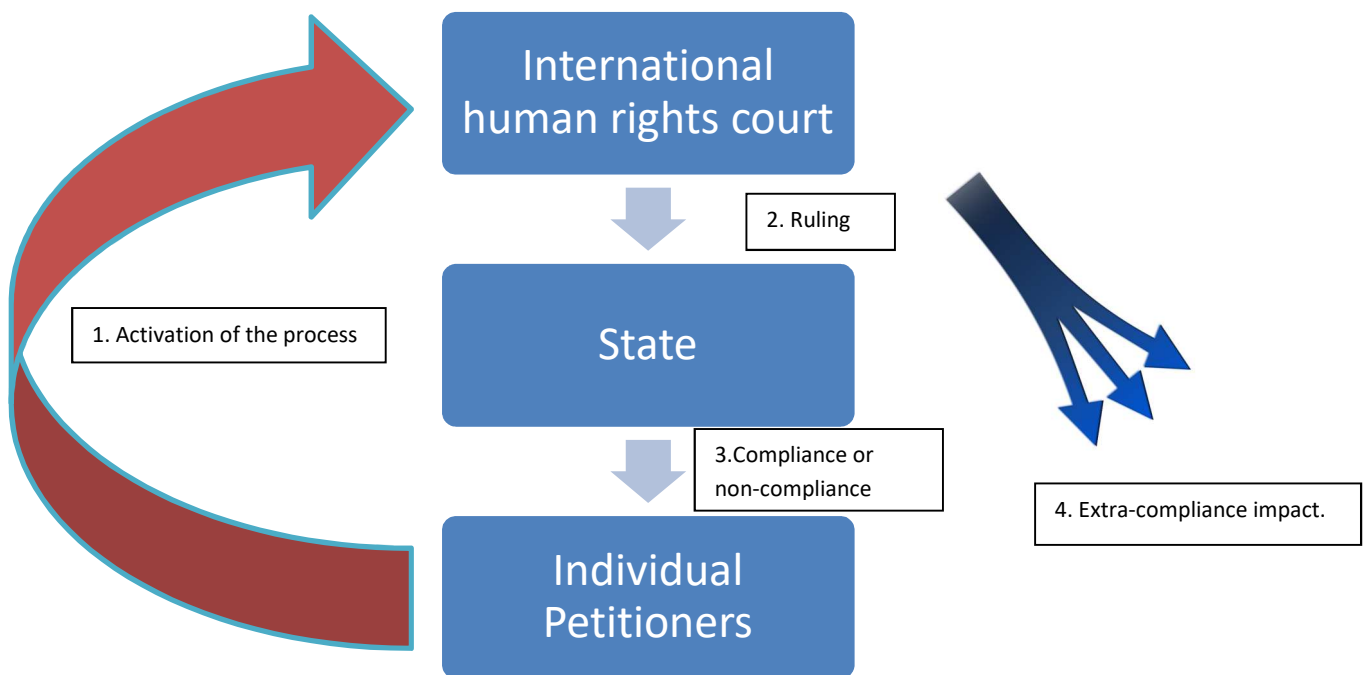
Human rights law is seldom this tidy and to understand it in this way is to ignore many other impacts that human rights adjudication has. Even in the case of this compliant state the ruling has other impacts. For example, the content of the ruling (and the compliance by the state) can serve as an incentive for other petitioners to take their cases to the international adjudicative system. The ruling can be used as precedent in domestic litigation on the human rights in question; it will likely be publicised in media outlets, it will be taught in law



schools, it will be discussed over dinner. The ruling has the potential, therefore, to inform the discourse that surrounds the particular topic of the ruling.

It seems clear then that a human rights ruling can have an impact beyond compliance; a further issue is whether an international human rights ruling that holds a state responsible for a human rights violation can have impact in the absence of compliance. If we understand that in human rights adjudication there are more stakeholders than only states and if we understand impact broadly – as a collection of changes that come about because of a human rights ruling or because of how a human rights ruling is deployed by stakeholders - then the answer is yes. In fact, many of the non-compliance impacts mentioned when talking about a compliant state will occur where compliance is missing. The ruling can still be invoked as precedent in domestic law (whether in the state that received the ruling or in other states<sup>35</sup>), it will still be publicised by the media, it will still be taught and written about by academics and, with enough media coverage, it will still be talked about over dinner. If the shaming of a state is considered valuable by victims, then a ruling that is favourable to a victim but not complied with by a state may still serve as an incentive to other potential petitioners. Non-compliance itself may reinforce an important narrative surrounding the state that certain sectors of society are seeking to push: namely that the state in question does not respect the law.

This model of impact regardless of compliance would look like this:



### c. Impact from the bottom up.

The idea that international law can have impact despite a lack of compliance by states was well explored by Beth Simmons who studied how human rights treaty ratification affected the way that human rights were experienced on the ground. Simmons' study offered copious empirical evidence to strongly suggest that the mechanisms for impact in human rights law do not come from outside the state but rather from within it<sup>36</sup>. She demonstrated that within a state that is a party to an international human rights treaty, domestic stakeholders take international norms and use them in a variety of ways to provoke policy change within the state.

“Scholars of international relations are often pessimistic about the ability of international law to influence human rights practices because they are largely looking in the wrong direction: *outward* at interstate relations rather than *inward* at state-society relations”<sup>37</sup>.

According to Simmons' work, the ratification of human rights treaties affects the domestic arena by allowing domestic stakeholders to alter the national agenda of priorities, to leverage litigation and to empower political mobilization<sup>38</sup>, which ultimately produce pro-human rights impact within the state. For her, it is not surprising that the mechanism for human rights law impact is bottom-up and located internally because "nobody cares more about human rights than the citizens potentially empowered by these treaties"<sup>39</sup>. Human rights treaty ratification becomes a powerful tool for those residing within a state party to push for change, a method of pressure that is more direct, more reliable and, as Simmons demonstrates, more effective than relying on action from outside actors.

This model of impact from the bottom up was developed with regards to treaty law, but it can likewise be applied to the rulings of human rights courts, particularly if we consider that these courts are closely observed by several different groups of domestic stakeholders that include human rights civil society organisations, domestic lawyers and domestic politicians. All of these stakeholders are capable of producing change domestically and they are all looking for support in that endeavour. If that support comes from a court made up of "jurists of the highest moral authority and of recognized competence in the field of human rights"<sup>40</sup> the chances that their mobilisation will bring about change will increase.

It is important to note, however, that impact that occurs in the absence of compliance will often not be related to the reparations measures ordered by the international court and will therefore not replace compliance. For example, an international human rights court may order a state to pay compensation to a victim of torture and arbitrary detention and to

apologise to them. In the event that the state refuses to comply, domestic stakeholders can still mobilise around the ruling; they can use it to shame the state, they can organise public demonstrations condemning the attitude of the state, they can work with opposition media to keep the issue at the forefront of public debate and they may eventually be able to harness enough public support to push the legislature to enact pro-human rights prison reform. But the victim in the original case has still not received the reparations that they are owed by the state. Therefore, it is important to be clear about what extra-compliance impact can mean in practice and who it benefits from it. In the example above, the experience of the general population of prisoners in the state has likely improved as a result of the ruling and the mobilisation surrounding it, but the original victim in the case, while welcoming the reform, may still feel that the ruling, and indeed the whole petitions process, did nothing to make their life better. That said, while it is important to recognise that the victim's right to reparation has not been respected, it would be wrong to reduce the impact that the court ruling has to only the victim or to only those who would benefit from the concrete reparations measures that were ordered. Such an approach would render domestic stakeholder mobilisation around the international individual petitions process invisible and thus contribute to obscuring the way in which human rights litigation fits into the broad and complex advocacy strategies that civil society has developed in their efforts to improve respect for human rights.

## **5. The impact of the Inter-American Court of Human Rights**

### **a. America<sup>41</sup> and its Court**

The Inter-American Court of Human Rights was created by the American Convention on Human Rights in 1969<sup>42</sup> and its initial purpose was “the application and interpretation of the American Convention on Human Rights”<sup>43</sup>, which says little about the criteria which we should use to evaluate its effectiveness. What’s interesting is that this international effort to further human rights accountability in America contrasts sharply with the political landscape of the continent at the time and in the decades that followed, which was riddled with dictatorships that showed brazen disregard for human rights.

### **i. Bad Faith**

There are several salient aspects of the context in which the Inter-American Court operates that are important to note if we are to understand the way that it has evolved and the impact that it has in the region. First and foremost is that this court has consistently been asked to adjudicate in cases of gross and systematic violations of human rights where the states that come before it have demonstrated alarming levels of bad faith, both in the commission of the violations in question and in their behaviour before the system organs. The first case that the Court ruled on is an excellent example of this; Honduran student Manfredo Velasquez Rodriguez was disappeared by plain clothes military officers and the state denied for years that he had ever been detained. No serious investigation was carried out and no *habeas corpus* petition lodged on his behalf was ever effective<sup>44</sup>. In the most egregious demonstration of bad faith, two witnesses for the victim were murdered, one before and one after they testified<sup>45</sup>. At that time there was no international recognition of forced disappearance as a crime and given that Velasquez Rodriguez’ body was never discovered, the Court found itself in the unenviable position of adjudicating a case where,

despite there being a widely acknowledged practice of forced disappearance in Honduras, they had no domestic investigation, no evidence and no law. Despite this scenario the Court came down on the side of justice in making a decision against the state that demonstrated that it was not going to allow a state to take advantage of its own bad faith when it came to gross and systematic violations of human rights. To do this it deployed a remarkable amount of judicial creativity to create the crime of forced disappearance by stitching together violations of the rights to liberty, integrity and life, by inverting *onus probandi* rules and by finding the state responsible for violations committed by non-state actors<sup>46</sup>.

In the years that followed the *Velasquez Rodriguez* case the Court continued to develop a body of jurisprudence that interpreted the law to fit violations on the ground, that adjusted procedural rules to tackle the bad faith of states and that created a mechanism to protect victims and witnesses from reprisals<sup>47</sup>.

The reparations ordered by the Court have also evolved to fit the context of gross and systematic violations that populate the Court's docket. This is particularly relevant for the argument that I am trying to make in this article because the Court has not shown any inclination towards making it easy for states to comply. Inter-American Court rulings often contain long laundry lists of reparations measures that range from apologising to victims and paying damages to ordering legal reform and ensuring the prosecution of those responsible for the violation<sup>48</sup>. The Court's evolution in terms of reparation reached new heights in the *Case of the Cotton Field*, where the Court pioneered the use of transformative reparations because *restitutio in integrum* would not fix the structural discrimination faced by women in Juárez that led to the state's tolerance of their murders<sup>49</sup>.

## ii. Transitional states

Given the enormous complexity of many reparations rulings handed down by the Court, it is not clear cut to say that the lack of compliance with these rulings is necessarily down to bad faith on the part of states. Certainly there are states that flat out refuse to comply, preferring international shaming to the domestic cost of conceding a victory to their political opponents<sup>50</sup>. Others however, may struggle with the mechanics of achieving full compliance domestically. This is because another contextual issue that becomes relevant when talking about compliance and impact in the context of the Inter-American Court is that the length of proceedings between the violation and the final ruling is so long that often states that receive an adverse ruling are not necessarily run by the governments that committed the violations but instead are somewhere on a long and complicated transition to democracy. Transitional states can be characterised by weak institutions and power-sharing and can be led by an executive that wishes to comply but is politically unable to force domestic institutions to carry out the reparations measures directed to them. For example, where the legislature, the judiciary or the armed forces are loyal to the previous regime it will likely be impossible for the executive to achieve legislative reform or criminal prosecution of perpetrators. This is an issue that has come up repeatedly in cases where states have enacted amnesty laws that prevent the prosecution of crimes committed by prior dictatorial governments<sup>51</sup>.

Where compliance is not impossible, it is at times considered too costly by a weak transitional government that prefers to explain away the international shame by saying that

preserving the terms of their democracy is more important than achieving full compliance with a single case ruling.

### iii. Partial compliance with IACtHR rulings

In this context of gross and systematic violations, multiple reparations measures and weak democracies, it becomes very clear that studies that look only at full compliance are not adequate to gauge the impact that a ruling has in general but also not even adequate in measuring the behaviour of individual states with regards to a ruling handed down against them.

The most accurate measurement of state compliance with rulings of the Inter-American Court of Human Rights to date was carried out by Darren Hawkins and Wade Jacoby. They developed a methodological structure for measuring compliance that took into account that reparations rulings are made up of several different measures and then tabulated compliance with each individual measure and not the ruling *in toto*. They collected all of the rulings for which there existed compliance reports at the time of their study and they broke down the reparations ordered into specific categories of measures. They then coded each measure as complied with or not complied with according to the Court's own evaluation of compliance contained in its compliance reports<sup>52</sup>. They also, when measuring compliance, adjusted their findings to account for how long it took a state to comply, creating a measure that they labelled "resistance" and which reflects "the extent to which a state delays in complying with an order"<sup>53</sup>. This is an important caveat to make: while two states can be understood as equally compliant if they have both carried out the measures ordered of



them, it is an entirely different scenario on the ground if the first state complied immediately and the second state complied after ten years. Hawkins and Jacoby, were therefore able to introduce a level of nuance into the study of compliance with Inter-American Court rulings that does not exist in other studies. The only caveat to add to their study is that it does not account for the changing characteristics of reparations rulings over time. Reparations ordered by the IACtHR have evolved and have grown increasingly complex over the years<sup>54</sup>. Today's Court is ordering significantly more reparations than it did in the 1990s or the 2000's; therefore Hawkins' and Jacoby's finding that compliance has increased since 2003 might be – in part - a reflection of the fact that the Court is ordering more and more specific measures than it did before<sup>55</sup>. While this finding may require specification, their overall measurements of compliance hold strong.

Hawkins and Jacoby's main finding is that the most prevalent behaviour of states ordered to repair human rights violations by the Inter-American Court of Human Rights is one of partial compliance. They found that in the cases for which there existed compliance reports states fully complied with all measures ordered in 6% of cases, they complied with no measures ordered in 11% of cases and they complied with some parts of the ruling in the remaining 83% of cases<sup>56</sup>. They concluded from these general figures that “[i]n any given case, states rarely do all they are ordered to do. But by the same token, states rarely do nothing at all”<sup>57</sup>. While this study was published in 2011, the Court's compliance reports over the past seven years support the idea that this trend has continued<sup>58</sup>.

Hawkins and Jacoby's methodology also allowed them to identify which reparations measures were complied with more often. In this sense, they found that the highest rates of

compliance were found in conjunction with the payment of moral damages and the payment of the costs and expenses of taking the case to trial, both of which are complied with 43% of the time<sup>59</sup>. Only slightly less complied with are the payment of material damages and the requirement to apologize, with an overall compliance rate of 40%. All other measures of reparation were complied with significantly less. The authors then adjusted these results according to their resistance level, i.e. how long states took to comply, and found that the same four reparations measures being complied with the most were also generally complied with faster than the rest<sup>60</sup>.

#### **iv. Civil Society Mobilisation**

A final contextual characteristic that is important to grasp in order to understand the impact that rulings of the Inter-American Court can have is the intense engagement of civil society organisations with the individual petitions process. This engagement can be seen since *Velásquez Rodríguez* where the original petition was presented by his family along with four domestic and international human rights NGOs<sup>61</sup>. In the thirty eight years since that initial petition it is easy to observe how NGOs have taken a preponderant role in presenting cases to and litigating cases through the Inter-American System all the way to the Court. This is in large part because the Inter-American System recognises an *actio popularis*, whereby the petitioner in a case need not be the victim themselves or have a close relationship with the victim. This open petitions model has been particularly significant due to the fact that victims in cases that come before the Court are often members of marginalised communities that would not otherwise have the tools to access the justice system themselves. In this sense, the Court has ruled on cases where the victims have been political

prisoners, homeless children, incarcerated children, remote indigenous communities, etc. In fact, my own examination of the procedural narratives of cases that reached the court yielded that around 74% of petitions that the Court ruled on between 1988 and March of 2017 were presented by at least one named civil society organisation<sup>62</sup>. Petitioners often include a mix of domestic and international NGOs who pool their resources to litigate cases effectively; the domestic NGO often has a close relationship with the victims and access to evidence while the international NGO often has greater resources and litigation expertise<sup>63</sup>.

Another way that NGOs participate in the procedure before the Court is as *amici curiae* both with regards to contentious cases and advisory opinions<sup>64</sup>. The amici role allows NGOs (along with academics, international organisations and states) to attempt to guide the Court in its ruling and often provides voice to advocates who are not party to the litigation itself.

Finally, it's also worth noting that members of civil society organisations and cause lawyers<sup>65</sup> who have represented victims before the Inter-American System have also at times been elected to positions of influence in the system. For example, two of the lawyers who litigated the *Velásquez Rodríguez* case before the system later went on to become Commissioners on the IACHR<sup>66</sup>. This fluidity in roles, at least with regards to positions on the IACHR, requires the acquiescence of states who ultimately vote a candidate into their post, and it's therefore a good example of how complex the dynamic relationship between states, civil society and system organs is. It further allows us to understand another way in which ideas flow from civil society towards the Inter-American system (and the States involved) and why the system organs have maintained a strong connection to the human rights NGO

field. It also gives us some insight into why this regional system is the source of some of the most progressive human rights jurisprudence in the world.

The fact that civil society organisations participate intensely in cases that come before the Court and that they continue to do so despite low levels of full compliance suggests that their mobilisation around the individual petitions process is motivated by more than an expectation of obtaining full compliance. The fact that these organisations continue to present cases at increasing levels despite the high costs of doing so, the length of proceedings, low rates of compliance and the very real danger that they face by engaging in this work suggests that civil society organisations in Latin America are using international human rights litigation as part of broader advocacy strategies that have impacts that are not measurable by looking only at compliance.

**6. Human Rights litigation as a part of a broader advocacy strategy: A survey of petitioners in cases that reached the Inter-American Court of Human Rights<sup>67</sup>.**

My contention in this paper is that there exist impacts brought about by the Court's rulings (and the petitions process itself) that are important enough to drive petitioners to the Inter-American system and that are not susceptible to measurement by compliance studies, which are too narrow in scope to account for all of the effects that an international court ruling can have. It is therefore important to elucidate what in fact motivates petitioners to bring cases to the Inter-American system and push them all the way to an Inter-American Court ruling.

Given that the majority of cases that result in rulings from the Court are presented by civil society organisations, I put together an online survey that sought to collect data on the priorities that led these petitioners to make decisions before, during and after litigation before the Inter-American Court. To this end, I studied the procedural narratives of all of the rulings handed down by the Court from 1986 (*Velásquez Rodríguez*) to the end of 2012 (*Uzcátegui et al*) and put together a database where I identified the petitioners in each case. I decided to survey those organizations and specifically where possible the persons (often lawyers) that were in charge of making the decision to petition the system and the procedural decisions thereafter. Being that the purpose of the research project was to identify impacts that can be sought by those who want to produce change domestically, and given that Beth Simmons' framework identifies that those most interested in such change are domestic stakeholders<sup>68</sup>, I decided to survey only domestic NGOs and not the handful of international NGOs that bolster the litigation once it becomes international. While some cases were brought by Amnesty International and Human Rights Watch/Americas in the early years of the Court's jurisdictional work, these organizations do not now generally litigate individual cases before the Court. By far the most prolific international litigator is CEJIL – the Center for Justice and International Law - and its motives are clearly set out in its publicized mission statement which declares that its founders had: “the goal of creating a regional organization that would fight for justice, liberty, and a dignified life for the continent's inhabitants through a concentration of efforts on the use of international law, compliance with human rights, and the Inter-American System's mechanisms of protection”<sup>69</sup>. They are dedicated to the use of strategic litigation to better the lives of people on the ground in America; in order to do that they often partner with domestic

NGOs. It seemed much more important, for the purposes of my study, to survey these domestic organizations whose work and strategies vary from case to case.

For all of the cases studied, I identified and contacted 150 petitioning domestic NGOs. The survey was designed to provide petitioners with the opportunity to explain why they thought that litigating their case internationally was worth their while and how rulings of the Court are useful to them<sup>70</sup>. It is important to note that this was a survey of perception and not fact and there are many things that can influence a petitioner's perception of the litigation process and their state's behaviour. Furthermore, the fact that participation in the survey was voluntary and that it collected data regarding the litigation of 32 of the 154 cases included in the study (twenty percent of cases) means that we cannot conclude that the answers received constitute a definitive study of the opinions of the petitioners' pool as a whole or even the pool of petitioners in cases that reached the Court. We can however say that they suggest petitioner trends and help us to elucidate the possible extra-compliance impacts of the rulings of this Court.

#### **a. Results of the Survey**

The survey collected data on a wide range of perceptions and litigation decisions regarding 32 cases that the Inter-American Court issued merits rulings on between 1988 and 2012<sup>71</sup>; and all data remains on file. The most relevant information for the purposes of this paper is summarized in the following section; all responses have been anonymized in order to protect the respondents.

**i. Why did you present your case?**

The survey included two questions designed to reveal the petitioning NGO's motives in deciding to bring the case to the Inter-American system. The first asked respondents to freely narrate why the NGO decided to present the petition to the IACHR. The majority of respondents said that they made the decision due to a lack of domestic justice. This formulation suggests that they believed that justice could be achieved internationally. Several different iterations of the same idea included references to domestic impunity and an ongoing search for justice. Having said that, they did not elaborate as to what the term "justice" entailed.

In at least two surveys the respondents said that they brought the cases to the system to pursue injunctions that would put an immediate stop to ongoing violations regarding victims who were imprisoned<sup>72</sup>. In other surveys the respondents wrote openly about using the Inter-American system to visibilize a domestic human rights problem or to pursue a favourable precedent from the Inter-American system<sup>73</sup>.

When asked further along in the survey what they wanted to achieve by presenting the specific petition to the system, many insisted again on the objective of attempting to attain justice. In addition, some respondents answered that their main objective was the reestablishment of the rights of their clients, including those imprisoned<sup>74</sup>. They also opened up about wider objectives that they had, most notably, calling attention to the human rights violations occurring in the state, establishing precedents and shaming the

state<sup>75</sup>. Some talked about applying political pressure on the state, both domestically and internationally. For example:

“To present an emblematic case of forced disappearance [...] so that it would shock the public and thus pressure the authorities to make sure to investigate human rights violations committed during that time”<sup>76</sup>.

Another said:

“pursuing the case and obtaining a judgment would help us apply political pressure to the [state] government and its supporters in the international community, including the OAS and the U.S.”<sup>77</sup>

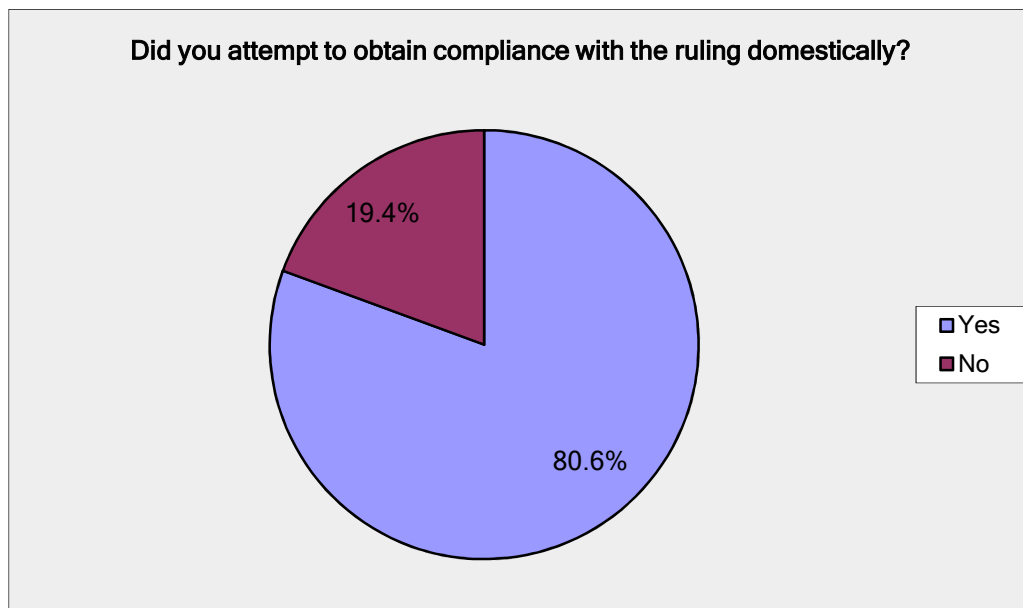
In at least two cases the respondents stated that their main objective was to expand the jurisprudence of the Inter-American system regarding a particular oppressed group<sup>78</sup>.

Many of the answers to these two questions suggest that from the outset NGOs were not only interested in obtaining compliance with reparations ordered. Visibilization, state shaming and the establishment of a useful precedent can all come about regardless of compliance.

## **ii. Did you pursue compliance?**

When asked whether or not they sought compliance from the state an overwhelming majority of respondents said that they did.





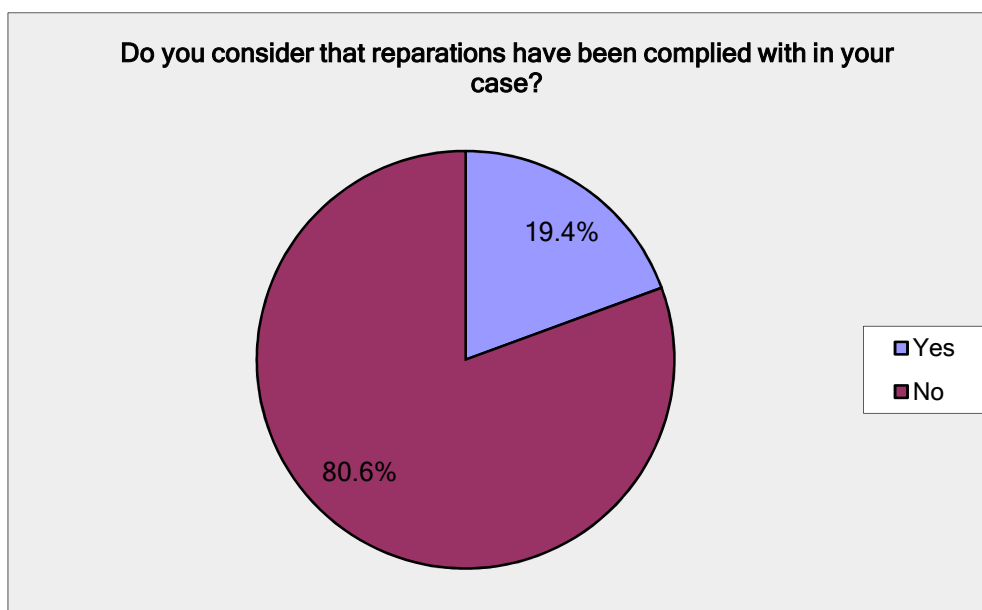
While extra-compliance impact may exist then, compliance remains important to most petitioners surveyed. If it was not they would not spend time and resources attempting to achieve compliance. However, it's important to remember that the rulings of the Inter-American Court often contain many different reparations measures, some of which transcend the victim to address broader social issues that caused or facilitated the violation. That being the case, pursuing compliance with these broader measures might fit well among the activities that the NGO is already carrying out. So while NGOs do dedicate time and resources to pursuing compliance, we shouldn't understand that they necessarily stop their other advocacy efforts to do so.

**iii. Was your ruling complied with?**

The pattern of compliance with the Court rulings in the respondents' cases followed the model of partial compliance observed by Hawkins and Jacoby. One respondent reported

that the ruling had been completely complied with; three said that no compliance existed and; a large majority reported that some degree of partial compliance had occurred<sup>79</sup>.

However, the survey then asked: Do you consider that reparations have been complied with in your case? Here, the respondents were only given two options: yes or no. At the time of designing the survey I was already aware that states generally complied with some parts of the rulings and generally did not comply with others. The fact that the present question did not account for partial compliance forced the respondents to consider whether or not they perceived partial compliance was enough to consider a state “compliant”. While we know from previous written answers that the majority of cases had some degree of compliance, respondents overwhelmingly considered the reparations not complied with.

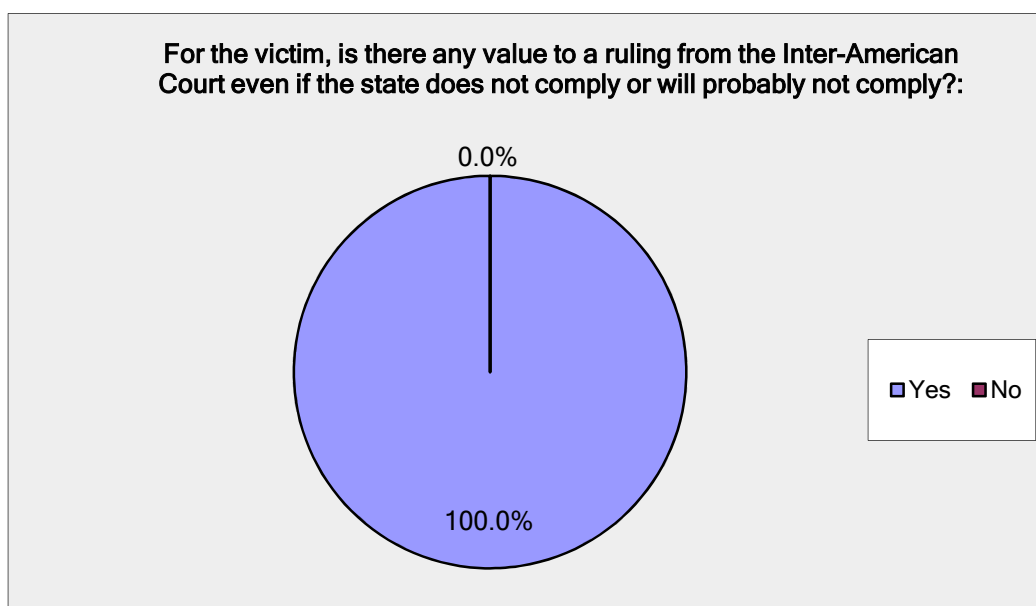


This may be an indicator of a general valuation of total compliance over partial or non-compliance but it can also indicate that the petitioners value the measures that have not been complied with over those that have. In fact two thirds of respondents listed various

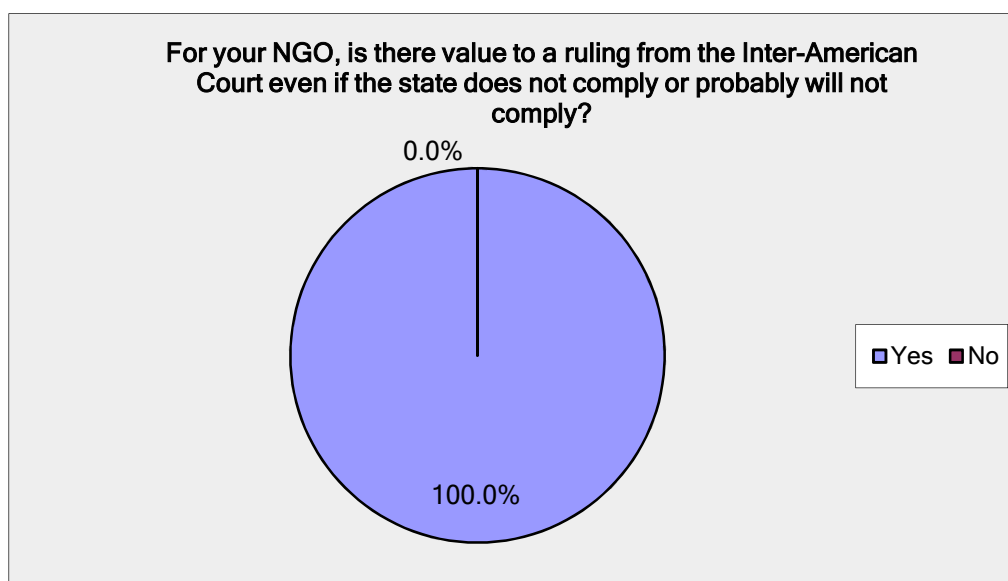
reparations that had been complied with and yet only 6 considered that the state was compliant. If we recall that Hawkins and Jacoby's study indicated that the Inter-American Court reparations measures that were complied with the most were the payment of costs and damages and the requirement to apologise, whereas those with the lowest rates of compliance were those that required states to end impunity and effect systemic change, it makes sense that a petitioning NGO might value the broader reparations measures more and thus consider a state incompliant until they are achieved. It could also be true that labelling a partially compliant state as incompliant serves a broader identity narrative about the lawlessness of the state.

**iv. Is there any extra-compliance value to a ruling in favour of the victim?**

The survey then delved deeper into the question of how much compliance or a lack thereof mattered to petitioners, many of who were taking significant risks to achieve a ruling. The results were striking:

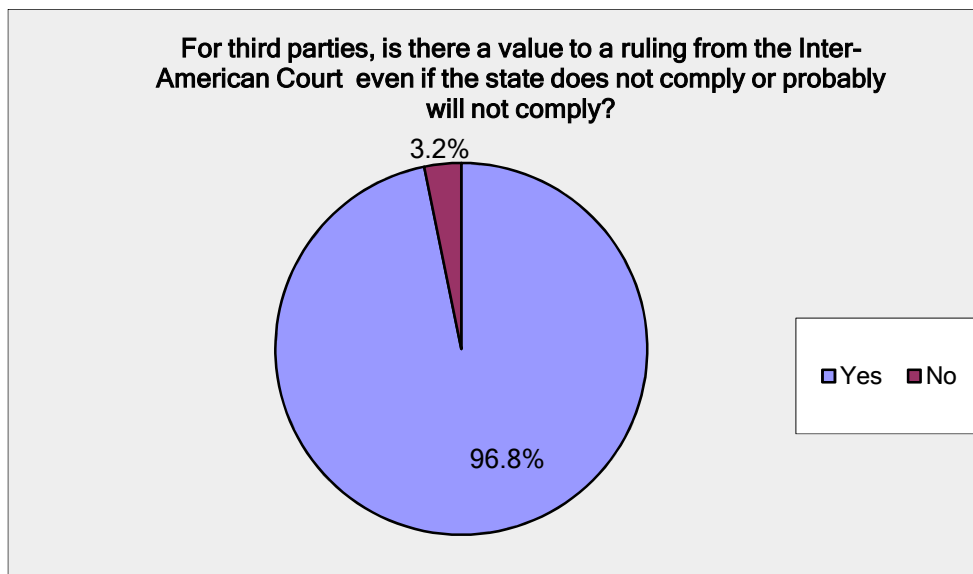


The written answers that accompanied the yes/no choice here spoke of the declarative and symbolic meaning of the ruling, of the importance of being recognized as a victim, of being restored in dignity<sup>80</sup> and having their names cleared. They also spoke of the fact that even if the rulings were not complied with, there remained the possibility that they could be complied with in the future. Many of them said that the ruling was a measure of justice in itself for the victims. This is consistent with the idea that for petitioners, justice is not a function of compliance with a ruling but can be found in the recognition of the hardships suffered and the allocation of the status of victim/survivor of human rights abuses. In this sense, the ruling contributes to the construction of a narrative about the victim and, if we consider that for a case to get to the Court the state must have denied that victimhood for many years, the ruling serves to rewrite – ultimately correct - the official story. In the context of gross and systematic violations that are so prevalent in cases that come before the Court, a declaration from the highest Court in the region that the state was wrong to do what it did is a tremendously important expression of justice for victims and petitioners.



Here, the written answers told of their perception of the ruling as a tool to keep fighting for compliance with regards to the specific case and also for other cases. Some spoke of the importance of truth, and that the ruling could be used to ensure that the events did not happen again. One said it raised the profile of the organization and helped build a good reputation, several noted the experience that they gained during the litigation.

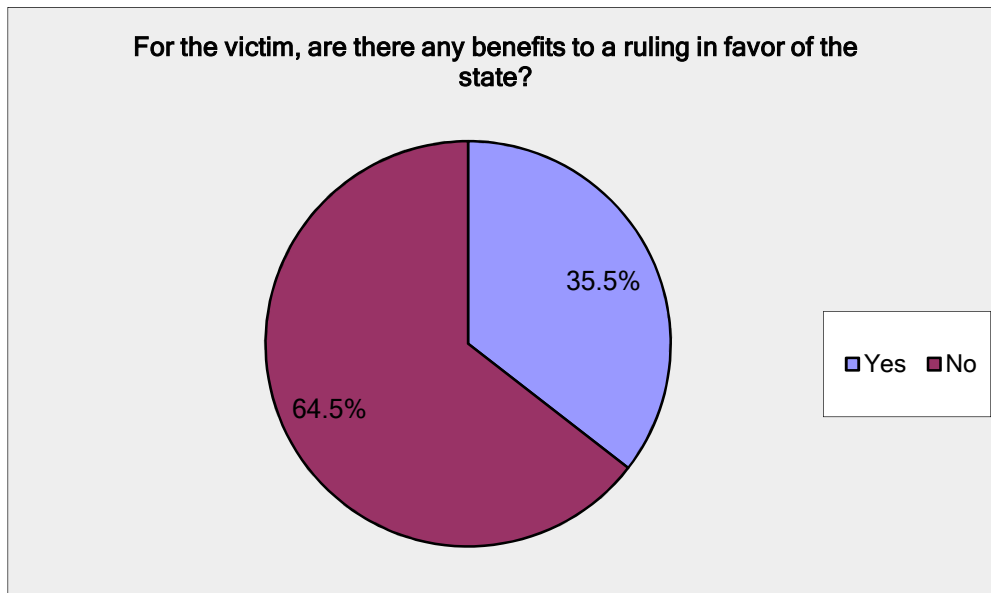
Similarly to victims, petitioning NGOs that have been working in a context of gross and systematic violations also benefit from the validation that the ruling provides in terms of public image and from the rewriting of the truth narrative after human rights violations. In addition, the perception of the ruling as a tool instead of an end is illuminating; it suggests that in the absence of compliance petitioners understand that they can still use the ruling as part of a broader strategy to achieve goals that encompass but go beyond individual justice for the victim. This understanding supports the idea that human rights NGOs play an important role in pushing the system organs to address human rights violations and in deploying the rulings to create change, and that they should therefore be understood as stakeholders in the international adjudicative process.



Here, all but one of the respondents answered that there was value for third parties. This value was identified primarily as the establishment of precedents for future litigation and the definition of international standards that could be applied to similar cases. There was also mention of the importance of the establishment of the truth, which would benefit society as a whole.

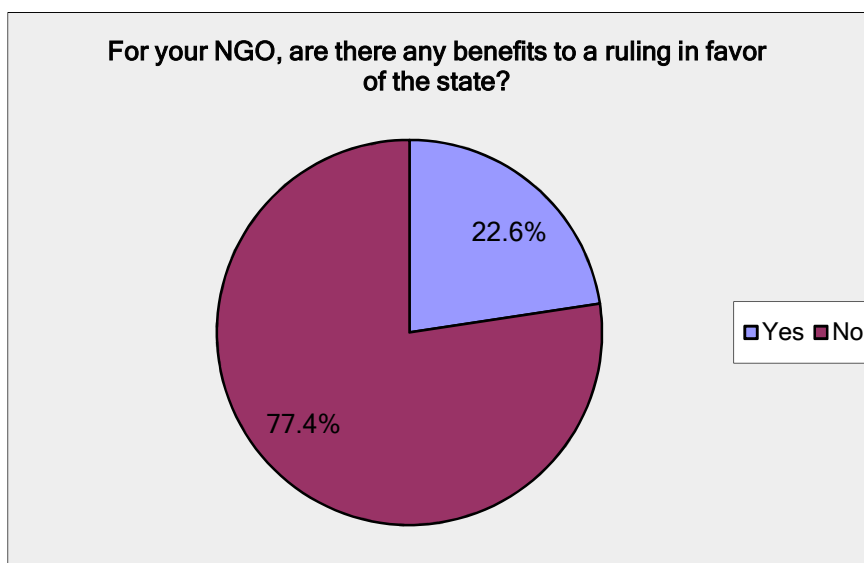
**v. Is there any value to a ruling against the victim?**

A very different set of answers emerged when the same three questions were asked with regards to a ruling that did not condemn the state. Here almost two thirds of respondents answered that they could think of no benefits for the victim.



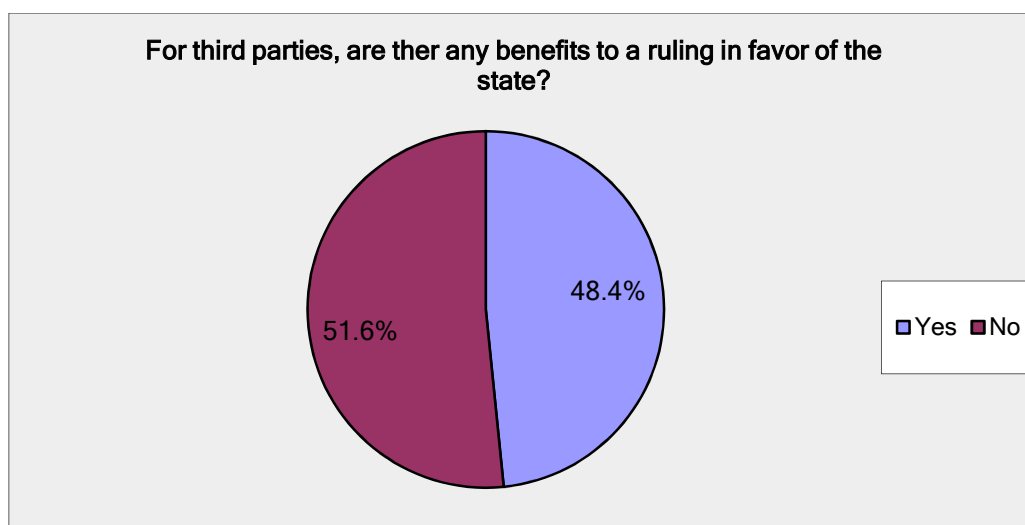
The few respondents that could find a benefit noted the moral victory of fighting the state for what was right.

When asked about benefits in favor of the NGO that could come about from a ruling in favor of the state, the situation was gloomier still with over three quarters of respondents failing to find any value in the ruling if they lost their case.



For the most part, those that found benefits spoke of the moral victory of fighting for human rights, even if they did not win.

Finally, when asked if there was any possible value to a ruling in favor of the state for third parties, around half of the respondents found that there could be; most of them mentioned a strengthening of the rule of law and the possibility that the ruling could still contain some useful precedents.



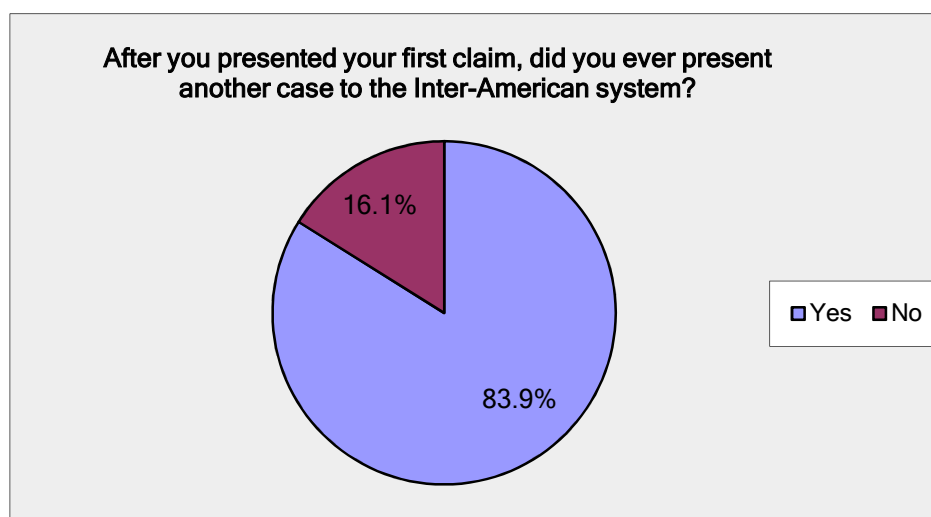
The collection of the answers to the last six questions sheds a lot of light on what is important for petitioners. First and most strikingly, the value of a ruling is not tied to compliance; this is demonstrated by the fact that all of them found value in a favorable ruling even where compliance was not feasible. Second, what does seem much more important to petitioners is the content of the ruling, namely the condemnation of the state. Wherever that condemnation is lacking, the value they ascribe to the ruling drops dramatically. This finding lends support to the idea that the declarative and symbolic nature of the ruling is very important and very useful to petitioners and that the value of declarative justice is not affected by the state's decision to comply or not. Truth is



mentioned as a goal throughout the surveys and must be valued by observers of the system. The fact that the Court supports a certain narrative of events that casts them as human rights violations and that it declares that the state was wrong to treat the victim in the way that it did are tremendously important discursive benefits of litigation, particularly when understood in the context of propaganda and misinformation that characterises states that commit gross and systematic violations. The possibility of finally obtaining an official endorsement of the truth can make litigation worth it for petitioners.

**vi. Did you return to the petitions process?**

Crucially, when asked whether, after presenting their first claim, they had presented another, the overwhelming majority said that they had. This question sought to illuminate whether, in the opinion of the petitioning NGO, the experience was worth it, i.e. if the hardship, the long time and resources spent, the danger to their personal integrity and reputation and the lack of compliance made them think that the experience was not worth the effort or if on the contrary, despite all of those hardships they got enough out of the experience to do it all over again.



In 83.9% of cases surveyed petitioners decided to present a claim to the system again, even when almost all of them did not experience full compliance with their first ruling. This is yet another indication that petitioners have motivations other than achieving full compliance and that they found a way to use the process and the ruling they obtained to further their goals.

**vii. How did you deploy the ruling domestically?**

I then went on to ask civil society petitioners what they did to draw attention to the litigation and what they did with the ruling once it was handed down. In terms of publicizing their cases, just under two thirds of respondents said that they employed a media strategy during the examination of the case before the Inter-American system. In three cases surveyed the respondent said that the lack of a media strategy was due to a lack of resources and contacts with the press, suggesting that the lack of a strategy was not due to it not being deemed useful<sup>81</sup>. For some, the deployment of a media campaign was a fundamental part of their overall advocacy strategy. For example:

- “There was a media strategy at all times, including press releases, the publication of reports and books, events and public fora, a webpage within our website, etc. Where possible, everything was put out in English and Spanish”<sup>82</sup>.
- “All of the actions were broadcast through domestic mass media, radio, TV and newspapers, so that society could know about the case and also so that they would overcome their fear of reporting similar cases”<sup>83</sup>.

- “The media strategy is a fundamental component of legal defense for [the NGO] and it consists of acts of visibilization agreed upon with the victims. In the case of [the victims], it was employed during the whole process and was intensified when the cases came before the Inter-American Court”<sup>84</sup>.
- “The media was our ally, it constantly broadcast and informed”.<sup>85</sup>

The deployment of a media strategy is indicative of a highly organized NGO that understands its role as more than just a litigator. NGOs can use media strategy as part of a litigation strategy; use the litigation as part of a larger social action strategy; or both. It is important to remember that while declarative justice may exist in a ruling independently of any other stakeholder action, many non-compliance impacts require NGOs to work hard to make the legal process accessible to their audience and to craft a message about it that fits their broad advocacy goals.

With regards to how the NGO used the ruling the survey asked: “Has the ruling featured in any other document produced by your NGO? If so, please detail. (eg: NGO website content, shadow reports to other international monitoring bodies, domestic law suit, publicity campaign, education campaign, information about your NGO, finance report, funding proposal, parliamentary lobby, networking efforts, etc.)” The answers collected show that the NGOs use the rulings in many, if not all of the examples listed. Several respondents answered that they used it in all the examples. Most predominant was the placing of the ruling on the organization’s website. There were also many cases of use of the ruling in media campaigns, in capacity building courses, in domestic litigation, in shadow reports, in funding proposals. Some respondents mentioned academic articles that they or their colleagues had written on the basis of the rulings. Most notably, one NGO said that:

“...the ruling has been useful for those [nationals] who are suffering political persecution and who are asking for political asylum or refugee status and are facing deportation from the USA and Canada, [it is useful] for the NGO when coming before immigration authorities in favor of those persecuted...”<sup>86</sup>

The answers to this question are the clearest indicator yet that petitioning NGOs deploy the rulings strategically to create impact regardless of compliance by the state.

**viii. What did you achieve by bringing this case to the Court?**

The final set of responses that are relevant to this paper came when the petitioners were asked to identify the impact of the ruling they had gotten from the Court. When asked “In your opinion, what was the impact of the ruling domestically?” respondents were again asked to compose their own answers freely. They reported a broad array of impacts including discursive change, alternate truth narratives, and domestic legal changes. For example:

“The ruling proved that in our country human rights are definitely violated and that institutions do not do their jobs”<sup>87</sup>.

“It has been cited in some cases to exclude evidence obtained under torture and it has been put to good use in the national campaign against the use of military courts in cases of human rights violations”<sup>88</sup>.

“The lives of indigenous groups became more visible and we were able to see state practices that apply parts of the standards achieved”<sup>89</sup>.

“It had a big positive impact, especially in the search for justice, in a country with a militaristic culture and where soldiers thought they were untouchable...”<sup>90</sup>.

“The ruling from the Inter-American Court was well received because the media highlighted that no human rights violation should lack investigation”<sup>91</sup>.

“...a trial was opened against Alberto Fujimori, former president of the country, who was sentenced to 25 years”<sup>92</sup>.

“The [...] cases have contributed in that legal system operatives now use their reasoning: lawyers, civil and military courts”<sup>93</sup>.

One of the most common answers had to do with what respondents called the visibilization of certain issues. It is apparent that before the ruling they were not able to interest the media or public opinion in the issue that concerned them and that resorting to the international legal process before the Inter-American system gave them the exposure that they needed. Several respondents also mentioned that the rulings were being used in pleadings and in the sentences of domestic judicial bodies and by policy makers. The most striking impact was the stay of execution of 35 death row inmates, a development that the respondents themselves call “a *de facto* suspension of the death penalty”<sup>94</sup>.

While the overwhelming majority of surveys collected respondent perceptions of impact that were positive, in one case the respondent was unable to report a positive impact:

“It was rejected by [state] authorities and ignored”<sup>95</sup>.

When asked to break down the impacts by beneficiaries and identify the importance of the ruling for the victim, for the NGO and for third parties the respondents went into more detail. Regarding their perception of the importance of the ruling for the victim, they answered, for example:

“Moral vindication”<sup>96</sup>.

“Very important because it largely vindicates part of the historic truth and the violations committed and it brought them some (though few) reparations”<sup>97</sup>.

“After the ruling the victim felt repaired and happy on an emotional level. After the ruling he was given political asylum [...] which had been under review”<sup>98</sup>.

“It was important, they felt listened to and that their reality was paid attention to”<sup>99</sup>.

“That it is possible to achieve justice and try to reach the truth”<sup>100</sup>.

“Fundamental. Vindicating”<sup>101</sup>.

“...Our view, from what we have been told, is that it was very important: getting a favourable ruling has contributed to the rebuilding of their life project.”<sup>102</sup>.

“In a way, they felt dignified”<sup>103</sup>.

“It helped clear [the victim’s] name, provided him some protection from persecution”<sup>104</sup>.

“Might have saved his life”<sup>105</sup>.

When asked to identify the importance of the ruling for their NGO they answered, for example:

“Very, because it visibilizes and helps to establish the standards that are applicable to several structural problems”<sup>106</sup>.

“Our NGO became known as able to help victims of torture, persecution and political imprisonment; we were also recognized by the [state] Bar Association and other NGOs”<sup>107</sup>.

“It positioned the organization as one of the most important in [the state] in the field of strategic litigation of human rights”<sup>108</sup>.

“Great importance, the rulings confirmed many complaints that we had been presenting about the impact of militarization on indigenous communities [...] especially on women”<sup>109</sup>.

“It is important because it is an achievement and a tool for the work that we do”<sup>110</sup>.

“It raised our profile, and helped build our credibility”<sup>111</sup>.

When asked about the importance of the ruling for third parties many wrote about the value of precedent and the value of truth. Others saw the ruling as a tool that victims and human rights NGOs can work with domestically. For example:

“Some judicial actors have taken up the case and in general it has helped to make the state feel scrutiny and pressure from the international community”<sup>112</sup>.

“It was important to denounce human rights violations, because sooner or later we will get some results”<sup>113</sup>.

“For society, so it may know the truth...”<sup>114</sup>

“It is a precedent in cases where similar violations can happen, or in the best of cases, it would stop similar events happening again”<sup>115</sup>.

“It is an incentive to take other cases to the Inter-American system”<sup>116</sup>.

While this survey is not a qualitative study of petitioners, it does point to some important indicators of the motives that take them to the Inter-American petitions system and all the way to the Court. What motivates these petitioners is a desire to achieve justice after a human rights violation and to further their advocacy efforts, and while they do value compliance, their understanding of justice and the usefulness of the process is not contingent upon whether or not or to what degree the state complies with the ruling in

their case. They care very much about the discursive nature of the ruling that they get, particularly in that it is seen to condemn the state. In this sense, they value a pro-victim understanding of the truth of the violation; the vindication of the victim; the visibilisation of the issues that they work on and; the creation of precedents. Most notably, they consider Court rulings as advocacy tools and they are very good at mobilising around the process and the ruling to create extra-compliance impact.

The answers provided by petitioners lend support to the idea that we should stop considering states as the only recipients of the law that is created through international human rights adjudication. Human rights NGOs use the individual petitions process strategically and they work hard to maximise the impact of litigation both before and after the ruling is handed down. All of this work and all of its effects have gone unnoticed by studies that focus on state compliance as the only impact of international litigation. If we consider civil society organisations as stakeholders in the process, then it becomes a lot easier to see the impacts that rulings have and that NGOs bring about independently of compliance, and even in the absence of any compliance at all.

## **7. NGO Mobilisation around the Inter-American Individual Petitions Process.**

The survey responses were collected in 2013 as part of a broader study of the litigant experience before the Court. Current data collected and published by the Inter-American system organs on petitions, together with recent literature on NGO involvement with the Inter-American petitions process, support my assertion that petitioners' motivations when



bringing cases to the system continue to have less to do with compliance and more to do with wider advocacy goals. In this sense, petitions to the Inter-American system have continued to rise and the prevalence of domestic and international NGOs among the pool of petitioners in cases that reach the Inter-American Court remains high (74% across all cases until and 76% in cases against Latin American states from 1988-2017<sup>117</sup>). Many NGOs present more claims after obtaining a ruling that was not fully complied with, including several of the petitioners that I surveyed. CEJIL remains the most prolific litigator before the system and in general, petitioning NGOs in cases that reach the Court continue to represent victims whose mistreatment is symptomatic of broader human rights problems within Latin American states.

Several authors have contributed studies of NGO involvement in the Inter-American system. For example, Heidi Nichols Haddad provides an account of how human rights NGOs have permeated the Inter-American system since the '70s and '80s by assisting first the Inter-American Commission and then the Inter-American Court in the performance of their functions. Haddad posits that the relationship between the system organs and NGOs, most notably large NGOs with well-established reputations, is deep and reciprocal<sup>118</sup>, and in the latter part of the twentieth century included those NGOs advising and assisting the Commission in the processing of individual petitions<sup>119</sup>. Engstrom on the other hand points to the mobilisation of civil society groups within the framework provided by the Inter-American system as a characteristic of "the development of human rights as a field of political practice in Latin America"<sup>120</sup>.

Together with Low, Engstrom then goes on to note that recourse to the Inter-American system can provide NGOs with opportunities to frame the issues that they care about within the language of human rights and to thus reap legitimacy benefits from that framing<sup>121</sup>. Furthermore, they hold that NGOs also benefit from interacting with the Inter-American system because of identity formation processes which come about either because the NGO becomes more professional itself or because it manages to re-label the groups of people that they mobilise for as vulnerable or deserving of special protection<sup>122</sup>. All of these effects of interacting with the Inter-American system are valuable for petitioning NGOs and none of them rely on whether or not the state against which the NGOs mobilise is compliant with rulings from the system organs.

A good example of these types of impacts can be seen in Anaya and Campbell's account of the litigation of the *Awes Tigni* case against Nicaragua. Several foreign and international NGOs came forward to support the indigenous community in their struggle to pressure the state to recognise and protect the collective rights of indigenous communities to land and resources<sup>123</sup>. In addition to their aims with regards to the specific situation lived by the victims in the case, the advocates also sought a ruling that would acknowledge these rights as human rights and thus locate them within the discourse of the universal and inalienable. When the Court ruled that the rights to land and resources of the indigenous community were understood as part of the right to property under article 21 of the American Convention on Human Rights, it "signal[ed] that indigenous peoples' rights to ancestral land and resources are a matter of already existing international law derived from the domain of universally applicable human rights"<sup>124</sup>. This understanding would allow the case to be used

as precedent in Inter-American cases against Suriname, Paraguay, Belize and the USA<sup>125</sup>, as well as to inform legal arguments based on property rights elsewhere in the world. To apply Engstrom and Low's framework to this case: the location of indigenous rights within the scope of human rights legitimised and universalised them and at the same time reconceptualised indigenous peoples as deserving of special protection. The ruling had far-reaching effects in terms of discourse and issue-framing that were not at all affected by the state's slow trek towards compliance.

Another way in which the literature has presented extra-compliance effects of Inter-American Court rulings is in describing the impact that the *Velásquez Rodríguez* ruling had on domestic NGOs that were struggling to find avenues of pressure against Latin American States. This ruling appears to have become not only a beacon signalling that a new opportunity for justice had opened up, but also a roadmap for how to achieve a favourable ruling from the Court. For example, Haddad provides interviews with key players who noted the increase of cases brought to Human Rights Watch after their success with *Velásquez Rodríguez* and that at that time NGO Global Rights also started to use the individual petitions process<sup>126</sup>. Engstrom and Low likewise explain how the *Velásquez Rodríguez* ruling was employed by NGO APRODEH in the framing of cases of massacre and forced disappearance committed by Peruvian authorities<sup>127</sup>. Their purpose in doing so was to not only to obtain a binding ruling that would support their narrative surrounding abuse by the state, but also to obtain a "useful tool to deploy in its domestic political advocacy work"<sup>128</sup>.

Scholars have provided further accounts of how NGOs have employed litigation before the Inter-American system as an avenue to pursue advocacy goals that go beyond redress for the specific victim. NGOs have used Inter-American litigation to challenge amnesty laws in the southern cone<sup>129</sup>, to improve the treatment of rape survivors and the quality of reproductive healthcare in Peru<sup>130</sup> and to suspend the extraction of oil from indigenous land<sup>131</sup> among many more examples. Carvahlo and Baker discuss Global Rights petitioning the IACHR for a precautionary measure soon after the murder of an indigenous leader as a way to "give visibility to what was happening in Mato Grosso do Sul"<sup>132</sup>. In terms of how NGOs use Court rulings to further their advocacy goals, Hudlet and González explain how Inter-American Court rulings in four cases brought by NGOs against Mexico were deployed by another NGO before domestic courts to restrict military jurisdiction in a separate case of human rights violations committed by the armed forces<sup>133</sup>.

A recent example of how the availability of the Inter-American system's protection measures has influenced how NGOs mobilise is included in Cavallaro *et al's* account of civil society mobilisation after the disappearance of 43 students in Ayotzinapa, Mexico in 2014. In that case representatives of the victims' families announced their intention to seek precautionary measures from the Inter-American Commission shortly after the students disappeared<sup>134</sup>. The Commission has played an important role in investigating the case and pressing the state for action ever since<sup>135</sup>. This deployment of an individual protection procedure early in the timeline of a disappearance indicates that NGOs on the ground are well-prepared in that they have the knowledge and the technical expertise to trigger international monitoring quickly. It also suggests that they are well-aware of the advantages

of deploying the monitoring of the Inter-American system organs as well as the important extra-compliance impacts their involvement brings about, namely that engaging the Commission allows NGOs to visibilise and afford urgency to issues, to shape evolving narratives and to pressure states to take concrete measures to remedy ongoing violations.

The preceding narrative serves to illustrate that trends that were suggested by the survey of petitioners are supported by the work of scholars who are interested in the complex relationship between NGOs and the Inter-American system organs. It is apparent that NGOs that petition the system in cases that reach the Inter-American Court do so to obtain redress for the victims of state abuse, but that they are also motivated by the possibility of obtaining impacts that go beyond compliance with reparations for the victim in particular, many of which are sought and harnessed regardless of the attitude of states parties.

## **8. Conclusions**

I set out to challenge the idea that international human rights courts, and in particular the Inter-American Court of Human Rights, can be adequately evaluated with compliance studies. Theoretically and practically, compliance is a far more complicated notion than it would appear to be at first sight. Therefore, studies that employ compliance to measure the effectiveness of international human rights courts should be designed in such a way as to properly capture the nuances of each particular system of international adjudication. Even

where compliance can be measured in a sophisticated way, there exist many extra-compliance impacts that are not susceptible to measurement with these studies.

An examination of the perceptions of NGO petitioners in cases that reached the Inter-American Court, along with studies of NGO interaction with Inter-American system organs and narratives of strategic litigation before the system, support the assertion that petitioners value compliance but they also value and seek out impacts that are not measurable by using compliance studies. Focussing on compliance, particularly the more limited concept of total compliance, invisibilises a number of impacts that rulings have and that affect stakeholders other than the state. These independent impacts can be just as important as compliance or more so, depending on the stakeholder and the context. In this sense, the Inter-American Court is a good example of how extra-compliance impact can be valued and sought out by petitioners. Ultimately, while petitioners do value compliance, they seem to value a notion of declarative justice independently of compliance and they see the rulings of the Court as tools to further their advocacy. They work hard to bring about as much impact as possible during the litigation and once the ruling is published. It is this understanding of justice and their ability to deploy the process and the ruling strategically that are powerful enough to push them through the long and arduous process of bringing a claim to the Inter-American system and that then keep them coming back for more.

It was Simmons who stated that:

“much research suggests that litigation's power resides not so much in its ability to provide every victim with a decisive win in court. Litigation is also a political strategy, with the power to inspire rule revision and further to mobilize political movements.

It can often be used strategically not only to win cases, but also to publicize and mobilize a cause"<sup>136</sup>.

The key to solving the Inter-American paradox of low compliance and rising relevance that gave origin to the present article is to understand that civil society organisations are autonomous stakeholders in international adjudication who have evolved to find ways to pursue human rights justice in the face of hostile states. If we open our understanding of international adjudication to include human rights NGOs as both initiators of international monitoring and recipients of international law, we are able to visibilise a range of extra-compliance impacts that had been obscured by a focus on compliance. In this way, properly valuing these extra-compliance impacts allows us to understand that the behaviour of petitioners to the Inter-American human rights system is not actually paradoxical at all.

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<sup>1</sup> Eric Posner & John Yoo, *Judicial Independence in International Tribunals*, 93 Cal. L. Rev. 1 (2005).

<sup>2</sup> Laurence Helfer and Anne-Marie Slaughter, *Toward a Theory of Effective Supranational Adjudication*, 107 Yale L.J. 273, 313-4 (1997).

<sup>3</sup> Posner and Yoo, *supra* note 1 at 44. Usage was determined to be the number of cases per state, per year. *Id.* at 43.

<sup>4</sup> *Id.* at 28.

<sup>5</sup> Annual Report of the Inter-American Commission on Human Rights, 9 (2018) available at <http://www.oas.org/en/iachr/docs/annual/2018/TOC.asp> (last visited Jun. 17, 2019). Trinidad & Tobago denounced the ACHR in May of 1998 and Venezuela did so in September of 2012.

<sup>6</sup> Inter-American Commission on Human Rights, Statistics of the Inter-American Commission on Human Rights: petitions, cases and precautionary measures, available at <http://www.oas.org/en/iachr/multimedia/statistics/statistics.html> (last visited Jun. 17, 2019).

<sup>7</sup> Since the first contentious case to come before the Court, victims, witnesses and lawyers have experienced violence and threats of violence because of their participation in the process. Both the Commission and the Court have had to develop a sophisticated system of protection measures to respond to this phenomenon. See *infra* note 30.

<sup>8</sup> Robert Howse & Ruti Teitel, *Beyond Compliance: Rethinking Why International Law Really Matters*, 1 Global Policy, 127, 128 (2010).

<sup>9</sup> Benedict Kingsbury, *The Concept of Compliance as a Function of Competing Conceptions of International Law*, 19 MICH. J. INT'L L. 345, 346 (1997-8).

<sup>10</sup> Eg. Oona Hathaway, *Do Human Rights Treaties Make a Difference?* 111 YALE L.J. 1870 (2002); BETH SIMMONS, *MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS* (CAMBRIDGE UNIVERSITY PRESS 2009); Darren Hawkins & Wade Jacoby, *Partial Compliance: A Comparison of the European and Inter-American Courts for Human Rights*, 6 J. Int'l L. & Int'l Rel. 35, (2010-1); Fernando Basch *et al*, *The Effectiveness of the Inter-*

*American System of Human Rights Protection: a Quantitative Approach to its Functioning and Compliance with its Decisions*, 7 Sur, Int'l J. on H.R 9, XX (2010); Damian González-Salzberg, *The Effectiveness of the Inter-American Human Rights System: A Study of the American States' Compliance with the Judgments of the Inter-American Court of Human Rights*, 15 REV. COLOMB. DERECHO INT. ILDI, BOGOTÁ (COLOMBIA) 115, (2010).

<sup>11</sup> Eg. JACK GOLDSMITH & ERIC POSNER, *THE LIMITS OF INTERNATIONAL LAW* 107-34 (Oxford University Press 2005).

<sup>12</sup> Eg. Ryan Goodman & Derek Jinks, *How to Influence States: Socialization and International Human Rights Law*, 54 Duke L.J. 621 (2004); Harold Hongju Koh, *Transnational Legal Process*, 75 NEB. L. REV. 181, 205 (1996).

<sup>13</sup> Eg. James Cavallaro & Stephanie Brewer, *Reevaluating Regional Human Rights Litigation in the Twenty-First Century: The Case of the Inter-American Court*, 102 Am. J. Int'l L. 768, 794 (2008); Alexandra Huneus, *Courts Resisting Courts: Lessons from the Inter-American Court's Struggle to Enforce Human Rights*, 44 CORNELL INT'L L.J. 493, 520-30 (2011); Helfer & Slaughter, *supra* note 2 at 366-86.

<sup>14</sup> Helfer & Slaughter, *supra* note 2 at 278; Posner & Yoo, *supra* note 1 at 28; Gerald Neuman, *Import, Export and Regional Consent in the Inter-American Court of Human Rights*, 19 EJIL 101, 123, (2008).

<sup>15</sup> Helfer & Slaughter, *supra* note 2 at 290.

<sup>16</sup> Kingsbury *supra* note 9 at 345. Kingsbury dismisses this understanding as unfounded in theory.

<sup>17</sup> *Id.*

<sup>18</sup> Howse & Teitel, *supra* note 8 at 135.

<sup>19</sup> Case of The Last Temptation of Christ (Olmedo Bustos et al.) v. Chile, Inter-Am. Ct H.R. (ser. C) No. 73 ¶187 (Feb. 5, 2001). The ruling by the Inter-American Court recalled the state's obligation to modify its domestic law in accordance with the content of the American Convention. In this case the domestic rule that allowed for prior censorship was housed in the Constitution.

<sup>20</sup> Case of the "Juvenile Reeducation Institute" v. Paraguay, Inter-Am. Ct H.R. (ser. C) No.112 (Sep. 2, 2004), ¶316-7.

<sup>21</sup> Posner & Yoo, *supra* note 1 at 43. They found that the IA Court has a Compliance rate of 5% which, at the time of the publication of their study, is a figure you could only have reached by considering only cases fully complied with as complied with.

<sup>22</sup> *Id.* at 43.

<sup>23</sup> *Id.* Hawkins & Jacoby, *supra* note 10 at 58.

<sup>24</sup> Courtney Hillebrecht, *Rethinking Compliance: The Challenges and Prospects of Measuring Compliance with International Human Rights Tribunals*, 1 J. Hum. Rts. Prac. 362, 366 (2009) (discussing the Inter-American Commission on Human Rights).

<sup>25</sup> Eg. YUVAL SHANY, *ASSESSING THE EFFECTIVENESS OF INTERNATIONAL COURTS* (OXFORD UNIVERSITY PRESS 2014); KAREN ALTER, LAURENCE HELFER & MIKAEL RASK MADSEN, *INTERNATIONAL COURT AUTHORITY* (OXFORD UNIVERSITY PRESS 2018); ENGSTROM ET AL, *THE INTER-AMERICAN HUMAN RIGHTS SYSTEM; IMPACT BEYOND COMPLIANCE* (PALGRAVE MACMILLAN 2018); THERESA SQUATRITO, ORAN YOUNG ANDREAS FOLLESDAL & GEIR ULFSTEIN, *THE PERFORMANCE OF INTERNATIONAL COURTS AND TRIBUNALS* (CAMBRIDGE UNIVERSITY PRESS 2018).

<sup>26</sup> See, in this sense, Howse & Teitel, *supra* note 8 at 130.

<sup>27</sup> Lisa L. Martin, *Against Compliance*, Paper Prepared for the APSA Annual Meeting 26, 29 (2011).

<sup>28</sup> Kingsbury, *supra* note 9 at 348.

<sup>29</sup> Hawkins and Jacoby, *supra* note 10 at 58. According to their data the rates of compliance with reparations measures are as follows: payment of costs and expenses, 43%; payment of moral damages, 43%; payment of material damages, 40%; apology, 40%.

<sup>30</sup> Both the Inter-American Commission and Court have had to develop a sophisticated system of measures designed to protect victims, advocates and witnesses in the cases that come before them. See in general DINAH SHELTON, *REGIONAL PROTECTION OF HUMAN RIGHTS* 685-91 (Oxford University Press 2008); JO M. PASQUALUCCI, *THE PRACTICE AND PROCEDURE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS* (Cambridge University Press, 2003) 251-98; CLARA BURBANO HERRERA, *PROVISIONAL MEASURES IN THE CASE LAW OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS* (INTERSENTIA 2010).

<sup>31</sup> SHANY, *supra* note 25 at 6-7.

<sup>32</sup> ENGSTROM ET AL, *supra* note 25 at 5.

<sup>33</sup> ALTER, HELFER & MADSEN, *supra* note 25 at 13.

<sup>34</sup> ENGSTROM ET AL, *supra* note 25 at 4.

<sup>35</sup> E.g. The US Supreme Court decision that decriminalised homosexuality referred to the case law of the European Court of Human Rights. *Lawrence v. Texas*, 539 U.S. 558, 573 (2003).

<sup>36</sup> SIMMONS, *supra* note 10.



<sup>37</sup> *Id.* at 114.

<sup>38</sup> *Id.* at 148-154.

<sup>39</sup> *Id.* at 154.

<sup>40</sup> American Convention on Human Rights, art. 52, Nov. 21, 1969, 1144 U.N.T.S. 143.

<sup>41</sup> Herein and throughout my work on the Inter-American system, I use the word “America” to refer to the entire American continent – from Alaska to Cape Horn - and the Caribbean.

<sup>42</sup> American Convention on Human Rights, Chapter VIII, Nov. 21, 1969, 1144 U.N.T.S. 143. For a history of the discussions surrounding the establishment of this court, which date back to 1948 see CECILIA MEDINA QUIROGA, *THE BATTLE OF HUMAN RIGHTS: GROSS, SYSTEMATIC VIOLATIONS AND THE INTER-AMERICAN SYSTEM*, 161-5 (Martinus Nijhoff, 1988).

<sup>43</sup> Statute of the Inter-American Court of Human Rights, art. 1, Oct. 1979, OAS/Ser.L/VI.4 rev.12, Jan, 31, 2007.

<sup>44</sup> Case of Velásquez Rodríguez v. Honduras, Inter-Am. Ct H.R. (ser. C) No. 4 at ¶ 65, 74, 80.

<sup>45</sup> *Velásquez Rodríguez*, Inter-Am. Ct H.R. (ser. C) No. 4, ¶ at 40-41. Claudio Grossman, *The Velásquez Rodríguez Case: The Development of the Inter-American Human Rights System*, in *International Law Stories* 77, 90 (Noyes, Dickinson & Janis eds., Foundation Press 2007).

<sup>46</sup> The Court held that “[t]he phenomenon of disappearances is a complex form of human rights violation that must be understood and confronted in an integral fashion”. *Velásquez Rodríguez*, Inter-Am. Ct H.R. (ser. C) No. 4 at ¶ 150, 155-7, 130-31, 162-184.

<sup>47</sup> See in general, LAURENCE BURGORGUE-LARSEN & AMAYA ÚBEDA DE TORRES, *THE INTER-AMERICAN COURT OF HUMAN RIGHTS: CASE LAW AND COMMENTARY* (Oxford University Press 2011); JAMES CAVALLARO, CLARET VARGAS, CLARA SANDOVAL & BERNARD DUHAIME, *DOCTRINE, PRACTICE, AND ADVOCACY IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM* 258-278 (OXFORD UNIVERSITY PRESS 2019).

<sup>48</sup> Hawkins & Jacoby, *supra* note 10 at 37

<sup>49</sup> Case of González et al v. Mexico (Cotton Field), Inter-Am. Ct. H.R. (ser. C) No.205, ¶ 450 (Nov. 16,2009).

<sup>50</sup> Eg. In Peru, public pressure led President Alan García to declare publicly that he will not comply with an Inter-American Court ruling that ordered the state to inscribe the names of victims of state terror on an anti-terrorism monument. Julissa Mantilla Falcón, *La Verdad de las Mentiras: La Sentencia del Penal de Castro Castro*, Jan. 16, 2007, *La Insignia Iberoamérica*, available at [http://www.lainsignia.org/2007/enero/ibe\\_026.htm](http://www.lainsignia.org/2007/enero/ibe_026.htm)

<sup>51</sup> Amnesty laws were central in eg.: Case of Barrios Altos v. Peru, Inter-Am. Ct H.R. (ser. C) No. 75 (Mar. 14, 2001); Case of Molina Theissen v. Guatemala. Inter-Am. Ct H.R. (ser. C) No. 106 (May 4, 2004); Case of Moiwana v. Suriname, Inter-Am. Ct H.R. (ser. C) No.124 (Jun. 15, 2005); Case of Almonacid- Arellano v. Chile, Inter-Am. Ct H.R. (ser. C) No. 154 (Sep. 26, 2006).

<sup>52</sup> While their study allows for partial compliance with a ruling, it does not allow for partial compliance with a measure, i.e. a partial payment of damages is considered non-compliance with that particular measure. While the authors recognize that this does invisibilize partial compliance with specific measures, they decided to employ the dichotomous compliance/non-compliance coding scheme because the Court’s own inconsistency in measuring partial compliance with specific measures made it difficult to confirm across the board. Hawkins & Jacoby, *supra* note 10 at 49. The likely result of this decision is an understatement of partial compliance. Given that their aim was to prove that partial compliance is the rule in the Inter-American Court system, their distortion works against their own hypothesis.

<sup>53</sup> *Id.* at 51.

<sup>54</sup> Thomas Antkowiak, *Remedial Approaches to Human Rights Violations: The Inter-American Court of Human Rights and Beyond*, 46 *Colum. J. Transnat'l L.* 351 (2007-8). Antkowiak’s coverage of the evolution of reparations ordered by the Court came before the paradigm shift contained in the Cotton Field case, where the Court ordered transformative reparations. *Cotton Field*, Inter-Am. Ct. H.R. (ser. C) No.205 at ¶ 399-402 and Operative Paragraphs 22-23.

<sup>55</sup> Hawkins & Jacoby, *supra* note 10 at 60.

<sup>56</sup> *Id.* at 56.

<sup>57</sup> *Id.*

<sup>58</sup> See Inter-American Court of Human Rights, Cases in Supervision Stage available at [http://www.corteidh.or.cr/cf/jurisprudencia2/casos\\_en\\_etapa\\_de\\_supervision.cfm?lang=en](http://www.corteidh.or.cr/cf/jurisprudencia2/casos_en_etapa_de_supervision.cfm?lang=en) (last visited Jun 28,2019).

<sup>59</sup> Hawkins & Jacoby, *supra* note 10 at 58.

<sup>60</sup> Hawkins' and Jacoby demonstrate that states are fastest to apologize (resistance level of 0.94) followed by the payment of moral damages (0.96), the payment of costs and expenses (1.0) and the payment of material damages (1.10). *Id.* at 58.

<sup>61</sup> Juan Méndez & José Miguel Vivanco, *Disappearances and the Inter-American Court: Reflections on a Litigation Experience*, 13 Hamline L. Rev. 507, 531 (1990).

<sup>62</sup> If we break this figure down by region, 76% of Court cases brought against Latin American states were presented by at least one named NGO whereas all cases brought against Anglo Caribbean states were presented by Law Firms.

<sup>63</sup> The NGO with the greatest number of petitions before the Inter-American System is the Center for Justice and International Law (CEJIL). See *infra* note 69 for their mission statement.

<sup>64</sup> E.g.: In the *Case of the Cotton Field*, regarding femicide in Juarez, 17 NGOs and academic centres presented *amicus curiae* briefs. In *Atala Riffo and Daughters v. Chile*, a case regarding the discrimination of a lesbian mother, 32 *amicus curiae* briefs were presented.

<sup>65</sup> Beth Simmons references Sarat and Scheingold as defining cause lawyering as "legal work that is directed at altering some aspect of the social, economic and political status quo"; SIMMONS, *supra* note 10 at 133.

<sup>66</sup> Claudio Grossman served on the Commission from 1994 to 2001 and Juan Méndez served from 2000 to 2003. In addition, Robert Goldman, Sofia Macher, Felipe González Morales and James Cavallaro were also litigants in cases that reached the Court before being elected to the Commission. José Zalaquett was a witness for the victim and Victor Abrahamovic was the director of a petitioning NGO before being elected commissioners. Pablo Saavedra, Maria Claudia Pulido and Ariel Dulitzky were all litigators at CEJIL before taking up high-level staff positions at the Commission and the Court.

<sup>67</sup> The original survey data was included in Patricia Palacios Zuloaga, *Compliance and Impact of the Inter-American Court of Human Rights*, Doctoral Dissertation at NYU School of Law (June 2013). All data remains on file with the author.

<sup>68</sup> SIMMONS, *supra* note 10 at 154.

<sup>69</sup> Center for Justice and International Law, About CEJIL, What We Do <https://www.cejil.org/en/what-we-do> (visited Jul.8, 2019).

<sup>70</sup> It is worth noting that petitioners represented a very wide political spectrum; while most remained silent on the issue, some espoused views of the left and others of the right, usually with regards to whichever government they were mobilizing against.

<sup>71</sup> 30 surveys were completed in Spanish and 2 were filled out in English. All translations are my own.

<sup>72</sup> Surveys 3 and 4.

<sup>73</sup> Surveys 1, 5, 6, 7, 8, 10, 20

<sup>74</sup> Surveys 3, 4, 9, 22.

<sup>75</sup> Surveys 1, 2, 5, 6, 7, 8, 10, 11, 18, 19, 21, 30, 31.

<sup>76</sup> Survey 10.

<sup>77</sup> Survey 30.

<sup>78</sup> Surveys 15 and 20.

<sup>79</sup> All original data remains on file with the author.

<sup>80</sup> See *infra* note 103 for an understanding of the Spanish word "dignidad".

<sup>81</sup> Surveys 9, 25, 26.

<sup>82</sup> Survey 3.

<sup>83</sup> Survey 8.

<sup>84</sup> Surveys 11, 32.

<sup>85</sup> Survey 17.

<sup>86</sup> Survey 4.

<sup>87</sup> Survey 2.

<sup>88</sup> Survey 3.

<sup>89</sup> Surveys 5, 6, 7.

<sup>90</sup> Survey 8.

<sup>91</sup> Survey 13.

<sup>92</sup> Survey 17.

<sup>93</sup> Surveys 25, 26.

<sup>94</sup> Surveys 23 and 24.

<sup>95</sup> Survey 22.

<sup>96</sup> Survey 2.

- <sup>97</sup> Survey 3.
- <sup>98</sup> Survey 4.
- <sup>99</sup> Surveys 5, 6, 7.
- <sup>100</sup> Survey 8.
- <sup>101</sup> Surveys 9, 25, 26.
- <sup>102</sup> Survey 11.
- <sup>103</sup> Survey 16. The original Spanish phrase was “*se sintieron de alguna manera dignificados*”. It is important to note that in Latin America the word “*dignificar*” refers to a reestablishment of a base level of recognition that had been denied. It is therefore not equivalent to the English word “*dignify*” which denotes an honour, distinction or rise to a higher level of importance i.e. dignitary. See also Survey 17.
- <sup>104</sup> Survey 30.
- <sup>105</sup> Survey 31.
- <sup>106</sup> Survey 3.
- <sup>107</sup> Survey 4.
- <sup>108</sup> Survey 10.
- <sup>109</sup> Surveys 11, 32.
- <sup>110</sup> Survey 18.
- <sup>111</sup> Survey 30.
- <sup>112</sup> Survey 3.
- <sup>113</sup> Survey 8.
- <sup>114</sup> Surveys 16, 17.
- <sup>115</sup> Survey 18.
- <sup>116</sup> Survey 21.
- <sup>117</sup> *Supra* note 62.
- <sup>118</sup> HEIDI NICHOLS HADDAD, *THE HIDDEN HANDS OF JUSTICE: NGOs, HUMAN RIGHTS, AND INTERNATIONAL COURTS* (CAMBRIDGE UNIVERSITY PRESS 2018) at 90-5.
- <sup>119</sup> *Id.* at 95.
- <sup>120</sup> Par Engstrom, *Introduction: Rethinking the Impact of the Inter-American Human Rights System*, in ENGSTROM ET AL, *supra* note 25 at 15.
- <sup>121</sup> Par Engstrom & Peter Low, *Mobilising the Inter-American Human Rights System: Regional Litigation and Domestic Human Rights Impact in Latin America*, in ENGSTROM ET AL, *supra* note 25 at 28-9.
- <sup>122</sup> *Id.* at 29-30.
- <sup>123</sup> S. James Anaya & Maia S. Campbell, *Gaining Legal Recognition of Indigenous Land Rights: The Story of the Awas Tigni Case in Nicaragua*, in HURWITZ, SATTERTHWAITHE & FORD, *HUMAN RIGHTS ADVOCACY STORIES* (Foundation Press 2009) at 121, 126.
- <sup>124</sup> *Id.* at 153.
- <sup>125</sup> *Id.* at 150-2.
- <sup>126</sup> HADDAD, *supra* note 118 at 103.
- <sup>127</sup> Engstrom & Low, *supra* note 121 at 37-8.
- <sup>128</sup> *Id.* at 39.
- <sup>129</sup> CAVALLARO ET AL, *supra* note 47 at 258-278.
- <sup>130</sup> Luisa Cabal, Mónica Roa & Lilian Sepúlveda Oliva, *What Role can Litigation Play in the Promotion and Advancement of Reproductive Rights in Latin America?*, 7 *Health and Human Rights* 50, 65-6 (2003).
- <sup>131</sup> Salvador Herencia Carrasco, *Public Interest Litigation in the Inter-American Court of Human Rights: The Protection of Indigenopus Peoples and the Gap between Legal Victories and Social Change*, 2015 *Rev. Quebecoise de Droit Int'l* 199, 212 (2015).
- <sup>132</sup> Sandra Carvalho & Eduardo Baker, *Strategic Litigation Experiences in the Inter-American Human Rights System*, 20 *SUR – J. on Hum Rts.* 449, 453 (2014).
- <sup>133</sup> Karen Hudlet Vásquez & Denise González Nuñez, *Los Efectos de la Incidencia internacional de las Organizaciones de la Sociedad Civil: El Caso de la Corte Interamericana de Derechos Humanos y el Fuero Militar en México*, 172 *El Cotidiano* 136, 147-8 (2012).
- <sup>134</sup> CAVALLARO ET AL, *supra* note 47 at 209.
- <sup>135</sup> *Id.* at 208-2012.
- <sup>136</sup> SIMMONS, *supra* note 10 at 132.