

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*

LA EFECTIVIDAD DEL SISTEMA
INTERAMERICANO DE PROTECCIÓN DE LOS
DERECHOS HUMANOS: UN ESTUDIO SOBRE
EL CUMPLIMIENTO DE LAS SENTENCIAS DE
LA CORTE INTERAMERICANA DE DERECHOS
HUMANOS POR LOS ESTADOS MIEMBROS

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ABSTRACT

The paper undertakes a comprehensive quantitative research on the subject of American States' compliance with international judgments on human rights' issues. The research analyses the level of effectiveness of the Inter-American Human Rights System, showing that the data annually published by the Inter-American Court in its Reports might not be the only way of understanding the actual degree of effectiveness of the system. Furthermore, some ideas are evaluated regarding possible paths in order to improve the current situation.

Key words author: Inter-American Court of Human Rights; Inter-American Human Rights System; Compliance with international judgments; Effectiveness of the Inter-American System.

Key words plus: Inter-American Court of Human Rights, Inter-American Human Rights System, International law, Judgments.

RESUMEN

El presente trabajo abarca una extensa investigación cuantitativa acerca del cumplimiento de sentencias internacionales en materia de derechos humanos, por parte de los Estados del Continente Americano. La investigación analiza el nivel de efectividad del Sistema Interamericano de Protección de los Derechos Humanos, observando que los datos que la Corte Interamericana publica cada año en sus Informes pueden no ser el único modo de entender el grado de efectividad del sistema. Asimismo, se discuten algunas ideas respecto de posibles vías para mejorar la situación actual.

Palabras clave autor: *Corte Interamericana de Derechos Humanos; Sistema Interamericano de Protección de los Derechos Humanos; Cumplimiento de sentencias internacionales; Efectividad del Sistema Interamericano.*

Palabras clave descriptor: *Corte interamericana de derechos humanos, sistema interamericano de derechos humanos, derecho internacional, sentencias.*

SUMMARY

INTRODUCTION.- I. A BRIEF REVIEW OF THE IAHRs.- II. THE EFFECTIVENESS OF THE IAHRs.- III. THE EFFECTIVENESS SHOWN GRAPHICALLY.- IV. THE EFFECTIVENESS IN NUMBERS.- V. PROGRESS MADE DURING 2009.- CONCLUSIONS.- BIBLIOGRAPHY.

INTRODUCTION

The paper is aimed at analysing the effectiveness of the Inter-American Human Rights System (IAHRS) in achieving its goals, namely to protect and ensure the free and full exercise of human rights in the American Continent. It will be discussed that the mentioned system imposes obligations upon its Member States, which appear *prima facie* mostly unfulfilled. Nevertheless, an in-depth analysis will show that the degree of effectiveness of the system is higher than it is assumed to be.

The paper will argue that the judgments of the Inter-American Court of Human Rights, main organ of the mentioned regional system, could be seen as effective regarding the modification of the Member States conduct in some areas. In particular, making the States publicly recognize the violations of human rights committed within their jurisdiction and also in economically repairing the victims of such violations. However, at the same time, the system currently lacks of effectiveness in other specific goals, such as compelling the States to undertake the needed judicial measures in order to prosecute the individuals responsible for the committed violations, and regarding the amendment of States' domestic legislation to avoid further human rights violations.

The starting point of this essay will consist in giving a brief outline of the IAHRS. Following that step, the present work will be destined to the analysis of the effectiveness of the system, using empirical data obtained from the judgments of the Court.

I. A BRIEF REVIEW OF THE IAHRS

It is important to remember that the creation of a regional system aimed at the protection of human rights was a European idea that came into existence with the creation of the European Court of Human Rights in the year 1959, and was later implemented by the American and African Continents. These regimes evidence a clear area where States have surrendered part of their

sovereignty, with the goal of achieving a stronger protection of individuals' essential rights, by giving an international organ the power to make decisions that would be legally compulsory for them.

Regarding the American Continent, the IAHRs was created within the framework given by the Organization of American States (OAS), an international organization created in 1948, mainly aimed at achieving an order of peace and justice in the American Continent. It has to be noticed that human rights' issues were an actual concern in the American Continent since the creation of the OAS itself. As a matter of fact, The American Declaration of the Rights and Duties of Man, the first international document in the Continent regarding human rights, was proclaimed at the same conference that produce the constitutive charter of the organization,¹ and it was also prior to the Universal Declaration of Human Rights adopted the same year by the United Nations.

However, the regional system as it exists nowadays was not created until the entry into force of the American Convention on Human Rights in 1978. It would be fair to say that the main goal of the system is the protection and enforcement of human rights within its Member States on behalf of the individuals—irrespective of their nationality—. In order to accomplish this purpose, the system has established two main organs: a Commission—Inter-American Commission on Human Rights—which is actually an organ of the OAS and was created in 1959,² and a Court—Inter-American Court of Human Rights—, which is the principal organ and only has jurisdiction over Member States of the system.³

1 Thomas Buergenthal & Dinah Shelton, *Protecting Human Rights in the Americas: Cases and Materials*, 39 (N.P. Engel, Kehl, Arlington, Virginia, 1995).

2 The Commission later became a principal organ of the OAS in 1970, when the amendment made to the OAS Charter in 1967 entered into force.

3 At the present time, twenty one out of the thirty five Members of the OAS are also Member States of the Inter-American system, namely: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay and Venezuela. There is a particular situation regarding the States of Dominica, Grenada and Jamaica, which have ratified the American Convention but did not accept the compulsory jurisdiction of the Court.

Between the different functions of the Commission, it has to be highlighted the prerogative of elaborating country reports regarding the level of protection of human rights within the different States of the OAS, as well as —since the year 1965—⁴ it can examine individual petitions and make recommendation to the States regarding them. However, since the entry into force of the American Convention, the role of the Commission was extended. Should its recommendations not be followed by the States, it may submit the case to the Inter-American Court, provided that the involved State has ratified the American Convention and accepted the jurisdiction of the mentioned Tribunal.

On the other hand, the Inter-American Court could be seen as the ultimate monitoring organ, as it has the final and compulsory decision regarding the States' behaviour and its compliance with the protection of human rights. The legal obligation of the States to follow the Court's decisions is founded in the international duty assumed by them at the moment of ratifying the American Convention.⁵ Besides, this Tribunal has not only the power to establish that human rights recognized by the American Convention had been violated and need to be ensured, but it also can rule that the consequences of the abridgment should be remedied and compensation should be paid.⁶

Furthermore, Non Governmental Organizations have acquired a main role in the system, especially regarding the representation of the victims before the Tribunal and the submitting of expert opinions —*amicus curiae*— on the different cases. In particular, it can be thought that the role that the civil society —comprehensive of individuals and NGOs— could have in

4 Resolution XXII of the Second Special Inter-American Conference in 1965, OAS Official Records, OEA/ser.C/I.13, 32-34 (1965).

5 Article 68.1 of the American Convention on Human Rights clearly establishes: “*The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.*”

6 Article 63.1 of the American Convention on Human Rights states: “*If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.*”

demanding the States to act accordingly to the Court's decisions might be seen as extremely important for the effectiveness of the system.

II. THE EFFECTIVENESS OF THE IAHRs

Following Oran R. Young,⁷ this essay will consider *effectiveness* as a measure of the role that institutions play as determinants of the content of the actor's behaviour in the international society. Therefore, an institution would be perceived as an effective one if its functions impel actors to act differently than they would if the institution did not exist. In particular, it has to be acknowledged that effectiveness is actually a matter of degree, rather than an all-or-nothing proposition. Furthermore, Young especially suggests that the *effectiveness* of a particular system would vary in relation with the ease of monitoring the compliance with its prescriptions; the probability of the imposition of a sanction in the case of non-compliance; and the magnitude of such sanction.⁸

In view of the given definition, the degree of effectiveness of the system under analysis will be considered regarding the compliance of the Member States with its decisions. It will be observed if the existence of the Court's judgments made the States act in a different way than they would have if the ruling would not have been issued. Particular attention would be paid to the monitoring procedure—from which all the empirical data has been collected—and also to the fact that sanctions exist for particular prescriptions but not for all of them, in order to analyse if this factor is relevant regarding the degree of compliance. Furthermore, the conclusions of the paper will comment

7 Oran R. Young, *The Effectiveness of International Institutions: Hard Cases and Critical Variables*, in *Governance without Government: Order and Change in World Politics*, 160-194, 162-164 (James N. Rosenau & Ernst Otto Czempiel, eds., Cambridge University Press, Cambridge, 1992).

8 Oran R. Young, *The Effectiveness of International Institutions: Hard Cases and Critical Variables*, in *Governance without Government: Order and Change in World Politics*, 160-194, 176 (James N. Rosenau & Ernst Otto Czempiel, eds., Cambridge University Press, Cambridge, 1992).

on strategies to improve the effectiveness of the system that could be thought for the future.

III. THE EFFECTIVENESS SHOWN GRAPHICALLY

According to the data published by the Inter-American Court of Human Rights in its 2008 Report,⁹ up to the end of that year the organ has adopted final decisions on 105 cases. However, from those judgments, 102 have actually been on the merits of the cases,¹⁰ and 100 of those decisions were convictions of the demanded States.¹¹

The same statistics of the Court state that from all the rulings up to the end of 2008, 94 of them have not been complied with by the convicted States.¹² This would mean that only 6% of the orders of the Court have been effective. Nevertheless, it is possible that the data is not completely accurate and has not yet took into account the full compliance by the States of Chile, Paraguay and Ecuador with the rulings of the cases *Claude Reyes*,¹³ *Canese*¹⁴ and *Acosta-Calderón*,¹⁵ which occurred in 2008. If that were the case, the actual number of non-complied judgments would be a total of 91, leaving 9% as the level of effectiveness of the system. In any case, the IAHRs appears as highly ineffective, as over 90% of the judgments of the Tribunal remain unenforced by the States.

However, it should be considered that the criterion adopted by the Court in order to establish compliance might be extremely

9 Inter-American Court of Human Rights, *Annual Report 2008*, 64.

10 The cases *Cayara* and *Alfonso Martín del Campo-Dodd* were dismissed due to the admission of preliminary objections entered by the States, and the case *Maqueda* was dismissed due to discontinuance of the action brought by the Inter-American Commission.

11 The cases *Fairén-Garbi* and *Solis-Corrales* and *Nogueira de Carvalho* are the only two cases in which the Court has found no violation of the American Convention.

12 Inter-American Court of Human Rights, *Annual Report 2008*, 69.

13 *Case of Claude Reyes et al.* Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 24, 2008.

14 *Case of Ricardo Canese v. Paraguay*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of August 6, 2008.

15 *Case of Acosta-Calderón*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 7, 2008.

severe, as it employs a criterion of all-or-nothing. As long as there is any ordered measure that has not been completely fulfilled, it is considered that the State did not comply with the judgment. That is the reason why this work proposes a different analysis, covering the monitoring decisions issued by the Inter-American Court regarding the compliance of its judgments. The proposed analysis will consider the different measures ordered by the Tribunal and their compliance with by the States, in order to help realizing if the States are actually modifying their behaviour because of the Court's decisions, which would show the degree of effectiveness of the system.

The conducted research reviewed all the Court's orders on the monitoring compliance of cases issued up to the end of 2008, covering the compliance with 70 judgments on merits that took place between the years 1989 and 2006. The chosen method to display the results of the research consist in dividing the different measures ordered by the Court into six categories: *pecuniary compensation*; *costs and expenses*; *publicity of the international judgment*; *public acknowledgement of international liability*; *the obligation of prosecuting the individual perpetrators of the human rights violation*; and *the order to amend domestic legislation*.

Although it has to be recognize that it is usual for the Tribunal to order different measures, as diverse as the obligation to provide the victim or its family with medical and psychological treatment;¹⁶ the duty to nullify a judicial conviction;¹⁷ or the order to memorialized the victims with monuments or street names;¹⁸ the present paper will limit the analysis to the previously mentioned measures, as those are the ones the Court has ordered with more frequency.¹⁹

16 Inter-American Court of Human Rights, Case of the *19 Tradesmen v. Colombia*. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109, op. para. 9.

17 Inter-American Court of Human Rights, Case of *Cesti-Hurtado v. Peru*. Merits. Judgment of September 29, 1999. Series C No. 56, op. para. 8.

18 Inter-American Court of Human Rights, Case of *Myrna Mack-Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, op. para. 10.

19 Therefore, the fact that Table 1 might show cases in which the six measures under analysis have been complied with by the States should not be understood as judgments that have

The results of the research are shown in Table 1 and, in order to quantify them, they were classified according to the degree of compliance into three categories regarding the conduct of the State, *fully complied* (FC in the Table), in the cases where the States have completely fulfilled the ordered measure; *partially complied* (CP),²⁰ when some steps were taking in order to comply, but the result has not yet been accomplished; and *pending fulfillment* (PF), for the cases where no relevant actions were taken.

been fully complied with, as other measures not considered in the present analysis might have been ordered and still be pending of fulfillment. Only the cases *Velásquez-Rodríguez*, *Godínez-Cruz*, *Aloeboetoe*, *Gangaram Panday*, *The Last Temptation of Christ*, *Claude Reyes*, *Canese* and *Acosta-Calderón* had been fully complied with, up to the end of the year 2008.

20 CP is used instead of PC, as it avoids visual confusion on the Table.

Table 1
The Effectiveness of the System

		Pecuniary compensation	Costs and expenses	Publicity of judgment	Public acknowledgement	Prosecution	Amendment of legislation
Peru	Neira-Alegría	FC	FC				
	Loayza-Tamayo	FC	FC			PF	CP
	Castillo-Páez	FC	FC			PF	
	Castillo-Petruzzi		PF				CP
	Cesti-Hurtado	CP	FC			PF	
	Durand and Ugarte	FC	FC	CP	FC	CP	
	Cantoral-Benavides	FC	FC	FC	FC	PF	
	Constitutional Court	CP	FC			PF	
	Ivcher-Bronstein	PF	PF			PF	
	Barrios Altos	CP	CP	FC	FC	CP	PF
	Five Pensioners	FC	FC			PF	
	Gómez-Paquiyaui	FC	FC	FC	FC	PF	
	De La Cruz-Flores	FC	FC	CP			
	Berenson-Mejía		FC	FC			PF
	Huilca Tecse	FC		FC	FC	CP	
	Gómez-Palomino	PF	PF	PF		PF	PF
	García-Asto	CP	CP	CP			
	Baldeón-García	PF	PF	PF	PF	PF	
Guatemala	Blake	FC	FC			CP	
	White Van	CP	CP			PF	
	Street Children	FC	FC			PF	FC
	Bámaca-Velásquez	FC	FC	FC	FC	PF	PF
	Myrna Mack-Chang	FC	FC	FC	FC	CP	
	Maritza Urrutia	FC	FC			PF	
	Plan de Sánchez	CP	FC	CP	FC	PF	
	Molina-Theissen	FC	FC	CP	FC	PF	PF
	Carpio-Nicolle	CP	CP	FC	PF	PF	
	Fermin Ramírez		FC				PF
	Raxcacó-Reyes		FC	FC			PF

		Pecuniary compensation	Costs and expenses	Publicity of judgment	Public acknowledgement	Prosecution	Amendment of legislation
Paraguay	Canese	FC	FC	FC			
	Juvenile Reeducation Institute	CP	PF	FC	PF		
	Yakye Axa	CP	CP	PF	FC		PF
	Sawhoyamaxa	CP	CP	CP			PF
	Goiburú	PF	PF	CP	PF	CP	PF
	Vargas-Areco	CP	CP	CP	PF	PF	CP
Honduras	Velásquez-Rodríguez	FC					
	Godínez-Cruz	FC					
	Juan H. Sánchez	CP	FC	FC	FC	PF	
	López-Álvarez	FC	FC	FC		PF	
	Servellón-García	FC	FC	FC	FC	CP	
Colombia	Caballero-Delgado	CP	FC			PF	
	Las Palmeras	FC	FC	FC		CP	
	19 Tradesmen	CP	CP		FC	PF	
	Gutiérrez-Soler	FC	FC	FC		CP	
Ecuador	Suárez-Rosero	CP	FC			PF	
	Benavides-Cevallos	FC				PF	
	Tibi	CP	PF	CP	PF	PF	
	Acosta-Calderón	FC	FC	FC			
Chile	The Last Temptation		FC				FC
	Palamara-Iribarne	FC	FC	FC			PF
	Claude Reyes		FC	FC			FC

		Pecuniary compensation	Costs and expenses	Publicity of judgment	Public acknowledgement	Prosecution	Amendment of legislation
Nicaragua	Genie-Lacayo	FC					
	Mayagna	FC	FC				FC
	Yatama	PF	PF	CP			PF
Argentina	Garrido-Baigorria	FC	FC			PF	
	Cantos		FC				
	Bulacio	FC	FC	FC		CP	
Suriname	Aloeboetoe	FC					
	Gangaram Panday	FC					
	Moiwana	FC	FC		FC	PF	
Venezuela	El Amparo	FC				PF	
	The Caracazo	FC	CP	FC		PF	
Trinidad and Tobago	Hilaire	PF	PF				PF
	Caesar	PF					PF
Panama	Baena	CP	FC				
Bolivia	Trujillo-Oroza	FC	FC	FC	FC	CP	FC
Brazil	Ximenes-Lopes	FC	FC	FC		PF	
Dominican Republic	Yean and Bosico	FC	FC	PF	PF		PF
El Salvador	Serrano-Cruz	CP	FC	CP	FC	PF	
Costa Rica	Herrera-Ulloa	CP	CP				PF

Source: Own elaboration.

IV. THE EFFECTIVENESS IN NUMBERS

The results shown in Table 1 have been processed in Table 2 to allow seeing that the different measures have a quite distinctive degree of compliance.²¹ The pecuniary compensations and the payment of costs and expenses show a relatively high level of compliance, having been fully complied with on the 59% and 70% of the cases, respectively.²² Regarding these types of measures, it has to be considered that these are the only ones in which the Tribunal establishes a sanction for non-compliance, stating that in case of arrears in the payment an interest should be paid.²³ However, the results concerning the publicity of judgments and the public acknowledgement of international liability could indicate that the existence of a sanction might not be the reason for the higher degree of compliance. Indeed, the degree of fulfilment of these last mentioned orders is similar to the previous ones —around 60% and 70% respectively.

On the other hand, the obligation of conducting domestic investigations regarding the human rights violation, in order to prosecute and punish the wrongdoers, appears as the most unfulfilled by the States —close to three quarters of all the cases. As a matter of fact, up to the end of 2008, not even in one case a State has completely fulfilled that measure. The order regarding the amendment of the domestic legislation shows similar results. In almost two thirds of the cases, the States have not taken seri-

21 It has to be mentioned that the two rulings against Trinidad and Tobago were not considered for the results —even though presented in Table 1—, because of the exit of the State from the System and the extreme situation that presents its reluctance to inform the Tribunal if any steps were taken in order to comply with the judgments. Therefore, Table II is based on 68 cases instead of the 70 showed in Table 1.

22 It should be recognized that, for the first time, in its *2008 Annual Report*, the Court has presented specific statistics regarding compliance with the orders to pay compensations and costs and expenses. However, the results shown thereby are based on 58 and 51 cases respectively, with no indications regarding which were the cases taken under consideration. Inter-American Court of Human Rights, *Annual Report 2008*, 72-73.

23 The Court started ordering such sanction in Inter-American Court of Human Rights, *Case of El Amparo v. Venezuela*. Reparations and Costs. Judgment of September 14, 1996. Series C No. 28, para. 49.

ous steps in order to comply with this measure; and they have fully accomplished so in only five out of twenty two occasions.

Nevertheless, it should be understood that the data clearly shows that the rulings of the Court are far from being indifferent to the Member States. Even though, up to the end of 2008, in only eight out of sixty eight cases the States have fully complied with the judgment as a whole, it also has to be noticed that in sixty five of them the States have actually modify their conduct, taking steps in order to comply with the Court's decisions.²⁴ Moreover, observing the advances made in the year 2009, it could be confirmed that all the States —with the exception of Trinidad and Tobago that abandoned the system— have taken steps in order to comply with the orders of the Court.

Table 2
Compliance in numbers

	Total	Fully complied	Partially complied	Not complied
Pecuniary compensation	61	36 (59%)	20 (32.8%)	5 (8.2%)
Costs and expenses	60	42 (70%)	10 (16.7%)	8 (13.3%)
Publicity of Judgment	38	23 (60.5%)	11 (29%)	4 (10.5%)
Public acknowledgement	23	16 (69.6%)	0	7 (30.4%)
Prosecution	42	0	11 (26.2%)	31 (73.8%)
Amendment of legislation	22	5 (22.7%)	3 (13.6%)	14 (63.6%)

Source: Own elaboration.

²⁴ The only exceptions are the cases *Ivcher-Bronstein*, *Gómez-Palomino* and *Baldeón-García*, all against Peru.

V. PROGRESS MADE DURING 2009

Even though the quantitative analysis has been conducted up to the end of the year 2008—which is the last year covered so far by the Reports of the Inter-American Court—it is important to observe that there has been progress made on the analysed cases during 2009, as it is shown on Table 3. In particular, attention should be drawn to three specific facts. Firstly, there is a new judgment that has been fully complied with, the case *Mayagna*.²⁵ Secondly, for the first time, a State has complied with the order of the Court regarding the prosecution of the perpetrators of human rights violations, in the case *Castillo-Páez*.²⁶ Finally, it could be highlighted that steps have been taking towards compliance with the judgments in all the cases analysed within this paper.²⁷ This last fact could be understood as indicating a certain level of effectiveness of the IAHRs that cannot be denied, in the sense that the rulings of the Court do make States modify their conduct.

25 Inter-American Court of Human Rights, *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of April 3, 2009.

26 Inter-American Court of Human Rights, *Case of Castillo-Páez*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of April 3, 2009.

27 During 2009, the State of Peru has taken measures in order to comply with the previously mentioned cases *Ivcher-Bronstein*, *Gómez-Palomino* and *Baldeón-García*.

Table 3
Improvement during 2009

		Pecuniary compensation	Costs and expenses	Publicity of judgment	Public ccknowledgement	Prosecution	Amendment of legislation
Peru	Castillo-Páez	FC	FC			FC	
	Ivcher Bronstein	FC	FC			CP	
	Gómez-Palomino	CP	CP	CP		PF	PF
	Baldeón-García	PF	PF	FC	PF	PF	
Guatemala	Bámaca-Velásquez	FC	FC	FC	FC	PF	CP
	Plan de Sánchez	CP	FC	FC	FC	PF	
	Molina-Theissen	FC	FC	FC	FC	PF	PF
	Carpio-Nicolle	FC	FC	FC	PF	PF	
Paraguay	Goiburú	PF	FC	FC	PF	CP	PF
Colombia	Caballero-Delgado	FC	FC			PF	
	19 Tradesmen	CP	FC		FC	PF	
Ecuador	Tibi	CP	FC	CP	CP	PF	
Nicaragua	Mayagna	FC	FC				FC
Brazil	Ximenes-Lopes	FC	FC	FC		CP	
Costa Rica	HerreraUlloa	FC	FC				PF

Source: Own elaboration.

CONCLUSIONS

In brief, the paper has analysed the level of effectiveness of the Inter-American Human Rights System. In opposition to what the data provided by the Court's Reports shows, this work has given reasons to believe that the IAHRS appears as highly effective in achieving an important portion of its goals through its ordered measures. Nevertheless, it is evident that its levels of effectiveness need to be improved.

A special comment must be reserved for the factors that Young presents as relevant for the effectiveness of a system, namely the ease of monitoring compliance; the probability of the imposition of a sanction; and the magnitude of such sanction. It can be said that the system has developed a method of monitoring compliance, which might be assumed that has particular relevance in its degree of effectiveness.

Furthermore, the regime does not include specific mechanisms related to the enforcement of judgments, as the American Convention does not give the OAS political organs express powers to impose sanctions in the case of non-compliance.²⁸ However, an amendment of the regional treaties in order to give a political organ the power to enforce judicial decisions concerning human rights might be seen as highly inconvenient. Such a procedure needs to be based on the moral legitimacy of political actors regarding human rights policies, which could be argued to be absent in the American Continent. Up to the end of 2009, twenty of the twenty one Member States of the IAHRS have been convicted by the Court²⁹ and none of them have fully complied with all the remedies ordered by the Tribunal. The situation is even

28 Verónica Gómez, *The Interaction between the Political Actors of the OAS (Organization of American States), the Commission and the Court*, in *The Inter-American System of Human Rights*, 173-211, 192 (David J. Harris & Stephen Livingstone, eds., Clarendon Press, Oxford, 1998).

29 The only exception is Uruguay. However, in 2010 the Inter-American Commission has filed an application with the Court against Uruguay, consequence of the State's lack of compliance with the Commission's recommendations in the Case 12.067. Moreover, this case is also linked to Uruguay's lack of compliance with a previous case from 1992 (*Report 29/92*).

worse concerning the other fourteen Member States of the OAS, which decided to not even give such authority to the Tribunal. Moreover, the hegemonic actor of the OAS, the United States of America, which sustains economically around sixty percent of the total expenses of the organization,³⁰ has not only decided not to join the system, but it is also under serious accusations of using torture as a State practice in their fight against terrorism.³¹

On the other hand, the Court itself has created a system of sanctions applicable to the measures with pecuniary incidence. However, even if this mechanism could be seen as successful, as these measures are highly fulfilled by the Member States, it has also been said that the measures regarding publicity of judgments and public acknowledgement of international liability have a similar degree of effectiveness, but lack of particular sanctions. It could be thought that if the Court starts to impose sanctions for non-compliance with the different measures—as it already does with the monetary ones—this could lead the judgment to a new level of effectiveness. Nevertheless, this may not necessarily be true as it has been seen that measures without sanctions can also be effective.

Perhaps, it is time to start thinking that the “motivation” to comply with human rights' standards, does not need to come from above the States, with the imposition of sanctions, but from inside them. A more conscious civil society, one that pressures national governments to fully comply with the Court's judgments, and therefore with international human rights norms, could be the most effective mechanism to improve the protection of human rights within the American States.

30 Dexter Boniface, *Is There a Democratic Norm in the Americas? An analysis of the Organization of American States*, 8 *Global Governance*, 3, 368-381, 368 (2002).

31 Kenneth Roth, *Getting away with Torture*, 11 *Global Governance*, 3, 389-406 (2005). Tom Malinowski, *Banned State Department Practices*, in *Torture: Does it make us safer? Is it ever OK? A Human Rights Perspective*, 139-144 (Kenneth Roth & Minky Worden, eds., New Press, New York & London, 2005).

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