Assessing Impact with Context:

The Inter-American Court of Human Rights and the Effects of Overlapping Institutions

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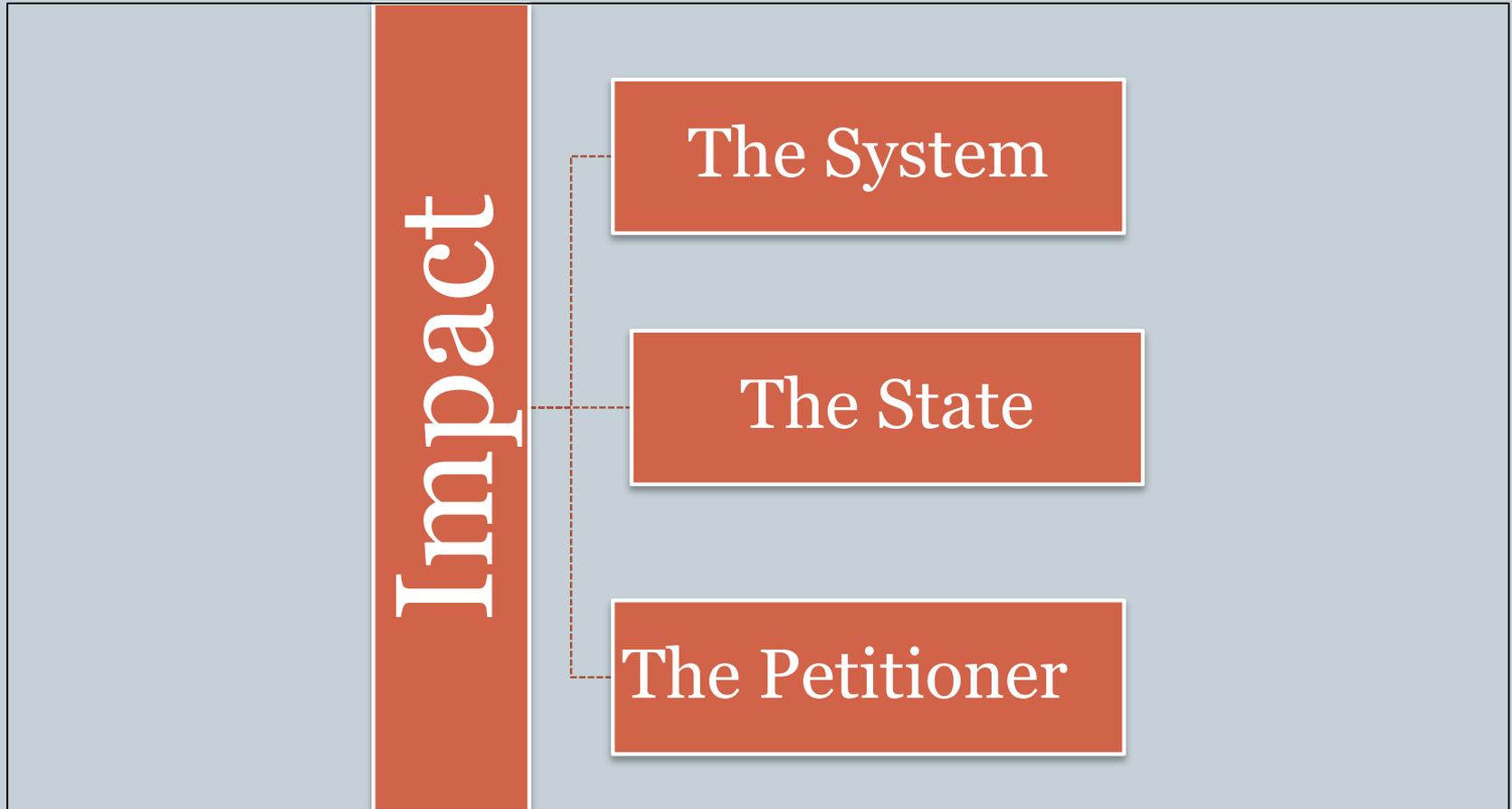
The Motivating Puzzle

- International human rights institutions form a dense, interconnected network.

- Yet, scholars often consider institutions and their effects in isolation.

- What if human rights institutions' recommendations vary? How do states balance these (potentially competing) demands?

- (How) Can we understand the impact of one HR institutions (e.g. the IAHRS) without taking the larger HR environment into account?

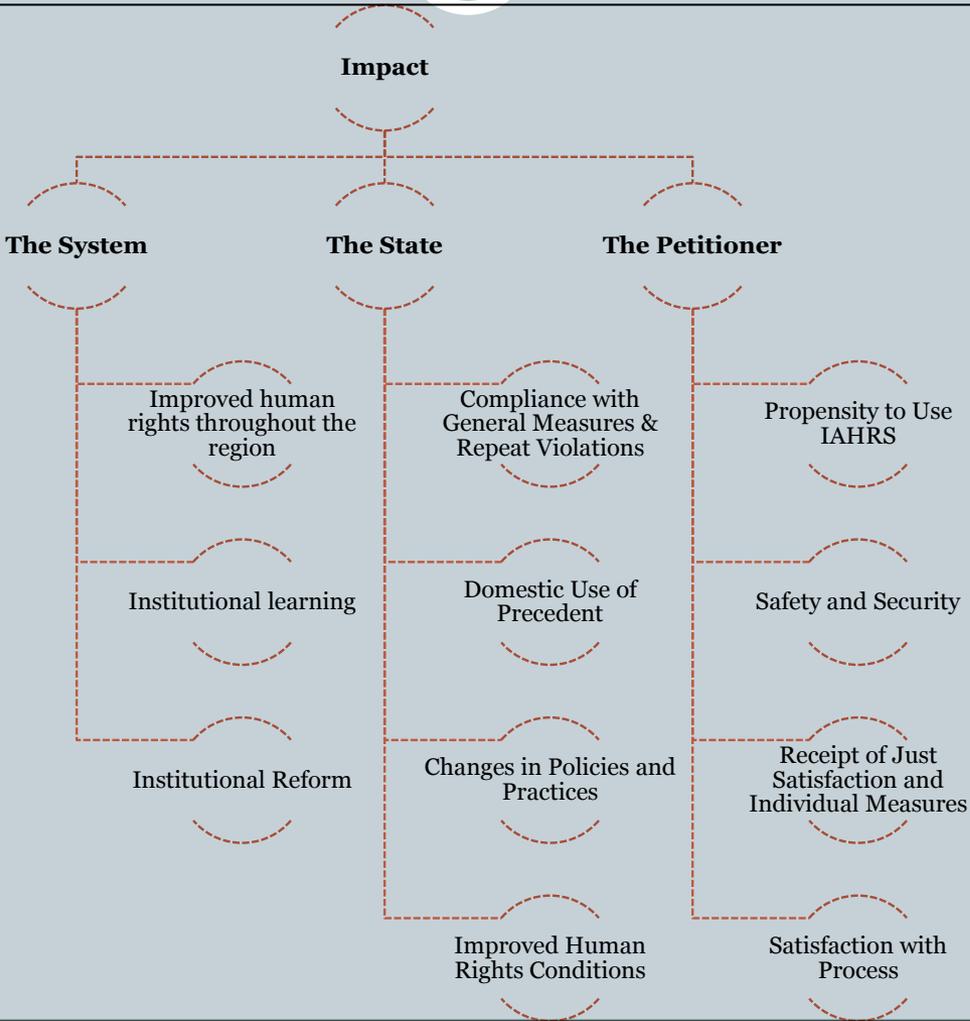# Why Overlapping Institutions Matter for Assessing the Impact of the IAHRS

- ## Methodologically:
  - Isolating the causal effects of the IAHRS vis-à-vis other institutions/processes.

- ## Theoretically:
  - Understanding the causal processes by which the IAHRS affects domestic politics, human rights outcomes, individuals' satisfaction and system-wide changes.

- ## Practically:
  - Understanding the ways in which we can improve the effectiveness of the IAHRS in a crowded international human rights environment.

Three Levels of Impact of the IAHRS

Impact

- The System
- The State
- The Petitioner

Identifying Indicators for Impact

Impact

The System
- Improved human rights throughout the region
- Institutional learning
- Institutional Reform

The State
- Compliance with General Measures & Repeat Violations
- Domestic Use of Precedent
- Changes in Policies and Practices
- Improved Human Rights Conditions

The Petitioner
- Propensity to Use IAHRS
- Safety and Security
- Receipt of Just Satisfaction and Individual Measures
- Satisfaction with Process

Impact of the IAHRS | Overlapping Institutions

- Some questions to consider:

    1. Do states/CSOs/individuals need to choose among different institutions' rulings and recommendations?

    2. What happens when rulings/recommendations differ?

    3. How do these actors evaluate potential impact/importance of different institutions?

    1. How are resources (political and financial capital) allocated?

Early Empirical Analyses of Overlapping Institutions & Accountability Politics in LatAm

- Emphasis on accountability/anti-impunity
  - High salience; high variance

- Three Case Studies
  - Brazil, Mexico & Uruguay

- Two Systems:
  - Inter-American (Court & Commission)
  - UN (Treaty Bodies and UPR)

- Method:
  - Content analysis of recommendations & responses

- Concept:
  - Let's start with compliance/implementation broadly, then move to other indicators of impact.

Frequency of Anti-Impunity Measures

	Brazil	Mexico	Uruguay
Inter-American Court	1 of 1[22] (100%)	1 of 1 (100%)	1 of 1 (100%)
Inter-American Commission	1 of 1 (100%)	7 of 9 (78%)	1 of 3 (33%)
UPR	18 of 188 (10%)	40 of 161 (25%)	12 of 99 (12%)
CCPR	--	1 of 1 (100%)	0 of 1 (0%)
CESCR	--	--	0 of 1 (0%)
CERD	--	1 of 1 (100%)	0 of 1 (0%)
CEDAW	0 of 1 (0%)	--	--
CAT	--	1 of 1 (100%)	--
CED	--	--	1 of 1 (100%)
CMW	--	1 of 1 (100%)	0 of 1 (100%)
CRC		2 of 2 (100%)	

Table 1: Prevalence of Anti-Impunity Measures

Regional Preferences for Accountability

Regional Organization	Recommendations Regarding Impunity
Africa	3 (4%)
Asia	9 (13%)
Eastern Europe (EEG)	6 (9%)
Latin American and Caribbean Group (GRULAC)	*15 (21%)*
Observer	2 (3%)
Western Europe and Other Group (WEOG)	35 (50%)
Total	70

Table 2: Regional Distribution of UPR Recommendations on the Fight Against Impunity
(Number in parentheses is percentage of total recommendations for these three states on this issue).

Specificity of Recommendations: The IAHRS

- *Fernández Ortega et. al. v Mexico* (Nov. 25, 2010):

"The State must conduct in the ordinary jurisdiction, with due diligence and within a reasonable time, the investigation and, if appropriate, the criminal proceedings with regards to the rape of Mrs. Fernandez Ortega and to determine those criminally responsible, and if appropriate, to apply the punishments and other consequences that the law dictates, as established in paragraphs 228-230 of the judgment."

Specificity of Recommendations: The UPR

Category of Recommendation	Brazil	Mexico	Uruguay
1	0	0	0
2	5	4	2
3	2	3	0
4	9	21	8
5	2	12	2

Table 4. Frequency of types of recommendations

States' Responses: IACtHR & IACmHR

- Brazil: Mixed and reluctant. Moving away from compliance.
  - E.g. Gomes-Lund

- Mexico: Mixed. Possibly moving toward partial compliance.
  - E.g. New bill to try soldiers guilty of hr violations in civilian courts making its way through Congress.

- Uruguay: Generally compliant.
  - E.g. Positive steps taken to comply with Gelman.

State Responses: The UPR

- Brazil: Accepted all but one of 18.

- Mexico: Accepted all but three of 40. Gave six general responses.

- Uruguay: Accepted all 12 and detailed submitted self-evaluation.

Lessons Learned from Early Data Analysis (1)

- <u>Observation</u>: Varying degrees of prevalence and specificity across different institution types.

- <u>Implication</u>: States are getting mixed messages about what matters and from whom.

- <u>Recommendation</u>: Inter-institutional coordination; INGO/CSO institutions bridge that gap; increased activity of related epistemic communities.

Lessons Learned from Early Data Analysis (2)

- <u>Observation</u>: State responses are driven by domestic politics more than institutional design.

- <u>Implication</u>: Overlapping institutions might matter, but states with stronger domestic institutions are better able to reconcile/navigate the international human rights institutional landscape.

- <u>Recommendation</u>: More capacity-building at the domestic level.

Concluding Comments

- Impact assessment is a methodological and theoretical challenge.

- Adding context significantly complicates the process, but is necessary.

- Only by understanding the tough choices that state, sub-state and non-state actors have to make with respect to the larger human rights institutional environment can we assess the impact of the IAHRs.

Questions & Comments

Compliance and Beyond

- Compliance:
  - Theoretically and methodologically central to assessing impact.
  - Can isolate/evaluate compliance with the IACtHR.

- Impact beyond compliance is more difficult to assess, especially when we consider processes like institutional reform, norm diffusion/change, and individual-level satisfaction.

- To put it simply, context matters.