



Inter-American Human Rights Network

The Inter-American Human Rights System: The Law and Politics of Institutional Change

interamericanhumanrights.org¹

Policy Briefing

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Executive Summary

This briefing is based on the principal conclusions of the second workshop of the Inter-American Human Rights Network, held at UCL's Institute of the Americas in October 2015². The workshop discussions examined the consistent challenges to its institutional development that the Inter-American Human Rights System (IAHRS) has faced since its inception. At the same time, participants highlighted how the IAHRS has expanded as civil society organisations (CSOs) have strengthened, as the jurisprudence has accumulated and as the System has built up its legitimacy over time. Though the most recent reform process has now concluded, the IAHRS continues to face a number of challenges, and it will need to seek to institutionally adapt and innovate if it is to maintain its impact into the future.

Institutional Expansion: Progress and Contention

The IAHRS has gradually expanded the scope and scale of its actions, developing from a quasi-judicial entity with an ill-defined mandate, to a legal regime which formally empowers individuals and groups to challenge the human rights performance of states in the Americas. Numerous factors have encouraged this expansion, but CSOs have played a fundamental role in shaping the System's institutional evolution. The development of the IAHRS has also been facilitated by constitutional reforms in countries across the region, which has led to the widespread incorporation of international human rights standards, including those developed by the IAHRS, into national systems. The role of individual Commissioners, judges and officials at the IAHRS itself has proved fundamental to the expansion of the System, by pushing the institutional boundaries of its mandate, and by advancing new initiatives that build on the human rights standards and jurisprudence accumulated over time.

Challenges to the authority and legitimacy of the IAHRS

The institutional changes that the IAHRS has undergone remain deeply contentious. The System depends on its moral and political authority as a legitimate international human rights institution to be able to act and to strengthen human rights protections. It has faced challenges on this front historically; one of the reasons why the Commission struggled in its early days, for example, was the perception that it had been created by the United States as part of its efforts to undermine the Cuban revolution. Moreover, the System has faced challenges from states and officials hostile to its expansion and to critical IAHRS decisions. One crisis in the late 1990s arose as a result of attempts by the government of Alberto Fujimori in Peru to withdraw from the

¹ The **Inter-American Human Rights Network (IAHRN)** is an international research project which seeks to examine the development and impact of the regional human rights system of the Americas. The network is funded by the Leverhulme Trust under its International Networks programme and its membership comprises leading and emerging scholars of the Inter-American system from across the globe. For further information on the IAHRN please contact Dr Par Engstrom (p.engstrom@ucl.ac.uk), or IAHRN network facilitator, Peter Low (p.low@ucl.ac.uk)

² A more detailed summary of the workshop is available via the [IAHRN website](#). Please note, the analysis contained in this briefing does not necessarily reflect the views of all workshop participants.

Court's jurisdiction. While, in more recent years, several Latin American countries have engaged with the IAHRs in a broadly supportive manner, others – notably, Ecuador and Venezuela – have actively sought to undermine it. Another manifestation of efforts to constrain the influence of the System and to exert more subtle political control of its institutional development can be seen in attempts to secure appointments of officials who favour a minimalist System to both the Commission and the Court.

The changed political context in the region also presents a challenge. The rise of sub-regional organisations, such as UNASUR, has seen other incipient human rights mechanisms expand into areas which were previously the exclusive institutional remit of the IAHRs. Officials within these new institutions have argued that they enjoy greater legitimacy to engage with human rights issues in Latin America on the basis of, *inter alia*, their firm grounding in Latin America and the exclusion of the United States. Moreover, unlike in earlier periods of the System's institutional development, the region's governments are today nearly universally elected by popular vote. The democratic credentials of governments have made the balancing act for the IAHRs between its role as a supranational human rights arbiter, on the one hand, and the principle and practice of subsidiarity, on the other, increasingly delicate. Such challenges are evident in, for example, the Court's deliberations regarding the applicability (or otherwise) of domestic reparations mechanisms. Where the Court has ruled national compensation systems to be inadequate, for example in the 2010 *Chitay Nech et al. vs Guatemala* judgment, it has risked provoking backlash and non-compliance by elected governments that argue that their decisions enjoy greater legitimacy than those imposed by an external court. In other words, although the reform process – the so-called 'strengthening process' – concluded with relatively limited changes to its institutional mandate (at least when compared to what many supporters of the IAHRs had initially anticipated, or feared), the risks to the System's future development remain considerable.

Institutional Adaptation and Innovation

In light of the considerable political challenges facing the IAHRs, continuous adaptation will be required. The IAHRs will also need to sustain a degree of institutional adaptation and innovation to develop new procedures and methods of operation in order to assume an active role in defining the shape of its future development.

Adaptation: institutional transparency

The IAHRs is frequently subjected to criticisms of lack of transparency. For an institution that regularly exhorts governments to improve access to information, to disseminate the truth about violations, and that seeks to promote freedom of expression and other related values, such criticisms can prove damaging to its legitimacy. Though a degree of confidentiality is an inescapable requirement of an institution processing sensitive and personal information, the IAHRs could do more to make information publicly available. Access to the IAHRs' archives, operational data and case information, for instance, has often been inconsistent, with blanket limits on access to materials seen in some cases. This is not only a principled matter of transparency; it also represents an impediment to the empirically-based research needed to inform policy discussions. Moreover, clarity and transparency in the selection of individual cases as well as in the criteria and procedures for the appointments of officials are essential. It needs to be recognised that important advances, external to the IAHRs, have recently taken place in this regard, as manifested, for example, in the work of the Independent Panel for the Election of Inter-American Commissioners and Judges. It should also be stressed that for the System to maintain its legitimacy the IAHRs should do its utmost to minimise any perceptions of bias.

Innovation: novel responses to contemporary human rights crises

It is widely recognised that some of the procedural reforms the IAHRs has undergone have been positive. For example, changes to the reporting on compliance monitoring – from written reports only to public hearings – are credited with increasing institutional impact. Procedural changes are unlikely to be sufficient, however, as the historical record of the IAHRs indicates. New initiatives in recent years, such as creating a working group of experts to investigate the disappearances of students in Ayotzinapa, Mexico, have enabled impact in real time, rather than only as a result of years of extended legal proceedings. This institutional innovation could provide a model for future activities. The System could also draw inspiration from other

successful institutional models, such as that of the International Commission against Impunity in Guatemala (CICIG), as ways of lending expertise to the strengthening of domestic institutional responses. By pursuing innovative solutions to the region's human rights challenges, the System will be well placed to keep up with changing political dynamics and shifting patterns of CSO mobilisation in Latin America. Such forms of institutional change could be possible without necessarily requiring significant additional resources.

Balancing resources

The System remains subject to considerable political and resource constraints on its ability to explore alternative avenues for action. Assuming stagnant or only modestly rising funding in the coming years, the development of new models of action will inevitably mean that personnel and funds will be diverted away from existing areas of activity. This could be a serious concern, given the already substantial backlog of cases facing the Commission, in particular. Previous institutional changes – for example, expanding the work of the Commission's Rapporteurs – resulted in greater pressure being put on resources for processing petitions. Moreover, decisions to prioritise particular areas or activities are often not subject to the System's autonomous discretion. Institutional initiatives are often dependent on external donors, whose priorities may not necessarily align with those of the IAHRs. This is manifested, for example, in the current difficulties of the Commission to secure funding for its newly established Unit on Economic, Social and Cultural Rights. Strengthening the institutional capacity of the IAHRs in the future will require regular, empirically-based, assessments of the relative effects and opportunity costs of diverting resources from one activity into another.

Institutional Outreach

The IAHRs is regularly subject to fierce criticism and the System operates in a regional environment that is often politically hostile. This may, in part, be an inevitable consequence of being an international human rights institution fulfilling its institutional mandate. The System, nonetheless, will need to continue to engage its critics; but it also needs to cultivate its supporters. The vital support given to the IAHRs from the region's dynamic human rights movement is well documented. For example, during a regional campaign in the context of contentious institutional reforms, the so-called 'strengthening process', CSOs successfully mobilised in support of the IAHRs and managed to counter some of the most far-reaching proposals of hostile governments to dilute the strength of the Commission's institutional mandate. CSOs have indeed emerged as the lifeblood of the IAHRs through their petitioning and promotional initiatives. Yet, the System could do more to cultivate support for its activities.

Inter-regional dialogue

The IAHRs is part of a complex institutional network of international human rights institutions. Recognising that important initiatives are already underway, the System could seek to further develop mutually supporting relationships with other regional human rights systems as well as the UN institutions. Such forms of collaboration serve to exchange significant experiences and best practices, while giving due consideration to regional and local specificities. For example, the evolving practice of issuing joint press releases by independent experts of the UN, the IAHRs, and the African System, provides important opportunities to develop joint responses to particularly pressing, and common, human rights challenges. More permanent means of sharing information between regional and universal bodies could allow for the design of more effective institutional responses to current and future human rights challenges. Building on important advances in the exchanges between the IAHRs and the African System, there is an ongoing need to further expand dialogue between officials in the European and Inter-American systems. Despite common perceptions that Europe and the Americas represent fundamentally distinct regional contexts, the two systems share a number of common challenges, notably their increasing caseloads in the context of changing rights environments. Officials within both systems would undoubtedly benefit from sustained dialogue regarding certain policy responses; for example, in critically assessing how successful the doctrine of 'margin of appreciation' has been in the European System, or the approach to reparations of the Inter-American System. Equally, as the case-law of the Inter-American System continues to increase, dialogue about the reforms brought by Protocol 14 to the European Convention, and the system of pilot and semi-pilot judgments in relation to systemic problems, would also be welcome.

Scholarly experts

The IAHR additionally enjoys the backing of a growing community of critical supporters who continuously review its various activities. There is a pressing need for such regular monitoring of IAHR operations and for a sustained sober assessment of its performance. Although important work is already taking place in this regard, increased critical deliberation of the IAHR's activities is required in order to contribute to the ongoing process of quality control of the System. As a human rights system based on international law, critical legal and jurisprudential analysis of the IAHR is obviously indispensable. But any robust assessment of the System requires contributions from other scholarly disciplines as well. From critical evaluations of the impact of the activities of the IAHR on domestic human rights protections, to strategic assessments of the political opportunities and constraints it faces, multi-disciplinary perspectives on the System are vital. In this endeavour, improving scholarly access to the IAHR's archives and operational information would advance the robust, empirically-based research needed to inform policy discussions. Strategic partnerships with academic institutions with the required expertise would significantly strengthen the capacity of the IAHR to conduct such assessments, though any such initiatives would undoubtedly need to respect the confidentiality of much of the information processed by the IAHR.

Recommendations

On the basis of this analysis, the following recommendations can be identified to help further strengthen the institutional development of the IAHR:

- 1) **Leverage institutional competition.** Initiatives to develop rival human rights mechanisms by new sub-regional organisations in the Americas are, in part, motivated by long-standing criticisms of the IAHR. Whatever the merits of these diplomatic initiatives, the IAHR needs to take these institutional efforts seriously and respond accordingly. In particular, the IAHR and its supporters could be pro-active in identifying possible ways for new human rights mechanisms to complement pre-existing ones, while also stressing the many comparative advantages of established and tested mechanisms of the IAHR. Institutional legitimacy is built up over time, but if not continuously nourished it quickly erodes.
- 2) **Improve institutional transparency.** There is a pressing need to ensure greater levels of transparency and to develop criteria for appointments procedures. To maintain its legitimacy in the face of political challenges, the System should do its utmost to minimise any perceptions of bias. Standardising procedures and timelines for case progression through the System across countries would accordingly constitute a positive development. Recent initiatives to monitor appointment procedures of Commissioners and Judges and to adopt public appointment criteria to guide future elections should be welcomed and supported.
- 3) **Strengthen institutional adaptation and innovation.** The System should consider procedural reforms and new ways of working to ensure efficient and effective operations. There is also ample scope for the IAHR to explore innovative solutions to contemporary human rights crises. The Interdisciplinary Group of Independent Experts designated by the IACHR to investigate the disappearances of students in Ayotzinapa, Mexico, or the UN sponsored International Commission against Impunity in Guatemala (CICG), are interesting models of institutional innovation that could be considered in other contexts.
- 4) **Develop innovative outreach mechanisms.** There is ample scope to strengthen institutional collaboration with other human rights systems in order to develop mechanisms to share and disseminate best practices and institutional experiences. Improving researchers' access to the IAHR's archives and operational information in particular would also pay important dividends. While there is clearly a need for confidentiality in certain cases, enabling evidence-based assessment of the System's activities is much needed to inform policy discussions.