

AMNESTY AND THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

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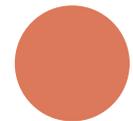
MAIN POINTS

- The Inter-American Human Rights System
 - The system coming of age through its engagement with transitional justice, particularly question of amnesty
 - Limited influence of international factors in initial stages of transitional justice
- IAHRS and scope of amnesties
 - Jurisprudential developments
 - Key features of IAHRS' position on amnesties
- Do these normative and jurisprudential developments “matter”?
 - The IAHRS and politics of compliance
 - Civil society mobilisation and domestic judiciaries
- Main points and limitations



DEVELOPMENT OF THE IAHRs

- Protracted institutional development shaped by character of Cold War and authoritarian rule
 - 1948: American Declaration of the Rights and Duties of Man
 - 1959: Inter-American Commission on Human Rights
 - 1969: American Convention on Human Rights
 - 1978: Entry into force of American Convention
 - Two-legged system:
 - IACHR with monitoring and supervisory functions
 - Court with adjudicatory and advisory functions
 - 1986-1990: First cases of the Inter-American Court (*Vélasquez Rodríguez et al* cases, forced disappearances in Honduras)
- **Key features:**
 1. Increasing use of the system
 2. Increasing 'pluralism'
 3. Procedural focus on the individual
 4. Normative and jurisprudential expansion
 5. Judicialisation of enforcement



TRANSITIONAL JUSTICE AND INTERNATIONAL INFLUENCES

- Regional differences in patterns of violations
- Similarly, variation in TJ approaches adopted
- Yet, one commonality: amnesties
 - Argentina, Brazil, Chile, El Salvador, Peru, Uruguay...
- Evolution of the IAHRs bound up with question of how to deal with violations under previous regimes
 - forced disappearances; torture; arbitrary detention; judicial guarantees in states of emergency; provision of remedies; questions of accountability for past abuses; and admissibility of amnesty laws



THE IAHRs AND AMNESTIES

- Do governments have the (sovereign) right to guarantee impunity on the grounds of “national reconciliation” and/or “stability”?
- Do states have an international obligation to provide victims with effective remedies?
 - Can victims’ interests be overridden on the grounds of a greater “social good”?
- Are amnesty laws compatible with a state’s international human rights obligations as established by the IAHRs?



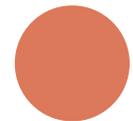
THE IAHRs AND AMNESTIES (CONT.)

- Early response: normative
 - IAm Commission adopting an increasingly robust position on the admissibility of amnesty laws:
 - First general response - 1985-86 Annual Report
 - Individual petitions - El Salvador, Uruguay, Argentina (1992)
 - Violation of right of victims to effective investigation and prosecution
 - Special country reports: Argentina & Uruguay
 - Key principles:
 - International grounds for an official state investigation and dissemination of the truth
 - Individual victims' right to due process and humane treatment
 - Not to be compromised by majoritarian politics: e.g. response to referendum in Uruguay



THE IAHR'S AND AMNESTIES (CONT.)

- More recent response: IAm Court's jurisprudence
 - *Barrios Altos*: Peruvian self-amnesty laws violating victims' rights of access to justice
 - Self-amnesty laws "lack legal effect"
 - Beyond the specific case: barring self-amnesties for serious crimes
 - *Barrios Altos* ruling have "generic effects"
 - Yet, ambiguous whether ruling applies to all forms of amnesties
 - How about democratically adopted laws?
 - Amnesty laws held to be legitimate if the democratic process leading to the adoption of such laws fulfil certain criteria, e.g. in terms of inclusiveness and deliberation?



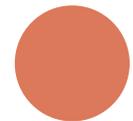
THE IAHRs AND AMNESTIES (CONT.)

- IAHRs' robust position on impunity
 - Scope of amnesty laws:
 - “all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations” (*Barrios Altos*)
 - IACHR: impunity with respect to cases of crimes against humanity fosters repetition of activities that are contrary to democracy and human rights
 - IAm Court: 2 dimensions of impunity
 - i. society*: “fosters the chronic repetition of human rights violations”
 - ii. victims*: “fosters the total defenselessness of the victims and their next of kin, who have the right to know the truth about the facts
- Amnesty = Impunity



THE IAHRs AND AMNESTIES (CONT.)

- Do amnesty need to be repealed, rather than simply not applied in other cases?
 - *Almonacid* and Chilean self-amnesty law (2006)
 - The case processed by the IACHR 1998-2005
 - Chilean government argument before the IAm Court that although law was incompatible with IAm Convention, Chilean judiciary refrained from applying the law
 - IAm Court: not sufficient, law must be repealed
- Jurisprudential contribution of the IAHRs:
 - Broad --> more qualified
 - No reference to intl law --> more conditioned
 - Societal function --> more victim focused
- Yet, questions of compliance...
 - E.g. *Gomes Lund* (Brazil) and Brazilian Supreme Federal Court



THE IAHR'S AND POLITICS OF COMPLIANCE

- Judgements of IAm Court the result of (very) lengthy (domestic and regional) judicial processes
- But no automatic compliance
- Rather, judgements become additional resources for 'domestic compliance constituencies'
- Beyond jurisprudential influences, the IAHR'S has inserted itself into struggles surrounding TJ in multiple ways:
 - Opportunity structure for civil society activism
 - Norms and jurisprudence available to domestic litigants and judges

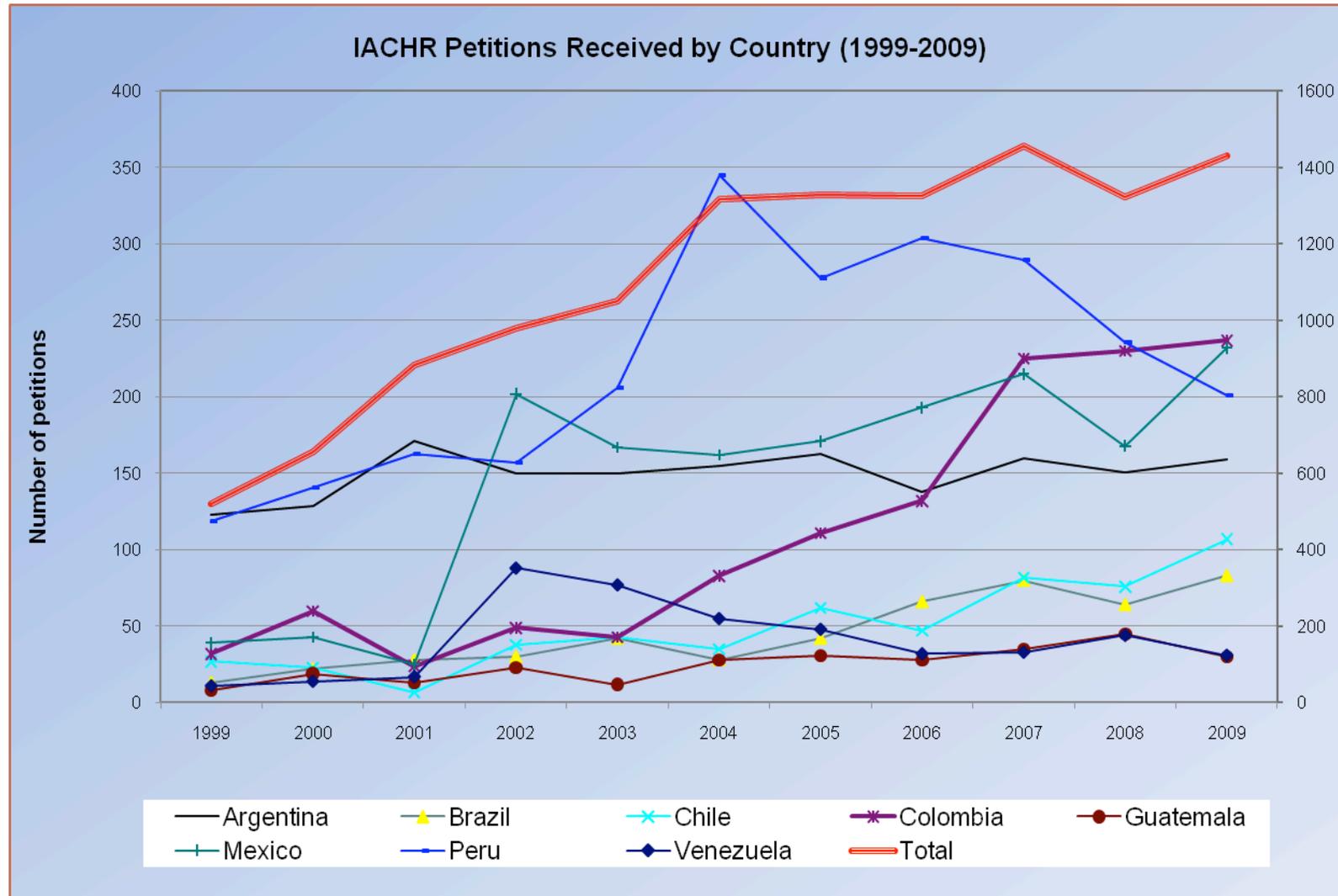


THE IAHRs AND CIVIL SOCIETY MOBILISATION

- Opportunities for civil society mobilisation
 - Important role of NGOs (in contrast to Europe)
 - *Strategies*: exposure; negotiation; framing; promotion; strategic litigation; and regional networks.
 - Yet, significant cross-regional variation in the use of the IAHRs
 - How human rights activists perceive of and act upon the IAHRs
 - Both opportunities and constraints
 - Capacity of actors to mobilise the law is unequal



Increasing use, yet cross-country variation



THE IAHRs AND DOMESTIC JUDICIAL POLITICS



- Domestic judiciaries as political actors and domestic judicial systems as political arenas
- Human rights ‘constitutionalized’ across the region
- Yet, widespread variation



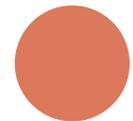
The Argentine Supreme Court and 'impunity laws'

1. 1994 Constitutional reform: IAHRs as part of Argentina's domestic legal system
2. Domestic courts as arenas of human rights enforcement
3. Role of Argentine judges
4. Human rights litigation before domestic courts



MAIN POINTS AND LIMITATIONS

- Consolidation of the IAHRs
- Significant jurisprudential developments
- Important opportunities for human rights actors
- Availability of domestic courts
- Leveraging the IAHRs in negotiations with the state
- Broader understandings of “compliance” - current theories of enforcement are inadequate
- The use of the IAHRs requires legal know-how
- Lengthy and costly judicial process
- Problematic state responses
- But, these obstacles can be overcome with a strategic vision of the potential and limitations of the IAHRs



THANK YOU FOR YOUR ATTENTION!



Questions and comments
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