

# **Compliance Agents: National Human Rights Institutions and the Inter-American Human Rights System**

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This short paper explores the relationship between the IAHRs and a relatively new class of domestic and transgovernmental human rights actor: National Human Rights Institutions or NHRIs. NHRIs can provide insight into the complex interactions and local pathways of causation which inform IAHRs on the ground. To frame this discussion, the paper draws on recent social science scholarship to highlight the domestic compliance effects of the IAHRs. However, incorporating insights from comparative politics, the memo also explores the impact of local implementation contexts and social accountability actors. In so doing, the limitations of adopting an exclusive focus on rule-compliance as a means to evaluating why the IAHRs matters for domestic human rights politics are highlighted.

## ***The Inter-American Human Rights System and the Implementation Gap***

As the focus turns away to implementation and enforcement strategies, increasing attention is being paid to how the IAHRs actually penetrates domestic jurisdictions, and crucially, when and why it matters for affecting positive human rights change. Material to the focus of this paper on National Human Rights Institutions (NHRIs) and the IAHRs is the shift in focus towards what has been termed ‘implementation partners’ at the local level (Open Justice 2013). For its parts, the IACtHR has begun to formalise Agreements of Institutional Cooperation with universities, governmental and nongovernmental national bodies, including constitutional courts and public defenders, as well as the Ibero-American Federation of Ombudsmen.<sup>1</sup> The focus on domestic compliance structures and constituencies is a crucial additive to debate on the effectiveness of the IAHRs, recognising the limitations surrounding infrastructure and enforcement of the Inter-American itself. It is also a necessary shift given that implementation will be contingent upon an array of compliance actors at the domestic level being both *willing* and *able* to mobilise effectively around IAHRs rulings, as well as the capacity of state structures to fulfil their international obligations.

## ***Local implementation contexts: formal structures and rule contestation***

With some notable exceptions (Risse et al 2013), the linkages between international and domestic jurisdictions remain theoretically neglected or under-specified. In particular, the impact of human rights instruments has often been assumed to be the outcome of transgovernmental processes that is not influenced by actors within the State beyond political elites (Finnemore 1996; Koh 1999). Less attention has been given to ‘bottom-up’ accounts of the effects of international human rights instruments (Simmons 2009: 138). This critique of the dominant social science turn in human rights scholarship is particularly pertinent to those fragile democratic contexts found in Latin America which display little history of representative institutions, unstable and weakly enforced rule of law systems, histories of

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<sup>1</sup> IACtHR 2010 Annual Report, p. 21-5.

authoritarian governments and systematic human rights abuse (O'Donnell 2010; Whitehead 2002; Helmke and Levitsky 2004). In such contexts, the limits of representative government and legalisation as pathways towards compliance are likely to be particularly profound. In turn, genuine political will, where it does exist, is often hamstrung by a state infrastructure ill-equipped to fulfil its function across the national territory (O'Donnell 1993).

In the absence of reasonably stable, credible and routinised formal structures at the domestic level, the effectiveness of the IAHRs may be most evident in the intermediate actions it takes to empower or facilitate pro-compliance constituencies outside state structures able to convert information into instrumental leverage over elected officials (Dai 2007). In the absence of direct sources of enforcement (i.e. willing and able State human rights mechanisms), non-binding standards may still generate positive effects through instrumental and normative mobilisation of domestic advocacy coalitions (Grugel and Peruzzotti 2012). Even where robust official implementation mechanisms exist, such as NHRIs, careful attention must be paid to their actual performance in order to avoid the risk of creating 'illusions of compliance' (Open Justice 2013: 16). In sum, human rights advocacy in contexts where formal rules are widely contested, routinely violated and frequently changed gives the enterprise an unpredictable quality (Levitsky and Murillo 2009). It is incumbent on researchers to calibrate expectations in light of prevailing implementation conditions, to pay attention to pathways of compliance as well as rule-compliant outcomes, and to critically assess how diverse actors may become both agents and venues for action.

This perspective highlights not only the multiple linkages which exist between the domestic and international, but also the importance of disaggregating the state and specifying the domestic balance of interests within and outside state structures. In particular, it demands a more rigorous appreciation of social accountability actors, their engagement with IAHRs processes and facilitative role in amplifying human rights discourse in domestic political processes of democratic accountability. Peruzzotti and Smulovitz specify three core accountability strategies for social accountability actors: judicial activism, media exposure, and public opinion mobilisation (Peruzzotti and Smulovitz 2006: 19). The focus here is on social sanctions which, while lacking in binding force, may nevertheless entail material consequences for elected officials. The informational status or the monitoring ability of these compliance constituents is central to their ability to exert influence over policymakers. Such a focus suggests 'indirect but incentive-compatible ways' in which the IAHRs may influence national compliance decisions (Dai 2007: 366).

It also draws attention to the political contestation of human rights norms occurring in the shadow of the law. The extent to which rights-related policies of government are shaped by international human rights norms will be mediated by their broader norm salience among the populace, likely requiring consideration of situational determinants and variation across rights-issue areas (Brinks 2003; Goodale and Engle Merry 2007; Prentice 2013).<sup>2</sup> Such considerations caution against reifying 'the lens of rule-compliance' to the detriment of advancing knowledge on the full effects of international human rights standards (Howse and Teitel 2012). A fuller understanding of the domestic effects of IAHRs recommendations and decisions must also acknowledge myriad complex interactions as well as political impact on domestic power balance. Reflecting on the inherent contestation of human rights politics and the conceptual limitations of a compliance approach, Howse and Teitel (2010: 28) observe:

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<sup>2</sup> For instance, observers have lamented the lack of public opinion outcry in Latin America regarding incidents of torture. See *Agencia EFE*, Relator ONU contra tortura alerta de falta de sensibilidad de opinión pública', 15 June 2011.

Interpretation is pervasively determinative of what happens to legal rules when they are out in the world; and yet “compliance” studies begin with the notion that to look at effects, we start with an assumed stable and agreed meaning to a rule, and whether it is complied with or obeyed, so understood.

Particularly salient to this analysis then are those social accountability actors which seek to assert human rights among competing domestic interests and preferences. Human rights NGOs have rightly received significant attention among scholars and practitioners (Cavallaro and Brewer 2008). By June 2012, the IACtHR load of contentious cases numbered 244, many of which had been initiated by national and transnational NGOs. These NGOs play a crucial role in facilitating access to the IAHRs for victims of human rights violations who are often extremely vulnerable and ill-equipped to pursue legal action alone. Another (amorphous) class of actor which has received growing attention are human rights defenders, which may include human rights NGOs but also individuals, community groups, and even intergovernmental organisations, civil servants or members of the private sector who act to promote or protect human rights. The focus of the remainder of this paper, however, falls on a section of the state bureaucracy specifically tasked with the promotion and protection of human rights: National Human Rights Institutions (NHRIs).

### ***Domestic Compliance Gateways: National Human Rights Institutions***

NHRIs are uniquely placed to potentially act as a key compliance constituency mechanism or ‘gateway’ as a conduit of domestic implementation, linking international human rights standards to domestic political and legal institutions and actors (Carver 2000).<sup>3</sup> They are emblematic of the growing penetration of not just international human rights norms but also structures within domestic jurisdictions across Latin America.<sup>4</sup> In contrast to the relatively low-cost insertion of norms into constitutional texts, establishing an NHRI carries with it the possibility of unintended consequences and ex-post enforcement costs (Ginsburg and Versteeg 2012). Locating NHRIs within a transgovernmental framework highlights the importance of disaggregating the state (Slaughter 2004), as well as mapping out the multiple linkages and relative power of sections of the state bureaucracy dealing with human rights. Drawing on insights from comparative politics, some preliminary tasks include: (1) gauging the relatively power of progressive or reformist elements within state structures (Fox 2008); (2) examining the role of ‘mandated horizontal accountability institutions’ such as NHRIs in contexts of weak checks and balances on executive power (O’Donnell 1998); and (3) explaining why some NHRIs in Latin America have successfully protected human rights, while others have effectively undermined human rights on behalf of their governments (Pegram 2012).

Conceptually, NHRIs can be broadly understood as a ‘bridge’ between state and society (Smith 2006). NHRIs are situated, in theory, at the intersection between vertical (direct electoral channels) and horizontal (state checks and balances) accountability domains within the state (O’Donnell 1998). With regard to the former, NHRIs in Latin America are mandated

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<sup>3</sup> The NHRI has been (loosely) defined as ‘a body which is established by a Government under the constitution, or by law or decree, the functions of which are specifically designed in terms of the promotion and protection of human rights’ (UN 1995: 4).

<sup>4</sup> Outside of Europe, the Americas display the highest regional concentration of NHRIs or *Defensorías del Pueblo* (literally the People’s Defender), with twenty-six of thirty-five OAS members, or seventy-five percent, having established the institution. All countries in South America have established an NHRI with the exception of Brazil.

to advise the executive and public bureaucracy on public policy, as well as make recommendations on legislative projects and educate and promote a broad rights mandate. With regard to the latter, NHRIs generally exercise a ‘fire alarm’ form of oversight over the public bureaucracy. Reflecting a core accountability role, safeguards of independence are generally robust, including no executive designation of personnel.<sup>5</sup> Significantly, the NHRI imports the Iberian ombudsman investigative faculties required to perform a protective function, including complaint-handling powers and robust investigation, legal and court referral prerogatives, though not legally binding authority. Finally, one of the more novel features of NHRIs in Latin America is their extensive access to, and use of, social accountability mechanisms outside state structures often in partnership with civil society actors (Peruzzotti 2012). This social accountability function goes beyond a regulative ‘watchdog’ form of oversight to a more transformative realm of rule interpretation and social oversight in defence of human rights.<sup>6</sup>

### ***Transnational Compliance Gateways: National Human Rights Institutions***

Shifting the focus to the transgovernmental domain, the rapid ascent of NHRIs as the normative ‘vehicle of choice’ is evident in the growth of dedicated infrastructure within the UN system (Linos and Pegram 2013). In contrast to the UN, the IAHRs has not formalised arrangements with regional NHRIs. However, Latin American scholars have addressed the potential role that NHRIs can play in ‘the creation of a culture of respect for human rights which values the Inter-American Commission, the Court and its resolutions’, while also cautioning against an uncritical assessment of what remain formally independent, but government funded, agencies (Mendez and Aguilar 1997: 268). Drawing on their Iberian lineage, observers have derived inspiration from the Portuguese and Spanish NHRI’s relationship to the European Convention on Human Rights to assert that their Latin American peers are obliged to ‘promote the diffusion and implementation’ of the American Declaration of Human Rights and the Inter-American Convention on Human Rights (Santistevan 2004: 53).

Notwithstanding a lack of dedicated official infrastructure,<sup>7</sup> the OAS has shown growing interest in NHRIs, signalled in 1997 with a declaration calling for their establishment in all member states.<sup>8</sup> Similarly, a 2003 OAS General Assembly Resolution called for the strengthening of national systems for the promotion and protection of human rights in member states and the development of cooperative relations between the OAS and the Network of National Institutions for the Promotion and Protection of HRs in the Americas.<sup>9</sup> The OAS has continued to promote the role of NHRIs in human rights protection and promotion, with a declaration in July 2008 signalling an interest in facilitating interaction of national institutions with ‘the organs, agencies and entities of the Organization’.<sup>10</sup> Most recently, NHRIs have been invited to participate in the ongoing IAHRs reform process and

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<sup>5</sup> A notable exception is the Colombian NHRI head who is appointed by the legislature from a short list provided by the President.

<sup>6</sup> For an in-depth analysis of the bridging function of NHRIs in Latin America see Pegram 2012.

<sup>7</sup> The Ombudsnet Unit of the Inter-American Institute of Human Rights was effectively dissolved in 2008.

<sup>8</sup> OAS General Assembly: Support for International Exchanges Among Defensorías, OAS AG/RES 1505, XXVII-0/97 (June 5, 1997)

<sup>9</sup> OAS GA, Strengthening of HRs Systems Pursuant to the Plan of Action of the Third Summit of the Americas, OAS AG/RES 1925, XXXIII-O/03 (June 2003).

<sup>10</sup> Strengthening the role of NHRIs for the Promotion and Protection of Human Rights in the Organization of American States, AG/RES. 2421 (XXXVIII-O/08), adopted on June 3, 2008)

have featured in a number of civil society submissions to the IACHR.<sup>11</sup> NHRIs in Latin America, alongside other Human Rights Defenders, may perform an important function, in acting as a gateway to international tribunals for victims of human rights violations. The following section presents a preliminary mapping exercise of the interactive linkages between NHRIs and the IAHRs, with a particular focus on the IACtHR.

### ***Mapping Connections: National Institutions and the Inter-American Human Rights System***

In contrast to the UN system, the IAHRs is yet to develop a formal framework to govern NHRI participation. Nevertheless, NHRI engagement with the IAHRs, including the OAS General Assembly, the IACHR and the IACtHR, has been a feature of transgovernmental activity in Latin America since the early 1990s.<sup>12</sup> Across countries, NHRIs have looked to the IAHRs for support in bolstering their domestic credibility, influence and guidance in elaborating a human rights mandate.<sup>13</sup> In turn, the IAHRs has engaged, albeit on an *ad hoc* basis, with those NHRIs viewed as credible and effective interlocutors at the local level. This reflects a wider agenda to enhance coordination with human rights stakeholders and the potential for NHRIs to assist resource-strapped Inter-American agencies to better understand local contexts, facilitate access to the IAHRs for victims, and monitor compliance with Inter-American recommendations and decisions.

#### *Article 25(1) and National Human Rights Institutions*

A first-order question arises as to what may be the role of NHRIs according to the American Convention and IACtHR jurisprudence. As noted above, NHRIs in Latin America generally enjoy the investigative faculties required to perform a protective function,<sup>14</sup> including complaint-handling powers and robust investigation, legal and court referral prerogatives (*habeas corpus*, *amparo*, *habeas data* and constitutional review powers), though not legally binding authority. As such, they form part of a horizontal network of accountability agencies alongside the courts, public prosecutors and defenders, as well as actors at the sub-national level. Article 25(1) of the American Convention provides a right to judicial protection at the domestic level and the IACtHR has recognised certain legal prerogatives of NHRIs, *amparo* and *habeas corpus* court actions, as falling within the meaning of Article 25(1). However, in the *Bámaca Velásquez* decision, the IACtHR noted that *habeas corpus* petitions and a special pre-trial investigation conducted by the Guatemalan NHRI proved ineffectual and the state was found to have violated Article 25(1).<sup>15</sup> Similarly, in the more recent *Contreras et al.* decision, the IACtHR draws a clear distinction between the NHRI and control agencies with binding authority, suggesting that an NHRI alone does not constitute effective judicial remedy:

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<sup>11</sup> See submission y Santa Clara University's International Human Rights Clinic, 4 October 2012. The Uruguayan NHRI submission can be viewed here:

<http://scm.oas.org/IDMS/Redirectpage.aspx?class=CP/INF.&classNum=6542&lang=s>

<sup>12</sup> Notable studies of this largely unexplored arena of engagement include Mendez and Aguilar 1997; Santistevan 2004; Reif 2004; and Parra Vera 2009

<sup>13</sup> For example, shortly after assuming office the first Colombian Ombudsman, Jaime Cordoba Triviño, travelled to Washington in 1994 to address the IACHR on the domestic human rights situation. See *Boletín de Prensa*, 'El Defensor del Pueblo habla mañana ante Comisión de Derechos Humanos de la OEA', 19 September 1994.

<sup>14</sup> The Chilean National Institute of Human Rights notably lacks the ability to receive complaints and many of the investigative faculties common in the region.

<sup>15</sup> *Bámaca Velásquez* Case, Judgement 25 November 2000

...although a complaint before the Ombudsman's Office can result in effective and useful actions in cases of alleged human rights violations, it is clear that the facts denounced were also brought to the attention of the Office of the Prosecutor General whose responsibility it was to initiate the corresponding criminal proceedings.<sup>16</sup>

### *The OAS and National Human Rights Institutions*

OAS support for NHRIs has gone beyond General Assembly resolutions. The OAS has become increasingly involved in the monitoring of freedom and fairness of elections (Pastor 2000). OAS electoral missions have often coordinated activities with domestic NHRIs. Possibly, most dramatically, in the contested elections of 2000 in Peru the highly credible NHRI staked a claim to supervise 'the neutrality of the state' during the election. Backlash against the institution by Fujimori allies was robustly countered by the head of the OAS mission, Eduardo Stein, and other international observers (Pegram 2008: 76-8). The electoral arena is one of the most controlled and protected domains in Latin American democracies and not necessarily natural terrain for a human rights ombudsman. However, NHRIs across the region have developed electoral supervisory functions with the overt support of OAS electoral missions.<sup>17</sup> The OAS has continued to provide political support to individual NHRI offices, as well as call for their strengthening across the region.<sup>18</sup> More dubiously, some NHRIs have stridently defended the actions of their government before the OAS General Assembly – placing their independence in doubt.<sup>19</sup>

### *The IACHR and National Human Rights Institutions*

The IACHR performs a quasi-judicial role as a first-stage complaint mechanism within the IAHRs. Conceptually, NHRI practitioners have described the IACHR as acting akin to 'a collegiate Ombudsman for human rights', noting the affinity in a *modus operandi* informed by a lack of legally binding authority and the potential for court referral (Santistevan 2004: 54). Importantly, NHRIs have standing to petition the IACHR on behalf of individuals or groups of individuals alleged to have had their rights violated. For the purposes of the Convention, in a series of decisions the Commission has recognised NHRIs as 'persons' and therefore legitimate petitioners (Reif 2004).

In 1996, the Argentinean NHRI lodged an appeal with the IACHR alleging a violation of the rights of more than 65,000 pensioners. In parallel, the NHRI opened a domestic investigation highlighting the failure of the State and court system to rule on the matter. The IACHR opened a file on the NHRI's complaint in order to determine admissibility. However, before the Commission could formally rule on its admissibility the NHRI withdrew the petition following resolution by the Argentinean Supreme Court. As Mendez and Aguilar (1997: 273) note, this was a pioneering example of an NHRI successfully dovetailing a domestic and international compliance strategy. Confirmation of the NHRI's formal standing as a

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<sup>16</sup> *Contreras et al. vs. El Salvador* case, Judgement 2011

<sup>17</sup> NHRI [Panama], 'Defensoría del Pueblo y Misión de Observación Electoral de la OEA unen esfuerzos', Boletín de Prensa, 23 March 2004

<sup>18</sup> *La Republica* [Peru], OEA destaca la labor de justicia en la Defensoría del Pueblo, 10 June 2012. Also NHRI [Colombia], 'OEA aprobó fortalecimiento a Defensores del Pueblo y a Instituciones Nacionales de DDHH', 16 July 2008

<sup>19</sup> Venezuela Ministry of Communication, 'La Defensoría del Pueblo rechazó las acusaciones realizadas por el Gobierno de Colombia en la OEA', 22 July 2010

petitioner came in 2002 when the Peruvian NHRI submitted a petition in the *Janet Espinoza* case. The IACHR did not question the ability of the NHRI to lodge the petition.<sup>20</sup>

In review the admissibility of petitions, the IACHR has engaged with NHRIs at each stage of the process. In terms of fact-finding, NHRIs have been afforded special audiences with the IACHR to advise on the facts of active cases.<sup>21</sup> NHRIs have also served ‘friends of the Commission’ through *amicus curiae* briefs. In other instances, the IACHR has designated NHRI personnel as legal experts to advise on domestic law concerning issues such as military versus civilian jurisdiction, public administration law and electoral legislation pertaining to gender quotas (Santistevan 2004: 55-6). In turn, NHRIs, similar to NGOs, may bring with them significant resources and legal expertise. The most active NHRIs within the IAHRs have dedicated legal personnel expert in accessing domestic and international tribunals (NHRI [Peru] 1999; Chipoco 2001). Indeed, one submission to the ongoing review process of the IAHRs advocates greater engagement with NHRIs to improve current admissibility rate of 10 percent.<sup>22</sup>

In terms of outcome, a number of petitions to the IACHR by the Bolivian NHRI for redress have resulted in friendly settlements, following a finding against the State by the Commission. Notably, the Bolivian NHRI has monitored follow-up and compliance with the terms of the consent agreements. In a series of final decisions, the IACHR defers to the Bolivian NHRI in declaring the terms of the friendly settlement to be complied with and recommending the case be closed.<sup>23</sup> Where an amicable settlement has not been achieved, NHRI petitions have proceeded to the IACtHR.<sup>24</sup>

### *The IACtHR and National Human Rights Institutions*

Observers have noted an absence of rules for formal participation of NHRIs in compliance proceedings before the Court (Open Justice 2013: 98). According to Article 63 of the Courts rules of procedure, the submission of compliance monitoring reports is restricted to states and to victims or their legal representatives. NHRIs may submit information but only at the court’s discretion. Nevertheless, in recent years, the IACtHR has signed Inter-Institutional Agreements of Cooperation with NHRIs in Ecuador and Peru (IACtHR 2010: 21). NHRIs may be particularly well-placed to undertake monitoring and compliance activities. A recent quantitative study focused on the effectiveness of the IAHRs notes that while legal petitions by NHRIs constitute only 4 percent of the total, they display a compliance rate of 71.4 percent compared to an average of 35.7 percent (Basch et al. 2010).

Legal scholars have advanced a number of proposals regarding the appropriate role of NHRIs before the IACtHRs. Mendez and Aguilar (1997: 273-4) suggest that NHRI petitions should be limited to class actions. They also warn against using NHRIs as a means to rationalise the number of petitions from individuals. However, Reif (2004: 179) counters, that NHRIs should not be barred from submitting individual protection submissions. In light of the New Rules of Procedure published by the IACHR in 2009 and the creation of the innovative Inter-

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<sup>20</sup> *Janet Espinoza Feria* Case, Admissibility, Case No. 12,404 (10 October 2002)

<sup>21</sup> *Siglo 21*, ‘Pide a CIDH mediar para evitar contaminación minera de Guatemala’, 10 January 2013

<sup>22</sup> Submission to Executive Secretary of the IACHR by the International Human Rights Clinic, Santa Clara University School of Law, 4 October 2012.

<sup>23</sup> See Alfredo Díaz Bustos vs. Bolivia 2005; Víctor Hugo Arce Chavez vs. Bolivia 2007; Miguel Ángel Moncado Osorio and James David Rocha Terraza vs. Bolivia 2007.

<sup>24</sup> For example, *Ticona Estrada y Otros vs. Bolivia*, 2008.

American Public Defender to assist victims who lack legal representation to appear before the court, Dulitzky (2011: 154) proposes to include NHRIs among those agencies which could perform this function within the IAHRS. The remainder of this section draws on IACtHR proceedings to map out the various role which NHRIs have performed in Court proceedings:

- ***Amicus curiae* briefs:** NHRIs have increasingly submitted *amicus curiae* briefs, with the leave of the court. This is the most common form of engagement. The Peruvian NHRI has been particularly active in this regard, submitting the first *amicus* brief in 1997.<sup>25</sup> NHRIs in El Salvador and Panama have also participated in proceedings as ‘friends of the court’.<sup>26</sup>
- ***Expert witness:*** The IACtHR has on various occasions designated personnel or former functionaries of NHRIs as expert witnesses during proceedings.<sup>27</sup> Again, members of the Peruvian NHRI has led the way in offering their expertise to the Court on interpretation of the Constitution and laws.<sup>28</sup> The Commission has proposed NHRI personnel as expert witnesses as well as drawn on special reports issued by NHRIs in support of its interpretation of the law before the IACtHR.<sup>29</sup> NHRI personnel have also served as the ‘common intervener’ at the invitation of the Commission.<sup>30</sup>
- ***Fact-finding:*** The IACtHR has made extensive use of NHRI special reports to highlight a lack of compliance at the local level,<sup>31</sup> to ascertain the nature of the violation as well as its scope,<sup>32</sup> to prove the alleged context within which the violations occurred,<sup>33</sup> and to ascertain responsibility.<sup>34</sup> In *Juan Humberto Sánchez vs. Honduras*, the Court included a report by the NHRI as documentary evidence, noting that its findings were not challenged by the State.<sup>35</sup>
- ***Provisional measures:*** NHRIs have been active in providing recourse to individuals under threat in the course of human rights investigations. The Guatemalan NHRI has evacuated victims and human rights activists faced with death threats (Inter-American Yearbook on Human Rights 1991: 1094). The Colombian office has been particularly

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<sup>25</sup> See Also case of *Barrios Altos et al. v. Peru* 2001; Case of the “Five Pensioners” vs. Peru 2003; Case of *Acevedo-Jaramillo et al. vs. Peru* 2006

<sup>26</sup> See Case of *Baena-Ricardo et al. vs. Panama* 2001; Case of *Masacres del Mozote vs. El Salvador* 2012

<sup>27</sup> See case of *García Prieto et al. vs. El Salvador* 2007; Case of *Juan Humberto Sánchez vs. Honduras* 2003

<sup>28</sup> See Case of *Ivcher-Bronstein vs. Peru* 2001; Case of *Lori Berenson-Mejía vs. Peru* 2004; Case of *Acevedo-Jaramillo et al. v. Peru* 2006;

<sup>29</sup> See Case of *Barrios Altos vs. Peru* 2001; Case of *Gómez-Palomino v. Peru* 2005.

<sup>30</sup> Where there is more than one victim, a ‘common intervener’ must be designated. See case of *García Prieto et al. vs. El Salvador* 2007

<sup>31</sup> Case of *Acevedo-Jaramillo et al. vs. Peru* 2006

<sup>32</sup> See case of *García Prieto et al. vs. El Salvador* 2007. In *Manuel Cepeda Vargas vs. Colombia* 2010, the Court makes extensive use of an NHRI report into the murder of members of the Patriotic Union party, referring to the NHRI’s verdict that the scale of the violence amounted to ‘systematized extermination’. See also case of *García Prieto et al. vs. El Salvador* 2007

<sup>33</sup> See Case of *Barrios Altos vs. Peru* 2001

<sup>34</sup> In *Masacres del Mozote vs. El Salvador* 2012, the IACtHR notes that the El Salvadorian NHRI established that the ‘massacres occurred within the framework of military operations, one of the objectives of which was the mass extermination of civilians...’

<sup>35</sup> See case of *Juan Humberto Sánchez vs. Honduras* 2003

active in monitoring provisional measures issued by the IACHR and IACtHR.<sup>36</sup> Colombian NHRI personnel themselves have also been subject to threats and assassinations.<sup>37</sup>

- **Reparations and compliance:** victims of human rights violations have requested that NHRIs perform symbolic acts of repentance on behalf of the state.<sup>38</sup> NHRIs have presented compliance briefs to the IACtHR.<sup>39</sup> Indeed, States have instructed NHRIs to prepare compliance reports as a means to prevent a case proceeding to the IACtHR.<sup>40</sup> Méndez and Aguilar (1997: 260) highlight the role NHRIs can play in promotion and education of IAHRs decisions. NHRIs have been requested to engage in training of justice administrators.<sup>41</sup> Dulitzky (2011: 163) calls for a concerted effort towards creating domestic compliance mechanisms which include NHRIs among a multi-member body comprising of state and non-governmental actors.

### *Questions which arise from this mapping exercise*

#### Theoretical and conceptual framing:

- If international mechanisms are limited in their ability to enforce human rights, how might a focus on NHRIs and other domestic compliance agents further advance human rights strategies?
- The role of compliance constituency mechanisms at the local level remains under-specified in the literature. How might analytical tools drawn from comparative politics toward accountability theory serve to more accurately frame the activity of these institutions both for descriptive and prescriptive purposes?
- Rule-compliance conceptions of the impact of international law are important in that they may offer objective validation of institutional claims and in turn shape actors' expectations. However, to what extent should an emphasis on standardized outcomes in evaluative exercises be balanced with sensitivity to local implementation contexts?

#### NHRIs, the IAHRs and state compliance

- The willingness of NHRIs to petition the IACtHR either directly or in coordination with other actors, as well as formalization of relations with IAHRs mechanisms, has been slow and uneven. What explains this? Can such rights advocacy at the international level secure substantive results within domestic jurisdictions?

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<sup>36</sup> See *El Tiempo*, 'El Defensor del Pueblo solicita protección especial para una Defensora Comunitaria víctima de atentado', 15 May 2013; *FIO*, 'Amenazas proferidas contra miembros de ONGs líderes sociales y una funcionaria de la Defensoría del Pueblo', 9 June 2011.

<sup>37</sup> *El Tiempo*, 'Asesinaron a defensor público en Cali', 7 October 2011.

<sup>38</sup> See case of *La Cantuta vs. Peru* 2006

<sup>39</sup> See case of *Baena-Ricardo et al. vs. Panama* 2003

<sup>40</sup> See case of the 19 Merchants vs. Colombia 2002

<sup>41</sup> See case of *Anzualdo Castro vs. Peru* 2009

- What benefits and pitfalls are posed by conceptualising NHRIs as vehicles of domestic implementation of human rights standards by the international human rights establishment?
- How might the regional experience of these institutions provide insights for advancing human rights strategy in contexts where formal rules and structures are unstable, weakly enforced or non-existent?

#### NHRIs, state compliance and IAHRs at the domestic level

- To what extent can interaction between myriad Human Rights Defenders and NHRIs contribute to human rights protection and promotion through social accountability mechanisms which, although non-binding, may nevertheless entail material consequences?
- Are the legal, judicial and rights strategies pursued by NHRIs and other control institutions (constitutional courts, prosecutors' office) mutually reinforcing or prone to tension? What are the prospects for a domestic mechanism to coordinate implementation of IAHRs recommendations and rulings?
- What are the main domestic legal and contextual factors that influence the ways in which human rights norms are interpreted, adopted and adapted, or indeed resisted by these actors?

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