MAKING INTERNATIONAL LAW STICK: REFLECTIONS ON COMPLIANCE WITH JUDGMENTS IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

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INTRODUCTION

Since its emergence some five decades ago, the Inter-American human rights system has held great promise. This has been particularly true since the Inter-American Commission on Human Rights ("the Commission") became more actively involved in addressing gross human rights violations in the 1970s, and since the Inter-American Court of Human Rights ("the Court") began hearing contentious cases in the late 1980s. As human rights organs linked to the Organization of American States ("OAS"), the Commission and the Court purported to serve as the ultimate arbiters and guardians of human rights in the Americas. In Latin America, the decades of the 1970s and 1980s bore witness to a wave of civil wars and dictatorial regimes that produced widespread human rights violations while adding terms such as "disappeared" to the global lexicon. As transitions to peace and democracy took place in the late 1980s and early 1990s, the Inter-American system's simultaneous emergence as an increasingly robust mechanism for upholding regional human rights standards promised to buttress the reforms taking place nationally, heralding a new era of rights protection in the troubled region.

In many ways, the Inter-American system has fulfilled this substantial promise. The Commission and the Court have emerged as flagship institutions of the OAS. As their judgments increased in number, scope and sophistication, the Commission and Court grew in stature and influence in Central and South America—and to a lesser extent, in North America, the Caribbean, and beyond. The Court's judgments in particular came to be cited by domestic courts, international tribunals and legal scholars, and in many instances served as the authoritative versions of some of

the hemisphere's most notorious assassinations, massacres, and forced disappearances.

The Inter-American system has provided relief to thousands of victims and made significant contributions to the non-recurrence of abuses, yet it remains imperfect. While its decisions are rightly heralded for their progressive affirmations of victims' rights, particularly in the area of reparations, full compliance with the judgments of the Commission and the Court has frequently proven a challenge. It goes without saying that a subsidiary system of human rights protection such as the Inter-American—whose fundamental purpose is to ensure respect for certain basic rights across countries—cannot be considered truly effective unless its judgments are successfully implemented. As such, this article aims to briefly explore the extent to which member States of the OAS comply with the judgments of the Inter-American Commission and the Inter-American Court of Human Rights, and why.

The article begins with some general considerations regarding the Inter-American System, including the relationship between the Commission and the Court, before describing the System's mechanisms for supervising compliance with judgments. The article then considers the specific issue of compliance with rulings of the Inter-American Court, examining general trends in compliance and non-compliance, specific emblematic cases, and mechanisms that contribute to compliance. Finally, the article formulates some broad conclusions and proposals regarding compliance with judgments of the Commission and Court. Throughout the article, compliance is understood narrowly as the implementation of individual judgments by the States against which they are issued, and not the precedential effect of Inter-American jurisprudence for OAS States in general.[2]

Due to space constraints, the article focuses on final judgments of the Commission and (in particular) the Court in contentious cases; it does not address compliance, for example, with precautionary and provisional measures, or with friendly settlements. For similar reasons, the article does not seek to construct a cohesive theory of compliance with judgments of international tribunals or with international law in general, as has been done elsewhere[3]; the aim is instead to provide a snapshot of compliance levels in the Inter-American system and some initial reflections on the factors that influence compliance. Finally, it is worth noting that the current state of knowledge regarding compliance with Inter-American judgments is incomplete. There has been no comprehensive study of States' compliance with judgments of the Inter-American Commission and Court. However,

we believe that we can draw accurate conclusions based on the information that the Commission and Court have made available, and based on the experience of our organization, the Center for Justice and International Law (CEJIL), in litigating hundreds of cases before the Commission and Court over the past seventeen years. We also draw heavily on the recent CEJIL publication *Implementation of the judgments of the Inter-American System: Jurisprudence, Legislation, and National Experiences* (in Spanish)[4].

GENERAL CONSIDERATIONS REGARDING THE INTER-AMERICAN SYSTEM AS THEY PERTAIN TO COMPLIANCE

In considering the issue of compliance with judgments in the Inter-American human rights system, it is essential to keep in mind certain basic characteristics of the system. Most fundamental, and in contrast to the present-day European system for the protection of human rights, the Inter-American system continues to be comprised of two instances. The Inter-American Commission is a quasi-judicial body that combines the processing of individual cases with reporting, training, and other human rights promotional activities. The Inter-American Court, meanwhile, is a purely judicial body. Cases reach the Court only after they have been heard and decided by the Commission, and in practice the Commission serves a major filtering function. In 2006, for example, the Commission received 1,325 new cases, while submitting just 14 cases to the Court[5].

The two-tier nature of the Inter-American system has important implications for compliance with judgments. Most importantly, the Commission may only refer a contentious case to the Court if the State in question has not complied with the recommendations contained in the Commission's final judgment[6]. As a result, one way to assess compliance with the Commission's judgments is to compare—in those cases where referral to the Court is possible[7]—the number of cases that the Commission refers to the Court versus the number it chooses not to refer to the Court. Between 2003 and 2006, for example, the Commission submitted 51 cases to the Court. Only twice in that period did it choose not to send a case to the Court where doing so was jurisdictionally possible, and even in those two cases[8] the States had not complied with the Commission's recommendations[9]. These statistics, though superficial, suggest that States are currently disinclined to comply with judgments of the Inter-American Commission, at least where there exists the possibility of further contesting the case before the Court.

Of course, many of the cases heard by the Commission cannot be submitted to the Court, as the United States, Canada, Cuba and much of the

English-speaking Caribbean have not recognized the Court's contentious jurisdiction. Is compliance any better when States do not have the option of continuing to defend themselves before the Court? The statistics on compliance with final judgments of the Commission—most, but not all, of which are issued against States that have not accepted the Court's jurisdiction—are not particularly encouraging. In 2006, for instance, the Commission monitored compliance with 87 of its final judgments (issued between 2000 and 2005), finding noncompliance in 27 cases, partial compliance in 59 cases, and full compliance in just one case[10]. Between 2001 and 2006, the Commission reported full compliance with its judgments just 5.3% of the time[11].

As discussed below, compliance with Court judgments is generally better than compliance with Commission judgments. Though there are likely multiple reasons for this, one factor is undoubtedly the perception that the Court's judgments are binding while the Commission's are not. There is little question that the judgments of the Inter-American Court are final, obligatory, and not subject to appeal, as established explicitly by the American Convention on Human Rights ("American Convention")[12]. Furthermore, it appears from Inter-American jurisprudence and practice that the Court's rulings are self-executing, except perhaps with regard to monetary compensation[13]. In contrast, there is significant debate about States' duty to comply with the "recommendations" that the Commission issues in its judgments. Both the Commission and the Court have considered that all OAS States—as parties to the OAS Charter and, in some cases, the American Convention—are obliged to make every effort to comply with the Commission's recommendations in individual cases, in light of the good faith principle enshrined in Article 31(1) of the Vienna Convention on the Law of Treaties[14]. Nonetheless, States have often distinguished Commission judgments from those of the Court. While Colombian courts have established that the Commission's recommendations are binding, for example, courts in Argentina, Venezuela and Mexico have found the opposite[15].

COMPLIANCE SUPERVISION MECHANISMS IN THE INTER-AMERICAN SYSTEM

Compliance supervision has long been recognized as an area in which the Inter-American System has significant room for improvement. As mentioned previously, comprehensive information about compliance with Commission and Court judgments has not been compiled, to the System's great detriment. Though several mechanisms do exist whereby

the Commission and the Court monitor compliance with their judgments, these mechanisms have important shortcomings. Inadequate compliance supervision is undoubtedly due in part to the resource challenges that perpetually confront the Inter-American System. Additionally, however, the task of monitoring (as well as achieving) compliance is complicated by the System's expansive reparations measures. Such measures are essential to ensuring full reparation of victims and guaranteeing non-repetition, but they necessarily broaden the areas to be monitored by the Court. While most national courts and international tribunals tend not to venture beyond monetary compensation in repairing victims, the Inter-American System (particularly the Court) has a rich reparations jurisprudence that encompasses measures of restitution, compensation, rehabilitation, and satisfaction, as well as guarantees of non-repetition. While judging compliance with an order to pay monetary damages is fairly straightforward, it is exponentially more complex to determine whether a State has provided adequate conditions for the return of displaced persons to a town ravaged by armed conflict[16], or to assess whether a country has sufficiently revamped its nationality regime to bring it into compliance with international law[17]. In this way, one of the System's most admired features—the holistic nature of its reparations orders (*reparación integral*)—creates significant challenges when it comes to supervising compliance with judgments.

As mentioned, both the Commission and the Court engage in some form of compliance supervision, beginning by requiring the parties in contentious cases to periodically report on compliance. The information collected, however, is generally under-exploited. The Commission has opted to classify, in its annual report, the compliance status (total, partial or pending) of recent final judgments. This provides a full, if superficial, quantitative assessment of compliance levels (see above). Qualitative information, however, is hard to come by. The Commission occasionally grants public hearings on the state of compliance with one of its final judgments, whereby it can receive information from the parties and pressure the State to implement its recommendations. The formal record of such hearings, however, is usually limited to a short paragraph in the Commission's customary end-of-session press release[18].

The Court has taken a different approach, providing detailed qualitative information regarding the implementation of many (though not all) of its judgments, but no overall picture of the state of compliance with its rulings.[19] Since beginning the practice in 1999[20], the Court has issued dozens of resolutions regarding compliance with its judgments in contentious cases. These resolutions are based on information submitted to

the Court by the three parties to the litigation—the State, the Commission, and the victims' representatives. The Court's annual reports, in contrast with those of the Commission, contain scant information on compliance, simply listing the compliance resolutions issued in the previous year[21]. There are signs, however, that the Court is taking a greater interest in the issue. For example, the tribunal recently began holding hearings on compliance with judgments in contentious cases, and has also developed a practice of holding extraordinary sessions in locations other than its headquarters in Costa Rica[22]. Anecdotal evidence suggests that the latter practice contributes to compliance by raising the Court's profile in the country where the sessions are held and placing pressure on the host government to be in good standing with the Court.

The American Convention on Human Rights explicitly envisions a role for the member states of the OAS in guaranteeing respect for the judgments of the Inter-American Court. Article 65 of the American Convention instructs the Court to deliver an annual report to the OAS General Assembly and to "specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations"[23]. Though the Court observes this mandate in submitting its report at the annual General Assembly meetings—and, in practice, the Commission does the same—the results are inevitably underwhelming. Sandwiched between myriad other issues, and occurring in a context in which States are often reluctant to criticize one another, the presentations by the Court and the Commission seldom have a lasting impact and appear to contribute little to fostering compliance with judgments. Former Court President Antonio Cançado Trindade repeatedly sought a far more active role for States in compliance monitoring, proposing that the OAS Permanent Council's Commission on Juridical and Political Affairs create a permanent working group on the implementation of Inter-American judgments. The working group would receive information from States, the Commission, the victims, and the Court before issuing reports and recommendations for further action to the Permanent Council and eventually the General Assembly.[24] The proposal appears not to have received serious consideration by OAS member states, reflecting States' general lack of attention to their role as collective guarantors of the Inter-American System[25]. This perhaps helps explain the Court's current interest in expanding its own role in compliance supervision.

COMPLIANCE WITH JUDGMENTS OF THE INTER-AMERICAN COURT

Observers of the Inter-American system generally agree that States' efforts to comply with the Court's judgments follow a familiar pattern[26].

In contrast with their response to Commission rulings, it is quite rare for States to completely fail to comply with Court judgments, and most States advance significantly over time toward implementing these judgments. Monetary compensation, for example, is almost always paid. Symbolic measures—public apologies, naming of schools and parks, publication of the Court's sentence, and so on—are also usually implemented. Compliance with legal reforms ordered by the Court is likewise quite strong, perhaps surprisingly so. More difficult, but often at least partially implemented, are measures of rehabilitation such as health and education benefits, and guarantees of non-repetition such as the training of public officials. Certainly the most challenging aspect of sentence compliance relates to a State's obligation to investigate and prosecute the individuals responsible for the human rights violations in question. Arguably the most important requirement imposed by a Court sentence insofar as it seeks to ensure individual criminal accountability for human rights violations, it is almost never fully implemented. Though a lack of political support for (often sensitive) investigations plays some part in noncompliance, it is also true that investigations suffer because much more than political will is required for them to be successful. A confluence of factors—including the independence of the judges and prosecutors involved, the complexity of investigating crimes that often occurred decades prior, the need to revoke amnesty laws or to overturn sham acquittals while respecting the principle of *non bis in idem*, and the general weakness of Latin American criminal justice systems—contributes to low levels of compliance with the Court's orders to punish those responsible for the violations at issue.

Of course, these general trends in compliance with Inter-American Court judgments are subject to many qualifications. To begin with, compliance behavior often differs substantially between States, and even within States depending upon the government in power at a given time. Peru under the autocratic rule of Alberto Fujimori, for example, repeatedly incurred the Court's ire by unapologetically refusing to implement its judgments, and the Fujimori government even took steps to withdraw the country from the Court's jurisdiction[27]. Once Fujimori was ousted in a corruption scandal, however, the successive governments of Valentín Paniagua and Alejandro Toledo made compliance with Court judgments a priority[28]. Most significantly, Peru implemented the seminal *Barrios Altos* judgment that rendered a Fujimori-era amnesty law devoid of legal effect. In addition to permitting the prosecution of human rights violators in Peru (including, currently, Fujimori himself), the *Barrios Altos* precedent has contributed to the overturning of amnesty laws in Argentina.

In a similar success story, the Inter-American Court's 2001 *Last Temptation of Christ* judgment ordered Chile to reform the laws that had provided for the prior censorship of the film that gave the case its name[29]. In response, the Chilean Congress first amended the country's Constitution to eliminate film censorship, and later passed a law creating a rating system for cinematic productions[30]. Though few countries have been obligated by the Court to undertake such far-reaching structural changes, States such as Argentina, Colombia, Guatemala, and Paraguay, have in recent years made significant strides toward complying with Court judgments. Again, the notable exception to these positive compliance trends invariably relates to the criminal prosecution of individual rights violators.

Notwithstanding the constructive relationship that many countries presently enjoy with the Court, it is not hard to encounter States that resist complying with the Court's judgments. Aside from the Fujimori-era Peruvian judgments mentioned above, one of the most striking examples of noncompliance relates to Trinidad and Tobago. Though Trinidad formally rescinded its recognition of the Inter-American Court's jurisdiction in 1999, the Court has continued to hear cases based on facts that occurred before this denunciation took effect. In the *Hilaire, Constantine and Benjamin et al.* case, the Court examined a law prescribing the death penalty as the only applicable sentence for the crime of murder in Trinidad and Tobago, finding that both on its face and in its application the law violated several rights enshrined in the American Convention, including the right to life[31]. In addition to executing one of the petitioners while the case was still pending, in violation of the Court's provisional measures, Trinidad refused to provide information on its compliance with the Court's judgment[32]. This led the Court to take the unusual step of requesting that the OAS General Assembly require Trinidad to provide such information.[33] Not only was this effort unsuccessful[34], but in a subsequent Court case Trinidad and Tobago did not even bother to file a brief or attend the public hearing[35].

Though such extreme disregard for the Court is infrequent, an unwillingness to comply with Court judgments is not unique to States that have withdrawn their recognition of the Court's contentious jurisdiction. The Dominican Republic, for example, has expressed significant hostility towards the Court in the wake of the politically charged 2005 *Yean and Bosico* decision finding that two Dominican girls of Haitian descent had been improperly and discriminatorily denied their birth certificates[36]. Though the Dominican government did pay the monetary compensation ordered by the judgment, it has failed to comply with the remaining reparations measures. Most significantly, the country implemented a new immigration

regime that violates the letter and spirit of the Inter-American Court's judgment by institutionalizing the denial of Dominican nationality to children of Haitian descent[37].

The compliance case studies discussed here—though a very small sample—suggest reasons why States may, or may not, comply with Inter-American Court judgments. In particular, non-compliance appears more likely when the government charged with implementing a judgment is not democratically accountable (*Castillo Petruzzi, Loayza Tamayo*),[38] or when the beneficiaries of the judgment are viewed as unsympathetic by the majority of the public, as in the case of alleged terrorists (*Castillo Petruzzi*), death row inmates (*Hilaire, Constantine and Benjamin et al.*), or marginalized minorities (*Yean and Bosico*). The underlying factor appears to be a lack of domestic political pressure on government authorities to comply with the Court's judgment[39]. This situation is often compounded by the absence of a sincere, autonomous commitment to human rights and the rule of law among key domestic actors, by the inability of the OAS and the international community to tip the balance of domestic interests, and by the negative pressure exerted by those who stand to lose power and influence if the judgment is fully implemented, among other factors.

In addition to cautioning against conditions that place compliance in peril, observers of the Inter-American system have also identified factors that tend to promote the implementation of judgments. Viviana Krsticevic has argued elsewhere, for example, that beyond the more easily identifiable factors that influence compliance—the advocacy capacity of NGOs, the good faith efforts of State officials in the different branches of government, the role of the press, and the actions of national and regional political leaders, among others—the institutional and legal structure of a country is important in determining how likely it is to comply with a judgment[40]. Specifically, Krsticevic identifies three factors that contribute to compliance. The first is the existence, or lack thereof, of formal incorporation mechanisms, such as Constitutional or similar provisions that make human rights treaty obligations preeminent in domestic law or make international judgments enforceable in domestic courts[41]. The second is the adoption of formal implementation policies or similar coordination mechanisms, such as *ad hoc* or permanent committees that bring together the various government agencies responsible for implementing the various reparations measures established in Inter-American judgments.[42] Finally, special mechanisms and procedures in the judicial sphere can significantly assist compliance in what is often the most difficult area: criminal prosecution of individual rights violators. In particular, special prosecutorial units or teams, as well

as independent tribunals that issue progressive decisions with regard to the enforceability of international judgments, can greatly facilitate compliance with Commission and Court judgments[43].

CONCLUSIONS

In an oft-cited article assessing the impact of litigation before the Inter-American system, James L. Cavallaro and Emily Schaffer begin by observing that:

Scholars and practitioners have devoted far more energy to the study of jurisprudential aspects of the decisions of the Inter-American human rights system than to assessing the degree to which these decisions are implemented in practice. Yet it is precisely the implementation of decisions and the impact of international oversight on the degree of respect for human rights that should matter most to the human rights community[44].

Both statements are undoubtedly true. While the success of the Inter-American system in strengthening human rights protection in Western Hemisphere ultimately depends largely on the degree to which its judgments are implemented, comparatively little attention has been paid to this aspect of its work. That said, broad conclusions can be drawn based upon the information that the Commission and the Court have made available, as well as the observations of practitioners and scholars. It is clear, for example, that States are more inclined to comply with Court judgments than Commission judgments. It is also clear that compliance with both Commission and Court judgments is far from perfect, and that reparations measures such as monetary compensation are significantly more likely to be implemented than an order to punish the individuals responsible for a human rights violation. Finally, it appears that a series of factors relating to political dynamics and the domestic legal structure affect the likelihood that a State will effectively comply with a judgment.

There is no denying that a great deal of work remains to be done, both to better understand the state of compliance with Inter-American judgments and to strengthen the mechanisms for supervising such compliance. Though it would be ideal if the member States of the OAS took a more active role in peer-reviewing compliance with Inter-American judgments, this seems unlikely to happen given the dynamics of the OAS and the lack of response to the Court's past proposals for such a review system. Instead, the Commission and the Court should themselves dedicate greater attention to monitoring the implementation of their judgments and maintaining the pressure on States to comply. In this regard, the Inter-American Court's

recent decisions to hold extraordinary sessions outside Costa Rica and to begin granting public hearings on compliance in contentious cases are steps in the right direction. Much more could be done by both the Commission and the Court, however, such as identifying obstacles to compliance in specific cases and analyzing this information to reach general conclusions and recommendations regarding the implementation of judgments. Finally, NGOs should likewise place increased emphasis on compliance monitoring, as the successful implementation of judgments is critical to achieving the aims of their strategic litigation. As they frequently possess detailed information on the implementation of judgments in cases they litigate, NGOs should also find more effective ways of sharing this information with each other and with scholars, ombudsmen, and other observers who can analyze the information and propose avenues for improved compliance.

(**Endnotes**)

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2 For a discussion of this distinction, see Rodrigo Uprimny, "La fuerza vinculante de las decisiones de los organismos internacionales de derechos humanos en Colombia: un examen de la evolución de la jurisprudencia constitucional," p. 8 in version on file with authors, to be published in CEJIL ed., *Implementación de las decisiones del sistema interamericano de derechos humanos: jurisprudencia, normativa y experiencias nacionales* (2007). See also, Thomas Buergenthal, "Implementation of the Judgments of the Court," in *Corte Interamericana de Derechos Humanos: El sistema interamericano de Derechos Humanos en el umbral del Siglo XXI*, Inter-American Court of Human Rights, San José de Costa Rica, 2004, pp. 185-193.

3 See, e.g., Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 Yale L.J. 2599 (1997); Abram Chayes and Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (1998).

4 CEJIL, *Implementación de las decisiones del sistema interamericano de derechos humanos: jurisprudencia, normativa y experiencias nacionales*, cit.

5 See IACHR, Annual Report 2006, chapter III.

6 See IACHR Rules of Procedure, art. 44. Though States may also submit cases to the Court following a final judgment of the Commission in accordance with Article 51 of the American Convention on Human Rights, in practice all contentious cases have been referred to the Court by the Commission. When referencing "final judgments" of the Commission, we are referring to the merits reports adopted by the Commission in accordance with articles 50 and 51 of the American Convention.

7 Referral of a case to the Court is not possible, for example, if the State in question has not accepted the jurisdiction of the Court, or if the facts of the case took place before such acceptance.

8 IACHR, Case 11.171 (2006), Case 12.142 (2005).

[9] While non-compliance with its recommendations is by far the most important factor in deciding whether to refer a case to the Court, the Commission also considers: the position of the petitioner; the nature and seriousness of the violation; the need to develop or clarify the case-law of the system; the future effect of the decision within the legal systems of the Member States; and the quality of the evidence available. IACHR Rules of Procedure, art. 44.

[10] IACHR, Annual Report 2006, Chapter III.

[11] See IACHR, Annual Reports 2001-2006.

[12] American Convention on Human Rights, arts. 67, 68.

[13] See Viviana Krsticevic, "Reflexiones sobre la Ejecucion de las Decisiones del Sistema Interamericano de Proteccion de Derechos Humanos", in CEJIL, *Implementación de las decisiones del sistema interamericano de derechos humanos: jurisprudencia, normativa y experiencias nacionales*, cit., pp. 39-40.

[14] See I.A. Court H.R., *Case of Loayza-Tamayo vs. Peru*, Merits, Judgment of September 17, 1997, Serie C No. 33, paras. 79-81; IACHR, Annual Report 1997, Chapter VII, para. 12.

[15] See Krsticevic, cit., pp. 98-105.

[16] See I.A. Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005 (Only in Spanish). Series C No. 134, para. 313.

[17] See I.A. Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, paras. 236-242.

[18] See, e.g., IACHR, Press Release No. 35/05, reporting on a hearing to monitor compliance in Case 11.481, Monsignor Oscar Arnulfo Romero and Galdamez (El Salvador), October 28, 2005.

[19] The Court has, however, reported that full compliance has been achieved in only 11.57% of its cases. See "Síntesis del informe Anual de la Corte Interamericana de Derechos Humanos correspondiente al ejercicio de 2007, que se presenta a la Comisión de Asuntos Jurídicos y Políticos de la Organización de los Estados Americanos," (April 3, 2008), p. 9.

[20] See I.A. Court H.R., *Case of Castillo-Petruzzi et al. v. Peru*. Compliance with Judgment. Order of November 17, 1999. Series C No. 59; *Case of Loayza-Tamayo v. Peru,* Compliance with Judgment. Order of November 17, 1999. Series C No. 60.

[21] See, e.g., I.A. Court H.R., Annual Reports 2004, 2005, 2006.

[22] The Commission has a similar practice of holding extraordinary sessions, typically once a year, away from its headquarters in Washington D.C.

[23] American Convention on Human Rights, art. 65.

[24] See, e.g., "Mensaje del Presidente de la Corte Interamericana de Derechos Humanos, Presidente Antonio Augusto Cancado Trindade, con motivo de la inauguracion del seminario 'retos para el cumplimiento de las decisiones de los organos del sistema interamericano de proteccion de los derechos humanos'," San Jose, Costa Rica, September 19, 2003 [on file with authors]. See also, Separate Opinion of Judge Manuel E. Ventura Robles, I.A. Ct. H.R. *Case of Caesar v. Trinidad and Tobago*. Merits, Reparations and Costs. Judgment of March 11, 2005. Series C No. 123, para. 33.

[25] See Krsticevic, cit., pp. 37-38.

[26] See, e.g., Krsticevic, cit., pp. 42-43; Cancado, cit.; James L. Cavallaro & Emily J. Schaffer, *Less as More: Rethinking Supranational Litigation of Economic and Social Rights in the Americas,* 56 Hastings L. J. 217 (2004), p. 234.

[27] See I.A. Ct. H.R., *Castillo Petruzzi vs. Peru*, Compliance with judgment, cit.; *Loayza-Tamayo*, Compliance with Judgment, cit.; see also Cavallaro and Schaffer, cit., p. 247.

[28] The record of President Alan Garcia's government is so far less encouraging. Though it is too early to draw conclusions, the government caused significant concern in the human rights community with its hostile reaction to the highly-sensitive judgment in I.A. Court H.R., *Case of the Miguel Castro-Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160.

[29] See I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile*. Merits, Reparations and Costs. Judgment of February 5, 2001. Series C No. 73, paras. 97-98.

[30] Case *of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 28, 2003, considering #19.

[31] See I.A. Court H.R., *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*. Merits, Reparations and Costs. Judgment of June 21, 2002. Series C No. 94.

[32] I.A. Ct. H.R., *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago,* Monitoring Compliance with Judgment, Order of the Inter-American Court of Human Rights of November 27, 2003, considering #8.

[33] See I.A. Ct. H.R., Annual Report 2003, p. 45.

[34] See Separate Opinion of Judge Manuel E. Ventura Robles , I.A. Ct. H.R. *Case of Caesar v. Trinidad and Tobago,* cit., para. 5.

[35] See I.A. Ct. H.R. *Case of Caesar v. Trinidad and Tobago,* cit., paras. 24, 30.

[36] See I.A. Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*, cit.

[37] See *Yean and Bosico* compliance observations submitted by CEJIL, University of California Berkeley Law School (Boalt Hall) International Human Rights Clinic, and Movimiento de Mujeres Dominico-Haitianas, December 1st, 2006, pp. 9-13 [on file with authors].

[38] Democratic accountability is obviously lacking when the government involved is autocratic, as in the *Castillo Petruzzi* and *Loayza Tamayo* examples, but it is also the case when those directly affected by the judgment (though nominally operating in a democratic context) have enough power to prevent democratic institutions from implementing a judgment that would adversely affect their interests. This has been the case, for example, with regard to the Court's judgments in I.A. Ct. H.R., Case *of Myrna Mack-Chang v. Guatemala.* Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101; and *Case of Molina-Theissen v. Guatemala.* Merits. Judgment of May 4, 2004. Series C No. 106.

[39] James Cavallaro and Emily Schaffer reach a somewhat similar conclusion in arguing that Inter-American cases which are not accompanied by parallel, coordinated campaigns by social movements and/or the media, even if litigated successfully, are likely to result in unimplemented judgments and possibly even a backlash against the Inter-American system among OAS member states. See Cavallaro and Schaffer, cit., p. 270, 275.

[40] See Krsticevic, cit., p. 16.

[41] See id., pp. 69-84.

[42] See id., pp. 84-91. See also, Juana Acosta, "Cumplimiento de las sentencias de la Corte Interamericana de Derechos Humanos," pp. 8-9, discussing Colombia's experience with the Official Compliance Mechanism ordered by the Court's *Mapiripán Massacre* judgment, para. 311.

[43] See id., pp. 91-110.

[44] Cavallaro and Schaffer, cit., p. 235.