

The Powers of the Inter-American Court of Human Rights Towards the Implementation of Gender Justice Laws at the National Level in South America

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Recommended Citation

Therrien-Tomas, Kiana Miss. . "The Powers of the Inter-American Court of Human Rights Towards the Implementation of Gender Justice Laws at the National Level in South America." *Bridges: An Undergraduate Journal of Contemporary Connections* 5, (1). https://scholars.wlu.ca/bridges_contemporary_connections/vol5/iss1/6

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Although South America is earning international attention as an innovative global leader in various fields, it currently remains a region steeped in traditional beliefs and practices. Despite prevailing laws against domestic violence, countless Latin American women proceed to be failed by the legal system. As South American societies produce their own theory of gender justice, apprised by local realities and universally accepted norms, women's rights advocates and the Supreme Court can represent a decisive role in forming the discourse.

Guatemala, for instance, has one of the most significant rates of femicide in the world. It is predicted that more than 6,500 women were victims of brutal killings between 2000 and 2012, and thousands more were raped and beaten. Among 20 000 cases filed in 2011 with the courts under Guatemala's *2008 Law against Femicide and Other Forms of Violence against Women*, less than 3 percent of the cases that entered the courts concluded in a judgment. (Musalo K and al., 2014)

In Colombia, a woman is reportedly killed by her spouse or former spouse every six days. According to The Brazilian Institute of Geography and Statistics, women accounted for forty-four percent of the cumulative number of physical aggression victims. In 2007, the *Cidadania, Estudo, Pesquisa, Informacao e Acao* (CEPIA) issued a report revealing that "every fifteen seconds a woman is beaten in the country, eight percent of women have been threatened with firearms, and six percent suffered sexual abuse." In addition, in Brazil, "every four minutes, a man beats a woman inside her home." (Spieler, P, 2011, 127)

According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), South America has the highest gender-based violence rates globally, with Brazil, Mexico, Argentina, Peru, El Salvador and Bolivia rendering 81% of global cases. (OCHA, 2020) More recently, widespread lockdowns have produced horrific conditions where violence and abuse victims have no one to turn to and nowhere to go. (OCHA, 2020) A dramatic surge in violence cases against girls and women during the lockdown in South America is approaching a catastrophe. Data gathered since the international stay-at-home orders began to portray an alarming reality. "In Colombia, domestic violence reports during lockdown have increased by 175% compared to the same period last year. In Mexico, domestic violence calls to help lines have gone up by 60% in the first weeks of lockdown. In the Dominican Republic, the Ministry of Women's Affairs's violence service, Línea Mujer, received 619 calls during the first 25 days of quarantine". (OCHA, 2020)

This data effectively demonstrates the need for enhanced approaches towards redressing and preventing violations of fundamental human rights,

including the rights of South American women. Throughout this literature review, I aim to contemplate the powers of the Inter-American Court of Human Rights (IACHR) towards the implementation of gender justice laws at the national level in South America. More specifically, I will analyze the IACHR's influence in advancing the implementation of laws aimed at curbing violence against women (VAW) throughout South America's various nation-states. Although women movements may have won a case in the IACHR, the harsh reality remains that they are still required to go through yet another battle to make sure those laws are implemented nationally in a nation state as implementation is monopolized by national government, although subnational governments still have a role to play. Accordingly, I will follow the latter section with a collection of the best recommended litigative strategies and practices to aid women in implementing their case won at the IACHR within their nation-state.

Overview

Latin American feminists brought to light the matter of violence in the 1970s under military rule or armed conflict situations. These contexts caused concern among feminists regarding state violence against women. Women's organizations deemed the rape and torture of political prisoners and the use of rape as a threat of war. These organizations combined these forms of violence to more profound societal forms of submission and violence against women in private and public spheres. Means of democratization in the region yielded new possibilities to systematize norms to end violence against women. In fact, within various countries, feminists succeeded in getting this issue on the political agenda. During the mid-1990s, the region established international legislation on VAW that uniquely incorporated state-sponsored violence. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (1994) entrenched a global responsibility for states to prevent, examine, and punish VAW regardless of where it takes place. While Latin American governments massively enacted this convention, national legislation was not normalized with the international convention's broad scope. This illustrates the intricate and often contradictory dynamics of standardizing norms to confront VAW in multilevel settings. While transnational networks supported the creation of a robust regional movement with a collective plan and a partitioned understanding of the problem of VAW, national attempts to get VAW on the political agenda were met with irregular responses, as the cases of Brazil and Uruguay demonstrate.

The Inter-American human rights protection system is analogous to other international and European systems intended to protect individuals from state violence and coercion. The system concentrates on victims of state-sponsored violence. The Inter-American Court performs a notable role in this system and serves as a self-governing judicial institution. The court's determinations are binding on these states considering they have agreed upon the treaty's competence. It is important to note that the court is not a criminal bench and does not have jurisdiction over individuals, solely over states. The purpose of international human rights law is to protect the victims and provide for the atonement of damages following the States' actions rather than punishing those guilty of violations.

The powers of the IACHR in advancing the implementation of laws prohibiting violence against women in South America

The Inter-American Court of Human Rights' power to shape government behaviour deviates significantly from country to country. The variation of the Inter-American Court's jurisdiction across states can be effectively demonstrated by observing the practice of constitutional law in each state. Feminist attempts to engender new areas nationally were affected by parallel means at the international level (UN) and regional level in South America. Nearly all of the norm diffusion literature¹ is concerned with how international treaties and legislation, once established, affect national contexts. In simplified terms, norm diffusion is then conceptualized as a transmission model where international organizations are the sources, and federal states are receivers.

The primary tool of the Inter-American Human Rights System (IAHRS) is the 1969 American Convention on Human Rights (the American Convention or ACHR). The ACHR states that the system comprises two organs: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. The IACHR holds two functions. As an Organization of American States (OAS) medium, it oversees the North and South American continents' human rights situation by checking whether the states operate according to the American Declaration. As an organ of the American Convention, the IACHR can obtain petitions sent by an individual or group of people declaring human rights violations

¹ I mention norm diffusion as theories of norm diffusion “explain how principled ideas gain power and change states’ identities and behaviour. An international norm begins with a principled idea shared by only a few individuals and organizations and ends as a globally institutionalized cultural trait with the power to shape the behavior of governments throughout the world.” (Finnemore and Sikkink, 1998).

against any state party to the Convention. After investigating the admissibility and virtues of a case, the IACHR can give it to the Inter-American Court of Human Rights or publish its final report with suggestions to the concerned state. When a state enacts the American Convention, it automatically sanctions the IACHR's competence to receive individual cases of human rights infringements. Still, the state needs to expressly indicate that it recognizes the Inter-American Court of Human Rights' jurisdiction. (Spieler, P, 2011)

Meyer (1999) asserts that the process to establish the Inter-American Convention on violence against women develops upon the *Comisión Interamericana de Mujeres*² (CIM)'s "traditional strategy" (Meyer 1999, 66) of urging governments to bring national laws in compliance with the latest international standards.

If the Inter-American Court of Human Rights' sole consistent achievement were judgment compliance, its authority would be confined to the resolution of about fifteen disputes per year. Additionally, its central compliance constituencies would embody the region's executive branches and the human rights non-governmental organizations that prosecute internationally. In some states, domestic constitutional litigation has been used as the platform on which the IACHR's influence has developed to intermediate and broad authority, enabling it to expand its power.

The IACHR's jurisprudence becomes an influential domestic judicial review source. The decisions of the IACHR not only represent means pushing for state compliance but are also a medium for defying laws and practices before the domestic judiciary. Litigants can invoke IACHR judgments to configure how courts evaluate law domestically without filing a petition before the Inter-American System (IAS). The Court's jurisprudence becomes installed domestically, and the Court's jurisdiction can grow despite its little docket.

The IACHR's utmost authority lies in the face of severe and urgent cases, as they hold the power to compel the Member States to ratify preventive measures. In cases of extreme gravity and urgency, the Commission may demand that the Inter-American Court request the adoption of "provisional measures" to prevent irreversible harm to persons, even when the case has not yet been presented to the Court. The imperatives of the IACHR include both the conventional statute (affirmed by the state by its act of sanction or adhesion) and the understanding of that precept. Since the Court has been bestowed the power to decipher the Convention, which is a positive legal order for all state parties, the Court maintains

² CIM (Comisión Interamericana de Mujeres) represents the Spanish Acronym for the Inter-American Commission of Women (Meyer, 1999)

the capacity to establish the corresponding norms' meaning and scope. The states are bound by the international instruments' standards to which they are parties and subject to the official interpretation of them, without prejudice to other dispositions that may improve the American Convention's understanding under the rule of the principle *pro persona*. According to the Court, victims of violations to the American Convention are entitled to retribution by punishing their offenders. The IACHR developed a consistent body of case law regarding a states' duty to punish perpetrators of human rights violations. The outcomes of these decisions apply not only to offender states, but also to all states party to the treaty. Although the Inter-American Court is not a criminal tribunal, its findings directly impact the scope of defendants' rights in domestic criminal proceedings. As cases concerning human rights violations are brought against states, external and independent organizations' activism must ensure state compliance and domestic enforcement. In the Inter-American system, particularly, the tradition of state atrocities necessitated that independent organizations manage strong oversight to guarantee states comply with and fortify human rights. Accordingly, the Inter-American Court's mandate challenging states to prosecute human rights violations is of great significance.

Further, as Roggeband (2016), international legislation may be effectively used to push for or improve national legislation. Still, it may also have contrary effects and direct to a stagnation of existing domestic policy processes or a reversal of previous winnings. The problem resides in the fact that the IACHR can only promote the observance and protection of human rights in Member States of the Organization of American States that have ratified the American Convention. The Inter-American Court underlined this obligation through a consistent body of case law. It identified the commitment as emerging from states' responsibility to secure and guarantee rights protected by the American Convention and satisfy victims' rights. The IACHR does receive, analyze, and investigate individual petitions in which violations of human rights are alleged to have been committed in both countries that have ratified the Convention and those who have not. It is bound to observe the general situation of human rights, report on the situation, and make recommendations to better protect human rights in the 35 independent states within the Americas that have sanctioned the OAS Charter and are OAS Member states.

Although women movements may have won a case at the international level in the IACHR, they are required to overcome yet another hurdle to ensure these laws are implemented nationally within nation-states as implementation is monopolized by national government. Norm diffusion processes are frequently recognized as linear global to local procedures. Such a model tends to identify national and international policy grounds as separate and hierarchical. As Conny Roggeband (2016) argues within her text, I too believe that instead, we need a

model that blends multiple and often parallel multilevel efforts to institutionalize norms.

Collection of best recommended litigative strategies and practices

Throughout the vast body of literature that emerged on litigative strategies for women's movements, I have highlighted key practices suggested by various authors to best aid women in implementing their case won at the IACHR at the national level within respective nation-states. Several authors have come up with dynamic models and strategies to best bring about positive changes in policy reforms to help the case of violence against women. Keck and Sikkink (1999) produced the often-cited "boomerang pattern," in which societal groups that come upon unresponsive states solicit international organizations' support, which consecutively puts pressure on reluctant states to modify their customs. This would theoretically imply that partnerships between women's movements and supranational legal bodies such as the IACHR would propel the adoption of appropriate laws concerning violence against women in South America's nation-states.

Moreover, more recently, Montoya refined a theoretical framework that identifies four distinct pathways women movement activists should take when trying to win their case. The first pathway consists of a 'bottom-up domestically driven reform' inaugurated by substantial societal mobilization that favourably pressures the government to react. The second pattern is labelled as a top-down domestically driven reform by strong advocates within state policy institutions. The third model embodies a transnationally driven reform entailing interaction between domestic actors and international advocates. A fourth pathway represents an internationally driven reform, which "arises when the results of transnational mobilization of a few countries garner an international response that spills over into countries lacking active or effective domestic advocacy" (Montoya 2013, 36).

Further, Chappell highlights the importance of extensive lobbying efforts. Through her work, she points out that in the case of the International Criminal Courts (ICC), lobbying efforts made by feminists activists in the Caucus supported by some state delegations led to the inclusion of rules into the ICC's statute that gives victims standing in proceedings and makes sure there is no mistreatment in the courtroom towards women who have been victims of sexual violence. Chappell also suggests the use of the Victims Protection and Reparations Section (VPRS). The Rome Statute mandates the Victims Protection and Reparations Section to promote victim participation in proceedings before the court. The VPRS does so by

rendering information to victims regarding their rights, aiding their application for participation in proceedings, reparations, and establishing their legal representation. In fact, the practice of the VPRS has expanded exponentially with the court's growing caseload. It seems that gender disparities across registry agencies produce a compounding effect. Women lose the opportunity to display their "views and concerns" in proceedings and miss the occasion to assist the judges and the international community more broadly in recognizing the degree and nature of crimes perpetrated against them when they do not register as victims through the VPRS. Such participation is crucial to realizing the gender justice goals of the Rome Statute, such as holding perpetrators accountable for their actions and ultimately ending exemption for these crimes.

Additionally, throughout their work, Musalo and Bookey highlight the series of suggestions they offered to the government of Guatemala within their 2010 report on violence against women in Guatemala. These detailed recommendations mentioned the need for reliable statistical gathering, improvement of crime scene investigation, and development of forensic evidence capabilities (Musalo et al. 2010, 219-20). The latter encompasses activities that necessitate state capacity in order to take place.

Lastly, authors Alter and Karen emphasize the value behind mobilizing interest groups around a litigation strategy. They insist that obtaining national judicial support and following through on legal victories ultimately reveal the detriments of not changing federal policy. They also point out that these elements were both necessary conditions for a transfer of the domestic balance of power and the result of national policy change. The authors suggest that the more definite the interest group's mandate and constituency, the more probable it was to convert to litigation strategy. On the other hand, the broader and more encompassing an interest group's mandate be, the less likely it will become a litigation strategy.

In conclusion, the need for increased approaches towards redressing and preventing violations of fundamental human rights, including the rights of South American women is very much apparent within my literature review. I have contemplated the powers of the Inter-American Court of Human Rights (IACHR) towards the implementation of gender justice laws at the national level in South America. I have concentrated on IACHR's influence in advancing the implementation of laws prohibiting violence against women (VAW) throughout South America's various nation-states. As mentioned, although women movements may have won a case in the IACHR, the harsh reality remains that they are still required to go through yet another battle to make sure those laws are implemented nationally in a nation state as implementation is monopolized by national

government. I have demonstrated that the Inter-American Court of Human Rights' authority varies by state, depending on local legal practices and constitutional politics. This fluctuation has implications for the future of the IACHR. I have highlighted a best litigative strategies and practices recommended by authors in my collection of literature concerning litigating violence against women in South America. Those enumerated include, but are not limited to, mobilizing interest groups around a litigation strategy, the need for reliable statistical gathering, improvement of crime scene investigation, and development of forensic evidence capabilities, and extensive lobbying efforts. Interesting for further study building off of this work would be the comparison of outcome through specific cases in which the IACHR interfered with nation-states.

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