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Furthering the fight against impunity in Latin America: the contributions of the Inter-American Court of Human Rights to domestic accountability processes

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8 | The contributions of the Inter-American human rights system to domestic struggles for accountability: a synthesis of the case studies

1 | INTRODUCTION

The previous three chapters have analyzed the contributions of the Inter-American human rights system, with a focus on the IACtHR, to three different domestic accountability processes. Chapter 5 examined the IACtHR's contribution to the work of pro-accountability constituencies – i.e. victim groups and human rights organizations – in Guatemala, pursuing justice in a relatively small number of cases emblematic for the larger patterns of violence during the civil war. Chapter 6 analyzed the contributions of the IACtHR to a series of legislative processes through which Colombia has sought to enact a transitional justice framework which balances the need to achieve a negotiated end to a long-running armed conflict with the need to respect the right of victims to truth and justice. Finally, chapter 7 examined the IACtHR's contributions to the work of the prosecutors in Colombia's National Human Rights Unit, who are responsible for the investigation and prosecution of serious human rights violations in practice.

The accountability processes discussed in these three chapters are very different in nature. However, in each of these processes, this study has identified a number of important contributions of the IACtHR to the work of relevant domestic actors. And while, as was stated clearly in the introduction, this study does not pursue a structured comparison between the different cases, it is possible at this point to synthesize and reflect further on the nature of the IACtHR's contributions identified through the case studies. In doing so, this chapter attempts to draw lessons from the particular processes observed and analyzed in those case studies which may inform how we conceive the IAHRs' influence more broadly. Of course, since these lessons are drawn from very particular situation, they can make no claim to completeness. It is very possible that the IAHRs has influenced accountability processes in many other places and many other ways as well. This chapter only summarizes what I have been able to observe in the particular contexts analyzed in this study. Moreover, because these lessons are taken from particular contexts, there is no guarantee that the mechanisms described here will operate in the same way under different circumstances. However, these lessons may broaden and deepen our understanding of the way in which the IAHRs can influence – and has influenced – domestic accountability processes in some instances.

Rather than simply list the various ways in which the IACtHR has contributed to domestic accountability processes, this chapter seeks to answer

three questions: 1.) which of the IACtHR's 'interventions' in domestic accountability processes have contributed to the work of domestic actors? ("contribution of"); 2.) to which aspects of domestic accountability processes have these interventions contributed? ("contribution to"); 3.) through which mechanisms have the IACtHR's interventions in domestic accountability processes been able to make those contributions? ("contribution through")

The answer to the first of these three questions is partly predetermined by the design of this study. Since this study focuses on the IAHRs' judicial function, the case studies have analyzed only on the parts of its operations which are directly connected to that function. Moreover, as indicated in the introduction to this study, one of the assumptions guiding the analysis in this study has been that the Inter-American system, in execution of its judicial function, 'interacts' with domestic accountability processes through three dimensions of its work: 1.) through the proceedings it conducts in individual cases; 2.) through the individual judgments in which those proceeding result; and 3.) through the doctrines it develops over the course of its case law. These three types of interactions, or 'interventions', have structured the way in which the case studies have been presented in this text. What the case studies have demonstrated, is that the IAHRs has made important contributions to domestic accountability processes through all three of these types of 'interventions'. On this basis, this chapter will now discuss the aspects of domestic accountability processes to which the IACtHR's interventions have been able to contribute – in other words: their spheres of influence – and the mechanisms through which they have done so.

2 CONTRIBUTION TO? – SPHERES OF IAHRs INFLUENCE

Through the detailed examinations of three domestic accountability processes, and taking into account their political and social context, the previous three chapters have been able to identify a number of different examples of concrete contributions made to those processes by the Inter-American system. Upon closer inspection, it becomes clear that each of those examples catalogued in the case studies has contributed to one of four dimensions of the domestic accountability processes under examination. These four dimensions, the spheres of Inter-American influence on domestic accountability processes, are: 1.) the domestic *discourse* concerning the need to provide justice for victims of serious human rights violations; 2.) the domestic *narrative* of the underlying human rights violations; 3.) the *normative framework* for investigation and prosecution of serious human rights violations; and 4.) the progress of concrete domestic *proceedings* concerning serious human rights violations.

Of these four spheres of influence, the normative framework and domestic proceedings are, from a lawyer's perspective at least, perhaps the most familiar and obvious. Previous studies concerning the domestic impact of international criminal proceedings have therefore largely focused

on those two domestic spheres. However, the case studies conducted in the previous three chapters suggest that the contributions of the IACtHR to domestic discourse and narrative have been especially relevant. Moreover, the case studies also suggest that contributions to the domestic normative framework are often achieved after – and even through – changes in the discourse of pro-accountability actors. This section will analyze each of these four domestic spheres in more detail. It will examine how the concrete contributions of the IAHRs identified in the case studies have affected these domestic spheres and how they have, thereby, brought to the overall goal of achieving (criminal) accountability for serious human rights violations closer.

2.1 Discourse

The case studies clearly demonstrate that much of the work involved in the domestic struggle against impunity for serious human rights violations takes place outside the courtroom and is performed by actors who are not part of the criminal justice system. In Guatemala, domestic investigations and prosecutions were only undertaken after long and intense campaigning by pro-accountability actors from civil society – i.e. victim groups and human rights organizations – and required sustained campaigning by those actors to be brought to a conclusion. In Colombia, mechanisms aimed to respect the victims' right to truth and justice were included in the transitional justice framework for the demobilization of the AUC only after human rights groups had made these rights part of the national debate. Thus, the case studies underline that civil society demand for justice is crucial for the success of domestic accountability processes.

In this context, however, it matters greatly *how* domestic actors demand accountability. It matters how they articulate their claims of how and why they want the state to respond to serious human rights violations. In other words, the discourse employed by pro-accountability actors in support of their claims is relevant to their chances of success. Those chances will remain slim, to be sure, but they will be slightly higher if their claims are supported by an effective discourse. In the words of Alison Brysk: “there are no formulas for social change, only rhetorical strategies for improving the odds”.¹ Brysk herself has detailed one such rhetorical strategy, which

1 A. Brysk, *Speaking rights to power – constructing political will* (Oxford University Press, 2013), p. 10. The idea that discourse is relevant to the possibility of social change, is based on the postmodernist understanding that “[d]iscourses are not only social products, they have fundamental social effects. They are modes of power.” D. Harraway, *Primate visions: gender, race and nature in the world of modern science* (Routledge, 1989), p. 289, as cited in: A. Brysk, “‘Hearts and minds’: bringing symbolic politics back in”, (1995) 27(4) *Polity* 559-585, p. 566.

she calls “speaking rights to power”.² In short, her argument holds that, for a number of reasons which are beyond the scope of discussion in this section, framing “local problems in terms of globally legitimate norms” is a particularly effective form of information politics,³ especially for those who do not have ready access to the traditional sources of hard-power in their domestic context. In this sense, speaking rights to power is a “weapon of the weak”, or a form of “communicative counter-hegemony”.⁴

In both case studies, anti-accountability constituencies have attempted to discredit and marginalize those pursuing justice for serious human rights violations. They have been labeled ‘communists’ or ‘terrorists’ (Guatemala) or ‘friends of terrorists’ (Colombia). This discourse paints the call for justice as an attack on the state which is inspired either by ideological motivations (seeking to win the war through the courts) or by the desire to profit financially from the country’s troubles by claiming compensation. Against this background, human rights discourse has proven an effective weapon for pro-accountability actors, because it allows them to shift the balance of discursive power between them and anti-accountability constituencies in their favor in two ways: by connecting their demands to an established social order and by shifting to a ‘language’ in which they are more fluent than their counterparts. This is so, because the victim groups and human rights organizations pursuing justice for serious human rights violations tend to be more fluent in the language of human rights than anti-accountability constituencies, who are often from sectors of society which have tended to view human rights law with suspicion. Moreover, those groups, being close to the traditional sources of state power and dominant in domestic public discourse, had no need for a ‘weapon of the weak’, such as a human rights-based discourse. Thus, when pro-accountability actors frame their demand for justice in human rights language, anti-accountability actors generally have not been able to answer those claims successfully using the same language.

As we have seen in chapters 5 and 6, this dynamic may increase the chances of success of domestic accountability processes, when pro-accountability actors’ human rights based discourse manages to capture the attention of the judges, prosecutors and legislators who ultimately determine the outcome of domestic accountability processes. For those actors, acting in an official capacity and occupying a particular place within the domestic legal order, human rights language has a particular resonance, making it difficult to simply dismiss human rights-based arguments as politically or ideologically motivated.

2 See generally A. Brysk, *Speaking rights to power – constructing political will* (Oxford University Press, 2013).

3 Idem, p. 8. See also idem, p. 15, explaining that: “[s]peaking rights to power means gaining attention, then empathy, and then evoking a powerful norm that persuades power-holders, allies, or fellow-sufferers to mobilize.”

4 Idem, pp. 10 and 16.

Chapter 6 of this study illustrates that dynamic especially well. As the chapter demonstrates, human rights organization favoring accountability were able to significantly disrupt and redirect the legislative process towards the adoption of (what would eventually become) the Justice and Peace Law through their employment of a discourse based on the rights of victims to truth and justice and the absolute prohibition of amnesty provisions. This discourse resonated with, first, an important minority of parliamentarians and, later, with the Colombian Constitutional Court, who recognized this discourse as legitimate and based on a set of norms binding to the Colombian state. Anti-accountability constituencies and state officials responsible for the demobilization of the paramilitaries, who had committed to a discourse based on the need for peace and reconciliation, were unable to counter civil society's arguments on their merit or with reference to a similar set of norms. As a result, they have had to accept considerable changes to the transitional justice framework they had originally proposed. In the peace process with the FARC-EP, this dynamic played out rather differently. Before starting the negotiation process, the Santos administration – which had at least a practical interest in lowering the standard of justice demanded by human rights organizations – spent considerable time and effort on developing its own discourse human rights-based discourse on transitional justice. This made it difficult for human rights organizations to effectively challenge the state's transitional justice approach with reference to human rights standards and, thereby, to capture the attention of possible allies within the state apparatus in the same way as they had done in relation to the JPL.

This theory of speaking rights to power thus helps to explain why the pro-accountability actors from civil society, who are relatively marginalized and much further removed from the state and from traditional sources of power than anti-accountability constituencies, have employed a human rights-based discourse and how this has, at times, helped them to move domestic accountability processes forward. However, when pro-accountability actors attempt to speak rights to power, it is clear that they will need to be able to demonstrate that their claim, i.e. justice for victims of serious human rights violations, is indeed a matter of human rights. This, of course, is where the Inter-American system comes in. Chapters 2 and 3 of this study have demonstrated that the IACtHR has been a pioneer in framing the struggle against impunity as a human rights issue. It was the first human rights institution to recognize that state have a positive obligation under international human rights law to investigate, prosecute and punish human rights violations. It remains, so far, the only human rights institution to unequivocally recognize that victims of human rights violations have a right to justice. Chapters 5 and 6, in turn, demonstrated that the Inter-American system is the main source to which pro-accountability actors refer

when they frame their claim to justice in the language of human rights.⁵ Thus, without the jurisprudence of the IACtHR, it would be difficult for pro-accountability actors to make this claim and to speak rights to power, in order to increase their chances of actually achieving justice.

The jurisprudence of the IACtHR does not only provide pro-accountability actors a legal authority for demanding justice as a matter of human rights law, it also provides them with a whole catalogue of more specific obligations on the state, tailored to the realities of overcoming entrenched impunity in the region, all of which can similarly be argued to be demanded by human rights law. Thus, pro-accountability actors can, for example, authoritatively claim that there is an unqualified prohibition of amnesty provisions under Inter-American human rights law. And as we have seen in chapter 6 of this study, they have done so with some success. Chapter 6 has also demonstrated that, in order for a rights-based discourse to be successful, it is important that the right in question can be presented as clear and unequivocal, belonging to the hard core of human rights law, and, therefore, as representing a credible threat to domestic authorities when they do not properly respect and ensure that right.

Moreover, chapter 5, in particular, has demonstrated that speaking (Inter-American) human rights to power works not only as an offensive strategy – in order to amplify pro-accountability actors' claims for justice – but also as a defensive strategy. In the extremely polarized political environment of Guatemala, the argument that investigation and prosecution of serious human rights violations is explicitly required by the IACtHR is employed by both civil society actors and prosecutors, when they find themselves under attack from anti-accountability actors. Reference to the IACtHR and its case law serves to draw the debate away from their personal beliefs and motivations for pursuing justice and refocus it on the international legal obligations of the state. As such, it helps those actors to reduce the reputational damage done by such personalized attacks to their campaigns for justice or to the investigations they are conducting.

2.2 Narrative

The narrative dimension of domestic accountability processes is closely related to the discursive dimension described above. Both are concerned with the way people speak about accountability for serious human rights violations. The difference is that, while the discursive dimension relates to the way pro-accountability actors articulate their demand for accountability, the narrative dimension relates to the way the underlying human rights

5 See also P. Engstrom and P. Low, 'Mobilizing the Inter-American human rights system: regional litigation and domestic human rights impact in Latin America', in: P. Engstrom (ed.), *The Inter-American human rights system: impact beyond compliance* (Palgrave MacMillan, 2018), recognizing the IAHRs' potential for providing "symbolic and discursive tools to frame political demands in terms of regional human rights standards".

violations and their historical context are understood and discussed. The narrative dimension is of great relevance to domestic accountability processes, because the way in which the underlying human rights violations, and – particularly – the role of both the state and of those demanding justice in those violations are understood, may affect both the public's expectations with regard to justice and the willingness of relevant state actors to pursue and provide it. Therefore, the work of civil society actors demanding justice for serious human rights violations includes promoting a particular narrative of those violations, which highlights not only their occurrence, but also the context of their occurrence and the role of the state in it. As observed by Winifred Tate:

“human rights activism is an effort to bring certain public secrets into the public transcript [the dominant narrative, HB], to make what is known but denied part of the general discussions about the nature and cause of violence and possible solutions”.⁶

Thus, domestic accountability processes are often accompanied by a clash between the competing narratives of underlying human rights violations promoted by pro- and anti-accountability constituencies.⁷ This is underlined all three case studies conducted in the context of this study. In Guatemala, the most important narrative clash concerned the question whether, in the context of the internal armed conflict, the Guatemalan military had committed genocide against certain indigenous groups. Anti-accountability constituencies, having long promoted a narrative in which the military only used violence against armed insurgent groups in order to protect the country from communism, emphatically deny that a genocide has ever taken place in Guatemala. Pro-accountability constituencies, on the other hand, argue that the military has simply used the pretext of counterinsurgency to commit atrocities on a large scale against political dissenters and against the indigenous population. In Colombia, meanwhile, one of the central controversies with regard to the armed conflict concerns the question of the relationship between the state and paramilitary organizations. Pro-accountability actors have long suspected that the state has covered up the true extent of the collusion between state forces and paramilitary groups, in order to avoid accountability for the state agents involved in crimes committed by the paramilitaries. According to the narrative they promote,

6 W. Tate, *Counting the dead – the culture and politics of human rights activism in Colombia* (University of California Press, 2007), p. 293.

7 In this context, Alison Brysk speaks of “canon and counter-hegemony”. In her view, canonical narratives provide “the framework of received wisdom, universally transmitted by storytelling, which shapes how ordinary people talk about politics”. Counter-hegemonic narratives, meanwhile, challenge the canon by proposing “a reversal of a canonical narrative, attachment of new characters to an existing narrative, or self-representation by marginalized members of society”. A. Brysk, “‘Hearts and minds’: bringing symbolic politics back in”, (1995) 27(4) *Polity* 559-585, pp. 572-573.

the state cooperated extensively with paramilitary commanders, and some even believe that the paramilitaries were enlisted by the state to do its dirty work for it in the war against the guerrillas. However, the dominant narrative regarding the civil war and the state's role in it, promoted by anti-accountability constituencies, paints the state as passive, unable to control either the guerrillas or the paramilitaries.

Both in Guatemala and in Colombia, the Inter-American human rights system has contributed considerably to the work of pro-accountability actors in challenging the dominant narrative of the respective internal armed conflicts. According to Jeffrey Davis, the IAHRs has been "an exceptional vehicle for allowing the victims' story to come out through testimony, for enshrining it in the judicial record, for testing and admitting evidence and for establishing the truth".⁸ The three case studies demonstrate the truth of that statement for their respective contexts. Both states have, for example, recognized, in the course of certain proceedings at the Inter-American level, the occurrence of particular events – i.e. massacres – that had previously been denied by them and accepted state responsibility for those events. The example of the Trujillo commission, discussed in detail in chapter 7, is illustrative in this context. The fact that the Colombian state accepted responsibility for a massacre committed by a paramilitary group, has helped pro-accountability actors to demonstrate the close ties which existed between paramilitary groups and state forces.

The IACtHR's judgments, and their interpretation of the historical context of both the Guatemalan and the Colombian internal armed conflicts, have also been important in this respect. In those judgments, the IACtHR provides a thorough account of the facts of the case at hand and, moreover, it situates those facts in the historical context of the armed conflicts in which they took place. In relation to Guatemala, the IACtHR's judgments concerning massacres committed against indigenous populations, including the *Plán de Sánchez* and *Río Negro* cases, shed light on the scorched earth campaigns conducted by the Guatemalan military in rural areas in the 1970s and 1980s, on the national security doctrine which formed the basis for these campaigns and on the racism which constituted a fundamental element of that doctrine. In relation to Colombia, the string of IACtHR judgments concerning the paramilitary phenomenon, delivered at a crucial moment in the paramilitary demobilization process, underlined the state policies which allowed for the creation of the paramilitary groups and the collusion between those groups and state forces. All of these judgments supported and deepened the narratives promoted by pro-accountability actors of the serious human rights violations for which they demand justice.

Finally, while it is likely that the IACtHR's account of the Guatemalan and Colombian armed conflicts and the serious human rights violations committed during those conflicts has not reached the general public, the

8 J. Davis, *Seeking human rights justice in Latin America – truth, extra-territorial courts and the process of justice* (Cambridge University Press, 2014), p. 207

case studies demonstrate that it has reached at least some members of one particular audience which is fundamental to the success of domestic accountability processes: the prosecutors and judges involved in human rights cases. Chapters 5 and 7 of this study show that the IACtHR's account of the facts in its judgments and the way in which it has interpreted those facts in light of their historical context, has contributed significantly to the way judges and prosecutors have dealt with those facts in at least some individual cases. In Guatemala, the judgments of the IACtHR have supported judges in finding that certain controversial events, especially massacres and enforced disappearances, took place and were executed with the involvement of the state's armed forces. Moreover, they also provided a precedent for the use of the reports of the Guatemalan truth commissions as evidence in a legal case. Finally, the IACtHR's interpretation of the facts of the massacre cases in light of their historical context, has helped domestic judges to understand the scorched earth campaigns against indigenous groups as part of a genocide. In this sense, one of the respondents cited in Chapter 5 of this study described the Guatemalan massacre cases before the IACtHR, particularly *Plan de Sánchez*, as a 'foundational phase' for the domestic genocide case against Ríos Montt. In Colombia, the IACtHR's judgments concerning the paramilitary phenomenon have not only exposed links between paramilitary groups and state forces, they have also inspired prosecutors of the National Human Rights Unit to expand the scope of their investigations and investigate the full circle of those responsible for paramilitary crimes, including certain state agents. They have done so, on the one hand, through the direct orders from the IACtHR contained in them to conduct an exhaustive investigation and identify all those responsible for the human rights violations at issue. On the other hand, they have also performed a more pedagogic function, in that the IACtHR's own contextual analyses have served as an inspiration for domestic prosecutors seeking to do the same. A similar dynamic has been observed in the Justice and Peace Tribunals. The practice of contextual analysis of human rights cases has eventually become formalized through Directive 0001 of 2012, which requires contextual analysis for complex cases and creates a special unit within the Public Ministry to assist with such analysis.

2.3 Normative framework

That the normative framework within which domestic accountability processes operate is relevant for their chances of success, does not require much explanation. Of course, a normative framework conducive to investigation and prosecution of serious human rights violations does not in itself ensure that accountability processes will ultimately be successful. All three case studies underline that the successful investigation and prosecution of such complex and politically sensitive cases requires much more than only an appropriate legal framework. However, legal obstacles to investigation and prosecution created through that normative framework may undermine and

derail accountability processes, even when all other ingredients for success are present. Therefore, pro-accountability actors often need to invest considerable effort into clearing such legal obstacles before any investigation and prosecution of human rights violations can be pursued successfully.

All three case studies demonstrate that the IACtHR's doctrines concerning the obligation of the state to remove legal obstacles to investigation, prosecution and punishment of serious human rights violations, discussed in detail in Chapter 3 of this study, have contributed to the removal (or prevention) of such obstacles in Guatemala and Colombia. These doctrines have provided pro-accountability actors with a very specific legal vocabulary to articulate their demand to remove legal obstacles. At the same time, the legitimacy of the IACtHR as an international human rights court and the authority attached to doctrines which form part of its *jurisprudence constante*, make their arguments highly persuasive to the domestic authorities who hold the power to remove those legal obstacles for them. The fullest illustration of this contribution of the IACtHR's doctrines is provided in Chapter 6 of this study, which is dedicated in its entirety to Colombian struggles to prevent the erection of an insurmountable legal obstacle to the investigation, prosecution and punishment of serious human rights violations committed in the context of the internal armed conflict in the form of amnesty legislation. The chapter demonstrates not only the IACtHR's important contribution to the discourse surrounding these processes, but also how reference to the IACtHR's doctrine on the obligation to investigate and prosecute and the prohibition of amnesty provisions helped to persuade certain domestic authorities of the merit of their discourse. Ultimately, the reception of IACtHR doctrines by relevant state actors – including, particularly, the Constitutional Court – has redirected the course of domestic legislative processes and thereby influenced the normative content of the transitional justice frameworks adopted through them. As a result, the domestic legal obstacles are now limited mainly to the 'punishment' part of the obligation to investigate, prosecute and punish serious human rights violations.

Chapter 5, meanwhile, demonstrates that the IACtHR's doctrines on the state's obligation to remove legal obstacles had also made some – limited and unstable – contributions to the normative framework for investigation and prosecution of serious human rights violations in Guatemala. Firstly, the IACtHR's doctrine on the prohibition of amnesty provisions has provided the basis on which Guatemalan courts, first the Supreme Court and later the Constitutional Court, have excluded cases of serious human rights violations from the scope of applicability of the Law of National Reconciliation. As a result, this law would no longer form an obstacle to the investigation and prosecution of most of the crimes committed by the Guatemalan armed forces during the internal armed conflict. However, recent indications of backtracking on the part of the Constitutional Court and the even more recent introduction of a Draft Bill to override this domestic jurisprudence by expanding the scope of the Law of National Reconciliation, put this progress – and the IACtHR's contribution to it – at risk. Secondly, two

important decisions by the Guatemalan Constitutional Court have ensured the domestic reception of the IACtHR's doctrines on the imprescriptibility of serious human rights violations and the continuous nature of the crime of enforced disappearance, thereby removing two further domestic legal obstacles to investigation and prosecution of such violations.

2.4 Progress of domestic proceedings

Finally, the case studies show that the IAHRs' interventions have in some cases affected the progress of individual domestic proceedings concerning serious human rights violations. In many ways, this is the most obvious sphere of influence of Inter-American interventions in domestic accountability processes. When the IACtHR delivers a judgment ordering a state to investigate, prosecute and punish certain human rights violations, we would expect this to have some effect on the progress of the domestic proceedings concerning those violations. In fact, if one were to approach the case studies from a compliance-based perspective, this would be the only dimension of the domestic accountability process of interest.

Upon closer inspection it becomes clear, however, that many of the IAHRs' contributions to the progress of domestic proceedings are dependent on successful action in one of the other three dimensions of domestic accountability processes described above. For example, if the doctrines developed by the IACtHR contribute to the removal of a legal obstacle in the form of – say – an amnesty provision, they thereby also contribute to the progress of proceedings which would otherwise have been blocked by that amnesty provision. Similarly, when IACtHR judgments contribute to the promotion of a narrative of serious human rights violations which requires an expansion of the scope of domestic investigations, it thereby also affects the progress of those investigations. Since these indirect contributions of the IAHRs to the progress of domestic proceedings have already been covered in the preceding sections, they will not be further discussed here.

However, the case studies have also demonstrated several more direct IAHRs contributions to the progress of domestic proceedings. Firstly, Chapter 5 demonstrates that *proceedings* at the Inter-American level may contribute to the progress to the progress of the domestic proceedings concerning the same facts, especially when the two sets of proceedings are conducted in parallel. Pro-accountability activists in Guatemala indicated that the monitoring effect of the parallel proceedings on the Inter-American level can help them to push domestic proceedings forward in two ways: they provide an international spotlight, which limits the space for political maneuvering by anti-accountability actors and they provide leverage to pressure domestic authorities into action when their interest in the case seems to wane. Similarly, prosecutors at the National Human Rights Unit of the Colombian Public Ministry also described the effects of the IACtHR's monitoring on their ongoing investigations in Chapter 7. According to these prosecutors, the constant requests for information about cases which were

directly related to IACtHR proceedings, made them prioritize those cases over other, similarly grave cases. Moreover, the prolonged involvement of the IACtHR ensures that these cases remain on the agenda indefinitely and are not allowed to simply peter out.

Secondly, Chapter 5 suggests that Inter-American proceedings may affect the progress of domestic proceedings by protecting those involved in them. Serious threats against the reputation or even the safety of activists, prosecutors, judges and witnesses might discourage those actors from continuing their work, which would adversely affect the progress of domestic proceedings. As suggested by Chapter 5, Inter-American proceedings help to protect pro-accountability actors from such threats in two ways: firstly, the international spotlight which these proceedings shine on pro-accountability actors makes it more costly for their opponents to attack them directly. Secondly, both the IACtHR and the IACmHR have on many occasions ordered the state to provide police protection to pro-accountability actors. Even when pro-accountability actors do not particularly trust the police and enjoy its protection, they are aware that the additional spotlight such police protection shines on them would make attacking them a very costly undertaking.

Thirdly, Chapter 5 demonstrates that, in one particular case – that of the *Dos Erres* massacre – an IACtHR *judgment* has had a direct impact on the progress of the domestic proceedings concerning that case. Thanks to the IACtHR's judgment in *Dos Erres* and a subsequent decision by the Guatemalan Supreme Court declaring that judgment directly enforceable, domestic prosecutors were able to clear all the procedural obstacles which had prevented the domestic proceedings from progressing to trial. However, this contribution of the IACtHR is very case-specific and has not been repeated for other proceedings analyzed in the case studies.

3 CONTRIBUTION THROUGH? MECHANISMS UNDERLYING THE IACtHR'S CONTRIBUTIONS TO DOMESTIC ACCOUNTABILITY PROCESSES

So far, this chapter has addressed both the interventions which have been the 'source' of the IAHRs' contributions to domestic accountability efforts (contribution of) and the dimensions of those domestic processes to which these interventions have managed to contribute (contribution to). What remains to be analyzed, however, is *how* exactly those interventions contribute to the four relevant dimensions of domestic processes. What do these interventions *do* to affect domestic processes? The 'missing link' between the source of the IAHRs' contributions and their domestic object, are the mechanisms *through* which these contributions take place. Unlike the domestic spheres of IAHRs influence, the mechanisms underlying the IAHRs' contributions to practice cannot be directly observed through empirical analysis. They do not, therefore, follow directly from the empirical observations described in Chapters 5 to 7, but have to be deduced from

them through a further interpretative leap. As a result, the mechanisms identified in this section should be understood as propositions – grounded in the researcher’s interpretation of the domestic effects observed through the case studies – and in need of confirmation through further research.

On that basis, this section introduces five mechanisms understood by the researcher to have been responsible for producing the IAHRs’ contributions to domestic accountability processes in Guatemala and Colombia. In the case studies conducted a part of this research, the IAHRs has contributed to domestic accountability processes by 1.) *translating* the demand for justice to a right to justice; 2.) *legitimizing* and depoliticizing demands for justice (and those demanding justice); 3.) *monitoring* domestic proceedings and prioritizing certain cases; 4.) *modelling* appropriate modes of interpretation and contextual analysis; and 5.) *protecting* pro-accountability actors.

3.1 Translating

Through the doctrines it developed over the course of its jurisprudence – starting with the *Velásquez Rodríguez* judgment and continuing to this day – the IACtHR has translated civil society’s desire and demand for justice into a right to justice. At the same time, it has imposed upon the states under its jurisdiction a legally binding obligation to provide justice to victims through the investigation, prosecution and punishment of human rights violations. The case studies – and their synthesis in this chapter – have demonstrated that their ability to frame their demands in a vocabulary of international human rights has been crucial to pro-accountability actors’ success in the discursive sphere, especially since they are generally far more conversant in this vocabulary than their domestic opponents. Thus, through its development of this international human rights vocabulary the IACtHR has made a fundamental contribution to domestic accountability processes.

Moreover, as discussed in Chapter 3 of this study, the IACtHR has further translated this general obligation to investigate, prosecute and punish human rights violations into a plethora of more concrete obligations. These more concrete obligations have been tailored specifically to overcoming the situation of entrenched impunity present in many of the states under its jurisdiction, and certainly in the two states examined in the context of this study. The case studies have demonstrated how these concrete obligations have contributed to the discourse of domestic pro-accountability actors and, ultimately, to the removal of legal obstacles and the creation of a normative framework conducive to investigation and prosecution of serious human rights violations.

Finally, it should be noted that the IACtHR is not the only source of international human rights ‘language’ and doctrines in the area of anti-impunity. As discussed in Chapter 2 of this study, the IACtHR’s case law is part of a broader international (legal) movement against impunity, which includes the jurisprudence of other international courts and influential soft-law documents developed by the UN. In fact, as demonstrated in

Chapter 3 of this study, the IACtHR's own doctrines have sometimes been inspired and guided by standards developed in other international contexts, including the jurisprudence of the ECtHR, soft-law documents like the UN Principles to Combat Impunity and the Minnesota Protocol and treaties like the UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. In such instances, the IACtHR has translated diffuse international standards – the status and bindingness of which can be debated – to legal doctrines of direct applicability in the states under its jurisdiction.

In short, the doctrines developed by the IACtHR in the area of anti-impunity have contributed to both the discursive and the normative dimensions of domestic accountability processes in Guatemala and Colombia, through their translation of civil society demand into legal standards of direct applicability in the national legal order.

3.2 Legitimizing and depoliticizing

As illustrated at length in all three case studies, domestic pro-accountability actors are often isolated and marginalized in the domestic social and political contexts analyzed in this study. Anti-accountability constituencies, on the other hand, generally belong to established sectors of society and are close to the sources of state power. As a result, the playing field on which these two constituencies clash with each other over the question of accountability for serious human rights violations is uneven and skewed towards those who oppose it. And while this power-imbalance affects all aspects of domestic accountability processes, its effects are most visible in their more public aspects, i.e. the discursive and narrative spheres.

The case studies show that pro-accountability actors, their demands for justice and their narrative of the human rights violations for which they demand justice are routinely delegitimized as motivated by revenge, left-wing ideology and/or financial interests. In this context, the judgments of the IACtHR, and their orders to the state to investigate, prosecute and punish human rights violations, contribute to the discursive dimension of domestic accountability processes in two ways: firstly, they make it possible for pro-accountability actors to locate the source of the demand for justice outside themselves. Thus, the demand for justice comes not from a marginalized group of local activists, but from a higher authority in the form of an international human rights court which enjoys considerable legitimacy in the region. Secondly, the reference to IACtHR judgments ordering the state to investigate and prosecute human rights violations help pro-accountability activists to draw the debate away from their personal motivations and towards the legal obligations of the state. And while such IACtHR-based discourse may perhaps not resonate very strongly with the general public, it is particularly persuasive to the domestic prosecutors and judges involved in domestic proceedings concerning serious human rights violations.

Through the same mechanism, the IACtHR's judgments may affect the narrative dimensions of domestic accountability processes. A narrative of the Colombian or Guatemalan internal armed conflict which paints the state itself as complicit in the most serious violations of human rights imaginable and holds some of the most powerful members of society personally responsible for those violations might not be particularly persuasive when it is promoted by an 'ideologically suspect' group of activists. This perception might change, however, when that narrative is supported by an international court.

In short, the IACtHR's doctrines and its judgments in particular cases have contributed to the discursive and narrative dimensions of domestic accountability processes through their legitimation and depoliticization of the demands and narratives promoted by pro-accountability actors.

3.3 Monitoring

That Inter-American proceedings contribute to the progress of (parallel) domestic proceedings through their monitoring of the latter, was pointed out explicitly by various respondents in Chapters 5 and 7.⁹ Therefore, its discussion here will be brief. It suffices to point out that this mechanism functions in three possible ways: firstly, Inter-American monitoring of domestic proceedings, and the international spotlight entailed therein, may limit the possibilities for political maneuvering to frustrate those proceedings and provides pro-accountability actors with leverage to pressure state authorities when proceedings become stuck. Secondly, monitoring by the Inter-American system brings with it a continuous demand to update the system on the progress of domestic proceedings, which may lead prosecutors to prioritize those cases over others. Thirdly, the monitoring of domestic proceedings by the Inter-American system will ensure that those proceedings remain a priority for the responsible prosecutors, and are not allowed to simply simmer out.

In short, proceedings in individual cases before the organs of the IAHRS have contributed to the progress of their domestic counterparts through the monitoring effects produced by those Inter-American proceedings.

3.4 Modelling

The IACtHR's judgments, and their account of the commission of serious human rights violations in the context of the Guatemalan and Colombian armed conflicts, have contributed to the narrative dimension of the respec-

9 See also J. Davis, *Seeking human rights justice in Latin America – truth, extra-territorial courts and the process of justice* (Cambridge University Press, 2014), pp. 209-211, suggesting that the judges of the IACtHR are aware of this monitoring mechanism and that they therefore "frequently ask victims, advocate and state representatives what the court could order to remove obstacles and push human rights cases through domestic courts".

tive domestic accountability efforts. These judgments have helped to expose certain public secrets – the commission of genocidal acts in the rural areas of Guatemala, the collusion between paramilitary groups and the Colombian state forces – and bring them into the dominant narrative. Moreover, the IACtHR's judgments about these phenomena *model* a certain way of interpreting the facts of a case in light of the historical context in which they were committed. And, as demonstrated in Chapters 5 and 7 of this study, domestic judges and prosecutors have taken inspiration from this example set by the IACtHR's judgments. This, in turn, has had important effects on the narratives of the Guatemalan armed conflict presented in certain judgments delivered on the national level and on the scope of the investigations conducted by prosecutors at the Colombian National Human Rights Unit and on the lines of investigation explored by them.

It should be noted that this willingness of domestic judges and prosecutors to learn from the example set by the IACtHR in this respect cannot be explained through a legal logic. There is no obligation or expectation on domestic judges to follow the IACtHR's interpretation of facts, as its mandate is limited to the interpretation of the provisions of the ACHR. Rather, their willingness to learn and take inspiration from the IACtHR seems to be based on the perception that the IACtHR represents a professional example worthy of imitation and that its methods are particularly appropriate for dealing with complex cases involving structural human rights violations.

In short, the judgments of the IACtHR have contributed to the narrative dimension of domestic accountability processes and the scope of domestic proceedings, through their modelling of an appropriate technique for interpreting the facts of a case in their historical and political context.

3.5 Protecting

Inter-American proceedings contribute to the progress of domestic proceedings through their protection of pro-accountability actors and other participants in those proceedings. Protection of pro-accountability actors is achieved both through the 'spotlight' which Inter-American proceedings shine on those actors and the threats they experience domestically and, more directly, through the protective measures which both the IACmHR and the IACtHR regularly order in their favor. This mechanism was identified explicitly by respondents and has been discussed in some detail in Chapter 5 and in section 2.4 of this chapter. In order to avoid unnecessary repetition, it will not be further discussed here.

In short, proceedings within the IAHRs and its protective measures have contributed to the progress of domestic proceedings by protecting pro-accountability actors.

4 IN SUM

The case studies have analyzed the contributions made to domestic accountability processes by three distinct IAHRs 'interventions': 1.) *proceedings* conducted by the IAHRs in individual cases; 2.) the *judgments* produced by the IACtHR as a result of those proceedings; and 3.) the *doctrines* developed by the IACtHR over the course of its case law. Through the case studies we have been able to observe that all three of these interventions have in fact contributed to domestic accountability efforts.

More specifically, through the case studies contributions of these three interventions have been observed in relation to four distinct dimensions of domestic accountability processes in Guatemala and Colombia: 1.) *discourse* framing the demand for justice as a matter of international human rights law; 2.) domestic *narratives* of the underlying serious human rights violations and the context in which they were committed; 3.) the domestic *normative framework* for the investigation, prosecution and punishment of human rights violations; and 4.) the progress of domestic *proceedings* in relevant cases.

On the basis of the analysis conducted in the three case studies and the synthesis of those case studies provided in this chapter, it is proposed that the contributions of the IAHRs to these four dimensions of domestic accountability processes were achieved through the following five mechanisms: 1.) *translating* the demand for justice into a right to justice and an obligation to investigate, prosecute and punish serious human rights violations; 2.) *legitimizing* and depoliticizing the demand for justice; 3.) *monitoring* domestic proceedings and *prioritizing* IACtHR cases; 4.) *modelling* appropriate modes of interpretation of the facts underlying cases of human rights violations; and 5.) *protecting* pro-accountability actors.